

FORECLOSURE BASICS

Mark W. Vyvyan, Esq.
Fredrikson & Byron, P.A.
Real Estate Group
612.492.7005
mvyvyan@fredlaw.com

I. PRELIMINARY STEPS

A. Documents to Gather

1. Note
2. Mortgage
3. Assignments
4. Notices of Default
5. Loan History
6. Abstract / Title Information

I. PRELIMINARY STEPS (cont.)

B. Information to Gather

1. Names of Occupants / Owners of Property
2. Description of Property (size, location, type)
3. Other security for debt

C. Has Required Notice Been Given?

1. Statutory
2. Contractual

II. TYPES OF FORECLOSURE

A. Foreclosure by Advertisement

1. Must meet statutory prerequisites
 - a) Within 15 years of maturity?
 - b) Power of sale?
 - c) No other suit pending?
 - d) Mortgage and Assignments of record?
2. Generally cheaper and quicker

II. TYPES OF FORECLOSURE (cont.)

B. Foreclosure by Action

1. Is a deficiency desired?
2. Defects in mortgage?
3. Priority questions?
4. Need for judicial supervision?
5. Other collateral?
6. Process is generally longer, more expensive

II. TYPES OF FORECLOSURE (cont.)

C. Voluntary Foreclosure

1. Cooperative borrower?
2. Must meet statutory prerequisites
 - a) Non-homestead?
 - b) Non-agricultural?
 - c) Default for at least one month?
3. Shortened publication and redemption periods
4. No reinstatement

III. FORECLOSURE PROCEDURES

A. Foreclosure by Advertisement

1. Notice of pendency / power of attorney
2. Notice of foreclosure sale
 - a) Published for six weeks
 - b) Served on occupant
3. Sheriff's sale
4. Record Certificate of Sale
5. Redemption period(s)

III. FORECLOSURE PROCEDURES (cont.)

B. Foreclosure by Action

1. Summons and Complaint
2. Notice of Lis Pendens
3. Litigate suit to judgment
4. Notice of sale under Judgment and Decree
 - a) Published for six weeks
 - b) Posted for six weeks
 - c) Served on debtor (if within county)

III. FORECLOSURE PROCEDURES (cont.)

5. Sheriff's sale
6. Motion to confirm sale
7. Record certificate of sale
8. Redemption period(s)

C. Voluntary Foreclosure

1. Record voluntary foreclosure agreement
2. Same procedure as foreclosure by advertisement
3. Notice of sale published for only four weeks
4. Shortened redemption period(s)

IV. EFFECT OF SHERIFF'S SALE

- A. Locks in amount to determine deficiency
- B. Title does not pass until end of mortgagor's redemption period

V. REINSTATEMENT AND REDEMPTION

A. Reinstatement

1. Applies before sale
2. Borrower has ability to “come current”

B. Mortgagor’s Redemption (Mortgagor)

1. Applies after sale
2. Borrower / creditor must pay bid amount plus interest

V. REINSTATEMENT AND REDEMPTION (cont.)

C. Redemption Periods

1. 6 month
2. 12 month
 - a) Executed prior to 7/1/67?
 - b) More than 1/3 of debt paid?
 - c) 40 acres?
 - d) Agricultural/wetlands?
 - e) Between 10 and 40 acres (check statutes)?

V. REINSTATEMENT AND REDEMPTION (cont.)

3. Shortened Periods
 - a) Voluntary foreclosure
 - b) Abandoned property

D. Creditor's Redemption

1. Only applies if mortgagor fails to redeem
2. Creditors must file notice of intent
3. Redeem in order of priority
4. 7 day redemption periods