

Editor's Introduction

Real estate foreclosures continue front and center before media news outlets. This issue of the Quarterly Prophet focuses on a number of foreclosure issues of interest to our clients. It covers topics such as the non-judicial foreclosure process, the newly enacted requirements relating to the issuance of the Notice of Sale in the non-judicial foreclosure process for residences, and the recent clarifications to the limitations on deficiencies after short sales. This issue also discusses the recent ruling by the California Court of Appeal in *First Bank v. East West Bank* on what happens when two deeds of trust on the same property are both recorded at exactly the same time by different lenders. We hope you find this issue helpful and interesting.

On a separate note we are pleased to announce the relocation and expansion of the firm's Northern California office to 225 West Santa Clara Avenue, San Jose. The office is now headed by our newest partner Hemal Master, and will handle a full range of services required by our clients in Northern California, including finance, litigation and bankruptcy. We hope you will stop by to see the new office and Hemal when you have an opportunity.



Legislature's Action Helps Clarify Purpose of Limitations on Deficiencies after Short Sales

By Mercedes O. Martin

On September 30, 2010, Governor Schwarzenegger signed Senate Bill 931 (SB 931) into law which introduced new and broad limitations on the ability of a lender to obtain a deficiency judgment after consenting to a short sale, whereby the mortgagor or trustor sells real property securing a loan for less than the amount of the indebtedness. Codified in Code of Civil Procedure section 580e, the new law essentially prohibited recovery of a deficiency after a short sale from a mortgagor or obligor for the unpaid balance of the obligation if (1) the obligation was a note secured by a first deed of trust; (2) the real property was a dwelling of one to four units; and (3) the property was sold with the written consent of the lender.

The Uncertainty and Vagueness of Section 580e

As highlighted in the article *California Code of Civil Procedure Section 580e – Introducing New Limitations on Deficiencies after Short*

Sales, which appeared in the Fall 2010 edition of the Quarterly Prophets, the language of Section 580e was vague and unclear, and thus presented substantial risks to lenders. For example, one could interpret Section 580e to preclude lenders from recovering other collateral securing the indebtedness following a short sale. If read, literally, the language also arguably precluded recovery under any guarantee of the indebtedness since any remaining indebtedness was effectively fully discharged upon acceptance by a lender of short sale proceeds.

Realizing the potential problems and risks to lenders due to the uncertainty of SB 931's language, one month after its enactment, the bill's sponsor submitted a letter to the October 8, 2010 Senate Daily Journal in an effort to clarify the intent and scope of SB 931. The bill's sponsor made clear that the purpose of SB 931 was to "protect distressed homeowners with non-purchase money recourse loans on residential property when the fair market value of the subject property is less than the balance of the first deed

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30 YEARS
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Deficiencies after Short Sales

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of trust,” and thus it was not to apply to commercial loan transactions, such as residential subdivision loans, and loans where a single note is secured by multiple collateral. The sponsor also clarified that the bill was only meant to apply to one parcel of residential property consisting of no more than four units; therefore, excluding additional parcels of property collectively secured by one first deed of trust. Most importantly, the sponsor indicated in the letter that the bill was “not intended to extinguish that portion of the debt obligation . . . secured by another residential, commercial, or vacant land property, or other personal property related to or used in connection with the property” that is the subject of the short sale.

The Swift Response

The California legislature quickly responded to codify the original intent of SB 931, as described in the October 8, 2010, letter to the Senate Daily Journal. In February 2011, Senate Bill 412 (SB 412) was introduced which aimed to amend Code of Civil Procedure section 580e to require that following the short sale, the obligations of the parties be treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage. SB 412 would also except limited liability companies, part-

nerships and other parties from the application of Section 580e. The provisions of SB 412 were thereafter incorporated into Senate Bill 458 (SB 458). After negotiations and compromises among the various interest groups associated with consumer loans secured by real estate, SB 458 passed the California legislature, and the changes to Section 580e became effective in July 2011

Summary of Major Changes to Code of Civil Procedure Section 580e

1. Many commercial transactions excluded: As amended, Section 580e does not apply to a short sale if the trustor or mortgagor is a corporation, limited liability, limited partnership or political subdivision of the state. This is consistent with the initial intent of SB 931 to apply only to loan transactions with individuals and effectively leaves many commercial transactions outside the scope of Section 580e.

