

# Closing for Sure—A Practical Checklist for Foreclosure Property

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## I. Introduction<sup>1</sup>

- A. With the volume of foreclosures at or near record levels since the Depression era and problems with foreclosure processing by mortgage servicers disclosed by extensive media coverage since October 2010 at least, the need for settlement attorneys and agents to pay close attention to the details of proper foreclosure procedures and documentation was never greater.
1. Title to foreclosed property depends on the authority of the parties initiating and conducting the foreclosure and the validity of the foreclosure sale under applicable law and the governing documents.
  2. Clients may purchase property directly at the foreclosure sale or subsequent resale by the REO entity; foreclosed properties are involved in a significant percentage of all current real estate transactions.
  3. Purchasers often are purchasing foreclosed property without financing and for very favorable prices.
  4. Terms of sale in the foreclosure itself or in the REO resale contract may limit the rights of purchasers significantly
    - a. Insurable vs. marketable title
    - b. Foreclosure trustees' or REO sellers' discretionary rights to cancel transactions without liability to purchasers
    - c. Inducements to purchasers to use foreclosure firm or REO sellers' settlement agent for settlement.
- B. Security instruments
1. Deeds of trust—conveyance of the title (usually fee simple, but leasehold deeds of trust also are fairly common in commercial transactions) to trustee(s) to secure a debt or obligation to the secured party; foreclosure is by trustee's sale pursuant to applicable state law.
  2. Mortgages—conveyance of the title (again, usually fee simple, but commercial leasehold mortgages are common) to the secured party, subject to the equity of redemption; foreclosure is by direct sale by secured party pursuant to applicable state law. (Mortgages are recognized in Virginia, but uncommon.)
  3. Indentures—used historically for large transactions involving national corporations and financial institutions (*e.g.*, railroad bond issues.)

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- C. Alternative enforcement procedures
  - 1. Foreclosure suit (sometimes called “strict foreclosure” or “judicial foreclosure”)—a proceeding for court-ordered sale under a security instrument; some states require foreclosure suits in every case, under more or less streamlined procedures.
  - 2. Non-judicial foreclosure—sale without any court order being required
    - a. State law procedural requirements are designed to protect against abuse
    - b. Common (practically universal) Virginia foreclosure practice is non-judicial foreclosure of deeds of trust<sup>2</sup>
  - 3. Deeds in lieu of foreclosure—“voluntary” conveyance to the secured party or designee
    - a. title vested in secured party generally merges with the lien under the security instrument (but not if the conveyance is to a designee of the secured party)
    - b. conveyance does not extinguish subordinate liens like foreclosure would
  
- D. Title insurance coverage for security instruments—loan policy insures the lien/security interest, not the loan, *per se*
  - 1. Pre-2006 ALTA loan policy insuring provisions relevant to foreclosure cover loss or damage resulting from
    - a. invalidity or unenforceability of the lien of the insured mortgage (defined to include a deed of trust) upon the title;
    - b. priority of any lien or encumbrance (including some mechanics liens) over the lien of the insured mortgage
    - c. other insuring provisions protect against title risks causing loss to the secured party
  - 2. 2006 ALTA loan policy Covered Risks provide coverage against loss or damage resulting from
    - a. invalidity or unenforceability of the lien of the Insured Mortgage (again, a defined term, including a deed of trust), including loss due to specified causes (but not limited to those causes) [Covered Risk 9]
    - b. priority of any lien or encumbrance (including some mechanics liens) over the lien of the Insured Mortgage [Covered Risks 10 and 11]
    - c. invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage due to certain bankruptcy or creditor’s rights issues. [Covered Risk 13]
    - d. other general Covered Risks causing loss to the Insured

## II. Virginia Foreclosure Procedure and Practice

- A. Generally, governed by the terms of the deed of trust and applicable statutes, especially Va. Code §§55-59, *et seq.* Federal and state consumer protection laws, particularly the federal Fair Debt Collection Practices Act, also may present issues beyond the scope of this course.
  
