

foreclosures Saving our fields

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FORECLOSURE

SAVING OUR FIEFDOMS

I. Most Common Types of Foreclosures

- A. Property taxes
- B. Mortgages or trust deeds
- C. Condominium and homeowner association liens
- D. Judgment liens

II. Mortgage/Trust Deed Foreclosures

- A. Non-judicial foreclosure of trust deeds (Advertisement and Sale) - most common
 - 1. Parties
 - a. Grantor - mortgagor (borrower), usually owner
 - b. Beneficiary - mortgagee (lender)
 - c. Trustee - disinterested third party, usually title company or attorney
 - 2. Notice of Default and Election to Sell
 - a. Record in real property records
 - b. Mail to lienholders
 - c. Important contents
 - i. Date, time, and place of scheduled sale
 - ii. Balance at time of notice; amount of default
 - 3. Notice of Sale will be published in a newspaper of general circulation within the county
 - a. Newspaper need only be in same county, not in same town
 - b. Published once per week for four consecutive weeks with last publication date more than 20 days prior to sale
 - 4. Sale held by Trustee by oral auction, usually at front of courthouse
 - 5. What to do before sale
 - a. Send letter to Trustee asserting HOA's claim to excess proceeds is superior to other creditors
 - b. Determine whether there may be substantial equity
 - i. Property tax assessor
 - ii. Real estate agent or broker
 - iii. Internet websites

- c. Possibly seek deed-in-lieu of foreclosure from owner
 - i. Relieves owner from further personal liability for assessments
 - ii. HOA must be able to negotiate with senior lienholders
 - 6. What to do after sale
 - a. Contact Trustee after sale to determine if there are excess proceeds
 - b. Make demand on Trustee for balance owed to HOA to extent of excess proceeds
 - 7. No right of redemption
- B. Judicial foreclosure of mortgages or trust deeds - less common
- 1. Lender files lawsuit for foreclosure
 - 2. All junior lienholders are named as defendants in lawsuit, including HOA
 - 3. In Oregon, HOA has 30 days from date of service of summons and complaint to appear in lawsuit
 - a. When served, note date and time of service on face of summons or complaint
 - b. Turnover to attorney
 - i. As corporation, the HOA cannot appear in the case except through an attorney
 - ii. Want to make sure priority of HOA's assessment lien is established
 - 4. Judgment of foreclosure
 - 5. Foreclosure sale
 - a. Oral Auction
 - i. Usually in front of county courthouse
 - ii. Proceeds paid to auctioneer (sheriff) - deposited with court
 - iii. Bidders must have cash or cash equivalent to bid at sale
 - 6. Approval of sale by court
 - 7. Distribution of proceeds according to judgment
 - 8. 180 day right of redemption
 - a. Owner and junior lienholders have right to redeem property by paying amount of bid at sale plus interest at 9% per annum
 - b. Effect of redemption

- i. Restores property to original ownership
 - ii. Restores unpaid creditors to their original positions
 - c. Effect of right of redemption
 - i. Less bidders at foreclosure sale since increased risk owner will redeem
 - d. Successful bidder should not make any improvements in property prior to expiration of redemption period since cost of improvements are not recoverable if property redeemed.
- C. HOA's rights if it does not receive any notice of the foreclosure

III. HOA Judicial Foreclosures

- A. Reasons to foreclose
 - 1. Unable to collect money judgment for assessments
 - 2. Owner has no apparent other assets from which to collect assessments
 - 3. Substantial equity in property
 - 4. Stop the bleeding -future owner more likely to pay assessments on a go-forward basis
 - 5. Owner is chronic delinquent
 - 6. Owner is a trouble maker or creates substantial costs to HOA on other issues
- B. Process-what does the attorney do
 - 1. Order title report
 - 2. File lawsuit
 - a. Defendants include
 - i. All junior lienholders as disclosed by title report
 - ii. All owners, occupants, and other claiming interest in the property
 - 3. Serve all defendants
 - a. Personally
 - b. Publication - costly
 - c. Other methods
 - 4. Defendants have 30 days to appear or be defaulted
 - a. If appear, negotiate or litigate
 - b. If do not appear, take default judgment
 - 5. Judgment for foreclosure

