

levels, where lenders can save tens of thousands of dollars by averting foreclosure.

"A quick skip trace by a private investigative service often yields results of a new address and/or phone number," says Vic Draper, president of DefaultLink.

"With the progression and enhancement of data available to private investigators coupled with the increasing need to locate homeowners early in the default process, we have seen the loss mitigation process expand its rate of success."

He adds that homeowners also derive benefits, since they will be able to remain in their homes thanks to the communication that Quick Skips helps facilitate.

DefaultLink: (866) 926-5407.

New Web Site In Business

Morovia, Calif.-based **Loan Servicing Network**, which specializes in outsourcing, has launched a new Web site with MorgaTech, a subsidiary involved in vendor management and business-to-business technology.

The new Web site, which can be

viewed at www.LoanServicingNetwork.com or www.MorgaTech.com, provides customers, business associates and employees an up-to-date, state-of-the-art resource for information about the company and its latest product offerings.

The company says the new design reflects its move to offer diverse products and services. Comprehensive information is provided concerning the MorgaTech software division and its product offerings. Sections featuring FAQ and customer testimonials are also included to provide customers with relevant resources and content.

Also, it says, customers ranging from title companies, to government agencies to small and large mortgage banking clients will benefit from Technical Advice, a resource for improving technical understanding within each component of MorgaTech.

"Our intention is to provide a Web site with valuable information on technology relevant to our customers' needs along with solutions offered by LSN and MorgaTech," says Kendall Bond, chief executive officer.

Loan Servicing Network: (877) 886-6742. **SM**

FORECLOSURE

Hooking Up With The Receivers

Lenders that don't stay in close contact with those who are central to collection and property preservation could be in for a shock.

BY BRUCE J. BERGMAN

Commercial lenders and servicers recognize in their souls that the receiver is almost as important as the foreclosure action itself. That is rarely the case in residential foreclosures, but on the few occasions when it is necessary, it becomes quite important.

For the very reason receiverships are seldom an issue in the residential



Bergman

matter, a quick primer here on what it is all about can be exceptionally helpful for those properties where the subject is relevant.

The receiver, who is not deemed to represent either the mortgage holder or the borrower, stands in the shoes of the borrower/owner/landlord for the purpose of collecting the rents and preserving the property. So, for a shopping center

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or office building, the receiver collects all those rents, fixes the roof leaks, maintains the grounds, repairs the elevator, etc.

In most states, the receiver also must maintain hazard insurance, post a bond as security for faithful performance of his duties and pay taxes and senior mortgages to the extent that the income of the premises allows.

Whether a borrower is collecting income or not, if he is allowing the property to deteriorate, it increases the possibility the value of the security will decline and possibly be worth less than the debt by the end of the action.

For example, the owner might go on vacation and leave the premises open to the elements, vandalism or drug dealers. Even if owners don't abandon the property, they might rip out pipes or do other damage - and the litany of physical peril could go on and on. Consequently, a receiver can serve the purpose of preserving the premises.

Of course, if there is income from tenants, there is an incentive for a borrower to delay the foreclosure forever because every month means further income for him - without necessity to pay debt service.

The problem of accrual of ever greater debt only continues to bedevil the victimized lender or servicer. And bleeding the property affords a further ironic benefit to the borrower. He can use some of the income derived from the property to pay the lawyer to delay the foreclosure case.

So, taking the income away from the borrower reduces the desire and ability to slow down the case while at the same time serving as a source of funds to be applied ultimately in reduction of the mortgage debt.

Procedures to appoint a receiver are matters of statute and practice, and will vary throughout the states. This is certainly a subject worthy of consultation with servicers' counsel in each jurisdiction.

New York model

But New York can serve as an example of the way it is done. Typically, appointment can be sought with-

out notice to any party. (The mortgage document must have the proper clause, but it is almost always there.)

Counsel prepares an order and the appropriate explanatory papers in support, including information about the nature of the property and its income, which the lender or servicer supplies to counsel, and the court appoints the receiver based upon that.

While it should take a relatively

Even if owners don't abandon the property, they might rip out pipes or do other damage.

brief period of time to issue, sometimes the courts wait weeks or months to sign the order.

This, too, varies from state to state and even within counties in the states. Naturally, counsel charges for the process.

Receivership downsides

In a perfect world, the receiver is appointed quickly, goes about his tasks with diligence and professionalism, and serves all the purposes of



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a receivership. But it may not always happen that way.

One problem is whether a receiver wishes to serve at all. A receiver's commission in New York is 5% or less of the income of the property. While 5% of the income of a shopping center is a handsome reward, 5% of the income of a two-family house (perhaps up to \$2,400) would yield only \$120 per month.

A lawyer or other professional appointed as receiver might not wish to expend all the effort for such an apparently paltry sum. The problem that creates is various proposed receivers selected by the court may reject the appointment.