- B. After default in satisfaction of the obligation secured by the deed of trust, the secured party generally must give notice of default and, perhaps, pre-acceleration notice. [2009

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<sup>2</sup> Note that legislation was proposed in the 2011 Virginia General Assembly (S.B. 798) to require judicial foreclosure of security instruments in Virginia; the bill did not pass.

amendment of Va. Code §55-59.1.C creates “rebuttable presumption” that notice of default was given if notice of foreclosure sale was sent. Compare *Bayview Loan Servicing LLC v. Simmons*, 22 VLW 982 (Rockingham County Cir. Ct., No. 062715, Jan. 11, 2008)]

- C. The secured party then exercises its right to have the obligation satisfied by enforcing its lien and typically appoints a substitute trustee, usually a law firm or other related entity experienced in foreclosure and debt collection work.
  - 1. The authority to sell the property at the request of the secured party, to satisfy the obligation secured by the deed of trust, is implicit. Va. Code §55-59, clause 7
  - 2. “The party secured by the deed of trust, or the holders of greater than fifty percent of the monetary obligations secured thereby” may appoint the substitute trustee (*Id.*, clause 9); a mere noteholder or nominee for the actual secured party apparently would not have that right. (*See* Va. Code §55-59.1.B for lost note procedure.)
  - 3. The substitute trustee must be appointed before exercising any authority under the deed of trust. *Id.*, clause 9
  - 4. The substitution of trustee must be recorded before or with any instrument in which the substitute trustee’s authority is exercised (including, of course, the foreclosure trustee’s deed.) *Id.*
  
- D. Notice. The foreclosing trustee must notify the owner and certain others. Va. Code §55-59.1.A
  - 1. Owner(s) at their last known address in the records of the secured party; prudence also requires the foreclosure trustee to send notice to any other owners and/or address(es) disclosed in the land records, if different.
  - 2. Noteholders of notes secured by deeds of trust recorded at least 30 days prior to the foreclosure sale, including assignees of those noteholders if the assignment is recorded at least 30 days before the sale.
  - 3. Condominium unit and property owners’ or proprietary lessees’ associations that have filed notices of liens at least 30 days before the sale.
  - 4. Internal Revenue Service, if notice of federal tax lien has been filed at least 30 days before the sale.
  - 5. “Failure to comply with the requirements of notice contained in [§55-59.1] shall not affect the validity of the sale, and a purchaser for value at such sale shall be under no duty to ascertain whether such notice was validly given.” Va. Code §55-59.1.C. Nonetheless, evidence of proper notice is an underwriting requirement for title insurance, at least when insuring the foreclosure sale transaction.
  
- E. Advertisement. The foreclosing trustee also must advertise the sale in a local newspaper. Va. Code §§55-59.2, -59.3, and -63
  - 1. as required by the terms of the deed of trust; contents as required in Va. Code §55-59.3
  - 2. subject to minimum statutory requirements
    - a. if advertisement is required by terms of deed of trust, at least twice if published weekly or three days if published daily, with sale no earlier than eight days after first publication and not later than 30 days after last publication

- b. if deed of trust does not require, once per week for four successive weeks or five times (if property is located in a city or a county contiguous to a city); sale no earlier than eight days after first publication or later than 30 days after last publication.
3. “Failure to comply with the requirements for advertisement contained in [§55-59.2] shall, upon petition, render a sale of the property voidable by the court.” Va. Code §55-59.2.E. Therefore, evidence of advertisement complying with the requirements of the deed of trust and the minimum statutory requirements is an underwriting requirement for title insurance, at least when insuring the foreclosure transaction; title insurers are unwilling to insure “voidable” title.
4. The 2019 amendments to Va. Code §8.01-324, dealing with requirements for newspapers that may be used for legal notices and publications, may affect advertisement of foreclosures in localities with no local newspaper; *see* [www.publicnoticevirginia.com](http://www.publicnoticevirginia.com).

#### F. Sale.

1. At public auction, sometimes conducted by an auctioneer for the foreclosing trustee; the foreclosing trustee (or individual authorized to act on behalf of a foreclosing trustee entity) actually must be present.
2. The secured party usually bids the amount of its debt plus the expenses of foreclosure.
3. The sale will be subject to prior liens (except local real estate taxes, which must be paid.)
4. Terms may be as permitted by the deed of trust but should not be so unilateral that the contract between the foreclosing trustee and purchaser lacks mutuality and becomes unenforceable. *Busman v. Beeren & Barry Investments, LLC*, 2005 WL 3476681 (Fairfax County Cir. Ct., Dec. 12, 2005)
5. A written memorandum of sale must be signed so that contract will be enforceable under the statute of frauds.

