

Oregon Foreclosure FAQs

By

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QUESTION: How do lenders foreclose property in Oregon?

ANSWER: If the property is the borrower's primary residence, the foreclosure process is almost always done nonjudicially. This is a foreclosure that is initiated by recording on the public record a "[Notice of Default](#)" ("[NOD](#)") – rather than the filing a lawsuit in court. Immediately after recording the NOD, the borrower is sent a [Notice of Sale](#) which contains much the same information contained in the NOD. It identifies the foreclosing entity, the amount of the arrearages, the foreclosure sale date, and the borrower's right to "cure" the default by paying the arrearages.

QUESTION: How long does this process take?

ANSWER: The Notice of Sale must precede the scheduled auction date by not less than 120 days. This does not count the time prior to the filing of the NOD, which can involve several months of borrower nonpayment *before* the NOD gets filed.

QUESTION: How many months of nonpayment normally occur before the bank commences the foreclosure?

ANSWER: There really is no "normal." Much depends on the lender and their backlog at any point in time. Certain lenders had less problems with their foreclosures than others. There seems to be a direct relationship between the size of the lender and their foreclosure delays. That is, the larger the lender, the larger their backlog, and the longer their delay in filing NODs. I would expect a delay of at least five months, although eight, nine, ten or more months is not unusual. In all cases, borrowers should read their mail from the bank. While most of it contains the standard payment demands, normally, when the lender warns that they will accelerate the indebtedness in the next 30 days, it signals the final stage of letter writing, and one would expect the NOD to be filed soon.

QUESTION: Can I stop the foreclosure, and if so, how?

ANSWER: In Oregon, we are a "Trust Deed" state. This means that the lender (known as the "Beneficiary") secures their right of repayment of the promissory note by a trust deed, rather than a mortgage. While there are technical differences between mortgages and trust deeds, the primary one is the method of foreclosure. Trust deeds are foreclosed "non-judicially," meaning that the process occurs outside of court. The best way to stop a trust deed foreclosure in Oregon is for the borrower (known as the "Grantor") to pay the amount of the current arrearages, including late fees and statutorily limited attorney fees. When the foreclosing trustee receives full payment, he/she will [discontinue the sale](#). This right to "cure" the default continues until [five days before the scheduled auction date](#). Within the five day period, the borrower must pay the entire debt due under the promissory note, plus fees, etc. in order to stop the sale.

QUESTION: What if the property is not my primary residence? Am I at any greater risk in a foreclosure?

ANSWER: Non-primary residences, e.g. a second homes, vacation homes, investment properties, etc, may legally be treated differently under Oregon foreclosure law. That is, even though the lender took a trust deed to secure repayment of the promissory note, [ORS 86.770](#) provides that the lender has the option of foreclosing it judicially, i.e. by filing a complaint in court. Once they get a judgment for the money due, the property will be sold at auction, and if the entire indebtedness is not recovered at that time, the borrower can be held liability for the “deficiency,” that is, the difference between the amount owed to the bank, and the amount it actually recovers through foreclosure. However, in my experience, most non-primary residences in Oregon are foreclosed nonjudicially, i.e. just the same as trust deeds on primary residences. In such cases, following the nonjudicial foreclosure, there will be no liability to the foreclosing bank for any deficiency.

QUESTION: What if I am being foreclosed by the holder of the first trust deed, but I also have a second trust deed on my property? What happens to the second following the foreclosure?

ANSWER: The second trust deed is “second” because it was recorded after the first. This means that that second lender’s interest is “inferior,” or “subordinate,” or “junior” to the first lender’s trust deed. As such, unless the second bank pays the first, the second will be foreclosed along with the defaulting borrower. When this happens, the second loses its secured position in the property, but retains an unsecured claim against the borrower under the promissory note. The only exception to this rule is when the first and second trust deeds were taken out from the same lender and at the same time. In such cases, promissory note liability on the second will be extinguished just the same as the first trust deed. However, this assumes that (a) the property is a primary residence as of the commencement of the foreclosure, and (b) the money on the second loan was “purchase money,” i.e. it was used to acquire the home rather than for other expenses such as debt consolidation. For more discussion on the issue, see my post [here](#).

QUESTION: What if there are no bidders at the foreclosure sale?

ANSWER: The bank makes an initial bid, sometimes called a “protective bid” or “minimum bid.” This bid may be less than the amount due from the borrower, although it should reflect the current fair market value of the property. All bidders attending the sale must bid *more* than that initial bid. The property will be sold to the highest bidder for cash. If there are no bidders besides the bank, it will take title to the property.

QUESTION: What if I have a short sale and the property is in foreclosure? Can I get the lender to postpone the auction so that my short sale can close?

ANSWER: Generally, yes. You should contact the person in charge of handling the foreclosure. They are identified on the Notice of Sale. They are called the “Trustee” or “Successor Trustee.” They can contact the lender and ask for the postponement. If you are told the auction is postponed, confirm this by going on the Trustee’s website to make sure that it shows the scheduled foreclosure date has been postponed. Postponements are usually for 30 days. If the website does not show that the auction has

been postponed, immediately contact the Trustee. Never “assume” that an auction date has been postponed. Always verify. There will normally not be any written notice to you from the bank or the bank’s trustee notifying you of a postponement.

QUESTION: I have heard recently that in some parts of Oregon, lenders have halted their foreclosures. Do you know why – and when will they start back up again?

ANSWER: It is correct that during the first few months of 2011, certain lenders quietly cancelled or rescinded their foreclosures. Although the lenders never made a public announcement as to why, it is my opinion that the answer was based upon two major factors. First, some recent Oregon federal court and bankruptcy court rulings had sent a pretty clear message that some judges believe most nonjudicial foreclosures conducted in this state had been performed without following the law - specifically, [ORS 86.735\(1\)](#), which requires that all of the successive assignments of the trust deed must first be recorded before commencing the foreclosure. The second reason for the foreclosure halt is believed to be that the lenders are waiting to see if there might be a legislative fix in this 2011 Session, which would pave the way for them to continue their foreclosures without having to comply with ORS 86.735(1). A complete explanation is beyond the scope of this answer, but I have addressed it in posts [here](#), and [here](#). Today, it appears that some lenders have re-commenced the foreclosures they had earlier put on hold. It remains to be seen if the Oregon legislature will oblige the banks, but at the present time it does not appear likely.

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