TAKING IT TO THE STREET

RATING AGENCIES
ADDRESS DEFAULT MANAGEMENT

EXTREME REO:
How to manage the most difficult assets

Know the Law Series
A state-by-state look at post-sale redemption

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Dedicated to Default Management
ARE WE REALLY FIDUCIARIES?
Serving the Needs of the Investor

In managing real estate sales, either pre-foreclosure or as real estate owned (REO), asset managers and others charged with the successful preservation of value and disposition of property take on many roles. From property manager to local agent supervision to finally prudent decision-maker on behalf of the investor, asset management is ultimately concerned with realizing best value for someone else.

There is the responsibility we owe the defaulted borrower, especially pre-foreclosure, when a timely sale of his property for best value could not only stay foreclosure and credit loss, but perhaps even return equity toward a fresh start. But even post-foreclosure, what REO properties bring can offset borrower deficiency as well as mitigate the loss of another third party we serve, the investor.

With this in mind, it might benefit us to think of our role as fiduciaries, which is typically defined as the relationship between a trustee and the person or body for whom the trustee acts. In a recent issue of the American Banking Association’s journal on trusts and investments, a cover article discussed the “Prudent Disposition Strategy for Fiduciaries Owning Real Estate.” Among trustees, it is commonly accepted that real estate held for sale must be managed in compliance with the Uniform Prudent Investor Act, which has now been approved for enactment in all 50 states. While meeting the act’s principles for more liquid assets such as stocks and bonds is straightforward, insuring real estate sales are also “prudent” can be more problematic.

As it relates to REO sales, it can be argued that like fiduciaries, we too are charged with the duty to avoid waste, establish a record of due diligence and prudence as to the engagement of services and/or marketing of the asset and finally the achievement of a transparent, arm’s-length sale for best value. If the investor, not to mention original borrower, were looking over our shoulders, would all of our actions pass these tests?

In our day-to-day dealings, it is sometimes difficult to challenge assumptions long held: that whatever we’re doing, and how we’re doing it, is simply the way things have always been done and not worth revisiting. True fiduciaries are not offered this security. They are repeatedly tasked with re-evaluating and then evidencing, that the processes they use are not only effective, but also transparent. Was the price achieved truly the best? If so, why was it the first offer and for full value? If, alternatively, the property is languishing on the market, why? And what steps or changes should we be reconsidering about how the properties are marketed?

Consumers, as well as our clients and customers, are increasingly expecting that more transactions can and should be “transparent”—openly subject to competition and the “light of day.” Transparency increases not only information and validity but also confidence in business and toward each other. These are worthy goals that fiduciaries, including those of us in the unique industry of REO disposition, can make an increasing difference on as we build ways to sell real estate smoother, smarter and faster.

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