

# Navigating a Commercial Foreclosure

A free webinar for real estate attorneys, paralegals and business professionals

**Welcome!**

The webinar will begin shortly.



CHICAGO COMMERCIAL CENTER  
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# Presenters



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**Regional Vice President & Associate Regional Counsel**  
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# Welcome Notes

- Copy of these presentation slides available at: [www.chicagotitle-seminars.com](http://www.chicagotitle-seminars.com)
- Questions will be answered at the conclusion
- Brief survey provided when you log-out
  - Attorneys seeking CLE credit must complete the survey

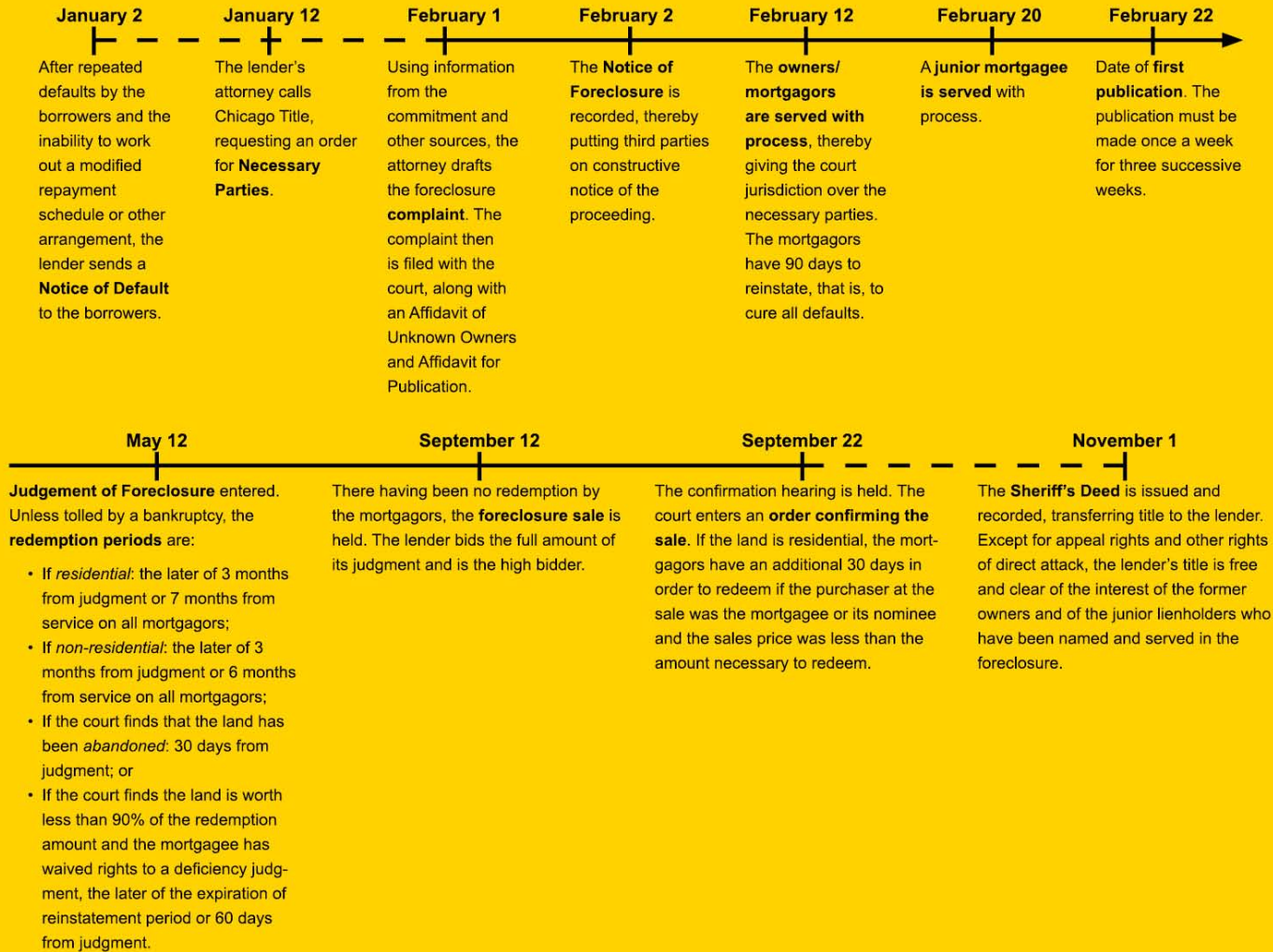


# Presentation Outline

- Necessary Parties Exam
- Complaint Procedures
- After Judgment
- Sale & Sheriff's Deed
- Question & Answer



# Sample Mortgage Foreclosure Timeline



# Necessary Parties Exam

- Necessary Parties
- Permissible Parties
- Unknown Owners
- Non-Record Claimants
- Predatory Lending



# Necessary Parties

- The mortgagor or current record owner of the land
- Other persons (not guarantors) who owe payment of indebtedness or other obligations secured by the mortgage and against whom personal liability can be asserted.

# Permissible Parties

- Persons having a possessory interest in the mortgaged real estate
- Mortgagor's spouse
- Trustee holding an interest in the land or a beneficiary of said trust
- Guarantors
- State of Illinois
- United States of America
- Any assignee of leases or rents
- Recorded mechanics' lien claimants
- Any other mortgagee or claimant
- MERS (Mortgage Electronic Registration Systems, Inc.)
- Predatory Lending State Board
- Homeowner's/Condominium Associations
- Property Managers
- Bankruptcy trustee



# Unknown Owners

- Persons who have an interest in the real estate but their identities are unknown. For example, heirs, legatees and devisees
- Jurisdiction over Unknown Owners
  - Affidavit
  - Due and diligent inquiry
  - Service

