

Foreclosure – Know Your Rights / Nevada Law

When you develop a definite plan of action with well-timed, well-informed steps, you can stop the foreclosure process and save your home.

The lender may use a deed of trust with a power of sale clause as the mortgage. This permits the lender to foreclose by following a statutory procedure for sale without the necessity of filing a lawsuit in court. We have outlined the foreclosure process for the state of Nevada below.

PRELIMINARY NOTICES

Non-judicial Foreclosure – The borrower has three months from the date a notice of default and election to sell is recorded to perform and cure the default under the deed of trust. If the borrower fails to do so, then the property will be sold at foreclosure. Recording a notice of default and election to sell must be recorded by the deed of trust's trustee.

Certified Mailings – A copy of the notice of default and election to sell must be mailed certified, return receipt requested, to the borrower and any owner of the property on the date the notice is recorded. The notice must be mailed to the last address the lender has, but if the current address of the borrower is not known, the trustee may send it to the property in foreclosure. The trustee must send the notice of default and election to sell to the borrower within 10 days of recording the same to anyone who recorded a request for such a notice.

Advertising and Posting – The property must be advertised and posted in the same manner as for an execution sale.

Cure – The borrower has 90 days from the first day following the day on which the notice of default and election to sell was recorded to cure the default. The borrower may cure the default by performing under the loan agreement. Usually this would mean paying the missed payments or other sums due to the lender, but not the accelerated loan balance.

SALE PROCEDURES

Time of Sale – The time of sale must be specified in the foreclosure notice. It should be for a time no less than that which would be specified for an execution sale.

Place of Sale – The foreclosure sale may be made at the trustee's office, even if the office is not in the same county as the property.

Manner of Sale – The property should be sold in the manner required by law for the sale of real property on execution.

SPECIAL PROCEDURES

The court may issue an injunction to restrain waste (destruction) of the property during foreclosure.

Deficiency – If the foreclosure fails to generate sufficient proceeds to pay off what remained due on the loan, then the lender may sue for a deficiency within three months after the foreclosure sale. A hearing will be held to determine the market value of the property. Notice of such hearing must be served at least 15 days before the hearing. An appraiser may be appointed by the court, on its own motion or on request, to have the foreclosed property appraised to find the market value. At the hearing, the greater of the market value or the foreclosure sale price must be credited against what remained unpaid on the loan. The court may award a deficiency judgment for the difference.

The deficiency judgment must be sought within six months after the date of foreclosure. Even if multiple properties are being foreclosed on by the lender, the deficiency must be sought within two years of the initial foreclosure on the first of the multiple properties.

Redemption – A deed of trust sale gives the foreclosure purchaser clear title free of any right of redemption for the old borrower. There is a one-year redemption on judicial sales.