Claims Chat

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Right of Appeal

Is it safe to insure title coming through a judicial proceeding such as a bankruptcy sale or a mortgage foreclosure sale immediately after the sale--or should we wait until the time has expired for a party to the case to appeal? If you think the answer is "we can insure immediately," consider the recent Florida appellate court decision entitled *Blue Star Investments Inc. v. Johnson* decided December 5, 2001, and cited as *2001 Fla. App. Lexis 17143*.

There, eleven days after the foreclosure sale, the mortgagor moved to have the sale set aside on the grounds of the inadequacy of the sale price. The bid at the sale was $41,459.10; and the appraised value was $60,000.00

The Court refused to set the sale aside citing several other cases which upheld foreclosure sales where the amount bid was also between 65 and 75% of value. It also cited a case where the sale was set aside because the sale price of $150.00 was "gross inadequate" when compared to a value of over $34,000.00.

If title had been insured before the challenge was made, the title insurer would have had to pay the costs of defense in the lower and in the appellate courts.

So the **RULE** to follow is that where we are asked to insure title during or just after the completion of a judicial proceedings in or by which title is transferred, review the file with underwriting before the title commitment is issued so the issues can be evaluated and proper requirements or exceptions be taken. If the commitment must be issued before this can be done, raise the following requirement in Schedule B Section 1:

> This commitment is subject to such further exceptions and/or requirements as may be necessary upon review of the judicial proceedings in Case _____ by the underwriting department of the Company.

You may say, "Well, that was just a rare occurrence. Challenges in court cases just do not happen once the case has proceeded to judgment." Wrong, there are many such appeals that are filed. Most are filed within a prescribed time set by statute or rule.

Another recent example occurred in September of this year when the Florida Supreme Court decided an appeal in the case of *Shurman v. Atlantic Mortgage*, cited at *795 So. 2d 952*. In a mortgage foreclosure case, Mr. Shurman was not served personally, but rather by having the papers served on his wife at their home. A default was entered against him in May of 1998 and the property was sold at foreclosure sale on June 25, 1998. On January 11, 1999, Mr. Shurman filed a motion to set aside the foreclosure sale claiming that the service on him was void because he was in prison at that time.

We were not told in the case whether the lender or its counsel knew that Mr. Shurman was in prison at that time. The point to be made here is that this case tells us of another challenge to a foreclosure judgment and sale.

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