

**Commencing Foreclosure Proceedings
and
Pre-Sale Considerations**

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Notice of Default and Election to Sell
(NRS 107.080)

- (1) Identify the recorded deed of trust.
- (2) Describe the default(s).
- (3) Declare beneficiary's intent to accelerate the debt.

Record and Mail Notice of Default to

- (1) Trustor and person who holds record title (NRS 107.080(3));
- (2) Persons with an interest requesting notice (NRS 107.090(3)(a));
- (3) Holders of subordinate interests (NRS 107.090(3)(b); and
- (4) Each guarantor or surety (NRS 107.095).

Noticing Requirements for Certain Residential Real Property
(NRS 107.085)

- (1) Deed of Trust made on or after 10/1/03;
- (2) Deed of Trust is subject to §152 of Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §1602(aa).
 - (a) Borrower's principal dwelling; and
 - (b) Loan is not for acquisition or construction.
- (3) Statutory notice must be:
 - (a) Given 60 days prior to sale; and
 - (b) Personally served or given in manner as a court determines.

Trustee's Sale Guaranty

- (1) TSG insures that the information provided to the trustee and beneficiary regarding ownership, persons entitled to notice and location of property are correct under State law.
- (2) TSG is not a title insurance policy.

Reinstatement
(NRS 107.080)

- (1) Reinstatement period (cure period) is 35 days after both recordation and mailing of the Notice of Default.
- (2) Reinstatement requires payment of only the past due installments, any default interest, late payment fees and foreclosure costs.
- (3) After reinstatement period (assuming beneficiary elected to accelerate debt) entire secured debt plus foreclosure costs must be paid.

Pre-Sale Considerations Where There is a Deficiency

Beneficiary may recover a deficiency judgment equal to the difference between:

- (1) The amount of the unpaid indebtedness (defined in NRS 40.451); and
- (2) The higher of: (a) the successful bid at foreclosure sale or (b) the fair market value of the property on the date of sale.

(NRS 40.459).

Formulating the Credit Bid

- (1) The beneficiary can bid credit (without cash) up to and including the total debt.
- (2) Obtain an appraisal.
- (3) Beware of bidding too high or too low.

Example #1 (Bid too high)

\$100,000	debt
\$ 85,000	bid
\$ 80,000	value

Deficiency is \$15,000
Unpaid debt is \$20,000

Example #2 (Bid too low – IRS lien)

\$100,000	debt
\$ 50,000	bid
\$ 80,000	value

Deficiency is \$20,000

If there is an IRS lien, IRS can redeem for amount of bid plus interest and costs (26 USC 7425(c)(1); 26 CFR 301.7425-3).

IRS pays	\$50,000
Deficiency	<u>\$20,000</u>
	\$70,000
	<\$30,000>

Example #3 (bid too low – cash bidder)

\$100,000	debt
\$ 80,000	value
\$ 65,000	credit bid
\$ 70,000	cash bidder (highest bid)
\$ 80,000	value
Deficiency	\$20,000
Cash	<u>\$70,000</u>
	<\$10,000>

Deed in Lieu of Foreclosure

- (1) Sale by trustor to beneficiary to satisfy all or a portion of debt.
- (2) Beware of junior liens - obtain a policy of title insurance.
- (3) May be set aside as a preference.
- (4) Partial satisfaction – a "bargained for" deficiency.

Lender Tips

1. Remember to notice any guarantors and sureties. Failure to notice will result in a release of liability.
2. A junior IRS lien will not be cut off unless the IRS is properly noticed.
3. Do not accept a deed in lieu of foreclosure without title insurance.