

Property Exam 2

Sammy owned Greenacre, but needed some money to start his consulting business teaching people how to make money fast. Sammy went to Frog Bank and took out a loan for \$50,000 secured by Greenacre. That same day Sammy went to Tadpole Bank and took out another loan for \$25,000 secured by a Greenacre mortgage. Also that same day Sammy took out a third loan for \$15,000 from Fly Bank also secured by a Greenacre mortgage.

The next day the banks went to record their mortgages. Fly Bank recorded first, Tadpole Bank recorded second and Frog Bank recorded third.

For several months Sammy made all of the payments on all three loans. But soon new competition in his consulting business from a company teaching people to make more money faster started putting a strain on Sammy's business.

Sammy kept paying Fly Bank and Frog Bank, but could no longer pay Tadpole Bank. After a few months of non-payment, Tadpole Bank foreclosed on its mortgage.

Which mortgage is in first priority position at the time of the foreclosure?

What rights does Tadpole Bank's mortgage give it against Greenacre?

Which Banks (if any) does Tadpole Bank have to notify about its foreclosure?

Prior to the foreclosure sale, what rights does Sammy have?

What happens to Fly Bank and Frog Bank's mortgages after a new owner purchases the property at the foreclosure sale?

Example Answer:

Which mortgage is in first priority position at the time of the foreclosure?

First Priority

In general, the first person to record a mortgage or a deed of trust has first priority. ("First in time, first in right.") Here Fly Bank recorded first placing it in first position, Tadpole Bank recorded second placing it in second position and Frog Bank recorded third placing it in third position.

What rights does Tadpole Bank's mortgage give it against Greenacre?

Rights of Mortgagee

Tadpole Bank has a mortgage against the property. A mortgage is a transfer of an interest in real property to secure repayment. Upon default, the mortgagee or the deed of trust owner has the right to sell the property and collect amounts owed.

Which Banks (if any) does Tadpole Bank have to notify about its foreclosure?

Notification of Foreclosure

All lower priority security instruments must be notified of the foreclosure sale because those security instruments will be extinguished by the sale. As explained above, Tadpole is in second position. The only lower priority security interest belongs to Frog Bank.

Tadpole Bank will therefore have to notify Frog Bank regarding the foreclosure.

Prior to the foreclosure sale, what rights does Sammy have?

Rights of Sammy

Up until the day of the foreclosure sale Sammy has the right of redemption. This right allows Sammy to pay all amounts owed to Tadpole Bank and reclaim his ownership of Greenacre.

What happens to Fly Bank and Frog Bank's mortgages after a new owner purchases the property at the foreclosure sale?

Other Mortgages on Property

The new owner will take subject to Fly Bank's mortgage as that mortgage is in first position and a higher priority than the Tadpole Bank mortgage which was foreclosed.

Frog Bank's mortgage will be extinguished after the foreclosure sale. If the price at the foreclosure sale is more than the debt owed to Tadpole Bank, Frog Bank will get what's left over to pay its mortgage. If the price is enough to cover both Tadpole Bank's mortgage and Frog Bank's mortgage, the remaining money will go to Sammy.