

## Foreclosing SBA 504 Mortgages

As many banking institutions continue to react to the effects of the economy, many are faced with the need to foreclose commercial mortgages originated under the U.S. Small Business Administration (“SBA”) 504 loan program. In addition to standard banking practice and applicable state laws related to mortgage foreclosures, when it comes to SBA 504 loans, additional requirements and nuances must be addressed.

When an event of default occurs under an SBA 504 loan, the first thing that the bank should do is retrieve and review the SBA 504 Loan Authorization and the related Third Party Lender Agreement. The Third Party Lender Agreement is executed by and between the bank and the certified development company (“CDC”). As a general rule, the Third Party Lender Agreement will require that the bank provide written notice of an event of default to the CDC and SBA within 30 days of the event of default and at least 60 days prior to the bank’s foreclosure of its mortgage. Failure to timely provide the required notice may result in a necessary postponement of the bank’s foreclosure sale.

Additional consideration should be given to the type of foreclosure process employed by the foreclosing party. Under Minnesota law, a mortgagee may foreclose its mortgage by advertisement (publication) or by action (judicial). The type of foreclosure generally has ramifications with respect to deficiency judgments (see our Newsletter Article from July of 2008:

[http://www.analawfirm.com/Newsletters/Newsletter\\_July\\_08/Foreclosure\\_Deficiencies\\_7-08.pdf](http://www.analawfirm.com/Newsletters/Newsletter_July_08/Foreclosure_Deficiencies_7-08.pdf))

When the foreclosure involves SBA 504 loan mortgages, the type of foreclosure process can also have an effect on the applicable redemption period. When the CDC is the holder of a mortgage junior to the foreclosing bank’s mortgage, the statutory redemption periods apply in foreclosures by advertisement under Minnesota law, including 6 month redemptions and even 2 month redemptions pursuant to a Voluntary Foreclosure Agreement. However, pursuant to 28 U.S.C. §2410, if the bank chooses to foreclose by action, the SBA is granted a 1 year redemption period, commencing from the date of filing of the Court’s order confirming the foreclosure sale, regardless of the otherwise applicable redemption period prescribed by Minnesota law.