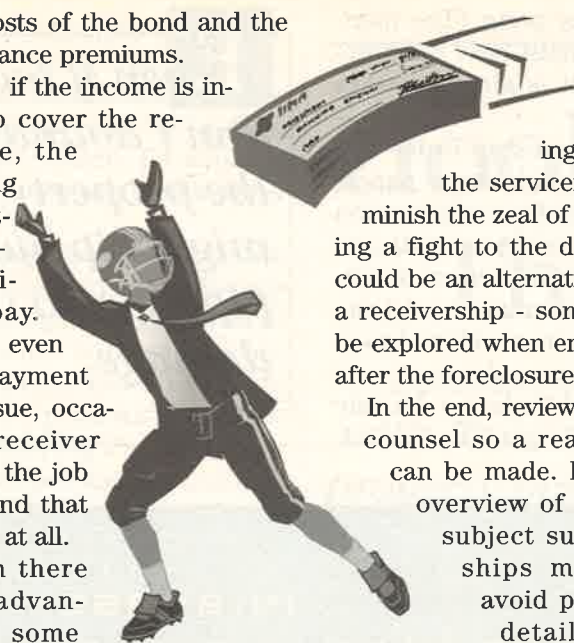
As an alternative, courts sometimes declare the receiver should be paid an hourly rate, with \$250 per hour (in New York) often viewed as the appropriate amount. That kind of fee, however, can render the obtaining of a receiver simply uneconomical in the small residential situation.

Then too, if the income of the premises is very low, or difficult to obtain because tenants are departing or refusing to pay, the receiver will insist that the foreclosing party ad-

vance the costs of the bond and the hazard insurance premiums.

Moreover, if the income is insufficient to cover the receiver's fee, the party seeking the appointment is likely to be directed to pay. Still further, even assuming payment is not an issue, occasionally a receiver does not do the job very well, and that hardly helps at all.

Although there are clear advantages, with some disadvantages, seeking a receiver in a residential case is usually not advised. But it is something to consider discussing with counsel at the inception of a case for those special circumstances. While the income of a one-family house would rarely elicit the appointment of a receiver, a four to a six-family house comes a little closer to making it worthwhile, although it is still borderline at best.



Of course, if the problem is that the property is being destroyed, or if the servicer's goal is to diminish the zeal of a borrower vowing a fight to the death, then there could be an alternative basis to seek a receivership - something that can be explored when encountered, even after the foreclosure has begun.

In the end, review the subject with counsel so a reasoned decision can be made. Because a rapid overview of a multinuanced subject such as receiverships must by design avoid presenting much detail, reference to other sources that offer more expansive information is suggested, as follows:

■ "Bergman on New York Mortgage Foreclosures," Chapter 10, "Receiverships in the Foreclosure Action," Matthew Bender & Co. Inc. (rev. 2002).

■ "No Scamming This Time - Protecting Receiver and Foreclosing Plaintiff From Deception," New York Law Journal, Sept. 25, 1996, at 5 col. 2.

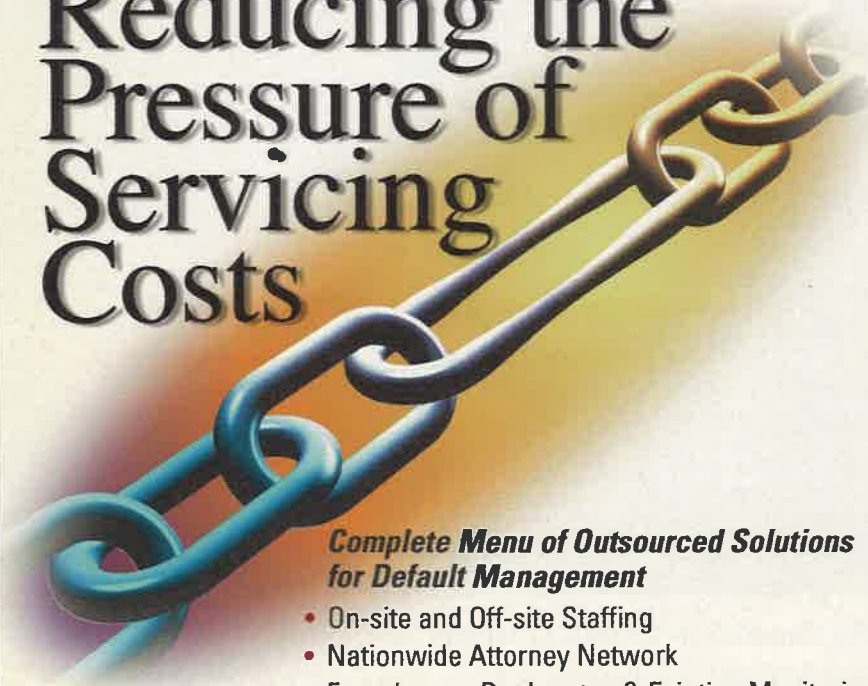
■ "The 5 Percent Question - Receiver's Commission: Confusion Reigns Over 'How Much'," New York Law Journal, May 24, 1995, at 5 col. 2.

■ "Now, Some New Matters of Interest - Month-to-Month Tenants, Receivers and Rent Overcharges," *Servicing Management*, page 33 (January 1995).

■ "Receivership is an Effective Tool - Servicers Can Outwit the Crafty Delinquent Borrower," *Servicing Management*, page 6 (February 1993). **SM**

Bruce J. Bergman, author of the three-volume treatise "Bergman on New York Mortgage Foreclosures," Matthew Bender & Co. Inc. (revised, 2001), is a partner with Certilman Balin Adler & Hyman in East Meadow, N.Y., and an adjunct associate professor of real estate at New York University's Real Estate Institute, where he teaches the mortgage foreclosure course. He is also a member of the USFN, the American College of Real Estate Lawyers and on the faculty of the Mortgage Bankers Association of America School of Mortgage Banking.

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