

FORECLOSURES

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HOME TEAM TITLE

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What is a Foreclosure?

- **Foreclosure** - Foreclosure is the legal proceeding in which a bank or other secured creditor sells or repossesses a parcel of real property due to the owner's failure to comply with an agreement between the Lender and borrower called a Mortgage or Deed of Trust. The typical violation of this agreement resulting in the Foreclosure is the Borrowers default in the payments required under a Promissory Note secured by that Mortgage or Deed of Trust.

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Preliminary Concepts and Definitions

- The concept of “secured” debt
- • Provides lender with another basis for collection in the event of default (an additional “remedy”)
- • Gives lender priority as to certain assets
- • Reduced risk to lender = reduced rate to borrower

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Preliminary Concepts and Definitions

- Advantages of the use of secured debt
- • Facilitates and encourages investment in certain “favored” assets and activities (e.g. low income housing, owner-occupied dwellings VA and FHA. Etc.)
- • Makes low interest rate funds available through subsidies and other programs
- • Provides tax incentives (e.g. residential mortgage interest deduction)
- .Increases "productivity: of dormant assets (e.g. borrow on "equity" and invest in productive enterprise)

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Preliminary Concepts and Definitions

- Instruments Securing (Collateralizing) Debt Obligations with Real Estate
- 1. Mortgages
 - Two party instrument by which an owner grants an interest real property directly to a lender to secure a debt;
 - A separate promissory note is not required but its use is recommended

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Preliminary Concepts and Definitions

- 2. Deeds of Trust
 - Three party instrument by which an owner grants an interest in real property to a trustee as security for the payment of a debt;
 - A separate promissory note is required and is secured by the Deed of Trust;

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Preliminary Concepts and Definitions

- 3. As a practical matter, distinctions between mortgage and deeds of trust are of little significance in modern practice
- 4. Other
 - • Security/Construction Agreements
 - • Land Installment Contracts

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Requirements for valid mortgages or deeds of trust (Section 4-101, Real Property Volume, Annotated Code of MD)

- Must contain the name(s) of all parties
- Must describe the property in a manner sufficient to identify it with reasonable certainty
- Must State the Amount of the loan
- Must be signed by the mortgagor (owner)
- Must be notarized
- Must be recorded among the Land Records or the County (or Baltimore City) where the property is located, (If land lies in more than one county, it must be recorded in each county),
- Must contain an "affidavit of disbursement and/or consideration" (assures that mortgage and deeds of trust are bona fide and not created to defraud other creditors)
- Must contain the names and license numbers of the lender and the loan originator or an affidavit stating that the lender is exempt – MD Code – Real Property 3-104.1

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Priorities

- Generally based on time of recording (Section 3-203, Real Property Volume, Annotated Code of Maryland,)
- Exception for "purchase money" mortgage –takes priority as to property over other established liens – MD Code Real Property 7-104
- Senior vs. Junior mortgage
- Mortgage vs. Other liens

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Causes of Foreclosures

- WHAT ARE SOME CAUSES OF FORECLOSURES?

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Causes of Foreclosures

- WHAT ARE SOME CAUSES OF FORECLOSURES?
- Lost Job
- Illness
- Death of a wage earner
- Divorce
- Strategic Defaults – loss of property value
- Rate adjustments on toxic loans
- Switch from interest only to amortizing on toxic loans

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WHAT ARE SOME WAYS YOU CAN BE IN DEFAULT ON A DEED OF TRUST??

- Monetary Defaults
 - Monetary defaults normally lead to foreclosure
- Non-Monetary Defaults
 - Bankruptcy
 - Transfer of Property in violation of due on sale clause
 - Failure to occupy as principal residence
- Right to "cure" defaults- the borrowers' right to avoid further enforcement (by way of foreclosure or otherwise) by remedying the breach of failure in compliance with the terms which has occurred.
- There may be different "cure" provisions dealing with monetary vs. Non- monetary defaults on commercial loans
- There are specific notices of the right to cure which are required to be sent to the borrower under the loan documents.

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Foreclosures – Historical Perspective

- Prior to the “sub-prime meltdown” Maryland and the District of Columbia were relatively fast foreclosure states. When the bubble burst and people began defaulting on their loans, lenders were able to take people’s homes in as little as 60 days. Predatory lending practices allowed borrowers to take on loans that they could not afford with little or no documentation.
- The legislature in Maryland and the DC Council both acted quickly to enact restrictions and requirements intended to slow down the process and to keep people in their homes and allow them the chance to negotiate modifications and forbearances with the lenders.

