

**Lenders: A Judgment on a Note Does Not Extinguish
Your Right to Foreclose on a Mortgage**

By: Tommy Lydon, Weston Adams, and Jill Benson, MG&C

MG&C appellate attorneys, Weston Adams and Jill Benson, recently prevailed in a case before the South Carolina Supreme Court that will protect lenders who choose to sue borrowers or guarantors for judgments, rather than foreclosing on real estate or other collateral that secures the indebtedness. This situation typically arises when collateral is contaminated, has little value, or is jointly owned by the borrower with others, which could make it difficult to liquidate.

In *Lever v. Lighting Galleries*, a promissory note in the amount of \$36,256.97 was secured by a fourth mortgage on real estate owned by the borrower. When the borrower defaulted, the lender chose not to bring a foreclosure action against the real estate because the property was worthless at that time due to an oil spill and the borrower only owned a 1/3 interest in the property. Instead, the lender brought suit on the note which resulted in a judgment against the borrower. Despite attempts to collect the debt, the lender was unable to recover any money via its judgment.

A number of years later, the contamination on the real estate was cleaned up and the value of the property exceeded the balances due on the prior mortgages. The borrower sought to avoid paying our client's mortgage arguing the mortgage was extinguished because the lender had elected its remedy by suing on the note and because the judgment expired after its ten year statutory effective period. The trial court agreed with the borrower, finding the expiration of the judgment obtained by the lender on the promissory note rendered the note and mortgage inoperative, such that the mortgage should be marked satisfied.

The South Carolina Supreme Court reversed the trial judge. The Supreme Court ruled a lender who holds a mortgage to secure a debt has the option to either bring an action on the note or pursue a foreclosure action and may pursue a foreclosure even after its note judgment expires. Until the mortgage debt is actually satisfied, the recovery of a judgment on the underlying promissory note has no effect upon the mortgage or its lien. As a result, lenders can now rest assured that pursuing legal action against borrowers and guarantors without simultaneously foreclosing against their collateral will not prejudice their right to pursue the collateral at a later date if they so desire.