#### G. Settlement.

1. Foreclosing trustee will convey title by special warranty trustee’s deed.
2. Disbursements by foreclosing trustee (who must account for sale proceeds to the Commissioner of Accounts), in order of priority, as follows:
  - a. expenses of foreclosure sale
  - b. real estate taxes
  - c. secured debt
  - d. subordinate liens
  - e. owner prior to sale. Va. Code §55-59.4.A, clause 3Note the foreclosing trustee cannot use proceeds of the foreclosure sale to satisfy prior liens; the sale is subject to prior liens.
3. The foreclosing trustee must account for the sale proceeds and disbursements according to the statute. *Id.*
  - a. Traditionally, filing the foreclosing trustee’s accounting with the Commissioner of Accounts and approval of the accounting by the Commissioner is not required for title insurance.

- b. However, note 2010 amendment to the statute, deleting provision that “no purchaser [be] required to see to the application of the proceeds.” (2010 H.B. 714, Acts of Assembly chapter 417)
- c. Note that disciplinary action can be taken against the foreclosing trustee for failure to cooperate with the Commissioner of Accounts. *In the Matters of Howard Norman Bierman*, Virginia State Bar, 4<sup>th</sup> District Subcommittee, April 15, 2009.
- d. Foreclosing trustee is entitled to a “reasonable commission”; in light of increased efficiencies in foreclosure practice by firms concentrating their practices, “reasonable” may be something less than 5% of the foreclosure sale price. *In re: Trustee’s Foreclosure Sale of the Property of the Estate of Mabel A. Pitha*, VLW 009-8-263, Middlesex County Cir. Ct. No. CWF509-07 (Nov. 23, 2009); citing *In re: Exceptions to the Commissioner of Accounts’ Report on Account of Sale of 401 Princess Anne Rd.*, VLW 009-8-262, Va. Beach Cir. Ct. No. CL07-4188 (Nov. 8, 2007)

#### H. Effect of foreclosure sale.

- 1. The foreclosure sale discharges the lien of the deed of trust being foreclosed; it becomes a link in the chain of title and is not released.
- 2. Subordinate liens are extinguished.
  - a. subordinate deeds of trust
  - b. subordinate judgments (usually judgments subsequent to the deed of trust, but not always; date of *attachment* determines priority, not date of docketing, if the judgment lien doesn’t attach immediately upon docketing.)
- 3. Special cases
  - a. federal law grants the IRS a right of redemption to purchase property from the foreclosure purchaser for the purchase price plus certain other allowances until 120 days after the sale, provided the IRS was notified; if the IRS wasn’t notified, the federal tax lien is not extinguished, regardless of state law priority.
  - b. a purchase money lien will take priority even over previously-docketed judgments that otherwise would attach immediately (except judgments in favor of the federal government—judgments, not tax liens.)

### III. Title Insurance Underwriting for Title Passing through Foreclosure

- A. Distinguish among underwriting the current transaction when it is a foreclosure sale, a sale by the secured party that purchased property at a recent foreclosure sale, or a transaction with a foreclosure sale in the chain of title.
- B. Recall title insurance traditionally is based on the elimination of known risks, but title insurance underwriting has evolved to accept some level of risk, even known risks.
- C. Insuring title for a foreclosure sale or sale by the secured party that purchased the property at a recent foreclosure.
  - 1. It seems reasonable to require acceptable evidence of satisfaction of the statutory and deed of trust requirements
  - 2. Substitution of trustee

- a. written and executed by the secured party before the foreclosing trustee took any action (including notifying parties entitled to notice, advertising the sale, or, certainly, conducting the sale)
    - b. recorded with or before the foreclosure deed
  - 3. Notices to owner(s) and subordinate lienholders, if any (especially the IRS), notwithstanding the statutory protection for purchasers set forth in Va. Code §55-59.1.C. However, the foreclosing trustee's *specific* certification of notice being sent to required parties disclosed by the title search generally will be acceptable.
  - 4. Proper advertisement, complying with the requirements of the deed of trust and minimum statutory requirements, notwithstanding title being merely voidable and the provision requiring a petition to object to lack of advertisement under Va. Code §55-59.2.E. However, the foreclosing trustee's certification generally will be acceptable.
  - 5. Often the secured party that purchases the property at foreclosure (or an entity that takes title for the secured party) may be an entity unfamiliar to the agent; consult with underwriting counsel to work out requirements for the conveyance by unusual entities.
  - 6. Remember, accounting to the Commissioner of Accounts and approval of the accounting traditionally is NOT going to be a title insurance requirement.
- D. Insuring title to property with a foreclosure sale in the chain of title.
- 1. The foreclosing (usually substitute) trustee must have been authorized to act; written, timely substitution must have been recorded, just as if insuring title for the foreclosure sale.
  - 2. Recitals in the foreclosure trustee's deed often must be relied upon as the best evidence of proper notices and advertisement, including generic recitals.
  - 3. The statutory protections may be the only way to eliminate the risk that the foreclosure wasn't conducted properly.
- E. Other liens generally will not be released of record
- 1. Foreclosure sale extinguishes (but usually doesn't satisfy) subordinate liens, so no certificate of satisfaction may be available.
  - 2. Foreclosure sale is subject to prior liens.