2. All deeds of trust now included: SB 931 originally applied only to lenders who held a first priority deed of trust or mortgage on the property. As a result of compromises made by proponents of SB 458, the scope of Section 580e is now expanded to cover all holders of all deeds of trust and mortgages, regardless of the lien priority; thus, any holder of a junior priority deed of trust or mortgage will be precluded from obtaining a deficiency judgment against the borrower after consenting to a short sale. It remains to be seen whether this “debtor-friendly” provision supported by consumer advocate groups will

have the opposite effect. Rather than consenting to a short sale, junior lien holders may be driven to instead seek a personal judgment against the borrower after being foreclosed out by a senior lien holder.

3. After short sale covered by Section 580e, the rights of the parties are as if the property was sold through a non-judicial foreclosure: The revisions to Section 580e delete prior language which, in essence, treated acceptance of short sale proceeds as a full discharge of any remaining indebtedness. Instead, subdivision (a) has been completely reworked to provide guidance in the situation where the deed of trust subject to a short sale is not the sole security for the indebtedness. New subdivision (a)(2) provides that when a note is not secured solely by a deed of trust or mortgage, following the short sale, the “rights remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage for a price equal to the sales proceeds received by the holder.” This new language is beneficial to lenders because not only is the applicability of 580e to situations where a single note is secured by multiple collateral detailed within the statute, lenders may now look to the highly developed area of non-judicial foreclosure law to determine their

rights and remedies following a short sale.

4. Additional compensation prohibited: New language is included which prohibits a holder of a note to require a trustor, mortgagor or maker of the note to pay additional compensation, aside from the short sale proceeds, to obtain written consent to the sale. This closes a potential loophole whereby a lender could essentially collect a portion of the deficiency in advance of the short sale by requiring a trustor or mortgagor to pay a short sale “consent fee.” This provision was included as part of compromises with consumer advocate groups and is consistent with SB 931’s original intent that a short sale transaction should not put a borrower in a position less favorable to that in a non-judicial foreclosure.

5. Provisions cannot be waived: Although it was implied in the prior language of the statute that the provisions of Section 580e could not be waived, it remained unclear whether a waiver of the protections afforded by Section 580e would be enforceable. New subdivision (e) of Section 580e makes clear that any purported waiver of the protections of the statute shall be void as against public policy.

Conclusion

With the help of SB 931’s sponsor clarifying the original intent of legislation, and practitioners bringing to light the pitfalls of the original language, the California legislature completely revamped Code of Civil Procedure section 580e. While SB 458 did not address all the concerns raised by the originally enacted version of Section

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New Requirements for Non-Judicial Foreclosure on Residential Real Property

By Albert Moon

The Governor recently approved amendments to Civil Code section 2924f that add three requirements relating to the issuance of the Notice of Sale in the non-judicial foreclosure process when the deed of trust or mortgage containing a power of sale is secured by real property containing one to four single-family residences. These new requirements become effective on April 1, 2012.

The primary method of foreclosure for lenders with real property security in California is the non-judicial foreclosure trustee's sale, rather than through court-supervised judicial foreclosure. For lenders opting for the non-judicial foreclosure, existing law requires the filing of a Notice of Default and after the passage of at least three months, the posting, publishing and filing with the county recorder of a Notice of Sale, giving at least 20 days' notice of the specified date, time and place of the sale. As foreclosures continue to rise, there has been a growing confusion about the trustee's sale among the homeowners facing the sale of their home and the potential bidders at the sale. In order to better inform both the homeowner

and the bidder, the new amendments essentially require the foreclosing lender to: (1) include specific language in its Notice of Sale informing potential bidders of certain risks involved in bidding on property at a trustee's sale; (2) include a notice to the property owner about how to obtain information regarding any postponement of such sale; and (3) make a good faith effort to provide current information to homeowners regarding sale dates and postponements and that the information be available free of charge.

First, the Notice of Sale must contain a "Notice to Potential Bidders" in substantially the following language: "NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property, you should understand that there are risks involved in bidding at a trustee auction. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You should also be aware that the lien being auctioned off may

be a junior lien. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property."

Many unsophisticated bidders at a trustee's sale incorrectly believe that placing the highest bid automatically entitles him or her to free and clear ownership of the property. They are unaware that under the law, their winning bid entitles them only to whatever interest in the property was held by the foreclosing lender, and that interest may in fact be subject to a senior lien on the property. The required "Notice to Potential Bidders" informs the bidder of such risks.

