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Foreclosures

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I. [21.1] INTRODUCTION TO THE FORECLOSURE PROCESS

Most real estate practitioners are not familiar with the foreclosure process, what time periods are involved, or how to conclude a transaction once a foreclosure has been initiated. This chapter presents some of the statutes and pitfalls that may be encountered when trying to close a transaction on behalf of a seller-mortgagor or a third-party buyer prior to or during a foreclosure process.

In many foreclosures, the foreclosing lender is the successful bidder at the foreclosure sale and then must try to resell the property. This chapter also presents items to look for when representing a buyer who is purchasing from a seller-lender that obtained title through its foreclosure.

A. [21.2] Illinois Is a Judicial Foreclosure State

The process of a foreclosure in the State of Illinois is judicial. Some states, such as California, Arizona, Texas, and Missouri, are nonjudicial power of sale states. The statutory provisions governing a judicial foreclosure are found at 735 ILCS 5/15-1100, *et seq.* Since the foreclosure process is a statutory process, the practitioner should first review the statutory provisions and determine the current status of the foreclosure prior to proceeding any further in his or her representation of a client.

B. [21.3] Illinois Has a Redemption Period and a Judicial Sale

Two statutory sections that need attention by the practitioner are those dealing with the period of redemption for both residential and commercial real estate (735 ILCS 5/5-1603) and the judicial sale provisions (735 ILCS 5/15-1507). Both of these statutory sections provide for the period under which the borrower may have an opportunity to redeem as well as how the judicial sale will affect the opportunity to sell the property.

II. [21.4] SELLER'S ISSUES WHEN FACING FORECLOSURE: PRIOR TO THE FILING OF A COMPLAINT TO FORECLOSE

The first issue that the practitioner has to determine is whether the seller can convey good and merchantable title to the buyer. This is a consistent theme throughout the rest of this chapter in terms of being able to comply with the terms of the real estate contract by conveying title to the buyer.

A. [21.5] When Is a Demand Letter Necessary?

Many times, attorneys begin their representation of a seller prior to the filing of the complaint to foreclose. Since the foreclosure action has not begun, the seller does have the ability to convey good and merchantable title to a buyer. A seller will usually receive a demand letter issued by the lender or lender's agent prior to the foreclosure action's being filed. It is important to take a look at the underlying mortgage documents to ascertain whether a demand letter is necessary. Some

mortgages do not have an acceleration provision that requires a demand letter, and the mortgagee may accelerate upon any event of default without notice. Most Fannie Mae, Freddie Mac, FHA, or VA loans do have an acceleration provision that requires that a demand be sent by either regular or certified mail and gives the borrower a chance to cure that can run anywhere from ten to thirty days. It is important to ascertain whether the mortgage holder has properly accelerated the mortgage, as a failure to do so can provide your client with a defense to the foreclosure action and ultimately procure for your client additional time to complete his or her transaction.

B. [21.6] "Workout Units" and the Ability To Make Payments Under Forbearance Agreements

If you find that your client has received a demand letter, there may be certain opportunities at this juncture to mitigate your client's expenses with regard to any potential foreclosure action. Many lenders have what they call "loss mitigation units" or "workout units." A phone call to the lender at the numbers provided on the demand letter may yield an opportunity for your client to reach some sort of restructure or arrangement with the lender to make payments. In the event that your client has some funds available, or if the client can borrow some funds through relatives or profit-sharing or pension plans, this might be a very valuable opportunity. Most clients do not wish to make phone contact for fear of what they might hear or not knowing how to move forward with regard to this matter. Thus, the practitioner may wish to involve himself or herself in working out some sort of forbearance agreement or restructure of payments on the loan for the client.

C. [21.7] "Short Sales"

Another option that might present itself is the "short sale" option. A short sale occurs when the purchase price of the property will not yield enough money to pay off the mortgage lien or liens. As a result, the lender will come up "short" with regard to the payoff amount. To the extent that the property has a current valuation that is less than the amount of the liens, the lender will need to be satisfied with regard to that valuation and understand it will not receive sufficient money. As an advocate for your client, you may be able to provide that documentation to the lender so that your client will then be allowed to sell the property, use all proceeds to pay the lender, and then receive a discharge of the note and mortgage as a result of the short sale. All too often, we see that borrowers do not try to avail themselves of the short sale opportunity, either through ignorance or embarrassment. This is an excellent avenue to be explored, and we encourage practitioners to assist their clients in this regard.