#### IV. Selected Issues Arising in Foreclosures and Foreclosed Property Transactions

- A. Foreclosure trustee's deed to a large financial institution as trustee for a mortgage-backed securities trust
  - 1. Lack of provision in foreclosure deed authorizing the mortgage-backed securities trustee authority to sell property and convey title
  - 2. Difficulty in obtaining satisfactory evidence of the mortgage-backed securities trustee's authority otherwise under governing documents
  - 3. Uncertain authority of mortgage-backed securities trustee to delegate its authority to a service company by power of attorney or otherwise
  - 4. Inconsistencies in abbreviated references to mortgage-backed securities trusts
- B. Execution of deeds for sale of foreclosed property after foreclosure (REO)

1. Lack of local record evidence of delegation of authority to deal with REO properties, including power to sell and convey title
  2. Multi-layered ownership and management of REO property and uncertain authority to sell and convey title under various servicing or REO arrangements
  3. Uncertain authority of individuals acting for entities in that multi-layered structure
- C. Closing protection
1. HUD and its service agents insist on getting closing protection letters from settlement agents' title insurers to assure disbursement of net proceeds as agreed and required by HUD
  2. Standard ALTA closing protection letter, by its own terms, does not apply to a seller
    - a. applies when title insurance is specified for the protection of the addressee
    - b. covers lenders, their successors and assignees, mortgage warehouse lenders and purchasers<sup>3</sup>
  3. Closing protection by title insurers in Virginia must be limited to matters relating to the status of title to the land. Virginia Bureau of Insurance, Administrative Letter 1995-8, Sept. 4, 1995.
  4. Settlement agent surety and fidelity bonds should cover the risk HUD wants protected. Va. Code §55-525.20
- D. Unreleased prior liens
1. Deeds of trust
    - a. generally
      - i. satisfied, but unreleased
      - ii. unsatisfied
      - iii. difficulty of identifying or locating secured party for release
    - b. credit lines
      - i. satisfied, but not closed as required by Va. Code §55-66.12.A
      - ii. equitable subordination vs. statutory subordination under Va. Code §55-58.3. *Deutsche National Bank Trust Co. v. Batmanghelidj*, 22 VLW 580 (USDC, EDVa, Alexandria, No. 1:07cv683, Sept. 17, 2007)
  2. Other liens, incl. judgment liens
    - a. attachment and priority
      - i. identity of judgment debtor and owner
      - ii. tenancy by the entirety
      - iii. deeds of trust securing purchase money
    - b. enforceability under applicable statutes of limitation
      - i. liens other than judgment liens filed in the judgment records
      - ii. general district court judgments prior to July 1, 1995. *Mona v. Cranston*, 639 SE2d 208 (Va., Jan. 12, 2007)
      - iii. ten years after conveyance for value by judgment debtor. Va. Code §8.01-251.C

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<sup>3</sup> Closing protection does not extend to a borrower in a refinancing. *Cauthorne v. American Home Mortgage, et al.* \*, 2008 U.S. Dist. LEXIS 69293 (EDVa, Richmond, No. 3:08cv84, Sept. 15, 2008) [\*including "Aggressive Mortgage Corp."]