# Non-Record Claimant

Defined as: Any person...

- who has or claims to have an interest in mortgaged real estate,
- whose name or interest, at the time a notice of foreclosure is recorded . . . is not disclosed of record
- whose interest falls in any of the following categories:
  - (1) right of homestead,
  - (2) judgment creditor,
  - (3) beneficial interest under any trust other than the beneficial interest of a beneficiary of a trust in actual possession of all or part of the real estate or
  - (4) mechanic's lien claim.

# Elimination of Non-Record Claimant Interests

- **Affidavit:** After the Notice of Foreclosure is recorded, the plaintiff must file an affidavit with the court clerk stating the names and respective present or last known addresses of the non-record claimants or that the existence, names and present or last known address of the non-record claimants are unknown.
- **Publication Notice:** At least 30 days prior to the entry of a judgment of foreclosure, non-record claimants must be provided with notice as set forth in the statute. Most often it takes the form of publication.

# Predatory Lending

- Residential Mortgages in Cook County
- Copy of Lis Pendens must be filed with the Department of Financial and Professional Regulation (“Department”).
- Certificate of Service must be simultaneously recorded with the lis pendens notice that affirms that a copy of the lis pendens was filed with the Department.

# Predatory Lending

## Exception for Predatory Lending on Necessary Parties Exam will read as follows:

NOTE: THE LAND LIES WITHIN COOK COUNTY AND IS SUBJECT TO THE PREDATORY LENDING DATEABASE ACT, 765 ILCS 77/70 ET SEQ. AS AMENDED. FOR ANY NOTICE OF FORECLOSURE FOR A RESIDENTIAL MORTGAGE FORECLOSURE ON COOK COUNTY PROPERTY, A CERTIFICATE OF SERVICE MUST BE SIMULTANEOUSLY RECORDED THAT AFFIRMS THAT A COPY OF THE NOTICE OF FORECLOSURE WAS FILED WITH THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION. SEE 765 ILCS 77/70(g). THE CERTIFICATE OF SERVICE SHOULD CERTIFY THAT NOTICE WAS SERVED ON THE DEPARTMENT AT THE FOLLOWING ADDRESS:

