

Michigan (MI) 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 Michigan. The Process

Michigan uses two forms of foreclosure: foreclosure by court action and foreclosure by advertisement. A mortgage may be foreclosed by filing a lawsuit in the Michigan circuit court. The court may order the property sold six months after the initial filing of the lawsuit. The property will be sold by the circuit court commissioner or any other person who is appointed by the court to conduct the sale. After the sale, the borrower has six months to redeem.

Foreclosure by Advertisement

If the mortgage contains a power of sale clause and there has been a breach of the terms of the mortgage, such as nonpayment of the loan, then the property may be foreclosed on through a non-judicial foreclosure by advertisement, unless the mortgage is held by the Michigan state housing development authority. Nonpayment of any installment of a mortgage constitutes a separate act which justifies foreclosure.

The notice of a foreclosure sale must be published once a week for four weeks in a newspaper of general circulation in the county where the land is situated. Within 15 days after the first publication, a true copy of the foreclosure notice must be posted in a conspicuous place on the premises described in the foreclosure notice. The lender or the lender's agents have a right to enter the mortgaged premises to post or deliver foreclosure notices.

The sale must be a public sale, conducted between the hours of 9 o'clock "in the forenoon" and 4 o'clock in the afternoon. The sale must be at the courthouse or place where the circuit court for the county tries lawsuits. The sale is to be conducted by the person appointed for the purpose in the mortgage, or by the sheriff, under sheriff or deputy sheriff. The sale must be made by auction to the highest bidder. The sale may be adjourned from time to time by posting a notice of such adjournment at the time and place where the sale would otherwise have been made. Any adjournment for more than a week must also be published in the same newspaper as the original notice, within 10 days from the date the sale was adjourned, and again once per week for each week the sale is adjourned.

The officer or person conducting the sale will execute, acknowledge and deliver a deed to the premises to the high bidder at the foreclosure sale. The deed must specify the last date by which the borrower can redeem the

property. The deed must be recorded within 20 days after the sale. The register who records the deed shall endorse the time the deed was received. If the property is ever redeemed, the register will destroy the deed and record the word redeemed on the face of the special book for foreclosure deeds. The deed and the foreclosure do not wipe out liens or claims that existed prior to the date of the original mortgage.

Redemption

The borrower may redeem by paying the lender the sum for which the property was sold at foreclosure, plus interest at the same rate as the mortgage. If the foreclosure buyer recorded an affidavit stating how much in taxes and insurance the foreclosure buyer paid, following the foreclosure sale, then the borrower must repay that amount as part of the redemption process.

If a property is over four units or three acres and has not been abandoned, then the time period for redemption is one year from the date of the foreclosure sale. If the property has been abandoned, and if the balance is over two-thirds of the original loan, then the redemption period is one month. If the balance is two-thirds or less of the original loan, use one year. If the property is four units or less and does not exceed three acres in size, then two different redemption time periods apply.

1. If the mortgage was originated after 1965, and if the amount that remains unpaid on the loan is more than two-thirds of the original debt, then the borrower still has six months to redeem.
2. If the unpaid balance on a mortgage is less than two-thirds of the original debt, then the borrower has only three months to redeem if the property has been abandoned.

Abandonment

For residential property of four units or less, or three acres or less, abandonment shall be presumed in the following circumstances:

Personal Inspection

The lender has made a personal inspection of the premises and the inspection does not reveal anyone who is presently occupying or about to occupy the premises.

Borrower Fails to Respond to Proper Notice

The lender has posted a notice at the time the personal inspection was made, and mailed it by certified mail, return receipt requested, to the borrower's last known address. The notice must state that the lender considers the premises to be abandoned, and that the redemption period in such event will be only 30 days. If the borrower does not respond to these notices within 15 days by mailing to the lender (first class mail) a letter stating the premises are not abandoned, then the premises are considered to be abandoned. Obviously, a borrower who wants to preserve his or her rights should get busy and write the lender to show the premises are not abandoned or else the borrower will lose most of the benefits of the right of redemption.

Deficiency

A lender is restricted to foreclosing against the property as the sole remedy, unless the lender has a separate document that obligates the borrower to pay a sum certain, such as a promissory note, or the borrower has otherwise agreed to pay a sum in a specific amount stated in the mortgage document. In order to recover a deficiency amount, which would be the balance due on the mortgage minus the sum collected at the foreclosure sale (or credited if the lender bids by canceling out some of the borrower's obligation), the lender must file a lawsuit. The borrower can defend by showing the foreclosure sale price was less than the true value of the property at the time and place of the sale. If the sale was for substantially less than the true value, the deficiency sum the lender can recover may be either defeated or reduced by crediting the property's fair value against the unpaid loan balance at the time of the foreclosure. However, these defenses do not apply if the lender forecloses by court action rather than by foreclosure by advertisement.