3. Inter-company indemnity letters among title insurers, including mutual indemnification agreements
    - a. indemnity based on arguable liability under title insurance covering current owner (including as secured party that acquired title through foreclosure of deed of trust insured by loan policy)
    - b. title insurer issuing title insurance for current transaction will become liable to its policyholders for unreleased liens under that title insurance; the indemnifying company is not directly liable to the parties to the current transaction
    - c. liens usually will remain unreleased
- E. Defective deeds of trust
1. Unrecorded deeds of trust
    - a. either due to settlement agent fraud or neglect, foreclosure firms and title insurance companies are dealing with an alarming number of claims involving failure to record the deeds of trust
    - b. cooperation from defaulting borrowers facing foreclosure is unlikely and expensive suits to establish the secured parties' liens often are required
    - c. apparent causes other than fraud include failure to calculate recording costs correctly so the deeds of trust cannot be recorded promptly, extensive use of independent contractors to perform title work and recordings, and general lack of attention to follow-up details
  2. Failure to have all co-owners join in deeds of trust as grantors (either not joining in deeds of trust at all or not being identified as grantors)
  3. Defective notarizations should be helped by 2008 amendment of Va. Code §55-106.2, making validity of notarization practically irrelevant three years after recording
  4. Errors in recording order on simultaneous loans—recording order may not be conclusive as to priority of liens; knowledge and intention of parties may determine, especially if both loans are from the same lender and if forms used for deeds of trust clearly indicate intended priorities between them. *But, see* Va. Code §55-96.A.1.
  5. Other defects include failure to include property descriptions or other attachments, which may or may not affect validity, priority or enforceability of the lien of the deed of trust covered by title insurance.
- F. Proof of Status as Holder of Secured Indebtedness
1. Growth of secondary mortgage market and, especially, mortgage-backed securitization of residential loans creates opportunities for physical possession of loan documentation to be separated from “ownership”
  2. Discovery of so-called “robo-signers” in late 2010 and investigations of foreclosure procedures and practices of mortgage loan servicers by state attorneys general and federal agencies have raised awareness of the lack of adequate documentation or record-keeping regarding the ownership of secured residential loans in the secondary mortgage finance and mortgage-backed securitization business. (For a more detailed analysis of the issues presented, *see Much Ado About Nothing? The Foreclosure “Crisis” of 2010-2011 (And Beyond?)*, 15<sup>th</sup> Annual Advanced Real Estate Seminar, Virginia CLE® and Real Property Section of the Virginia State Bar, March 4, 2011)

3. Foreclosure actions in other jurisdictions have been delayed or dismissed altogether when the party seeking foreclosure cannot prove it is the holder of the secured indebtedness by producing the actual note [see, e.g., *U.S. Bank, National Association, trustee for the Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2006-Z v. Antonio Ibanez*; and *Wells Fargo Bank, N.A., trustee for the ABFC 2005-OPT 1 Trust, ABFC Asset Backed Certificates, Series 2005-OPT 1 v. Mark A. LaRice, et al.*, (Supreme Judicial Court of Massachusetts, No. SJC-10694, Jan. 7, 2011) and *Fleet National Bank v. Nazareth*, 818 A. 2d 69 (Conn. App. 2003)]
4. Consumer advocates have paid attention to these developments (see <http://www.nakedcapitalism.com/2009/10/more-judges-taking-on-foreclosures-without-document-trails.html>)
5. The writer understands possession of the secured notes may have been an issue in the approval of some foreclosure accountings by Virginia Commissioners of Accounts and in a few title insurance claims

G. Servicemembers Civil Relief Act (50 U.S. Code Appendix §§501, *et seq.*)

1. Questions have arisen regarding whether secured parties can foreclose on active duty military personnel, especially during periods of deployment overseas.
2. The relief provided by the SCRA “applies only to an obligation on real or personal property owned by a servicemember that (1) originated before the period of the servicemember’s military service and for which the servicemember is still obligated; and (2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.” 50 U.S. Code App. §533(a)
  - a. For members of the Army, Navy, Air Force, Marine Corps, or Coast Guard, “military service” means active duty—“full-time duty in the active military service of the United States” 50 U.S. Code App. §511(2)(A)(i) and 10 U.S. Code §101(d)(1); presumably, reserve members would enter a period of military service under SCRA when they are called to full-time duty.
  - b. For members of the National Guard, “military service” is “service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days.” 50 U.S. Code App. §511(2)(A)(ii)
  - c. “Regular” armed forces personnel serving full-time, then, would appear to qualify for SCRA mortgage relief only on loans originated before they were commissioned or enlisted; members of the reserves or National Guard may qualify for SCRA mortgage relief on loans originated before they were called to active duty.
3. Foreclosure under an obligation covered by SCRA made “during, or within 9 months after, the period of the servicemember’s military service” is not valid except upon court order or qualified waiver. 50 U.S. Code App. §533(c) (see, 50 U.S. Code App. §517, for waiver agreement provision.)
4. It is not clear whether SCRA would affect title of a *bona fide* third party purchaser; a purchaser may be able to determine if an owner is a servicemember on active duty but perhaps not whether that duty is as a member of the regular armed forces, reserves, or National Guard or when active duty began.

