

## **DISTRESSED DEVELOPMENT FORECLOSURE CHECKLIST**

DEVELOPER: \_\_\_\_\_

DEVELOPMENT: \_\_\_\_\_

LENDER: \_\_\_\_\_

PROPOSED PURCHASER: \_\_\_\_\_

### **LENDER'S FILE DOCUMENTATION RELATED TO DEVELOPMENT**

- Deed of Trust
- Loan Agreement
- Reviews, Approvals, Consents to any development issues
- Assignments of developer's rights & interests

### **DEVELOPER**

- Good standing with Secretary of State?
- Available? Cooperative?
- Bankruptcy? Receivership? Foreclosure?

### **TITLE EXAMINATION: PROPERTY ORIGINALLY SECURED (and CURRENT STATUS)**

- Legal description
  - Additions
  - Releases
  - COMPARE: Out conveyances
  - Are all properties included in one deed of trust, being foreclosed?
  - Are there tracts not encumbered by the deed of trust being foreclosed?
  - Are there multiple lenders?
- Owner(s) of remaining unreleased tracts

### **TITLE EXAMINATION: DEVELOPMENT DOCUMENTATION AND PRIORITY**

- Declarations of Covenants, Conditions and Restrictions
  - Declarant? Current developer?
  - Property covered / encumbered
  - Annexation rights (discretionary)?
  - Approval of building plans – Developer? ARC?
  - Easements, setbacks or other construction requirements?
  - HOA dues (*see* Association below)?
  - Rights of first refusal, options or purchaser approval provisions?
  - Transfer fee covenants?
  - Other significant provisions which might affect purchaser?
  - Retained special declarant rights & development rights
    - Itemize &/or describe significant or unusual provisions
    - Duration
    - Transfer(s) recorded?
  - Consents from lender?

- Amendments or Waivers -- itemize
  - Property added?
  - Lender Consents?
  - Vote required?

- Plats
  - Property already impliedly dedicated?
  - Access – public or private? current lots? Over prior phases? Future lots?
  - Annexation rights - “future development” areas?
  - Annexation obligations?
  - Comply with statutes?
  - Consents from lender?
  - Common elements
    - Indicate specified uses (clubhouse, golf course, access, beach, lake, etc.)
    - “TO BE BUILT” or “MAY BE BUILT”

#### COMMON ELEMENTS

- Shown on plats
- Described adequately in Declarations
- Conveyed from developer to HOA? All or which specified tracts/phases?
- Released from deeds of trust
- Mechanics’ liens – construction status?

#### ASSOCIATION(S) (for each relevant association)

- Corporate / entity name? Good standing?
- Articles, Declarations, Bylaws – consistent?
- Elected board? Actively serving? Officers? Directors?
- First budget adopted?
- Records maintained, status?
- Financials – sufficient to pay bills? Reserves?
- HOA dues status – developer? Others?

#### TITLE EXAMINATION: OTHER EASEMENTS, LIENS & ENCUMBRANCES

- Property Taxes & Assessments
  - Segregated?
  - Common areas?
  - Deferred Builder taxes or discoveries for unreported improvements?
  - Special assessments, such as utility infrastructure or tap-on fees?
- Utility or other easements
  - Needed for / Benefit to development?
  - Consents from or subordinations by Lender?
  - Specific & appropriate to the Development?
  - Violations or encroachments known?
- Mortgages

- Assignments of any developer / development interests?
- Mechanics' liens (filed or potential)
- Judgments
- Access – roads:
  - Public / completed so accepted for dedication?
  - Private?
  - Over prior phases? Rights reserved?
  - “Paper” streets that need to be extinguished?
- Undeveloped areas, subject to potential annexation rights?
- Leases?
- UCC's?
- Other liens or encumbrances?

#### NON-RECORD MATTERS

- Parties in possession
- Recent construction (such as architect services, surveying, grading/paving, utilities)
- Equipment or temporary construction buildings or materials on site
- Survey – inc. cemeteries, compliance with restrictions and plats of any construction, road widenings or location or improvements and easements, acreage, “as built” certification for condominium plats

#### NON-TITLE MATTERS: REGULATORY, DEVELOPMENT ISSUES

- Utilities access, in place (necessary reserved easements above), incl. water, sewer/septic, electric, gas, telephone, cable
- Permits
- Plans and specifications (assignable? Assigned in loan docs?)
- Status of construction of
  - Roads
  - Proposed common area improvements
  - Lots/units to be foreclosed
- Zoning / subdivision approvals
- Environmental issues – wetlands, dumpsites, asbestos, wetlands, stormwater drainage, riparian
- Inspections on improvements in place or for contemplated improvements (soil suitability, termite, building inspection)