

## General Information About Foreclosure Sales

*This information is intended to provide general information about the foreclosure process and should not be considered a substitute for specific information provided by the Trustee conducting the sale, or for advice from an attorney or other real estate professional. This information is subject to modification at the actual sale, and any announcements at the sale will take precedence over information contained herein. These procedures may be modified at any time without notice. Statutory changes and court decisions may render this information inapplicable.*

**1. What kind of deed will the successful bidder receive?**

The purchaser at the foreclosure will receive a Trustee's Deed, not a General Warranty Deed. In a General Warranty Deed the seller gives the purchaser certain warranties of title. A Trustee's Deed contains no such warranties. The Trustee's Deed only conveys the real estate interest that was pledged to secure the note. For example, defects in the chain of title prior to the date of the deed of trust would not be cured by a foreclosure sale.

**2. How does foreclosure affect other deeds of trust?**

The general rule is that the foreclosure of a senior (first in time) deed of trust will eliminate junior (subsequent) deeds of trust, assuming proper notice has been provided. The exception would be a situation where the senior deed of trust has been subordinated to the junior deed of trust by agreement.

**3. How does foreclosure affect judgment liens and other types of liens?**

Court judgments are automatically liens on real estate in the county where the judgment is rendered or where a transcript of the judgment is filed. The priority and survival of these liens generally depend on timing, similar to the priority of deeds of trust described above. Mechanic's liens for improvements to the property sometimes survive the foreclosure and may attach to the property after a foreclosure even if nothing is filed of record prior to foreclosure, depending on the situation.

**4. How does foreclosure affect property taxes?**

Real estate taxes are unaffected by foreclosure sales. The purchaser at a foreclosure sale will take the property subject to any outstanding taxes for prior years and for the current year when they become due. There is no proration of real estate taxes for the current year.

**5. How does foreclosure affect federal tax liens?**

Federal tax liens require special notice to the IRS by the Trustee, and there is a 120 day redemption period following the sale. This means the IRS could potentially buy back the property from the successful bidder. This is somewhat rare, however the IRS's right to redeem could affect marketability or a lender's willingness to make a loan secured by the property.

**6. Who is responsible for physical defects?**

Neither the Trustee nor the lender make any representations regarding the condition of the premises. The Trustee is usually unfamiliar with the condition of the property. The purchaser at the foreclosure sale will have to address these problems without any assistance from the Trustee or the lender.

**7. What if there is someone living in the property?**

Neither the Trustee nor the lender make any representations regarding delivery of possession. The purchaser may have to file suit to evict the parties in possession.

8. **How can a bidder investigate the condition of the property?**

The Trustee and the lender usually have no authority to allow access to the premises. Bidders may contact the owners or occupants directly if they wish. Bidders can inspect the exterior of the property from the public right of way.

9. **How can a bidder investigate the state of title?**

Bidders at a foreclosure sale are strongly encouraged to conduct some type of independent title examination prior to bidding. The assistance of an attorney is recommended. The title work could take the form of a "letter report" in which the title company reports the current status of the property (with liability for errors limited to the cost of the letter report); or a full commitment that a title insurance policy will be issued following the purchase.

10. **Can a bidder learn in advance what the lender will be bidding?**

Sometimes, but not always, opening bid information will be available. If it is available the opening bid will be posted on the Trustee's website along with other information about the property.

11. **How will the sale be conducted?**

The above information will be announced at the foreclosure sale and the Trustee will entertain questions from potential bidders. Then the official sale notice will be read aloud. Often an initial bid will be placed by, or on behalf of, the lender. Ample time will be allowed for each bidder to consider whether to continue bidding. At the end of the bidding, the final bid will be announced in the traditional form of reciting "going once, going twice, going three times."

At the close of the bidding, the Trustee will interview the provisional purchaser to confirm that the bidder understands the conditions of the sale. The high bidder will be given a stated period of time (typically until 3:00 p.m. that day) to produce certified funds in the amount of the bid. If funds are not received within that time frame, the Trustee reserves the right to either offer the property to other bidders (in order of their bids); or the Trustee may cancel the sale and republish the foreclosure sale for a later date.

12. **What happens after the funds are deposited with the Trustee?**

Upon receipt of a certified check in the bid amount, the purchaser will be given a receipt for those funds. Some delay may occur in providing the Trustee's Deed since additional time may be required to obtain the publisher's affidavit that must be attached to the original deed. Some lenders reserve the right to complete the deed and record the deed themselves, which can take up to 30 days.

13. **How can financing be arranged if the price is not determined at the time of the sale?**

Due to the limited amount of time in which to produce certified funds, lenders should be advised in advance that typically any funds loaned to a foreclosure sale purchaser will not likely be secured by the property being foreclosed upon until days later when the purchaser has been provided the Trustee's Deed. Lenders should also be advised that if a loan to the foreclosure sale purchaser is finalized later, the Trustee will not be responsible for any closing costs, prorated taxes or other expenses related to that loan closing. The entire bid amount is retained by the Trustee to be applied against the note, less expenses.