



CONSIDERING FORECLOSURE INVESTING?

You've seen the headlines: record numbers of Coloradans are defaulting on their mortgages. This, despite Colorado's strengthening economy. The foreclosure surge has created a new economic opportunity for many: foreclosure investing. So, should you prepare to start investing in foreclosed real estate?

Infomercials, newspaper advertising and sales seminars abound with the promise of easy riches investing in this real estate niche. But making money buying foreclosures is not as simple as writing a check. Indeed, many have failed because they underestimated the complexity involved. To succeed, the investor must possess knowledge of the foreclosure process, be willing to take calculated risks and, of course, have cash on hand.

First, what is the foreclosure process? In Colorado, the mortgage vehicle used by almost all lenders is a deed of trust. The deed of trust conveys an interest in the borrower's real estate to the Public Trustee to secure payment of the borrower's debt to the lender. If the borrower fails to pay the debt according to its terms, the lender may direct the Public Trustee to sell the secured real estate at a public auction to pay the debt to the lender. It is at this public auction, the foreclosure sale, that the foreclosure investor may purchase the borrower's real estate.

Like other public auctions, the high bidder wins. Each bidder, except the foreclosing lender, must bid and be ready to pay in immediately available funds. The high bidder becomes the owner of the real estate according to specified terms and conditions unless the borrower and other junior lien holders redeem.

Two of several alternatives to public auction that foreclosure investors can consider in pursuing these properties are 1) purchase the lender's interest outright, or 2) purchase the owner's interest.

When the lender's interest is purchased outright, in some circumstances and depending upon the creditworthiness of the foreclosure investor, a lender may permit the investor to purchase the indebtedness with a cash down payment and carry back the remainder in the form of a promissory note. Alternatively, depending upon the lender's analysis of the value of the foreclosed property, the lender may sell the indebtedness to the foreclosure investor for a discount on the actual total value of the indebtedness; but, our experience has been that lenders almost always demand full cash payment for the discounted price.

When the foreclosure investor purchases the lender's interest in the indebtedness being foreclosed, the foreclosure investor steps into the shoes of the lender and continues with the foreclosure process to its conclusion. The owner of the property has a redemption period (usually 75 days; six months for agricultural property) after the date of the foreclosure sale within which to redeem the property from the foreclosure sale by paying all amounts bid at the foreclosure sale, plus interest and other charges permitted by law. Other lienors may also redeem after the owner.

Many foreclosure investors, in order to eliminate the possibility of redemption by the owner, deal directly with the owner to acquire the owner's interest after having acquired the interest of the lender or having successfully bid at the foreclosure sale. But, new legislation further complicates the process.

In May of this year, Governor Owens signed into law a bill that further restricts dealings between investors and foreclosed property owners. Agreements between them must be in writing, must comply with the terms of the new law, must permit the owner being foreclosed upon a right (for a short period of time) to terminate any agreements with the foreclosure investor and, it strictly governs any option

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S U M M E R 2 0 0 6

Have you ever been so busy that you lost all track of time? We were just about to light fireworks and carve the watermelon when we realized the kids are back to school and it's nearly time to plan the tailgate party. What a shock to find it half-past summer and a quarter-'til fall. As we pause to catch our breath, we want to say thank you for keeping us too busy this year to wind our watch.

Each season brings change, and this one was no different. We happily welcomed new faces, projects and ideas but bid a sad farewell to longtime friend and employee, Bonnie Simpson. We knew that one day hubby's job transfer would come, and this summer, the Simpsons, Bonnie, Ben, Samantha and Bradford, got the call and returned to, hometown, Phoenix.

Joining us fall, 1996, as a legal secretary, Bonnie became a paralegal in our litigation department, proving herself an invaluable team member. Bonnie is the all American girl-next-door, Team-Mom, troop leader, stellar employee and loyal friend (who shows up with homemade chicken soup and warm cookies when you're sick). Ever equipped with a winning smile, even temper, warm heart, sharp mind and quick wit, she helped us weather storms with grace and celebrate life and victories with joy. Bonnie left us each better than we were before and we miss her deeply.

We wish you each a safe Labor Day and a productive season ahead. Thanks again for your confidence in us; we appreciate you.

Best regards,

Elise Dickerson

Administrator

(CONTINUED FROM FRONT) agreements between the foreclosure investor and the owner being foreclosed upon under which the owner might reacquire the property. Professed ignorance of this new law will not protect the foreclosure investor.

Foreclosure investors should be aware that if an owner redeems a property from a foreclosure sale, all liens on the property other than the lien being foreclosed are automatically revived and are, as a result of the redemption of the property by the owner (or the owner's assignee, the foreclosure investor) again due and payable according to their original terms. If the property is encumbered by other significant liens beyond the indebtedness being foreclosed, a foreclosure investor is generally wiser to either purchase the property at the foreclosure sale by being the high bidder or purchase the lender's interest so that the foreclosure investor need not redeem the property on behalf of the owner and revive the other liens.

In sum, foreclosure investing is not a passive investment activity. It takes thorough understanding of the Colorado foreclosure law, as well as adherence to regulations regarding the relationship between foreclosed property owners and the foreclosure investor. Further, the investor must make economic decisions about the property being foreclosed to determine its future salability and, thus, the price to be paid to purchase the foreclosed property. The foreclosure investor, in the end, takes a calculated risk.

Traditionally, the best strategy for the foreclosure investor has been to acquire the property at the foreclosure sale or the foreclosed indebtedness from the lender and to acquire the interest of the owner so that the owner does not redeem the property from the foreclosure sale. However, in light of the new law governing the relationship between the foreclosure investor and the owner of the property being foreclosed, that strategy should be reexamined. It remains a wise choice for foreclosure investors to engage competent and experienced legal counsel to advise them about the process and to be available for consultation throughout each transaction undertaken by the foreclosure investor.

About the author: Curtis Shortridge specializes in civil litigation, business and real estate law and is a frequent lecturer and counselor to real estate professionals, business and property owners in Colorado.

SS&R Welcomes Brent Hultquist



Brent S. Hultquist has joined the firm as an Associate. Brent enters private practice following an 11 year tenure with a large insurance company's claims group. With the encouragement of his wife of 7 years, Heather, he pursued his dream career of being an attorney by attending law school in the evenings. Having attained his academic goal, the couple is now enjoying more family time with their 2 year old son, Peyton.

Brent completed his J.D. at the University of Denver, College of Law in May, 2005. Ranked 2nd in his class, he is currently wrapping up his Masters of Law in Taxation (LL.M.) in the D.U. Graduate Tax Program. His academic honors include the prestigious Order of St. Ives as well as serving as Writing and Research Editor, Denver University Law Review, 2004-2005.

Brent's practice areas include Wills, Trusts and Estates, Probate, Taxation, Business, Insurance and Real Estate Law. We hope to introduce him to you very soon.