

GROUNDBREAKERS

(Continued from page 20)

stores, and that the termination of operations of any one of the anchor stores would permit all of the other anchor stores to withdraw as well. As a result, the court determined that damages could be catastrophic, and held as follows:

"Considering the magnitude of the chain of events which could conceivably be brought about by the closing of Sterns without either the transfer to another operation or the agreement of all the anchor stores, we believe that the landlords could not possibly recover money damages to compensate them for the injury. The possible ultimate injury could be the destruction in total of each of these malls."

The entry of the orders mandating specific performance of the operating covenants by the court in the *Sterns* cases was a major departure from prior Pennsylvania decisions on the subject of tenant operating covenants, yet the decision was fully supported by the Superior Court's earlier decision in *Pearle Vision*.

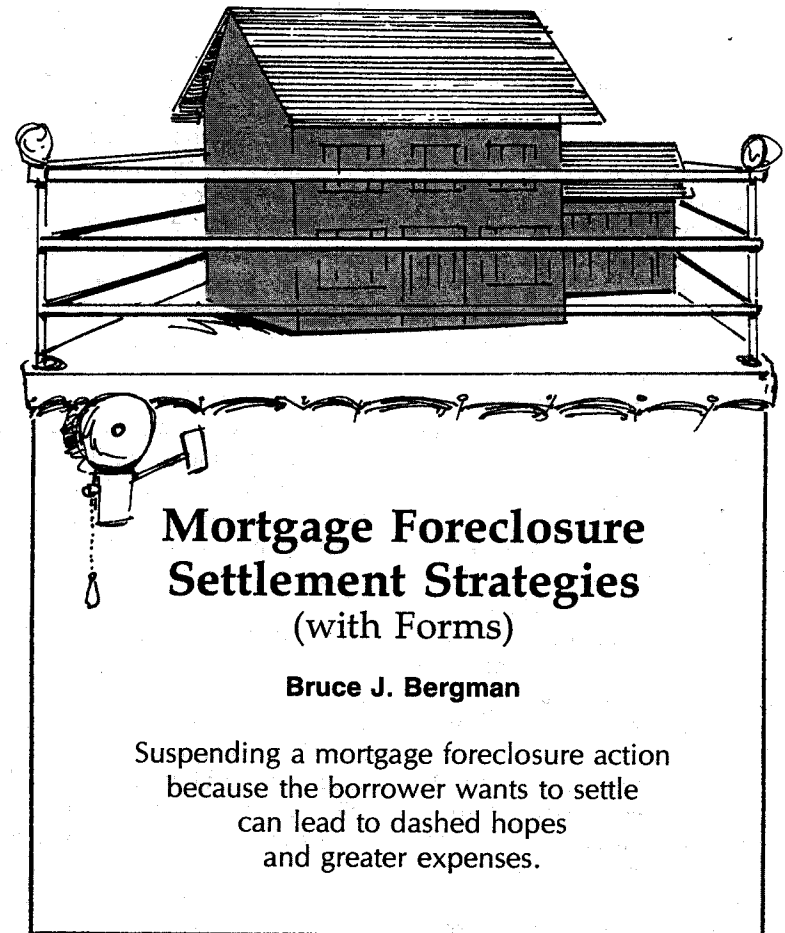
Contempt of Court

However, the *Sterns* court did not stop with the mere issuance of the injunctive orders. The owners subsequently claimed that the operator defendants were in contempt of those

orders, contending that the Sterns operators were still not operating a "department store" as envisioned by the lease agreements. The plaintiffs pointed out that although the defendants had returned merchandise and fixtures into the stores (which previously had been almost totally liquidated before the issuance of the injunctions), the stores were still not running at full capacity, still had significantly reduced levels of merchandise, had reduced hours of operation, and still contained vacant areas without merchandise.

The operators vigorously contested the contempt petitions, but the court ruled that the defendants' efforts to comply with the previous injunctive orders were nothing but a "subterfuge" and "charade." The court noted that it would not act as a "merchandising consultant" to Sterns, but specifically noted the difference between filling a store with merchandise and actually "merchandising" a department store operation to attract customers. For example, the court specifically noted the absence of Christmas decorations in the middle of December as evidence of the defendants' failure to truly operate a department store in good faith as envisioned by the lease agreements.