As a borrower's attorney, you want to try to procure, as part of the short sale option, a full release under the note. You need a release of the lien in order for the closing to occur, but a release of the lien does not necessarily release your client from his or her obligation on the underlying indebtedness. The debt will be considered satisfied only to the extent of the proceeds received by the lender from your client's sale unless you are able to negotiate a full release of liability for your client under the mortgage and the note.

III. SELLER'S ISSUES ONCE THE FORECLOSURE PROCESS HAS BEGUN: PRIOR TO JUDICIAL SALE

A. [21.8] Timing Issue: Ability To Convey Title and Statutory Redemption Period

The second stage that the transactional practitioner has to be aware of occurs once the foreclosure process has begun and prior to the judicial sale. The issue the practitioner needs to face again is whether the seller has the ability to convey merchantable title to a buyer. Prior to the judicial sale, the general answer is going to be yes. The first section that the practitioner needs to look to is the redemption period under 735 ILCS 5/15-1603. If a judgment has been entered, the mortgagors generally have seven months from the date of service on the last of the mortgagors, or three months from the entry of judgment, to redeem the property. It is important to look at the entered judgment of foreclosure for the specific date the period of redemption expires. During that time period, the mortgagor, as seller, can convey legal title to a buyer using the proceeds of the sale to pay off the lender. Note, however, that if the property is vacant and abandoned and the court so finds, then the redemption period can be shortened to 30 days after entry of a judgment of foreclosure. 735 ILCS 5/15-1603(b)(4). Once the redemption period has expired, the mortgagor-seller technically has no right to redeem the property from the judgment of foreclosure and will not be able to convey good and merchantable title to the buyer.

B. [21.9] Statutory Reinstatement Period

The practitioner needs to inquire of the client as to when the client may have been served with the summons and complaint in the foreclosure action. A quick look at the statutory reinstatement provision found at 735 ILCS 5/15-1602 provides the mortgagor the opportunity, within 90 days of the date of service of summons and complaint, to reinstate the mortgage upon payment of all arrearages due, fees, and costs. This section can be availed of only once every five years to the extent that the court makes a finding that the statutory reinstatement has occurred. This statutory provision also allows the mortgagor's attorney to petition the court to adjudicate any fee issues that may arise between the mortgagor, mortgagee, and mortgagee's attorney. This section may be of use once the complaint is filed and within 90 days of the service of the summons and complaint. Many loan documents also contain a contractual right to reinstate, which is independent of the statutory right. The loan documents must be reviewed to determine if this right exists, as if it does, it may be argued that a mortgagor has the opportunity to reinstate even after the 90-day statutory period expires. If your client has the ability to reinstate his or her loan, this can put an early end to the foreclosure process and save your client money, as any additional fees and costs incurred by the foreclosing lender are usually recoverable under the terms of your client's mortgage.

C. [21.10] Amount Necessary To Redeem from Judgment of Foreclosure and Order of Sale

If a complaint has been filed and your client has been served, you should ascertain whether a judgment of foreclosure and order of sale has been entered. To the extent that a judgment of foreclosure and order of sale has been entered, the redemption period is set forth in the judgment and should be a starting point for the practitioner to the extent that it advises of the last date to

effect a redemption and to be able to convey good and merchantable title. A judgment also sets forth the amount of fees, costs, and amounts due the mortgagee as of the date of the judgment. One interesting twist that confronts the practitioner is the fact that a judgment accrues interest at nine percent pursuant to statute. However, to the extent that a borrower wishes to redeem the property pursuant to statute and under the terms of the judgment, the rate of interest to be charged is not nine percent, but rather the contractual rate, as if no default had occurred. See 735 ILCS 5/15-1603(d)(1).

