



**FORECLOSURE AND  
RECEIVERSHIP PROCESS**

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# FORECLOSURE AND RECEIVERSHIP PROCESS

*(Non-Residential/State Courts)*

Arizona | California | Colorado | Delaware | Georgia | Maryland  
Minnesota | Nevada | New Jersey | New York | Pennsylvania  
South Dakota | Utah | Virginia | Washington, DC | Wisconsin

## ARIZONA – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** 91 days

**Trustee's Sale Guarantee (TSG):** Obtained from a title insurance company. The TSG premium is based upon the unpaid principal balance of the loan.

**Reinstatement Rights:** The trustor and certain other parties may reinstate the DOT by curing all defaults (monetary and non-monetary) by 5 p.m. on the last business day before the sale.

**Pre-Sale Notice Requirement:** The Notice of Sale (NOS) identifies the real property by address, legal description, and tax parcel number, and sets the date, time, and location of the sale. The NOS is recorded in each county where the real property is located and gets mailed, along with a statement of breach, to the trustor, beneficiary, and other parties with an interest in the property or who have requested notice. The NOS is also published in a newspaper of general circulation and posted on the property and at the courthouse. The sale may be postponed for successive periods of up to 90 days without need to record a new NOS or repeat the pre-sale notice requirements.

**Sale Procedure:** The property is sold at public auction to the highest cash bidder. The beneficiary may credit bid up to the full amount due under the loan documents, but a lower opening bid is strongly advisable. Payment in full is due from the winning bidder by 5 p.m. Mountain Time on the first business day following the sale.

**Acquisition of Title:** After the sale and payment of bid, the trustee will deliver a trustee's deed to the winning bidder within seven business days. If the trustee's deed is properly recorded within 15 days after the date of the sale, the trustee's sale is deemed perfected at the appointed date and time of the sale. Arizona does not have a real property transfer tax.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** Any action for a permitted deficiency judgment must be brought within 90 days of the sale.

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## ARIZONA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately two to four weeks (ordinary course and uncontested). In extreme situations, a receiver may be appointed without notice to the borrower or on notice but without a hearing.

**Common Grounds:** Receivers can be appointed to prevent waste, loss or damage to the property, if there is a provision in the deed of trust or other mortgage document that allows the appointment of a receiver, if the borrower agrees to the appointment of the receiver, if the value of the lender's collateral is less than the amount owed to lender, if the owner fails to turn over rents or other cash collateral to lender, or if the property or the rights of the parties need to be protected and preserved.

**Qualifications:** The receiver must not be an affiliate of any party, must not hold an interest that is materially adverse to a party, must not have a material financial interest in the outcome of the proceeding, must not be a creditor or owe money to a party, or hold an equity interest in a party.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure in order to seek the appointment of a receiver. However, a foreclosure or other mortgage enforcement proceeding by the party who brought the receivership action is permitted.

**Appointment Order:** There is no standard court form; generally the form of the order is proposed by lender's counsel. The order should be broad enough to address common issues, but balanced with lender approval rights for major actions and account for the requirements under the Arizona Commercial Real Estate Receivership Act, A.R.S. 33-2600 et seq.

**Reporting Requirements:** The order typically requires the receiver to file an initial inventory with the court and deliver monthly reports to the borrower and lender. In the absence of a reporting requirement in the order, the filing of such reports is permissive, not mandatory.

**Finances:** Except as limited by court order, the receiver has the power to control and manage receivership property, operate a business constituting receivership property, pay debts, and assert claims. The court may award a receiver its reasonable and necessary fees from the receivership property. The court may require a person that requested the appointment of the receiver to pay the receiver's expenses if the receivership is not producing sufficient funds to pay the receiver's fees and expenses.

**Ability of Receiver to Sell the Property:** A.R.S. 33-2615(B) allows a receiver to sell property free and clear of liens, including those of junior lenders and judgment creditors, with court approval. Any junior liens will attach to the proceeds of the sale, but the buyer will receive the property free and clear.

**Discharge:** Upon completion of the receiver's duties, he or she is obligated to provide a final report. If the court approves the final report and the receiver has caused the distribution of all of receivership property, the receiver is discharged.

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## CALIFORNIA – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** Approximately 120 days for nonresidential properties.

**Initial Notice Requirement:** Notice of Default and Election to Sell (NOD) is recorded in the county where the property is located. The NOD may also contain a notice of acceleration of the debt secured by the DOT. The NOD is recorded and mailed to the borrower, any guarantor, and other parties with an interest in the property or who have requested notice (*i.e.*, a junior lienholder). Parties entitled to notice are set forth in a trustee's sale guarantee (TSG) obtained from a title insurance company. The TSG premium is based on the unpaid principal balance of the loan. For residential properties, the lender must first contact the borrower and undertake a foreclosure avoidance assessment. At least 30 days must elapse after the initial contact for the foreclosure avoidance assessment before the NOD may be recorded.

**Reinstatement Rights:** The borrower, any guarantor, and certain other parties may cure the default (except a maturity default) up to five business days before the sale date (or any postponed sale date).

**Pre-Sale Notice Requirement:** Notice of Sale (NOS) may be recorded three months after the recording of the NOD. The NOS sets the sale date, time, and location, and the legal description of the property to be sold by the trustee. The NOS is recorded and mailed to the borrower, any guarantor, and other parties with an interest in the property or who have requested notice, and is published in a newspaper of general circulation and posted in three public locations. The sale may not occur any earlier than twenty-one days after the NOS is recorded, and may be postponed for any period of time not to exceed a total of 365 days from the date set forth in the NOS before a new NOS must be recorded (a new NOD does not need to be recorded)

**Sale Procedure:** The property is sold at public auction to the highest cash bidder. The beneficiary may credit bid up to full amount due under the loan documents. Payment is due at the time of sale.

**Acquisition of Title:** After the sale and payment of bid, the trustee will deliver a trustee's deed to the winning bidder. Normally, there is no real property transfer tax due, though there may be such taxes at the local level. The deed is to be recorded within 30 days of the trustee's sale.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** No deficiency judgment in non-judicial foreclosure or foreclosure on purchase money obligation.

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## CALIFORNIA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately six to 10 weeks (ordinary course). If applicable circumstances exist, an expedited hearing may be requested and, in extreme situations, without notice to the borrower.

**Common Grounds:** Default in performance of obligations under the loan documents. California courts will enforce an appointment clause set forth in the loan documents and under statute (*e.g.*, environmental contamination of property).

**Qualifications:** There are no express statutory qualification requirements. The receiver may be an individual or an entity, but may not be a party or an attorney of a party interested in the action, or related to any judge of the court.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial foreclosure in order to seek the appointment of a receiver, although it is commonly done to preserve the property and collect rents pending a sale of the property.

**Appointment Order:** Court orders should be tailored to be broad enough to address common issues, but balanced with lender approval rights for major actions (may be achieved by stipulation). Order may permit the sale of the property with court approval.

**Reporting Requirements:** Appointment order will require the receiver to file an initial inventory of all property within the receivership estate (generally within 30 days of appointment) and a report with the court, with periodic (generally monthly) updates.

**Finances:** The receiver will be paid through the income generated by the property. Most orders require larger expenditures, leases, and other contracts to be approved by the lender, and require the receiver to remit excess cash flow to service the debt. The receiver may accept lender advances and should consider obtaining separate counsel.

**Ability of Receiver to Sell the Property:** If the appointment order permits and upon lender consent, the receiver may market and sell the property. Court approval is required upon motion served on the borrower and other interested parties. Borrower consent is preferable, but not always required by the court or title insurance underwriter. There are no express statutes permitting or prohibiting receivership sales; however, at least one California court invalidated the receiver's sale authority per an order issued by a prior judge in the same court. Title insurance is generally available, but some title companies may require expiration of borrower's right to appeal in order to issue coverage. In a judicial foreclosure, the borrower also has a right of redemption which may be exercised between three and 12 months after the sale, depending upon whether the sale proceeds satisfied the underlying debt.

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver must file a final report and accounting and request discharge.

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## ■ COLORADO – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** 145-160 days

**Public Trustee's Sale Guarantee (TSG):** Obtained from a title insurance company. The TSG premium is based on the unpaid principal balance of the loan.