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Mortgage Foreclosure Settlement Strategies (with Forms)

Bruce J. Bergman

Suspending a mortgage foreclosure action because the borrower wants to settle can lead to dashed hopes and greater expenses.

UPON THE REASONABLE assumption that most mortgage lenders prefer not to be harsh, while at the same time borrowers will strive to avoid loss of their property, the artful structuring of any settlement is a

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pivotal element of many foreclosure actions. Unlike other litigation, however, settlement in the mortgage foreclosure area should not encompass the usual compromise strategy where each side concedes some amount. Aside from the atypical foreclosure, when there may be a genuine impediment to the plaintiff's success, settlement in foreclosure essentially engenders either reinstatement upon the lender's terms or, alternatively, full payment of all sums secured by the mortgage, usually over some period of time.

BACKGROUND TO SETTLEMENT • Some foreclosures extend for many months, or even years, while settlement is contemplated. Because delay portends danger for both the lender and the borrower as interest increases, avoiding that delay is essential.

The source of this delay is either a less than meticulous approach to the strategy of settlement or ignorance of that strategy. Although most foreclosures are settled, experience suggests that defaulting borrowers cannot or will not honor their obligations until their position is about to become irretrievable. Even assuming the borrowers' sincerity—which unfortunately cannot always be done—they may be trying to obtain time to sell the property or to refinance. Whether these goals are achievable can be problematical. In the residential arena, perhaps they hesitate to obtain a loan

from family or friends or are loath to encumber some other valuable property. Sometimes hostile marital relations inhibit cooperation between husband and wife obligors.

Whatever the reason, the understandable trauma of foreclosure frequently leads borrowers in adversity to either say things they don't mean or make promises they just don't have the wherewithal to honor. This, in turn, elicits the admonition that continuous fortitude is critical to a favorable and expeditious conclusion.

You should not hold an action in abeyance pending a vowed resolution. On the contrary, the foreclosure should in most instances proceed as if no settlement was possible until the very moment a conclusion actually results.

HOW PROCEDURE AFFECTS SETTLEMENT • In those jurisdictions where speedier nonjudicial foreclosure is the prevailing method of enforcement, there is perhaps less to discuss concerning the juxtaposition of procedure to settlement. But the majority of states employ judicial foreclosure and in these jurisdictions, settlement is intertwined with procedural issues.

Although procedure varies even among the states where judicial foreclosure is the dominant approach, a useful outline of these steps is as follows:

- Collection procedures;
- Acceleration;

- Summons, complaint, and *lis pendens*;
- Default or answer;
- Order to appoint referee to compute (if default) or motion for summary judgment, or trial, if contested by submission of answer;
- Referee's computation (*ex-parte* if on default, hearing if contested);
- Judgment of foreclosure;
- Sale; and
- Closing, if purchased by an outside bidder.

Each stage of the case is a prerequisite to the next plateau and must be methodically pursued. Assuming that a lender desires to accept some settlement offer—be it lump sum reinstatement, payments over time, payments with a recasting of the mortgage, or some other permutation—a common lender's error is to halt its foreclosure efforts while awaiting resolution. Some lenders urge this posture upon their counsel because the borrower has "promised to pay" or in an attempt to be gracious and not increase the burden of legal fees to be borne by the defaulting borrower.

Don't Delay

However, the promise to pay in 10 or 20 or 30 days is often overly optimistic—or disingenuous at the outset—as experience dictates so often. Then, the lender is stalled for

weeks or months with only promises in hand and the foreclosure action no nearer a completion.

Rather than allow the borrower's inability to pay control the progress of the case, it is recommended that the foreclosure action continue during settlement negotiations, which should not cost the lender anything additional in legal expenses.

Attorneys' Fees

In some actions, most often those that are contested, attorneys bill on an hourly basis. In other cases billing may be assessed according to the stage of the action.

