

RITZEN

OLIVIERI LLP

FORECLOSURES: Deal or No Deal?

Sean M. Warshawski, Barrister & Solicitor

Ritzen Olivieri LLP

Tel: 780-460-2900

Email: seanw@rolaw.ca

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Introduction

Is it worth it?



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MORTGAGES

ATB Financial[®]



MORTGAGES

- Conventional mortgages
 - Non-recourse
- High Ratio mortgages
 - Recourse against mortgagors
- Corporate Mortgagors
 - Recourse against mortgagors
 - Consider personal guarantees
- Investment properties
 - Generally recourse against mortgagors

FORECLOSURE PROCESS

1. Lender sues borrower.
2. Borrower can defend, do nothing or file a “demand for notice”.
3. Equity or not?

EQUITY

- Bank seeks “Redemption Order”
- Owner given opportunity to “redeem” or satisfy the arrears
- If they do not, Court lists the property for sale with a realtor
- Offers are made to and vetted by Lender
- Lender does not have to consider any offers that do not satisfy the debt in full

EQUITY

- If the Lender is prepared to accept an offer, it applies to Court for an “Order Confirming Sale and Vesting Title
- All offers are presented to the Court
- All offerors must be served with notice of the Court Application, such that they can make a last offer
- If offerors wish, they can attend Court to try to make a better offer
- Goes to sealed bid process

NO EQUITY

- Conventional mortgage
 - Non-recourse
 - 1-day redemption period followed by posting at Court
 - If not sold, lender usually obtains a “Final Order for Foreclosure”, takes title to the property, and is free to sell it on its own without Court’s supervision
- Recourse Mortgage
 - Order for Sale to Plaintiff
 - Judgment against mortgagor for Deficiency

RISKS

- Schedule “A”
- “AS IS, WHERE IS”
- Contractual warranties are removed
- No real property report
- Foreclosure properties are often in poor condition

- Theoretically, much more risk than in a normal purchase

PROTECTION

- Title Insurance
- Due diligence
- Good realtor
- Good lawyer

Other Considerations

- Assumption of liability
- Due diligence
- Good realtor
- Good lawyer

Current Trends

- Last downturn was quick but deep
- Current downturn slow and long
- Banks working with borrowers
- Mortgage insurers working with borrowers

Getting the BEST deal

- Deals are usually paid for in full – added risk
- Look in low-activity markets
- Consider investing in mortgages rather than actually purchasing the real estate
- Know the market, have a good realtor
- I can't tell you what a good deal is, you have to know for yourself

CONCLUSION

Please note this presentation is for information purposes only, and is not intended to constitute legal advice. Any legal questions should be directed to a lawyer.