

PUBLICATION

Louisiana Receivers in Foreclosure: Application of Payments to Costs and Expenses

May 01, 2013

In line with our prior posts on Louisiana Keepers, the following is a sample of a typical issue that can arise in the Keeper context regarding the payment of costs and expenses associated with a loan.

Question: Our borrower's accountant, in preparing its tax return, is questioning application of keeper remittances of \$400,000. Over \$100,000 was paid to reimburse the master servicer for expenses incurred in relation to the loan. Three principal and interest payments were made as well. Most loan docs say that the borrower owes all costs and expenses associated with the loan but I wanted to make sure that is the case in Louisiana before I tell the borrower how the funds were applied.

Answer: As opposed to a "statutory" entitlement to pay the costs/expenses associated with the loan, Louisiana case law provides that the loan documents between the parties control. So, if the loan documents provide that the costs associated with the loan are taxable against the borrower in certain situations, then you are within your rights to pay those costs from disbursements you receive in accordance with the loan documents. One classic example of this is that most Louisiana loan documents provide that all costs associated with the Keeper are born by the borrower.

That said, it is always important to review the Court order itself (or any consent motions) to determine whether they contain any specific breakdown as to the application of the disbursements.