

New Jersey (NJ) 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 New Jersey.

The Process

Foreclosures in New Jersey take place by filing a lawsuit. New Jersey doesn't use privately conducted mortgage foreclosure sales. A lender begins by filing a complaint of foreclosure in the Superior Court. Constructive notice can be given by recording a lis pendens with the clerk or register of the county where the land is located. A lender may file a foreclosure suit simply to collect the unpaid payments rather than the entire unpaid principal balance. If so, the lender can get a judgment for the missed payments and yet hold the mortgage and the note intact for the rest of the loan balance. The property may be sold through a foreclosure sale with the mortgage lien and note still in place so that the buyer at the foreclosure sale holds title subject to the existing mortgage lien and note. In this type of sale, however, the lender may not collect a deficiency judgment against the borrower.

Preliminary Notices

In New Jersey once the lender wins a judgment to foreclose on the real estate, whether in part, as just described, or in whole, by a writ of execution, the sheriff or another officer will conduct the sale. The foreclosure notice must be posted in the county office of the county where the property is located, and on the property in foreclosure. The notice must be advertised in two newspapers in the county, one of which must be either the county seat or the largest municipality in the county. The person seeking the foreclosure must notify the property owner and any other parties to the foreclosure lawsuit at least ten days before the sale. The newspaper ad must disclose any title defects, unless the court has ordered the foreclosure sale completed free of any liens. The buyer can back out of the purchase if the ad did not disclose the title defects, or if the sale was not ordered to be free of liens. The buyer must begin by notifying the court that a defect in title exists.

Sale Procedures

The sheriff may then proceed to sell the property in the manner directed by the court. The sheriff must deliver the deed unless an objection to the sale is made within ten days after the sale, or the objection is made before the deed was delivered, if delivery is past ten days from the sale. Unless there

are valid objections, the court will confirm the sale. Thereafter the sheriff must file a report of the sale with the court within a reasonable time.

Deficiency Judgments

Deficiency judgments are permitted in New Jersey. A lawsuit for a deficiency must be commenced within three months from the date of the foreclosure sale, or confirmation of the sale if confirmation was required. Although the deficiency suit is a separate lawsuit, it can only be brought against a person who was joined to the foreclosure lawsuit and who is personally responsible for the mortgage debt. Such a person must be served with the process. On a note that is dated on or after May 1, 1980, the debtor may dispute the deficiency by introducing evidence of the fair market value of the mortgaged premises at the time of the foreclosure sale. The deficiency is limited to the difference between the fair market value of the premises and the balance due on the loan. However, a borrower should object to the foreclosure sale price prior to the confirmation of the sale. The failure to do so may set the borrower up for a larger deficiency. However, some New Jersey courts are refusing to confirm the foreclosure sale unless the lender agrees, as part of the confirmation, not to sue the borrower for a deficiency greater than the difference between the fair market value and the balance owed on the loan.

Redemption

Redemption is possible during the ten days a borrower has to object after a foreclosure sale. If the borrower objected to the sale, then redemption is possible anytime until the court rules on the objections, which may be longer than ten days.

If the lender sues the borrower for deficiency, the effect is to reopen the foreclosure sale, which would otherwise have been final and proof against a right of redemption. A deficiency gives a borrower the right to bring an action to redeem the property within six months after the lender's deficiency judgment is rendered. However, persons who answered the deficiency suit, disputing its amount, and lost may not redeem.