

A GUIDE TO FORECLOSURE SALES

1. What is foreclosure?

When property is mortgaged, the property is transferred to a creditor to be used as secured collateral on a loan. The individual exchanging the property for the loan becomes the mortgagor, and the creditor acquiring the property title becomes the mortgagee.

If the mortgagor defaults on the loan payments associated with the mortgage, the creditors can take legal action to enforce a mortgage against the property and prevent the mortgagor from keeping the property. This type of legal action is referred to as foreclosure.

2. What happens in a foreclosure action?

If the Court finds that the mortgagor is in default of the mortgage payments, final judgment will be issued in favor of the creditor. The final judgment lists the costs due to the plaintiff, such as principal charges, interest, costs of the suit, and attorney's fees.

In addition to the assessment of costs, the final judgment will set forth instructions for the sale of the mortgaged property at a public auction. The instructions will include a description of the property to be sold, the time, place, and date of the sale, the amount due on the mortgage, and instructions to the Clerk's Office regarding how to distribute the proceeds of the sale if someone other than the creditor is the successful bidder.

3. What is done prior to the foreclosure sale?

The creditor's attorney must file the original final judgment with the Clerk's Office, which will

record the judgment. Either simultaneously with filing the judgment, or shortly after, the creditor must provide a *Notice of Sale* for issuance by the Clerk's Office.

A copy of the notice must be advertised in a local newspaper authorized by law to accept legal notices. The advertisement must be published once a week for 2 consecutive weeks, and the second publication must be at least 5 days before the sale date. Before the foreclosure sale occurs, the creditor must file with the Clerk's Office an *Affidavit of Publisher* that proves that the sale has been properly advertised.

4. May the mortgagor redeem the property before the foreclosure sale?

Yes, by paying the amount of the final judgment, including the costs and attorney's fees before the foreclosure sale. Otherwise, there is no right to redemption.

5. How do I find out about mortgage foreclosure sales?

Notices about the sales are published in the *Tallahassee Democrat*, *Tallahassee Advertiser*, or *Capitol Outlook*, once a week for two consecutive weeks. The sales dates and final judgments can be seen on the Clerk's website by going to www.clerk.leon.fl.us. Click on "Public Notices", and then click on "Notice of Foreclosure Sales". You will see a list of sales scheduled, and may select a date to view the case number, style of the case, and final judgment.

6. When and where are mortgage foreclosure sales held, and how are they conducted?

Foreclosure sales are conducted by the Clerk's Office according to Section 45.031, Florida Statutes, and are held at the southwest door of the Leon County Courthouse. Before the bidding, the deputy clerk conducting the sale will read an announcement informing potential buyers of their rights and responsibilities under Florida law. A description of the property may also be read at this time. Potential buyers take the property "as is", subject to any defects, liens, encumbrances, and all matters of which the buyer had notice or could have obtained knowledge.

If the creditor is the successful bidder, no funds are deposited with the Clerk, unless the bid is above the amount of indebtedness. However, if a party other than the creditor is the successful bidder, an immediate deposit of 5% of the bid is required. The balance of the bid, plus documentary stamps and court registry fees, must be received by 4:30 p.m. on the date of the sale. Payment must be in the form of cash, certified check, or cashier's check. No personal checks or promissory notes will be accepted.

The creditor is required to pay a mandatory sale fee of \$40.00. If the successful bidder is a party other than the creditor, the successful bidder is required to pay for the documentary stamps on the *Certificate of Title*, and a court registry fee which is calculated on the bid amount at 2% on the first \$500.00 and 1% of the balance. If the balance is not paid by the deadline, the sale will be declared void, and a resale will be scheduled. The bidder's deposit is nonrefundable and will be used to pay for the costs of the resale. Any amount remaining will be applied towards the final judgment.

7. Can anyone make an objection to the sale?

An *Objection to the Sale* may be filed within 10 days after the filing of the *Certificate of Sale*. This

will stop issuance of the title until the Court has a hearing and rules on the objection.

8. When is the Certificate of Title received?

If no objections are filed within 10 days of the sale, the Clerk's Office will issue and record the *Certificate of Title*. However, if the 10th day falls on a Saturday or Sunday, the title will be issued on Tuesday; if Monday is a holiday, the title will be issued on Wednesday.

9. What is a Tax Deed Application?

A tax deed application is the means by which a holder of a Tax Certificate – either a private individual or the County -- can force the redemption or sale of real property for delinquent taxes. After a Tax Certificate becomes 2 years old, the holder can submit a Tax Deed Application to the Leon County Tax Collector's Office. Once the application is made and the Tax Collector's Office has secured the title abstract and collected the necessary fees, the application is forwarded to the Clerk's Office. The Clerk's Office then has the responsibility either to collect the taxes due or sell the property at a public auction.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Clerk's Office, Circuit Civil Division, Leon County Courthouse, Room 232, 301 South Monroe Street, Tallahassee, FL 32301, (850) 577-4170; if you are hearing or voice impaired, call 1-800-955-8771.

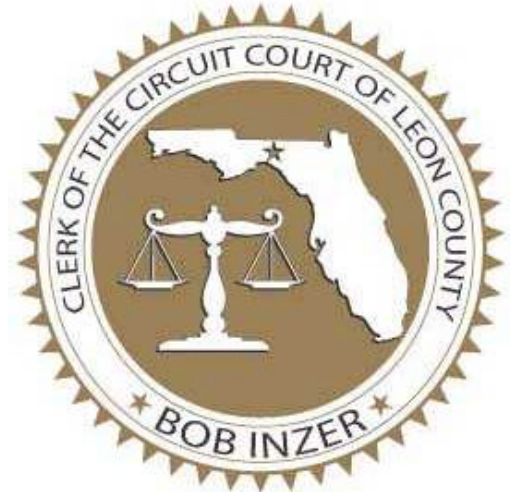
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Circuit Civil Division
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Please visit our home page at
<http://www.clerk.leon.fl.us>

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