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When is a Receivership Sale of Real Estate a Reasonable Alternative to Foreclosure?

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Foreclosure is usually the remedy of choice used by secured creditors to monetize their real estate collateral; however, there are situations where a sale of real estate through receivership could be an attractive alternative to foreclosure.

Where circumstances have given cause for appointment of a receiver to operate, manage, and stabilize property in the short term, the option of a receiver sale should be considered, especially where title to the property does not need to be cleansed of junior encumbrances through the foreclosure process.

In states with a lengthy judicial foreclosure process, a receiver's sale can result in a much more timely disposition by avoiding the usual baked-in litigation delays of initial answer time and procedural timelines applicable to motions for default and/or summary judgment. In judicial foreclosure states where the sale is conducted by statute only through the local sheriff or appointed commissioner, a receiver's sale can put conduct of the sale in the hands of a real estate professional who can employ a market program and design a sale process which is more likely to lead to better commercial results.

Even in states which enjoy a fairly expeditious non-judicial foreclosure process allowing for a quick sale, the receiver's sale can prove the best means of ultimate disposition of the property where the creditor wishes to avoid taking the property in as real estate owned. This factor can be particularly compelling for banks wishing to mitigate the risk of holding an operating property such as a hospitality property or one which presents potential environmental issues such as an industrial property.

In multijurisdictional portfolio cases where a federal receivership action has been filed as to properties in different states, a receivership sale under the federal statute can be considered to avoid disposition of properties on different timelines due to various applicable foreclosure laws in each state. In non-judicial foreclosure states where the creditor or its servicer is prepared to take the collateral in as real estate owned, foreclosure is likely the quickest and simplest route. Where other factors are at play, receivership sales are worthy of consideration.