

Oklahoma (OK) 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 Oklahoma.

Judicial Foreclosure Available::yes

Non-judicial Foreclosure Available::yes

In Oklahoma both judicial and non-judicial foreclosures are available. The judicial sales are governed by the age-old principles of common-law equity, and some statutes. The non-judicial sales are governed by the Oklahoma Power of Sale Mortgage Foreclosure Act, which was passed in 1986. However, the lender who chooses the non-judicial route will effectively give up the right to sue for a deficiency if the foreclosure involves homestead property. Moreover, a borrower may force the lender into judicial foreclosure if the property involved is a homestead by recording and then mailing a written notice to the lender 10 days before the foreclosure sale claiming the property as homestead. At that point, only judicial foreclosure may be used. This right is not available on other types of property.

Judicial Foreclosure

Mortgages on real estate can be foreclosed by filing a lawsuit under principles of equity in the District Court of the county where the land is located. If there has been a default by the borrower in meeting the requirements of the loan, such as not paying the payments, then the court will order a foreclosure sale. The price may be determined through a special appraisal procedure. Unless the borrower waives the right to an appraisal in the mortgage, the property must be appraised before it can be sold at foreclosure. At the foreclosure sale, the property may not be sold for less than two-thirds of the appraised value.

Judicial Execution Sale

Advertising

The impending foreclosure sale must be advertised at least 30 days in advance of the sale.

Non-judicial Foreclosure

Mortgages that can be foreclosed out of court must include the following statement, in bold and underlined type:

A power of sale has been granted in this mortgage.

A power of sale may allow the mortgagee (lender) to take the mortgaged property and sell it without going to court in a foreclosure action upon default by the mortgagor

under this mortgage.

A written notice of intention to foreclose by power of sale must be sent by certified mail to the borrower at the borrower's last known address. The notice shall describe the defaults of the borrower under the loan, and give the borrower 35 days from the date the notice is sent to cure the problem. If the borrower comes up with the missed payments during the 35 days, then the foreclosure can be stopped. It cannot be accelerated. However, if there have been three defaults, then the lender need not send another notice of intent to foreclose, and if the borrower has been in default four times in the past 24 months, and has been notified as above, then no further notice will be required to accelerate.

Preliminary Notices

Contents

The notice must describe in detail the nature of the borrower's default on the loan.

Time

The lender's notice informs the borrower that if the house is the borrower's homestead, then the borrower has ten days to elect judicial foreclosure or else face out-of-court foreclosure under a power of sale clause.

Advertising

The notice must be published once a day for four consecutive weeks, but the first date must be not less than 30 days before sale.

Recording

The notice, plus an affidavit confirming the validity of the trustee's procedures, must be recorded within ten days after the borrower has gone through the 35-day notice period.

Service

The borrower must be served with the papers advising the buyer of the default. They should be served in the same manner as for court. These papers should not only be served, but the wise lender will preserve proof of

receipt, return of service or an affidavit in lieu of personal service, along with proof of publication. All of these affidavits and a copy of the notice must be recorded.

Sale Procedures

Time and Place

The time and place of the sale must be specified in the notice of foreclosure.

Manner

The property will be sold at public auction to the highest bidder. If a purchaser at a foreclosure sale other than the borrower fails to post cash or certified funds equal to 10 percent of the bid amount, then the lender may proceed with the sale and accept the next highest bid.

Redemption

Once the court confirms a foreclosure sale there can be no redemption. There is no right of redemption on power of sale foreclosures either, although the borrower has the right to redeem until the foreclosure sale.

Deficiency

A lender may sue judicially to obtain a deficiency judgment. Also, under the Oklahoma Power of Sale Mortgage Foreclosure Act, any action for a deficiency must be commenced within 90 days after the date of sale. In such event the lender shall establish that the fair market value of the property on the date of the foreclosure sale exceeded the foreclosure sale price. If it did, then the higher figure must be credited against the balance due on the loan. If the house is the borrower's homestead, and the borrower elects judicial foreclosure, the borrower may be hit with a deficiency suit. On the other hand, if the borrower does nothing, then the lender cannot sue for a deficiency.