

What is foreclosure?

When property is mortgaged, the property is transferred to a creditor to be used as secured collateral on a loan. The individual exchanging the property for the loan becomes the mortgagor, and the creditor acquiring the property title becomes the mortgagee. If the mortgagor defaults on the loan payments associated with the mortgage, the creditors can take legal action to enforce a mortgage against the property and prevent the mortgagor from keeping the property. This type of legal action is referred to as foreclosure.

Where do I file a foreclosure action?

1. For claims under \$15,000, you may file the foreclosure action at County Civil Division.
2. For claims \$15,000 or above, you must file the foreclosure action in the Circuit Civil Division.

All mortgage foreclosure files are public record and can be viewed at the respective court location.

What happens in foreclosure proceedings?

If the Court finds that the mortgagor is in default of the mortgage payments, final judgment will be issued in favor of the creditor. The final judgment sets forth the costs due to the plaintiff, such as principal charges, interest, costs of the suit, and attorney's fees.

In addition to the assessment of costs, the final judgment will list instructions for the sale of the mortgaged property at a public auction. The final judgment will include a description of the property to be sold; the time, place, and date of the sale; the amount due on the mortgage; and instructions to the Clerk's Office regarding distribution of the proceeds of the sale if someone other than the creditor is the successful bidder.

What is done prior to the foreclosure sale?

The creditor's attorney must file the original final judgment with the Clerk's Office, which will record the judgment. Either simultaneously with filing the judgment, or shortly after, the creditor must provide a Notice of Sale for issuance by the Clerk's Office.

A copy of the notice must be advertised in a local newspaper authorized by law to accept legal notices. The advertisement must be published once a week for 2 consecutive weeks, and the second publication must be at least 5 days before the sale date. Before the foreclosure sale occurs, the creditor must file with the Clerk's Office an *Affidavit of Publisher* that proves that the sale has been properly advertised.

May a person who is not involved in the foreclosure lawsuit bid on the property?

Yes, and this person is often referred to as a "third party bidder."

When and where are mortgage foreclosure sales held, and how are they conducted?

Mortgage foreclosure sales are conducted by the Clerk's office according to Section 45.031, Florida Statutes, and are held at 11:00 am, Monday through Friday unless the final judgment states otherwise. The sales are held at the north Front Door of the Santa Rosa County Courthouse, 6865 Caroline St, Milton, FL, 32570.

Prior to the bidding, the deputy clerk conducting the sale will make any necessary announcements. It may be necessary for the Clerk to verify that you have with you the required deposit in the form of cash, money order or cashier's check before the sale begins. A description of the property may also be read at this time. Potential buyers take the property as is, subject to any defects, liens, encumbrances, and all matters of which the buyer had notice or could have obtained knowledge.

If the creditor is the successful bidder, no funds are deposited with the Clerk, unless the bid is above the amount of indebtedness. However, if a party other than the creditor is the successful bidder, an **immediate** deposit of 5% of the bid is required. The balance of the bid and court registry fees (3% on the first \$500.00 and 1.5% on the balance), must be received by 4:00 p.m. on the day of the sale. Payment must be in the form of cash, certified check, or cashier's check payable to Mary M. Johnson, Clerk Circuit Court - **NO** personal checks or promissory notes.

The creditor is required to pay a mandatory sale fee of \$70.00. If the successful bidder is a party other than the creditor, the successful bidder is required to pay for the documentary stamps on the *Certificate of Title*. If the balance is not paid by the deadline, the sale will be declared void, and a resale will be scheduled. The bidder's deposit is nonrefundable and will be used to pay for the costs of the resale, per Florida Statute 45.031(2). Any amount remaining will be applied towards the final judgment.

When is the Certificate of Title issued?

If no objections are filed within 10 days of the sale and all required documents and fees have been provided, the Clerk's Office will issue and record the Certificate of Title. However, if the 10th day falls on a Saturday, Sunday or Holiday, the title will be issued on the 2nd business day thereafter.

Homeowner's Rights Information:

If property is sold at Public Auction, there may be additional money from the sale after payment of person(s) who are entitled to be paid from the sale proceeds pursuant to the final judgment. If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, and

If you are the property owner, you may claim these funds yourself. You are not required to have a lawyer or any other representation and you do not have to assign your rights to anyone else in order for you to claim any money to which you are entitled. Please check with the Clerk of the **Circuit Court, Circuit Civil Division**, (850) 983-4624 or 983-4625, within ten (10) days after the sale to see if there is additional money from the foreclosure sale that the Clerk has in the registry of the court.

If you decide to sell your home or hire someone to help you claim the additional money, you should read very carefully all papers you are required to sign, ask someone else, preferably an attorney who is not related to the person offering to help you, to make sure that you understand what you are signing and that you are not transferring your property or the equity in your property without the proper information. If you cannot afford to pay an attorney, you may contact **Northwest Florida Legal Services** at (850) 432-2336 to see if you qualify financially for their services. If they cannot assist you, they may be able to refer you to a local Bar Referral agency or suggest other options. If you choose to contact **Northwest Florida Legal Services** for assistance, you should do so as soon as possible after receipt of this notice.

For questions concerning Foreclosure Sales, please call the Civil Division of the Clerk's Office, Monday - Friday, 8:00 a.m. 4:30 p.m., (850) 983-4624 or 983-4625.

Once you have found a property that you are interested in, it is very important that a title search be obtained on the property since the Clerk's Office does not guarantee a clear title and is not responsible for any encumbrances on the property after the property is purchased at auction.