V. FORECLOSURE CHECKLIST—*see* following pages

## **FORECLOSURE/FORECLOSED PROPERTY PURCHASE CHECKLIST**

### **Deed of trust**

- Executed by *all* owners at the time of execution and recording
- Adequate property description in body of deed of trust or attached
- Properly notarized
- Priority based on recording order or otherwise
- Proper trustee(s) named [but, secured party may appoint substitute trustee(s) as necessary in any case]
- Identity of secured party
  - Lender
  - MERS as beneficiary and/or nominee for lender
  - Successors and assigns

### **Assignment(s) of deed of trust (if any)**

- Executed on behalf of secured party of record
  - Duly-authorized officer of secured party or other official with apparent authority
  - Agent/attorney-in-fact with authority (of record if assignment is recorded)
  - Mortgage servicer for assignor
- Executed/effective before assignee exercises secured party rights

### **Appointment of substitute (foreclosure) trustee (Va. Code §55-59, clause 9)**

- Executed on behalf of secured party *when executed*
  - Identity of secured party known
    - Of record by deed of trust or recorded assignments
    - Other satisfactory evidence
  - Satisfactory evidence of authority to execute
    - Mortgage servicer for secured party
    - MERS
    - Foreclosure firm (self-dealing?)
    - Duly-authorized officer of secured party or other official with apparent authority
- Executed before foreclosure trustee exercises authority under deed of trust or law
  - Notice to borrowers/owners/others
  - Advertisement
  - Sale
  - Trustee's deed
- Recorded before or with trustee's deed (Va. Code §55-59, clause 9)

### **Notice of foreclosure sale**

- Notice of default or *pre*-acceleration notice required by deed of trust (But, *see* Va. Code §55-59.1.C as amended in 2009 for rebuttable presumption that notice of default was given if notice of foreclosure sale was sent and Va. Code §55-59.1.A for provision that notice of sale is an effective notice of acceleration.)

- Notice to present owner(s)
  - According to records of secured party (Va. Code §55-59.1.A)
  - As disclosed by public records?
- Notice to subordinate lienholders, if any, of record 30 days prior to proposed sale
  - Noteholder secured by deed of trust whose address is recorded with the deed of trust (or assignee whose address is of record under recorded assignment)
  - Common interest community owners association which filed a lien pursuant to applicable statute
  - IRS
- Required contents of notice (*Permissible* form in Va. Code §55-62)
  - Time, date and place of proposed sale
  - Recording reference or copy of appointment of substitute trustee
  - Copy of advertisement or notice containing the same information (*see* below for required contents of advertisement)
- Mailed no less than 14 days prior to proposed sale (except longer period for notice to the IRS noted below)
  - To owner(s) by certified or registered mail
  - To subordinate lienholders by regular mail
- Notice to IRS and IRS right of redemption, if applicable
  - No less than 25 days notice prior to proposed sale
  - By registered or certified mail or personal service on IRS
  - Even with notice, IRS may redeem property up to 120 days after the sale

**Advertisement of sale (Va. Code §§55-59.2, -59.3 and -63)**

- “[I]n a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies” (Va. Code §55-59.2.A)
- In the section of the paper where legal or foreclosure notices appear (Va. Code §55-59.2.B)
- As required by terms of the deed of trust
  - Minimum requirement: 2X for weekly advertisement, 3X for daily
- If the deed of trust does not require advertisement (rare)
  - 1/wk X 4 weeks, unless
  - Property located in a city or county contiguous to a city, 5 days
- Re-advertisement, as above, for postponed sale (Va. Code §55-59.2.D)
- Required contents (also required in notice of sale; *see* above) (Va. Code §55-59.3)
  - Description of property to be sold
  - Street address, if any
  - General location referring to streets, routes or known landmarks if the property has no street address
  - Tax map identification *may* be provided but isn’t required
  - Time, place and terms of sale
  - Name(s) of foreclosing trustee(s)
  - Name, address and telephone number of a person who can respond to inquiries concerning the sale (a trustee, the secured party, or an agent or attorney.)

**Trustee's foreclosure deed**

- Satisfactory recitals evidencing authority and validity of foreclosure (including Servicemembers Civil Relief Act)
- Execution by authorized trustee(s) under appointment of substitute trustee(s)
- Property description
- Identification of grantee
- Evidence of authority for grantee to convey title (if grantee is a fiduciary)

**REO resale**

- Identity of grantor same as grantee in foreclosure deed
- Satisfactory evidence of authority to execute (sometimes multiple layers of dubious authority; analyze each layer.)
  - Duly-authorized officer of grantor or other official with apparent authority
  - Agent/attorney-in-fact with authority (of record)
  - Mortgage servicer for grantor?
  - MERS?