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF BANKING  
122 S. MICHIGAN AVENUE, SUIT E 1948  
CHICAGO, ILLINOIS 60603  
ATTN.: STANLEY WOJCIECHOWSKI

# Complaint: Form

- Filed in the circuit court of the county in which the mortgaged real estate is located.
- Description of the mortgage being foreclosed
- Legal description and common address
- Statement as to defaults
- Names of present owners of the real estate
- Names of other persons who are joined as defendants and a description of their interest or lien on the real estate sought to be terminated
- Names of defendants claimed to be personally liable for any deficiency
- Any Guarantors
- The capacity in which the Plaintiff brings the foreclosure (“as legal holder of the indebtedness” or as “holder of the Note evidencing the indebtedness”)
- Statement as to the Right of Redemption or to a shortened redemption period.

# Complaint: Notice of Foreclosure

- Names of all plaintiffs and the case number
- The court in which the action was brought
- The names of the titleholders of record
- A legal description of the real estate sufficient to identify it with reasonable certainty
- A common address or description of the location of the real estate
- An identification of the mortgage sought to be foreclosed
- Executed by a party to the foreclosure, or by any party's attorney.

# Complaint: Service

- Personal Service
- Substituted Service
- Service by Publication
- Personal Service outside the U.S.



# After Judgment: Components

- Recitals of findings and the Order of Judgment
- Lien priority
- Last date of redemption
- Correct legal description of the land
- Entered more than 30 days after the date that defendants were personally served and more than 30 days after the date of first publication as to those defendants who were served by publication

## Consent Judgment

- No objections
- Judgment vests fee title

# After Judgment: Last Date of Redemption

- **Residential Real Estate:** redemption period ends the later of 7 months after mortgagors are subjected to the jurisdiction of the court, or, 3 months after the date that the judgment is entered.
- **All other foreclosures:** redemption period ends the later of 6 months after mortgagors are subjected to the jurisdiction of the court, or 3 months after the date the foreclosure judgment is entered.
- **Special Right to Redeem:** redemption period will expire 30 days after the date of sale is confirmed if the purchaser of the sale was a mortgagee who was a party to the foreclosure and the sale price was less than the redemption amount. The owner may redeem by paying (1) the sale price, (2) all additional costs and expenses incurred by the mortgagee as stated in the report of sale and confirmed by the court, and (3) statutory interest from the date of purchase price was paid or credited and offset.

# Sale: Notice of Sale

- Publish details of the sale
- Publication must contain:
  - common address
  - legal description
  - description of improvements
  - time and place of sale
  - terms of the sale
  - contact person
  - case information
- Published during 3 consecutive calendar weeks, once each week



# Sale: Certificate of Sale

- Given to Purchaser at sale upon receipt of payment in full of the amount bid
- Recordable form describing the real estate purchased, indicating the date and place of sale and shows the amount paid

# Sale: Confirmation of Sale

1. Report of sale
2. Confirmation hearing
3. Order approving sale
  - “No just reason for delaying the enforcement or appeal”

# Sheriff's Deed

- Components of the Deed
  - Contains elements of any other deed
  - Recites the case number
  - Identifies the court which ordered the deed executed and the signature and the title or authority of the grantor
- Must be issued to holder or assignee of the certificate of sale

# Deed in Lieu of Foreclosure

- Deed in Lieu of Foreclosure Agreement
- Non-Merger
- Creditors' Rights

# National Foreclosures

Please contact Chicago Title to speak with one of our experts on how we can help you with your foreclosure needs in other states.



# Questions & Answers

Please submit your written questions with the webinar control panel on your screen



# Contact Us: We're here to help!

- If you are a current client of Chicago Title, please contact your sales representative
- If you are not a current client, please contact:

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# Thank you!

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