# n Alert On Early Settlem

In New York, The Strategy Must Include Service Of Proce

BY BRUCE J. BERGMAN, © 1996



be stopped to accommodate that setbeen completed. not before service New York - at least tlement, but not in process

tract, Notices of Chattel Sale, etc.

Typeset by Newspaper

NOTICE OF TRUSTEE'S SALE No. TS 123456

servicers, subservicers, trustees, attorneys, legal advertisers, etc. regarding your legal publication Notices of Default, Notices of Summons, Notices to Administer Estates, Notices of Sale of Pro

AKE

pursue. Sometimes a case should even

vicer, is most often the path to terms to the lender or sercase

on

typically favorable

ettling a mortgage foreclosure

raise A few years ago, its revenue zeal

2 New York passed statute which

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED AUGUST 21, 1995. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD

Bruce J. Bergman

lender or servicer) had to file proof of that service within 120 days. tiff (for our purposes, the foreclosing first thing to be done. Then the plainfiled with the court. That had to be the was begun when the legal papers were course, a mortgage foreclosure action) said that an action (including, of

the mortgage holder. ognized that the first party to suffer served! So it can be immediately recrate foreclosure has to be instituted served. That means that a new, sepadismissed as against the parties not fashion, the foreclosure is deemed a defendant is avoiding service If service is not made in a timely those persons not timely

## Untangling the mess

arise? Here is a thumbnail sketch: More on the consequences in a moment. But first, how might this mess

ly moved away, service cannot be Whether he is hiding or has just quiet-A defendant just can't be found.

York Mortgage Mathew Bender volume sel to a number of major lenders closure course, and on the faculty of the MBA's School of Mortgage where he teaches the mortgage foreand servicers and author of the two-East Meadow, N.Y., is outside coun-Certilman Balin Adler & Hyman in Bruce J. Bergman, Banking. University's Real Estate Institute, fessor of real estate with New York Lawyers, an adjunct associate the American College of Real Estate National Foreclosure Professionals, 1995). He is a member of the treatise, Bergman on New Mortgage Foreclosures, & Co. Inc. a partner with Mortgage (Rev.

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NOTICE OF TRUSTEES SALE No. TS 123458
YOU ARE IN DEFAULT UNDER A DEED OF
TRUST, DATED AUGUST 21, 1995 UNLESS YOU
TAKE ACTION TO PROTECT YOUR PROPERTY.
IT MAY BE SOLD AT A PUBIL SALE. IF YOU
NEED AN EXPLANATION OF THE NATURE OF
THE PROCEEDING AGAINST YOU. YOU
SHOULD CONTACT A LAWYER ON LAWYER, ON LAWYER
OF HAIL SERVICE CORPOPATION, as culy appointed
Tustee under and pursuant to Deed of Trust executed by John Doe as Trustor recorded September
11, 1995, as Instrument number 95-123456 of Official Records in the office of the County Recorder of
Main County, State of California, WILL SELL AI
PUBLIC AUCTION TO HIGHEST BIDDER FOR
CASH all right title and interest conveyed to and now
held by it under said Deed of Trust in the property aLated in said County and State described as: The
Casterly 30 feet of Lot 25 filed for record June 7,
1933 in Book 30 filesperity described above is
number signed Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, of the real property described above is
purported to be. 1123 Fast Lane, Marina CA. The
cords. The street address and other common
designation, if any, shown herein. Said sale will be
made, but without coverant or warranty, expressed
or implied, regarding the possession, or ercumtrances, to pay the remaining principal sum of the
noted) secured by said Deed of Trust, for the amount reasonably estimated to be \$54,185.00. The beneficiary under the terms of said Deed of Trust, with interest
thereof as provided in said note(s), advances, if any,
under the terms of said Deed of Trust, with interest
or implied, regarding the said and the recorded in the
county where the real property is located. Date. Decanably estimated to be \$54,185.00. The beneficiary under the learned to sell ones. Sell and written Note of
Default and Election to Sell to be recorded in the
county where the real property is located. Date. Decentred to the undersigned a written Declaration of
Default and Declaration of Sell to be poss

CONTACT A LAWYER.
On January 23, 1996, at 10:00 A.M. at the Fifth Avenue entrance to the City Hall, 1400 Fifth Ave., San Rafael, CA. SAMPLE SERVICE CORPORATION, as duly appointed Trustee under and pursuant to Deed of Trust executed by John Doe as Trustor recorded September 11, 1995, as Instrument number 95-123456 of Official Records in the office of the County Recorder of Marin County, State of California, WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as:

and costs: lication measures 4 inches This ASAP typeset pub-

\$96.00 (ASAP)

described as:

The Easterly 30 feet of Lot 25 filed for record June 7, 1983 in Book 9 of Maps at Page 7, Marin County Records.

