Avoiding Pitfalls in Foreclosure - South Carolina

Gene Allen
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Review the loan documents:

- Are the signors on the note and mortgage the same?
- Is the legal description correct?
- Are the names and dates on all loan documents consistent?
- Is the legal description in the title policy consistent with the mortgage?

The title search:

- Order the title search immediately
- Limited title search (from date of mortgage) or full search
- Does title search show deeds and mortgages properly recorded and properly indexed?
- Are there any different spellings or variations of names?
- Did any owner fail to sign the mortgage?
- Subsequent owners are necessary parties if they still own the property – intervening owners who no longer have an interest in the property are not necessary parties.
- Prior lienholders are not necessary parties as their position cannot be affected by your foreclosure.
- If the title search reveals past due taxes, there is the risk of losing the property at a tax sale. If the property has been sold for taxes, there is only one year to redeem.

Special issues:

- Is the loan to be foreclosed a purchase-money mortgage?
- Have prior liens been paid but not satisfied of record – need evidence of payment. (HUD-1 for example)
- Assignments – who is the true party-in-interest plaintiff?
- Have all assignments been recorded?
- Is there a manufactured home on the property – do you have a copy of the certificate of title? 2003 enactment of Retirement of Title Certificates to Manufactured Homes law

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Are there issues requiring putting a title insurance company and/or closing attorney on notice of potential liability?

Have all demands, cure notices, acceleration notices been properly given as required by applicable law and/or the loan documents? (Especially important if borrower's default is other than monetary.)

Is there potential for environmental liability?

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