The Indiana Foreclosure Process...

In Indiana, lenders must foreclose on a mortgage in default by using the judicial foreclosure process.

Judicial Foreclosure

The judicial process of foreclosure, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage or deed of trust. Generally, after the court declares a foreclosure, the property will be auctioned off to the highest bidder. However, there is a wait time between the date the suit was filed and the day the property is sold. A typical timeline is about 150 days.

In Indiana, the date the mortgage was signed determines the length of time a lender must wait between filing the suit and proceeding with the foreclosure sale. The wait time is anywhere from three (3) to twelve (12) months, but the owner may file a waiver of the time limit, which allows the sale to proceed without delay. When this occurs, the lender loses the right to pursue a deficiency judgment.

The foreclosure sale process involves publishing an ad once a week for three weeks. The first ad must be run 30 days before the sale. At the time the first ad is run, each owner must be served with notice of the foreclosure sale by the sheriff.

The owner may reside in the property, rent free, until the foreclosure sale, provided the owner is not committing waste,
which means tearing up the property.

Immediately after the sale, the sheriff conveys title by giving deed.

How are mortgage liens treated in Indiana?

Indiana is known as a lien theory state where the property acts as security for the underlying loan. The document that places the lien on the property is called a mortgage. There is no power of sale provision in the Indiana Code.

How are Indiana mortgages foreclosed?

In Indiana, the lenders go to court in what is known as a judicial foreclosure proceeding where the court must issue a final judgment of foreclosure. The property is then sold as part of a publicly noticed sale. A complaint is filed in court along with what is known a lis pendens. A lis pendens is a recorded document that provides public notice that the property is being foreclosed upon. A lender must usually wait three (3) months to execute on a complaint for foreclosure. The period is longer for certain mortgages based on when they were executed.

Before property may be sold at a foreclosure sale, the sheriff must advertise the sale by publication once per week for three (3) consecutive weeks in a newspaper of general circulation. The first publication must be made at least thirty (30) days before the date of the sale. At the time of the first publication, the borrower must be personally served in accordance with the Indiana Rules of Trial Procedure governing personal service. The sheriff's sale must occur between 10AM and 4PM on any day of the week except Sunday. A lender may take immediate possession of abandoned property.

What are the legal instruments that establish a Indiana mortgage?

The documents are known as the mortgage, note, and in a commercial transaction, a security agreement. Sometimes the mortgage document is combined with the security agreement. A mortgage is filed to evidence the underlying debt and terms of repayment, which is set forth in the note.

How long does it take to foreclose a property in Indiana?

Depending on the court schedule, it usually takes approximately 150-200 days to effectuate an uncontested foreclosure depending on the age of the mortgage document. This process may de delayed if the borrower contests the action, seeks delays and adjournments of hearings, or files for bankruptcy.

Is there a right of redemption in Indiana?

No, Indiana doesn't have a post sale statutory right of redemption, which allows a party whose property has been foreclosed to reclaim that property by making payment in full of the sum of the unpaid loan plus costs. There is a pre-sale right to redemption after the issuance of a judgment.

Are deficiency judgments permitted in Indiana?

Yes, a deficiency judgment may be obtained when a property in foreclosure is sold at a public sale for less than the loan amount that the underlying mortgage secures. This means that the borrower still owes the lender for the difference between what the property sold for at auction and the amount of the original loan.

What statutes govern Indiana foreclosures?

The laws that govern Indiana foreclosures are found in Indiana Code, Article 29 (Mortgages), Chapter 7 (Foreclosure, Redemption, Sale, Right to Retain Possession). To view these statutes on the Web, you can visit:

http://www.in.gov/legislative/ic/code/title32/ar29/ch7.html