D. [21.11] Filing Bankruptcy: Redemption Period and Reinstatement Period

Subsequent to a judgment being entered, borrowers may consider filing some sort of petition in bankruptcy, either under Chapter 7 or Chapter 13. Section 362 of the Bankruptcy Code provides an automatic stay provision that stops any action in the foreclosure process. 11 U.S.C. §362. The automatic stay provision prohibits the mortgage holder from moving forward with regard to a sale or even entering a judgment of foreclosure and order of sale. The Chapter 13 workout proposal for mortgagors would allow the borrower the opportunity to reinstate the loan by payment of the arrearages through the terms of the plan, along with fees and costs, at a point in time after the 90-day provision. 735 ILCS 5/15-1602. This may be an excellent option for a borrower's attorney when the client has come in after the statutory reinstatement period has expired. In either case, bankruptcy may provide additional relief for the borrower, either in terms of removing any personal liability or giving the borrower an opportunity to reinstate the loan when the statutory provision no longer provides for it.

The statutory redemption provision states that redemption must occur within seven months of the date of service on the mortgagors or three months from the date of judgment, whichever is later. 735 ILCS 5/15-1603. 735 ILCS 5/15-1603(c) clearly states that "[o]nce expired, the right of redemption provided for in Sections 15-1603 and 15-1604 shall not be revived." Also, 735 ILCS 5/15-1605 states: "No equitable right of redemption shall exist or be enforceable under or with respect to a mortgage after a judicial sale of the mortgaged real estate pursuant to Section 15-1507 or after entry of a judgement of foreclosure pursuant to Sections 15-1402 or 15-1403." Assuming that the borrowers have failed to take action by this point in time and a judgment of foreclosure and order of sale has now been entered and the redemption period has expired, what option do the mortgagor and the mortgagor's attorney have? That question is discussed below.

IV. SELLER'S ISSUES ONCE FORECLOSURE PROCESS HAS BEGUN: POST-JUDICIAL SALE

A. [21.12] Special Right To Redeem

735 ILCS 5/15-1604 can provide a "last ditch" effort to save the property. This section establishes a "special right to redeem," which is limited in scope. The purchaser at the sale must have been a mortgagee who was a party to the action and not a third-party purchaser. The wording of the statute would include a junior mortgagee who was named and served in the foreclosure action and who overbid the foreclosing mortgagee. This section also provides that the foreclosure sale price be less than the sum set forth in 735 ILCS 5/15-1603(d) or generally the

judgment amount of the foreclosing mortgagee plus costs, fees, and interest at the mortgage rate. When both prongs of the statute are met, the mortgagor shall have a right to redeem for a period ending 30 days after the order confirming sale is entered. NOTE: The triggering date is not the date of sale, but the date the order confirming sale is entered by the court.

As a practical matter, most mortgagees will have scheduled the sale for a day or two following the expiration of the period of redemption. If a borrower comes to the practitioner's office and indicates that the redemption period has expired, then most likely the sale will have been, or will immediately be, held, therefore affording no other opportunity for redemption than that under 735 ILCS 5/15-1604. The issue that the practitioner then faces is what actions can he or she take on behalf of the client and, again, whether the client will be able to give good and merchantable title to any type of buyer in a sale proceeding. Since the period of redemption has expired (see 735 ILCS 15/1603 and 15/1604), the seller-mortgagor would not be able to give good and merchantable title to a buyer. As a direct consequence, the practitioner should be very careful in reviewing any type of sale contract. The borrower may be able to avail himself or herself of an option under the bankruptcy statutes. If bankruptcy is not an option, then the practitioner should determine whether any objections can be raised to confirmation of the judicial sale. See 735 ILCS 5/15-1508.

B. [21.13] Order Confirming Judicial Sale

The court is required to confirm the sale pursuant to 735 ILCS 5/15-1508. The court can decide not to confirm the sale to the extent that the court finds "(i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done." 735 ILCS 5/15-1508(b). There have been many cases dealing with this statutory section.

An article to review on sale confirmation is Steven B. Bashaw, *Illinois mortgage foreclosure: A growing trend to confirmation of sales*, 43 ISBA Real Prop. News'l, No. 5, 1 (June 1998). Many of the cases on sale confirmation deal with third-party bidder issues. Fair market value should not be a factor in confirming the sale. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 128 L.Ed.2d 556, 114 S.Ct. 1757 (1994). The interesting part of the statute that remains to be developed is whether "justice was otherwise not done." This might give the mortgagors some opportunity to raise an issue that would allow an equity judge to deny confirmation. This is left to the ingenious borrower's attorney.

Once the sale is confirmed, the mortgagee then obtains a deed from the selling officer and records it. The deed then vests title in the foreclosing mortgagee or the highest bidder at the sale. The borrower's only recourse is to appeal any decision or to attack the proceedings on a jurisdictional basis.