**Cure Rights:** The grantor of the DOT and certain other parties may reinstate the DOT by curing all defaults (monetary and non-monetary), and cure must be made by noon the day before the sale, provided required notice of intent to cure has been delivered at least 15 days prior to the scheduled sale date.

**Pre-Sale Notice Requirement:** Foreclosures are commenced by providing the public trustee with a Notice of Election and Demand, which the public trustee uses to create a Combined Notice. The Combined Notice sets the sale date, time, and location, and includes the legal description of the property. The Notice of Election and Demand is recorded and the Combined Notice is mailed to parties with an interest in the property. The Combined Notice is also published in a newspaper of general circulation.

**Sale Procedure:** The property is sold at public auction to the highest cash bidder. The beneficiary may credit bid up to the full amount due under the loan documents, but any bid from the beneficiary should be for the lesser of the amount due or the estimated fair market value of the property. Payment in full is due from the winning bidder on the sale date and if not paid, the next highest bidder is awarded the property (subject to the same payment requirement).

**Acquisition of Title:** After the sale and payment of bid, the public trustee will deliver a certificate of purchase to the high bidder, which is recorded and holds the same lien priority in the property as the deed of trust that has been foreclosed. After the redemption period, title to the property vests automatically in the holder of the certificate and a confirmation deed will be issued.

**Redemption:** Only junior lienholders have a post-sale right to redeem the property, which may be exercised if a notice of intent to redeem is filed. Filing a notice of intent to redeem does not impose an obligation on the lienholder to in fact redeem. A junior lienholder must file a notice of intent to redeem in order to share in any excess proceeds of the sale.

**Deficiency Judgment:** A deficiency action may be brought at any time within the standard statute of limitations period. In the deficiency action, the lender's failure to bid at least the fair market value of the property may be raised as a defense to liability (but not to the validity of the underlying foreclosure).

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## ■ COLORADO – RECEIVERSHIP PROCESS

**Time Frame:** If ex parte (without notice to borrower), if permitted under the DOT, one to two weeks. Otherwise, four to five weeks depending on the court's calendar.

**Common Grounds:** The lender has a statutory right to appointment of a receiver if a foreclosure has been commenced and the lender can demonstrate a threat of waste. In addition, courts typically enforce a lender's contractual right to appointment under the terms of the deed of trust.

**Qualifications:** There are no express statutory qualification requirements. The receiver may be an individual or an entity; however the receiver should be an independent third party (as the receiver is an officer of the court rather than an agent of the lender).

**Foreclosure Not Necessary:** Typically, it is not necessary to commence a judicial or non-judicial foreclosure in order to seek the appointment of a receiver (unless the lender's sole basis is statutory).

**Appointment Order:** There is no standard court form; order proposed by lender's counsel. The order should be broad enough to address common issues, but balanced with lender approval rights for major actions. Whether the order may permit the sale of the property is unresolved and hotly contested by borrowers.

**Reporting Requirements:** Appointment order typically requires the receiver to file monthly or quarterly reports with the court, with copies to the lender and borrower (if the borrower has appeared), and with a final report being a condition to discharge of the receiver.

**Finances:** The receiver will be paid through the income generated by the property and by the lender to the extent that income from the property is insufficient. Most orders require larger expenditures, leases, and other contracts to be approved by the lender and/or the court, and require the receiver to remit excess cash flow to service the debt. The receiver may accept lender advances (known as receivership certificates).

**Ability of Receiver to Sell the Property:** There is no statutory or judicial prohibition on a receiver selling property. Whether such power will be granted or recognized is up to the individual judge; however, the exercise of such power has been the basis of several successful borrower challenges. It is more likely that the receiver will be empowered to market and sell interests in the property to the extent the collateral is comprised of real property "inventory" (e.g., individual condominium units or subdivided lots within development projects).

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver must file a final report and accounting and request discharge. A successful foreclosure sale will not automatically discharge the receiver.

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## DELAWARE – FORECLOSURE PROCESS

**Security Interest:** Mortgage

**Time Frame:** Timing varies depending on the forum and circumstances. An uncontested foreclosure generally takes six months to complete. A contested foreclosure can take 12-18 months (or longer in New Castle County) to complete.

**Reinstatement Rights:** Following acceleration, there is no right to reinstatement.

**Initiation of Foreclosure Case:** An action to foreclose is commenced by filing a complaint with the Superior Court in the county in which the property is located. The complaint must be served on the borrower, who has 20 days to respond.

**Pre-Sale Notice Requirement:** In addition to serving the complaint on the borrower, within 10 days of filing the complaint, a notice of the foreclosure action must be posted at the property and served by certified mail upon all tenants and junior lien holders. Further, after judgment is entered, a notice of the scheduled foreclosure auction, including the date, time, and location, must be posted at the property and served upon all tenants and junior lien holders.

**Sale Procedure:** The property is sold by the sheriff at a public auction to the highest cash bidder. The mortgage lender/judgment holder may credit bid up to the full amount of its judgment.

**Post-Sale Procedure:** The sheriff will execute and record a deed transferring title to the successful bidder within two to four months after the sale.

**Acquisition of Title:** Legal title to the property is transferred to the successful bidder via the sheriff's deed, subject to payment of the sheriff's fees. Transfers by the sheriff to a bona fide mortgage lender in connection with a mortgage foreclosure are exempt from state and county transfer taxes.

**Redemption:** Not available.

**Deficiency Judgment:** A deficiency action may be brought at any time within the statute of limitations period applicable to suits on promissory notes. Suits may be commenced on the note before, during, or after foreclosure.

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## DELAWARE – RECEIVERSHIP PROCESS

**Time Frame:** Ordinary course is 60-90 days; in cases involving actual waste or emergent health and safety issues, within a month.

**Common Grounds:** There is Chancery Court authority holding that a default by a borrower and consent in the loan documents to appointment of a receiver upon default is sufficient. However, the Chancery Court may consider equitable defenses even where the mortgage contains express consent to appointment of a receiver.

**Qualifications:** There are no express statutory qualifications or requirements. The receiver may be an individual or an entity. The receiver is proposed by the petitioning lender.

**Foreclosure Not Necessary:** It is not necessary to commence a foreclosure in order to seek appointment of a receiver.

**Appointment Order:** There is no standard court form, and the order is proposed by lender's counsel. The order should be broad enough to address common issues but balanced with lender approval rights for major actions.

**Reporting Requirements:** The order typically requires the receiver to file monthly reports and serve those reports on the borrower and lender.

**Finances:** The receiver will be paid through income generated by the property and by the lender to the extent that income from the property is not sufficient. Most orders require that leases, contracts, and larger expenditures be approved by the lender.

**Ability of Receiver to Sell Property:** The ability of the receiver to sell the property is uncertain in Delaware, even with consent of the borrower. At a minimum, court approval is required after filing of a motion and serving the borrower and other interested parties. Title insurers may be reluctant to underwrite a receivership sale.

**Discharge:** Upon foreclosure or disposition of the property, the receiver must request discharge and usually will be required to file a final report and accounting.

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## GEORGIA – FORECLOSURE PROCESS

**Security Instrument:** Deed to Secure Debt (Security Deed)

**Time Frame:** Approximately 45-60 days for non-judicial foreclosures. Foreclosure sales held on the first Tuesday of each month.

**Reinstatement Rights:** No statutory right of reinstatement if the balance has been accelerated by maturity or default.

**Initiation of a Foreclosure Case:** If recorded loan documents include a power of sale and a power of attorney to act on behalf of the borrower in the event of foreclosure, the lender may initiate a non-judicial foreclosure by providing written notice to the borrower followed by publishing an advertisement of the sale. If the loan documents do not give the lender the power of sale, the lender must initiate a judicial foreclosure.

**Pre-Sale Notice Requirement:** Notice of the initiation of foreclosure proceedings—which includes the name, address, and telephone number of the individual or entity having authority to negotiate, amend, and modify the terms of the security deed—shall be given to the borrower by the secured creditor at least 30 days prior to the proposed foreclosure sale. In addition, an advertisement containing a full and complete description of the property to be sold, the name of the grantor, the current holder of the security deed, the time and place of the proposed sale, and reference to the power of sale according to the terms of the security deed shall be published in the legal organ (official media outlet) of the county in which the property is located once a week for four consecutive weeks preceding the sale date. The fourth and final advertisement cannot appear during the same week as the foreclosure sale.

