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**FORECLOSURE TRUSTEE'S CHECKLIST**

**Preliminary Matters**

**LENDER FUNCTIONS**

- [ ] 1. Alert attorney to proceed and provide him with copies of:
  - a. the original promissory note and all modifications
  - b. the deed of trust and any amendments as recorded;
  - c. names and addresses of any guarantors
  - d. current loan history screen printout showing payoff, principal, interest, late charges and fees due, last payment date, etc.
- [ ] 2. Send debtor notice of default and acceleration so that default interest rate can now be accrued.
  - a. modify internal accounting to charge default rate.
- [ ] 3. Schedule some representative to be available on the date of foreclosure on receipt from attorney of notice of sale date.
- [ ] 4. A day or two before foreclosure, calculate all amounts due and advise attorney.

**ATTORNEY/TRUSTEE FUNCTIONS**

- [ ] 1. Order a "foreclosure binder" for title insurance from the Title Company.
  - a. Type of title report: Do NOT obtain a mere "letter report" - which does not guarantee any information. A foreclosure binder may be only \$100.00 additional but will guarantee information and the fee applies to insurance on acquisition of title by the Bank.
- [ ] b. Request title binder in a letter to the Title Company. If possible, enclose/attach

a copy of the legal description from our deed of trust and street address to give them a head start. Ask for the report to include:

- the name of the person shown by the records in the recorder's office to be the owner as of 40 days prior to the sale date.
- any probate or guardianship proceedings concerning the owner.
- any bankruptcies concerning the owner, notice of which appears of records.
- all encumbrances on the land or against the owner junior to the deed of trust being foreclosed, including judgments, junior deeds of trusts, federal and estate tax liens, and mechanic's liens.
- all requests filed under Missouri Revised Statutes § 443.325, for notice of sale under the deed of trust being foreclosed, or under any prior unreleased deed of trust.
- in the event any of the foregoing matters are not found, the title report should affirmatively so state.

(See steps below after receiving title report).

- [ ] 2. Review the loan documentation from the Lender: promissory note, modifications, deed of trust, etc. and make note of:
  - a. the provisions contained pertaining to default, acceleration and foreclosure.
  - b. the party ordering foreclosure is the lawful holder.
  - c. the note tracks all charges and credits that are proper.
  - d. the note does not show payment or any other defense.
- [ ] 3. Identify the named Trustee from the current deed of trust. If necessary, prepare Appointment of Successor Trustee, and get it executed and recorded before beginning publication of notice of sale.
- [ ] Determine whether it is necessary to obtain the resignation of the named trustee.
- [ ] 4. Verify that the Lender has given all notices and made all demands required by law or by the note and deed of trust. If not, decide who will make them. Inquire whether the Lender wishes you to make any further demands for payment prior to giving notice of sale.

Review whether the federal Fair Debt Collection Practices Act applies, e.g. be sure to give the proper "mini-Miranda" warning in all correspondence to the debtor, including in the publication of notice of sale

- [ ] 5. Verify that the Lender has not established a pattern of conduct of forgiving strict performance by the Debtor, which may therefore necessitate giving the Debtor an opportunity to cure his default before proceeding with advertisement and sale.

- [ ] 6. Verify whether the deed of trust in question is not a “second mortgage loan” as defined in Missouri Revised Statutes 1985 Supp., § 408.231.  

If it is a second mortgage loan, determine that the requisite notice of default and opportunity to cure has been provided the Debtor.
- [ ] 7. Prepare and obtain holder’s affidavit(s) of lost notes if necessary.
- [ ] 8. Obtain authority and direction from the Lender as to:
  - a. whether any further demand is to be made of the Debtor.
  - b. bidding instructions in the event the Lender will not be present or represented at the sale.
  - c. the extent of the trustee’s authority to accept a down payment and allow time for payment of the purchase money in the event a third party is the purchaser.
- [ ] 9. If personal property is included, determine the necessity of conducting a sale of personal property under Missouri Revised Statutes, § 400.9-501 et seq.
  - a. Determine the portion of the debt the Lender wishes to allocate to the personal property for bidding purposes.
  - b. If any of the personal property is a stock of goods, obtain from the Director of Revenue the statement of whether any sales tax is due from the Debtor, as provided by Missouri Revised Statutes, § 144.150.
- [ ] 10. Consider the advisability of having a receiver appointed to preserve the income from the property if there is any expectation the Debtor will serve notice of Right of Redemption and attempt to hold onto the property after sale.
- [ ] 11. Consider the possibility or advisability of accepting a deed in lieu of foreclosure, but only after the title report is received to ensure the Lender would not be accepting any unacceptable risks.

### **Reviewing the Title Report**

- [ ] 12. If the title report shows any federal tax liens, advise the Lender of the government’s right to redeem from the sale for 120 days.
- [ ] 13. If the title report shows that the owner is the subject of a Bankruptcy proceeding, advise the Lender of the effect of the automatic stay, and the procedure to obtain relief. Get Relief From Stay as necessary.

- [ ] 14. As a safeguard, verify any pending Bankruptcy independently from the title report.

### **Preparing the Notice of Sale**

- [ ] 15. Select a newspaper in the county in which foreclosure notices are customarily run. Determine whether the insertion can be daily, only business days, or weekly.

If the deed of trust specifies a different newspaper than the customary one, it may be necessary to publish in both. If the deed of trust requires a longer period of notice or more insertions than the law requires, the deed of trust will govern.

