

South Dakota (SD) Foreclosure Laws

Judicial Foreclosure Available: :yes

Non-judicial Foreclosure Available::yes

If the mortgage contains a power of sale clause, then it may be foreclosed by advertisement, provided that there is a default on the mortgage. Alternatively, the lender may sue for a judgment against the borrower for the amount of the debt due and an order of sale.

Non-judicial Foreclosure Preliminary Notices

Contents

The foreclosure notice must give the names of the borrower and lender, the mortgage date, the amount due, a description of the premises and the time and place of sale.

Advertising

A foreclosure notice must be published once a week for four successive weeks in a newspaper in the county where the premises are located.

Sale Procedures

Time

The time must be between 9 A.M. and 5 P.M.

Manner

The sale is made by the sheriff at public auction to the highest bidder. The lender may bid, too. The winner gets a certificate of sale. Once the redemption period runs out, the buyer gets a deed. Any surplus remains on deposit with the clerk of the court for three months for possible claimants.

Postponement

The sale may be postponed.

Judicial Foreclosure

A lender may foreclose by filing a lawsuit in the circuit court of the county where the property is located. Service of process may be obtained by publication, if necessary. The lender may seek either or both of an order of sale and a judgment for the balance due on the mortgage. Once the court

finds foreclosure to be appropriate, then the sale may be made by a referee or sheriff, or anyone else appointed by the court. If the lender plans to bid, but the borrower submits competent evidence as to value, then the court may order the premises to be sold at their fair and reasonable value less the balance due on the loan. The borrower will receive a certificate of sale at the foreclosure. A deed will subsequently be issued once the redemption time period expires.

Deficiency

If the mortgage is a purchase money mortgage (a loan or loans used to buy the person's property) then a deficiency judgment is not permitted in South Dakota.

Redemption

If the tract of land is 40 acres or less, and the mortgage contains a special power of sale clause, then a 180-day period of redemption exists. If the property is abandoned, the time period becomes only 60 days. Generally unless the special short-term redemption mortgage provisions apply, all persons may redeem within one year of the date of sale.