



Wednesday, September 18, 2024

RE: Offers by 2nd Mortgagees to 1st Mortgagees

Attention All Secured Lenders holding First Mortgages,

I understand that several 2nd mortgagees have approached 1st mortgagees with various offers concerning their mortgages. There is nothing inappropriate or “shady” in this happening, however, 1st mortgagees need to consider the economic risks carefully before accepting any offer made by a 2nd mortgagee.

If you hold a 1st mortgage then you have until September 20, 2024 to make a credit bid for the mortgaged property. After you submit your credit bid on September 20, if there is a 2nd mortgage on that property then that 2nd mortgagee has until September 30, to submit their own credit bid, BUT the 2nd mortgagee would have to pay out the 1st mortgagee’s indebtedness in full, which means your principal and all accrued interest and fees would be paid.

In my opinion, any 1st that submits their own credit bid by September 20, but then has a 2nd do a successful credit bid on that property should



probably be very happy and relieved ! However, if the 2nd does not close this credit bid on the closing date, likely in November, then the 1st would still have the opportunity to complete their original credit bid.

A 2nd mortgagee and a 1st mortgagee can also arrive at a private bargain regarding a property. However, we strongly caution any 1st mortgagee to consider that any written promise from a 2nd mortgagee may not ultimately happen! Anybody can promise something in writing, which may be legally binding, but if they cannot close on this promise then you are only left with a piece of paper and the legal remedy to “sue them”. In the real world, a written promise and the right to sue does not amount to a lot of value.

Please seek legal advice before agreeing to any arrangement in respect of your mortgaged property if it means that you will not proceed with your credit bid before September 20, 2024.

My general advice to any 1st mortgagee in discussions with a 2nd: only consider what the 2nd mortgagee has to say if they will be making you a significant non-refundable deposit before September 19, 2024.

For example, if the principal of your 1st mortgage is \$200,000 on a property



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you believe could sell today for \$175,000 then I would want at the very least \$50,000 in cash non-refundable by September 19 before even discussing the rest of the 2nd's offer AND that offer must be in the form of a legally binding written contract that I could have a lawyer review. Even if you were to be offered this kind of cash payment, the rest of the bargain must be considered quite carefully as it would cause you to forgo your right to make a credit bid now.

Yours very truly,

Geoff S. Rabideau