



FORECLOSING ON YOUR REAL ESTATE TAX LIENS



Every state has a slightly different method on how they go through their foreclosure procedures. However, the basic process is the same in every state. The time periods allowed for foreclosure is what varies from state to state.

As far as foreclosing on real estate tax liens, in some tax jurisdictions a tax deed is automatically received from the treasurer at the end of the property owner's redemption period. While in others an attorney may have to get involved and go to court to be able to foreclose on a tax lien.

FORECLOSURE

- Foreclosure's definition is to shut out, exclude, bar, or deprive a person of the right to redeem a mortgage.
- Foreclosure is not only a process to recover a lender's collateral but also a procedure whereby a borrower's rights of redemption are eliminated, the title to a property is taken away from the borrower in lieu of receiving mortgage payments, all interests in the subject property are removed and sold to recoup the loan proceeds for the real estate lender.

∞ Power of Sale Foreclosure

- A foreclosure is based on the terms of the deed of trust or the mortgage contract, giving the lender, or the trustee, the right to sell the collateral property without being required to spend the time and money involved in a court foreclosure suit.

∞ At the Foreclosure Sale

- The trustee has an obligation to act impartially and can take no action that would discourage bidders.



- ∞ This is to be a public auction opened to all persons, including the trustee and the lender.

∞ **Judicial Foreclosures and Sale**

- ↳ This legal procedure involves the use of the courts and the consequent sale of the collateral. Foreclosure by court order is an alternative method that may be used in some states, although it is not favored by commercial lenders. However, it is the only remedy if a deed of trust does not contain a power of sale provision.

∞ **How it Works**

- The delinquent mortgagors are notified of the default and the reasons for it. They are informed that an immediate solution is required and that all their efforts must be expended to solve the problem as quickly as possible.
- If all attempts fail, the foreclosure process is initiated by the lender filing a complaint in the court for the county in which the property is located and a summons is issued to the borrowers.
- At the same time, a title search is made to determine the identities of all the parties having an interest in the collateral property and a lis pendens (a legal action pending) is filed with the court to give notice to the world of the pending foreclosure action.
- Notices are sent to all parties having an interest in the property, requesting their appearance in court to defend their interests, or they will be foreclosed from any future rights by judgment of the court.
- It is vitally important for the complainant lender to notify all junior lien holders of the foreclosure action so they will not be enjoined from participation in the property auction. The junior lien holders acquire the right to file a suit if they are not given proper notification.

∞ **Jurisdiction**

- Depending on the number of days required by the residing jurisdiction for public notice to be given to inform any and all persons having an unrecorded interest in the property that a foreclosure is imminent, and depending on the availability of a court date, the complaint is eventually aired before a presiding judge.
- In most cases, the defendant borrower does not appear in court unless special circumstances are presented in defense of the default.



- Creditors presenting their claims are recognized and noted, and a sale of the property at a public auction by a court appointed referee or the sheriff is order by means of a judgment decree, so the proceeds from the sale will be used to satisfy the parties named in the judgment.
- With a judicial foreclosure, a junior lien holder's interest in the property is not automatically eliminated. However, if the junior lien holder did not join in the foreclosure suit, the property is sold, subject to the junior lien. If the junior lien holder was a party of the foreclosure suit, the interest ends at the sale just the same as the senior lien holder's interest does.

∞ Insured Conventional Mortgage Foreclosures

- ↳ Most private mortgage guarantee companies terms of the insurance policies a default is interpreted to be nonpayment for four months. Within ten days of default, the lender is required to notify the private mortgage insurer, who will then decide whether or not to instruct the lender to foreclose.
- ↳ When an insured conventional mortgage is foreclosed, the lender who is insured is the original bidder at the public auction of the collateral property. Under these circumstances, the successful bidder lender files notice with the insurance company within sixty days after the legal proceedings have transpired.

∞ Loss Recovery

- If an insurance company is confident o recovering any losses by purchasing the collateral property from the lender and then reselling it, it will reimburse the lender for the total amount of the lender's bid and receive title to the property.
- If the private mortgage insurance company does not foresee any possibility for recovery, it may elect to pay the lender the agreed amount of insurance and the lender retains ownership of the property. The lender then sells the property to recover any balance still unpaid.
- In all cases of judicial foreclosure and sale any ownership rights acquired by the successful bidder at the foreclosure auction will still be subject to the statutory redemption rights of the defaulted mortgagor. A full fee simple absolute title cannot vest in the bidder until these redemption rights have expired.

∞ Federal Housing Administration Insured Mortgage Foreclosures



- ➔ Foreclosure on FHA insured mortgages, form 2068 Notice of Default, must be given to the local FHA administrative office within sixty days of default. The notice includes the reasons for delinquency.
- ➔ Loan counselors from the local FHA office will attempt to design an agreement between the lender and the borrower for adjustments to the loan conditions in order to prevent foreclosure in most cases.
- ➔ The most common technique used in circumstances where default is beyond the borrower's control, but deemed curable, is forbearance of foreclosure.