For example, counsel may find that the preliminary conference with the lender, opening and reviewing the file, and preparing the acceleration letter might merit a fee, to that juncture, of \$375. This obviously could be more or less depending upon a host of factors, not the least of which is where in the country the task is being performed. It will also tend to increase over the years. This amount might be excessive for a neophyte single practitioner reviewing a simple \$8,000 mortgage from an office in his den in a rural community. That same fee, however, might be woefully deficient if a substantial mortgage is in the charge of a senior partner at a large firm in a major metropolitan area. Thus the suggestion of an applicable fee pegged to stages is a very general assumption presented solely for the purpose of elucidation.

Borrower's Promise

Upon receipt of the acceleration letter, the borrower may call the lender's counsel seeking reinstatement and offer or promise to pay the arrears. This may be viewed favorably. At the same time though, the lender's attorney has started the machinery to prepare the summons, complaint, and *lis pendens*. Then, a decision must be made whether to refrain from preparing the pleadings, awaiting the promised reinstatement, or whether to proceed notwithstanding the "promise."

This is a business, not a legal, decision. If the borrower's promise is entirely sincere and supported by the ability to deliver the requisite sum with reasonable dispatch, there is little danger in relying on the representation. The problem is the great difficulty in assessing the borrower's bona fides. Familiarity with foreclosure cases leads the author to conclude that more often than not the borrower's pledge will not be timely kept. When this is the case consider continuing the foreclosure action until sufficient monies are actually paid.

The Pleading

A like evaluation of the next level in the foreclosure—obtaining and analyzing the foreclosure search as a basis for preparing the summons, complaint, and *lis pendens*—is necessary. In many jurisdictions, each pleading is filed with the court, with the *lis pendens* being placed on record with the

clerk of the county where the mortgaged premises are situated. The summons and complaint are then served upon the defendants.

Assume that typical counsel compensation at this point is cumulatively \$1,000. Having been served with process, the borrower awakens and pledges to pay all arrears within 30 days, including late charges, legal fees of \$1,000, and disbursements incurred.

The Referee

Assume that the lender advises counsel that it wants to accept reinstatement. But the time for all defendants to answer expires in 10 days, at which time the action could proceed to appointment of a referee to compute. Completing that next step would increase the legal fee to \$1,500, for which the borrower should be liable. The lender is then faced with a choice: should it wait the 30 days or proceed with the appointment of a referee?

The second option is recommended for careful consideration. Although the lender's attorney will be entitled to a fee commensurate with bringing the case to the point of a referee's appointment, the additional expense is justifiably to be paid by borrower. There could be compelling reasons on a case-by-case basis to wait the 30 days, and these reasons can always be evaluated. But across a portfolio of mortgages, the likelihood is that most cases will be enmeshed in delay awaiting the promised payments.

If counsel advises the borrower that nothing will be done for 30 days pending the receipt of the reinstatement, then the action that could have gone forward must stop. That thirtieth day must be diaried. If on the thirtieth day payment does not arrive, only then can the attorney go forward. Multiplying this scenario through tens or hundreds of case files underscores the burdens, extra time, and jeopardy to efficiency created by awaiting the promised payments.

A borrower can and should be told unequivocally that an action goes forward until the day the sums due are received and until that time, whatever legal expenses emerge are the borrower's responsibility. This posture insures faster settlements upon terms most favorable to the lender.

REINSTATEMENT • If before judgment of foreclosure and sale, the borrower comes forward requesting the opportunity to reinstate the mortgage and the lender agrees, the borrower will need to know how much money to remit. Although a lender most often need not allow reinstatement, unless a Federal National Mortgage Association form of mortgage or a derivative of this form is used, the lender may be amenable to this idea upon the condition that all amounts are paid.

The Reinstatement Letter

Orally conveying the reinstatement amount can lead to imprecision, pos-

sible confusion, and the specter of waiver of acceleration. Accordingly, a reinstatement letter should be sent. Appendix 1 at the end of this article is a suggested form.

Payment

The reinstatement letter contemplates receipt of a certified check only. The reason is to avoid the delay and expense involved in processing a bad check. The remittance is to be payable to the special or escrow account of the lender's counsel. This allows the attorney to make absolutely certain that the check clears. Then it can be transmitted to the lender. For lenders who prefer that the check be payable directly to them, the letter can be changed accordingly.