Second, the Notice of Sale must contain a "Notice to Property Owners" in substantially the following language: "NOTICE TO PROPERTY OWNERS: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to the public, as a

courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale."

Although the homeowner receives the Notice of Sale that states the proposed date and time of the trustee's sale, such sale date is often postponed by public declaration at the time and place of the scheduled sale. Existing law does not require the foreclosing lender to re-notice the Notice of Sale (mailed to the homeowner) unless the sale has been postponed for at least 365 days. Since homeowners rarely attend the foreclosure sale of their home and, as a result, are not aware of the public declaration of postponement, it is not uncommon for them to be caught by surprise when their home is ultimately sold months after the initial sale date. The "Notice to Property Owners" provides the home-

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Albert Moon specializes in commercial and real estate loan documentation, loan workouts and restructures, and real estate transactions.

The Legal Effect of "Payment in Full" Endorsements

By Lawrence S. Grosberg

Where a dispute exists between the parties as to the amount owed, the question arises as to whether payment by a check with the endorsement "payment in full" on the back of the check extinguishes the obligation.

The legal effect of a "payment in full" endorsement on the back of a check for a sum that is less than the amount actually owed had been in doubt because of an apparent conflict of two California statutes. However, decision of the United States District Court for the Central District of California in *Directors Guild of America v. Harmony Pictures, Inc.* 32 F. Supp. 2d 1184, 1192 (C.D. Cal. 1998) provides some guidance.

Prior to the *Directors Guild* decision, the two California statutes which appeared to be in conflict were Civil Code section 1526, which stated that a creditor could simply strike through the "payment in full" language to render it ineffective, and Commercial Code section 3311, which stated that the "payment in full" condition is binding whether or not the creditor strikes the language.

In the *Directors Guild* case, the court resolved the statutory conflict by ruling that the more recent of the two statutory enactments, Commercial Code section 3311, would control. Thus, the court concluded that that a party may not simply strike out the words on the check, cash it, and continue to request payment for the balance due. The court found that to avoid creating an accord and satisfaction situation (acceptance of the check extinguishes the obligation), the creditor was obligated to return the check to the debtor.

However, in the decision by the California Court of Appeal in *Woolridge v. J.F.L. Electric, Inc.* 96 Cal. App. 4th Supp. 52 (2002), although the court found that where two statutes are in conflict the more recently enacted statute controls (here, Commercial Code § 3311), the court also stated that whether the parties reached an accord and satisfaction is a question of fact which required a trial of the matter (whereas the *Directors Guild* court had granted summary judgment, thereby avoiding the necessity of a trial).

The *Woolridge* court stated that in order to show an accord and satisfaction, the debtor had to prove the following: (1) the debtor in good faith tendered an instrument to the claimant as full satisfaction of the claim, (2) the amount of the claim was unliquidated or subject to a bona fide dispute, and (3) the claimant obtained payment of the instrument.

The court went on to state that if the debtor further shows that he accompanied the tender with a conspicuous state-

ment that the amount tendered was in full satisfaction of the claim, and if the claimant did not prove that he tendered repayment of the amount within 90 days, the debt was discharged.

Although it seems clear that the recent cases have held that the requirement for an accord and satisfaction are governed by Commercial Code section 3311, from a practical standpoint, the court's decision in *Woolridge* decisions makes it clear that whether an accord and satisfaction occurs is a question of fact, at least in the California state courts.



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A Tale of Two Competing Deeds of Trust

By Carol A. Robertson

What happens when two deeds of trust on the same property are both recorded at exactly the same time by different lenders?

This issue was addressed in the recently published case of *First Bank v. East West Bank* decided by the California Court of Appeal. The court held that since both deeds of trust reflected a recording time of 8:00 a.m., the beneficiaries of the two deeds of trust shared equal lien priority in the real property. Neither lender was happy with this result. While this sounds like a one-in-a-million problem, this case points out that because of the way documents are recorded by title companies, it can (and did) happen.

