

WFG Underwriting Bulletin



To: All Maryland Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
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Subject: Maryland Residential Deed of Trust Foreclosure Checklist and Procedures

Introduction

Maryland loans on residential real estate are primarily secured by deeds of trust which designate private trustees to conduct the foreclosure. Trustees must be human beings in order to bring a foreclosure, and are usually attorneys working for the foreclosing lender. Substitute trustees may be appointed by the secured party prior to initiating the foreclosure, as evidenced by a "Substitution of Trustee" document recorded in the land records.

Maryland statutes set forth a hybrid deed of trust foreclosure procedure, as described in MD Real Property §7-105, et seq. and MD Rules of Procedure §14-201, et seq. A civil action must be filed in the circuit court of the jurisdiction in which the property is located. However, court involvement is usually minimal until the property is sold and the foreclosure is ratified, i.e., given approval by the court.

Since there is little court involvement in most deed of trust foreclosures, it is expected that Maryland title practitioners will carefully review the actions of the foreclosure trustee. It is not usually necessary to review foreclosure files that are older than the date of ratification plus 3 years, since the right of the property owner and subordinate lien holders to contest how the foreclosure was conducted expire after that time. See MD Real Property §§7-105.2(e) and 7-105.3(f).

Most of your concern, when reviewing a Maryland foreclosure file, should center on due process and other basic legal issues, such as:

- Were the property owner and any tenants given proper notice of the foreclosure, and did they have the opportunity to respond?
- Were all junior lien holders given notice of the foreclosure?
- Were any objections made to the foreclosure by any party, or has an appeal been filed?
- Did the property owners file a bankruptcy before or during the pendency of the foreclosure?

Although a foreclosure may be cured up to one day prior to the foreclosure sale, homeowners do not have rights of redemption following the foreclosure sale in Maryland.

A secured party may file a motion for a deficiency judgment if the proceeds of the sale are insufficient to satisfy the debt and accrued interest. This is done by following the requirements of MD Real Property §7-105.13 and the MD Rules of Procedure.

Note: You should never insure a foreclosure prior to ratification without the written consent of a WFG Maryland underwriter.

Foreclosure Review Checklist

Below is a foreclosure checklist for reviewing deed of trust foreclosures for up to 3 years following the date of ratification:

I. Preliminary Issues:

1. Do the names of the property owners on the vesting deed exactly match the names on the deed of trust?

2. Was the property owner-occupied, vacant, or does/did a tenant occupy the premises?

Note: there are different notice and mediation requirements set forth under MD Real Property §7-105.1, depending upon the answer to this question. Further, contact a WFG underwriter if a tenant occupies the property after the date of ratification.

3. Is the deed of trust a first lien on the property?

4. Did all property owners sign the deed of trust?

5. Is there a proper legal description printed on, or attached to, the deed of trust?

6. Does the deed of trust include a power of sale?

7. Is the trustee, or substitute trustee, an individual?

8. Is this currently a ground rent property?

9. If this was formerly a ground rent property, was title merged before or after the deed of trust, and does a ground rent merger deed exist?

10. Do front foot benefits (water and sewer charges imposed by covenants) apply?

11. Are there outstanding HOA or condominium dues against the property?

12. Has IRS filed a lien against any of the property owners?

Note: IRS has the right to redeem the property for up to 120 days following receipt of notice of the foreclosure. Contact a WFG underwriter immediately if the United States has any other liens against the property, as a judicial foreclosure may be required.

II. Procedural Questions:

Were the following documents filed as part of the foreclosure?

13. Order to Docket, including the following documents:

- ✓ Notice of intent to foreclose
- ✓ Original or certified copy of the deed of trust
- ✓ Statement of debt due with affidavit of secured party supporting the amount of debt
- ✓ Copy of the debt instrument with affidavit certifying ownership of the debt instrument
- ✓ Copy of appointment of a substitute trustee, if applicable

14. Final Loss Mitigation Affidavit.

15. Affidavit of Mailing of Notice of Intent to Foreclose sent no sooner than 45 days after default and at least 45 days prior to filing the Order to Docket.

16. Proof of Publication of Advertisement of Sale.

17. Verification that the foreclosure sale was conducted at least 45 days after service of the notice of intent to foreclose on the property owner.

18. Notice of sale has been provided to all junior and subordinate lien holders.

19. Proof of bond.

20. Evidence that the property owners are not currently on active duty in the U.S. military.

21. Report of sale filed within 30 days following the sale.

22. Final order of ratification of the sale.

III. Post-ratification issues:

23. Has a Trustee's or Substitute Trustee's deed been prepared and recorded?

24. If a power of attorney was used in order to prepare the deed, was the power of attorney recorded?

25. Were any motions filed before or after ratification by any party?

26. Has an appeal been filed?

27. Did the foreclosure judge make any unresolved objections to the sale?

28. Was a bankruptcy filed by the property owner at any time prior to or during the foreclosure process?

29. Was there a substituted purchaser?

30. Has the property been resold to a bona-fide purchaser who obtained an owner's policy of title insurance from WFG or another reputable title insurance underwriter?

This Bulletin is intended to provide you with a preliminary road map for Maryland foreclosures. It is not intended as an all-inclusive list of foreclosure procedures, and you should understand the implications of the responses to each of the questions set forth above.

IN THE EVENT YOU DO NOT FULLY UNDERSTAND MARYLAND FORECLOSURE PROCEDURES, DO NOT HESITATE TO CONTACT A MARYLAND UNDERWRITER FOR WFG NATIONAL TITLE INSURANCE COMPANY WITH ANY QUESTIONS YOU MIGHT HAVE.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.