

North Dakota (ND) 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 North Dakota.

The Process

In North Dakota, a lawsuit may be brought in District Court for foreclosure or for satisfaction of a mortgage on real estate. Prior to bringing any lawsuit, the lender must give the borrower no less than 30 days advance notice of the lenders intent to foreclose. This notice must be sent no later than 90 days before the suit is filed.

The notice must contain:

1. a description of the real estate
2. the date and amount of the mortgage
3. the amount due for principal, interest and taxes paid by the lender, stated separately

4. a statement that if the amount due is not paid within 30 days from the date of mailing or service, then a lawsuit will be filed to foreclose

The notice must also state the time period for redemption, which is either one year, or, for small tracts with substantial balances and the properly worded mortgages, six months.

The notice must be served by registered or certified mail addressed to the owner of record at the post office address shown on the mortgage or recorded by the register of deeds. The notice may be served personally in the same manner as a lawsuit. A U.S. Post Office registry return receipt showing the envelope was delivered to the title owner is evidence the owner received it. If the borrower brings in the missing payments any time within 30 days after receipt of the notice, the loan must be reinstated.

North Dakota law requires the lawsuit paperwork to include several allegations that are unusual. First, North Dakota law requires the attorney bringing the suit to hold a power of attorney to act on behalf of the lender. The lawsuit itself should allege this is so. Second, the lender must also declare in the original lawsuit whether or not the lender will pursue a deficiency judgment against the borrower if the foreclosure sale does not bring in enough money to pay off the outstanding loan balance. The lender may not ask for a deficiency in the foreclosure suit if it has already brought

another suit just to collect on the loan. If the borrower can bring in the missed payments plus foreclosure costs before the decree of sale is issued by the court, then the lender's lawsuit to foreclose must be dismissed.

All sales must be made by the sheriff or deputy of the county where the judgment is rendered. The sale must take place in the county where the land is located. The sale will normally be at the courthouse or another place designated by the trust deed. Whenever the real estate is sold at foreclosure, the sheriff or deputy must give the buyer a certificate of sale, and at the expiration of the redemption time period, a deed must be given to the buyer. The lender cannot obtain possession during the redemption period. However, the lender can obtain a court injunction barring the borrower from committing waste against the property during the redemption period if the borrower continues to occupy the premises. Any cash surplus from the sale, beyond that needed to pay off the mortgage and the foreclosure costs, must be paid to the borrower.

Redemption

The normal redemption period is one year. One year from the sale, if the borrower can come up with the balance due on the loan, plus costs, the property can be redeemed. Property sold at foreclosure can be redeemed not only by the borrower, but by a creditor who holds a lien against the property. A creditor who wants to redeem is called a redemptionor. Interestingly, one redemptionor can redeem from another redemptionor who took title by redemption. Each redemptionor must wait 60 days after the last redemption. The amount paid to redeem must be the amount of the original purchase price with interest as stated in the original loan documents or the one on which foreclosure took place. In either case, the amount should elude the foreclosure costs, plus taxes and insurance.

Short-Term Redemption

The short-term redemption time period is six months. In order to claim short-term redemption, the mortgage must contain the following wording:

"The parties agree that the provisions of the short-term mortgage redemption act shall govern this mortgage."

The mortgage should also contain (in capital letters) the words,

"MORTGAGE-SHORT-TERM MORTGAGE REDEMPTION"

The area covered must be ten acres or less. Short-term redemption is available if the amount claimed upon the mortgage before foreclosure is

more than 66 2/3 percent of the original indebtedness secured by the mortgage.

Moratorium

The North Dakota courts have the power to postpone an entry of judgment in foreclosure proceedings if the balance owed on the loan is less than the market value of the property. These provisions are applicable to persons who would be deprived of a home.

Trustee for Commercial Property

Commercial property in North Dakota may be placed in the charge of a trustee pending the expiration of the period of redemption. The trustee can take possession of the premises; pay utilities, taxes and insurance; receive rentals from tenants and evict them if they don't pay.