As noted in the case, title companies routinely deposit bundles of documents with the Los Angeles County Recorder's office each day, prior to the opening of the office, for recording that day. After reviewing the documents, the recorder stamps each document with a date and time stamp reflecting an "8:00 a.m." recordation time (recorders' practices in most counties in the state are similar). In this case, the court noted that recording a document and indexing the document are two different

functions. To give constructive notice to the world that a deed has been recorded, it must be indexed so that the recorded document will be found in a title search and picked up on a preliminary title report. California is a "race-notice" state, which means that whoever records first and does so without actual knowledge, or constructive notice, of a previously created interest in the real property has priority.

In this case, both deeds of trust were recorded at the same moment and neither lender had actual knowledge of the other lender's deed of trust. Neither lender had constructive notice of the other's interest because neither deed had been indexed yet and thus would not have shown on a title search. Consequently, the court ruled that lenders shared equal lien priority in the real property.

While this case turned on a set of unusual circumstances, it underscores the importance of recording a deed of trust as soon as possible. Under a different, but more commonly occurring set of facts, this case also illustrates the advisability of obtaining, if possible, subordination agreements from other lenders in situations where the lender is aware of other deeds of trust, rather than relying on lender's instructions with respect to the order of recording of security instruments.

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580e, and new debtor protections were included as part of negotiations with consumer advocate groups, the revisions to the statute are an improvement from the original version. Revised Section 580e now circumscribes application to distressed homeowners who have non-purchase money recourse loans on residential property and clarifies the rights of lenders who are affected by its application.

Foreclosure Requirements

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aware of the public declaration of postponement, it is not uncommon for them to be caught by surprise when their home is ultimately sold months after the initial sale date. The "Notice to Property Owners" provides the homeowner the necessary information to keep themselves updated about the sale of their home.

Third, in order to ensure that accurate information is avail-

able to the homeowner, the new law requires a beneficiary, trustee, mortgagee or authorized agent to make a good faith effort to provide up-to-date information, free of charge, regarding sale dates and postponements of the trustee's sale, either (1) by an internet website, (2) by a telephone recording accessible 24 hours a day, seven days a week, or (3) through any other means that allows 24 hours a day, seven days a week, no cost access to updated information.

Except for the obligations imposed upon the foreclosing lender in the third requirement above, the amendments do not modify or

create any substantive rights or obligations for any person specified in either of the required notices, and failure to comply with any of the new requirements will not invalidate any sale that would otherwise be valid under Civil Code section 2924f. It is important to note that the information provided in the notices above does not constitute the necessary public declaration of sale postponement (see Civil Code § 2924g(d)) in the event the lender elects to postpone the sale.

A Practical Guide to Non-Judicial Foreclosure

By Maggie Loates

Many lenders have become intimately familiar lately with the sharp end of a non-judicial foreclosure, but still may be a bit hazy about the process. The purpose of this article is to clarify the procedure.

Considering the Penultimate Sanction: Non-Judicial Foreclosure

When a borrower has failed to repay its loan despite having agreed to Plans A, B, C, D and E, then it is time to think about Plan F, Non-Judicial Foreclosure.

At this point, notice should have already been given to the borrower that it is in default, and that the lender has opted to accelerate the loan (if not already matured) and charge the default interest rate provided for in the promissory note.

Preliminary Matters: Do the Recent Residential Foreclosure Statutes Apply?

In the last few years, the California legislature has revised the California Civil Code to give (temporarily) individuals whose loans are secured by owner-occupied residential real property the opportunity to work out alternative payment options with their lenders so they do not lose their homes in foreclosure, although many provisions expired January 1, 2011. Before a non-judicial foreclosure can be initiated, it still must be determined whether the property and the loan are covered under California Civil Code section 2923.5.

The criteria which subject a loan to Section 2923.5 (which sunsets January 1, 2013) are:

(1) The deed of trust was recorded between January 1, 2003 and December 31, 2007, (2) the encumbered property is a single family residence or contains no more than 4 dwelling units, and (3) one of the units is occupied by the borrower as his/her principal residence and indicated to be such in the loan documents.

If all of these conditions exist, then it will be necessary for the lender to comply with the provisions of Section 2923.5(a), including contacting, or attempting to contact, the borrower to assess his/her financial situation and to explore options for the borrower to avoid foreclosure. In that event, FRBC can advise and assist its clients in complying with the legal requirements.

Under Section 2923.5, if the property is subject to the above conditions, a lender may not record a Notice of Default until 30 days after either (1) the lender's initial contact with the delinquent borrower, or (2) if the lender has not been able to contact the borrower, 30 days after the due diligence requirements of Section 2923.5(g) have been satisfied.

