Modern Real Estate Practice in Illinois Tenth Edition

Unit 15: Real Estate Financing: Principles
Mortgage Basics

- A mortgage is a voluntary lien on real estate
  - Borrower is the mortgagor
  - Lender is the mortgagee
  - Promissory note is a borrower’s promise to repay debt
Security and Debt

• Mortgage Loans
  – Mortgage (security instrument) creates lien on the property (hypothecation)
Promissory Notes

• A promissory note is the primary evidence of debt
  – Negotiable instrument
  – Interest
    • Usury
    • Loan origination fee
    • Discount points
  – Prepayment
Mortgage Document or Deed of Trust

• Mortgage document or deed of trust establishes property as security for debt
• Deed of trust
  – Conveys legal title, without right of possession
• Provisions for Default
• Assignment of the Mortgage
• Release of the Mortgage Lien
Duties of the Mortgagor or Trustor

- Payment of the debt
- Payment real estate taxes
- Property insurance
- Property maintenance
- Receipt of lender authorization for major alterations to property
Mortgage Clauses and Provisions

- Acceleration Clause
  - Foreclosure
- Defeasance Clause
  - Satisfaction of mortgage
  - Release deed
- Alienation Clause
  - Defeats assumption
Mortgage Clauses and Provisions

• Assignment
• Tax and Insurance Reserves
  – PITI
  – Flood insurance reserves
• Assignment of Rents
• Buying “Subject to” or “Assuming” Existing Financing
  – Novation
Recording

• Mortgage or deed of trust recorded in county in which property is located
Priority

• Determined by the order of recording
  – First lien
  – Second or junior lien
  – Subordination agreement
Provisions of Land Contracts and Other Owner Financing

• Land Contract (installment contract/contract for deed)
  – Buyer (vendee) makes a down payment and a monthly loan payment that includes interest and principal directly to seller
  – Seller (vendor) retains legal title to the property during contract term, and the buyer is granted equitable title and possession
  – Once entire debt is paid, the seller delivers the title
Predatory Lending and Mortgage Fraud

• Unfair or abusive loan terms
• Subprime lending
• Mortgage fraud
  – Fraud for profit
  – Fraud for housing
Mortgage Law

• Title-theory states
  – Mortgagee has title and mortgagor has equitable and possession.

• Lien-theory states
  – Mortgagor retains legal and equitable title; mortgagee has a lien on the property as security for the mortgage debt.

• Intermediate-theory states
  – Mortgage and deeds of trust convey only qualified title to lender as security for loan during existence of the debt. Mortgagor holds legal title. (Illinois is referred to as intermediate-theory)
Foreclosure

• Methods of foreclosure
  – Nonjudicial foreclosure
  – Judicial foreclosure
  – Strict foreclosure
• Deed in lieu of foreclosure
• Redemption
• Reinstatement in Illinois
• Deficiency judgment
Short Sales

• Borrower is unable to make mortgage payments and cannot sell for what is owed on the property
• The lender agrees to accept less than the amount owed
• Potential for several different types of fraud
Bankruptcy and Foreclosure

- Advise consumer to seek legal advice
- Chapter 13
- Chapter 7