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## FORECLOSURE Q&A

### **How are mortgage liens treated in Alabama?**

Alabama is generally known as a title theory state where the property title remains in trust until payment in full occurs for the underlying loan. The document that secures the title is typically called a mortgage. In Alabama, the mortgage serves the same purpose and generally contains the same terms as a deed of trust and serves the same function in a non-judicial foreclosure.

### **How are Alabama mortgages foreclosed?**

The primary method of foreclosure in Alabama involves what is known as non-judicial foreclosure. When the mortgage is initially signed it will usually contain a provision called a power of sale clause, which upon default allows an attorney to foreclose on the property in order to satisfy the underlying defaulted loan. Auctions are conducted by the sheriff. 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. Prior to initiating a foreclosure the attorney conducting the foreclosure must obtain and file a notice of sale indicating the foreclosure will be pending. The lender must then publish a notice of foreclosure sale date for three (3) weeks in a newspaper of general circulation in the county in which the property is located. If there is no such newspaper in the county in which the property is located, then the newspaper in an adjacent county may be used.
2. The borrower may make payment and discontinue the foreclosure process provided the payment is made prior to the foreclosure sale and all costs and fees are paid in full.
3. The sheriff will auction the property to the highest bidder, including the lender. Sales usually occur between 11AM and 4PM. The foreclosure sale may be postponed by the sheriff from day to day.

In Alabama, the lenders can also go to court in what is known as a judicial foreclosure proceeding where the court must issue a final judgment of foreclosure. The property is then

sold as part of a publicly noticed sale by the sheriff. A complaint is filed in court along with what is known a lis pendens. A lis pendens is a recorded document that provides public notice that the property is being foreclosed upon.

### **What are the legal instruments that establish an Alabama mortgage?**

The documents are known as the mortgage, or in a commercial transaction, a security agreement. Sometimes the mortgage document is combined with the security agreement. A mortgage is filed to evidence the underlying debt and terms of repayment, which is set forth in the note.

### **How long does it take to foreclose a property in Alabama?**

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

### **Is there a right of redemption in Alabama?**

Yes, Alabama has a statutory right of redemption, 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 within twelve (12) months after the sale. A Deed in Lieu of Foreclosure does not provide a right of redemption nor does it permit a deficiency judgment.

### **Are deficiency judgments permitted in Alabama?**

Yes, a deficiency judgment may 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 Alabama foreclosures?**

The laws that govern foreclosures are contained in Alabama Code (1975) Foreclosure sales are covered in Title 35 (Property) Articles 1, 1A, 2, 3 §35-10-1 et. seq. (Powers Contained in Mortgages, Foreclosure by Power of Sale).