

FORECLOSURES

RE28RC12

I. CREDIT

- A. Credit Reports
- B. Credit Score
- C. Fair Credit Reporting Act (FCRA)
- D. Impact of foreclosure on personal credit

II. TYPES OF FINANCING INSTRUMENTS

- A. Mortgage
- B. Note - Promise to pay - IOU,
- C. Installment sales contract/Contract for Deed/Land Contract

III. THE MORTGAGE

- A. Who gives the mortgage?
- B. Review sample mortgage
- C. Types of mortgages
 - 1. Non-Recourse and Full Recourse
 - 2. Conventional
 - 3. Conforming
 - 4. Adjustable Rate Mortgage (ARM)
 - 5. Option Arm
 - 6. Interest Only Mortgage/100% Plus
 - 7. Piggyback Mortgage
 - 8. Fixed/Adjustable
 - 9. Balloon Mortgage
 - 10. Negative Amortization Loan
- D. Mortgage covenants
 - 1. Principal and interest
 - 2. Taxes
 - 3. Insurance
 - 4. Not to commit waste or remove improvements
- E. Mortgage provisions
 - 1. Power of Sale - Clause in a mortgage or Deed of Trust granting the Lender or Trustee the right to sell the property upon default.
 - 2. Acceleration Clause - Loan provision that gives the lender the right to declare the entire loan balance immediately due and payable upon violation of certain loan provisions (such as making payments on time).
 - 3. Due on Sale Clause or Alienation or Non-Alienation clause
 - 4. Mortgagee in Possession - Situation when lender takes possession and control of a property upon notice foreclosure of loan. Purpose is to prevent damage and collect any income produced.
 - 5. Defeasance Clause
 - 6. Assignment of Rents
- F. Mortgage Payments - (*no law but typical practices*)
 - 1. Payments generally due first of month
 - 2. Interest generally paid in arrears
 - 3. Generally a 15-day grace period
 - 4. Perhaps 3% late charge after 15-day grace period
 - 5. Payment is considered delinquent until all monies are paid to date

- G. Breach of Mortgage Covenants
 - 1. Order of Notice from the lender
 - 2. Workout Department/Loss Mitigation Department
 - a. Require complete package of financials, hardship letter, tax returns, bank statements etc.
 - b. Options include loan modification, forbearance, Deed-in-Lieu of Foreclosure, Short Sale, pre-foreclosure sale and more.
 - 3. PMI - If residential loan contains PMI lender has obligation to attempt to work out resolution.
 - 4. Right of Redemption
 - a. No Statutory Right in Massachusetts
 - b. Equitable Right (until auctioneer's hammer comes down)
 - 5. Short Sale
 - a. What is a Short Sale?
 - b. Easy or difficult – working with mortgagee
 - c. Tax consequences
 - 6. Special Servicers

IV. FORECLOSURE PROCESS

- A. Judicial vs. Non-Judicial foreclosures
 - 1. Power of Sale (Non-Judicial) vs. Entry by Possession
- B. 150-Day Advance Notice of Default – M.G.L. c. 244, § 35A (b)
 - 1. 150-day cure period
 - 2. No acceleration
 - 3. Only once within 5 years
 - 4. No extraordinary fees or charges
 - 5. No attorney fees
 - 6. Copy of notice to MA Division of Banks
- C. Pre-Foreclosure – Non-Judicial Foreclosure
 - 1. Complaint to Foreclose Mortgage
 - a. Land Court or Superior Court - Most complaints are filed in Land Court. The complaint states the intent to foreclosure under the Power of Sale Clause in the Mortgage and that defendant is not subject to relief under the Service Members Civil Relief Act.
 - 2. Service Members Civil Relief Act of 1940 - Dec.19, 2003 (Formerly known as the Soldiers and Sailors Relief Act)
 - a. History of SMCRA
 - b. Protection for Service Members
 - c. Legal Notices
 - 3. Recording the Notice
 - a. An Order of Notice of Foreclosure must be filed at the appropriate Registry of Deeds
 - 4. Securing the Property
 - a. Abandoned Property
- D. Non Judicial Foreclosure - Ruebeck v. Attleboro Savings Bank (*Case that set precedent of Foreclosure Proceeding in MA.*)
 - 1. Notice of Sale
 - a. Advertising Requirements - Following Judgment (Order of Notice), foreclosure process begins. Notice of Sale published in newspaper of general circulation in city or town where property located once a week, for 3 successive weeks, at least 21 days

VII. FINDING AND BUYING FORECLOSURES

- A. Sources of Information
 - 1. Foreclosures or bank owned/REO's
 - a. Pros and cons
 - 2. Newspapers/Banker & Tradesman
 - a. Online access for a fee/school discount
 - b. Best source
 - c. Free at the library
 - 3. Internet
 - a. For Sale foreclosure lists
 - b. Lenders website
 - 4. Registry of Deeds
 - a. Online access free
- B. Listing a property
 - 1. Doing the research
 - a. Amount owed to lender
 - b. Junior lien-holders
 - c. Registry Of Deeds
 - d. Letter from owner giving permission to speak to lender
 - 2. Valuing the property
 - a. Upside-down
 - b. Other available inventory
 - c. Marketplace demand
 - 3. Contacting owner/mortgagor
 - a. Short Sale
 - 4. Arrange for financing
 - a. Lender requirements
 - 5. Use professionals
 - a. Lawyers
 - b. Appraisers
 - c. Consultants
- C. Risks of buying foreclosures
 - 1. Pre-foreclosure sale may not close
 - 2. No access to property
 - 3. No access to appraiser
 - 4. No access to fire department
 - 5. Limited inspection ability
 - 6. No extensions for financing - could result in lost deposits
 - 7. Property could be distressed – deferred maintenance
 - 8. Eviction of former owner

Examples of cases:

i. Ruebeck v. Attleboro Savings Bank, 55 B.R. 163, 167-68 (Bkrcty.D.Mass.1985)

*ii. Snowden v. Chase Manhattan Mortg. Corp., 17 Mass.L.Rptr. 667, 2004 WL 1194656, *3 n.5 (Mass. Super. 4/27/04)*