

We had decided to distribute the Realtor Newsletter only once each month. However, there is a topic that demands immediate airing and discussion. That is the subject of **the listing and selling of a house in foreclosure**. The purpose of this Newsletter is to begin a dialogue of what you, the realtor, should do when faced with working on a listing or making an offer of a house in foreclosure.

Foreclosures are increasing at alarming rate due, among other reasons, in large measure to the ease in recent years with which buyers were able to obtain 100% financing with low interest variable rate loans. The rates on these loans are now increasing leading to a greater number of defaults. Since there is little equity in these properties, the desire of the homeowner to pay the mortgage before other bills has declined dramatically.

We do not intend to go into a deep analysis of the Connecticut law on foreclosures. It is too time consuming for a Newsletter. However, several realtors have raised the question: ***What do I do when I become involved with a property which is being foreclosed?*** We believe that you will find our suggestions to be of practical assistance to you whether you are the prospective listing agent or the selling agent.

First you should never assume that the lifestyle of a homeowner or the existence of a beautiful home precludes the home from being in foreclosure. It is obviously indelicate and unwise to ask the homeowners directly if they are in foreclosure (whether you will be the listing agent or the selling agent). There is, however, a method whereby you can prudently exercise due diligence to make that determination and it literally takes mere seconds!

Simply go to the Connecticut Judicial Department website at [www.jud.state.ct.us](http://www.jud.state.ct.us) and click on **Case Look-up** found in the upper left corner of the Homepage. Then click on **Civil /Family**. Then click on **Inquiries**; then click on **Party Name**. Insert the homeowners' name in the appropriate box and click on it. You should then see if there are any cases involving the homeowner. From there you can determine if they are involved in a foreclosure. Before the Internet, you would have had to go to the Town Clerk's office to conduct a time-consuming title search!

If you learn from the website that the homeowner is in foreclosure, you can take specific courses of action depending if you are the prospective listing agent or the selling agent.

**LISTING AGENT.** When you learn from the judicial website that a homeowner is in foreclosure, you have, in our opinion, the right to discuss the matter of the pending foreclosure with the homeowner and to ask who their attorney is and obtain authority to speak to him or her. You must determine whether a sale is financially feasible since you may not be able to sell a house where the homeowner does not have sufficient funds to pay off all the liens and normal closing costs. You must also decide whether you have enough time to list, advertise and sell the house. The attorney may be able to give you this information. If there is no attorney, you should ask the homeowner directly the following:

1. Can you have a copy of the foreclosure complaint (this will allow you to see how many liens are on the property) and any motions filed.

If you do not get the complaint for whatever reason, ask to see the latest bills from the lender or lenders.

2. Are the real estate taxes current?

3. Ask the homeowners if they have the financial ability to pay all the liens on the house and expenses of sale and if so, from what sources.

You can also call the foreclosing lawyer to find out how much time remains to market the property.

Your inquiries will give you enough information whether it is feasible to list the property.

**SELLING AGENT.** If you are the selling agent, you can and should conduct the same Judicial Website inquiry as if you were the listing agent. However, you are obviously limited to working through the listing agent to obtain answers to the questions posed above. You can, however, still present an offer in such situations. You should consider adding the following clause to the offer to purchase a property in foreclosure (we recognize that our suggestion is quite new to the real estate community and we offer it only as a point of discussion). The clause should be used if you discover a foreclosure in progress and still wish to present an offer:

**This offer is contingent upon the Seller providing the Buyer evidence satisfactory to the latter that the Seller has the financial ability to transfer title to the premises in accordance with all the terms of this Contract. If the Seller does not provide such evidence within 7 business days of the date the contract is signed by all parties, the Buyer shall then have the option to declare this Contract null and void and in such case all deposits shall be returned to the Buyer immediately and neither party shall thereafter be obligated to the other.**

You should not conduct a physical inspection until your clients are satisfied with the evidence presented. Also, you may find it helpful to get the Buyers' attorney involved in this procedure, just as you would call a home inspector to do the physical inspection. If your clients are not satisfied with the results of the answers, they can cancel the contract.

I know we may have only scratched the surface of this issue. If this Newsletter has raised further questions, comments or concerns, please email me.

I would like to acknowledge my appreciation for the assistance of attorneys **John Cipriano** and **Bill Gambardella** in preparing this Edition of the Newsletter. Both lawyers aided me by offering their many separate experiences over the years and their wide knowledge of Connecticut real estate law.