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A Brief Guide To Redemption of Property After Judicial Foreclosure

Deficiency Determination

There is no specific time period for when the court shall set the foreclosure to take place. After the sale, the plaintiff has three months to file a motion to determine the fair market value, at which point the court enters a judgment against the borrower for the difference between FMV & loan balance & costs of sale. The borrower gets 15 days notice of the hearing. CCP 726(b).

The statutory right of redemption is the privilege given the borrower/trustor and the trustor's successor-in-interest to repurchase the property after a judicial foreclosure sale by payment of the amount of the sales price plus interest. CCP 729.020. The policy of providing this right is to encourage the purchaser at the sale to pay the full value of the property.

Time For Redemption

When property is sold pursuant to a decree of foreclosure subject to a right of redemption, and there is no deficiency liability (that is, when the sales proceeds are in an amount that satisfies the debt secured by the lien being foreclosed, plus interest and costs), the redemption period is three months after the date of the sale CCP 729.030(a)

When there is a deficiency liability after the sale (that is, the sales proceeds are not sufficient to satisfy the debt, plus interest and costs), the redemption period is one year after the sale CCP 729.030(b)

Amount to Redeem

When property is sold subject to redemption, the purchaser pays the amount due the levying officer conducting the sale, and the officer is required to execute and deliver a "certificate of sale" to the purchaser.

The certificate of sale contains the price paid for each parcel that is subject to redemption, the total price paid, a statement that the property is sold subject to the right of redemption, and the applicable redemption period. The certificate also must include the court, cause, and action number where the foreclosure decree was rendered, the date payment was entered, the name and address of both the beneficiary and trustor, a description of the property, and the date of sale 729.040 (a) & (b) The levying officer is required to record a duplicate of the certificate of sale.

The person redeeming must deposit the "redemption price" with the levying officer prior to the expiration of the redemption period 729.060(a)

The redemption price is the total of (729.060(b)):

- (1) the purchase price at the sale;
- (2) the amount of assessments or taxes, and reasonable sums for fire insurance premiums and maintenance expenses, paid by the purchaser;
- (3) any amounts paid on account of senior liens to the extent necessary to protect the purchaser's interest;
- (4) any liens held by the purchaser that were junior to the lien foreclosed; and
- (5) interest on the above sums at the legal rate.

When the purchaser and the person seeking to redeem disagree on the amount of the redemption price, or the capacity of the person to redeem, or if the purchaser rejects the tender of the redemption price, the person seeking to redeem can file a petition with the court prior to the expiration of the redemption period, together with a deposit with the court of the amount tendered. The petition is heard by the court within 20 days after it is filed, and it must be served on the purchaser, together with a notice of the hearing date and time, at least 10

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days prior to the date of the hearing. If the court determines that an additional sum is required for the redemption, the additional sum must be paid to the levying officer within 10 days after the order 729.070(a-d)