

PUBLICATION

Louisiana Receivers In Foreclosure - "Keep-er Away From My Collateral!!" Part II

March 27, 2013

Previously we discussed (1) what a keeper is and (2) why you should designate a Keeper. This post examines (3) the benefits of a Keeper and (4) some risks relating to a Keeper.

What's the Benefit?

Preservation of your collateral. A Keeper appointed pursuant to Louisiana law has full power of management and administration of the property seized and may operate it in the ordinary course of business.

More importantly, they can pay you! Assuming the property is generating revenues, the Keeper will first satisfy all costs and expenses incurred in the administration/preservation of the property (including fulfilling any obligations the owner may have with respect to leases, etc.) and any remaining balance is applied to the debt secured by the security instrument. This may become important if, for some reason, your litigation becomes protracted (i.e., the borrower files for injunctive relief, etc.).

To the extent the Keeper's costs are not satisfied by the revenues of the property, those costs are taxed as part of the costs of the foreclosure proceeding. The Keeper's compensation, however, is only taxed as part of the costs of the proceeding if said compensation is provided for in the security agreement.

HELP! My Keeper's Gone Rogue!

If any party believes that some action beyond the ordinary course of business is necessary to preserve the property or that the Keeper is acting beyond (or failing to act within) the scope of its authority, that party can apply to the court "for instructions" as to the proper course that should be taken by the Keeper. See La. R.S. 9:5140. The Court will then issue an Order directing the Keeper as to the appropriate action it should take.

One benefit of seeking such instruction is that the Keeper, when acting pursuant to an Order of the Court, is granted immunity from certain claims.

Conclusion

These posts, of course, only briefly highlight of some of the key points from Louisiana's Keeper laws. Should you have more specific questions, please do not hesitate to contact us.