

MAINE FORECLOSURE LAW*

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Two types of foreclosure processes in Maine

1. Judicial
2. Power of Sale

Judicial

Pre-Litigation Steps

- The Notice to Cure Letter (the “Default Letter”): Prepared by the mortgagee
 - **Recent foreclosure law change:** One of the significant changes to the Maine foreclosure laws are the requirements for Default Letters. The cure period prior to the commencement of a foreclosure action has been extended to **35** days
- Within 3 days of sending a Default Letter to a borrower, the mortgagee must provide electronic notice to the Maine Bureau of Consumer Credit Protection (via this website: http://www.maine.gov/pfr/consumercredit/pre-foreclosure_report_form.html) of most of the information contained in the Default Letter, as well as the fact that the Default Letter was sent by the mortgagee

* The information and suggestions presented at this seminar is subject to constant change and, therefore, should serve only as a foundation for further investigation and study. All information and procedures contained or used in conjunction with this seminar should be carefully reviewed and should serve only as a guide for use in specific situations.

Commencement of Foreclosure Process

- Request for Title Rundown: Counsel will first request a title search
 - Run from the date of the mortgage going forward. If the mortgagee is aware of the possibility of a senior mortgage, counsel should be advised
- Prepare and file Complaint
 - All junior lienholders will be named in the foreclosure Complaint as Parties-In-Interest. The priority of each is generally determined by the date of recording of the liens
 - Federal or State Tax Liens
 - Judgment Liens
 - Junior Mortgagees
 - Holders of senior liens (including real estate tax liens) are not named as Parties-In-Interest
- Service of the Complaint/Time to Answer: The Defendant (i.e., the borrower) and all parties-in-interest must be served with a copy of the Summons, a copy of the Complaint, and in the case of the Defendant, a one-page Answer form (see attachment), which must be filed with the Court within 20 days of service of the Complaint
 - If the Defendant fails to answer, counsel will file a Motion for Default Judgment and Summary Judgment, supported by an Affidavit of mortgagee
- **Recent foreclosure law change:** Pursuant to Maine's new foreclosure laws, if the Defendant answers the Complaint, he or she can also request mediation. If so requested, the Court will schedule mediation. In certain circumstances, a lender may move to terminate the mediation
 - A mortgagee's representative with authority to modify the loan must attend the mediation in person or via telephone
 - Counsel for the mortgagee must attend the mediation in person
 - NPV worksheet used to determine the availability/appropriateness of loan modification (the NPV worksheet is located at this website: <http://www.fdic.gov/consumers/loans/loanmod/loanmodguide.html>)

- HAMP modifications also a possibility
- Summary Judgment: If mediation is unsuccessful, counsel will file a Motion for Summary Judgment.

Post-Judgment

- Period of Redemption: From the date of entry of judgment, there is a statutory 90-day period of redemption during which time the borrower may redeem the mortgage by paying all sums due (or, at the mortgagee's option, cure the defaults and reinstate the mortgage)
- Notice of Public Sale: After the period of redemption has expired, counsel for the mortgagee advertises a public auction sale
- Foreclosure Auction: A foreclosure auction is generally held in the same county where the property at issue is located.
 - Prior to a foreclosure auction, it is important that the mortgagee obtain an appraisal of the mortgaged property so the mortgagee and counsel know its present fair market value
 - At the closing, the highest bidder receives a quitclaim deed
 - **Recent foreclosure law change:** Pursuant to Maine's new foreclosure laws, the mortgagee is now responsible for the full real estate transfer tax when the mortgagee deeds the property to itself (i.e., as Seller and Buyer)
- Report of Sale: After the foreclosure sale closes, the counsel for the mortgagee prepares and files with the Court a Report of Sale and an accounting of the disbursements of the proceeds from the sale
- Deficiency: The mortgagee may request that counsel pursue the deficiency on the loan, which is generally calculated as part of the Report of Sale. Counsel will prepare the Motion for Deficiency Judgment and, once granted, will obtain the Writ of Execution
- Evictions: In the Foreclosure Judgment, counsel includes language that provides that a Writ of Possession, which is the legal instrument compelling Defendants living in the foreclosed premises to vacate the premises
 - **Recent foreclosure law change:** A copy of the Foreclosure Judgment must be served on any tenant of the foreclosed premises. After providing the Notice, and following the redemption period, the

mortgage may institute a forcible entry and detainer (FED) action, subject to federal laws regarding evictions

- **Federal foreclosure law change:** Pursuant to the Helping Families Save Their Homes Act of 2009, 12 U.S.C. § 5201 *et seq.*, if the mortgagee intends to evict a tenant, the mortgagee must generally provide a tenant a 90-day notice prior to commencing the FED

Power of Sale

- Only available in commercial foreclosures that contain very specific power of sale language in the mortgage. See 33 M.R.S.A. § 501-A
- This streamlined method of foreclosure will generally allow a sale, with no redemption period, within 60 days
- A notice of foreclosure sale is published at least 21 days before the sale, and an affidavit of notice of mortgagee's sale of real estate is recorded in the appropriate registry of deeds and sent by registered mail to the mortgagor and to all parties-in-interest. The notice of sale is published for 3 consecutive weeks
 - **Recent foreclosure law change:** The mortgagee shall provide a copy of the notice of foreclosure sale to all tenants if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Notice to a tenant may be served on the tenant by sheriff or may be sent by first class mail and registered mail at the tenant's last known address
- If the mortgagee desires to preserve its right to pursue a deficiency claim, a notice of intention to sell and hold liable for deficiency must be sent to the mortgagors at least 21 days before the sale
- The sale is generally conducted by an auctioneer and must be held "on or near the mortgaged premises"
- Within 30 days after the sale, an affidavit of exercise of power of sale foreclosure with an attached certificate of publication is then recorded in the appropriate registry of deeds

Other Foreclosure Issues

- **Deed-in-Lieu:** Borrowers may offer a deed-in-lieu of foreclosure to the mortgagee

- **Recent foreclosure law change:** Pursuant to Maine's new foreclosure laws, the mortgagee is now responsible for one-half of the real estate transfer tax on a deed-in-lieu
- Forbearance Agreements: The mortgagee may enter into a forbearance agreement, before or after the commencement of foreclosure proceedings. This stays the foreclosure action, and assuming the borrower complies with the payment terms, the foreclosure action will not re-commence
- In the absence of a written agreement, any payment accepted by the mortgagee (and not returned within 10 days to the borrower) constitutes a waiver of the foreclosure