



UNDERSTANDING FORECLOSURE

DEFAULT

If the Borrower (Mortgagor) does NOT make the payments as required, he or she is in DEFAULT on the loan. The Lender's ultimate power is to foreclose.

FORECLOSURE is the liquidation of title to the real property to recover funds to satisfy the mortgage debt. The two types of foreclosure are "judicial" and "non-judicial."

JUDICIAL FORECLOSURE requires the lender to bring a lawsuit against the borrower and obtain a judgment for the amount of debt the borrower owes. When the judgment is obtained, the lender requests the court to issue an execution instructing the SHERIFF to take possession of the mortgaged property and sell it for cash at public auction to the highest bidder. Title is conveyed to the purchaser by a Sheriff's Deed or a Trustee's Deed.

NON-JUDICIAL FORECLOSURE (or foreclosure under the power of sale) requires the mortgagee or trustee to advertise sale of the property by posting notice at the courthouse in the county where the property is located for a *period of six weeks*. The mortgagee or trustee also must advertise the sale in a newspaper published in the company in which the property is located at least once a week for a minimum of three to five consecutive weeks.

In both cases, the advertisement must describe the property and appoint a day and an hour for the sale to be held. The sale is conducted by the trustee or sheriff, who convey the title to the purchaser by a trustee's deed or a sheriff's deed.

In the State of Michigan, a **SHERIFF'S CERTIFICATE** is issued at the foreclosure sale which is redeemed by the purchaser at the end of the "*statutory redemption*" period of a sheriff's deed.

NOTE: The main difference between "judicial and "non-judicial" foreclosure is the requirement of court action in judicial foreclosure. In other aspects, the events are much the same; default, advertisement and auction.

EQUITABLE REDEMPTION

After default, and up to the time a foreclosure sale is held, the borrower has an equitable "right to redeem" his or her property by paying the principal amount of the debt, accrued interest, and lender's costs incurred in initiating the foreclosure. The borrower's equity of redemption cannot be defeated by a mortgage clause. This right is terminated by the foreclosure sale.

The State of Michigan, however, permits "*statutory redemption,*" which allows the borrower to possibly recover the property even after the foreclosure sale.

STATUTORY REDEMPTION

Michigan provides a benefit to the borrower by statute. In statutory redemption, the borrower is granted the right to pay the debt plus accrued interest and costs in full after the foreclosure sale, and thereby recover the property. This is the amount that was bid at the sale. The period of time during which the borrower may recover the property in this way varies from state to state, but it is usually *six months to two years* after the date of the foreclosure sale. Michigan statute provides for possession of the property by the borrower during this period.

The only thing that can interrupt the borrower's occupancy is waste of the property. WASTE is failing to do preventive maintenance (keeping things from breaking down) or corrective maintenance (failure to fix things). If this occurs, the lender has a right to protect his collateral interest by treating the borrower as a tenant. The lender will go through the eviction process and name a receiver to take over management of the property until the foreclosure process is complete.

OTHER TYPES OF FORECLOSURE

- STRICT FORECLOSURE
- DEED IN LIEU OF FORECLOSURE

NOTE: Seller's who are in danger of foreclosure should seek legal counsel before proceeding with a brokerage listing.