The critical caveat in the reinstatement letter advising that the foreclosure is nevertheless proceeding and urging that the money be submitted lest fees and costs increase, serves a dual purpose. First, it should bring forth payment more rapidly. Second, it diminishes genuine chagrin or protest on the borrower's part if in fact payment arrives subsequent to counsel's proceeding to the next step in the case. With this warning, the borrower has no valid basis for consternation if additional legal costs are imposed.

Alternative Language

In urging the borrower to proceed "with dispatch," counsel is not saying precisely when the next step in the foreclosure will proceed. If counsel

feels a need to be more exact, then he can study the file to see if a date can be determined. Sometimes it cannot. For example, if the reinstatement letter is sent just after acceleration, counsel cannot know exactly the date upon which a foreclosure search will be received nor how soon thereafter the pleadings can be prepared. If you have a troublesome case, however, in which the borrower is likely to attack everything the lender does or says, precision in this correspondence may be especially worth the trouble.

Exculpation

The last paragraph of the reinstatement letter is exculpatory language designed to protect the lender if the quoted figures are incorrect. Faulty figures can arise in any number of ways:

- When initially the file is transmitted to counsel, the information in the lender's cover letter can be in error;
- The information can be incorrectly transcribed into the file and consequently into the pleadings; and
- When the attorney confers with the lender about the sums to be inserted in the reinstatement letter, erroneous calculations may be made.

However it occurs, incorrect figures are quoted on occasion.

If in response to a payoff letter containing erroneous monetary figures the borrower submits the amount requested, the lender can possibly be estopped at a later date from denying its

mistake and the proper amount due. This last paragraph provides a modicum of protection against this result.

Because anything inconsistent with a desire to accelerate may be deemed a waiver of that right, the possibility remains that a reinstatement letter irresolutely drawn can be deemed to be such a waiver. When litigation is in progress, or if contention in the foreclosure seems imminent, counsel may wish to consider altering the form to avoid any possibility of this issue. Appendix 2 presents such an alternative.

Couching the letter in the terms of Appendix 2 attempts to thrice vitiate any possible claim of a waiver of acceleration. Initially it refers only to contemplation of reinstatement rather than discussing it in absolute terms. Next, it indicates that reinstatement can occur only upon fulfillment of the recited conditions. Finally, it specifically characterizes the correspondence as not being a waiver.

THE STIPULATION • Sometimes a borrower is unable to reinstate a mortgage in one payment, even if genuinely desirous of doing so. It may only be able to pay those sums over a period of time. If this is acceptable to the lender, a letter simply inviting the receipt of payments will not be enough when some considerable period of time is made available to a borrower. In that case, a stipulation is the better vehicle.

Moreover, there may be other issues requiring clarification and me-

morialization that are not readily susceptible to the letter form. Again, a stipulation will serve the purpose.

A stipulation is an enforceable document. Although there may be some variation in applicable legal principles in the different states, a generally accepted maxim is that stipulations of settlement, which put an end to litigation, are favored by the courts and are rarely set aside absent fraud, collusion, mistake, or other typical grounds that might void any contract. The stipulation is a binding contract on the parties, superseding prior agreements and becoming the measure of the parties' obligations.

When a stipulation does not terminate an action—as is the suggestion when settling a foreclosure—the court generally retains its supervisory power over the action and can support enforcement of the document. Thus should a borrower breach the stipulation, the lender may proceed to enforce its terms, which, as will be outlined, confirm the obligations of the mortgage.

If the stipulation was signed under economic duress, that is, if a party was compelled to agree by means of a wrongful threat precluding the exercise of free will, it can be voided. A like result may ensue in the presence of fraud, collusion, or mistake. Moreover, when the language in the stipulation is ambiguous, an evidentiary hearing may be required to resolve the ambiguity.

Correcting Mortgage Deficiencies

If deficient items exist in the mortgage, they can often be corrected in the stipulation. For example, if the original mortgage did not contain a legal fee clause, the stipulation is an ideal place to correct that deficiency. If the mortgage neglected to provide the rate of interest applicable upon default, that too can be approached in the stipulation.

If the mortgage is to be changed, the stipulation need not delineate the changes specifically. Rather, a typical mortgage modification agreement can be separately prepared and recorded. This agreement is then mentioned and incorporated by reference in the stipulation.

