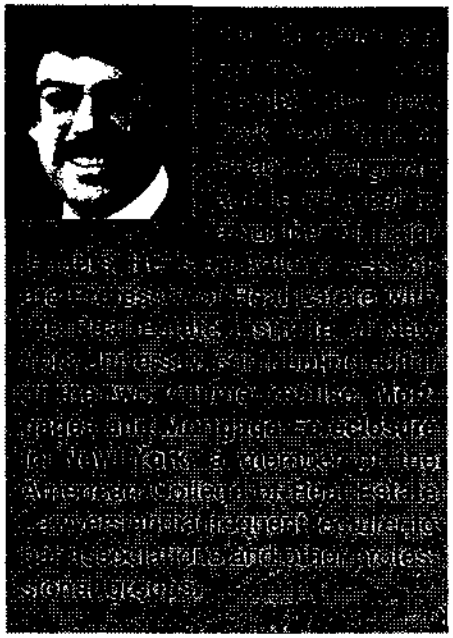
A LENDER'S GUIDE TO SUCCESS IN MORTGAGE FORECLOSURE – A NEW LOOK

By Bruce J. Bergman*

Because a mortgage is an investment, the interests of the lender are best served, obviously, by collecting the money due on the obligation. No one **wants** to foreclose. The effort tends to be technical, time consuming (in most jurisdictions), expensive and unfavorable for public relations. Moreover, lenders derive no pleasure from proceeding to put people out of their homes or taking away someone's place of business, which is not to say, however, that this is an arena for diffidence.

Distasteful though the exercise appears at first glance to be, it need not always be so. The divorcing couple expending all their energies warring with each other while neglecting payments on the mortgage are not so sympathetic afterall. Likewise, the speculator who just bought too many properties is not a classic case for compassion. Then too, one can encounter the reprobate operator who by uniquely creative means is bent upon denying payment to the mortgage holder. And this recitation hardly exhausts the list of scenarios suggesting that the concept of foreclosure should not necessarily be faced with trepidation.



Even when a situation is genuinely sympathetic, that a lender may consider foreclosure unfortunate hardly means that it should not enforce its rights. The business decision to proceed must be made sooner or later — and we will suggest sooner as the best approach — and there isn't much choice involved. The key here is that foreclosure properly conceived and prosecuted not only serves to protect this investment, but actually softens the impact upon the defaulter. Why that is in actuality not an incongruous proposition will be explained. What is most critical from the lender's viewpoint is starting from a safe position and handling the action with maximum efficiency and expertise, while not incidentally remaining gracious to the borrower. Both ends can and should be achieved.

ELEMENTS OF SUCCESS

If success is ever subject to a definition, presumably it means payment in full on the loan. But payment "in full" may be a somewhat elusive category, something to be reviewed here. In any event, reaching that goal of success, and combining it with a sense of decency, are a result of a number of factors, as follows:

—APPRAISAL

This is too obvious to dwell upon here. Suffice it to say, if there is insufficient equity in the property standing as security for the debt, the possibility of a loss is greatly increased. Thus, a lender's needn't be told that an accurate appraisal is a basic prerequisite.

—SOLID MORTGAGE DOCUMENTS

No matter what the level of any other elements, deficient mortgage papers, which are surprisingly common, can deny complete success.

—COUNSEL

Unless the lender itself has all the expertise to prosecute a foreclosure, anyone less than a mortgage foreclosure expert serving as lender's attorney bodes ill for success.

—DILIGENT PROSECUTION

A foreclosure proceeding at a snail's pace jeopardizes the loan as the running of interest erodes the equity and actually hurts the borrower by increasing the likelihood of a deficiency, while decreasing any available surplus. Consequently, there is danger in a desultory approach to the foreclosure process.

—KNOWLEDGE OF POSITION

What a lender can and cannot do and how both lender and borrower's best interests can be preserved by an understanding of law and procedure are vital to making sage decisions.

THE MORTGAGE

One essential element of successful mortgage collection, or foreclosure, are the powers given to the lender in the mortgage documents themselves.[1] Faulty papers, containing deficiencies not readily ascertainable in the normal course, are an initial area of concern.

The busy, sophisticated lender whose loan documents have been honed by competent counsel and tested by litigation over a course of years may not need much advice here. But even being in that enviable position does not preclude deleterious consequences arising when a lender purchases paper prepared by some other lender who is perhaps less astute.

