

PUBLICATION

Real Estate & Finance News: Recent Updates

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Recent Updates

Notice of Foreclosure under the Uniform Commercial Code

The Tennessee Supreme Court has determined that reasonable notification does not require a creditor to verify actual receipt of the notice of a foreclosure sale under the Uniform Commercial Code, thus overturning a Tennessee Court of Appeals decision that we reported in our Spring 2007 newsletter, *Auto Credit of Nashville v. Melissa Wimmer* (Tenn. 2007). The court determined that notification sent via certified mail was reasonable even if the debtor never received the notification. To impose on the creditor the burden of verifying, in every instance, the actual receipt of notice would place an unreasonable burden on the creditor, thus making secured transactions unduly cumbersome.

Small Business and Work Opportunity Tax Act of 2007

Congress passed Public Law 110-28 which provides, among other items, Gulf Opportunity Zone extensions and other tax provisions. On the GO Zone-related provisions, the act extends the placed-in-service date requirement for GO Zone low-income housing tax credits to December 31, 2010, for properties in the GO Zone receiving an allocation of credits in 2006, 2007 or 2008. The Act allows loans for certain repair and reconstruction costs in the GO Zone to qualify under the rules for qualified mortgage bonds and GO Zone bonds, thus allowing homeowners to refinance their mortgages if their homes were substantially destroyed by the hurricane. Additionally the Act extends the increased Section 179 expensing amount and phaseout of specific areas of the GO Zone through 2008.

Foreclosures Under Deeds of Trust

A lender's failure to follow the strict provisions of a deed of trust on foreclosing property resulted in the foreclosure being set aside. Noting that the parties can vary the terms of foreclosure by a contract anywhere it varies statutory requirements, the terms generally supersede statutory requirements and such requirements are strictly enforced. In this case, the deed of trust contained a number of provisions not required under Tennessee law existing at that time. For example, before acceleration, there was a requirement that the lender give notice to the borrower of the default, stating the action needed to cure the default, a date not less than 30 days from the notice date by which the default must be cured, and detailing the consequences of failure to cure, which were the right to accelerate and foreclosure. If the lender foreclosed before the end of the 30-day period, a conveyance at the foreclosure sale would be invalid. *CitiFinancial Mortgage Company, Inc. v. Augustus Beasley, et al*, No. W2006-00386-COA-R3-CV (Tenn. Ct. App. WD 2007).

Creation of Public Road

A private road may become a public road by implied dedication. The road had been used by the public many years. Owner tried to "repossess" his property by placing sign posts with "no trespassing" signs and a wire across the road. After a vehicle hit a sign post, the County filed for injunction against the owner. The court found that there was evidence finding an implied dedication of the road given the fact that the road had been used by the public for more than 50 years and the county had demonstrated its acceptance of the dedication by making improvements to the road. *Hawkins v. Smith County*, 2004-CA-01117 (Miss. Ct. App. 2007).