

# Understanding Foreclosure



**IT IS AN UNFORTUNATE COMMENTARY,** but when economic activity declines and housing activity decreases more real property enters the foreclosure process. High interest rates and creative financing agreements are also contributing factors.

When prices are rapidly accelerating during a real estate “bonanza,” many people overextend themselves to get into the market through investments in vacation homes, rental housing and “trading up” to more expensive properties. In some cases, this results in the taking on of high interest rate payments and second, third and even fourth deeds of trust. Many Buyers anticipate that interest rates will drop and home prices will continue to escalate. Neither may occur, and Borrowers may be faced with large “balloon” payments becoming due. When payments cannot be met, the foreclosure process looms on the horizon.

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**IN THE FORECLOSURE PROCESS,** one thing should be kept in mind: as a general rule, a Lender would rather receive payments than receive a home due to a foreclosure. Lenders are not in the business of selling homes and will often try to accommodate Homeowners who are having payment problems. The best plan is to contact the Lender before payment problems arise. If monthly payments are too hefty, it may be that a Lender will be able to make some alternative payment arrangements until the owner’s financial situation improves.

Let’s say, however, that a Homeowner has not made any alternative arrangements with the Lender. In this case, the Lender may decide to begin the foreclosure process. Under such circumstances, the Lender, whether a bank, savings and loan or private party, will request that

the Public Trustee of the county where the property is located, file a Notice of Election and Demand with the county recorder’s office. A copy of the notice is mailed to the Homeowner. Once the Notice of Election and Demand has been recorded, the Public Trustee will publish a Notice of Sale once a week for five successive weeks. The sale date can be no earlier than 45 days and no later than 60 days after recording of the Notice of Election and Demand. The Homeowner can bring the loan current by filing with the Public Trustee a written Notice of Intent to cure at least 15 calendar days prior to the sale date. The funds to cure must be delivered to the officer conducting the sale no later than noon on the seventh day prior to the scheduled sale. If the default is cured, the deed of trust or mortgage will be reinstated and regular monthly payments will continue as before.

If the default is not cured, or the sale is postponed by some other agreement, the property goes “on the block.” At the sale, Buyers must pay the amount of their bid in cash, cashier’s check or other instrument acceptable to the trustee. The foreclosing Lender must provide the Public Trustee with a district court order authorizing the sale, dated prior to the sale date, otherwise the sale cannot be held. A Lender may “credit bid” up to the amount of the obligation being foreclosed upon.

With the recent attention given to foreclosure, there also has been corresponding interest in foreclosed properties. However, Buyers should beware. Foreclosed properties are likely to be burdened with overdue taxes, liens and clouded titles. A Buyer should do his homework and ask a local title company for information concerning these outstanding liens and encumbrances. Title insurance may or may not be available following a foreclosure sale or various exceptions may be included in any title insurance policy issued to a Buyer of a foreclosed property. Your local title company will be happy to provide additional information.