V. [21.14] SELLER'S ISSUES WHEN PAYING OFF A MORTGAGE IN FORECLOSURE

In addition to the statutory periods and the ability of the mortgagor to convey good and merchantable title to the seller, as discussed above, there are several other issues that the mortgagor, as seller, needs to face once the foreclosure action has begun.

A. [21.15] Most Mortgage Documents Allow for Collection of Fees and Costs

Almost all mortgage documents have language that provides that reasonable attorneys' fees, court costs, and costs of collection may be recovered. These costs include title charges, publication costs, clerks' costs, sheriffs' costs, etc. These costs significantly add to the amount that is due to the mortgagee. In many cases, these costs run anywhere from \$1,500 to \$3,000 depending on the status of the foreclosure, what county it is being held in, and the cost of publication. To the extent that there is a pending foreclosure action and the practitioner feels that the fees and costs may be incorrect, a proper motion made to the court, pursuant to 735 ILCS 5/15-1607 or 735 ILCS 5/15-1603(f), would resolve that particular issue.

B. [21.16] What Are Allowable Fees and Costs?

In many situations, the issues that come before the practitioner are what fees and costs are allowable prior to the foreclosure action actually being filed. Clearly, some attorneys' fees are generated, albeit not the full amount of attorneys' fees that would be due if the foreclosure action were to proceed through completion. Most mortgagee attorneys have a fee schedule that provides for reasonable compensation for the file opening, review of the file, communications, etc. In addition, there will be title charges incurred on behalf of the mortgagee (customarily referred to as "minutes of foreclosure") and perhaps even inspection charges to ascertain who is in possession of the property and to make sure the property is being properly maintained. These inspection charges are necessary because in order to complete an eviction upon a foreclosure, all persons in possession need to be named in the foreclosure. To the extent that the case has not been filed, there is no court oversight with regard to fees and costs, and that issue is left to both the mortgagor's and the mortgagee's attorneys.

PRACTICE POINTER

- ✓ Mortgage companies can charge a payoff statement fee and/or fax fee for delivering payoff statements. These are routinely seen on payoff letters from most mortgage servicers. Although you may wish to argue over these fees with a lender, *Moskowitz v. Washington Mutual Bank*, 329 Ill.App.3d 144, 768 N.E.2d 262, 263 Ill.Dec. 502 (1st Dist. 2002), held that federal law, as promulgated by the Office of Thrift Supervision (OTS), preempts Illinois law and that OTS regulations indicate that payoff statements are an integral part of the lending process and that a lender can assess a fee for these statements. Thus, a borrower will need to pay these charges from the proceeds of the sale.

C. [21.17] Language Necessary To Clear Title Exceptions

When a foreclosure case has been filed and a mortgagor-seller has a pending contract with a third party, the mortgagor-seller will retain, usually through counsel, his or her own title company to provide title insurance to the third-party purchaser. Title companies routinely request that the mortgagor-seller obtain from the foreclosing mortgagee's attorney a statement indicating that upon payment of the amounts that are due and owing as set forth in the payoff letter by the

mortgagee, the foreclosure action will be dismissed with prejudice. It is incumbent on the mortgagor's attorney to seek that specific language from the foreclosing mortgagee's attorney, *i.e.*, that it will dismiss the case with prejudice upon the funds' being received so that the mortgagor can clear any title exceptions relating to the foreclosure. This should be done early in the process to satisfy the title examiner and avoid any delays in closing.

VI. [21.18] BUYER ISSUES WHEN PURCHASING REO (REAL ESTATE OWNED) PROPERTY

Once the foreclosure action has been completed — that is, the redemption period has expired, the judicial sale has been held and confirmed by the court, and the deed has been recorded — the mortgagee is in the position of seller and will need to try and dispose of the property to a third party purchaser. Seller-mortgagees often refer to these properties as "REO" (real estate owned), and most mortgagees have REO departments that deal specifically with the disposition of these properties. The remainder of this chapter discusses what actions attorneys for third-party purchasers need to be concerned with when purchasing a property from a lender after a foreclosure action has been completed.

