

A franchisee owned a hotel, subject to a mortgage securing a debt that the franchisee owed to a bank. The franchisee later acquired a nearby parking garage, financing a part of the purchase price by a loan from a credit union, secured by a mortgage on the parking garage. Two years thereafter, the franchisee defaulted on the loan owed to the bank, which caused the full amount of that loan to become immediately due and payable. The bank decided not to foreclose the mortgage on the franchisee's hotel at that time but instead brought an action, appropriate under the laws of the jurisdiction and authorized by the mortgage loan documents, for the full amount of the defaulted loan. The bank obtained and properly filed a judgment for that amount.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments.

The bank later brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The credit union was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed, and the confirmed foreclosure sales resulted as follows:

The bank purchased the hotel for \$100,000 less than its mortgage balance.

The bank purchased the parking garage for an amount that is \$200,000 in excess of the credit union's mortgage balance.

How should the \$200,000 surplus arising from the bid paid by the bank for the parking garage be paid?

- A. \$100,000 to the bank and \$100,000 to the credit union.
- B. \$100,000 to the bank and \$100,000 to the franchisee.
- C. \$100,000 to the credit union and \$100,000 to the franchisee.
- D. \$200,000 to the franchisee.

Explanation:

Proceeds from a **foreclosure sale** are typically **distributed** in the following **order of priority**:

Expenses from the sale (eg, attorneys' fees, court costs)

Mortgage being foreclosed

Junior liens, in order of [lien priority](#)

Debtor, if any surplus remains

Here, the credit union had the senior lien on the parking garage since its mortgage was placed on the property first. The bank later acquired a judgment lien on all the franchisee's property—including a junior lien on the garage—when the franchisee defaulted on the bank's loan. And since the foreclosure sale of the garage satisfied the credit union's entire mortgage and created a \$200,000 surplus, the bank (as the junior lienholder) should receive \$100,000 to cover the balance still owed under its mortgage on the hotel. The remaining surplus (\$100,000) should then be distributed to the franchisee **(Choices A, C & D)**.

Educational objective:

Proceeds from a foreclosure sale are typically distributed in the following order: expenses, foreclosed mortgage, junior liens, then the debtor.

References

55 Am. Jur. 2d Mortgages § 705 (2019) (distribution of foreclosure sale proceeds).

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Distribution of foreclosure sale proceeds



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