

INTRODUCTION TO ILLINOIS MORTGAGE FORECLOSURE PROCESS

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THE FORECLOSURE PROCESS

- Illinois is a judicial foreclosure state (one of about 22 states)
- Process is governed by The Illinois Mortgage Foreclosure Law (IMFL) 735 ILCS 5/15-1101 et. seq.
- 15-month process from default to eviction even if foreclosure is uncontested
- Can be much longer if contested or if borrower requests mediation

WHAT IS A MORTGAGE FORECLOSURE?

- Collection action (on a note)
- Enforcing a security instrument (mortgage)
- By the mortgagee, i.e., the entity which holds the indebtedness or has the authority to act on behalf of it
- After an event of default (there are at least 5)
- Notice of default/acceleration
- Acceleration of debt

FORECLOSURE TIMELINE

- | | |
|---------------------------|---|
| • January 1, 2016 | 1 st payment missed |
| • February 1 | 2 nd payment missed |
| • March 1 | 3 rd payment missed; notice of acceleration sent |
| • May 1 | Foreclosure attorney prepares complaint |
| • June 1 | Complaint filed |
| • June 15 | Borrower served-reinstatement and redemption times start |
| • July 15 | Answer due |
| • August 1 | Case Management Status |
| • August 15 | Motion for default filed |
| • September 1 | Default judgment of foreclosure entered |
| • September 15 | Expiration of right to reinstate |
| • January 15, 2017 | Expiration of right to redeem |
| • January 16 | Judicial sale – expiration of right to file BK |
| • January 17 | Motion to Confirm Sale filed*** |
| • February 1 | Order approving (confirming) sale entered |
| • March 2 | Expiration of special right to redeem |
| • March 3 | Order of possession can be enforced |

FORECLOSURE TIMELINE

- 01/01/16 - 1st payment missed
- 03/03/17 – OP can be enforced

COMPLAINT FILED

(TIMELINE JUNE 1, 2016)

- ▶ Summons must include notice including homeownership protection info set forth in 735 ILCS 5/15-1504.5
- ▶ Form complaint allowed as per 735 ILCS 5/15-1504
- Will contain a lot of information about the case including:
 - Name of the mortgagee and mortgagor(s)
 - Capacity in which mortgagee is suing
 - Legal description w/PIN
 - Date of default, principal balance due, per diem
 - Secondary liens
- Must include note and mortgage (but not assignments) – you have to have both to foreclose

ANSWER DUE

(JULY 1, 2016)

- Homeowner must admit or deny allegations contained in the bank's foreclosure complaint
- Raise any applicable affirmative defenses including lack of notices or lack of pre-foreclosure loss mitigation

FORECLOSURE JUDGMENT

(SEPTEMBER 1, 2016)

- Determines that plaintiff can foreclose
- Determines lien priority
- Will state the full amount owing at that time, including costs and attorney fees, as supported by a valid affidavit (S. Ct. Rule 191)
- Will disclose the last date for redemption
- Will say if personal deficiency allowed

PROVE-UP AFFIDAVIT (RULE 113(C)) (FOR CASES FILED AS OF MAY 1, 2013)

Principal	\$ _____
Interest	\$ _____
Pro Rate MIP/PMI	\$ _____
Escrow Advance	\$ _____
Late Charges	\$ _____
NSF Charges	\$ _____
Property Maintenance	\$ _____
Property Inspections	\$ _____
BPO	\$ _____
GROSS AMOUNT DUE	\$ _____
Less/Plus balance in reserve accounts	\$ _____
NET AMOUNT DUE	\$ _____

(Plaintiff will have to submit a separate itemization for attorney's fees and court costs.)

(Also, affidavit must contain other necessary information, e.g., proof that servicer has right to sue on behalf of investor, and, where defendant has appeared, the motion must include a payment history.)

LOSS MITIGATION AFFIDAVIT (RULE 114)

- Where defendant has appeared or filed an answer or other responsive pleading, plaintiff must file an affidavit stating:
 - What loss mitigation programs apply
 - What was done by lender to comply
 - Current status of loss mitigation efforts
- Rule allows court to stay or deny motion for judgment if lender is in non-compliance with any applicable loss mitigation program

NOTICE OF SALE

(JANUARY 16, 2017)

- Sets time and place of sale
- Must be published 3 consecutive weeks
- b/t 45 and 7 days prior to sale date
- Also: under S. Ct. Rule 113(f) (for cases filed as of May 1, 2013) – Notice of Sale mailed 10 business days prior to sale to *all* defendants

ORDER APPROVING SALE

(FEBRUARY 1, 2017)

The Court approves the sale of the home, unless

- notice of sale not properly given
- terms of sale unconscionable
- sale fraudulent
- substantial justice not otherwise done
- sold in violation of HAMP
- Personal (v. in rem) deficiency stated, if any
- Order of possession stayed 30 days
- 90-day period for bona fide tenants under the federal Protecting Tenants at Foreclosure Act

EXPIRATION DATES OF HOMEOWNER'S RIGHTS

- | | |
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