Florida (FL) Foreclosure Laws

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

The Process

In Florida, mortgages must be foreclosed by filing a lawsuit in court. As in any lawsuit, the borrower must be served with notice of the lawsuit and must be given an opportunity to appear and defend his or her rights. The lender will try to show that the borrower is in default, and that foreclosure is therefore necessary under Florida equity law. Florida is unusual in that the legislature has passed very few statutes regulating foreclosures. Most of the law on the subject of foreclosures in Florida is found scattered in dozens of cases. The basic statute, chapter 702.01 reads as follows:

All mortgages shall be foreclosed in equity. In a mortgage foreclosure action, the court shall sever for separate trial all counterclaims against the foreclosing mortgage. The foreclosure claim shall, if tried, be tried by the court without a jury.

Counterclaims by a borrower may be tried by a jury, but they must be tried separately from the main foreclosure lawsuit.

In Florida because the lawsuit to foreclose on a borrower is a suit in equity, it is impossible to obtain an injunction to stop what is, in essence, a court ordered sale. In addition, the court can order the sale at a low price. A sale can be set aside if there is an error in the procedure to foreclose; however, it cannot be set aside due to the low sale price. The court order commanding foreclosure will specify how the foreclosure must take place, and the foreclosure must take place on those terms.

After the sale takes place, the sale terms must be confirmed by the court that ordered the sale. If the terms of the sale order are met, title in the buyers name can become complete by filing a certificate of title. At the discretion of the court, junior lien holders can redeem the property, up to the time of the confirmation of the sale. The equity of redemption is cut off when the sale is confirmed, but it exists prior to that time, which means the borrower can save the property from foreclosure by coming up with the money before confirmation.

Deficiency

A separate action for a deficiency must be filed within four years after the foreclosure sale.