

# PUBLICATION

---

## Important Update on Georgia Foreclosures

February 14, 2013

Last year, we alerted to you to a ruling by the Georgia Court of Appeals that altered the notice requirements for non-judicial foreclosure in Georgia. In that case, *Reese v. Provident Funding Associates*, the Georgia Court of Appeals held that Georgia law requires the foreclosure notice to disclose the identity of the secured creditor. The Court of Appeals defined "secured creditor" to mean the "owner of the loan," not the servicer. Provident has sought permission to appeal the ruling to the Supreme Court of Georgia. The Supreme Court has not yet ruled on Provident's request. However, another case recently argued before the Supreme Court of Georgia presents the same questions and may resolve this unsettled issue of Georgia foreclosure law.

In *You v. JPMorgan Chase Bank*, the U.S. District Court for the Northern District of Georgia acknowledged that there was a split of authority in Georgia as to whether the holder of a security deed who did not also hold the note could institute non-judicial foreclosure proceedings. Put another way, the issue is whether only the owner of the note may foreclose or if the servicer or another entity which holds the security deed may also foreclose under Georgia law. To resolve this newly disputed issue, the District Court certified three questions to the Supreme Court of Georgia.

The first question is whether Georgia law allows a party that holds the Security Deed, but does not hold the underlying note, to foreclose. The second and third questions deal with whether the secured creditor must be identified in the foreclosure notice and whether substantial compliance with the notice requirement is sufficient. The answer to these questions will resolve the primary issues raised in *Reese*. Thus, the resolution of *You* should determine whether the *Reese* decision will be overturned. The Supreme Court of Georgia held oral arguments in *You* on January 7, 2013. A decision is expected in two or three months.

The outcome of the *You* case has the potential to substantially change Georgia foreclosure law. Should the Georgia Supreme Court hold that note ownership is a prerequisite to foreclosure, a number of prior and pending foreclosures could be subject to challenge. An adverse ruling would mean that wrongful foreclosure cases in which standing to foreclose is raised could no longer be resolved by motion to dismiss. A factual determination as to whether the foreclosing entity held the note would be required in each case. In situations where the original note is lost, a lender could be forced to institute a proceeding to re-establish a lost note prior to foreclosure. Such a ruling would inevitably increase expenses and cause extensive delays in Georgia foreclosures.

Until the *You* case is resolved, Georgia foreclosure law will remain unsettled. Our mortgage team will continue to monitor these cases and will issue an alert as soon as a decision is issued.