The basic problem is that most standard forms, be it the Federal National Mortgage Association (FNMA) version or other so called standard formulations in use in many states (and to a lesser extent mortgages prepared without reliance upon "forms") fail in that they either contain clauses which diminish a lender's rights, or neglect to include protective provisions.

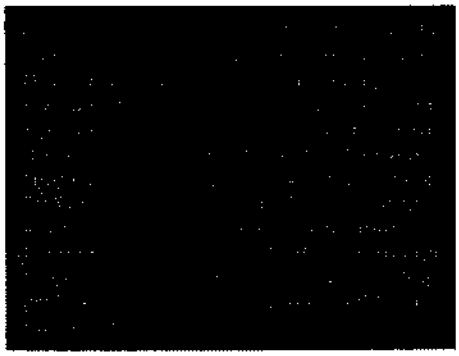
For example, the widely used FNMA mortgage has two major shortcomings

in what it **does** contain. One portion gives the borrower an **absolute** right to reinstate the mortgage at any time up to judgment, so long as all arrears and costs past due are paid in full. While reasonably conceived — since most lenders would in a majority of instances favor accepting reinstatement it does not take into account those mortgages which have been a source of enormous consternation, time, trouble and expense. Because state law is generally uniform in empowering a lender to reject reinstatement after acceleration, this unfortunate verbiage in the FNMA mortgage denies the lender a valuable right it otherwise would possess. Consideration to excising this provision by a properly worded rider to the mortgage is recommended.

A second dilemma faced by a lender employing the FNMA form is the requirement that the lender **must** provide a detailed thirty-day notice letter as a prerequisite to acceleration — again, something state law generally does not impose. If a borrower has been constantly in default, or where the equity cushion is thin, a lender should be able to accelerate — or at least retain the usual option of doing so — without preparing correspondence automatically adding thirty days lost time to the collection process. This is another area where a rider can eliminate an offensive provision.

As noted, mortgages also suffer from the language they neglect to encompass. Primary among these is providing recompense for legal fees. Particularly when a foreclosure becomes protracted — as when vigorous defenses or a bankruptcy are encountered — legal fees incurred by the lender can be substantial. Even if those factors which increase legal costs are not present, the relevant query is, why should the lender bear the burden of this expense?

While the FNMA form obligates borrower to pay lender's legal fees upon reinstatement, it does not authorize repayment of legal expense if a foreclosure proceeds to a conclusion! Significantly, neither do most standard forms provide reimbursement to the lender for payment to its attorneys. In turn, if these costs are not contained in the foreclosure judgment — and they cannot be if the mortgage documents did not so specify — should the value of the property be close to the total due on the loan, the legal cost component could easily be the difference between a loss and being made whole. Even where that is not the problem, there is no reason why attorneys fees should be absorbed by the lender.



These thoughts, therefore, suggest that in order to approach success, lenders are well advised to assure that the documents contain an appropriate legal fee clause.[2] While some jurisdictions may attend to this by statute, most do not. Instead, the general rule is that the papers themselves must clearly specify the obligation. In some states, a legal fee clause in the note alone is ineffectual. It must actually be inserted in the **mortgage.**

Another way to safeguard a lender's position arises from employment of a due on sale (or due on transfer) provision. Although rather well known nowadays, mention of it is necessary because it is **not** found in most standard forms.

Should interest rates rise precipitously in the future — and with typical cycles that is likely to occur eventually — today's mortgage at ten percent could be a poor investment some years hence, although such is the risk any lender takes with a fixed rate, as opposed to a variable rate mortgage. But most loans are made to a particular person, persons or entity, based in some measure on his, their or its credit. (Although an original borrower always remains liable for the debt, absent an assumption, they may not be locatable, which makes their obligation illusory.)

Thus, strangers who purchase the property should not necessarily receive the benefit of what may have become a below market rate mortgage. This was a lesson learned in the late 1960's and early 1970's when quiescent mortgage rates suddenly became volatile, exacerbated by the astronomical rates of the early 1980's. As a consequence, most mortgages today should, and prudently do, contain a due on sale clause which gives the lender the right — at its option — to demand the full balance of the mortgage if the property is sold, transferred or conveyed. Over a broad range of mortgages, this presents the opportunity to keep the portfolio competitive.

