NOTE-SAGE

Formerly Gr8 Houston Homes, Since 2013

Note Holder's Handbook

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Introduction

Hello and greetings! This report is intended to help you understand more about the note you carried back when you sold your house, land or other real estate. It is written for the layperson. In other words, it is written for someone who is not a real estate specialist. Many topics will be discussed, including the following

How much is your note really worth?

Why record keeping is vital to your note's value.

A simple technique that can avoid tax problems.

What to do when the payments are late.

What to do if the payments stop and when to foreclose.

A simple step you can take to verify the safety of your note.

How to get top dollar if you sell all or part of your note.

In Section 1 of this report, we will review some basics of seller carry back notes

In Section 2, we will show you an example of the creation of a seller carry back note in order to illustrate several points. Chances are very good that

you sold your property for less than you think. We'll show you why.

In Section 3, We will describe the steps you can take to assure the safety of your note. We will also describe how to maximize your note's value and how to make sure the payments are paid on time. Section 4 will also describe how to handle late or delinquent payments. We will describe alternatives to foreclosure if the payments stop altogether. Sometimes it can even be to your benefit when the payments stop. We'll explain.

In Section 4 *,* we will show you several ways to sell all or part of the note that was created in the example of Section 2. You'll see why selling part of your note is like having your cake and eating it, too. Section 4 concludes with a discussion of tax reporting for note holders. You'll see why an amortization schedule for your note is vital. We'll tell you how to get one for your note.

Section 5 describes how a note is valued and how to get the best offers on your note when you sell.

We invite you call us if you have questions about your note. Call Note-Sage at 281- 714-9438

Section 1

BASICS OF SELLER CARRY BACK

NOTES

Whenever any person, partnership, trust, corporation or any other entity becomes a lender on a piece of real property, a promissory note is created. You became a lender when you sold your real estate and carried back a note.

The Promissory Note

A promissory note is a written promise to pay a certain amount of money, and its payment is secured by some type of security instrument that becomes a lien on the real property.

The note specifies: (1) the amount of the loan (principal); (2) the interest rate (interest); (3) the amount and frequency of payments (debt service); (4) when the borrower must repay the principal (due date); and *(5)* the penalties imposed if the borrower fails to timely pay or tender a payment (late charge) or decides to pay a portion or all of the principal prior to the due date (prepayment penalty). The promissory note identifies the person who makes the payments to you (the buyer of your property—the borrower) and the person who receives the payments (you).

The Security Instrument

The security instrument is the document that provides for the alternate repayment of the debt to you in the case of default by the borrower. The security instrument is recorded in the county recorder's office as a lien against the title of the property you sold.

There are three kinds of instruments used to make real estate security for a debt: (1) mortgage, with or without the power of sale; (2) deed of trust; and (3) land contract. In many states, deeds of trust are by far the most common. People often call them mortgages. They account for well over 99%

of the security devices used for real estate. The land contract—known by many names such as installment contract, contract for deed, contract of sale, conditional sales contract, and the like—is used on occasion.

Mortgage

The mortgage gives the lender a lien on the real estate and *hypothecates* it as security for the note. The borrower, who is the buyer of the property, is called the *mortgagor.* The lender is called the *mortgagee.*

If the borrower does not pay, the lender may go to court through a procedure called a *judicial foreclosure,* that is, foreclosure through the courts. In this procedure, he has the court sell the property and, out of the money obtained from the sale, take enough to pay the expenses of the foreclosure and pay off the debt.

Deed of Trust

When a *deed of trust* is used, an additional party called a *trustee* is brought into the transaction. The borrower, called the *trustor,* transfers "bare legal

title" but nothing more to the trustee. The *trustee* holds this title for the benefit of the lender, who is called the *beneficiary.*

If the borrower does not pay, the lender directs the *trustee* to start a foreclosure. This *non-judicial foreclosure* involves the process of selling the Property to a third-party bidder or, in the absence of a sufficient third-party bid, the *beneficiary* acquires title to the Property. The foreclosure sale, in most cases, satisfies the debt.

