

Delaware (DE) Foreclosure Laws

When you develop a definite plan of action with well-time, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of Delaware.

Judicial foreclosure available:yes

Non-judicial foreclosure available:no

In Delaware, if a borrower defaults, the lender can take several remedies simultaneously. The lender could sue to collect on the note and foreclose the mortgage. A lender could also sue on the note first, and pursue foreclosure later. However, the lender will only be permitted to recover the amount unpaid on the loan. Usually, the speediest process is scire facias, a procedure which contemplates a sale of the mortgaged property for a sum that will pay the balance on the loan, or a transfer of title to the lender, after the property has been exposed at a public sale, in exchange for a credit against some part of the balance on the loan, or up to the full balance owed on the loan.

Scire Facias

Scire Facias is a proceeding in which the borrower must show cause that there should be no foreclosure. Usually, upon breach of the terms of the mortgage, such as through non-payment of the note or breach of the mortgage conditions, the lender may seek a writ of scire facias from the Superior Court in the county in which the mortgaged property is located. The initial filing, which must be sworn to, consists of a Praecipe and Complaint. The Praecipe calls upon the Prothonotary to issue the writ of scire facias. The term scire facias is the name both of the writ and the proceeding it instigates. The writ is issued upon the default of the borrower in making payments or observing mortgage conditions, and requires the borrower to show cause why the mortgage should not be foreclosed and the property sold.

Once the writ is issued, it will be served upon the borrower by the sheriff. If the sheriff goes out and tries to hand the borrower the writ without success after repeated effort, which is called return non est., then a default liberari judgment may be obtained. (At least two separately issued consecutive writs must be returned non est.) If the borrower is served with the writ, it will command the borrower to appear before the court to show cause why the mortgage premises out not to be seized and sold to pay off the mortgage, with interest, or else pay off the lenders losses due to the borrowers non-performance. If the borrower fails to appear within 20 days after being served with the writ of scire facias, then the lender will obtain a default liberari judgment. Otherwise the borrower must prove why the foreclosure

should not take place. Unless the court is satisfied with the explanation, the court will authorize the property to be seized to pay off the mortgage.

Preliminary Notices

Posting

Notices of the sale must be posted publicly and on the property in foreclosure at least ten days before the sale date.

Delivery

A copy of the notice must be run two weeks before the sale.

Sale Procedures

Person Conducting the Sale

The sale itself will be conducted by the sheriff.

Place of Sale

The place of sale must be either at the court house steps or at the site of the property in foreclosure.

Sale Procedures

Person Conducting the Sale

The sale itself will be conducted by the sheriff.

Place of Sale

The place of sale must be either at the court house steps or at the site of the property in foreclosure.

Post-Sale Matters

The sale must be confirmed by the court. Once confirmed, no redemption is possible. A deed will be executed by the Sheriff to convey title to the purchaser. Deficiency judgments are possible, but only by a suit on the note, in addition to the scire facias.

Unusual Procedures

Since scire facias is purely a remedy at common law, equity law does not play a role in the proceedings. Although mortgages can be foreclosed by an equity suit in the Delaware Court of Chancery, this method is seldom used. Strict common law has some unusual results, however. In particular, the borrowers counterclaims will not be heard at the hearing on the scire facias, because they were not part of the original mortgage. Such counterclaims must be pursued in a separate proceeding rather than as part of the scire facias proceeding. However, all record owners acquiring title subject to the mortgage (terre-tenants) must be joined in the scire facias proceeding. Also persons who have equitable or legal interests of record, such as one pursuant to a judicial sale, must be joined. These changes were made in 1986 to correct a constitutional problem with the old procedure.