Enforcement of the provision had been uneven and inconsistent in the various states. With the passage, however, of Section 341 of the Garn St Germain Depository Institutions Act of 1982, all state law prohibitions upon exercise of clauses of this type have been preempted. So long as the clause is skillfully drafted, lenders may derive comfort from its enforceability under the mandate of this federal statute.

Standard forms are also wanting on the subject of late charges. If a payment is submitted beyond the grace period, interest is effectively diminished, since use of the funds was delayed. Moreover, there is usually a cost factor attendant to handling receipt of tardy remittances. The investment is more thoroughly preserved upon compensation for this item.

Precisely what permissible percentage comprising a late charge will be allowed is addressed by state law or federal regulation, depending upon the nature of the lender. Typically, the charges range between two and five percent.

Of perhaps paramount importance are the twin concepts of interest on default and interest on advances. A dramatic method to underscore the importance in this area is to use a worst case situation comparing the monetary consequences of a well prepared mortgage, contrasted with one where attention to detail was lacking.

Assume these facts, representing a compendium of not uncommon events. The Jones partnership, a group of "sharp" operators, purchases a shopping center worth $6,000,000 for $5,000,000. They pay only $500,000 in cash, financing the balance through a $2,000,000 first mortgage from Bank A, a $2,000,000 second mortgage from Bank B and a purchase money third mortgage from seller for $500,000. Jones' monthly mortgage payment to

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both A and B, each being self amortizing for ten years at fourteen percent interest, is $31,053.40. Jones, for his own reasons, fails to remit mortgage payments to any of the lenders.

The first payment to each lender is due on January 1. At the end of February, aggressive Bank A, despairing of Jones' good intentions, accelerates the full balance of principal and interest due on its mortgage. Taking a desultory posture, and believing that a more gracious approach is best, B refrains from accelerating until the April installment is overdue. (The holder of the third mortgage has never before been a creditor and waits eight months before finding an attorney who can finally urge him to proceed. His mortgage will be cut off by foreclosure of either the first or second mortgages and is not relevant to this example).

Both banks institute foreclosure, A first, B some three months later. Jones, transparently claiming fraud to have been perpetrated by each bank, interposes an answer, delays both foreclosures for two years and causes both banks to incur $30,000 in legal fees. (Costs and disbursements to each bank in their respective foreclosures are $1,500).

While each bank required an insurance policy at their loan closings, Jones produced only a binder which was accepted. Unfortunately, the binder was in error and no insurance was ever placed on the shopping center. Still further, during the course of the litigation, Jones never paid any real estate taxes.

Bank A's servicing department was so inefficient, or so unsophisticated, it did not worry about the lack of insurance (even though their security could have been wiped out if the shopping center burned down) nor was it concerned about taxes (even though the mortgage could have been extinguished if taxes remained unpaid.) Here, B was more astute, and to protect its position, advanced $80,000 for insurance and $100,000 for taxes during the period of the litigation.

As the foreclosure cases lumbered to their conclusions, A's advantage in starting first meant that its foreclosure would cut off B's mortgage, **unless** B paid off A in full. That is just what B had to do, some three months prior to its own foreclosure sale.

Assume further that B's mortgage documents, unfortunately relying only upon a standard form, made no provision for legal fees or late charges, and was silent on the subject of interest upon default as well as interest upon advances. A's mortgage meanwhile, wisely drafted by polished practitioners, took all this into account.

Note briefly in addition these aphorisms. If a mortgage says nothing about the interest rate to apply on default, in most states the "judgement" or "legal" rate will apply. In New York, just to mention a typical example, that rate is nine percent. Likewise, the rate applicable to advances would be that judgment or legal rate.

Presume finally that Jones was quite content to collect all the substantial rents earned at the shopping center for the two years, all the while making no repairs or improvements whatsoever, supplying no services to the tenants and, as noted, conventiently avoiding the expenses of insurance and taxes.

As a result, Jones earned far in excess of his $500,000 cash investment in buying the shopping center. To B's consternation, two years of physical neglect, added to the spreading reputation of the shopping center as a place not to rent or shop, has reduced its value from $6,000,000 to the vicinity of $5,500,000.

When B adds up all the sums owed to it (the upset price), they aggregate $5,174,343.20 — a computation to be explained. Fortuitously, at B's foreclosure sale an outside bidder pays $5,432,000. (The difference between the foreclosure sale price and the amount owed B goes into a surplus to benefit, in this case, the third mortgagee.)