If you need to direct the trustee to start a non-judicial foreclosure, you may or may not be able to recover the entire loan balance. For example, if a third-party bids at a non-judicial foreclosure sale an amount equal to or greater than the amount which you are owed (including fees, costs, and expenses of the foreclosure) you would be fully paid.

On the other hand, if you bid the full amount that is owed to you, including all foreclosure fees, costs, and expenses (full credit bid) and there are no third-party bids, you will generally be limited to the Property and its value as the source of repayment of the outstanding balance of the note.

Land Contract

A *land contract* comes about in a situation similar to the purchase money deed of trust. Instead of giving a deed and taking back a promissory note secured by a deed of trust, the seller enters into a land contract with the buyer in which the buyer promises to pay for the land. Ordinarily the buyer promises to pay in installments over a period of time. In the same contract, the seller promises to deed the property to the buyer when the purchase price is fully paid.

Section 2

CREATION OF A SELLER

CARRY BACK NOTE

The following discussion also applies to first and second position liens with minor modifications. This type of transaction usually occurs because there are not enough prospective buyers who can qualify for institutional financing. If there were, there would be no need for the seller to take back a note. Even when the buyer can qualify for a loan, the buyer may not have enough for the entire down payment. In this case, the buyer gets a first loan from the institution, and the seller takes back a second note and deed of trust.

Because the buyer is able to buy a property that he or she would not otherwise have been able to buy, and

because the value of the $90,000 face value note in the secondary mortgage money market is only about

$70,000, assuming yields in that market are 15% at the time of this sale, the buyer may be willing to pay

more than the current appraised market value of the property. This is true because with a seller carry back

note, the buyer doesn't have to pay points, fees and other costs usually associated with an institutional loan.

The seller carry back note can be structured in an almost limitless variety of ways. The note can be fully amortized with no balloon payment (as in this example), amortized over a number of years, say 30 years, with a balloon payment at say 5 or 10 years. The note could be interest only with a balloon.

It can even have stepped interest payments (for example, 8% in year 1,9% in year 2 and 10%. in year **U** 3 through the end of the term), or graduated payments (for example, $500 per month for the first 12 months, $600 per month in year 2, $700 in year 3, etc.) The value of the note in the secondary mortgage money market depends on all of these parameters and more, See Section 6 of this report for a discussion of note value.

Here Is A Typical Example:

A free and clear property (with no existing loans) was sold for $100,000.

BUYER gave SELLER

a $10,000 cash down payment and SELLER carried back a purchase money Note and Deed of

Trust for $90,000. SELLER was getting no action on the property when trying to sell it for

$90,000 cash (the appraised value). Potential buyers would have had to pay all cash or qualify for

a loan.

Section 3

Note Safety

During the years after the creation of the note when you are receiving your monthly payments, there are several things you should do to keep your note safe and to maximize its value in the event you want to sell all or part of it in the future. You also need to know the best way to handle problems when they occur.

Note Safety—Loan-To-Value Ratio

A low loan-to-value ratio makes your note safer and increases its resale value. The loan-to-value ratio for your note is the sum of the current loan balance for your loan and all senior loans divided by the current market value of the property securing the note.

Loan-to-value ratio for a second loan having a current balance of $30,000, an underlying first deed of trust with a loan balance of $100,000 and a current property value of $200,000 is 65% (130,000÷ 200,000).

The priority of your note and deed of trust on the property (first position, second position, etc.) is critical to the note's value and should be verified by going to the county recorder's office and researching the title if you have any doubt about its priority.

This can be done by finding the document numbers of the liens filed against the property in the grantor/grantee index at the recorder's office and then reviewing the time stamp on each document to see which one was filed first, second, etc. You must know the priority of your note and the loan balances on any senior liens to be able to accurately calculate loan-to-value ratio.

If the loan-to-value ratio for your note is too high, there may not be enough

equity in the property to pay off your note plus back payments, late charges and foreclosures costs in the event of a default and resulting foreclosure.

The loan-to-value ratio of your note should improve over time because the loan balances are being reduced. If the property appreciates, this also improves loan-to-value ratio (makes it lower).

The same low loan-to-value ratio that improves the safety of your note also makes it more valuable because the risk of ownership is reduced.