- [ ] 16. Select a sale date on a Monday through Friday. It should be at least 21 calendar days from the first date of publication. (Both the St. Louis Countian and The Daily Record publish daily and the statutes require “at least 20 days” notice). If the property is not in St. Louis County or the City, find out publication days for the local legal newspaper and set the date based on the minimum 20 days of publication.
- [ ] 17. The time and place of sale may be provided in the deed of trust. If not, the sale should be scheduled for the customary time and place for foreclosure sales in the particular county. Get this information from other publications then running.
- [ ] 18. Make sure that the notice contains all the elements required by Missouri Revised Statutes, § 443.320. Carefully proofread the typed text before submitting the notice for publication.
- [ ] 19. Carefully proofread the printer’s proof of the notice.

### **Mailing the Notices - Certified Mail**

- [ ] 20. If any federal tax liens against the owner are disclosed, the proper notice must be sent to the district director of the IRS at least 25 days before the sale.
- [ ] 21. Notices must be mailed by certified mail at least 20 days before the sale, to the following parties prescribed by Missouri Revised Statutes, § 443.325:
  - a. the Debtor;
  - b. the owner as shown by the records as of 40 days before the sale; and
  - c. any party filing a request for notice of sale under the deed of trust in question or under any prior unreleased deed of trust.
- [ ] 22. Notices should also be mailed to:
  - a. Each guarantor. (Typical defenses to suits against guarantors is failure to keep

them informed.

b. Each judgment creditor shown by the title report, or to their attorneys (to encourage a third party purchase at foreclosure.

c. To subordinate lien holders - same reason

- [ ] 23. If the owner or Debtor is a married couple, separate notices should be mailed to each spouse.
- [ ] 24. Manually deliver the notices to the post office counter instead of mailing them, and obtain the post office stamped validation on the receipt.
- [ ] 25. Notify the Lender of the foreclosure date and remind them to have someone available, and to calculate all amounts due.

### **Preparing for the Sale**

- [ ] 26. Contact the Lender to verify whether any last minute settlement has been made.
- [ ] 27. Ask the title company to recheck the records immediately before the sale to determine that there has been no notice of Bankruptcy filed, nor any proof of death of the owner, or do this yourself.
- [ ] 28. Have the Lender calculate all amounts due from the Debtor to determine the amount the Lender needs at the sale or will need to meet to bid it in. Remind the Lender that any amounts not included will be extinguished by the sale (other than from a guarantor).

Be sure to include, at least:

- Principal balance
- Interest accrued prior to notice of default
- Interest at the default rate after notice
- Late charges and other fees and costs incurred to preserve the property
- Taxes and subdivision assessments paid on the debtor's account
- Publication costs and miscellaneous costs of foreclosure (postage)
- Attorneys fees and costs if not included above
- Trustee fees (calculated by attorney or trustee as necessary)

### **Attending the Sale**

- [ ] 29. Determine whether the Debtor is still in possession of the property, and if so whether an Unlawful Detainer action should be brought if the Lender bids-in at sale.

- [ ] 30. The trustee should bring to the sale and be prepared to exhibit to interested parties:
  - a. the original note and deed of trust;
  - b. the holder's affidavit;
  - c. the title report;
  - d. the certified mail receipts; and
  - e. the appointment of successor trustee.
  
- [ ] 31. Determine whether the land should be offered in parcels.
  - a. Determine whether there is any marshaling problem for separate parcels.
  - b. If the Debtor is present, inquire whether he has any preference for the order of sale.
  - c. Determine whether any other party present has any interest in bidding on less than the whole.
  
- [ ] 32. Read the advertisement in a loud voice to those gathered.
  
- [ ] 33. Add that the sale is of whatever right, title and interest the Debtor has in the property and is without any warranties whatsoever. Offer to exhibit the documents mentioned above, to any interested party.
  
- [ ] 34. Announce the manner of payment of the purchase money in the event the purchaser is not the Lender. (10% on conclusion of the bidding by cash or cashier's checks, and the balance by the end of business that day in the same manner).
  
- [ ] 35. In the event there is a federal tax lien against the Debtor, announce that the property will be subject to redemption by the IRS for a period of 120 days.
  
- [ ] 36. If the Debtor has served Notice of Right of Redemption, announce also that it has been received.
  
- [ ] 37. Ask for bids. ("Are there any bids?")
  
- [ ] In the event the Lender is not represented at the sale, open the bidding with the opening bid specified by the Lender his instructions.
  
- [ ] 38. If the successful bidder is not the Lender, obtain a memorandum of sale executed by the purchase and trustee.

#### **Post-sale Duties**

- [ ] 39. Prepare the trustee's accounting of allocation of sale proceeds.
  - must strictly follow the order set out in the deed of trust

- [ ] 40. Prepare and execute the trustee's deed.
  - a. Determine from the purchaser the exact name and style of the grantee.
  - b. Include all appropriate recitals as to "default, advertisement, sale, receipt of the purchase money, and all other facts pertinent thereto," as such recitals are prima facie proof of their truth.
- [ ] 41. Attach publisher's affidavit and certified mail receipts as exhibits before recording.
- [ ] 42. Retain possession of the note until the Trustee's Deed is filed, as it may be necessary to present it to the recorder under Missouri Revised Statutes, § 443.390.

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