



DEFENSIVE AND OFFENSIVE STRATEGIES VS. ASSET FORECLOSURES

CGBP WEBINAR on Friday, May 20, 2022 * 1:30pm - 4:45pm via ZOOM

Course Outline

I. REMEDIES OF THE DEBTOR-MORTGAGOR

(A) Administrative Remedies Against Foreclosures

- a. File an Opposition or Objection to the Petition for Extra-Judicial Foreclosure
- b. File a Petition for Certiorari and Prohibition under Rule 65
- c. What to do if the Executive Judge denies the Opposition and gives due course to the Petition for Foreclosure
- d. Remedy after the Auction Sale

(B) 7 Non-Judicial Remedies of Debtors

(C) Judicial Remedies to Fight Asset Foreclosures: 3 Pre-emptive Strikes of Debtors

(D) Grounds Against Foreclosures

- a. 14 Substantive Grounds
- b. 4 Procedural Grounds

II. 6 REMEDIES OF DEBTOR AGGRIEVED BY FORECLOSURE UNDER ACT NO. 3135

III. 4 REMEDIES AGAINST PETITION FOR EX-PARTE ISSUANCE OF A WRIT OF POSSESSION

IV. IN ANTICIPATION OF A NEW SPECIAL PURPOSE VEHICLE LAW*

- SPV Law based on RA 9182 (SPV Act of 2002)
- SPV amended by RA 9343 July 25, 2005

RIGHTS OF THE DEBTORS WHOSE DEBTS ARE SOLD OR ASSIGNED TO A SPECIAL PURPOSE VEHICLE CORPORATION

1. Mandatory Opportunity to negotiate for the restructuring or amicable settlement for not more than 90 days before the sale of non-performing loans.
2. The transfer price and the issues of: --Unjust enrichment; Barratry.

3. The extra-ordinary fiduciary duty of the assigning bank towards the borrower under the New General Banking Act and Special Purpose Vehicle Law.
4. The equitable right of redemption of the Borrower under Article 1634 of the New Civil Code
5. The mandatory requirement of the Truth and Lending Act for a Disclosure Statement in case of Assignment of Credit. (a) Significance of the coverage of assignment of credit under the law (b) Penal Sanction for non-compliance
6. Substantive and procedural legal requirements to perfect the assignment. Is mere notice to the debtor sufficient?
7. Distinction between assignment under the New Civil Code and negotiation under the Negotiable Instruments Law of Deposit Substitutes in the Secondary Market

NOTE: IN A PRESS RELEASE OF THE BANGKO SENTRAL NG PILIPINAS AS OF MAY 21, 2020, BSP Governor Benjamin Diokno stated that the Monetary Authorities are pushing for the enactment of the Financial Institutions Strategic Transfer (FIST) law to help banks facing difficulties amid the coronavirus disease 2019 (Covid-19) global pandemic. Diokno said the proposed law will be an enhancement to the Special Purpose Vehicle (SPV) Act of 2002, which gave exemptions on fee privileges to SPVs that invest in non-performing assets of the banks.

Under the proposal, Diokno said financial institutions may sell their non-performing assets (NPAs) to FIST corporations, which will be created as asset management corporations (AMCs) that will provided incentives to the financial institutions. He said this system will allow FIs to clear up their NPAs and have the additional funds to lend to their clients.

V. CORPORATE SUSPENSION OF PAYMENTS AND REHABILITATION

- A. Automatic stay of all proceedings
- B. "Equality in Equity" between secured and unsecured creditors
- C. Ordinary and Extra-ordinary suspension of payments
- D. Periods of stay or suspension of actions
- E. Cramdown
- F. Termination and lifting of suspension order

VI. REMEDIES OF THE BANKS

Note: CGBP also offers consulting service to those who may urgently need advice and assistance to those with foreclosure issues.

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