The Stipulation Form

The stipulation form allows the lender to maintain control of the situation as a means of protection. The model stipulation form found in Appendix 3 is analyzed here to demonstrate these advantages to the lender.

Opening Paragraphs

If there was any question about the technical propriety of service of process, which is critical in every lawsuit, the mortgagor has now waived any possible claim of defect in the first two paragraphs.

If more than one defendant is entering into the stipulation, the word "defendant" becomes "defendants" and "were" is substituted for "was."

Like changes in language would be made throughout to accommodate multiple borrowers.

Waiver of Defenses

If the defendant has some claimed defense in reserve, or if one was stated in the answer, that too is waived in paragraph 3, and is unavailable for use later should the settlement fail and the litigation be revived.

Schedule of Payments

The schedule of payments, set out in paragraph 4, is now absolutely clear. Any violation will trigger continuation of the foreclosure action, as a subsequent clause provides. Note that the critical date for payments is receipt. Failing to emphasize this aspect could create an ambiguity and allow a borrower to mail funds on that date. If a borrower claims to have mailed a payment which is then not received, or is received late, time periods to measure default become contentious. Stipulations best serve their purpose when crafted to be clear and definite.

Application of Payments

Paragraphs 5 and 6 cover the application of payments received.

Obviously the category and quantum of legal fees and disbursements vary from case to case. They should, however, be specifically listed so there is no confusion about where the funds are going and why.

Either the loan documents or the recordkeeping/computation requirements of the particular lender can govern the application of the sums received. This could, of course, be subject to negotiation. The lender prefers payments to be applied first in reduction of interest, whereas borrowers argue to apply the initial application to principal.

The language in paragraph 6 referring to the allocation of sums necessary to protect the mortgage is vital because the value of the stipulation would be questionable if, for example, the property was lost for failure to pay taxes. Likewise, if this is a junior mortgage, advances may be required to keep current a prior mortgage.

If this is a junior mortgage, a clause providing that a breach of any other condition of the mortgage is deemed a breach of the stipulation should be considered. Then, if the borrower neglects to remit payments on a prior obligation, thus jeopardizing the mortgage which is the subject of the stipulation, the lender is empowered to go forward with the foreclosure rather than incur the burden of making payments upon or satisfying in full a senior encumbrance.

Late Charges

Without the clause in paragraph 7, there might be an ambiguity as to whether late charges continue to accrue. There is no reason for late charges to be disregarded and paragraph 7 solves the possible problem. It is also an

opportunity to add a late charge provision to the obligation if it had been neglected in the original mortgage.

Increased Interest Rate

Paragraph 8 increases the mortgage interest rate. Since there is most often no obligation on the lender's part to countenance reinstatement after acceleration, it is free to impose such requirements as are legal and as prudent business decisions may suggest. If the subject mortgage is at a rate below the market, the lender may wish to increase the yield, in which event it must be in the stipulation. Note, however, that any encumbrances junior to the subject mortgage are not bound to that increase. Accordingly, their permission must be obtained in writing—if increasing the interest is contemplated.

Reinstatement of Mortgage

If the lender discontinued the foreclosure action and canceled the lis pendens based upon the promises in the stipulation, upon the borrower's subsequent default the action would have to begin anew from the very beginning. This would result in the time and expense of updating the foreclosure search, preparing pleadings again, and incurring all the expense attendant to bringing the case to the point where it had been when the stipulation was executed. Therefore, paragraph 9 properly holds the action in abeyance pending fulfillment of the stipulation's terms.

If the interest rate is being raised, that fact is repeated in paragraph 9, lest its neglect create an ambiguity in the stipulation. Obviously, no reference to the interest rate needs to be made here if the rate is not to be affected by the stipulation.

Balloon Payment

Paragraph 10 presupposes a balloon payment at the end of the term to either avoid being oppressive or to accommodate the borrower's ability to make monthly payments. If the particular situation warrants an increase in monthly payments, these terms would be stated here, akin to the language in a mortgage note or bond.

Tax and Insurance Escrow

When the original mortgage makes no provision for tax escrow payments, and particularly when the borrower has failed to pay tax obligations, paragraph 11 shows how this shortcoming in the mortgage can be cured.

