

A GUIDE TO FORECLOSURES

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. Where do I file a foreclosure action?

- a. **For claims under \$15,000**, you may file the foreclosure action at the County Civil Division, located at the Liberty County Courthouse.
- b. **For claims \$15,000 or above**, you must file the foreclosure action in the Circuit Civil Division, in the Liberty County Courthouse.

All mortgage foreclosure files are public record and can be viewed at the respective court location.

3. What happens in foreclosure proceedings?

If the court finds that the mortgagor is in default of the mortgage payments, final judgment will be issued in favor of the plaintiff. The final judgment sets forth the costs due to the plaintiff, such as

principal charges, interest, court costs, and attorney's fees.

In addition to the assessment of costs, the final judgment will list 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 distribution of the proceeds of the sale if someone other than the plaintiff is the successful bidder.

4. What is done prior to the foreclosure sale?

The original final judgment is filed and recorded with the Clerk's Office. Simultaneously, or shortly thereafter, the plaintiff 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 plaintiff must file with the Clerk's Office an *Affidavit of Publisher* which proves the sale has been properly advertised.

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

The sale dates and final judgments can be viewed at the Clerks Office or on the Clerk's Website at www.libertyclerk.com. You will see the list of sales scheduled. Files may be viewed in the clerk's office by request.

6. May a person who is not involved in the foreclosure lawsuit bid on the property?

Yes, and this person is often referred to as a "third party bidder."

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

Mortgage foreclosure sales are conducted by the Clerk's office according to Section 45.031, Florida Statutes, and are held at 11 a.m., on scheduled Tuesdays. The sales are held on the front steps of the Liberty County Courthouse.

Prior to 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 plaintiff 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 plaintiff is the successful bidder, an immediate deposit of 5% of the bid is required. The balance of the bid, plus documentary stamps (\$.70 per \$100) and court registry fees (3% on the first \$500 and 1.5% on the balance), must be received by 4:30 p.m. on the date of the sale. Payment must be in the form of cashier's check, money order, bank check, or cash - **NO** personal checks or promissory notes.

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.

A \$60 sale fee is required by Florida Statutes before the sale can be conducted.

8. 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 makes a decision on the objection.

9. When is the Certificate of Title issued?

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.

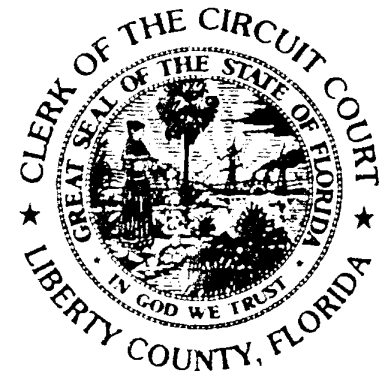
If you are a person with a disability who needs any accommodation in order to participate in a court proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Clerk's Office at 850-643-2215 (or through the Florida Relay Service, TDD by dialing 7-1-1) Liberty County Courthouse, 10811 NW SR 20, P.O. Box 399, Bristol, FL 32321 within two working days of receipt of your hearing notice. If you are hearing or voice impaired, call 1-800-955-8771.

ROBERT HILL
CLERK OF COURTS

Please visit our home page at

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