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NASH & LODGE

Myth One:

The property is worth less than the mortgage so the lender has to agree to a short-sale.

Reality One:

The lender *never* has to agree to a short-sale. It is your job to convince them that a short-sale is in their best interest.

Myth Two:

If the owner gets a purchase agreement signed before the period of redemption expires, the lender has to let it close.

Reality Two:

The lender does *not* have to agree to allow the purchase agreement to close once the redemption period expires.

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MORTGAGE FORECLOSURE: AN OVERVIEW

by Kim Frank

Mortgages can be foreclosed by advertisement or by action. A foreclosure by advertisement does not involve the court system. A foreclosure by action requires that a lawsuit be commenced and the foreclosure goes through the court system. The vast majority of foreclosures are done by advertisement so the following is an overview of a foreclosure by advertisement.

Default

To be foreclosed upon a property owner must go into default under the loan and mortgage documents. The mortgage and promissory note define what a default is. A default can be a failure to pay one payment or many. Sometimes, the individual may have defaulted on another loan and the loan documents allow the lender to declare the borrower in default on all loans through that lender. Or, if the property owner has made a transfer of the property such as renting the property out, transferring the property under contract for deed or adding another party as owner of the property to the title, the lender may be allowed to declare the borrower in default under the loan documents and require the borrower to pay the full amount of the loan immediately even if loan maturity is many years out.

Each lender may respond differently to the same default. The same lender may respond differently in different situations of the same default. Because the default rate has steadily increased it is more likely that a lender today will respond to a default by the borrower and will respond quicker than they would have a year ago. Once a lender responds legally to a default, the following will occur:

Thirty Day Debt Collection Notice

Once the lender has decided to proceed with a foreclosure it will hire a local attorney (an outside attorney) to commence the foreclosure. The outside attorney will start the foreclosure process by giving a **Thirty Day Debt Collection Notice** to the borrower. During the thirty day period documents may still be filed to foreclose and notices may be published.

Depending on the amount and type of debt (commercial versus residential) and the type of lending institution, the attorney *may* also be required to give thirty days notice to the debtor before requiring the property owner to have to pay the full amount of the mortgage (if this is required, notice of foreclosure generally will not be published during the thirty period).

Pre-Sale Notice of Foreclosure

The lender must publish the Notice of Foreclosure for six weeks and serve the occupant of the property at least 4 weeks prior to sale.

- Any time prior to the Foreclosure Sale (unless the default is non-monetary) the property owner may pay the payments by which it is in default to avoid foreclosure and the property can be sold prior to sale!
- The notice must be published in certain legal newspapers such as Finance & Commerce and the Anoka Union.
- The Notice will give you the following information:
 - The name of the mortgagee (the lender) and any assignees;
 - The name of the mortgagor (the borrower);
 - The legal description of the property;
 - The date of the mortgage;
 - The original principal amount of the mortgage;
 - The amount claimed to be due on the date of the notice;
 - The date, time and place of the Sheriffs Sale;
 - The length of the redemption period; and
 - The attorney/law firm who is handling the foreclosure

The Sheriff's Sale

At sale, the lender or any other interested parties may bid the amount of the debt or above. Generally, the foreclosing lender (through their outside attorney) bids the amount of the debt and investors or any other parties interested in the property bid above the lender's bid. As a practical matter, most Sheriff Sales take place without anyone other than the lender bidding. If you have a client who wishes to bid on the property you can contact the attorney for the lender to find out when the sale is and what is the amount that the lender will bid. A common myth is that the lender wants the property so they will be uncooperative or attempt to hinder your bid to buy the property. In truth the lenders want their money, not the property. They don't want to deal with the cost or the hassle of selling the property.

The Sheriff's Certificate/Post Sale Issues

The party that bids the most at the Sheriff's Sale gets what is known as a "**Sheriff's Certificate**" - which means that the party has a right of ownership to the property subject to the property owner's right to purchase the Sheriff's Certificate during the first six months after the sale (if the property is abandoned, the lender may go to court to reduce the redemption period to five weeks). The period of time that the owner has after the Sheriff's Sale to purchase the Sheriff's Certificate is referred to as the "**Redemption Period**".