**Sale Procedure:** The property is sold at public auction to the highest cash bidder on the steps of the county courthouse.

**Post-Sale Procedure:** Within 90 days of a foreclosure sale, all deeds under power must be recorded by the holder of a deed to secure debt with the clerk of the Superior Court of the county in which the foreclosed property is located. Also, if the lender is seeking a deficiency, there are additional steps (see Deficiency Judgment below).

**Acquisition of Title:** The parties involved execute a deed under power, which is recorded as set forth immediately above.

**Redemption:** Not available.

**Deficiency Judgment:** The lender can pursue a deficiency judgment if the property sells at the foreclosure sale for at least its fair market value as determined by a current appraisal. To obtain a deficiency judgment, the lender must, within 30 days after the sale, report the sale to the judge of the Superior Court of the county in which the property is located, and seek a confirmation order and approval.

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## GEORGIA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 45-60 days, depending on when the judge schedules a hearing.

**Common Grounds:** When property is in litigation and the rights of either or both parties cannot otherwise be fully protected, or when there is no one to properly and efficiently manage the property.

**Qualifications:** The receiver is an individual appointed as an officer of the court and must be disinterested and impartial. A receiver may be required to post a bond conditioned on the faithful discharge of his or her duties. If a bond is required, the judge will fix the amount and determine the sufficiency of the security.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure in order to seek the appointment of a receiver.

**Appointment Order:** There is no standard court form. The order should be broad enough to address common issues, but balanced with lender approval rights for major actions.

**Reporting Requirements:** None specified by statute; appointment orders may include some reporting requirements.

**Finances:** The receiver is usually paid through income generated by the property. If the income is insufficient, the court has discretion to determine upon whom costs should fall, and generally those costs are shared among parties that initiate or voluntarily join in the receivership proceedings.

**Ability of Receiver to Sell the Property:** The receiver may market and sell the property only if authorized to do so in the appointment order. Otherwise, the receiver has no authority to dispose of property in its possession. Moreover, the court may not confer upon the receiver the power to sell property before a trial on the merits. Any sale of the property is not final until confirmed by the court.

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver must file a final report and accounting and request discharge.

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## MARYLAND – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT) or Indemnity Deed of Trust (IDOT)

**Time Frame:** Approximately 150 days

**Reinstatement Rights:** Following acceleration of the balance (by maturity or upon default), there is no right to reinstatement.

**Initiation of a Foreclosure Case:** A commercial foreclosure case is initiated in the name of the substitute trustees for the beneficiary in the circuit court for the county in which the property is located by the filing of an Order to Docket Foreclosure, accompanied by a certified copy of the DOT or IDOT, a sworn statement of debt, and affidavits of the substitute trustees identifying the holder of the loan and confirming that the property is non-residential. The Order to Docket Foreclosure and other papers are not served on the borrower.

**Pre-Sale Notice Requirement:** The date and terms of sale must be advertised in a newspaper of general circulation in the county in which the property is located in each of three successive weeks preceding the sale. The foreclosure advertisement becomes the contract of sale following the auction. Notice of the sale, together with the text of the foreclosure advertisement, must be sent by regular and certified mail, return receipt requested, to local taxing authorities between 30 and 15 days before the sale, and to the property owner and any person holding a subordinate interest in the property between 30 and 10 days prior to the sale.

**Sale Procedure:** The property is sold at public auction to the highest bidder. The beneficiary may credit bid up to the full amount due under the loan documents. The foreclosure sale transfers equitable title, risk of loss, and a right to profits to the successful bidder.

**Post-Sale Procedure:** After the sale, the substitute trustees must file a report of sale disclosing the purchaser and the amount of the successful bid; certification of the publication of the foreclosure advertisement; affidavits of the purchaser and auctioneer; and a proposed notice of sale. The court approves and issues the notice of sale, fixing the dates by which the notice of sale must be published and objections to ratification of the sale may be filed. The notice of sale must also be published in three successive weeks. The grounds for objection to ratification are generally limited to procedural failings on the part of the substitute trustees. If objections are brought, they are decided by the court in due course. If no objections are brought, following certification of publication of the notice, the case is forwarded to a judge for review for compliance with the procedural requirements and entry of an Order of Ratification.

**Acquisition of Title:** The foreclosure advertisement typically provides that settlement on the foreclosure sale will occur within 10 days after the entry of an order of ratification. The substitute trustees deliver a deed to the successful bidder. Maryland and most local jurisdictions impose recordation and transfer taxes on the deed, determined by the amount of the successful bid.

**Redemption:** Not available (except IRS).

**Deficiency Judgment:** An action for a deficiency judgment is independent of the foreclosure proceeding and subject to Maryland's general statutes of limitations, three years from default on a contract not under seal, 12 years from default on a contract under seal.

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## MARYLAND – RECEIVERSHIP PROCESS

**Time Frame:** Ordinary course is 45-60 days. In cases of actual waste, health and safety emergencies, or fraudulent conveyance, it is three to four days.

**Common Grounds:** Default by the borrower and an appointment of receiver is necessary to protect the property from waste, loss, transfer, dissipation, or impairment or the owner of the property has agreed to the appointment of a receiver before or after default.

**Qualifications:** The receiver may be an individual or an entity. The receiver is selected by the petitioning lender. The receiver must verify under oath that the proposed receiver is not an affiliate of a party, does not have financial interest in the outcome of the action, does not have debtor-creditor relationship with any party, has not been a director, officer or employee of the owner in the past two years, is not a convicted felon, and has not been found liable for fraud, breach of fiduciary duty or similar misconduct.

**Foreclosure Not Necessary:** It is not necessary to commence a foreclosure proceeding in order to seek the appointment of a receiver.

**Appointment Order:** There is no standard court form, but certain powers and responsibilities are enumerated in the Maryland Commercial Receivership Act. The order is proposed by lender's counsel. The order should incorporate the powers and duties set forth in the act and set forth other powers to address common issues, balanced with lender approval rights for major actions.

**Reporting Requirements:** Appointment order typically requires that the receiver file monthly reports with the court and deliver copies to the borrower and the lender.

**Finances:** The receiver will be paid through the income generated by the property and by the lender to the extent that the income from the property is insufficient. Most orders require that expenditures above a relatively low threshold (typically \$5,000), leases, and other contracts be approved by the lender and that the receiver remit excess cash flow to service the debt. The order typically provides that the receiver may accept lender advances, which may be added to the secured indebtedness.

**Ability of Receiver to Sell the Property:** If the appointment order permits, and upon lender consent, the receiver may market and sell the property. Court approval is required upon motion served on the borrower and other interested parties. The remedy is rarely exercised because the Maryland foreclosure process is relatively simple, there are no express statutes or case law permitting or prohibiting receivership sales, and title insurance underwriters are often reluctant to insure title, absent borrower consent to the private sale.

**Discharge:** Upon the foreclosure sale or other disposition of the property or satisfaction of the underlying loan, the receiver must request discharge and may be required to file a final report and accounting.

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## MINNESOTA – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Time Frame:** Varies by foreclosure method chosen. Voluntary foreclosure, two months to sale. Foreclosure by advertisement, three months to sale. Uncontested foreclosure by action, four months to sale. Contested foreclosure by action, 12 to 16 months to sale.

**Reinstatement Rights:** Reinstatement by mortgagor available any time before the sale upon payment of default amounts due plus costs, disbursements and attorney's fees as provided by statute.

**Foreclosure Options:** Voluntary foreclosure: short timeline to sale; non-homestead and non-agricultural property only; no deficiency judgment; short redemption period. Foreclosure by advertisement: short timeline to sale; all types of real estate; mortgage must contain a power of sale; no formal court proceedings required; no deficiency judgment; six or 12 month redemption period. Foreclosure by action: best option where there are title issues or priority disputes; all types of real estate; deficiency judgment available; six or 12 month redemption period.

**Farm Foreclosure:** Minnesota has adopted the Farm-Lender Mediation Act. If the land constitutes agricultural property, it is in agricultural production within the meaning of the Act, the farmer must be offered the opportunity for mediation prior to commencement of foreclosure proceedings.

**Pre-Sale Notice Requirement:** Statutory notice requirements vary with foreclosure procedure chosen. Publication required when proceeding with a voluntary foreclosure or a foreclosure by advertisement.

