An owner acquired an apartment building and financed part of the purchase with a mortgage loan. The promissory note contained a clause that permitted the lender to accelerate the outstanding loan balance if the owner defaulted on the terms of the loan unless the owner cured the default within 10 days of a notice of default. The mortgage required the owner to make loan payments, maintain casualty insurance, and pay property taxes.

The owner made the loan payments when due but neglected to pay an insurance premium. When the lender learned that the owner was not maintaining the insurance, the lender notified the owner that the loan was in default and that it planned to accelerate the loan unless the lender received notification within 10 days that the premium had been paid. The owner failed to pay the premium within that time period, and the insurer notified both the owner and the lender that it was canceling the coverage.

In order to protect itself from a potential loss, the lender had the insurance policy reinstated by paying the delinquent premium. The owner then promptly tendered the amount of the delinquent insurance premium payment to the lender, but the lender refused to accept it.

The lender accelerated the loan, and after the owner failed to pay the accelerated amount, the lender initiated a foreclosure action. At the time of the acceleration, the owner was current on all loan payments.

There is no applicable statute.

Did the lender have the right to accelerate?

A. No, because the owner promptly tendered the delinquent payment amount to the lender.
B. No, because the owner's casualty insurance policy had been reinstated.
C. Yes, because acceleration is required before a foreclosure action can be initiated.
D. Yes, because the lapse in insurance coverage constituted a material default of the terms of the mortgage.

Incorrect

Correct answer D

Collecting Statistics

06 mins, 51 secsTime Spent

2023Version

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 are used to convey the mortgagee (eg, lender) an interest in real property to secure a debt. These documents may contain an **acceleration clause**, which allows the mortgagee to **demand full payment** of the **mortgage debt plus** any **accrued interest** if the mortgagor (eg, owner) **defaults** or fails to **satisfy other conditions** in the mortgage.

Here, the mortgage required the owner to maintain casualty insurance, which the owner neglected to do. Therefore, the lender had the right to accelerate the mortgage loan.

(Choices A & B) A debtor can avoid the consequences of acceleration only by paying the *entire* accelerated amount. Therefore, the owner's tender of the amount of the delinquent insurance premium payment to the lender and reinstatement of the casualty insurance policy did not eliminate the lender's right to accelerate.

(Choice C) A mortgagee may bring a foreclosure action whenever the mortgagor breaches a mortgage term, and the mortgagee is generally entitled to collect only the amount of the obligation currently due and owing. An acceleration clause allows a lender to demand *full* payment of the mortgage debt plus any accrued interest, but acceleration is not required before a foreclosure action can be initiated.

Educational objective:

An acceleration clause allows a mortgagee to demand full payment of the mortgage debt plus any accrued interest if the mortgagor defaults or fails to satisfy other conditions in the mortgage (eg, maintaining casualty insurance).