A woman borrowed money from a bank in order to build a new barn on her 20-acre farm. The loan was secured by a 10-year mortgage on the farm. The mortgage contained an acceleration clause. After three years, the woman defaulted on the loan. The bank sent a certified letter to the woman notifying her of its intention to accelerate the loan unless she cured the default within 75 days.

The woman was unable to make the required payment by the 75-day deadline to cure the default. As a result, the bank accelerated the loan and initiated foreclosure proceedings against the woman. The day after being served with a summons and complaint, the woman informed the bank that she was able to make the two outstanding mortgage payments, including late fees and interest. The woman then filed a motion to dismiss the foreclosure proceedings.

Should the motion to dismiss be granted?

A. No, because the bank initiated the foreclosure, which terminated the woman's right to redemption.

B. No, because the woman does not have enough money to force the bank to accept her payment.

C. Yes, because the bank is clogging the equity of redemption by failing to accept her payment.

D. Yes, because the woman has properly exercised the statutory right of redemption.

Explanation:

Common mortgage provisions

Acceleration clause	Allows creditor to demand entire loan due & payable if debtor defaults
Due-on-sale clause	Allows creditor to demand entire loan due & payable if debtor sells mortgaged property without permission
Due-on-encumbrance clause	Allows creditor to accelerate mortgage obligation if debtor obtains second mortgage or otherwise encumbers property
Defeasance clause	Requires creditor to give debtor legal title to property & release mortgage lien once all payments are made

Mortgage documents often contain an **acceleration clause**, which allows the lender to demand **full payment** of the **remaining mortgage debt** plus any **accrued interest** if the debtor (mortgagor) defaults on the mortgage loan. If the debtor is unable to pay, then the lender can move forward with foreclosure proceedings to recover any remaining debt.

However, the **doctrine of equitable redemption** gives the debtor an opportunity to retain the property and **avoid foreclosure** by paying the amount of the **loan obligation** currently owed at any time ***prior to*** **the foreclosure sale**. If the mortgage documents contain an acceleration clause, then the debtor must pay the full amount of the unpaid loan plus interest to redeem the property.

Here, the woman was unable to cure her default by the bank's 75-day deadline, so the bank initiated foreclosure proceedings. Although the woman was able to make the two outstanding mortgage payments plus late fees and interest, the acceleration clause required that she pay the *full amount* of the unpaid loan plus interest to redeem the property. Since the woman does not have enough money to do so, her motion to dismiss the foreclosure proceedings should be denied.

(Choice A) The foreclosure sale—not the initiation of the foreclosure proceedings—terminated the equitable right of redemption.

(Choice C) The principle of clogging the equity of redemption refers to a lender's attempt to deny the debtor the right to redemption after the mortgage is executed—eg, by including a waiver clause in the mortgage. Since no waiver occurred here, this principle does not apply.

(Choice D) Many states recognize a statutory right of redemption that allows a debtor to reclaim the property *after* a foreclosure sale—not *before* the sale, as the woman seeks to do here.

Educational objective:

An acceleration clause allows the lender to demand full payment of the remaining mortgage debt plus any accrued interest if the debtor defaults on the mortgage loan. If the debtor is unable to pay, then the lender can move forward with foreclosure proceedings.