

IF YOU MUST FORECLOSE PROTECTING THE ASSET AND EVICTING THE FORMER OWNER

When the debtor is in default and you have made the decision to commence foreclosure, you potentially have two problems. Protecting the asset and obtaining the income. Since the property is your primary source for obtaining repayment, it is important to take action to protect this asset.

Protecting the asset

If the property upon which you are foreclosing is income property, you, as the trust deed beneficiary are entitled to the rents and income from the property.

In addition, you have the right to insure that the physical condition of the property is preserved.

In order to obtain the rents, income and protect the property, you may be entitled to have a judge of the superior court appoint a receiver to take charge of the property and operate the property during the foreclosure proceedings. To determine if it is in your best interests, both economically and practically, you need to consult an attorney.

Evicting the former owner

Once you have obtained the title to the property after the trustee's sale, you are entitled to possession of the property. Frequently the former owner either does not want to leave or is taking his time in doing so. In addition, the former owner may be bitter and apt to destroy the property until he leaves. You have the right to immediately commence eviction proceedings to have the former owner removed from the property. To accomplish this, you need to hire an attorney to commence an unlawful detainer proceeding.

IF THE DEBTOR GOES BANKRUPT

While Bankruptcy is a proper legal way in which to protect assets, the bankruptcy laws can be manipulated by unscrupulous persons. In addition, the lender will be frustrated by the delay.

Often the debtor will attempt to stall the foreclosure by filing a bankruptcy. The effect of a bankruptcy filing is to stop the foreclosure proceedings until a bankruptcy judge issues an order to allow the foreclosure to continue.

A bankruptcy proceeding can be very frustrating because it frequently delays the foreclosure when there is no real reason to do so. At the same time, the value of the property may be declining and the income siphoned off.

Obtaining Relief From Bankruptcy Delay

In order to properly protect your interests, you should promptly retain an attorney to file a relief from stay action in the bankruptcy court. The purpose of this action is to obtain a court order allowing you to continue with the foreclosure. The issues which the judge must decide in this action are (1) is the bankruptcy filing done in good faith, (2) does the debtor have any equity in the property, (3) are there other creditors that can benefit from the equity in the property and (4) does the debtor have a realistic prospect of selling or refinancing