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Newsletter

Issue: # 2009-3

March 2009

Dear Anthony,

In our continuing focus on foreclosures, this Newsletter focuses on Fannie Mae Type Deeds of Trust and Mortgages and how they relate to the private money / hard money industry. Are you complying with your contractual obligations to your borrowers based on Fannie Mae?

Also in this edition, are you up to date regarding Colorado disclosures in dual lender/real estate broker transactions?

Finally, please say "Hello" to our newest additions to Geraci Law Firm. We hired a 25 year member of the California Bar who is an accomplished and experienced trial attorney who graduated from Harvard Law School. We also hired a very experienced member of the California bar who has had over 100 trials in her short career as an attorney. Finally, our newest associate graduated 1st in her class from Chapman University School of Law.

Geraci Law Firm is striving to fulfill a promise to become an all-inclusive full service law firm at reasonable prices. Contact us for your litigation, bankruptcy, real estate, mortgage and securities needs!

Fannie Mae Type TDs/Mortgages - Are You Complying With Your Own Documents? Even if You Use DocMagic or Other Software Vendors, This Could Apply to YOU!

By Anthony F. Geraci

Have you taken a closer look lately at your deeds of trust lately? If you haven't, you may want to make sure you're complying with the terms of your deeds of trust in foreclosing on these properties. Not complying with them could be grounds for terminating the foreclosure or worse.

Giving Proper Notice Under a Fannie Mae Type TD

You may be wondering what this article is about. Quite simply, there are what I would label two different deeds of trust - true hard money/private money deeds of trust and those that follow the Fannie Mae/Freddie Mac line of deeds of trust. Hard money deeds of trust are streamlined for the private/hard money industry and ensure that the Borrower does not have a lot of "protectionism" found in the Fannie Mae type of TDs. In particular, you must be wary of the acceleration clause provision and read it closely. In particular, the clause is substantially similar to the below:

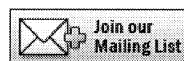
Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument . . . The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the

In This Issue

- [Fannie Mae Type TDs](#)
- [Colorado Dual Licenses Disclosures](#)
- [Geraci Law Firm's New Attorneys](#)
- [Solutions For You Services Offered](#)

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- [Register Now](#)
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default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

Is that language in your deed of trust / mortgage? If it is, you better be sending out a notice complying with the above if you are accelerating your notes, which I'm sure you are. If you are not, if you're basing your foreclosure on being able to accelerate the Note, you could be held liable for wrongful foreclosure.

Note that the language provides additional protections that are usually not completed by Notice of Defaults or other statutory provisions. You should draft an additional notice of acceleration to borrowers based on this contractual right.

Colorado Dual License Disclosure

Effective March 2, 2009, the Colorado Division of Real Estate requires use of their model form, the Dual Status Disclosure, if a licensed mortgage broker is also licensed as a real estate broker pursuant to 4 CCR 725-3, Rule 7-1-1. In accordance with Rule 7-1-1, the Disclosure also discloses whether the individual is also acting as a mortgage broker and real estate broker on the same transaction.

Geraci Law Firm's Newest Attorneys

Please welcome Gregory M. Lee, Amy A. Williams and Amy E. Martinez to the Geraci Law Firm team.

Gregory M. Lee is a 27 year trial attorney who is a Senior Associate with Geraci Law Firm. Mr. Lee focuses his practice on all aspects of civil litigation with a particular emphasis on real estate and banking litigation. Mr. Lee has tried over 85 cases and 11 before a jury to verdict. He received his Juris Doctorate from Harvard Law School in 1982 and received his Bachelor of Arts in Psychology from UCLA where he graduated *magna cum laude*.

Amy A. Williams is a trial attorney with Geraci Law Firm and leads its collections department. Mrs. Williams has completed over 100 trials before a judge regarding matters of civil litigation and collections. Mrs. Williams is an expert in collection judgments from borrowers and is a welcome addition to the team.

Amy E. Martinez is the newest member of Geraci Law Firm and is an associate handling real estate and securities transactions. Mrs. Martinez received her Juris Doctorate from Chapman University School of Law and graduated *summa cum laude*, 1st in her class. Prior to joining Geraci Law Firm, Mrs. Martinez previously practiced at a civil litigation and construction defect law firm.

We Are Committed To Giving You Solutions

Geraci Law Firm is committed to providing you with superior service and giving you solutions to your questions. Our practice areas are always on the cutting edge and find innovative new strategies to achieve your goals while mindful of your legal costs.

If you have any questions, please do not hesitate to call or email us at the above or below contact information.

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