



LESSON THIRTEEN

FORECLOSURE AND OTHER LENDING PROBLEMS

STUDENT LEARNING OUTCOMES



1. *Explain the collateral provisions of a trust deed.*
2. *Outline the steps in foreclosure proceedings.*
3. *Contrast "Power of Sale" with "Deed In Lieu of Foreclosure".*
4. *Explain how an "Assignment of Rents" clause protects real estate lenders.*
5. *List five ways that losses through foreclosure can be minimized or mitigated.*
6. *Explain the use of private mortgage insurance (PMI) in foreclosures.*
7. *Argue for or against the collecting of confidential data required of lenders under the Community Reinvestment Act.*

I. COLLATERAL PROVISIONS FOR A TRUST DEED

A. MAINTENANCE OF THE PROPERTY

B. HAZARD INSURANCE

C. PROPERTY TAXES AND OTHER LIENS

D. ASSIGNMENT OF RENTS

E. HAZARDOUS SUBSTANCES

F. MORTGAGE INSURANCE

G. TRANSFER OF PROPERTY OR BENEFICIAL INTEREST IN BORROWER WITHOUT LENDER APPROVAL

II. Default & Foreclosure

A. Borrower default

B. Time

1. First month missed payment
2. Second month missed payment
3. Third month missed payment
4. Fifth month
5. Redemption

C. Tips to avoid foreclosure

1. Don't ignore the problem
2. Contact the lender
3. Open and respond to all mail from the lender
4. Know your loan rights
5. Understand foreclosure prevention options
6. Prioritize spending
7. Use assets
8. Avoid a foreclosure company

Foreclosure Programs

D. Presidential Loan Refinance

1. You must be current on all mortgage payments.
2. Your home must be your primary residence.
3. Your home must be Fannie Mae or Freddie Mac financed.
4. LTV ratio may not be a factor in qualifying.
5. If you meet the above criteria, contact your lender.
6. Legislation pending for FHA and VA assistance.

E. Hope for Homeowners Refinance

- Original mortgage must be dated before 1/1/2008.
- Homeowner not in default intentionally.
- Homeowner not invested in multiple home loans.
- All information on original mortgage true, including
- income and occupation details.
- Homeowner not convicted of fraud.

F. Foreclosure

1. Non-Judicial TRUSTEE Sale

- a. Beneficiary notifies Trustee
- b. Notice of Default and Election to Sell
- c. Notice of Sale
- d. Final Sale

2. Judicial foreclosure (Mortgage)

- a. Rule 580b of Code of Civil Procedure
- b. Procedure
- c. Sale
- d. Deficiency Judgment

3. Deed in Lieu of Foreclosure

4. Request for Notice of Delinquency

III. Ways to Mitigate Default

- A. Impound accounts
 - 1. Pro rata portion of taxes & insurance
 - 2. Spreading payments over 12 months
 - 3. Other names: Escrow account/loan trust fund
- B. Forebearance

B. FORBEARANCE TO FORESTALL FORECLOSURE ACTION

1. Moratorium

- a. WAIVER OF PRINCIPAL
- b. WAIVER OF INTEREST
- c. WAIVER OF PRINCIPAL AND INTEREST
- d. PARTIAL PAYMENTS
- e. PREPAYMENTS

2. Recast the loan

- a. Extended term
- b. Increase the loan amount
- c. Reduce interest rate

C. Insurance of Loan

1. Government-Insured and Guaranteed Loans.

a. Federal Housing Administration (FHA)

1) Lender risk reduced

2) Premium is approximately 1.50% of the loan amount plus 1/2% of the loan amount as a monthly charge

b. U.S. Department of Veterans Affairs (DVA)

1) Guarantee

3) Practice: up to the maximum \$60,000

4) Subrogation

5) Release

c. California Veterans Farm and Home Purchase Act

1) Requires life and disability insurance on borrowers

C. Insurance

- 2. Private Mortgage Insurance (PMI)
 - a. Down payment
 - b. Interest rate
 - c. Insurance account
 - d. Loan amount
 - e. Losses
 - f. Premiums
 - g. Cancellation (under Homeowner Protection Act of 1998)
 - h. No PMI

D. Automatic Payment Plans

- 1. Pre-authorized monthly loan payment
- 2. Transmatic:
EFTS: Electronic Funds Transfer System

Foreclosure

- E. Consumer Protection
- 1. Public
 - A. Federal
 - B. State
- 2. Private
 - A. Defects
 - B. Warranty

- F. Charging Higher Interest
 - 1. Shifting losses
 - 2. Private lenders

G. Short Pay Off
-Called Short Sale

May have tax consequences-Seek professional tax advise.

V. Redlining

A. Definition: **Blanket** refusal to lend money in a high-risk **area**

B. Prohibited practice in the

➤ Housing and Financial Discrimination Act of 1977

➤ Fair Housing Act of 1968

Community Reinvestment Act of 1977

C. Rationale. The lender hopes to reduce exposure to defaults.

D. Disclosures

E. Evaluation

F. Community Reinvestment Act (CRA).

- Requires federally-supervised financial institutions to disclose lending data

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) requires lenders to report data on the race, gender, income, and census tract.