



Foreclosure Facts

These days, we're getting lots of questions about foreclosures. Following are brief answers to some of the most common questions we're receiving. If you're interested in a foreclosure property, we suggest you contact Bomber Bryan for information about the property **and** a real estate attorney for help with the many legal issues surrounding foreclosure.

What is "foreclosure?"

Foreclosure is a legal proceeding to terminate a borrower's interest in real property instituted by the lender to either gain title to the land or force a sale in order to satisfy the unpaid debt secured by the property.

In Wyoming, there are two different methods of foreclosure:

- 1) Judicial Foreclosure – used when no "power of sale" language exists in the mortgage or if there is some defect or deficiency in the mortgage. This is a more costly and time consuming method because the property is sold through a court proceeding requiring many legal steps.
- 2) Nonjudicial or Power of Sale Foreclosure – A process through which the mortgaged property is sold at a nonjudicial public sale by a public official. This is by far the most common foreclosure method used in Teton County.

What is a "short sale?"

A short sale is when the proceeds from the sale of real estate fall short of the balance on the mortgage loan. The lender agrees to accept less than the amount due on the loan due to financial hardship on the part of the borrower. Generally, lenders won't discuss short sale requests unless the borrower is already far behind on mortgage payments.

How does the Power of Sale foreclosure process work in Teton County, Wyoming?

- 1) Once the mortgage is in default, the foreclosing lender must comply with statutory requirements regarding notice and publication.
- 2) The sale, or auction, takes place on the courthouse steps at 10:00 on the published date and is conducted by the sheriff or deputy sheriff.
- 3) The highest bidder must pay the full amount of the bid to the sheriff's office by 5:00 pm the day of the sale.

Foreclosure Process, Continued

- 4) The winning bidder will receive a Certificate of Sale to be recorded in the land records, which creates a lien against the property – **legal title to the property remains in the mortgagor until the expiration of the redemption period.**
- 5) Certificates of Sale may be assigned or sold, and the assignee is entitled to all the rights of the original person named.
- 6) For non-agricultural properties, the property owner has 3 months from the date of sale to redeem the property by paying the bid amount plus 10% interest and other fees.
- 7) If the property owner does not redeem, judgment creditors and other lien holders then have 30 days to redeem. If so, another redemptioner may, within 30 days, redeem from the last redemptioner, and so on.
- 8) If the property is not redeemed after the expiration of all redemption periods, the purchaser will receive a Sheriff's Deed to the property.

What do I do if I am interested in a foreclosure property?

There are 3 basic approaches, depending on the stage of the foreclosure process:

1) Buying directly from the delinquent property owner prior to auction.

Be sure to work with a qualified Realtor, attorney, title company and inspector and this method could work for you. If you ignore the normal safeguards, you could wind up with a property in poor condition, not to mention liens, real estate taxes, utility bills, etc.

2) Buying at auction.

This is the riskiest type of foreclosure investing. The properties sold at auction are "as is" with no opportunity for inspection and no warranties from the prior owner. It's likely the distressed homeowner delayed routine maintenance and upkeep and possibly even vandalized or gutted the home prior to auction. And, if you buy an occupied property, you may have to evict the former owners.

3) Buying from the lender after the auction (REO, or Real Estate Owned)

Most foreclosed properties are taken back by the bank at auction, and the bank will generally "clean up" the property and list it with a Realtor for sale. While possibly more risky than a standard real estate transaction (you probably won't get a seller's disclosure, for example), this option is certainly safer than buying at auction.

Can I finance a foreclosure property?

Generally, no. The sheriff will require full payment of the bid amount by 5:00 pm the day of the auction. And you can't borrow money against this property and file a mortgage, because title remains vested in the current owner until the expiration of all redemption periods.

Does a foreclosure “wipe the slate clean?”

Not always. While most liens will be extinguished via the foreclosure process, you could still be liable for real property taxes and federal tax liens, for example.

Is title insurance available on foreclosed properties?

Yes. Once all redemption periods have run and you have received a Sheriff's Deed to the property, JHTE can provide you with an Owner's Policy of Title Insurance.

However - if you're planning to bid at auction, be sure to contact JHTE up front and obtain a title commitment. You'll want to know if there are any title issues that might not be cleaned up by the foreclosure process that will become your responsibility (such as real property taxes or federal tax liens). In addition, it would be helpful to know if there are multiple junior creditors who could successively assert redemption rights and significantly lengthen or delay the foreclosure process.

Is foreclosure investing right for me?

Buying foreclosed properties is not for the novice or faint of heart. As you've seen above, there are certainly many risks involved (such as defective or vandalized properties, liens or other title problems, and evicting the former owners). On the other hand, the profits can be significant.

If you're considering a foreclosure property, be realistic about the challenges and amount of work involved. If you minimize your risk by working with an experienced Realtor, attorney and title company, you'll increase your chances of success with foreclosure investing.