Note Safety—Storage

It is important to keep your original note in a safe place such as a safe deposit box or a fireproof safe in your home. Make a photocopy to keep with your trust deed and other escrow papers.

There are two reasons for this precaution. First, the note is not recorded in the county recorder's office. The deed of trust is. If you lost your deed of trust, you could simply get another copy at the recorder's office.

Second, your note is a negotiable instrument that means it can be endorsed on the back like a check. You wouldn't keep an uncashed check lying around, so think of your note like check and take good care of it.

Many people guard their original grant deed on a property with their life.

The fact is anyone can get another copy of their grant deed from the county recorder's office, just like they can a trust deed.

Maximizing Note Value—Payment Records

Keeping a detailed, well-organized and legible payment record showing the date each payment was received, and a breakdown of the principal, interest and late charge for each amount received is important to maintaining the value of your note.

If you ever decide to sell your note, you will be required to show the payment history to a prospective note buyer so the note buyer can verify the payment patterns of the note payor.

If the payments on a "seasoned" note, which is a note with a payment history over an extended period, have been made consistently on time, the value of the note will be greater than if the payments have been late or delinquent because the perceived risk of the note is lower.

Use the payment record sheet in the back of the book to keep track of all the payments you receive. Also, print out an amortization table for your loan amount. Go to www.bankrate.com to obtain a printable amortization schedule.

One thing many note holders neglect to do is to keep copies of the checks they receive. Make sure to make a copy of every check you receive and keep the envelope it came in if it was mailed to you. This kind of record keeping only adds value to your note as an asset because you have written proof that payments are being made on time.

Conversely, if you are receiving payments late or not at all, you again have proof in the form of good record keeping. Please use this tool!

Note Problems—Late Problems

If the payments on your note are late, it is important to call the note payor and find out why the payment is late and when it will be sent. Most note payors don't like to receive these kinds of phone calls, and just by calling you will improve your chances of receiving future payments on time. Be courteous but firm about the need to receive the payments on time.

If your note calls for a late payment charge, be sure to collect it. Many note holders have a late payment charge built into their note but do not collect it.

There are two reasons to collect the late charge besides the obvious one that it is more money in your pocket.

First, you will again improve your chances of receiving future payments on time if you collect the late charge.

Second, if you don't collect the late charges regularly, you may not be able to collect them later in the event of a foreclosure because you

demonstrated that you do not enforce that part of the note contract.

Note Problems—Delinquent Payments

If a payment is more than a month overdue, it ceases to be late and becomes delinquent. If you have talked to the note payor when the payment was merely late, you have taken the first step toward solving the delinquency problem because you have established communication with the payor.

The worst thinking you can do when the payments stop is to break off communications with the payor and start a foreclosure. Foreclosure may eventually be necessary, but it should definitely not be your first option.

A non-judicial foreclosure takes approximately four months if there are not postponements of the trustee's sale. In many cases, there are multiple postponements that could further prolong the process. Usually one or two months have passed without payments before the notice of default is filed, which means that six or more payments may be in arrears before the foreclosure sale takes place.

In order for you to recoup your investment in your note, someone must bid high enough for the property at the trustee's sale to cover the remaining principal balance on your note (and any underlying notes), all the back payments and late charges, and the trustee's fees and attorney's fees.

The amounts bid by the bidders at a trustee's sale will be well below the market value of the property. If the loan-to-value ratio of your loan is not low enough, no one will bid high enough at the trustee's sale to purchase the property. In this case, you will end up with the property back and may not be able to sell it for enough to get your money back out of your note.

If the note payor declares bankruptcy, this could incur further delays and costs. Even though the court may eventually rule that the foreclosure may proceed, these additional costs could mean you might end up with the property and not be able to sell for enough to recoup your investment in the note.

Another problem with foreclosure occurs when you have to take the property back. You must report the remainder of the realized gain that has not yet been reported (see the section on *Tax Reporting For Notes,* pages 16 —

18). In other words, you must complete the tax reporting of the installment gain from when the property was sold. If you are not able to sell the property in the same year that you receive it in a foreclosure, then you must pay taxes on the gain even though you have received no cash. Then if you sell the property in a subsequent year and take a loss you can only deduct $3000 of the loss per year.