Based upon this recitation, here are the consequences to B.

DEBT OWED TO B
(UPSET PRICE AT FORECLOSURE SALE)

Mortgage principal		$2,000,000.00
Interest, 2 years at judgment rate of 9%		360,000.00
Pay off first mortgage:		
principal	$2,000,000.00	
interest at 14%	560,000.00	
legal fees	30,000.00	
disbursements	1,500.00	
late charges, 2 mos. at 5%	3,105.34	
		$2,594,605.34
Interest on advance to satisfy first mortgage, 3 mos. at 9%		5,837.86
Disbursement in foreclosure		1,500.00
Insurance advance		80,000.00
Interest on insurance advance, 2 yrs. at 9%		14,400.00
Tax advance		100,000.00
Interest on tax advance, 2 yrs. at 9%		18,000.00
Total		$5,174,343.20

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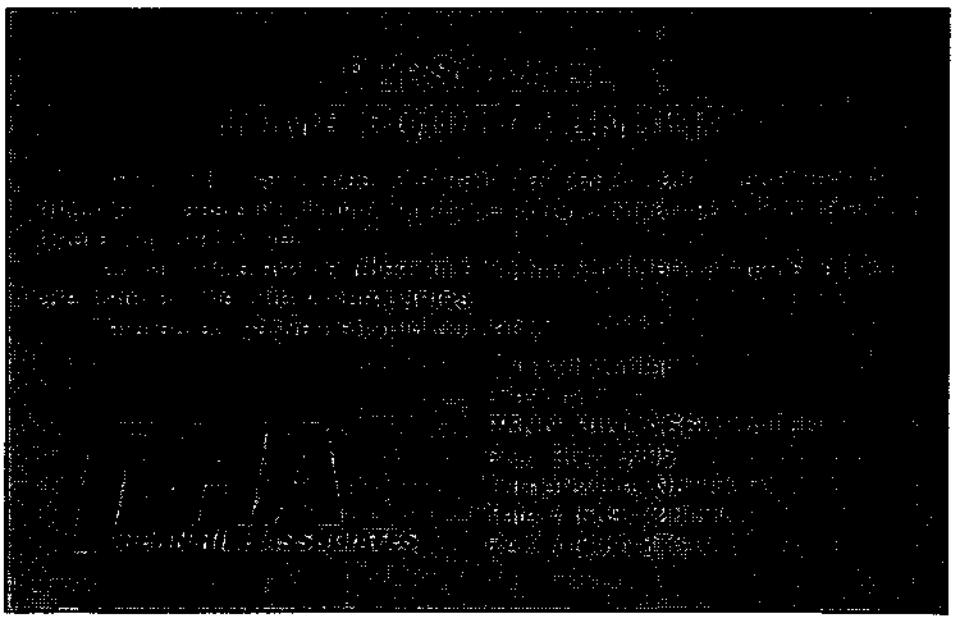

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B obtained at the foreclosure sale all its mortgage allowed it to recoup. Theoretically, it was made whole and might view the loan as an ultimate success, even though certainly fraught with problems. But, did B actually get all sums to which it could and, it is urged here, **should** have received?

To explain why we suggest the answer as "no," here is a delineation of what B **could** have recouped had its mortgage been more carefully drawn.

DEBT OWED TO B HAD MORTGAGE BEEN ARTFULLY DRAFTED

Mortgage principal	$2,000,000.00
Interest, 2 years at 14%	560,000.00
Late charges, 4 mos. at 5%	6,210.68
Payoff first mortgage	$2,594,605.34
Interest on advance to satisfy first mortgage, 3 mos. at 14%	9,081.11
Disbursements in foreclosure	1,500.00
Insurance advance	80,000.00
Interest on insurance advance, 2 yrs. at 14%	22,400.00
Tax advance	100,000.00
Interest on tax advance, 2 yrs. at 14%	28,000.00
Legal fees	30,000.00
Total	$5,431,797.13

The difference between what B actually received and what **would** have been available if it used the same mortgage A employed is $257,453.93 — hardly an inconsequential sum!