A. [21.19] Contract Issues

The biggest issue that the buyer's attorney needs to face is the terms of the contract being presented to his or her client. Keep in mind that the mortgage holder has not been in possession of the property, has no idea as to the condition or the operation of the appliances or other equipment within the property, and does not wish to make any representations regarding any of these particular issues. Therefore, the contract that is tendered to the buyer by the selling mortgagee usually has a variety of disclaimers with regard to significant issues and usually contains a provision that the property is sold in an "as is" condition.

1. [21.20] Zoning/Building Code Violation Issues

One example of the disclaimers presented by selling mortgagees is a disclaimer as to any type of zoning violations or building code violations, whether or not they show up on title. The seller has no indication as to whether the building complies with zoning laws since that was not a precondition of the seller's loan being made. The same is true with regard to building code violations. In many cases, there are building code violations that may appear on title as a result of the municipality filing an enforcement action. Most mortgagees will discount the price due to the building code violations but indicate that the buyer needs to take subject to those building code violations and any pending building court cases. At that point, the practitioner for the buyer needs to counsel the client to make a full investigation as to what the violations are and what will be necessary to correct them to ensure that the client will be able to have those title issues waived and receive a merchantable title. Please also keep in mind that title companies will make these violations an exception under Schedule B of their title commitment as well as their final title policy, and therefore there will be no insurance issued as to those building code violations.

2. [21.21] Bill of Sale Issues

Another issue facing a buyer's attorney is that of a seller refusing to provide a bill of sale. Again, this makes sense to the extent that the mortgagee was only foreclosing or taking possession of whatever property may have been left on the real estate and cannot ensure that it has good title to that personal property. As a result, the seller-mortgagee will not execute a bill of sale to the buyers and instead allows the caveat emptor rule to prevail.

3. [21.22] Affidavit of Title Issues

Sometimes the seller and the seller's attorney cannot ensure that there are no other parties who may claim an interest in the property at some point in the future and therefore refuse to execute an affidavit of title in favor of the buyer.

Some typical exculpation language is "Buyer acknowledges and agrees that Seller has owned the property only since the date of the foreclosure or other conveyance and has never occupied said property and therefore is not in a position to make any representation or warranties, express or implied, as to the property."

The typical seller contract also may include language substantially as follows:

Buyer hereby expressly acknowledges and agrees that Buyer has thoroughly inspected and examined the property to the extent deemed necessary by Buyer in order to enable Buyer to evaluate the purchase of the property. Buyer hereby further acknowledges and agrees that Buyer is relying solely on the inspection, examination, and evaluation of the property by Buyer and that Buyer is purchasing the property on an "as is, where is" and "with all faults" basis and not on any information provided or to be provided by Seller. Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition, habitability, merchantability, or fitness for a particular purpose. Except as otherwise specified herein, it is further agreed that Seller has not warranted, and does not hereby warrant, that the property or any improvements located thereon now or in the future will meet or comply with the requirements of any safety code or regulation or building code of the state, city, or county where the property is located, or of any other authority or jurisdiction.

This language supports the notion that the buyer is truly buying property in a vacuum, and it is incumbent on the attorney to advise the buyer to do a diligent inspection of the property. As a further note, the Residential Real Property Disclosure Act, 765 ILCS 77/1, *et seq.*, exempts lenders who have taken title via foreclosure from its disclosure requirements.

4. [21.23] Survey Issues

Another issue that is of concern to the seller-mortgagee involves plats of survey. Again, the contracts and riders that are being used by seller-mortgagees have no provision for the seller to provide a survey to the buyer. It is recognized that surveys generally are an accepted part of the

seller's package documents in the northern part of Illinois and in certain other parts of the state. However, the seller-mortgagee — and consequently the buyer — will not know where the property lines are located, nor whether there is a property or boundary line issue. Again, the concept is that the seller foreclosed on the property and is conveying whatever interest it may have, which may be little or nothing.

5. [21.24] Local Municipal Inspections

A thorny issue that has evolved over the past several years is that of local municipal inspections. Many municipalities now require an inspection to be performed when property is sold or transferred to upgrade the property and make sure that the property is in compliance with local zoning and building codes. See §2.94 of this handbook for a chart of Chicago suburbs requiring such inspections. In many situations, the property being foreclosed on has not been kept up and in fact may have significant building code or deficiency issues. Seller-mortgagees routinely make these inspections the responsibility of the buyer and make no provision for any municipally required repairs. The buyer may have to deposit some sort of escrow with the municipality to ensure that the buyer makes the repairs once the closing has occurred.