It is best if you can get the note payor to make up the delinquent payments, but sometimes this is not possible because the delinquency may have been caused by the payor's loss of a job and other loss of income during a period of several months.

Many times a payor can resume making payments but cannot make up the missed payments. If this is the case, it is an excellent opportunity to restructure the note so that you have a more valuable note. The payor will usually go along with a restructuring because it solves his problem also. In other words, you agree not to foreclose if the payor agrees to restructure the note.

Restructuring a note requires some special expertise and you should only do this yourself if you feel confident you know what you are doing. If you want help restructuring a note, call **Note-Sage at 281-714-9438.**

If the payor is not able to resume payments, you have two options—start foreclosure or sell the note. Sometimes you can still work with the note payor to restructure the note after the foreclosure has been started.

To start a foreclosure, notify the trustee of the default and request a foreclosure. The process will proceed according to the process described in Appendix B.

If you sell the note when payments are delinquent, but before a foreclosure is initiated, you will not receive as much cash for the note as you would if payments were not delinquent, but probably more cash than you would if

the foreclosure is already in process. This is because if you sell the note before the foreclosure process is started, the new buyer of the note has the time to try to work with the note payor to restructure or refinance.

If you want to sell a delinquent note before the foreclosure process has started, call **Note-Sage at 281-714-9438.**

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Section 4

SALE OF A SELLER CARRY BACK NOTE

A secured real estate note can be sold at any time from the day it was created until the day of the last payment. What is actually being sold is the stream of monthly payments. A note holder can sell all the payments (a full sale) or part of the payments (a-partial sale).

There are so many options available to the note holder for full and partial sales; they are too numerous to mention. If the note holder is working with a knowledgeable note buyer, the note buyer can structure options designed specifically for the cash needs of the note holder. For this example, let's focus on the (2) most popular methods of selling a note.

It is important to know that all of these sales are equivalent. In other words, a note buyer would be equally happy with any of these purchases from a note holder.

Example of a Note on Which You Are Receiving Payments

Loan To Value =

Sale Price = $100,000

$93,641.04/$100,000=

93.64%

Buyer's Equity

$10,742.67

$95,000 Face Value Note

9% Interest Rate

First Trust Deed

30-Year Term (360

Payments)

$93,641.04

$764.39 Monthly Payments

Owed Now

24 payments have been

made. The current

balance owed is $93,641.04.

Some of The Options Available To The Note Holder:

1. DO NOTHING. Continue receiving the remaining 336 monthly payments of $764.39.

2. FULL SALE. Sell the entire note now. Note holder receives: $79,501.55 cash now.

3. PARTIAL SALE-FRONT END PAYMENTS. Sell the next 5 years of payments (60 payments). Then receive the last 96 payments. NOTE HOLDER GETS: $35,156.68 CASH NOW

$88,958.43 Loan Balance in *5* years

$124,115.11 Total Cash to Note Holder Many other options are available. Options can be designed specifically for the cash needs of the Note Holder.

Full Sale

When the entire note is sold, it is always sold at a “discount” off the current principal balance of the note. The reason for this is that the face interest rate of the note is seldom as high as the market yield required in the secondary mortgage money market. In the example, the discount is $14,139.49 ($93,641.04 minus $79,501.55) assuming the secondary mortgage money market yield is 11%. The discount could be more or less depending on the current yield requirements in the secondary mortgage money market.

Partial Sale— Front End Payments

Partial sales are very attractive from the point of view of a note holder because the note holder does not have to take a big discount. The main reason for the discount being so large is that the payments due in the distant future are worth much less in today’s dollars than the payments that are due soon.

In a full sale, the note holder is selling all the payments, and not getting much for the ones at the end of the 15-year term—thus the large discount.

In a partial sale where the front-end or near-term payments are sold, most of the payment is interest. This means that the note holder gets a sizable amount of cash now and when the note holder gets the note back after 60 payments, the balance of the note is still fairly high. The note holder then gets the remaining 276 payments of $764.39.

