



BARRISTERS TITLE  
— services —

## **FORECLOSURE CHECKLIST**

### Substitution of Trustee

- Examine Substitution of Trustee (SoT) Instrument
  - SoT must be filed prior to Notice of Hearing if Trustee is not the person named in the Security Instrument
  - Was the SoT executed by a Proper Official of the Note Holder
  - Was SoT filed before the Notice of Hearing was sent out
  - Does SoT refer to the correct Book and Page of the Foreclosing Deed of Trust

### Notice of Hearing

- Does the Notice of Hearing contain all of the proper elements and is in proper form
- Determine if the Notice of Hearing was served on the Proper Parties
  - Proper (“Necessary”) Parties include:
    - Any person listed in the Security Instrument as being entitled to notice
    - Guarantors
    - Owners of any future or present interest
    - Guardian ad Litem if there are interests of heirs or other unknown persons at issue
  - Does not include:
    - Trustee of the Deed of Trust
    - Beneficiary of the Deed of Trust
    - Judgment Creditor
    - Junior Lienholders
    - Mechanicsmen Lien Claimants
- Determine that Service was timely
  - Personal Service w/i 10 days prior to Hearing; ***or***
  - Posting on Property w/i 20 days prior to Hearing

- Posting by Publication is also authorized (but rarely used)
- Verify Clerk Issued Order to Conduct Sale

### Notice of Sale

- Does the Notice of Sale contain all of the proper elements
- Determine if the Notice of Sale was served on the Proper Parties
  - Must be sent to all “Necessary Parties (See above)
  - Must be sent to anyone who has filed a Request for Notice; and
  - Must be sent – and received -- by certified mail to IRS twenty-five days prior to sale if any IRS tax liens are on record
- Determine that Service was timely
  - Must be posted in Designated Area 20 prior to Sale; ***and***
  - Must be Published once a week for 2 weeks in a qualified newspaper 10 days prior to sale; ***and***
  - Must be mailed 20 days prior to the sale to each party entitled to Notice
- Was the Foreclosure Postponed

### Upset Bids

- Has Upset Bid Period Ended
- If an Upset Bid was filed was it more than 5% greater than the prior bid

### Post-Foreclosure Issues

- Determine that the Final Report of Sale has been filed with Clerk
- Does winning bidder match the Grantee on the Trustee’s Deed
- Was the Bid assigned? If so, was it assigned properly
- Does the Grantor (Trustee) match the Substitution of Trustee
- Is the Mortgagee seeking a Deficiency Judgment against the former owner/Mortgagor
- Did the Mortgagor file for Bankruptcy at any point during the foreclosure process? If so, did the Substitute Trustee obtain a Relief from Stay
- Did the foreclosure extinguish any Declarant or other Development Rights

### Occupancy Issues

- Does the (former) owner Occupy the property
- Does any Tenant occupy the property
- If a Tenant occupies the property, has the Tenant received a 10 day Notice