How this resulted is simple. Because B's mortgage said nothing about interest on default, it earned only the judgment rate of nine percent on the principal for two years instead of the **mortgage** rate of fourteen percent. (The mortgage could have specified fourteen percent, or any other legal percentage, or "the highest rate allowed by law" was to apply on default.) Having neglected the point, B in essence gave an advantage to Jones upon defaulting and the loan yielded $360,000 in interest instead of $560,000.

When B wisely satisfied the first mortgage in full, that very substantial advance yielded interest not at the mortgage rate of fourteen percent, but at the judgment rate of nine percent. Since that advance was made for only a short period of time, the difference of $3,243.25 is not especially significant, but is a loss nevertheless.

Since B's mortgage never contemplated late charges, the $6,210.68 it could have been paid was never collected.

Advances for taxes and insurance were quite large. But that total of $180,000 generated interest for two years only at nine percent, rather than fourteen percent. The loss of return there was $18,000.

Counsel to B in the foreclosure earned $30,000 in bringing the action to its conclusion. Without a legal fee clause in the mortgage, B paid the bill but could not be reimbursed for it out of the foreclosure sale proceeds.

In sum, then, the point should be clear: a diligently crafted mortgage is a critical element in the collection/foreclosure process and is particularly worthy of scrupulous attention.

LENDERS' COUNSEL

The recitation of the nuances of mortgage drafting highlight the thought that the entire arena of mortgages and mortgage foreclosure is a specialized calling. While it is possible that a general practitioner, or an attorney specializing in real estate, might be able to prosecute a garden variety foreclosure with some measure of success, it is not likely that such a person can do so with anything approaching maximum efficiency. Nor would it be reasonable to expect someone not an expert in the field to resolve the highly technical problems and issues which emerge when foreclosures became enmeshed in convoluted litigation.

Even highly professional lenders can benefit from the expertise of counsel who regularly handle foreclosure matters, particularly when the caseload is large. The attorney not familiar with the myriad variations in mortgage cases, or who does not have the background to know with authority when and how to proceed from strength, could easily contribute to jeopardizing the integrity of a loan or a portfolio of mortgages.

Relevant here, and throughout any discussion of mortgage foreclosure, is the principle that once a mortgage is in default, time is an enemy of both parties because of the accrual of interest. The more interest increases, the more the danger that the debt will be greater than the value of the security for the loan. Therefore, the special ability of counsel thoroughly familiar with all aspects of foreclosures is critical.

LEVERAGE AS AN ALLY

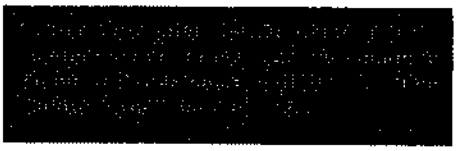
The noted example of the Jones shopping center case demonstrated the advantage of proceeding with dispatch. Bank A moved quickly and benefitted as a result. This is not to say that a lender must always be aggressive. Rather, it suggests that a lender should employ such control as the law allows and deal from a position of strength. The stronger a lender is, the more gracious it can afford to be since it always recognizes what it can and cannot do to protect itself.

Initially, let's briefly examine the very vital concept of acceleration. The mere fact that a loan is in default means only that certain payments are in arrears. Until a lender takes **some** affirmative action, the borrower is free to tender its arrears at any time, or do absolutely nothing. That is not an enviable position for a lender to be in.

The "something" a lender can do is avail itself of the **option** contained in every mortgage to declare due the entire balance of principal and interest due on the mortgage because of the default. That is the power to accelerate. Once acceleration is manifested, a lender need not accept a tender of arrears. It can if it desires to — that's the generosity aspect — but there is no **mandate** to do so (except in the very few states that hold a contrary view by statute.)

The significance of this power is considerable. It tends to have a chastening effect upon defaulters who are given some indication that the lender is resolute in its stance. It allows a lender to rid itself of the chronic defaulter upon which lender no longer desires to lavish the staff time, expense and annoyance. Of some moment too, after acceleration, as a condition of reinstatement, the lender may ethically demand reimbursement for any legal expense incurred — even without a legal fee clause in the mortgage — because the choice of accepting or rejecting reinstatement lies solely with the lender.

How precisely to manifest that acceleration is not something to be treated cavalierly.[3] It can be done in a letter to the borrower, or by actually filing foreclosure papers with the court, so long as the latter recites lender's election to accelerate. If sending a letter is the chosen course, it must be transmitted in whatever mode is set forth in the mortgage. While use of regular mail is the norm, if the mortgage specifies certified or registered, there must be compliance. Moreover, the content of the letter must be clear, unequivocal and overt. For example, demanding payment of arrears within a certain number of days, advising that failure to respond will **then** result in acceleration or foreclosure, will not suffice for a valid acceleration.



