

ISSUES TO CONSIDER PRIOR TO ACQUIRING OREO

When an event of default occurs with respect to a loan that is secured by a mortgage encumbering real estate, there are a number of issues that should be investigated by the bank prior to its acquisition of the real estate (“OREO”). The bank’s due diligence related to such issues should be finalized prior to the recording of a deed in lieu of foreclosure or the holding of a sheriff’s foreclosure sale. The following, while not intended to be comprehensive, is a list of the most common issues that should be investigated:

- Liquidation value of the property
- Environmental condition of the property
- Current zoning classification of the property
- Whether the property is used for agricultural production
- Status of any conditional use permits
- Title defects, encumbrances, liens
- Easements, use licenses or restrictions
- Status of any foreclosure proceedings related to other mortgages and/or liens
- Status of property taxes and assessments
- Status of any property tax appeals
- Status of any property tax forfeiture proceedings
- Building code compliance issues and/or open work orders
- Status of any condemnation proceedings
- Whether the property is part of a Home Owner’s Association or Common Interest Community
- Whether the property has been sold via a Contract for Deed
- Any leases or rental agreements, whether written or verbal
- Status of any eviction proceedings
- Whether property is occupied or vacant
- Whether vacant property is properly secured and winterized
- Outstanding vacant property fees imposed by the municipality
- Status of property and liability insurance
- Status of utilities
- Whether it is advantageous for the bank to transfer the OREO into a subsidiary limited liability company after acquiring title

Please feel free to contact our office to discuss any further questions or concerns.