**Sale Procedure:** The property is sold by the sheriff at public auction to the highest cash bidder. Mortgagee may credit bid. Foreclosure by advertisement: sheriff executes a Certificate of Sale to be recorded within 20 days of sale. Foreclosure by action: sheriff report of sale must be approved by the court; if the sale is approved, sheriff executes Certificate of Sale to be recorded within 20 days.

**Redemption:** Redemption periods start running from the date of sheriff's sale for voluntary foreclosure and foreclosure by advertisement, and from date of order confirming sale for foreclosure by action. Five weeks if judicial action completed for certain abandoned properties. Two months under voluntary foreclosure procedure. Six months is standard and applies to most foreclosure procedures. 12 months if balance due was less than 2/3 of original purchase price; property greater than 40 acres; or agricultural property greater than 10 acres.

**Deficiency Judgment:** Available only when proceeding by judicial action.

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## MINNESOTA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 30-60 days depending on the availability of the court. In emergency situations, a receiver can be appointed ex parte (without notice to the borrower).

**Common Grounds:** Minnesota has two types of receivership. A limited receivership and a general receivership. A receivership based upon the enforcement of rents or leases, or the foreclosure of a mortgage lien, judgment lien, mechanic's lien, or other lien is a limited receivership and is primarily designed for the purpose of safekeeping property in foreclosure. A limited receiver may be appointed before entry of judgment if there is demonstrated risk of loss or material impairment. A general receivership places all of the assets of the debtor into receivership to be liquidated and the proceeds distributed to creditors.

**Qualifications:** The receiver may be an individual, limited liability company, limited liability partnership, or other entities recognized by state law, and such receiver is appointed as an officer of the court and must be independent to the parties and the underlying dispute. To be qualified, the person must have knowledge and experience sufficient to perform the duties of a receiver and have the financial resources to post any required bond.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure in order to seek the appointment of a receiver.

**Appointment Order:** There is no standard court form; but the order must contain a description of the receivership property with particularity appropriate to the circumstances. The order is proposed by lender's counsel and should be broad enough to address common issues, but balanced with lender approval rights for major actions and the payment of receivership fees and expenses.

**Reporting Requirements:** Appointment orders typically require that the receiver file an initial inventory or schedule with the court, including a description of all liens encumbering the receivership property and estimated value of the receivership property and may instruct the receiver to deliver periodic reports to the court, the respondent, the lender, and other interested parties.

**Finances:** Receivers are paid from the income generated by the receivership property in the same manner as other administration expenses, and can be paid without separate order. However, any interim payments are subject to approval by the court in connection with the receiver's final report, and interested parties may object to such report. In certain cases, lenders may pay receivership fees and expenses.

**Ability of Receiver to Sell the Property:** The receiver may market and sell receivership property if permitted by court order following notice to interested parties and a hearing. A receiver in a general receivership can seek and gain court approval to sell receivership property free and clear of all liens, similar to a § 363 sale in federal bankruptcy proceedings.

**Discharge:** Upon the foreclosure sale or other disposition of the property or satisfaction of the underlying debt, the receiver typically files a final report and accounting and requests a termination of the receivership and a discharge of the receiver of its duties to the court and under the receivership order.

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## NEVADA – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** Approximately 120 days

**Initial Notice Requirement:** Notice of Default and Election to Sell (NOD). The NOD may also contain a notice of acceleration of the debt secured by the DOT. The NOD is recorded and mailed to the borrower, any guarantor, and other parties with an interest in the property or who have requested notice. Parties entitled to notice are set forth in a trustee's sale guarantee (TSG) obtained from a title insurance company. The TSG premium is based on the unpaid principal balance of the loan.

**Reinstatement Rights:** The borrower, any guarantor, and certain other parties may cure the default within 35 days of recording and mailing the NOD.

**Pre-Sale Notice Requirement:** Notice of Sale (NOS) may be recorded three months after the recording of the NOD. The NOS sets the sale date, time, and location, and the legal description of the property to be sold by the trustee. The NOS is recorded and mailed to the borrower, any guarantor, and other parties with an interest in the property or who have requested notice, and is published in a newspaper of general circulation and posted in a public location. The sale may be postponed three times before a new NOS must be recorded.

**Sale Procedure:** The property is sold at public auction to the highest cash bidder. The beneficiary may credit bid up to full amount due under the loan documents. Payment is due at the time of sale.

**Acquisition of Title:** After the sale and payment of bid, the trustee will deliver a trustee's deed upon sale to the winning bidder. Real property transfer tax is due at the time of recording the deed, even where the property reverts to the beneficiary. The deed is to be recorded within 30 days of the sale.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** Any action for a deficiency judgment must be brought within six months of the foreclosure sale.

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## NEVADA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 30 days (ordinary course). An expedited hearing may be requested if warranted by circumstances. In extreme situations, a receiver may be appointed without notice to the borrower.

**Common Grounds:** Default in performance of obligations under the loan documents or commencement of foreclosure. Nevada law will enforce an appointment clause set forth in the loan documents. Other statutory rights exist as well and Nevada is one of a few states that has enacted the Uniform Commercial Real Estate Receivership Act (the "Act").

**Qualifications:** Under the Act, There are no express statutory qualification requirements but rules on the same are to be promulgated at a later date.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure to seek the appointment of a receiver. Doing so does invoke a statutory right, however.

**Appointment Order:** There is no standard court form. The order proposed by the lender should be broad enough to address common issues, but balanced with lender approval rights for major actions, and will have to comply with certain requirements under the Act.

**Reporting Requirements:** The court will require the receiver to file an initial inventory and report, with periodic updates, usually every 30 days or as otherwise required by the court consistent with the Act.

**Finances:** The receiver is paid through income generated by the property, and by the lender if the income from the property is insufficient. Orders can require lender approval for large expenditures, leases, and other contracts, and require the receiver to remit excess cash flow to service the debt. The receiver may accept lender advances.

**Ability of Receiver to Sell the Property:** As provided by the Act, and if the appointment order permits, the receiver may market and sell the property. Court approval is required upon motion served on the borrower and other interested parties. Borrower consent is preferable, but not always required by the court or title insurance underwriter.

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver must file a final report and accounting and request discharge. Discharge alone does not terminate receivership, and a separate request should be made to dismiss the receivership case.

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## NEW JERSEY – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Time Frame:** Approximately eight to 12 months if uncontested; longer if contested.

**Reinstatement Rights:** Following acceleration of the balance, there is no right to reinstatement but mortgage may be redeemed as noted below under Redemption.

**Initiation of a Foreclosure Case:** The lender must send the notice of intention to foreclose at least 30 days, but not more than 180 days, before filing the foreclosure complaint. All foreclosure complaints are filed in the foreclosure unit in Trenton and must be served on all defendants. Uncontested matters remain before the foreclosure unit. If contested, the case is transferred to a judge in the county where the property is located.

**Pre-Sale Notice Requirement:** Notice of the sale must be posted at the sheriff's office in the county where the property is located and at the property and advertised by the sheriff in at least two newspapers selected by the sheriff once a week for four consecutive weeks preceding the sale. The last publication must be not more than eight days before the sale. Notice of the sale must be sent to all parties who have appeared in the action (including junior lien holders) and the record owner of the property at the commencement of the action at least 10 days before the sale.

**Sale Procedure:** The property is sold at public auction to the highest bidder. Any person may bid at the sale, including the borrower and the foreclosing mortgagee with a credit bid. There is a deposit requirement for the successful bidder. Each vicinage will adopt sale conditions, which include the successful bidder's obligation to remit the balance of the bid, and those become the contractual terms that bind the successful bidder.

**Post-Sale Procedure:** After the sale, the sheriff or selling officer must file a report of the details of the sale. No confirmation of the sale is required if it was conducted by the sheriff. If the sale was conducted by an officer other than the sheriff, the officer must apply to the court for confirmation of the sale. If objections are brought, they are scheduled for hearing by the court in due course.

**Acquisition of Title:** The person conducting the sale must deliver a deed to the successful bidder not later than two weeks after the sale (but not earlier than 10 days after the sale because of the statutory redemption period), provided that the successful bidder has paid the balance of the purchase price. The deed relates back to the date of the sale. The successful bidder must record the deed. Transfer taxes are required to be paid on the sheriff's deed and are typically based on the amount of the accepted bid.

**Redemption:** The borrower may redeem the mortgage at any time within 10 days after the sale or when a deed is delivered, whichever is later.