The street address and other common designation, if any, of the real property described above is purported to be: 1123 Fast Lane, Marina, CA.

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

Said sale will be made, but without covenant or warranty, expressed or implied, regarding the possession, or encumbrances, to pay the remaining prinicipal sum of the note(s) secured by said Deed of Trust, with interest thereof, as provided in said note(s), advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust, for the amount reasonably estimated to be: \$54,185.00.

The beneficiary under said Deed of Trust herefore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Note of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located. publication measures 7 3/4 inches and costs: This newspaper typeset

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orded in the coerty is located.

Date: December 19, 1995 SAMPLE SERVICE CORPORATION

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days expires made and while searching, the 120

being considered. So lender or servicer says to counsel, "Stop and in-A deed in lieu is offered and is

cur no further expenses."

Lender thinks a deed in lieu of foreclosure is a great idea, but must obtain direction from the VA (or from the authority. whatever other governmental entity may be involved) and likewise calls halt to the case pending word

agreement seem to be going well. Rather than burden a strapped borrower with greater legal fees and disbursements, lender tells its attorney to "hold off until further notice." ■ Negotiations for a forbearance

They're all possible

Any of these scenarios - and a host of others - are certainly possible. Some may even sound familiar to our readers. But each presents the likelihood of exist. That necessitates a motion to consolidate the separate cases!

The law is now clear in New York start a new action against the parties who weren't served during the vital 120 day period. Still further, a new action means *two* foreclosure actions additional expense (a new index number at \$170) and counsel's time to

inviolate 120 day period *will* be granted - so long as it is made *before* the time frame expires. [Norstar Bank of Upstate New York v. Wittbrodt, 154 The law is now clear in New York that a motion to extend the otherwise

In the rough seas of mortgage

subservicing,

ONE SERVICER lights the way!

Misc.2d 260, 594 N.Y.S.2d 115 (1993).] But that just means another motion. Anyway, if the servicer has stopped the action to avoid incurring the foundering case. further expenses, it may be reluctant to authorize a special motion to rescue

details surrounding this issue of service of process time limits. But exploring them will not additionally enlighten the basic practical message, which is: If there is a compelling reason to put a foreclosure on hold reason to put a foreclosure on hold after the legal papers have been filed, at least allow service of process to be completed. *Then* the lender or servicer has the luxury of time without creating extra work and extra expense. There are far more technical

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Quantra Corporation, Northbrook, III., has launched a Windows-based, client/server version of its Mortgage

been incorporated to enable users to gain access to information on tional functions and a graphical user interface. Industry data models have Loan Management System.

The new version features additomized reports and presentations. demand and generate detailed cus-

er, scalable architecture that currently supports Windows NT and Windows 95. It supports the most widely used The Mortgage Loan Management System is a platform independent system built on a three-tiered client/serv

manage their portfolios on a proactive basis." Management System analyzes mort-gages using traditional information as well as looking at the underlying borrower, lease, property and market factors to enable clients the ability to "Mortgage servicers and investors need the ability to make better decisions, faster. The Mortgage Loan

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relational database management tems including Microsoft SQL Se and IBM's DB/2.

"The market wants an advanced, easy-to-use, client/server solution that could flexibly integrate with other systems," says Cy Brinn, vice president of Quantra

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the Quantra system include: Some of the other new or enhanced features in the client/server version of a comprehensive asset man-

agement database; supports commercial, multifam-

ily and residential property types;
■ supports an array of of loan

structures and accrual methods; on-line processing;
direct output of investor infor-

real estated owned (REO) action to the Internet;

counting capabilities;

data marts for easy data storand retrieval; and document and event tracking;

form generation tool. reporting, graphical tool and custom ■ integrated relational database

ing bases. It also meets compliance reporting requirements including regulatory and rating agency.

The system emphasizes views into detailed aspects of the data maintained by the system. This includes a enhanced for detailed accounting and financial requirements. For loan accounting, it tracks GAAP, STAT, TAX and three user-defined account-Functionality detailed accounting

management

38