

## **Montana (MT) 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 Montana .

### **The Process**

Real estate may be foreclosed on by filing a lawsuit or by conducting a non-judicial private foreclosure sale in compliance with Montana law. Montana has some unusual mortgage provisions that have been largely replaced by the Small Tract Financing Act of Montana for homesteads and small business real estate. If the tract of land is 15 acres or less, then the lender may use a trust deed that provides for a relatively quick and inexpensive foreclosure procedure. Unless the Small Tract Financing Act applies, then the lender must foreclose either by filing a lawsuit and seeking an order of sale, or else following a special foreclosure procedure.

Under Montana's special foreclosure procedures, if applicable, the lender or person conducting the foreclosure sale must publish, post and serve a foreclosure notice at least 30 days in advance of the foreclosure sale. The notices must be advertised in a newspaper where the real estate is located, and if there is no newspaper, then by posting the notices in five conspicuous places in the county. Two other notices must be posted in conspicuous places in the township in which the land is situated, and one such notice must be in such a conspicuous place as will be most likely to give notice to all persons of the sale, and one must be posted at the front door of the county courthouse. The notice of sale must be further served on the occupant of the property to be foreclosed on and upon every person claiming an interest in the property who may be found in the state of Montana.

### **Small Tract Financing Act Foreclosure Procedure**

If the tract of land is less than 15 acres, then the Small Tract Financing Act applies to the foreclosure under the power sale provisions of a deed of trust. If there is a default on a loan obligation secured by the deed of trust, and then recorded a notice of sale, duly executed and acknowledged by the trustee named in the deed of trust, which sets forth proper information, then the foreclosure may be done out of court. The contents of the foreclosure notice must include:

1. The names of the borrower, lender and trustee.
2. A description of the property in foreclosure.

3. A description of the default causing the foreclosure.
4. The book and page where the trust deed is recorded.
5. The sum owing on the defaulted loan.
6. The trustee's or lender's intention to sell the property or pay off the debt.
7. The date of the sale, which shall be not less than 120 days subsequent to the date the foreclosure notice is filed for record.
8. The time of the sale, which shall be between the hours of 9 A.M. and 4 P.M., maintain standard time.
9. The place of the sale, which shall be at the courthouse in the county in which the property is located, or at the office or usual place of business of the trustee if it's within the county in which the property is located.

#### **Mailing of Foreclosure Notices**

The trustee, at least 120 days before the date fixed for the foreclosure sale, must mail foreclosure notices by registered or certified mail to the following persons:

1. The borrower, at the borrower's last known address
2. Any person who recorded a request for notice
3. Any record title owner as of the notice filing date

#### **Posting**

At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale must be posted in a conspicuous place on the property to be sold. The trustee may request the sheriff or constable of the county to post the notice. A copy of the notice shall be published in a newspaper of general circulation in the county in which the property is located once per week for three successive weeks. The posting and the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

#### **Recording**

On or before the date of the sale the trustee must record an affidavit stating that the requirements of mailing, posting and publication have been met.

## **Sale Procedures**

At the date, time and place specified for foreclosure in the notice of sale, the trustee or his or her attorney shall sell the property at public auction to the highest bidder. The sale may be postponed up to 15 days by a proclamation made at the time the foreclosure sale would otherwise have taken place. The purchaser must pay the high bid price in cash. In return, the purchaser will receive a trustee's deed. If the purchaser fails to pay, then the trustee can resell the proper at any time to the highest bidder. The trustee may reject any further bidding by a bidder who fails to produce cash in response to winning a bid.

## **Redemption**

Although the old statutes provided for a one year right of redemption, the Small Tract Financing Act eliminates the borrower's right to redeem after a properly conducted foreclosure sale.

## **Deficiency**

Montana does not allow a deficiency judgment unless the foreclosure was done by filing a lawsuit and the sale proceeds were insufficient to pay the judgment. Small Tract Financing Act foreclosures done out of court by advertisement do not give the lender any right to collect a deficiency from the borrower.

## **Possession**

The lender may obtain possession on the tenth day following the sale. Any person still in the house or property is to be treated as a tenant at will (a nonpaying tenant).