

# Minnesota Workouts and Foreclosures

Dealing with Distressed Properties and Loans

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# Pre-Negotiation and Forbearance Agreements

- Reasons to consider
- Typically favorable to lenders
- Differences between the types of agreements

# Typical provisions in Pre-Negotiation Agreements

- Terms of negotiation (timing, location, nothing admissible in any proceedings, etc.)
- Identification of authorized representatives
- Acknowledgment and re-affirmation of debt
- Acknowledgment and re-affirmation of validity and enforceability of documents
- Guarantor acknowledgment and re-affirmation of guaranty
- No waiver of rights of lender
- Waiver of defenses of borrower
- Release of claims against lender
- Payment of lender's expenses (including attorneys' fees)
- No agreement until written agreement executed
- Acknowledgment of pursuit of alternative opportunities
- Cooperation requirements
- Right to terminate anytime

# Typical provisions in Forbearance Agreements

- Many of the pre-negotiation agreement provisions above
- Forbearance terms (e.g., length of forbearance; timing of payments; modification of payments or loan amounts; modification of collateral; modification of reporting requirements; additional monetary and other safeguards for lender; additional performance obligations for borrower; etc.)
- Additional warranties and representations from borrower
- Default provision

# Voluntary Resolutions

- Deed in Lieu Agreements
- Voluntary foreclosures

# Deed in Lieu Considerations

- Do you want to own the property?
- Status of Title – Junior Creditors?
- Anti-merger language in deed

# Voluntary Foreclosures

- Available for commercial properties
- Waiver of deficiency, reinstatement, etc.
- Consent to receiver
- 4 weeks published notice of sale
- 2-month redemption period

# Non-Voluntary Foreclosures

- Foreclosure by Advertisement
- Foreclosure by Action
- Reasons to choose one or other
- Impact of *Ruiz* decision



# Impact of Gov. Walz's Executive Order and CARES Act

- Executive Order was a “request for moratorium” on residential properties
- CARES Act only impacted federally-backed loans on residential properties (1-4 units)
- Moratorium on federally-backed single family loans extended to August 31

# Foreclosure by Advertisement

- Process
  - Title work
  - Notice of Power of Attorney
  - 6-weeks Published Notice of Sale
  - Service on Occupants – Timing and Difficulties
  - Additional notices required on residential properties
  - Sheriff's Sale - Certificate



# Foreclosure by Action

- Process
  - Title work
  - Start foreclosure lawsuit – record lis pendens
  - Additional notices required on residential properties
  - Litigate and proceed to judgment
  - 6-weeks published and posted notice of sale
  - Sheriff's Sale – Report of Sale
  - Motion to Confirm Sale
  - Record Sheriff's Certificate

# Reinstatement Rights

- Applies Before Sale
- Statutory Right - Minn. Stat. § 580.30.
- Applies Even if Debt Accelerated
- Need to Pay Amounts Due, Interest and Costs
- Attorneys' Fees – ½ of Amount Due Under Minn. Stat. § 582.01

# Redemption Rights

- Redemption applies after sale
- Redemption period is typically 6 months
- 12-month period may apply if significant paydown has occurred, property is agricultural, or over 40 acres
- Mortgagor has first chance to redeem
- Junior creditors can redeem thereafter
- Complex procedures and requirements apply

# Appointment of a Receiver

- Controlled by Minn. Stat. § 576.25
- \$100,000 or More Original Principal Amount
- Doesn't Apply to Homestead, Residential Properties with Less than 4 Units, or Ag Land
- Appointment Mandatory if Mortgagee Makes Statutory Showings
- Also Limited Right of Entry Under Minn. Stat. § 582.031

# Deficiency Judgments

- Money judgment for amount by which debt exceeds bid at sheriff's sale
- Amount of deficiency determined at sheriff's sale. Not at time of later sale to a third party.
- Not available against borrower in a foreclosure advertisement with 6-month redemption period.
- Availability against guarantors
- Minn. Stat. § 582.30 Limitations



# Contact Info



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