6. [21.25] Type of Conveyance Deed

The seller-mortgagee normally modifies the contract to provide that it will give the buyer only a special warranty deed. It is clear that in a general warranty deed, several warranties are being made to the buyer, including the right to quiet possession of the property and the fact that the seller has good title to the same. In the case of seller-mortgagees, the seller is giving only whatever title it derived through the foreclosure proceeding and will warrant only that it holds the title to the property; any other warranties are specifically excluded. Richard Bales from Chicago Title recently wrote about special warranty deeds in the September 2002 IICLE Flash PointsSM. As he points out, a seller can limit liability when using a warranty deed with specific warranties. The language that may be used by seller-mortgagees in the contract provisions is "Seller will warrant and defend title against the lawful claims of all persons claiming by, through, or under Seller but against none other." There is not much that the attorney for the buyer can do in this regard other than to counsel the client at the time the contract is entered as to the nature and extent of the warranties being given and to obtain title insurance for the client.

7. [21.26] Repair/Damage Credits

In many instances, the seller-mortgagee will not provide damage or repair credits due to the deficiencies in the condition of the property. The argument is that the property price has been reduced to reflect these types of issues. The tax issues are generally prorated at base value since the mortgagee never took possession of the property, nor has it been paying those taxes. Therefore, the mortgagee feels that there is no need to provide an extra incentive of a five- or a ten-percent tax credit to the buyer at the time of the closing.

B. Title Issues

1. [21.27] Jurisdictional Issues

The title commitment will also indicate the right of appeal by any party involved in the foreclosure action. One case that should concern both the mortgagee's attorney as well as the buyer's attorney is *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294, 497 N.E.2d 1156, 100 Ill.Dec. 794 (1986). *Thill* specifically provides that when the return of summons does not comply with the strict terms of the statute, the service is void. As a result, in that particular case the entire foreclosure action was set aside. It would be incumbent on the buyer's attorney to have the title company make a full case takeoff on the foreclosure and insure over the right of appeal or setting aside the judgment of foreclosure and sale.

2. [21.28] Senior Liens That Have Not Been Foreclosed

A review of the title by the buyer's attorney may also disclose that there are senior liens that still remain on the title to the property. This is of significant issue to the buyer's attorney to the extent that the foreclosure foreclosed only those liens that were junior to the foreclosing lender. Any liens that may have existed at the time the mortgage was initially granted will not be affected by the foreclosure proceeding. It is therefore incumbent on the seller-mortgagee's attorney to clear up those prior liens in order to be able to convey good and merchantable title. Schedule B liens need to be dealt with by the mortgagee's attorney. Note that most form real estate contracts have specific title provisions with regard to Schedule B items.

The Multi-Board Residential Real Estate Contract used by many realtor associations in the Chicago metro area has a specific title paragraph. The language of that contract states: "If the title commitment discloses unpermitted exceptions, . . . then Seller shall have said exceptions or encroachments removed, or have the title insurer commit to insure against loss or damage that may be caused by such exceptions or encroachments." See the Multi-Board Residential Real Estate Contract, Lines 145 - 147, reproduced in §2.92 of this handbook.

Note that this paragraph does not allow a seller to cancel the contract if the seller cannot remove the exception, but requires the seller to proceed with the transaction. In the event that there are prior liens for which the seller cannot obtain payoff figures or that the title company will not issue over, the seller will be liable for damages to the buyer for its breach.

In response, many lenders attempt, via riders attached to the contract, to exculpate themselves in this event. These riders typically have the following language: "If for any reason Seller is unable to deliver insurable title to the subject property, then Buyer's sole and exclusive remedy shall be to receive a return of the earnest money deposit." As a result, the buyer's attorney should carefully counsel the client as to the ramifications of the seller's inability to clear up the Schedule B exceptions.

VII. [21.29] CONCLUSION

As the practitioner can see, there are significant issues in representing either a mortgagor during a foreclosure process or a third-party purchaser purchasing from a lender that has foreclosed. The quickest methodology to properly counsel your client is to review the statute, review the proceedings, if any, and determine how your client's ability to comply with the terms of his or her real estate contract will be affected.