



Foreclosure, Part 2

December 2005

In last month's technical bulletin, we explained the three types of foreclosure and discussed in detail the Public Trustee System of foreclosure. In this month's technical bulletin, we'll discuss Judicial Foreclosures and Tax Sales.

Judicial Foreclosure

A judicial foreclosure is a foreclosure conducted through the court system on a mortgage, deed of trust, judgment, assessment lien or mechanic's lien. The procedure for conducting the foreclosure is under Rule 105 of the Colorado Rules of Civil Procedure.

Foreclosure on Mortgage. A mortgage is an agreement between two parties: the Mortgagor (owner) and the Mortgagee (lender).

A complaint is filed with the court. A lis pendens is recorded, putting all on notice that a foreclosure action has begun. This is similar to the recording of the Notice of Election and Demand in the Public Trustee's foreclosure.

Defendants in the case are all those who have a record interest in the property subsequent to the mortgage or deed of trust being foreclosed but prior to the recording of the lis pendens.

Service of process to all defendants who are being cut out by the foreclosure is required, which means personal service with a return to the court by a process server. There is a procedure for notice by publication for unknown persons, persons who cannot be located, or corporations where the registered agent cannot be found.

Defendants have the right to answer the complaint. They may raise defenses and file counter or cross claims. A trial or court proceeding is held and the priority of the lien is decided. If the foreclosed lien is prior to all others, the decree will so state. The court enters judgment or decree of foreclosure ordering the mortgage or deed of trust to be foreclosed and ordering the sheriff to sell the property.

The Sheriff publishes the Notice of Sale. The sale cannot be held less than 45 days after commencement of the action but there is no maximum time limit other than a dismissal of the action. Notices of Rights of Redemption are sent to the Owner and the Grantor on the mortgage or deed of trust not less than 16 or more than 25 days after entry of the decree of foreclosure or issuance of a writ of execution. The sale, like the Public Trustee's Sale, is an auction type. The Sheriff's Certificate of Purchase is issued to the highest bidder and recorded with the Clerk and Recorder.

The **periods of redemption** for a Sheriff's Sale are the same as the periods of redemption for a Public Trustee's Sale. The intents to redeem by the owner and any junior lien holder must be filed with the Sheriff 15 days prior to the end of the owner redemption period as in the Public Trustee's Sale.

After expiration of the redemption periods, the Sheriff issues a Sheriff's Deed to the holder of the Certificate of Purchase if there was no redemption by the owner or any junior lien holder. If the owner redeems, a Certificate of Redemption is issued. If a junior lien holder redeems, a Certificate of Redemption is issued along with the

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Sheriff's Deed to the last redeeming junior lien holder after all redemptive periods have expired.

Foreclosure on Judgment, Assessment Lien or Mechanic's Lien.

The court proceeding is similar to the Sheriff's Sale under mortgage foreclosure proceedings. A Writ of Attachment may be recorded prior to obtaining a judgment. A Lis Pendens is recorded, and if the judgment is of record, a Writ of Execution, directing the Sheriff to enforce the judgment, and a Sheriff's Certificate of Levy are filed by the judgment holder. The Levy is notice to all that the sheriff is taking possession of the property for sale in order to satisfy a judgment.

The Notice of Sale is published in general circulation newspapers for at least 20 days. The sale is set and is an auction-type sale conducted by the Sheriff. A Sheriff's Certificate of Purchase is issued to the highest bidder.

The redemptive periods and instrument(s) issued by the Sheriff are the same as those under the Court sale.

Tax Sale

A Treasurer's Deed is delivered when there is a sale of real property by the Treasurer for failure to pay real estate taxes. The procedure for conducting the sale is set by statute.

If the property taxes are delinquent, the Treasurer is authorized to sell the property for unpaid taxes. A Certificate of Purchase is issued by the Treasurer to the purchaser. The Owner or the Owner's agent, attorney, or assignee, or any person having a legal or equitable interest in the property may redeem the property by paying back taxes, costs, and interest. This must be done prior

to the issuance of the Treasurer's Deed, *which may be applied for after three years following the tax sale.* The Treasurer's Deed is not automatically issued by the Treasurer at the end of the three-year period.

Marketability can only be insured once the statutory periods have expired. For example, marketability will not be guaranteed for a period of nine years (statute for official deeds) from the recordation of the Treasurer's Deed. Any subsequent policy to be issued will guarantee fee ownership and possession in accordance with its provisions but will not guarantee marketability.

Marketability can be insured if a Quiet Title Action is conducted through the courts. It will be guaranteed beginning six months from the time of the issuance of the Quiet Title Decree, provided that no steps have at that time been initiated to set aside or otherwise impair the effect or validity of the decree.

If deeds, releases, etc. are obtained from all persons with a record interest prior to the Treasurer's Deed, marketability will be insured and no quiet title action will be necessary.

Foreclosure Timetable

For a linear timetable of the foreclosure process, visit the Land Title website at www.LTGC.com and download the June 2003 technical bulletin, *Foreclosure Timetable*.

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