

Commentary

What You Need to Know About Receiverships

by Dave Wald

For the past several years the real estate advisory practice has been heavily involved with assisting lenders - both institutional and private - to evaluate, operate and sell their special assets/REO real estate. One goal is always to maximize value recovery while at the same time minimize their liability. An important part of this effort revolves around several significant issues, and a receivership is frequently recommended as an effective way to address these issues. Those issues are:

- < Not becoming a "mortgagee in possession" prior to foreclosure;
- < Avoiding the "chain of title" whenever possible;
- < Collecting income during the foreclosure process;
- < Understanding and eliminating pre-foreclosure liability (ie. environmental clean-up);
- < Ensuring that pre-foreclosure transactions are (or are not) voided by the foreclosure.

Establishing a receivership for land and/or standing and model homes provides four important benefits to a lender:

(1) Establishes control of the property by a responsible neutral party (the receiver). This allows the lender to participate indirectly in the operation of the property while avoiding claims that the lender was actively involved in directing property operations prior to foreclosure, and therefore has become a "mortgagee in possession". As a mortgagee in possession, the borrower's debt could be converted by the court into "joint venture equity"; which would make recovery extremely difficult. Value can be preserved where entitlements are expiring and action must be taken to ensure that they remain in-place. Another benefit of control is safety, where aspects of the property are unsafe, and access to the property or other safety measures must be taken to minimize or avoid liability. For example, the receiver can put in place alarm systems and security guards to protect model homes and standing stock.

(2) Ensures the collection of any net income which could be applied against the outstanding debt after foreclosure, or used to pay for remedial work on the Property during or after the receivership. During the required 120 day foreclosure notice period the receiver can collect and retain leasehold or sale income, which may ultimately be applied to the unpaid balance of a loan. Where lease or sale transactions must be negotiated or require certain action in order to be completed, the receiver is able to accomplish this. For example, in a single family home tract, where homes or lots are being sold, a receiver can complete the sales and retain the proceeds to ultimately be applied against the unpaid balance of the loan. If there are leases in-place that must be renegotiated and/or preserved, the receiver can accomplish this, and sell the property if need be.

(3) Provides for adequate time to investigate and evaluate the property (i.e., environmental or other health, safety or operational issues), which in some instances may be paid for with property operating funds collected by the receiver. By controlling access to the property and property records, the Receiver may be in a better position to complete a timely investigation of a property where there is an uncooperative or absentee borrower. For example, the current owner is required under most receiver orders to provide all books and records relating to the project to the receiver. This allows for the review and organization of all critical contracts, parcel maps, plans and specifications and other critical documents. Further, if there is income arising from the property, then that income may be used to pay for various aspects of the work that the receiver completes.

KOREK LAND COMPANY, INC.

14545 ERWIN ST. • VAN NUYS, CA 91411 • (818) 787-3077 • FAX (818) 787-9677
www.korekland.com • mail@korekland.com

(4) Facilitates the completion of necessary work (i.e., environmental clean-up, completing construction, removing safety hazards) in order to preserve, enhance or avoid a loss of value, all without entering the "chain-of-title." For example, the receiver could complete the construction necessary to close pending home sales during the foreclosure process, that otherwise might be lost with a delayed completion. The receiver can complete environmental investigations or remediation, complete unfinished entitlements, extend existing entitlements, complete unfinished construction, all without the lender taking title to the property, and as a result not entering the chain of title. This is particularly important where health and safety issues arise (i.e., hazardous materials or conditions), and the Receiver can accomplish the appropriate corrective action on behalf of the parties without the lender ever entering the chain-of-title.

With a properly drafted receivership order, a receiver will professionally control, operate, investigate, evaluate and complete any work and/or transactions (including a sale to a third party) that are necessary to obtain the best value from the Property. However, a receiver is an employee of the court, and as such can only act in the capacity prescribed in the receivership order and as further directed by the court.

Written by Dave Wald, founding partner of Wald Nickell Realty Advisors (WNRA), which acts as "surrogate owners" in their capacity as real estate advisors, court appointed receivers and asset managers. WNRA serves a wide array of predominantly first-tier institutional and private lenders, as well as corporate, government and individual owners of real estate, helping them to effectively accomplish their real estate goals. For more answers to more specific questions, please call Mr. Wald at 310/459-4141.

GUEST COMMENTARIES WELCOME, and may be printed at the sole discretion of **Korek Land Company**.

100194

Previous commentaries available upon request:

*A LENDER'S GUIDE TO MELLO-ROOS & ASSESSMENT LIENS, By Lewis G. Feldman, Esq. & Kathryn M. Lyddan, Esq.
CERCLA ENVIRONMENTAL LIABILITY FOR LENDERS - A LOOK AT THE NEW EPA RULE, By Dean Stackel
THE BROKER AS YOUR AGENT AND THE BROKER'S FIDUCIARY RESPONSIBILITIES, By Arthur Mazirow
DEALING WITH THE WILLIAMSON ACT, By David L. Preiss
UNDERSTANDING THE REMEDY OF LIS PENDENS, By Fredric W. Kessler
LET THE FILER BEWARE THE RISKS OF A LIS PENDENS FILING, By Theresa M. Marchlewski, Esq.
DEVELOPMENT AGREEMENTS, By Robert Merritt & Geoffrey Robinson, McCutchen, Doyle, Brown & Enersen
HOMEOWNER ASSOCIATION CONSTRUCTION DEFECT LITIGATION AGAINST DEVELOPERS, By Richard H. Levin
FORECLOSURE BIDDING STRATEGIES & THE RISKS OF A FULL CREDIT BID, By John H. Kuhl & Douglas Snyder*