**Deficiency Judgment:** Any action on the promissory note may be brought at any time within the statute of limitations period, which is six years from the date the cause of action arises. An action for a deficiency judgment is independent of the foreclosure proceeding, filed in the Law Division, and the deficiency action statute permits a deficiency action to be brought within three months after the foreclosure sale or confirmation of foreclosure sale.

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## NEW JERSEY – RECEIVERSHIP PROCESS

**Time Frame:** A receivership application is filed as a motion in a foreclosure action. The motion must be filed at least 16 days in advance of the return date and motions are typically heard by the Chancery judge in the vicinage where the property is located either every Friday or every other Friday. Because all foreclosure actions originate in the foreclosure unit in Trenton, if the motion to appoint a receiver is the first application after the filing of the complaint, it may take additional time to transfer the case to the local vicinage and the motion may be delayed.

**Common Grounds:** Discretionary with the trial judge. Courts consider the following: default by the borrower and an agreement in the loan documents that the lender may seek or is entitled to a receiver upon default; constructive waste in the form of the proper use of rents by the property owner following a default; whether the borrower has paid real estate taxes and/or insurance premiums; the ability of the property to generate sufficient revenue to pay the debt; and actual waste or other emergency circumstances.

**Qualifications:** No statutory requirements. The receiver may be an individual or an entity. The receiver is recommended by the petitioning lender and selected by the trial judge hearing the motion. The receiver must post a bond prior to appointment.

**Foreclosure Necessary:** A foreclosure complaint must be filed before seeking the appointment of a receiver. The application for a receiver is filed as a motion in the foreclosure action.

**Appointment Order:** No standard court form. The order is proposed by lender's counsel. The order will typically allow the receiver to collect all rents accruing after appointment, commence actions to protect and preserve the property, enter into leases for the property, pay real estate taxes and other charges accruing against the property, and make repairs necessary to preserve the property. It should be broad enough to address common issues, balanced with lender approval rights for major actions.

**Reporting Requirements:** Appointment orders typically require the receiver to file and serve reports.

**Finances:** The receiver is paid through the income generated by the property and by the lender to the extent that the income from the property is insufficient. The order typically provides that the receiver may accept lender advances, which may be added to the secured indebtedness.

**Ability of Receiver to Sell the Property:** Most appointment orders do not permit the sale of the property. When they do, court approval is required upon motion served on the borrower and other interested parties. The remedy is rarely exercised. Because there are no expressed statutes or case law permitting or prohibiting receivership sales, New Jersey judges are generally not inclined to allow a receiver to sell the property, and title insurance underwriters are often reluctant to insure title, absent borrower consent to the private sale.

**Discharge:** Upon the foreclosure sale or other disposition of the property or satisfaction of the underlying loan, a judicial receivership does not automatically terminate. A receiver must file a motion seeking an order requesting a discharge and canceling the surety bond.

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## NEW YORK – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Time Frame:** Timing can vary greatly. A contested foreclosure can take approximately 12-18 months and an uncontested foreclosure can take approximately four to six months.

**Reinstatement Rights:** Following acceleration of indebtedness, there is no right to reinstatement.

**Initiation of a Foreclosure Case:** An action in mortgage foreclosure is commenced by filing a summons and complaint together with a Notice of Pendency in the clerk's office of the county where the property is located and the action will be heard at the Supreme Court level in such county. Pursuant to New York's "one-action rule," a foreclosure action bars a separate action on the note and must be completed before pursuing a guarantor for any deficiency. The complaint should name the mortgagor, any guarantor potentially liable for a deficiency, and any other party that has a lien interest on the property junior to the foreclosing mortgagee. Depending on how process is served, defendants typically have 20-45 days to answer the complaint.

**Pre-Sale Notice Requirement:** The judge will sign a Judgment of Foreclosure and Sale, which sets forth the amount due and owing on the loan and will specify where the sale will take place and the newspaper in which the Notice of Sale (NOS) will be advertised. The NOS must be published in the newspaper at least once per week for four consecutive weeks or twice a week for three consecutive weeks before the sale, although the location of the property may affect the number of times per week the notice must be published and the number of weeks. Typically the sale will be required to take place somewhere between 21 and 35 days after the first publication. A copy of the NOS must also be served on all defendants who requested it or are entitled by law to notice.

**Sale Procedure:** The foreclosing mortgagee will ask the court to appoint a referee who will determine the amount of monies due and owing to the foreclosing mortgagee (the "Upset Price"). The referee will prepare a report of the amount due, which is then submitted to the court and is part of the Judgment of Foreclosure and Sale. A referee will be appointed by the court to conduct the sale. Typically the referee who prepared the report will also conduct the sale. The property is sold by the referee at a public auction. If the highest bid is less than the Upset Price, the foreclosing mortgagee will take possession of the property.

**Post-Sale Procedure:** After the sale, the referee will deliver the deed to the successful bidder, distribute the proceeds of the sale and file the Report of Sale with the county clerk within 30 days after conveyance of the referee's deed.

**Acquisition of Title:** Legal title to the property is transferred to the successful bidder by a referee's deed, subject to payment of sale fees and the bid price. Transfer taxes are due and payable upon recordation of the referee's deed.

**Redemption:** A mortgagor has the right to redeem at any time before the bidding commences at the foreclosure sale. The right of redemption cannot be waived and all holders of junior liens may also redeem at any point prior to the sale. There is no right of redemption following the foreclosure sale.

**Deficiency Judgment:** A foreclosing mortgagee may recover any deficiency judgment from the maker of a mortgage note or any guarantor by joining such parties as defendants in the foreclosure action and moving for a deficiency judgment within 90 days after the referee's deed is conveyed. Failure to comply with the foregoing bars any further action for deficiency, but the court is to direct that any monies remaining with a receiver, after payment of fees and expenses, be paid to the foreclosing mortgagee to the extent of the deficiency.

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## NEW YORK – RECEIVERSHIP PROCESS

**Time Frame:** A receivership application is filed as a motion in a foreclosure action. The motion may be filed any time before the final judgment; however, the recommended time to file is immediately following the filing of the summons and complaint and Notice of Pendency. Timing depends on the approach taken. If the foreclosing mortgagee moves by notice of motion or on an ex parte basis (as described below), the appointment process may take in excess of 30 days. If the foreclosing mortgagee proceeds by order to show cause, a receiver may be appointed in approximately five to 10 days.

**Common Grounds:** Under New York law, a receiver can be appointed in one of two ways. The first way, the "Receiver Clause" is the preferred method. This approach may only be used if the mortgage contains language to the effect of: "The holder of this mortgage, in an action to foreclose, shall be entitled to the appointment of a receiver." Such language allows for a mortgage holder to make an ex parte motion to appoint a receiver. Although inclusion of this language does not provide complete assurance that a court will grant the mortgage holder's motion, it provides strong support. In addition, courts will also consider factors such as whether protection by more benign means is possible or whether the appointment of a receiver would help to clarify and monitor the use of the subject premises during the pendency of the action.

In the event "Receiver Clause" language is not included in the mortgage, a party with an interest in the property may move for the appointment of a receiver on notice and by providing clear and convincing evidence that the property is in danger of being materially injured or destroyed and that a receiver is necessary to protect parties' interests in the property.

**Qualifications:** A receiver must be an individual. Subject to certain statutory restrictions as to who may serve as a receiver, the Chief Administrator of Courts sets the qualifications for receivers and those individuals who wish to serve and satisfy such qualifications are placed on a list which judges use to select a receiver. Judges select the receiver in their discretion, although they may allow proposals from the party making the motion for appointment. Receivers must file a certificate of compliance and an oath and must also post a bond.

**Foreclosure Necessary:** A foreclosure complaint must be filed before seeking the appointment of a receiver. The application for a receiver is filed as a motion in the foreclosure action.

**Appointment Order:** No standard court form, although some courts have a sample form that may be used. The order must include information about the date and nature of the appointment and must direct the owner or lessee to turn over all security deposits to the receiver. The order will also require that the receiver deposit all such deposits into an account set up for that purpose and will limit the ability of the receiver to withdraw funds from the account. Typically the order will allow the receiver to collect rents accruing after appointment and to commence actions to protect and preserve the property. The order may also provide guidelines for when the receiver may enter into leases or set rents.

