

Mississippi (MS) 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 Mississippi.

Judicial Foreclosure Available: Yes

Non-judicial Foreclosure Available: Yes

Mississippi offers two methods of foreclosure: by filing lawsuit asking for foreclosure in a Chancery Court and by sale, if authorized in the mortgage and conducted in compliance with Mississippi's statutes. The borrower's right to properly conduct of the sale, after proper notice and advertisement of the sale, may not be waived in the loan documents. Any defect in the sale that would cause it to be void may not be corrected by the statute of limitations until ten years have passed from the date of the defective sale.

If the deed of trust contains an authorization for the lender to call upon a trustee to sell the real estate due to the borrower's default on the loan, such as by non-payment then the real estate may be sold by the trustee named in the deed of trust (or later appointed as a substitute) to try and pay off the loan. No sale by a substitute trustee is valid unless it was first recorded in the Office of the Chancery clerk of the county where the land is located, prior to the first posting or publishing of the foreclosure sale notice. If the lender, instead of some other buyer, acquires title to the real estate at foreclosure, then the lender will give credit for the foreclosure sale price against what was due on the loan.

Preliminary Notices

Advertising

In order to be valid, the foreclosure sale must be advertised for three consecutive weeks before the sale in a newspaper of general circulation in the county in which the land is located.

Posting

In addition, one notice must be posted for the same time at the county courthouse door. The notice must name the borrowers who will lose title.

Cure Procedure

The borrower may stop the foreclosure at any time prior to the sale by coming up with the missed payments, accrued costs and attorney's and trustee's fees. Only the amount that is actually past due needs to be paid.

Even though the loan documents provided that the lender could accelerate the loan and make all future payments due, the borrower has the legal right to disregard the acceleration and stop the foreclosure by paying up the missed payments, accrued costs and attorney's and trustee's fees. The loan is then to be treated as though it was not accelerated. The borrower may continue to own and occupy the property and the lender may not foreclose.

Sale Procedures

Place

The place of sale should be the same as the place of sale for sheriff's sales of property in the county, which is usually the courthouse.

Manner

The sale must be made by public outcry in the county where the land is located, or in the county where the borrower lives. The sale must be for cash to the highest bidder.

Post-Sale Matters

After the sale, the trustee or substitute trustee must deliver a trustee's deed to the successful high bidder. The deed should give the names specified in the old deed of trust that was foreclosed on. The trustee's deed should also give information sufficient to locate the foreclosed deed of trust or mortgage in the deed records.

Special Procedures - Foreclosure and Major Disasters

In Mississippi, the governor may declare that a natural disaster, an enemy attack, or a man-made technological disaster makes it imperative to impose a moratorium on foreclosures. The moratorium may last for up to two years after the governor's declaration. The borrower can go to court and file a lawsuit to enjoin a lender from foreclosing. This would be due to damages to the mortgaged premises or because of economic conditions brought about by enemy attack, natural disaster or man-made technological disaster causing the fair market value of the property to decline by 15 percent, if refinancing is impractical under the circumstances. No cash is required on the injunction. The borrower must take action because a foreclosure conducted during a moratorium while the borrower did nothing is valid, even though the borrower could have won by exercising these rights.

Redemption

A foreclosure sale under a deed of trust is final in Mississippi. There is no right of redemption.