

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?