**Reporting Requirements:** Receivers must file an accounting with the court at least once per year. Appointment orders typically require the receiver to file and serve reports, and receivers are subject to certain statutory reporting requirements in connection with compensation.

**Finances:** The court will set the commission of a receiver which need not be paid from the income from the property. Typically the receiver will receive commissions not exceeding 5 percent of the greater of the sums received by the receiver, or the sums disbursed by the receiver, as the court allows.

**Ability of Receiver to Sell the Property:** A receiver may not sell the property in New York.

**Discharge:** After a final judgment is rendered in the foreclosure action, unless otherwise directed by the court, the receiver shall request a discharge. The order entered by the court authorizing the receiver's discharge will include approval of the receiver's accounting and proposed distributions and will also authorize the cancellation of the receiver's bond.

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## ■ PENNSYLVANIA – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Time Frame:** Timing varies substantially depending on the forum and circumstances. An uncontested foreclosure generally takes four to eight months to complete. A contested foreclosure can take 12-18 months to complete.

**Reinstatement Rights:** Following acceleration of the balance (by maturity or upon default) there is no right to reinstatement.

**Initiation of a Foreclosure Case:** An action in mortgage foreclosure is started by filing a complaint with the prothonotary (Court Clerk) in the Court of Common Pleas in the appropriate county. The complaint must be served on the borrower, who has 20 days from service to respond.

**Pre-Sale Notice Requirement:** A judgment in mortgage foreclosure is enforced by writ of execution. Each sheriff has various requirements to satisfy as a prerequisite to sale. The notice of the sheriff's sale must be posted at the sheriff's department and on the property at least 30 days before the sale date and must be published in a local newspaper and a designated legal publication for three consecutive weeks in advance of the sale. Statute requires the judgment holder to identify and notify everyone with a judgment, mortgage, lien, or other interest in the property if such interest is to be discharged by the sale.

**Sale Procedure:** The property is sold by the sheriff at public auction to the highest cash bidder. The judgment holder may credit bid up to the full amount of its judgment. Bidding strategy usually depends in part upon considerations involving the sheriff's fee structure and realty transfer taxes.

**Post-Sale Procedure:** The sheriff will record and deliver a deed to the successful bidder four to eight weeks after the sale.

**Acquisition of Title:** Legal title to the property is transferred to the successful bidder via the sheriff's deed, subject to payment of the sheriff's fees and any Pennsylvania realty transfer taxes.

**Redemption:** Not available.

**Deficiency Judgment:** Actions on the note or guaranty are separate from the foreclosure and may be brought at any time, subject to the standard four-year statute of limitations. If the foreclosing creditor acquires the property at sheriff's sale for an amount less than the foreclosure judgment, the creditor must comply with Pennsylvania's Deficiency Judgment Act (DJA) before pursuing the mortgagor, and/or any other borrower or guarantor, for the deficiency, whether or not a separate judgment on the debt has already been entered. Under the DJA, the judgment holder is required to petition the court to fix the fair market value of the subject property within six months after delivery of the sheriff's deed. The deficiency is established by crediting the fair market value of the property against the judgment amount as of the time of the sheriff's sale. If a petition is not timely filed, the sheriff's sale will be deemed to have satisfied the debt in full.

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## ■ PENNSYLVANIA – RECEIVERSHIP PROCESS

**Time Frame:** In the ordinary course, a petition for appointment of receiver will be heard in four to eight weeks (depending on the county). In cases of actual waste or other health and safety emergencies, a receivership petition can be heard in three to four days.

**Common Grounds:** Courts can enforce a contractual provision for the appointment of a receiver upon default but tend to require that the lender establish independent equitable grounds, usually a showing of waste or mismanagement. Borrower's retention or diversion of cash flow alone is generally deemed insufficient.

**Qualifications:** No express statutory qualification requirements. The receiver may be an individual or an entity. The receiver is proposed by the petitioning lender.

**Foreclosure Necessary:** A petition for appointment of receiver must be filed as part of a foreclosure proceeding.

**Appointment Order:** There is no standard court form. The order is proposed by lender's counsel. The order should be broad enough to address common issues, balanced with lender approval rights for major actions. The order usually does not permit the sale of the property by the receiver absent borrower consent.

**Reporting Requirements:** The order usually requires the receiver to file monthly reports with the court and deliver copies to the borrower and the lender.

**Finances:** The receiver will be paid by the lender and/or from the income generated by the property. Most orders require that the receiver remit excess cash flow to the lender to service the debt. The order usually allows the receiver to accept lender advances, which may be added to the secured indebtedness.

**Ability of Receiver to Sell the Property:** Yes, if the borrower consents. The appointment order may permit the receiver to market and sell the property. Court approval for any sale is required upon motion. The remedy is virtually never exercised absent borrower consent because (1) the courts are reluctant to authorize the disposal of the subject property when the borrower is contesting the foreclosure and/or the receivership, and (2) title insurance underwriters are reluctant to insure title absent contemporaneous borrower consent to the private sale.

**Discharge:** Upon the foreclosure sale or other disposition of the property or satisfaction of the underlying loan, the receiver can be discharged and may be required to file a final report and accounting.

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## ■ SOUTH DAKOTA – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Time Frame:** Six to 16 months. Depends on length of redemption period and whether foreclosure is contested.

**Foreclosure Options:** Foreclosure by action: best option where there are title issues or priority disputes; if uncontested, judgment is entered with costs and decree of sale. Foreclosure by advertisement: quickest way to a foreclosure sale; mortgage must contain a power of sale on default provision and be properly recorded; four weeks published notice of sale; 21 day written notice of sale; mortgagor or other lien holder may demand foreclosure by action.

**Nonjudicial Voluntary Foreclosure:** Mortgagor and mortgagee may agree in writing to statutory voluntary foreclosure. Mortgagor conveys property to mortgagee and delivers immediate possession. Mortgagee waives any deficiency. Junior lienholders provided notice by certified mail and have 60 days to redeem. If redeemed, mortgagee provides quit claim deed to junior lienholder.

**Sale Procedure:** By public auction at sheriff's sale to highest bidder. If foreclosure by action, fair and reasonable bid required and mortgagee must seek permission of the court to bid less than full amount of judgment debt. Sheriff provides certificate of sale to purchaser. Certificate of sale must be recorded within 10 days after date of sale.

**Sale in Parcels:** Property must be sold in parcels if possible without injury to the interests of the parties. Sale of only as many farms, tracts, or lots as necessary to satisfy the amount due, with interest, costs, and expenses.

**Deficiency Judgment:** Available upon application to the court when proceeding by action or advertisement. Mortgagor credited for the fair and reasonable value of the property sold.

**Redemption:** One year from date of sale. 180 days in case of statutory "short-term redemption mortgage." 60 days if property is determined to be abandoned.

**Deed and Vesting of Interest:** Upon the expiration of the time for redemption, sheriff provides a deed for the property to the purchaser. Title vests in purchaser with the deed.

**Crops:** Mortgagor is entitled to the crops growing on the property as of the expiration of the redemption period and has the right to enter the premises to remove the crops after the issuance of the deed.

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## ■ SOUTH DAKOTA – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 30-60 days depending on the availability of the court. In emergency situations, a receiver can be appointed ex parte (without notice to the borrower).

**Common Grounds:** A receiver may be appointed in a foreclosure action by the lender if it appears that the property is in danger of being lost, removed, materially injured, or that the conditions of the mortgage have not been performed and the property is probably insufficient to satisfy the mortgage debt.

**Qualifications:** The receiver must be disinterested to the action/ underlying debt unless written consent of the parties is provided. Before appointment, a receiver will be sworn in by the court to faithfully perform the receiver duties and required to obtain one or more sureties by the court.

**Foreclosure Not Necessary:** It is not necessary to commence a foreclosure in order to seek the appointment of a receiver, although it is common to do so.

**Appointment Order:** No standard court form. The order is proposed by lender's counsel and should be broad enough to address common issues, balanced with lender approval rights for major actions and payment of receiver fees and expenses.

**Reporting Requirements:** Appointment orders typically require that the receiver file an initial inventory or schedule with the court, including a description of all liens encumbering the receivership property and estimated value of the receivership property and may instruct the receiver to deliver periodic reports to the court, the respondent, the lender, and other interested parties.

