

Bankruptcy, Foreclosure and Receiverships

Georgia Association of Code Enforcement Officers

April 15, 2000

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Common Problems:

- Who owns the property?
- Who is responsible for the property?
- How to get results?

Bankruptcy

- A debtor seeks the aid of the federal courts to discharge or modify his debts, and for protection from creditors.

Chapter 7

- The most common form- liquidation.
- Trustee is appointed.
- Everything owned by debtor other than secured and exempt assets are sold to pay off unsecured debts.

Chapter 11

- Reorganization- preferred by corporations.
- Delta bankruptcy
- Debtor in possession
- Court oversight

Chapter 13

- Repayment plan over a period of several years
- Trustee appointed to review debtor's repayment plan

Effect of successful bankruptcy

- Confirmed plans.
- Discharge of debts.
- Distinction between secured and unsecured debts.

Temporary effects

- Automatic stay
- Contempt of court

Automatic stay and enforcement

- Exemption for police power actions
- Pecuniary interest test
 - tall grass / appearance of property / health
 - vs.
 - occupational tax

In re Douglas S. Nease and Brenda M. Nease

- Tall grass citation
- Chapter 13 bankruptcy- house surrendered to mortgage company, but no action
- Cease and desist letter / contempt action
- The Court said- “police power”

Effect of Code enforcement actions

- Fines may be discharged
- Liens may be erased by superior secured interests

Foreclosure

- The property is vacant, or...
- It is being occupied by a person who claims to no longer own the property.

- Who owns the property?
- How does the CEO track the owner down?

The Foreclosure Process

- Property owner gives a security deed to secure a debt (often, but not always, the purchase money for the property).
- Property owner defaults: fails to make payments.

The Foreclosure Process, cont'd

- The security deed grants the lender the right to sell the property on the courthouse steps on the first Tuesday of the month.
- “Deed in lieu of foreclosure”
- There is only a modest amount of notice required (newspaper advertisement).

The Foreclosure Process, cont'd

- At the foreclosure sale, the lender, as the agent for the property owner, sells the property to the highest bidder.
- Highest bidder may be a new property owner, but it is often the bank itself.
- “Deed under power of sale”

The Foreclosure Process, cont'd

- The original property owner may leave willingly, or...
- may continue to stay in the house as a holdover tenant.
- Unless the new owner chooses to have the old owner dispossessed, a Landlord-Tenant relationship is created.

Who is responsible?

- Before the property is actually sold on the courthouse steps, the original property owner is still responsible.
- After the foreclosure, the new property owner (whether the bank or someone else) is responsible.
- If old owner holds over, then they would be responsible as a tenant.

How do you determine and verify?

- Look at the deed records.
- Either in the deed room, or on the Superior Court Clerk's Authority website: www.gsccca.org
- Form PT-61
- Tax assessor's office
- Secretary of State's office

Effect of enforcement actions on foreclosure:

- An enforcement action will not necessarily stop a foreclosure, but should give a lender or prospective buyer pause, and may delay foreclosure.
- A lis pendens is appropriate when a civil action has been filed - will give the bank incentive to get the matter resolved.

Effect of foreclosure on enforcement actions:

- Where a code enforcement action has resulted in a lien on the property, a foreclosure will wipe out the lien except where it predates the recording of the security deed.
- CEO may have to refile or get the new owner named as a party.

Receiverships

- For a variety of reasons, control of a property is put in the hands of a person appointed to manage the property for a particular purpose.

Powers

- Depends on what the Court appointment order says.
- May be broad or narrow.

Duties

- Depends on Court appointment order.

Violations

- If the receiver is charged with managing the property, and does so negligently, may be sued.
- If the receiver is charged with managing the property, and fails to comply, then he can be cited for code violations.

Citations

- Enforcement action against the receiver would be in his official capacity only.
- Enforcement action would still be against the property, as well.