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ABERDEEN PROVING GROUND
FEDERAL CREDIT UNION

Real Estate and Foreclosure Update

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Discussion Topics

- **Referral Documents and Member Information**
- **Demand Letter/Notice of Intent to Foreclose**
- **Clearance of Title**
- **Docketing, Service and Final Loss Mitigation Affidavit**
- **Mediation**
- **Loss Mitigation**
- **Sale of Property**
- **Post Sale**
- **Foreclosure Litigation**



Referral Documents and Member Information

Referral: All referrals should be made at day 120 of default include the following:

Documents:

- Copy of Recorded Deed of Trust
- Copy of Note

Information:

- Social Security numbers for all debtors/and or owners (if you have them)
- Property Address
- Property type
- Mailing Address for Mortgagors
- Detailed Payoff figures
 - Including breakdown and explanation of all late charges and escrow or corporate advances
- Detailed Reinstatement figures
- Date Last Payment Received
- Next Payment Due Date
- Name and Telephone number of person to call for loss mitigation
- Whether you are in first or second position (or unknown if not known)



Demand Letter and Notice of Intent to Foreclose

- Demand Letter = Demand for Payment and Notice of Acceleration
 - Required by Deed of Trust
 - Can be sent concurrently with Notice of Intent to Foreclose
- Notice of Intent to Foreclose
 - Required by Maryland Law
 - Must be sent 45 days before foreclosure case is docketed.
 - If borrower reinstates within 45 days, may not assess legal fees
 - Notice of Intent has multiple statutory requirements including
 - Information related to loss mitigation & who to contact along with application
 - List of state foreclosure assistance agencies
 - Must be sent by certified and regular mail



Clearance of Title

- Must make sure that you can convey clear and marketable title to the foreclosure sale purchaser and includes clearance of the following:
 - Unreleased prior mortgages and/or deeds of trusts
 - Unreleased senior judgments and/or liens
 - Deceased borrower/owner
- How title is cleared:
 - Title insurance claim
 - must be filed – failure to do so and trying to clear yourself may void the policy
 - No title insurance or claim unsuccessful
 - Clearance of title by contacting creditor OR filing litigation (Quiet Title Actions)
 - Deceased borrower/owner = Personal Representative must be appointed.
 - If an estate has not been opened – you will have to open an estate and have a disinterested party appointed as personal representative



Docketing, Service and Final Loss Mitigation Affidavit

- Docketing = the act of filing with the Court all the required affidavits and documentation evidencing that the appropriate actions have been taken and that the parties have the right to foreclose.
- Service = After the Docket is filed, the papers must be served on all Defendants (all owners and/or borrowers)
 - Service is complete by personal service, substitute service OR posted service after 3 good faith attempts.
- Final Loss Mitigation Affidavit = No earlier than 28 days after service is complete filed with the Court advising the Court of any changes in Loss Mitigation status

NOTE – you can docket a case as Non-owner occupied which removes certain loss mitigation and mediation rights, however, it is your burden if challenged and the delay caused is significant enough that it is less cumbersome to give the borrowers the owner-occupancy rights at commencement.



Mediation

- Requested by borrower/mortgagor within 25 days of mailing of Final Loss Mitigation Affidavit
 - courts have continually recognized late filed mediation requests – even filed post sale
- Required to be held within 60 days of when court notifies OAH and may be continued for no more than 30 days
- Appearance required – client (Credit Union representative) can appear by phone
- Must submit documentation at last 20 days prior to hearing
 - Copy of Foreclosure Docket
 - Payment History
 - Correspondence Log
 - Copies of any correspondence received or sent to borrower
 - BPO/Appraisal (if available)
 - Copy of Title Report



Loss Mitigation

- Loss Mitigation = request for modification or forbearance
- Modification = change to original terms of note and deed of trust
 - Any change to principal balance or maturity date = must record in land records
- Forbearance = agreement as to how the borrower will repay the arrears
 - Balloon payment at maturity
 - Cure period = repayment over a set number of months



Sale of the Property

- Advertisement & Notice
 - Sale must be advertised in paper of general circulation in the County where the property is located
 - 3 consecutive weeks prior to the sale.
 - Notice of the Sale must be sent to all owners, borrowers & lienholders on record 30 days prior to the sale.
 - Notice must be sent between 15 and 28 days prior to the sale.
 - IRS Liens receive special notice 28 days prior to the sale.
- Sale is held on the Courthouse steps by Auctioneer (required in most counties)
 - Noteholder opens the bidding with their initial bid and property is sold to highest bidder
 - Noteholder may bid competitively
- Bidding instructions should be provided to the foreclosing attorney at least 48 hours prior to sale.
 - Attorney will review proposed bid and advise if changes are needed
 - some counties may disallow a sale if bid is too low in comparison with value
 - Never bid more than total debt or pay surplus to Borrower



Post Sale

- Report of Sale is filed with the Court within 30 days of the sale.
 - The Court issues a NISI Order
 - The Order provides a deadline in which parties may object to ratification and is published
 - Order of Ratification is entered = Court approval of Sale
 - Once entered the deed may be recorded and the audit stated.
- Recording Deed = vesting title in successful purchaser
 - All recording and transfer taxes as well as property taxes and municipal bills must be paid
- Maryland Audit
 - A suggested audit is sent to the Court appointed Auditor which is an accounting of the proceeds of the foreclosure sale and the expenses.
 - Once the suggested audit is sent, the Auditor will state a proposed Audit with the Court
 - The Court will then review the Audit and if no exceptions are filed the Audit will be ratified, concluding the foreclosure case.



Foreclosure Litigation

- **Response to FDCPA notice and request for verification of debt**
 - Provide name of original lender, copy of Note and Deed of Trust, payoff statement, transaction history
- **Qualified Written Request**
 - Provide acknowledgement of Receipt
 - Provide detailed response
 - Note: A true QWR must state specific reasons why they believe there are errors with their account. A majority of QWR's received are fishing expeditions related to the noteholders general servicing and general operations. A response to a QWR should only address the specific loan and the specific allegations as related to any alleged errors with the account.
- **Motion to Stay Foreclosure and/or Complaint to Stay Foreclosure**
 - Generally a catch all method of objecting to sale.
 - Time limits for filing, generally Court will entertain any time prior to sale.
- **Exceptions to Sale or Accounting**
 - Exceptions to Sale = limited to manner in which the sale is held
 - Exceptions to the Accounting/Audit = limited to challenges to the costs and reasonableness thereof and/or proposed distribution of the funds.
- **Suit for Wrongful Foreclosure**
 - Post sale way to challenge a sale which was already held.
 - Generally Courts will find any attempt to have the property re-titled to the debtor as Moot, however, if there are egregious errors by the lender, the Court still has the ability to award a monetary judgment (if requested).



For Additional Information



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