A partial sale of the front-end payments is like having your cake and eating it, too. You get a sizable chunk of cash now, and when you get the note back, it has a high remaining principal balance and Many payments left to collect.

In the example, the cash the note holder receives now plus the remaining loan balance the note holder receives in 5 years is more than $25,000 higher than the current principal balance of the note. In many cases, note holders prefer this type of an arrangement rather than selling the entire note for a large discount off the current principal balance.

Here is a brief overview of a couple of other ways to purchase notes. Ask your funding sources if these options are available.

Full Sale-Split Funding

In the split-funded sale, the note holder is selling all of the payments but is only selling part of the payments now and part of the payments in the future. This type of sale is really a hybrid between a full sale and a partial sale.

This is only one variation of a split-funded sale. The note could be split into three, four or more equal or unequal parts.

Partial Sale-One Half of Each Monthly Payment In this type of a sale, the note holder sells on half of each monthly payment and continues to receive the other half. This is a particularly attractive way to sell a note if you need some cash now but also want to keep part of the monthly cash flow

Again, this is only one variation of this type of sale. Many different variations

are available to suit your needs as a note holder.

Tax Reporting For Note Holders

When real property is sold, and a purchase money note and deed of trust are carried back by the seller as part or all of the purchase price of the property, the gain on the sale is reported on the seller's tax return as an installment sale.

The amount of interest received each year by the seller or note holder must be reported on Schedule B of Form 1040. This is a very simple process if the note holder has an amortization schedule for the loan, which summarizes the interest portion of each payment received.

A portion of the principal received each year must also h~ reported on Schedule D of Form 1040 (and supporting Form 6251 for Installment Sales).

This is not as simple as the tax reporting for interest.

The total amount of the gain on the sale is called the *realized gain.* Realized gain is the net sales price less the cost. The amount of the realized gain that is reported each year on the note holder's tax return is called *recognized gain.*

The amortization schedule shows the amount of interest and principal reduction for each payment, and the yearly totals.

For this example, we will assume that the cost of the property (cost basis) was $40,000. The realized gain is the sales price ($100,000) less the cost ($40,000) or $60,000.

A simple technique for properly computing the recognized gain for each year's tax return, and thus avoiding tax problems, is to first compute the gross profit percentage which is the realized gain divided by the sales price.

In the example, this percentage is $60,000 divided by $100,000 or 60%.

In the example, the property was sold in December 1988. The cash down payment was $5,000 and no payments were received on the note in 1988 because payments did not start until January 1989.

The amount of the gain to report on Schedule Din the first year (1988) is 60% of the $5,000 down payment of $3,000. For 1989, the amount to report on Schedule D is 60% of principal received in 1989 $389.41.

For the next year, 1990, the amount to report on Schedule D is 60% of principal received in 1990

($209.90) or $425.94. In our example, we assumed that the note holder sold the note after two

years. Therefore, he also has to report the net amount he receives on the sale of the note in 1990.

The additional amount to report in 1990 is 60% of the remaining note balance of $93,641.04 or

$56,184.62. Notice that the total of the four amounts reported ($3,000 +

$389.41 + $425.94 +

$56,184.62) is equal to the $60,000 realized gain that must be reported over the life of the note.

However, what about the discount? The note holder did not receive the entire remaining balance of $93,641.04 when he or she sold the note. The note holder received $66,229.43 in our example.

In this case, the note holder takes the entire discount of $93,641.04 less $79,501.55 or $14,139.49 as a tax deduction thus reducing the amount to report on Schedule D in 1990 from $56,184.62 to $42,045.13.

Tax reporting for partial sales and split funded sales are somewhat more complicated than this example for a full sale. You should consult your tax advisor for the tax reporting method for these types of sales.

If you have an amortization schedule for your note, the yearly principal paid the yearly interest paid are simple taken from the yearly totals shown on the amortization schedule.

Section 5

WHAT IS YOUR NOTE WORTH?

Another way of asking this question is "How much of a discount must I take if I sell my note?" All notes are purchased at less than the remaining balance of the note if the whole note is purchased. This difference between the remaining balance and the purchase price of the note is the "discount."