Default by Defendant

Paragraph 12 is the lender's pledge to take no action in the foreclosure, provided that the borrower complies with the obligations undertaken. Any default remaining uncured for seven days triggers the lender's ability to go forward with the foreclosure free of any requirement of notice to the borrower except notice of sale.

Although a good argument can be made that the borrower should certainly know when a default exists, his

counsel can be expected to, and should, argue for notice of default and some reasonable period to cure. This is an item to be negotiated. Indeed, it is not uncommon for stipulations of this type to provide for that notice.

However, the privilege of receiving notice can be abused. Suppose, for example, that any payment not timely received requires a letter, in turn mandating a cure 10 days after the date of the letter. If receipt of the letter is used as a measuring point, a further problem is created because that is an uncertain time. That then requires employment of certified or registered mail which adds expense and annoyance. The borrower could every month take advantage of the full cure period and remit payment only at the end of the time. The lender or counsel is thus forced to write a letter for every tardy payment and lose the use of the funds in each such late remittance.

This dilemma can be avoided while still being fair to the borrower by providing for notice of default only for a specified number of times, perhaps three or five. If a payment is thereafter late, no notice would be required. Should the borrower default and fail to remedy the default, the lender will have received the benefit of whatever payments were made and can proceed with foreclosure unimpeded.

Credit for Sums Paid

Although perhaps obvious, it is comforting to a borrower to have a

lender's affirmative statement in paragraph 13 as to the application of the payments made.

Reference to the attorney's fee is also appropriate to avoid any possibility of an untoward claim for a refund.

Survival

Particularly to the extent the stipulation modifies the mortgage, clearly delineating that the terms survive the ultimate withdrawal of the foreclosure, as in paragraph 14, is a worthy safeguard. If the survival provision is used here, reference to it in specific clauses may be dispensed with.

Counterparts

This clause allows separate stipulations to be signed by both parties, thus saving mail time back and forth. It saves even more time if multiple parties are involved.

Recording

Although stipulations are not normally recorded with the county clerk, when the document also serves as a mortgage modification or extension agreement, recording is recommended.

CONCLUSION • How well any lawsuit is settled is obviously a critical consideration in the litigation process. But it may be of even more compelling importance in the mortgage foreclosure case because of the relationship of time to the ultimate success of the case. Especially when the equity cushion is thin, the longer

the foreclosure is protracted, the greater is the quantum of interest accrual. The mounting of interest can very well represent the difference between the lender recouping its investment or ultimately owning a foreclosed parcel worth less than the mortgage debt.

Consequently, counsel serves the lender client far better with a solid knowledge of settlement nuances. So, if a lender wishes to entertain a lump

sum reinstatement, counsel should consider an appropriate reinstatement letter and the action should proceed apace until the payment is actually received and collected.

If the borrower requires a payment schedule over time to effect reinstatement of the mortgage, the settlement is in considerable jeopardy unless a meticulously prepared stipulation agreement memorializes the understanding.

APPENDIX 1 Reinstatement Letter

Dear _____:

Pursuant to your request, the following are the sums necessary to reinstate your mortgage:

Principal reduction	\$ _____
Interest to	_____
Late charges	_____
Disbursements	_____
Legal fee	_____
Cancel lis pendens and discontinue foreclosure action	_____
Total \$	_____

Only upon our receipt of a certified check for the full amount of monies due payable to the order of _____, as Attorneys, shall we cancel the lis pendens and discontinue the foreclosure action.

Since the foreclosure is proceeding, both legal fees and disbursements are increasing. Accordingly, your most prompt attention is suggested. Please note that if the check does not arrive with dispatch it may be insufficient if further legal fees and disbursements have been incurred.

This letter is for informational purposes only and shall not be construed as an estoppel.

Sincerely yours,

APPENDIX 2

Alternative Reinstatement Letter

Dear _____:

Although the mortgagee has no obligation to allow a reinstatement of the mortgage at this time since acceleration has previously been validly declared, it is prepared to consider reinstatement nevertheless, but *only* upon receipt of a good bank or certified check payable to _____ as Attorneys, to be sent to this office and be received here no later than _____. Should anything less than full payment, as follows, be submitted, or should the payment arrive here later than _____ or be in any form other than set forth, it will not be accepted and the foreclosure will proceed.

