

## The Completion and Sale of For-Sale Housing Projects in Receivership

### I. Benefits of Using a Receiver to Complete and Sell Housing

- **Benefits of Using a Receiver**
  - Four Months to Foreclose
  - Receiver Insulates Lender from Risk of Converting from Lender to Partner
  - Allows Property and Project Information To Be Compiled and Evaluated
  - Allows Management of Mechanics Lien Claims
  
- **Allows Receiver to Identify, Protect, Maintain Property & Other Collateral**
  - Locate and Secure Offsite Equipment and Materials
  - Complete and Maintain Erosion Control and Drainage Improvements
  - Protect the Property from Vandalism and Unauthorized Occupants
  - Prevents Dismantling and Destruction of Building
    - Theft of Copper Wiring, Steel, Appliances, Etc.
    - Unprotected Vacant Buildings Self Destruct
  
- **Receiver Can Provide Protection from Pre-Foreclosure Claims**
  - Pre-Receivership Project Costs
  - Long-Term Construction Defects Claims (SB800)
  - Potential Environmental Liability

## **The Completion and Sale of Housing Projects in Receivership (Continued)**

### **II. What the Receiver Can Do**

- **Receiver Controls the Property Subject to the Receivership Order**
  - Borrower Remains Fee Owner
  - Receiver May Be Appointed for Property and/or the Borrowing Entity
  - Recommended Authorities Within Order
  
- **Receiver Powers And Responsibilities – The Receivership Order**
  - Protect and Operate
  - Maintain & Obtain Insurance
  - Borrow Funds (Receiver’s Certificates)
  - Due Diligence - Gather Project Documentation and Permits
  - Take Possession of Property and Borrower Bank Accounts
  - Take Control of Bonds and Deposits
  - Complete and Preserve Entitlements
  - Complete and Record Tract Maps
  - Prepare Cost to Complete and Budget and Sales Proceeds Projections
  - Complete Construction
  - Correct Substandard Construction
  - Obtain Certificates of Occupancy
  - Clear Liens
  - Resolve Easement Issues
  - Lease and Sell – Wholesale or Retail
  - Initiate and Defend Law Suits
  - Resolve Buyer / Homeowner’s Construction Issues
  - Control of HOA and Other Associations
  
- **Receivership Funding**
  - Cash From the Property – Usually No Cash Flow on For-Sale Housing
  - Cash Borrowed From the Lender – Need Receiver’s Certificate
  - Cash Borrowed From a Third-Party Lender – How Does It Get Repaid?
    - Super Priority Lien
    - Lease and Sale of Property
      - Bulk sale vs. Retail Sale

## **The Completion and Sale of Housing Projects in Receivership (Continued)**

### **III. Insurance**

- **Comprehensive Insurance Review**
  - Review By Experienced Agent or Broker
  - Obtain and Review Complete Policies
  - Obtain Certificates of Insurance and Endorsements
    - Receiver
    - Lender's Loss Payable
    - Other Additional Insured's
  
- **Property & Liability Insurance**
  - Developer's Property
    - Before Sale of First Unit
    - After Sale of First Unit
  - HOA Common Area Property
    - Directors and Officers Insurance
    - Copy of the CC&R's
  - Homeowner's Property and Contents
  - Worker's Comp
  
- **Builders Risk / Course of Construction / WRAP Insurance**
  - Maintaining Existing Policy
    - Stand Alone Policy v. Master Developer Policy
    - Owner v. Contractor Sponsored Insurance Program (OSIP v. CSIP)
    - Conversion to Vacant Building Policy When Construction Stops
  - Obtaining New Builder's Risk / WRAP Policy
    - Construction Start Date Scheduled
    - Contractor Selected
    - Ten Year Tail Coverage
    - Nose Coverage

## **The Completion and Sale of Housing Projects in Receivership (Continued)**

### **IV. Subdivision Issues**

- **Long Term Construction Defects (SB800 Liability)**
  - Ten Year Liability for Construction Defects
    - Owner / Contractor(s) / Receiver
  
- **Status of Tract Map Approvals & Recordation of Final Tract Map**
  - Extend Tentative Map / Recent State Extension
  - Clearing Conditions of Approval to Record Final Map
  - Costs of Map Recordation
  - Receiver's Authority to Sign Final Map for Fee Owner
  - Importance of Conditions of Approval of Final Map
  
- **Standard Subdivision v. Common Interest Subdivisions**
  - DRE Reports and Amendments
  - DRE Homeowner's Association Issues
  
- **Extension / Recordation of Tentative Tract Map**
  - Tentative Map Extension / Recent State Extension
  - Requirement for Clean Title Report
    - Lender Indemnity for Title Company
    - Notice of Substantial Completion
  - Receiver's Authority to Sign Final Map for Fee Owner
  - Clearance for Recordation by City / County
  - Costs to Record Tract Map
  
- **DRE (California Department of Real Estate) Pre Approvals to Sell**
  - DRE Application
  - Pink / Yellow / White Report
    - CC&R's and Bylaws / Developer Bonds
    - HOA Budget – General Maintenance / Reserves
    - Form of Purchase Contract and Escrow Instructions
    - Sales Disclosures
    - Phasing

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**IV. Subdivision Issues (Continued)**

- **Receiver’s Maintenance and Repair Obligations**
  - Units vs. Common Areas
  
- **HOA (Homeowner’s Association) Management**
  - Payment of Dues Upon First Unit Sale
  - Selection / Replacement of HOA Manager
  - Holding First Meeting of Homeowners
  - Election of Officers and Directors
  - Reconciliation of HOA Dues Payments and Delinquencies

**V. Marketing & Sales (Title & Escrow)**

- **Receiver May Insulate Lender from Construction Defects Liability**
  
- **Burden of Paying Existing Liens and Other Contractual Costs to Clear Title**
  
- **Market Analysis**
  - National, Regional and Local
  - Consumer Lending Market
  - Unit By Unit Analysis
  
- **Disposition Alternatives**
  - Wholesale/Bulk Project Sale:
    - As-Is vs. Completed Project
    - Cost of Resolving Entitlement / Contractual Issues
  
  - Retail Sale as Condos - Managing the Team
    - Auction vs. Conventional Brokerage
    - Lender Pre-Approval Requirements
      - Convention Lender & FHA / VA
    - Pre-Sale Hurdle Requirements By Mortgage Lenders
    - Preferred Lender vs. Outside Lender
    - Conformance with Affordable Housing Set Aside Covenants
    - Sales Disclosures
    - Receivership Disclosures in Purchase Contract
    - Requirement for Clear Title / Title Company Indemnity

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- **Disposition Alternatives (Continued)**
  - Retail Sale as Condos - Managing the Team (Continued)
    - Form of Conveyance Deed
    - Post Closing Mechanics Liens
    - HOA Management
    - Customer Service / Warranty Administration Issues
  - Complete, Rent & Sell as Apartment Project (with Condo Map)
    - Value vs. Lower Cost of Completion and Sale
    - Sell as Leased Apartment Investment
    - Ease of Execution – Lower Marketing Costs
    - Apartment Leasing
    - May Eliminate Need For WRAP Insurance
    - Ellis Act Issues - Demolition and New Construction v. Conversion
    - Subsequent Conversion to Condominiums