There is no standard discount because there are no standard notes or standard properties. Each note is different, and each note must be individually researched in order to determine its highest value.

If you do not need all the cash from your note immediately, it is possible to receive 100% or more of the remaining balance of your note by selling only a part of the payments on our note now. This is illustrated in section 4 of this report.

The best way to find out how much your note is worth is to get a quotation from a professional note buyer. Be wary of some people who may approach you offering to buy your note for cash. Many of these buyers will attempt to give you a low-ball offer, whereas a professional note buyer will be more competitive with current secondary mortgage money market rates.

Also, many amateur note buyers don't know how to structure partial offers tailored to your needs as a note holder and many don't know how to close the transaction properly, so both the note holder and the note buyer are protected.

Appendix

The Foreclosure Process

In some states, the beneficiary can choose one of two methods to foreclose judicial or non-judicial. In a judicial foreclosure, the beneficiary files a lawsuit against the trustor in Superior Court to foreclose on the property. The case is then set for trial. If the court rules in favor of the beneficiary, the property will be ordered sold at a public sale. In most instances, however, it is a non-judicial foreclosure. In a non-judicial foreclosure, the court system is not involved. To foreclose non-judicially, the deed of trust or mortgage must contain a power of sale clause. The power of sale clause gives the trustee the right to begin foreclosure without going to court. To include a power of sale clause does not require a specific form or language.

If, on the other hand, the security instrument does not contain a power of sale provision, judicial foreclosure is the beneficiary's only way to obtain the property. Most conventional deeds of trust say "with the power of sale".

Judicial and non-judicial foreclosures differ in many ways. The foreclosure method selected by the beneficiary has significant consequences for the trustor.

Non judicial foreclosure is relatively fast, as this method does not involve the court system. In most instances, non-judicial foreclosure takes, at minimum, about four months after the trustor has failed to meet the obligation or defaulted on the loan. Judicial foreclosure, on the other hand, may take up to several years.

Non judicial foreclosure is generally less costly than judicial foreclosure. In a non-judicial foreclosure, the trustee's and attorney's fees are largely specified by law. In a judicial foreclosure, however, there are generally no legal limits for attorney's fees. As a result, the trustor may be liable for significant legal expenses.

Another major difference between the two foreclosure methods is the beneficiary's right to a deficiency judgment. A deficiency judgment is a court order stating that the trustor still owes money to the beneficiary if the proceeds from the foreclosure sale are not sufficient to pay the balance of the debt.

Some state laws do not allow a deficiency judgment in a non-judicial foreclosure on residential purchase money loans. A residential purchase money loan is one in which loan proceeds are used to purchase the property. Furthermore, state laws do not allow deficiency judgments against the residential trustor where the loan was made by the seller of the property or by a third party lender (often a financial institution) on a four-unit or less residential property that is the principal residence of the trustor.

If the beneficiary judicially forecloses on a non-purchase money residential loan, a deficiency judgment may be obtained against the trustor.

Non-judicial and judicial foreclosures also differ with regard to the trustor's right of redemption after the foreclosure sale. This is the trustor's right to reclaim the foreclosure property. In a non-judicial foreclosure, the sale of the property at the trustee's sale is an irrevocable final sale, and the trustor does not have the right to redeem or reclaim the property after the sale.

Judicial sales, however, are subject to redemption by the trustor.

This summary of the major differences between non-judicial and judicial foreclosure shows the advantages of non-judicial foreclosure for the beneficiary. The non-judicial foreclosure is timely, economical, non-subject to redemption, and may command a higher sales price. In addition, it is unlikely that the beneficiary would recover any losses through a deficiency judgment, as the trustor could not make the loan payments in the first place. Because of these advantages, beneficiaries typically prefer to foreclose non-judicially. Beneficiaries might foreclose judicially when they see an opportunity to recover any losses through a deficiency judgment.

The following two sections give detailed information on each of the foreclosure methods.

Non-Judicial Foreclosure

This section describes the major procedural requirements of non-judicial foreclosure, discusses the trustor's reinstatement and redemption rights, reviews legal provisions for trustee's fees and summarizes special legal provisions affecting foreclosures in many states.