After the recited date, legal fees will have increased, so that your prompt attention is most strongly urged.

The sums necessary to reinstate the mortgage are as follows:

[List sums due]

Upon receipt of the certified or bank check, payable to _____ as Attorneys, we shall cancel the lis pendens and discontinue the foreclosure action.

Under no circumstances shall this letter be deemed a waiver of acceleration, which is still in full force and effect. This letter is for information purposes only and shall not be construed as an estoppel.

APPENDIX 3

Stipulation Form

Caption _____ Stipulation
Index No. _____

It is hereby stipulated and agreed, by and between the undersigned as follows:

1. Notice of Pendency of this action was filed in the Office of the County Clerk of _____ County on _____ and an amended notice of pendency (if applicable) was filed in said office on _____.

2. The defendant _____ was served under the provisions of [cite applicable civil procedure sections], but has not appeared or answered. [If applicable, recite answers submitted and date.]

3. Said defendant has no defense to this action and does not intend to interpose any answer herein and specifically waives the right to do so and any and all defenses which might otherwise have been therein contained. [Or, "defendant withdraws its answer (and counterclaim) and waives any and all defenses purportedly set forth therein."]

4. Said defendant agrees to make or cause to be made the following payments to be received on the respective times hereinafter set forth by checks made payable to counsel as attorneys for mortgagee.

Date:	Check No. _____ dated _____ received subject to collection	\$ _____
Date:	One half of balance of arrears and all counsel fees and disbursements to be paid	\$ _____
Date:	Remaining balance of arrears [This list can contemplate as many payments as agreed upon and in the case of large or lengthy default, could be an extensive list.]	\$ _____

5. Said payments shall be applied first to counsel fees and disbursements of (counsel's name) which are as follows:

Counsel fees \$ _____

Proceeding for order to publish, appoint guardian ad litem and preparation of consent, affidavit, and answer of guardian ad litem \$ _____

Disbursements

Foreclosure	\$ _____
Index number fee	_____
Filing fee lis pendens	_____
Service of process	_____
Filing fee amended lis pendens	_____
Advertising summons	_____
Guardian ad litem's fee	_____
Xerox, postage, and telephone	_____
Subtotal \$	_____
Total \$	_____

6. The remainder of the aforesaid payments shall be allocated in such manner as mortgagor, in its sole and absolute discretion, from time to time, shall determine, provided same shall be applied to interest, reduction of principal, late charges, and any other disbursements which mortgagor may incur for the protection of the security of its mortgage.

7. It is understood that late charges incurred during the lifetime of this stipulation are to be imposed and paid in the aforesaid allocation.

8. The annual interest rate mentioned in plaintiff's mortgage note and mortgage is hereby changed to ____% per annum (increased from ____%) effective the date of this stipulation, _____, 19____.

9. The plaintiff's mortgage note and mortgage described in the complaint are not to be deemed to be reinstated until said defendant shall have timely and fully completed all of the foregoing payments. Upon completion of all of the foregoing payments, and so long as the mortgage is not otherwise in default, the mortgage will be reinstated according to its terms, except that the interest rate will be ____% per annum, effective _____, 19____.

10. Notwithstanding the increase in annual mortgage interest rate, the amount of the monthly mortgage payment for principal and interest, exclusive of real estate taxes and insurance, if any, shall not be increased, however, the entire remaining balance of the mortgage indebtedness shall be fully paid no later than _____, 19____.

11. Defendant _____, in addition to the payments of principal and interest payable pursuant to the mortgage note or this stipulation (the installments), will pay to mortgagee (if at any time required by mortgagee), on each date and in the manner specified in the mortgage note or this stipulation for payment of an installment an amount (the Escrow Fund) which would be sufficient to pay the taxes payable, or estimated by mortgagee to be payable together with insurance premiums, during the ensuing twelve (12) months, divided by the number of installments due during such twelve-month period. If the amount of the Escrow Fund shall exceed the amounts due pursuant to this paragraph, mortgagee shall credit such excess against future payments to be made to the Escrow Fund. In allocating such excess mortgagee may deal with the person(s) shown on the records of mortgagee to be the owner(s) of the mortgaged property. If the Escrow Fund is not sufficient to pay the items set forth above, defendant shall pay to mortgagee upon request, an amount which mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional collateral security for the debt and shall not bear interest, except as required by law. If the foreclosure action will be discontinued, the provisions of this paragraph shall be deemed to survive with the same force and effect as if originally embodied in the mortgage note and mortgage.