Once acceleration is accomplished, the lender is free to proceed with the foreclosure. As is most often the case, a borrower will eventually suggest that payment will indeed be forthcoming. Whether it does or does not arrive is exquisitely problematical. Experience suggests that the understandable trauma of foreclosure leads borrowers in trouble to either say things they don't mean or make promises they just don't have the wherewithal to honor.

If the lender is at a particular stage of a foreclosure, in the face of a promise to reinstate, should it halt the case and await the check? It would be an amiable thing to do, but foreclosure practitioners will observe that most often, the promise will not be kept. Therefore, the suggestion, to maintain control of a foreclosure action, is to tell a borrower that the matter will proceed to its next step regardless of the promise to pay, but that if payment arrives prior to that point, it will be accepted. If it comes immediately thereafter, it will be accepted, only if accompanied by a check for the concomitant increase in legal fees engendered by the progress of the litigation. Adopting such a posture still gives the borrower a chance to save himself, causes no undue delay to lender and assures that compensation for legal fees is forthcoming.

Suppose a borrower decides that rather than promise to pay, he will litigate with the bank? Although genuine defenses to bank foreclosures are extremely rare, that may not dissuade the borrower who wants to do battle either because he believes his cause is just or because he simply concludes that delaying the case is to his benefit.

At this juncture, bank's counsel has two choices. He can face litigation which must result when a borrower puts in an answer, safe in the knowledge that he will win, although adding months to the course of the case. Or, he can attempt to persuade borrower (or his attorney) to withdraw the answer.

Here is where knowledge and technique come to the fore. Bank's counsel — if he is the expert he should be — can explain to borrower's attorney why the so called defenses will be unavailing. If he is both correct and persuasive, he can then delineate the consequences of borrower's declination to withdraw the answer. First, meeting those defenses will cause legal fees to rise considerably. Since borrower will be required to pay those costs if there is ever to be a reinstatement, that certainly militates against litigation.

Second, the increase in legal fees, together with the accrual of interest during the time added to the case arising from the litigation, greatly increase the ultimate dollar amount owed to the bank. If that sum becomes greater than the value of the property, the borrower will be **personally** liable for the deficiency thereby created. Hence, borrower hardly does himself a favor by encouraging time consuming litigation.

Likewise, even absent probability of a deficiency, the wider the differential between the value of the property and the debt to the bank, the greater the **surplus** against which borrower could claim when the foreclosure is completed. Again, and no matter how one looks at it, the time and expense caused by litigation hurts the borrower. This is the correct message to be conveyed. If the argument prevails, everyone benefits, and it is suggested that bank's counsel proceed to make the point.

Another oft-encountered event is this. During the foreclosure, borrower, recognizing that there is equity in the property, tells the bank he is either going to sell his house (or commercial parcel, as the case may be) or refinance with another lender. Since such is his intention, which presumably will generate funds sufficient to satisfy the bank in full, he asks that the foreclosure be stopped while awaiting payment.

Should the bank accede to the request? Again, the suggestion is "no," even though responding affirmatively appears to be the cordial reaction. A lender cannot know whether a borrower's stated intention is sincere or not. Many times the statement is made only in desperation. Even if presented with all good intentions, neither can a bank know with any certainty whether a sale or a refinance is possible. To stop the action, awaiting borrower's promised actions, could stall a case for many months with no payment ever to be made. Multiplying this across a large mortgage portfolio could mean a majority of cases in limbo — with interest accruing all the while.

But there **are** ways to be accommodating under these circumstances. If borrower claims to be selling, the only modicum of support is submission of a contract of sale. If the transaction is all cash, there is **some** basis, at least, to conclude that a sale may go forward. Of course, a contract alone does not assure passage of title. There are a plethora of reasons while a closing will never take place, title problems or simple breach being notable among them. At this point, the bank must make a business decision as to whether it believes a closing is so likely that it will hold the foreclosure in place. An alternative — concededly less generous, although safer for the lender — is to continue the foreclosure to perhaps the eve of sale, to be

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poised to stop if the sale of the property by the borrower is truly imminent. If borrower fails after sufficient time has been given, the bank can almost immediately complete the foreclosure and recoup its investment.

