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Recent Trend in Florida May Negatively Impact Loan Portfolios

Tampa, Florida: Oct. 14, 2011

Dear Industry Partner:

The Law Offices of Daniel C. Consuegra, P.L. is always concerned with the rights of mortgage lenders and the preservation of the mortgage lien in connection with bankruptcy litigation. As existing laws change, we are committed to informing our clients and industry partners of the potential impact and to defending challenges to the mortgage lender's position. Currently, we are concerned by a recent practice which will further delay the already-overburdened foreclosure process in Florida and impact our client's loan portfolios.

Recently, Chapter 7 Bankruptcy Trustees in Florida have been filing notices to sell real property encumbered by valid mortgage liens. These sales involve the conveyance by Trustee's Deed of the property to third party purchasers (typically investors). The Debtor's Petition shows that there is no equity in the subject property, nor are any provisions made for the ongoing survival or repayment of the loan. Very often, improper notice to the mortgage lender is improper. In other cases, no notice is provided. So, the mortgage lender may have no notice of the sale by Trustee's Deed.

The investor will pay a few thousand dollars to the Trustee and take title to the property subject to the existing liens. The mortgage lender receives nothing at the time of sale. The investor does not even cure the mortgage arrearages. Further, we have discovered that many of these investors are actually corporations owned or directly affiliated with foreclosure defense firms. The result of this is simple. The investor rents out the properties on a month-to-month basis, delays the foreclosure, and makes considerable profit from the rentals of the properties. For the mortgage lender, this means additional parties to the foreclosure action, added service of process costs, as well as difficult and costly litigation. Often, the sale takes place in the bankruptcy while the foreclosure case is stayed by the automatic stay. In some cases, the foreclosure case goes to judgment, but must be vacated for failure to serve the new owner.

This issue is pending before the Bankruptcy Courts of the Middle and Southern Districts of Florida. The Tampa Division is currently examining this very issue on specific cases. Our firm believes that mortgage lenders should vigorously oppose any such Trustee Deeds as the resulting Court opinion will carry considerable weight.

Should you wish to discuss this issue and how it may adversely affect your rights, please contact Dan Consuegra at dan.consuegra@consuegralaw.com or our firm's bankruptcy litigation attorney, Steve Tran at steve.tran@consuegralaw.com. We can also be reached at (813) 915-8660.

Sincerely,

Daniel C. Consuegra
Managing Partner

About the Firm

The Law Offices of Daniel C. Consuegra, P.L., a full service creditors' rights firm, has been offering representation exclusively in Florida since its founding in 1986. The firm has more than 15 attorneys and over 200 support staff to serve its clients.

Affiliations: MBA, DAG/Default Attorney Group, ALFN, CLLA

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