12. The plaintiff will take no affirmative steps in this action so long as the defendant complies with all of the covenants on his part to be performed under this stipulation. If, however, there will be default on the part of the defendant under any provisions of this stipulation for seven (7) or more days, plaintiff, at its option, will have the right to proceed with the obtaining of a judgment of foreclosure and sale without notice, including all intermediary steps including appointment of a referee to compute and subsequent steps including foreclosure sale. In the event of a foreclosure sale, plaintiff will send notice of sale to said defendant.

13. If under the provisions of this stipulation plaintiff shall actually proceed with this action after a default on the part of said defendant under any of the provisions of this stipulation, the defendant shall be given credit for all sums actually paid by him to mortgagee allocated in accordance with the provisions of this stipulation. However, it is understood

that the defendant shall not be entitled to receive any refund or credit for the attorneys' fees or disbursements paid to counsel.

14. The provisions of this stipulation shall survive the discontinuance of this action.

15. This stipulation may be executed in counterparts, which counterparts, when taken together, shall constitute this stipulation.

Dated: (City and State)
_____, 19__

(counsel's name)

By: _____
Attorney for Plaintiff

Defendant

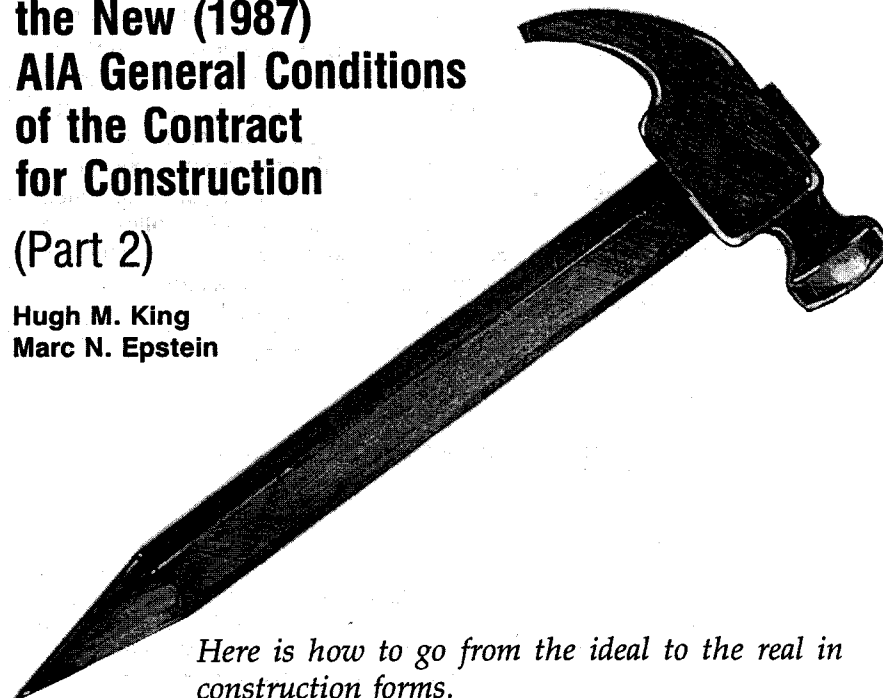
STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____, 19__, before me came [defendant] to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

Owner's Counsel Reviews (and Suggests Changes to) the New (1987) AIA General Conditions of the Contract for Construction (Part 2)

Hugh M. King
Marc N. Epstein



Here is how to go from the ideal to the real in construction forms.

IN THIS ARTICLE the authors continue their review of the American Institute of Architects Document A-201, General Conditions of the Contract for Construction. The authors analyze A-201 from the perspective

of the owner's counsel, and suggest changes (in boldface) to the form. Additional text explaining the reasoning behind the changes, labeled "Comment," follows most of the recommended changes.

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