

MANAGEMENT OF VACANT AND FORECLOSED PROPERTIES

With winter fast approaching, it is important for lenders to pay a visit to real estate which is, or is about to become, subject to a foreclosure proceeding to determine the occupancy status. If a subject property is vacant and unoccupied, lenders should make certain that the property is properly secured, winterized, and insured, as hazards such as frozen pipes and vandalism can drastically reduce the value of the property.

In most circumstances, if a property is vacant, Minnesota law allows a foreclosing lender to seek the appointment of a receiver to manage and control the property during the foreclosure process. Not only is a receiver useful to manage, monitor, and maintain vacant properties, a receiver can also be given the authority to enter into leases for vacant properties which can provide a stream of revenue to a foreclosing lender during the foreclosure process.

In the event a property is occupied by tenants, a receiver is useful to ensure that tenant rental payments are collected, tenant maintenance issues are taken care of, and utilities and taxes are paid in a timely manner. A receiver can also commence eviction proceedings for tenants that do not comply with the terms of a lease.

A receiver is appointed by commencing an action in the District Court for the County in which the property is located. The property owner must be personally served with the Summons and Complaint commencing the action and a hearing must be held before a District Court Judge.

The receiver must be an experienced property manager and must be independent of the foreclosing lender since the receiver is acting on behalf of the District Court, and not the lender. Furthermore, the receiver must provide periodic income/expense reports to the Court to ensure compliance with the receivership appointment.

Upon the expiration of the redemption period, the receivership is usually terminated and a final income/expense report is submitted to the Court. However, after the receivership ends, the receiver is often times independently retained by the foreclosing lender to manage the property until a suitable purchaser can be found.

A foreclosing lender may incur additional costs and attorneys' fees in seeking the appointment of a receiver. However, the additional costs and attorneys' fees can be justified if the lender is able to receive monthly revenue from the foreclosed property. Even if a foreclosed property does not generate revenue, the appointment of a receiver can still provide substantial value by safeguarding against hazards that can drastically reduce the value of the property.