

ACCEPTANCE OF PARTIAL PAYMENTS AFTER DEMAND

The question is often raised: “After sending a default notice demanding payment, can a lender accept a partial payment?” The easy answer is that a lender can, of course, accept a partial payment. However, there are potential ramifications of accepting a partial payment *after* making demand for a specific payment.

Upon an event of default, a lender often will make demand upon the borrower for payment to cure the default. In most cases, the lender will provide the borrower with a default notice that demands payment by a specific date.

The acceptance of a partial payment, *prior to* the deadline to cure provided in the notice, does not “cure” the default. Nor does the acceptance of a partial payment, *prior to* the cure deadline provided in the notice, prevent the lender from invoking its remedies under the loan documents immediately after the borrower’s failure to cure the default by the deadline.

A recent decision by the Minnesota Court of Appeals emphasizes that the acceptance of a partial payment *prior to* the expiration of the cure deadline *does not* require that the lender provide any further notice to the borrower before the lender may enforce its remedies under the loan documents.

In *Hinden v. American Bank of the North*, a borrower defaulted on a loan, after which the lender demanded payment by September 14. The lender’s default notice indicated that if the demanded payment was not made, the lender would be entitled to enforce its rights and remedies under the loan documents and at law. On September 13, the borrower made a partial payment, which the bank accepted. No other payment was made. The lender then invoked its rights and remedies under the loan documents, repossessing its collateral. The borrower later sued the lender alleging that after accepting the partial payment, the lender was required to send a “new” notice of default to the borrower providing notice that the lender intended to exercise its remedies under the loan documents.

The Court of Appeals confirmed that the lender’s acceptance of a partial payment, *prior to* the expiration of the cure deadline, *did not* invalidate the prior notice of default. Thus, the lender was *not* required to send a “new” default notice prior to exercising its rights and remedies under the loan documents.

The Court’s decision reiterates that if a lender demands payment, on or before a specific date, the lender’s acceptance of a partial payment, *prior to* the expiration of the cure deadline, *does not* invalidate the notice of default. However, the decision, by implication, emphasizes that should a lender accept a partial payment *after* the expiration of the cure deadline, the lender must issue a “new” default notice to the borrower, prior to exercising its rights and remedies under the loan documents.