

How are Missouri Mortgages Foreclosed?

The primary method of foreclosure in Missouri involves a non-judicial foreclosure. This type of foreclosure does not involve court action but requires notice. When the deed of trust is initially executed, it will usually contain a provision called a power of sale clause which upon default allows a trustee to sell the property in order to satisfy the defaulted loan. The trustee acts as a representative of the lender to effectuate the sale which typically occurs in the form of an auction. Because this is a non-judicial remedy there are very stringent notice requirements and the legal documents are required to contain the power of sale language in order to use this type of foreclosure method.

Power of Sale Notice Requirements

1. A notice of foreclosure sale must be published at least twenty (20) times and continued to the day of sale if the property is located in a city of 50,000 inhabitants or more. In other geographical areas, publication must occur for at least four successive weeks, the last advertisement no more than a week from the date of the sale. Notice requirements are in Missouri Revised Statutes Chapter 443.320.
2. Within 20 days of the date of the sale, the trustee must provide notice by registered or certified mail to the borrower of the sale date and time, the terms of the sale and a description of the property to be sold. Foreclosure sales are to be held between 9AM and 5PM to be deemed commercially reasonable. Sale requirements are referenced in Missouri Revised Statutes, Chapter 443.327.

In Missouri, the lender can also go to court for a judicial foreclosure proceeding where the court must issue a final judgment of foreclosure. Usually if the deed of trust does not contain the Power of Sale language, the lender must seek judicial foreclosure. The property is then sold as part of a publicly noticed sale. A complaint is filed in court along with what is known as a lis pendens: A recorded document that provides public notice that the property is being foreclosed upon.

How long does it take to foreclose a property in Missouri?

Depending on the timing of the various required notices, it usually takes approximately 60-90 days to affect an uncontested non-judicial foreclosure. This process may be delayed if the borrower contests the action in court, seeks delays and postponements of sales, or files for bankruptcy.

Is there a right of redemption in Missouri?

Missouri has an onerous post-sale statutory right of redemption with respect to power of sale foreclosures which would allow a party whose property has been foreclosed to reclaim that property by making payment in full of the sum of the unpaid loan plus costs. There is a one (1) year right of redemption if a foreclosure is obtained by judicial (court involvement) means. In order to exercise the right to redemption, however, the borrower must provide notice within twenty (20) days after the sale of the intent to redeem and then post a bond for all costs and fees due exclusive of the amount of principal and interest. Redemption rights are referenced in Missouri Revised Statutes, Chapter 443.420.

Are deficiency judgments permitted in Missouri?

No. A deficiency judgment may not generally be obtained when a property in foreclosure is sold at a public sale for less than the loan amount, which the underlying mortgage secures.

What Statutes govern Missouri foreclosures?

The laws that govern Missouri deed of trust foreclosures are found in Chapter 443.327 Missouri Revised Statutes. <http://www.moga.state.mo.us/STATUTES/C443.HTM>