In addition, as discussed in the accompanying article by Albert Moon, effective April 1, 2012, three new requirements relating to the issuance of a Notice of Sale for a non-judicial foreclosure involving property containing one to four single-family residences must be satisfied.

On the other hand, if the property securing the loan is

commercial, multi-family residential, in development, raw land, or some other kind of non-owner occupied housing, then these restrictions do not apply.

Getting Started: Initiating the Non-Judicial Foreclosure Process

When the lender has made the decision to resort to Plan F and non-judicially foreclose on the property securing a borrower's loan, the first thing that needs to be done is to determine if the loan is subject to California Civil Code section 2923.5. Once that has been clarified, and the appropriate actions taken if that section does apply, a Declaration of Default is prepared for the client's signature, and sent to the Foreclosure Trustee ("Trustee"). In addition, a Declaration re Compliance will be necessary, evidencing the lender's compliance with the residential statutory requirements.

In the Declaration of Default, it is usual to request a unified sale, which will include the foreclosure sale of the personal property described in the deed of trust as well as the real property. If the lender has personal property collateral other than as described in the deed of trust and wishes to have it included in a unified sale, the Trustee will require copies of the executed Security Agreement and any filed or recorded UCC-1 Financing Statements. The Trustee also finds it useful to have a copy of the lender's Policy of Title Insurance.

The following information is required for the Declaration of Default: (1) the amount of

the unpaid principal balance on the loan, (2) the date to which interest is paid, (3) the interest rate currently being charged, (4) the per diem interest amount, and (5) any late charges which have accrued.

Depending on the status of the loan, certain additional information may be required by the Trustee: (1) if the loan has not matured, the Trustee will need: (a) the date the first missed installment payment was due, and (b) the total amount of all unpaid installments from that date to the present; or (2) if the loan has matured, the Trustee will need the amount of unpaid interest that has accrued through the present date.

If the lender has expended any funds on post-default appraisals or property inspections, forced-placed insurance, maintenance of the property, or other costs associated with preserving the property, those must be itemized for the Trustee to be included in the default amount. Legal fees related to the foreclosure process can be added at a later stage.

If the loan is being accelerated due to a non-monetary default, a description of that default must be set forth in the Declaration of Default so the Trustee can include that in the Notice of Default as the cause of the breach.

The Trustee will then prepare a draft Notice of Default ("NOD"), which is the document that will be recorded with the County Recorder and will start the clock ticking on the foreclosure. Some Trustees require the lender to sign other documents in addition to the Declaration of

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Default. In any event, the client will have the opportunity to review and approve the draft NOD before it is recorded.

The Long Wait: The 90-Day Reinstatement Period (Possibly Longer)

Recording the NOD commences the first reinstatement period, during which, if the loan has not matured, the borrower may bring the loan current by paying all of the delinquent installments, plus late charges, and any other costs incurred by the lender. If this has occurred, the Trustee will be advised to stop the foreclosure and record a Notice of Rescission of the NOD. If the loan has matured, the borrower may stop the foreclosure during this period by paying off the entire amount owing, including interest, late charges and other fees and costs.

Ten days (or less) after the commencement of the 90-day period, the Trustee will mail a conformed copy of the recorded NOD to all interested parties, and again within 30 days of recording of the NOD. The Trustee obtains issuance of a Trustee's Sale Guarantee ("TSG") from its title company, which lists all of the parties required to be notified in the 10- and 30-day mailings. The TSG is similar to a Preliminary Title Report and will show all the exceptions on the property that would be disclosed by a "Prelim," including any junior deeds of trust. If the loan was for construction purposes, the TSG will often show multiple mechanic's liens filed by contractors and

sub-contractors who have not been paid. In many cases, the TSG also reveals unpaid property taxes and tax delinquencies for prior years.

The TSG guarantees the lender against any loss up to the amount of the Guarantee by reason of any incorrectness in the vesting of the property, the legal description of the property, the names and addresses of lienors, taxing authorities, and those requesting notice, and the name, address and publication schedule of the legally mandated newspaper in which the Notice of Sale must be published.

Almost There: Setting the Sale

At the end of the 90-day period, assuming the borrower has not brought the loan current, the Trustee will be free to set a date for sale of the property and commence publication of the Notice of Sale ("NOS"). However, the borrower retains the right to reinstate the loan and stop the foreclosure by paying the delinquent amounts up to five (5) days before any sale date.