The Redemption Period

During the property owner's Redemption Period, the property owner may occupy and sell the property. The property must close before the owner's redemption period expires. If the property owner sells the property, the property owner must pay the amount of the Sheriff's Certificate, interest accruing on the Certificate (which is at the mortgage rate) and taxes paid by the Lender. All subsequent mortgages and liens remain on the property when the Mortgage Holder pays the foreclosed mortgage in this manner.

Creditors Redemption Rights

Immediately after the owner's Redemption Period expires, the Sheriff's Certificate may be purchased by mortgage holders and lien holders on the property who had liens or mortgages recorded on the property after the mortgage that is being foreclosed if they filed a timely Notice of Intent to Redeem and correctly follow the redemption procedure. They redeem in an order based on when their mortgages or liens were recorded against the property. If they do not redeem they lose their lien on this property (the debt still exists against the borrower).

Overview

The mortgage default rate has sharply gone upward up and all indications are that the number of properties facing a foreclosure are not going to decrease any time soon. In fact, lenders may give borrowers less leeway and start a foreclosure in situations where in the past they would have either ignored the default or would give the borrower more

time to cure the default. The owners of these properties need to realistically consider all of their options including selling their property if they can't cure the default. You can help them determine if they have any equity to save by advising them what they can realistically expect to receive in a sale given the market conditions and the amount of time that they have to get a sale before they lose the property. In many cases, the homeowner look at what they need or what they paid instead of what they truly can get on the market in determining whether they have any equity. They don't have a lot of time to miss-price the home. You don't want to invest a tremendous amount of time and money marketing a property that either won't sell because the price is too high or can't be priced right because the debt is too high on the property. On top of everything if the homeowners expectations are too high and they end up losing the property who will they blame? Their real estate agent of course!

If there is no equity in the property or if their debt on the property is higher than the value of the property you can still sell the property provided you are able to persuade the lender or lenders to take less than they are owed (commonly referred to as a "Short Sale").

To work the foreclosure area takes a lot of work on your part, there are no guarantees that you will successfully sell the property and there are some liabilities that you expose yourself to that aren't present with the normal residential listing but if you become knowledgeable and skilled in this area you can become very successful in a tough market that you are facing today.

Next Month's Newsletter

Next month we will cover purchasing from homeowners facing foreclosure. Representing a buyer who purchases these types of properties can be very profitable for a real estate agent but is loaded with hidden bombs that can blowup in your face – civil lawsuits, criminal lawsuits, damages, fines and a loss of your license are all possibilities if you don't learn what can or cannot be done!

November Foreclosure Seminar

If you would like to learn more about the foreclosure process, representing sellers facing foreclosures, representing buyers purchasing foreclosure properties and how to avoid ethics complaints, Commerce Department complaints, civil lawsuits, criminal lawsuits and governmental investigations sign-up for our **November** seminar entitled "**Foreclosures: The A,B,C's of What You Need to Know to Represent Buyers and Sellers Without Being Sued, Fined or Sent to Jail**".

For more information, take a look at page three.

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We Combine Real Estate Knowledge with Real Estate Experience to Give

NOTICE: The foregoing is not intended to constitute legal advice for any specific circumstance, but is intended to reflect broadly applicable principles, under Minnesota law, relevant to a typical situation. Each set of facts and each contract is, or can be unique; the unique facts and specific language of the contract may require a different legal analysis and may result in a different outcome. Before proceeding in reliance upon this or any other general description of law, consult with an attorney, competent in the field of practice relevant to your situation.

PRESENTED BY:

NASH & LODGE

Continuing Education



3 Credit Seminar

An icon showing a blue document with a white house silhouette and a key, set against a light blue circular background.

FORECLOSURES

*The A,B,C's of What You Need to Know to
Represent Buyers and Sellers Without
Being Sued, Fined or Sent to Jail*

- ◆ You pick the Date, You pick the location
 - November 15 @ Maple Grove Community Center - Maple , MN
 - November 21 @ WINGATE HOTEL - COON RAPIDS, MN
- ◆ 3 Real Estate Continuing Education Credits
- ◆ Learn about what happens in a foreclosure from start to finish
- ◆ Learn how to represent Sellers facing foreclosure
- ◆ Learn how to represent Buyers of foreclosed property without violating equity stripping laws
- ◆ \$40.00 to register or Register before October 20th and the registration fee is only **\$30.00!**
- ◆ To register call (763-862-6100) or e-mail (lhansen@nashandlodge.com) Lisa



Both classes start at 9AM and will end at NOON
To obtain the registration discount you must pay by October 20th