A buyer purchased a commercial building and financed the purchase by executing both a negotiable promissory note and a mortgage to the bank to secure repayment of the loan. The mortgage was promptly recorded.

Six months later, the bank assigned only the promissory note to an investor. The assignment made no express reference to the mortgage and was not recorded in the public land records. The bank immediately sent the buyer a notice of the assignment, which provided the address of the investor and explained that the bank was no longer servicing the loan.

The buyer made timely payments to the investor for two years but then defaulted on the loan. After the buyer failed to cure the default, the investor accelerated the debt and commenced a foreclosure action.

The buyer's defense in the foreclosure action is that the investor is not the mortgagee and therefore has no right to foreclose.

Does the investor have the right to foreclose?

A. No, because the mortgage did not automatically accompany the assignment of the note to the investor. (15%)
B. No, because the mortgage was extinguished when the bank assigned and transferred only the note to the investor. (2%)
C. Yes, because the investor became the owner of both the note and the mortgage by virtue of the assignment of the note to him. (79%)
D. Yes, because the public land records continue to show the investor's predecessor in title as the mortgagee. (2%)

Incorrect

Correct answer C

79%Answered correctly

02 mins, 43 secsTime Spent

2023Version

Explanation:

Transfer of promissory note & mortgage

Transfer of both documents	*Both* documents are transferred unless:
Transfer of note without mortgage	expressly prohibited in note/mortgage forbidden by statute or public policy *or* increases mortgagor's duties, burdens, risks
Transfer of mortgage without note*	Transfer is void

*Jurisdictions are split as to effect of transfer.

To finance the purchase of real property, a borrower typically executes two documents that serve as evidence of the debt:

Promissory note – a formal "IOU" that sets forth the terms of the loan. It is the primary evidence of the debt and is not recorded in the deed records.

Mortgage – a lien that secures the loan by attaching the debt to a real-property interest and providing a means of enforcement (eg, foreclosure). It is recorded in the deed records to provide notice of an outstanding debt attached to the real property.

A **promissory note** can be **assigned to another** (an assignee) independent of the mortgage. And unless the parties agree otherwise, the **mortgage automatically transfers** with the note once the note has been properly assigned. This means that the investor became the owner of both the promissory note and the mortgage when the bank assigned the note to him **(Choice A)**. Therefore, the investor has the right to foreclose.

(Choice B) A mortgage is not extinguished by a transfer of the promissory note. Instead, it automatically transfers with the assigned note.

(Choice D) Transfers of a mortgage need not be recorded in public land records to be valid in a dispute between the mortgagor (the buyer) and the holder of the note (the investor). Therefore, the fact that the public land records continue to show the investor's predecessor in title (the bank) as the mortgagee is irrelevant.

Educational objective:

A promissory note can be assigned to another independent of the mortgage. And unless the parties agree otherwise, the mortgage automatically transfers with the note once the note has been properly assigned.

References

Restatement (Third) of Property: Mortgages § 5.4 (Am. Law Inst. 1997) (discussing transfer of mortgages).