An Authorization to Publish will be forwarded to the client for review and completion. The client will need to bring the accrued interest amount current and if the per diem rate has changed, to include that figure. Any expenditures should also be added, including legal fees. The finalized Authorization will be delivered to the client for signature, and then forwarded to the Trustee, who will then draft a Notice of Sale based on the updated figures.

At some point during the foreclosure process, the lender will probably need to sign a Substitution of Trustee form, which will substitute the Trustee for the original

trustee under the deed of trust (unless they are the same), thus enabling the Trustee to conduct the foreclosure sale. This document must be signed under notary and the original returned to FRBC, since a document to be recorded in the County Recorder's records must be an original.

Once the draft NOS has been approved by the client, the Trustee will have it recorded with the County Recorder, and arrange for the Notice to be published once a week for three (3) weeks in the designated newspaper for the area in which the property is located. This may not necessarily be the newspaper with which the lender is most familiar. The sale date will be set for approximately one week after completion of publication.

The Final Stretch: Preparing for the Sale

Shortly before the date set for the sale, Bidding Instructions will be prepared based on information provided by the client. The Instructions will include all outstanding unpaid loan amounts, including interest through the projected sale date, and updated legal fees and costs. The Trustee will add its fees and costs to the outstanding loan amount so the total owing will also include those sums.

The client will have the choice of adding the Trustee's fees to its credit bid, thereby insuring that any over-bidder will pay those fees as part of its bid. Bidding Instructions are an art, not a science, and the amounts of a lender's credit bid will be affected by factors such as the value of the property and the existence of other collateral or Guarantors as a source of repayment for the loan.

The Bidding Instructions

offer the lender three (3) options for its credit bid: (1) the Trustee may be instructed to credit bid the full amount owing; (2) the Trustee may be instructed to bid a specific amount which is less than the amount owing; or (3) the Trustee may be instructed to commence the bidding at a certain figure, then make certain incremental bids in the event there is another bidder at the sale, and be given a maximum amount he is authorized to bid on the client's behalf. FRBC can advise its clients on strategies for determining the bid amount and which option to choose.

Once the Bidding Instructions have been completed and signed by the client, they are forwarded to the Trustee, who will instruct its agent accordingly. If a representative of the lender wishes to attend the sale in person, he or she is certainly welcome to do so. However, the Trustee's agent has full authority to make all bids on behalf of the lender and the client's representative will not be required to do anything unless he or she wishes to do so.

In the event a borrower decides it doesn't want to lose its property and makes the lender an offer to resolve the delinquencies shortly prior to the sale date, the Trustee's sale can be postponed as many times as necessary for 365 days from the initial date set for the sale.

The Deed Is Done: The Property Reverts to the Lender

After the sale, the Trustee will prepare a Trustee's Deed Upon Sale for the lender's review. The Trustee will provide a copy of the recorded Deed, and some time later, the original Trustee's Deed will be mailed to the client by the County Recorder.

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NAMES IN THE NEWS

Andrew K. Alper spoke at the National Association of Equipment Leasing Brokers in November on the California Commercial Finance Lenders License.

Steven N. Bloom spoke at the Western Independent Bankers Troubled Asset Forum in October in San Francisco regarding disposition of OREO. He also spoke at the California Bankers Association Chief Credit Officers Symposium in Monterey on loan participations.

Hal D. Goldflam was quoted in an article titled "Looking to Receiverships to Compensate Victims in White-Collar Cases" appearing in the December 12 issue of the *Los Angeles Daily Journal*.

Tricia L. Legittino published an article for Law360 on spoliation of evidence and electronic discovery titled "Think Before You Delete: Spoliation and E-Discovery."

Patricia Y. Trendacosta spoke at the Western Independent Bankers Troubled Asset Forum on September 16 in Los Angeles regarding disposition of OREO.

Craig A. Welin spoke on workouts, foreclosures and bankruptcy issues at the Trigild Lender Conference in October in San Diego. He recently was quoted in articles by the Associated Press and Law360 concerning the MF Global bankruptcy, and in another titled "Looking to Receiverships to Compensate Victims in White-Collar Cases" appearing in the December 12 issue of the *Los Angeles Daily Journal*.

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