Many states allow the beneficiary of a deed of trust containing the power of sale provision to foreclose non-judicially after the trustor has defaulted on one or more contractual obligations. In case of default, the beneficiary may order the trustee to initiate foreclosure.

Notice of Default

Foreclosure begins when the beneficiary notifies the trustee that the trustor has defaulted on any obligations stated in the promissory note and deed of trust. The beneficiary gives the trustee information concerning the condition of the debt such as the amount of the unpaid balance and due dates. Upon receipt of this information, the trustee prepares the Notice of Default.

The Notice of Default must be recorded in the office of the recorder of the county where the property is located. If the deed of trust encumbers property located in more than one county, the Notice of Default should be recorded in the other counties as well.

The trustee must mail a copy of the Notice of Default to the trustor and to each person requesting notice within ten days of recording the notice. The law specifies additional notification requirements under certain circumstances. The Notice of Default must be published weekly for four weeks in a newspaper or personally be served on the Trustor, if the trustor has not requested to be notified of its recordation of the notice.

Trustor's should always notify the beneficiary and the trustee of any address changes to ensure prompt receipt of any correspondence from the beneficiary or trustee.

Before January 1, 1986, the trustor and beneficiaries under subordinate

deeds of trust were given three months from the recordation of the Notice of Default to cure the default. An amendment to the law extended the expiration of the reinstatement period to five business days before the scheduled trustee's sale. If the trustee's sale is postponed, the reinstatement period is extended to five business days before the new date of the sale.

At any time during the reinstatement period, the trustor may stop the default by paying the beneficiary all sums of money due on the loan up to that point including additional costs incurred by the beneficiary, and attorney's or trustee's fees as specified by law. It is not necessary to repay the entire loan balance.

After reinstatement of the loan, the foreclosure proceeding is discontinued and the trustor resumes making the regular periodic payments.

Notice of Trustee's Sale

If three months have passed since recording the Notice of Default, and the trustor has not begun to reinstate the loan; the trustee may proceed with the foreclosure by preparing a Notice of Trustee's Sale.

The Notice of Trustee's Sale must be recorded in the office of the recorder of the county in which the property is located at least 14 days before the date of the sale. As with the Notice of Default, the Notice of Trustee's Sale must be mailed to the trustor's last address actually known to the trustee.

The Notice of Trustee's Sale also must be published in a newspaper of general circulation in the city, judicial district or county where the property is located. The notice must be published once a week over a 20-day period before the sale.

In addition to mailing and publication, the Notice of Trustee's Sale must be posted for at least 20 days before the sale at the following locations: In at least one public place in the city, judicial district, or county in which

the property is to be sold; and In a conspicuous place on the property to be sold Improperly broadcasting the Notice of Trustee's Sale typically will result in the cancellation and re-notice of the sale.

As mentioned before, the trustor can cure the default during the reinstatement period that runs up to five days before the schedule sale.

After the reinstatement period expires, the trustor must pay the entire indebtedness plus foreclosure costs to avoid foreclosure. This is called redemption and only can be done during the five days before the sale. The trustor's right of redemption ends once bidding at the foreclosure sale starts.

Trustee's Sale

The trustee or the trustee's agent must conduct the foreclosure sale at a public auction in the county where the property is located. The sale is to the highest bidder who must pay in cash, cashiers check or cash equivalent as specified in the notice and acceptable to the trustee.

The trustee may postpone the sale at any time before it is completed. The sale may be postponed at the trustee's discretion, upon instruction by the beneficiary, or upon a written request by the trustor who has the right to request a one-day delay to obtain sufficient cash to pay the debt or bid at the sale. The trustor's request for postponement must include a statement identifying the source of the funds. The law allows for three postponements.

After three postponements, a new notice of sale must be given, except for postponements requested by the trustor or ordered by a court.

After the sale to the highest bidder, the trustee executes and delivers a trustee's deed to the purchaser. The trustee's deed conveys title to the purchase free and clear. The issuance of the trustee's deed terminates the previous trustor's legal and equitable rights in the property. It should be noted, however, that title to the property is conveyed subject to all senior liens, including liens for property taxes and assessments.

