

Just What Is Commercial Foreclosure Law

Article by: John Waller

The cast of characters. Everyone knows what a bank is. Most of us understand what a lender is – an institution from whom money is borrowed. Adding the word “commercial” to describe a lender simply means that the financial entity deals with businesses as opposed to individuals. Black’s Law Dictionary defines “commercial loans” as: “loans made to businesses as distinguished from personal-consumer credit loans.” Although a lender could make both commercial and consumer loans, this blog is dedicated primarily to commercial matters.

The field of law. To me, commercial foreclosure law refers to the rules and procedures applicable when a business defaults on a loan secured by some kind of collateral. So, if you work for an institution that loaned money to a business, and if the borrower defaulted under the terms of the loan agreement, then commercial foreclosure law provides the judicial framework for the protection of your rights. Typically, those rights involve the ability to collect money owed by the borrower through the sale of the loan collateral.

Collateral. Black’s states that collateral is property pledged as security for the satisfaction of a debt. If a business defaults on a loan, the lender can initiate a foreclosure action to compel the sale of the loan collateral and therefore collect the amounts owed by the borrower through proceeds from the sale. There are all kinds of business-related collateral. Perhaps the most recognizable is real estate – the land a business owns. Some of the most interesting cases, however, deal with personal property collateral, which can be any property imaginable that is owned by a business – a fleet of cars, office furniture or intangibles such as accounts receivable.

Lien. A lien is a description of an encumbrance on property: “a claim . . . on property for payment of some debt.” Black’s. In the context of my blog, a lien arises by written contract between a lender and a borrower – either a real estate mortgage agreement or a personal property security agreement. The lien granted by a borrower to a lender gives a lender the right to foreclose upon the subject property (collateral) for payment of the debt in the event of a default.

Commercial foreclosure. Turning again to Black’s, a foreclosure is defined, in part, as the “enforcement of a lien . . . or mortgage . . .” Paraphrasing Black’s, foreclosure is the legal process by which real or personal property subject to a lien is sold in satisfaction of a debt. To foreclose means to terminate a borrower’s rights in the subject property. A foreclosure that is commercial merely refers to the termination of a business borrower’s rights in its property.

A form of collection. Commercial foreclosure law is a special kind of collection law. It’s a body of rules governing how banks and financial institutions recover money by asserting rights in, and selling, collateral that a business granted to secure the loan. It’s the set of legal principles applicable to a lender needing to collect money owed by a business, which failed to make its loan payments or otherwise defaulted under the terms of the loan documents. If any of these matters are relevant to what you do for a living, I welcome your visits to my blog and hope that you will e-mail me with your questions or comments. John D. Waller is a partner at the Indianapolis law firm of Wooden & McLaughlin LLP (www.woodmclaw.com). He publishes the blog *Indiana Commercial Foreclosure Law* at commercialforeclosureblog.typepad.com. John’s phone number is 317-639-6151, and his e-mail address is jwaller@woodmclaw.com.