What if borrower forwards a contract, but with a mortgage contingency — that is, the purchaser is not obliged to go forward if financing cannot be attained? Under those circumstances, holding the foreclosure in abeyance is not advisable because issuance of a mortgage commitment to borrower's purchaser is tenuous. When it is given, **then** the bank may entertain a halt to the foreclosure under terms just mentioned.

Similar thoughts are recommended if borrower claims to be refinancing. Applying for a new loan to satisfy the existing mortgage may be an indication of the borrower's good faith, but it is not the equivalent of securing a firm mortgage commitment. Only when the latter issues should stopping the foreclosure be seriously addressed.

As a corollary to this discussion on when to pause in a foreclosure is this exigent point. In order to save a residence or a commercial parcel, a defaulting borrower will, perhaps understandably, do just about anything. They will not hesitate to come to court on the eve of sale and claim to have a defense that must be heard, or assert that they were never served with papers in the case. Since courts are prone to give everyone their "day in court," the likelihood of last minute delays in foreclosure cases is common.

Mindful that a borrower can intervene at virtually anytime, there is a final recommendation to encompass requests for time when the last step in a foreclosure has been reached — the scheduling of a foreclosure sale. If at this point a borrower comes forward asking for an adjournment of the foreclosure sale — and assuming it is backed with a reasonable expectation of payment — a bank can do two things to protect itself. To diminish the possibility that subsequent to a granted time extension the borrower will nevertheless seek relief from a court, the bank should demand that as a condition of the adjournment of sale the borrower execute an estoppel certificate. This is a document whereby the borrower acknowledges the quantum of the debt owed and asserts that in actuality there are no defenses to the foreclosure. While this does not absolutely preclude obfuscation on borrower's part thereafter, it does make it much more difficult for them to attack the foreclosure action later on.

Second, the bank can consider requesting a check in an appropriate sum to be applied to interest. To the extent the adjournment increases interest, as it must, the payment will eliminate some or all the consequences of allowing the hiatus.

THE RECEIVER

Harkening back to the case of Jones and the shopping center, it is not so difficult for a determined borrower to obscure and delay a foreclosure case, literally for years. It is not all that common, but it **does** happen and the consequences to the lender can be severe. Aside from the expense, not all of which will always be recoverable, years of delay raise the ever present specter of creating a debt greater than the value of the property.

The contentious problem is exacerbated when the value of the property declines during the litigation because the borrower neglects repairs, fails to pay taxes or generally "bleeds" the property. The confluence of mounting interest and declining value can create real jeopardy for the investment.

Where a commercial parcel is the subject of the foreclosure, the borrower can use the income collected to fund the litigation, thereby deriving incentive from continued obstreperous conduct. A less than knowledgeable lender could be bludgeoned into an unfavorable settlement, fearing an ever greater loss if the litigation is not concluded.

But there is an answer. Mortgages almost universally authorize lenders to seek the appointment of a temporary receiver of the rents and profits or the property. Standing in the place of the owner, the receiver is an officer of the court who collects the rents, to be applied in reduction of the mortgage, pays the expenses, makes needed repairs and in sum, **preserves** the property.

Once a receiver is appointed, all the income the borrower had previously been putting in his pocket, or using to fight the bank evaporates. A triple purpose is thereby served. The borrower's incentive to delay is markedly reduced. Collected income is used to reduce the debt. The integrity and value of the property is preserved.

Although most often employed in the commercial situation, receiverships are available for the one family house where a borrower decides to create interminable litigation. It is certainly an avenue of relief to consider when appropriate circumstances are found.

CONCLUSION

The realm of mortgage foreclosure is to technical that it requires considerable expertise to negotiate through all the difficulties and recondite points. While skilled legal counsel is essential — and has been suggested here as a prerequisite to success — it does not mean that bankers abdicate their responsibilities to supervise and protect their interests.

To the contrary, the dedicated banker has an important role to play. He can make sure that his mortgage documents underwrite all the protection required. He can attend to the engagement of competent counsel to prosecute those cases which must go into foreclosure. He can understand the strategy and mechanics which contribute to efficient and effective disposition of litigated foreclosures.

There is much room for self help, and the professional banker whose pursuit of techniques is assiduous can be all the more effective in his position as a result of his dedication.
