

A man purchased two warehouses on the same parcel of land and financed the purchase with a mortgage loan from a bank. Among other terms, the mortgage required the man to make all monthly payments of principal and interest on time, to pay all property taxes and assessments when due, to keep the property insured, and to not damage or impair the property or commit waste on the property. The man used the warehouses to store inventory for his business.

A few years later, the man changed the nature of his business. His business plan indicated that he would need only one of the two warehouses and that the warehouse to be used would need renovation. The man renovated one of the warehouses and tore the other one down and did not replace it.

When the bank learned of the man's actions, it accelerated the note and sent the man a letter containing a notice of default and intention to commence foreclosure proceedings. At the time the letter was sent, the man was current on his monthly mortgage payments and property insurance premiums.

After the man failed to pay the accelerated amount, the bank filed a foreclosure action. In that action, the man defended by offering into evidence an appraisal showing that the then-current value of the property was more than the balance due on the mortgage and more than the value of the property before the man renovated the one warehouse and tore down the other.

Which party is likely to prevail?

- A. The bank, because a default will be implied by the court under these facts.
- B. The bank, because the man violated the terms of the mortgage.
- C. The man, because he is current on his mortgage payments and property insurance premiums.
- D. The man, because the bank's collateral has not been impaired and in fact has been enhanced.

Correct

Collecting Statistics

01 min, 37 secsTime Spent

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Explanation:

An **acceleration clause** is a provision in a mortgage that allows the mortgagee to declare the entire amount of the mortgage debt due and payable **if the mortgagor breaches** the terms of the mortgage. Such clauses are valid and enforceable. Although acceleration clauses are typically triggered by **nonpayment of the mortgage**, they can also be triggered by violations of additional terms imposing specific obligations on the mortgagor, including the obligation to:

pay all property taxes and assessments when due

keep the property insured *and*

not damage or impair the property or **commit waste on the property**.

Acceleration and foreclosure based on waste typically occurs only if the value of the property is reduced (ie, the mortgagee's security is impaired) due to the waste. However, the mortgagor's **violation of specific mortgage terms that prohibit destruction of property** may also lead to acceleration and foreclosure based on waste even if the destruction increases the property value.

Here, the man is current on his mortgage payments and property insurance premiums as required by the mortgage **(Choice C)**. However, the mortgage also required that the man not commit waste. The man violated this term by tearing down one of the warehouses on the property without the bank's consent. As a result, the bank could properly accelerate the note, even though the man's actions enhanced the bank's collateral **(Choice D)**. Therefore, the bank is likely to prevail.

(Choice A) The court will not imply a default under these facts because the default resulted from the man's violation of an *express* mortgage obligation (ie, to not commit waste).

Educational objective:

Acceleration clauses can be triggered by nonpayment of the mortgage debt or by violation of other terms in the mortgage (eg, breach of obligation not to commit waste).

References

Restatement (Third) of Property (Mortgages) § 8.1 (1997) (defining and discussing an acceleration clause in a mortgage)

Restatement (Third) of Property (Mortgages) § 4.6 (1997) (discussing the doctrine of waste in the context of the mortgagor-mortgagee relationship)

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