**Finances:** Receivers are paid from the income generated by the receivership property in the same manner as other administration expenses, and can be paid without separate order. However, any interim payments are subject to approval by the court in connection with the receiver's final report, and interested parties may object to such report. In certain cases, lenders may pay receivership fees and expenses.

**Ability of Receiver to Sell the Property:** The receiver may only market and sell the property if authorized to do so by Court order. Otherwise, the receiver has no authority to dispose of receivership property.

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver must file a final report and accounting and request a discharge.

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## UTAH – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** Approximately 120 days

**Initial Notice Requirement:** Notice of Default (NOD). The NOD is recorded and mailed to those parties who have requested such notice, although it is advised to notify all lienholders of record. If the borrower did not request notice, the NOD must be mailed to the address of the subject property or posted on the subject property. A trustee's sale guarantee (TSG) can be obtained from a title insurance company to obtain the names and addresses of parties entitled to notice and/or those who have recorded liens against the property. The TSG premium is based on the unpaid principal balance of the loan.

**Reinstatement Rights:** The borrower, any guarantor, and certain other parties may cure the default within three months following recording of the NOD by paying the amounts then due and owing.

**Eligible Trustees:** Active members of the Utah State Bar with an office in Utah, a depository institution as defined in Utah Code § 7-1-13, an insurance or title company licensed and doing business in Utah, or a corporation authorized to conduct a trust business under the laws of the State of Utah can act as a trustee to foreclose the lien of a deed of trust.

**Pre-Sale Notice Requirement:** Notice of Sale (NOS) may be published and posted three months after the recording of the NOD. The NOS sets the sale date, time, and location, and includes the legal description of the property to be sold by the trustee. The NOS is published at least once a week for three consecutive weeks in a newspaper of general circulation, with the last publication at least 10 days but not more than 30 days before the scheduled sale date. Publication of the NOS is also required on a public legal notice website for 30 days before the scheduled sale date. The NOS must also be mailed to those parties who have requested such notice and posted at least 20 days before the scheduled sale date in a conspicuous place on the subject property and at the office of the county recorder. There is a form of NOS prescribed by statute. The sale may be postponed by the trustee successively for up to 45 days without re-noticing the sale.

**Sale Procedure:** The trustor and/or assigner has the right to direct the order of sale if the property/collateral consists of more than a single parcel. At the sale, the property is sold at public auction to the highest bidder. The beneficiary may credit bid, up to the full amount due under the loan documents. Payment is due as directed by the trustee.

**Acquisition of Title:** After the sale and within the three business days following payment of the bid amount, the trustee will deliver a trustee's deed to the purchaser. Utah does not have a real property transfer tax.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** Any action for a deficiency judgment must be brought within three months following the trustee's sale.

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## UTAH – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 30 days, if uncontested; up to 120 days if contested. In extreme situations a receiver may be appointed *quicker and without notice* to the borrower pursuant to a motion for temporary restraining order.

**Common Grounds:** A lender has a statutory right to seek the appointment of a receiver to enforce an assignment of rents against a defaulting borrower. Otherwise, Utah law permits the appointment of a receiver when property is at risk or may be insufficient to satisfy a judgment. Utah courts will enforce an appointment clause set forth in the loan documents.

**Qualifications:** The receiver is an individual appointed as an officer of the court and must be disinterested, impartial, and neutral. A receiver or the lender may also be required to post a fidelity/surety bond approximating the value of the property transferred into the receiver's possession.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure in order to seek appointment of a receiver.

**Appointment Order:** There is no standard court form; the order is proposed by lender's counsel. The order should be broad enough to address common issues, but balanced with lender approval rights for major actions. Utah law requires that after entry of an appointment order, a receiver must take an oath to perform his or her duties faithfully.

**Reporting Requirements:** Appointment orders typically require that the receiver file an initial inventory with the court and deliver monthly reports to the borrower and the lender.

**Finances:** Appointment orders generally provide that the receiver will be paid through income generated by the property and by the lender to the extent that income from the property is insufficient. Most orders require larger expenditures, leases, and other contracts to be approved by the lender. The receiver may accept lender advances.

**Ability of Receiver to Sell the Property:** The receiver may market and sell the property if so provided in the appointment order. Court approval is typically required, following service of the motion on the borrower and other interested parties.

**Discharge:** Upon the foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver typically files a final report and accounting and requests discharge in accordance with the terms of the appointment order.

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## ■ VIRGINIA – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** 30-45 days

**Reinstatement Rights:** There is no right to reinstate the loan unless specifically provided for in the loan documents. Prior to the foreclosure sale, the borrower has the right, after default and acceleration by the beneficiary under the DOT, to redeem the property by paying the full amount of the indebtedness.

**Pre-Sale Notice Requirements:** Written notice of the foreclosure sale must be sent to the owners of the property and any subordinate lienholder who holds a note secured by the DOT (recorded at least 30 days prior to the foreclosure sale) encumbering the property at least 14 days prior to the sale. In addition, the trustee must advertise the foreclosure sale in a newspaper of general circulation in the city or county where the property is located. The trustee should follow the advertisement requirements described in the DOT or, if the DOT is silent, the trustee must advertise the foreclosure sale once a week for four weeks if the property is located in a county. If the property is located in a city, the advertisement must appear on five different days, which may be consecutive days, provided that in each instance the sale shall not be sooner than eight days after the date of the first advertisement or later than 30 days after the last advertisement.

**Sale Procedure:** The property is sold at a public auction to the highest cash bidder. The beneficiary under the DOT may credit bid up to the full amount due under the loan documents, but due to transfer and recording taxes a lower starting bid is generally advisable. Qualified bidders, other than such beneficiary, must post a deposit in an amount required by the trustee that cannot exceed 10 percent of the final sales price.

**Acquisition of Title:** The winning bidder at the foreclosure sale typically has 30 days to close on the purchase of the property. The failure to close within 30 days will lead to a forfeiture of the bidder's deposit. The trustee will deliver a trustee's deed upon the closing of the sale. Virginia law requires the payment of both transfer and recording taxes upon the recordation of the trustee's deed.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** A deficiency action may be brought at any time within the applicable statute of limitations period.

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## ■ VIRGINIA – RECEIVERSHIP PROCESS

**Time Frame:** In the ordinary course, 21-90 days. In the case of fraud or waste, a temporary receiver may be appointed immediately on an ex parte basis, similar to a TRO.

**Common Grounds:** Receiver may be appointed where there is fraud, waste, or mismanagement of a property, or if the loan documents have been violated. While a receivership is an equitable remedy, most Virginia courts will appoint a receiver based solely on a violation of the loan documents unless there is a significant equitable reason not to do so.

**Qualifications:** No statutory qualifications. The receiver usually must post a bond. The selection of a receiver is within the court's discretion, but courts will generally appoint the receiver nominated by the lender.

**Foreclosure Not Necessary:** No foreclosure is necessary in conjunction with a receiver.

**Appointment Order:** There is no standard court form; order proposed by lender's counsel. The order should be broad enough to address common issues, but balanced with lender approval rights for major actions. Order may permit sale of the property by the receiver.

**Reporting Requirements:** Appointment orders typically require the receiver to file an initial inventory and serve monthly reports. The receiver must prepare a list of all creditors, which is used to notify them that a receiver has been appointed.

**Finances:** Appointment orders typically require the receiver to file an initial inventory and serve monthly reports. The receiver must prepare a list of all creditors, which is used to notify them that a receiver has been appointed. The receiver must also file a final accounting with the commissioner of accounts. A bond is statutorily required for an emergency appointment. A bond is not statutorily required otherwise. Whether the posting of a bond will be ordered varies on a case-by-case basis.

**Ability of Receiver to Sell the Property:** If the appointment order permits and upon lender consent, the receiver may market and sell the property. Court approval is required upon motion served on the borrower and other interested parties. Borrower consent is preferable but not always required by the court or title insurance underwriter. There are no express statutes or case law permitting or prohibiting receivership sales, but title insurance has generally been available.

**Discharge:** Upon foreclosure or other disposition of the property, or satisfaction of the underlying loan, the receiver typically files a final report and accounting and requests discharge in accordance with the term of the appointment order. Generally, either a consent order terminating the receivership is submitted or, absent consent, a motion is presented to the court to terminate the receivership.

