

Buchalter

Lender Options for Workouts, Foreclosures, and Receiverships

LOS ANGELES
NAPA VALLEY
ORANGE COUNTY
PORTLAND
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SAN FRANCISCO
SCOTTSDALE
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Borrower Defaults

- Lender Reviews Asset (BOV, Underwriting)
- Notice of Default/Start Legal Process
- Lender Decides Preferred Course of Action, Sell Note, Refi Note, Foreclose
- Negotiate with Borrower -Short Sale, Default, Possible BK Scenario
- Refi/Sell Note or Foreclose

After Foreclosure Take to Market

- a) Traditional
- b) Auction
- c) Receivership
- d) Create Market or Best Offer

Receivership

- File action
- Venue considerations
- Justification for Ex Parte Relief?

Application for appointment of receiver

- Notice considerations
 - Regular
 - Ex parte
 - No notice
- Evidence of grounds for receivership and, if necessary, type of notice

Order

- Prejudgment receiver is neutral, agent of court (not of the parties)
- Authority derives from court order
- TRO/Injunction in aid of receivership
- Bond
 - If appointment is ex parte, plaintiffs' bond (C.C.P. §566(b))
 - Plaintiffs' TRO bond (C.C.P. §529)
 - Receiver's bond and oath

Examples of possible functions of prejudgment real estate receiverships

- Secure and maintain the property
- Collect rents and profits
- Sell the property
 - Environmental contamination considerations
 - Under 564, receiver can remediate environmental problems
 - Construction defect considerations
 - Quasi-judicial immunity if act in accordance with court orders

Operation of the Receivership Estate

- Financing operations through issuance of receiver's certificates
- Interim reports
- Seeking instructions or other orders from court as need arises
- Final report and account and discharge

About Partner



Jenny Redlin, REPA

Principal, National Client Manager

20+ Years Environmental & Engineering Due Diligence



Building
Engineering
&
Assessments



Environmental
Consulting
&
Remediation



Construction
&
Development
Services



Energy
&
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Origination Vs. Pre-foreclosure Environmental Due Diligence

Phase I Environmental Site Assessment

- Only a full Phase I ESA can vet the property for **CERCLA liability** protections.
- Lenders found themselves **discovering issues that were missed** in the original **limited scope** environmental reports, which affected their foreclosure decision/process.

Findings	
RECs that would be missed by a TSA	10%
Sub Category A	0.7%
Sub Category B	9.3%
RECs that weren't missed by a TSA but could have been because the sources reviewed did not contain enough information to categorize the risk correctly	60%
RECs that were not missed by a TSA	40%

Limited Scope Environmental Reports

- Often used in origination to vet risk for business decision making
- **NOT recommended during foreclosures**
- Study found that in if a full Phase I had been completed on projects where only a transaction screen was completed- **items were missed 60% of the time.**

Remediation Costs and Strategies

- **Simple:** Sump/tank/hydraulic lift removals
 - *10's of thousands*
- **More Complex:** Soil/Soil Vapor and groundwater remediation
 - *100s of thousands/millions*
- Regulatory agency/stakeholder coordination-typically in a Receivership setting
- Remedial Cost Estimates
 - Could be utilized in a note or property sale
 - Price reduction
 - Escrow set-aside
 - Help with environmental pollution/risk insurance coverage decisions

REC from Non-TSA Source	Number of Phase Is*	Approximate Remedial Cost		
		Min	Expected	Max
UST	12	\$400,000	\$485,000	\$1,050,000
Auto repair	1	\$40,480	\$166,000	\$360,000
Drycleaners	4	\$255,750	\$380,000	\$1,000,000

*There were two reports that had more than one REC: 1. UST and Drycleaner 2. Auto repair and UST



Remediation – Mercury Case Study

Mercury Contamination

Recycling business at property

- Improper disposal of old light ballasts
- Property was littered with Mercury
- 100k clean up before they could foreclose
 - Mercury clean up one of the easiest types since it is in solid form
 - Vapor and groundwater clean-ups are often 10x's and up



Environmental Compliance Issues

In a foreclosure or receivership situation there are additional environmental concerns such as:

Asbestos at Site

- Was there proper abatement and testing?
- Some lenders had to sign waste manifests, exposing them to future liability

Erosion/Stormwater Run Off

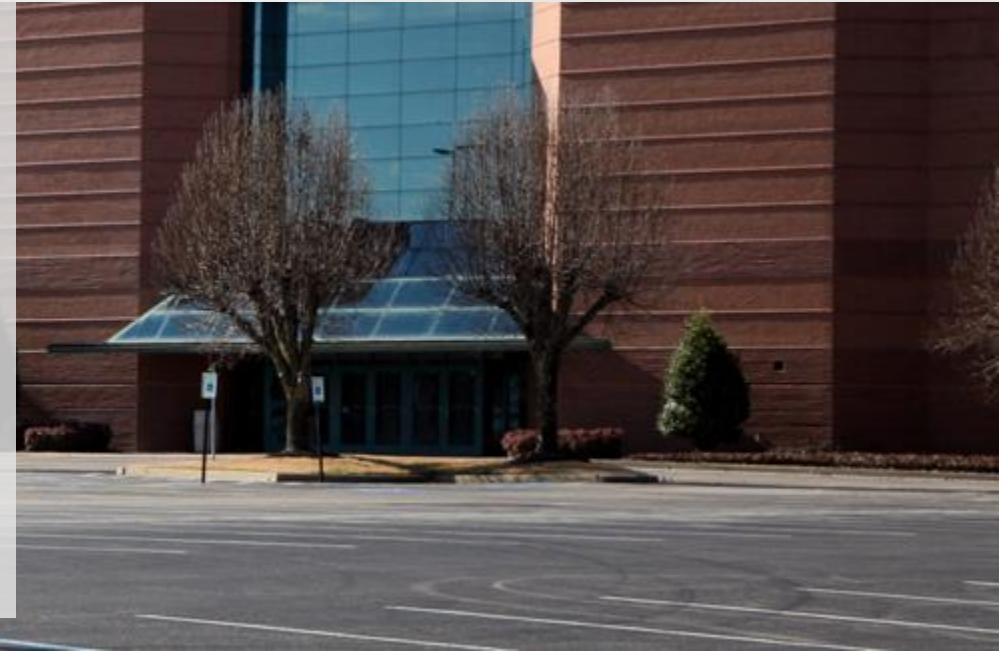
- Hefty fines for non-compliance
- Issues include;
 - flooding from clogged drains
 - sediment loading natural waterways/creeks, etc.
 - loss of structural integrity

Make sure your pre-foreclosure Phase I scope of work is modified to cover additional issues such as these! These are NOT ASTM standard items!!!



Forensic PCA Due Diligence

- Forensic PCAs can help trouble-shoot issues
- Especially important for buildings that have been vacant.
- Common issues found in vacant buildings:
 - Moisture intrusion into an unsealed façade
 - Mold growth
 - Indoor air quality
 - HVAC
 - Water Management/Legionella
 - Pest Infestations
 - Structural integrity issues- balconies, etc



What if you are foreclosing on a construction Loan?

Construction Status Review

- Collect/Review Key Documents- Lien releases, insurance, inventory of supplies
- Are subs and suppliers paid to date?
- Review and Document Site status- % complete, in compliance, etc.

Cost to Complete

- How far along is the projects
- Was it left dormant long enough to cause serious issues
- Analysis on finishing vs. demolishing