6. Foreclosure sale
 - a. Auction
 - i. Usually in front of county courthouse
 - ii. Proceeds paid to auctioneer (sheriff)
- deposited with court
 - iii. HOA will bid in its judgment balance (no cash needed)
7. Approval of sale by court
8. Distribution of proceeds according to judgment
9. Property is subject to right of redemption

IV. Property Tax Foreclosures

- A. Property is subject to foreclosure by the State once taxes are three years past due (ORS 312.010)
- B. Tax collector creates a foreclosure list of properties subject to foreclosure (ORS 312.040)
 1. Owner name, property description, years for which taxes are due, principal amount of taxes due, accrued interest
 2. Notice of foreclosure proceeding published in newspaper of general circulation and by first class and certified mail to owner
Note: no requirement to give notice to lienholders by mail
- C. Tax collector brings lawsuit for all delinquent taxes in one proceeding (ORS 312.050)
 1. In Rem proceeding against property (no personal liability claim against owner (ORS 312.050))
 2. Application for foreclosure judgment is filed with clerk of court with certified copy of foreclosure list on the date of first publication of the foreclosure list (ORS 312.060)
 3. Any person interested in the property can file an objection to the foreclosure up to 30 days after first date of publication of the foreclosure list (ORS 312.070)
 4. Court shall review by summary hearing, meaning no right for oral argument
 5. Court shall grant judgment of foreclosure as appropriate

6. Judgment shall order sale to the county (ORS 312.100)
- D. County holds property for two years after foreclosure (ORS 312.120)
- E. Redemption rights
1. Two year right of redemption (ORS 312.120)
 2. One year notice of redemption period (ORS 312.125)
 - a. By tax collector to all persons entitled to redeem whose interest appears in the county records as of the date foreclosure proceedings were commenced
 - b. Must be mailed by first class and certified mail not less than one year prior to expiration of the redemption period
 3. One year notice contents
 - a. Date of judgment
 - b. Date of expiration of redemption period
 - c. Warning of effect if not redeemed
 - d. Legal description and tax account number of the property
 - e. Name of the owner on latest tax rolls
 4. Who gets notice
 - a. Any person having interest in the property on date of judgment
 - b. Mortgage or other lien of record
 - i. Good reason to record Statement of Association Information
 5. General notice of expiration
 - a. Published in newspaper of general circulation in county
 - b. Not more than 30 days nor less than 10 days prior to expiration of the redemption period
 6. Redemption amount (ORS 312.120)
 - a. Full amount owed under the judgment
 - b. Accrued interest on the judgment
 - c. 5% penalty (to cover publication costs) plus fee
 - d. Additional fee
 - i. \$50 if redeemed prior to mailing of notice of expiration of redemption period, or
 - ii. The greater of \$50 or the actual cost to county for title search and other expenses related to obtaining title information
 7. If mortgagee or lienholder redeems property, redeemer gets lien for amount paid and is collectible with and in same manner as original lien (ORS 312.160)

V. Effect of Foreclosure

A. Priority of Liens

1. Tax liens
2. First mortgage/trust deed
3. HOA/Condominium liens
4. Remaining liens based on date and time of recording
 - a. Second mortgages
 - b. Judgment liens

B. Effect on Liens

1. Foreclosure by tax collector
 - a. Extinguishes all liens
2. Foreclosure of first mortgage
 - a. Extinguishes first mortgage lien
 - b. Extinguishes all junior liens, including HOA liens
 - c. Property tax lien remains as lien on premises
3. Foreclosure of HOA lien
 - a. Extinguishes HOA lien
 - b. Extinguishes second mortgages, other junior lienholders
 - c. Property tax lien remains as lien on premises
 - d. First mortgage lien remains as lien on premises
4. Foreclosure of second mortgage or other junior liens
 - a. Extinguishes second mortgages
 - b. Extinguishes other junior lien (third mortgages, later filed judgment liens)
 - c. Property tax lien remains as lien on premises
 - d. First mortgage lien remains as lien on premises