The purchaser of the foreclosed property is entitled to take immediate possession. A trustor who refuses to vacate the property may be legally forced to do so.

Rent and Rental Income

Generally, the trustor occupying the property does not have to pay rent to the beneficiary while in default. If a deed of trust should indicate a rent liability, enforcement of it would be unlikely.

The beneficiary may have a right, however, to any rental income generated by the property during the period of default. In the absence of such a provision in the deed of trust, the beneficiary is generally not entitled to any rental income.

Deficiency Judgment

In General, the law prohibits a deficiency judgment in a non-judicial foreclosure with a power of sale provision. Even if the proceeds from the foreclosure are inadequate to repay the loan, the beneficiary has no other possibility to recover.

Trustee's Fees

The fees a trustee is entitled to charge the beneficiary or deduct from the proceeds of the sale are prescribed by law. The trustee may charge for costs incurred in recording, mailing, publishing, and posting of Notice of Default and Notice of Trustee's Sale; the cost of postponing the sale by request of the trustor (not to exceed $50 per postponement) and the cost of a trustee's sale guarantee. In addition to charging for these actual costs, the law provides for a fee schedule based on the amounts of the unpaid debt.

The legal limitations for trustee's and attorney's fees do not apply to attorney's fees the beneficiary is entitled to recover under special provisions of the deed of trust.

Special Legal Provisions

Special federal and state laws may affect the manner in which the foreclosure is conducted. If the loan is insured or guaranteed by the U. S.

Department of Housing and urban Development (HUD! EHA) or the Veterans Administration (VA), certain procedures must be followed. In the case of a VA-guaranteed loan, the trustor may be liable for any deficiency, unless the veteran obtains a release of liability from the VA. California law does not necessarily protect the trustor from liability for a deficiency on a VA guaranteed loan. Federal laws governing the VA loan program take precedence over any conflicting California law. Trustors should contact the VA for details concerning their rights and to learn about specific requirements.

Judicial Foreclosure

Judicial Foreclosure is tried in some state Superior Courts. The beneficiary, upon default of obligation by the trustor, brings a foreclosure lawsuit against the trustor. If successful, the court will issue an order to sell the property at a public sale. The beneficiary must use judicial foreclosure if the security instrument does not contain a power of sale provision. A mortgage or deed of trust containing the power of sale provision may be foreclosed judicially if the beneficiary chooses to do so.

The decision to foreclose judicially or non-judicially is not necessarily final.

The beneficiary may discontinue judicial foreclosure at any time and commence non-judicial foreclosure.

Conversely, the beneficiary may abandon non-judicial foreclosure and initiate judicial foreclosure. Beneficiaries sometimes initiate both types of foreclosure simultaneously.

Foreclosure Sale

A court-appointed commissioner or sheriff in the public place must give notice of the sale of the property for 20 days preceding in the date of the sale. This same notice must be published in a newspaper of general

circulation weekly for 20 days. The notice also must be sent by certified mail to all defendants at their last known addresses.

At the foreclosure sale, the property must be sold by the auctioneer to the highest bidder who is financially qualified.

Redemption of Property

In a judicial sale, the trustor has the right to redeem or reclaim the property after the foreclosure sale. For a trustor, the right of redemption makes a judicial sale attractive. It should be remembered, however, that a judicial sale might also lead to a deficiency judgment. This possibility does not exist in a non-judicial foreclosure.

Deficiency Judgment

In a judicial foreclosure, the beneficiary has, under certain circumstances, a right to a deficiency judgment. The deficiency judgment is limited to an amount equal to either the difference between the indebtedness and the fair market value of the property, or the indebtedness and the sales price at the foreclosure sale, whichever is less.

Rent and Rental Income

The trustor occupying the disputed property does not have to pay the beneficiary rent while in default. The beneficiary may be entitled, however, to any rental income generated by the property.

After the sale, the trustor retains possession of the property and does not have to pay the beneficiary rent while in default. The beneficiary may be entitled, however, to any rental income generated by the property.

NOTE-SAGE

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