

A woman purchased a house, financing the purchase with a 30-year mortgage granted to a local bank, which the bank promptly recorded.

Five years later, the woman lost her job, had difficulty making her mortgage payments, and defaulted on several payments. The bank notified the woman that it would accelerate the mortgage debt as permitted by the mortgage. The woman tried to sell the house but could not find a buyer. The woman wants to avoid the publicity of a foreclosure sale and protect her credit rating. The house is not encumbered by any other liens.

The woman has asked the bank if it would accept a deed to the house and relieve her from any further liability on the loan. The bank is receptive to the woman's proposal.

Is the woman's proposal a viable foreclosure substitute under these facts?

- A. No, because such a transaction would be a clog on the woman's equitable right of redemption. (3%)
- B. No, because this is residential property for which a foreclosure sale is required. (3%)
- C. Yes, because the proposal is voluntary and the bank would receive unencumbered title from the woman. (84%)
- D. Yes, because the transaction would constitute a valid short sale by the woman. (8%)

Correct

84% Answered correctly

01 min, 26 secs Time Spent

2023 Version

Explanation:

Ways to avoid foreclosure

Equitable redemption*	Mortgagor pays full amount of outstanding debt (as increased by acceleration clause) plus any accrued interest
Deed in lieu of foreclosure	Mortgagor conveys all interest in mortgaged property to mortgagee
Renegotiating debt	Parties renegotiate terms of promissory note & mortgage

*Many states also recognize a statutory right of redemption that permits a mortgagor to reclaim the property *after* a foreclosure sale.

A mortgagor (the woman) may convey all interest in the mortgaged property to the mortgagee (the bank) in lieu of foreclosure so long as both parties agree—as seen here. This "**deed in lieu of foreclosure**" allows the mortgagee to **take immediate possession** of the property **without** the formalities of a **foreclosure sale**. And since there are no other liens against the house, the bank's acceptance of the deed in lieu of foreclosure would give it free and clear title to the house. Therefore, the woman's proposal is a viable foreclosure substitute under these facts.

(Choice A) The deed in lieu of foreclosure would relieve the woman of liability on the bank's loan without a foreclosure sale, so there would be no need for her to exercise the equitable right of redemption.

(Choice B) Deeds in lieu of foreclosure can be used for both commercial and residential properties.

(Choice D) A short sale occurs when the lender (bank) agrees to release its lien in exchange for the sale proceeds. Here, the woman wants to deed the house back to the bank—not sell it to another party.

Educational objective:

A deed conveying a mortgagor's interest in the mortgaged property to a mortgagee in lieu of foreclosure allows the mortgagee to take immediate possession of the property without the formalities of a foreclosure sale.

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