∞ Default Not Cured

- If the problems causing the default are solved within a one year period, the lender informs the local FHA office. If not, a default status report is filed and the lender must initiate foreclosure proceedings.
- If the bids at the foreclosure auction are less than the unpaid mortgage balance, the lender is expected to bid the debt, take property title, and present it to the FHA along with a claim for insurance, which may be paid in cash or in government securities.
- With prior FHA approval, the lender may assign the defaulted mortgage directly to the FHA before the final foreclosure action in exchange for insurance benefits in some cases.
- Regardless of case, if the property can be sold easily at a price that would repay the loan in full, the lender simply would sell the property after bidding at the auction and would not apply for FHA compensation.
- If the FHA ends up as the property owner, the collateral may be sold as is or the FHA may repair or refurbish the property if they feel it can be resold at a higher price to minimize the losses to the FHA.

∞ Veterans Administration Guaranteed Mortgage Foreclosures

- ➔ The lender's entire risk is recovered from the insurance benefits. A Veterans Administration loan is similar to a privately insured loan in that a lender receives only the top portion of the outstanding loan balance, up to a statutory limit.
- ➔ The lender must file proper notification with the local VA office of delinquency of more than three months. The VA office may elect to bring the loan current if it so chooses.



- ➔ If the VA office chooses to bring the loan current, the VA can come against the defaulting veteran for repayment of the fund advanced. Subrogation rights are given the lender against the mortgagor for the amount advanced. The VA claim against the defaulting veteran takes priority over the rights of the lender to these funds.

∞ Like FHA

- Similar to the FHA, VA lenders are required to make every effort to help the borrower through forbearance, payment adjustments, a deed in lieu of foreclosure, or any other acceptable solution.
- If foreclosure takes place, the lender usually will be the original bidder at the auction and will submit a claim for losses to the local VA office. The VA office has the option to pay the unpaid balance, interest, and court costs and take the title or to require the lender the difference between the determined value of the property on the date of foreclosure and the mortgage balance. If the property is badly deteriorated, the latter solution is generally chosen, which reinforces the importance for the lender to supervise the condition of the collateral property.

∞ Second Mortgage Foreclosures

- ➔ Defaults on second mortgages and other junior mortgages are handled in the same manner as the conventional first mortgages.
- ➔ Second mortgage or junior mortgage relationships are usually between two individuals rather than between an institutional lender and an individual borrower.
- ➔ A second mortgagee will generally seek counsel of an attorney to manage the foreclosure process against a second mortgagor. The delinquent borrower will be requested to cure the problem within a certain time period. If a cure cannot be accomplished, notice is given to all persons having an interest in the property, and the attorney then files for judicial foreclosure.
- ➔ The second mortgagee generally is the original bidder at the public sale and secures ownership of the collateral property subject to the lien of the existing first mortgage. Integrity of the first mortgage can be maintained by making any payments required by seeking to sell the collateral to eliminate or offset any losses.

∞ Deficiency Judgments

- ➔ If proceeds from a foreclosure sale are not sufficient to recover the outstanding loan balance plus costs incurred as a consequence of default and interest to date, a lender may sue on the mortgage for the deficiency in most states.



- If foreclosure is by court order, the judge normally awards the lender a judgment against the debtor in the amount of the deficiency.
- The lender must file suit against the debtor to collect any deficiency if a power of sale foreclosure takes place.

∞ Current Trend

- To rely less on collecting deficiencies and more on limiting a borrower's personal liability on a real estate loan to the equity in the collateral property in the current trend.
- One reason for this trend is the tendency of a deficiency judgment to penalize those borrowers who make good on their debts. Such judgments can become liens against any property a borrower holds or may acquire in the future. Dishonest debtors may avoid payment by simply making certain they do not own any property in their own names.

∞ Lender Adjustments

- A lender will usually attempt to adjust the loan conditions in order to help a troubled borrower over difficulties of short term.
- The most common cause for a default is delinquent mortgage payments.
- Other common causes for default could include; the nonpayment of property taxes or hazard insurance premiums, lack of adequate maintenance, and allowing priority liens to vest.
- Many lenders will exercise forbearance and waive the principal portion of a loan payment for a while or even extend a moratorium on the full monthly payment until a borrower can better arrange their finances to offset the possibility of a foreclosure on a delinquent mortgage.
- An extension of time or a recasting of a loan to reflect the borrower's current ability to pay under circumstances of financial distress are some additional adjustments in terms of a delinquent mortgage that might aid the defaulted borrower.

∞ Deed in Lieu of Foreclosure



- Sometimes all efforts at adjusting the terms of a mortgage to solve a borrower's problems fail. A lender may then attempt to sell the loan. This creates opportunities for real estate investors.
- If a lender cannot find a buyer willing and able to buy the loan, a lender may seek to secure a voluntary transfer of the property title from the borrower. This action prevents the possibly costly and time-consuming process of foreclosure.
- A borrower can eliminate the stigma of a foreclosure suit, maintain a respectable credit rating, and avoid the possibility of a deficiency judgment by executing either a quitclaim deed or a grant deed.
- A lender encourages a defaulted borrower to transfer a deed voluntarily because they are fully aware of the difficulties with evictions and the costs and time involved in a full foreclosure process.
- A lender must proceed with caution to be protected against any future claims of fraud or duress by the borrower and must be aware of the possibility of the existence of any other liens against the property. A quitclaim deed does not remove junior liens as does a completed foreclosure.