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## WASHINGTON, DC – FORECLOSURE PROCESS

**Security Instrument:** Deed of Trust (DOT)

**Time Frame:** 30-45 days

**Reinstatement Rights:** There is no right to reinstate the loan unless specifically provided for in the loan documents. Prior to the foreclosure sale, the borrower has the right after default and acceleration by the beneficiary under the DOT to redeem the property by paying the full amount of the indebtedness.

**Pre-Sale Notice Requirements:** A notice of foreclosure sale is filed with the D.C. Recorder of Deeds at least 30 days prior to the scheduled sale date on a form proscribed by the recorder's office. In addition, the notice of foreclosure must be mailed to the borrower via certified mail at least 30 days prior to the sale, and the practice is to also send a copy of the notice to any guarantors and junior lienholders of record. In addition, it is customary to advertise the sale in a newspaper of general circulation in D.C. a minimum of five times on alternate business days immediately prior to the sale.

**Sale Procedure:** The property is sold by an auctioneer at a public auction to the highest cash bidder. The beneficiary under the DOT may credit bid up to the full amount due under the loan documents, but due to transfer and recording taxes a lower starting bid is generally advisable. Qualified bidders, other than such beneficiary, must post a deposit in an amount required by the trustee that cannot exceed 10 percent of the final sale price.

**Acquisition of Title:** The winning bidder at the foreclosure sale typically has 30 days to close on the purchase of the property. The failure to close within 30 days will lead to a forfeiture of the bidder's deposit. The trustee will deliver a trustee's deed upon the closing of the sale. D.C. law requires the payment of both transfer and recording taxes upon the recordation of the trustee's deed.

**Redemption:** Not available (except for IRS).

**Deficiency Judgment:** A deficiency action may be brought at any time within the applicable statute of limitations period.

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## WASHINGTON, DC – RECEIVERSHIP PROCESS

**Time Frame:** In the case of a genuine emergency, a receiver can be appointed almost immediately, although a follow-up hearing will be scheduled to confirm the appointment, similar to the procedure for obtaining a temporary restraining order and preliminary injunction. Absent an emergency, the receiver can be appointed one to four weeks from the filing of the petition to appoint.

**Common Grounds:** The appointment of a receiver is an equitable remedy that can be granted "for good cause." Generally, good cause consists of the default on a loan where the loan documents provide for the appointment of receiver, or for fraud, waste, and/or mismanagement of the property.

**Qualifications:** The receiver may be an individual or an entity. Generally, the lender proposes a receiver in the petition to appoint a receiver. There are no statutory qualifications for a receiver, but the lender should generally move to appoint someone who has experience managing the type of property at issue.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial or non-judicial foreclosure in order to seek the appointment of a receiver.

**Reporting Requirements:** Appointment orders typically require that the receiver file an initial inventory with the court and deliver monthly reports to the borrower and the lender.

**Finances:** The receiver will be paid through the income generated by the property and by the lender to the extent that income from the property is insufficient. The measure of a reasonable fee is, by analogy, the amount the law allows others for the performance of similar duties. Most orders require larger expenditures, leases, and other contracts to be approved by the lender, and the receiver to remit cash flow to service the debt. The receiver may accept lender advances, which may be added to the secured indebtedness.

**Ability of Receiver to Sell the Property:** The process is to seek the court's permission, which can be sought in connection with the petition to appoint the receiver by a separate motion. Courts will consider applications to sell property on a case-by-case basis. Applications and orders to sell property should be modeled on those typically submitted pursuant to sales of property under the Bankruptcy Code. A determination should be made as to whether an exercise of a power of sale or other foreclosure would be a better strategic option than a sale out of the receivership estate, particularly for commercial property.

**Discharge:** The receiver shall not be dismissed except by order of the court. Accordingly, a consent order or a motion is filed when it is appropriate to terminate a receivership.

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## WISCONSIN – FORECLOSURE PROCESS

**Security Instrument:** Mortgage

**Foreclosure Procedure:** All mortgage foreclosures proceed by judicial action.

**Time Frame:** Six to 18 months. Depends on length of redemption period and whether action is contested.

**Reinstatement Rights:** Foreclosure action dismissed if principal, interest due and costs are paid before judgment is entered.

**Sale in Parcels:** If the property can be sold in parcels without injury to the interests of the parties, the judgment shall direct a sale in parcels, specifying them.

**Redemption:** In Wisconsin, the applicable redemption period runs before the property can be sold by public auction at sheriff's sale. Redemption period commences on entry of judgment. Shorter redemption periods for mortgages entered after April 27, 2016, instances where deficiency judgments are waived, and where property has been abandoned. Owner-occupied residences and farms: 12 month redemption period before sheriff's sale; six months if waiving deficiency judgment; if mortgage entered after 4/27/2016, then six month redemption period before sale; three months if waiving deficiency. Commercial and multi-family residential properties: six month redemption period before sheriff's sale; three months if waiving deficiency judgment. Abandoned properties: five week redemption period before sheriff's sale.

**Redemption in Part:** The mortgagor may redeem distinct lots or parcels of the property which could be sold separately under the judgment.

**Deficiency Judgment:** Available if demanded in the Complaint. If provided for in the mortgage, mortgagee may waive judgment for any deficiency with redemption period being reduced accordingly.

**Notice:** Foreclosure action commenced with personal service of Summons and Complaint. Posted and published notice of sheriff's sale as required by statute with length of minimum notice dependent upon length of redemption period.

**Sale procedure:** The property is sold by the sheriff at public auction to the highest cash bidder. Mortgagee may credit bid. Sale must be confirmed by the court. Sheriff prepares and provides the clerk of court with a deed for the property. Upon confirmation of the sale, the court transfers the deed to the register of deeds for recording. Title vests in the purchaser upon confirmation of the sale.

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## WISCONSIN – RECEIVERSHIP PROCESS

**Time Frame:** Approximately 30 to 90 days depending on the court's availability.

**Common Grounds:** If the receivership relates to the preservation of real property pending foreclosure, a receiver may be appointed when: the lender establishes an apparent right or interest in the property, that the property is in the possession of the borrower, and that the property or its rents and/or profits are in danger of being lost or materially impaired; on any grounds agreed to by the lender and borrower in the mortgage; or by case law if waste is being committed by the borrower. In a general insolvency receivership, the court may appoint a receiver when an execution against a judgment debtor is returned unsatisfied or when the borrower corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights.

**Qualifications:** If the receivership relates to preservation of real property pending foreclosure and the lender is supervised by the division of banking or the home loan bank board, federal office of thrift supervision, federal deposit insurance corporation, or resolution trust corporation, the court shall appoint an officer of such corporation as receiver to act without compensation and to give such bond as the court requires. However, lenders typically seek authority in the motion to retain a third-party property manager to maintain the real property. If the receivership is a general insolvency receivership, then there are no express statutory qualifications or requirements. The receiver may be proposed by the petitioning creditor.

**Foreclosure Not Necessary:** It is not necessary to commence a judicial foreclosure in order to seek the appointment of a general insolvency receiver.

**Appointment Order:** If the receivership relates to preservation of real property pending foreclosure, there is no standard court form. The order is typically proposed by lender's counsel and must clearly identify all receivership property, and should be broad enough to address common issues, balanced with lender approval rights for major actions and payment of receiver fees and expenses. In a general insolvency receivership, the order should incorporate the specific powers and duties of the receiver set forth in the statute.

**Reporting Requirements:** There are statutory reporting requirements for a general insolvency receivership. In all other circumstances, the order typically requires the receiver to file periodic reports and serve those reports on the borrower and lender.

**Finances:** If the receivership relates to preservation of real property pending foreclosure, the receiver is not entitled to be paid if the receiver is an officer of the lender. However, if the receiver hires a property manager, the motion to hire the manager should include the procedure for the property manager to be paid from the income generated by the property. In a general insolvency receivership, the receiver is paid pursuant to statute.

**Ability of the Receiver to Sell the Property:** Under a general insolvency receivership, the receiver may liquidate receivership property for the benefit of creditors and distribute the proceeds pursuant statute.

**Discharge:** If the receivership relates to preservation of real property pending foreclosure, when the receiver seeks confirmation of the sheriff's sale of the property, a request to discharge the receiver should be included, along with a final report and accounting and the total amount of funds to be delivered to the lender. In a general insolvency receivership, the receiver is discharged per statute upon application to the court for a final settlement of the account.

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