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Types of Foreclosures

- Non-Judicial Foreclosure process is used when a “power of sale” clause exists in a mortgage or deed of trust. A power of sale clause is found in the deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of the borrower’s default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically the trustee. Despite the permission given in the power of sale clause, lenders in Maryland must still file an Order to Docket before foreclosure proceedings can begin. However, it is not necessary for a hearing to be held prior to the foreclosure sale.

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Types of Foreclosures

- Judicial Foreclosure is used in cases where the security instrument contains neither a power of sale nor an assent to a decree, a lender must file a complaint against the borrower and obtain a decree of sale from a Circuit court having jurisdiction in the county where the property is located before foreclosure proceedings can begin. The court will then determine whether a default has occurred.
- In Maryland most foreclosures are Judicial Foreclosures. In contrast, the District of Columbia also permits non-judicial foreclosure, in which the foreclosure proceedings and sale can be completed without the institution of court proceedings

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Foreclosure of HOA/Condo Liens and Judgments

- Condominium and Homeowner's Associations have liens for the payment of dues which are part of the Declaration of Covenants and Bylaws that establish the community. Generally, the covenants provide that the HOA and Condo liens are subordinate to the lien of a first Deed of Trust on the property. If an owner does not pay, the HOA or Condo sues the owner and gets a judgment against the owner for the fees due plus attorney's fees and costs.

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Foreclosure of HOA/Condo Liens and Judgments

- As part of the collection process, the HOA, Condo or other judgment lien creditor seeks to collect its judgment by attaching assets, garnishing wages and the like. If they find an asset owned by the debtor, they can sell the asset at a Sheriff's sale. The rules for Sheriff's sales are different than the rules for foreclosures of Deed of Trust and Mortgages. The Sale is advertised and the asset is auctioned to the highest bidder. The Sheriff deeds the property to the winning bidder and the money goes to the creditor after payment of costs. You take title subject to the prior lien of the owner's Deed of Trust.

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Other Lender Remedies

Note that foreclosure is not the lender's sole remedy. In most cases the lender also has the option to bring a personal action for the debt which is due, directly against the borrower(s) (unless loan is "nonrecourse" financing, typically only available to the best commercial borrowers). The lender can get a judgment against the Borrowers and foreclose the judgment using the post judgment collection procedure described above.

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Pre-foreclosure Procedures

- Lender's procedures-normally starts with "in house" collection efforts.
- Call from Loan Servicing
- Letter from Loan Servicing
- If the default is not cured or other acceptable payments arrangements are not agreed to the loan is accelerated, which means that the entire remaining balance is declared due and payable in full (this may be done by the lender or its attorney)

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FORECLOSURES IN MARYLAND

Foreclosure Timeline

- WHAT'S THE MINIMUM TIME THAT A FORECLOSURE OF YOUR PRINCIPAL RESIDENCE CAN TAKE IN MARYLAND????
- 1. Default – you are in default if your payment is 1 day past due. The lender or lender's attorney notifies the borrower that a "default" has occurred under the terms of the loan in accordance with the loan documents.
- 2. A foreclosure action cannot be filed in court until at least 90 days after a default on the loan. Additionally, the lender must send the borrower a notice of their intent to foreclose at least 45 days before they file that foreclosure action in court.

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Notice of Intention to Foreclose

- Notice of Intent to Foreclose (usually sent 45 days after default) and a loss mitigation application. The Notice of Intent to Foreclose will provides information about why the loan is in default, the amount owed to bring the loan current, the last payment received, contact information for: (i) the lender or secured party; (2) the mortgage servicer that collects your mortgage payments; and (3) the department that can help you work out your default (i.e., loss mitigation, asset recovery, home preservation, or workout department).

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Notice of Intention to Foreclose

- When you receive a Notice of Intent to Foreclose after July 1, 2010, the lender must also include the following documents:
 - Information and resources on how to access housing counseling services
 - An explanation of the Maryland foreclosure process and timeline
 - A Loss Mitigation Application, including a description of the eligibility requirements for programs offered by the lender/servicer
 - Instructions for completing and returning the application to the attorney handling the foreclosure for the lender
 - An envelope preprinted with the address of the person responsible for conducting the loss mitigation analysis

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Maryland Foreclosures

- 3. 45 days after you get the Notice of Intent to Foreclose in the mail, a foreclosure may be filed in Court (but not earlier than 90 days after the default). When a foreclosure is filed against you, you will be served with a packet of papers called an “Order to Docket”.
- 4. Loss Mitigation Analysis. Maryland law requires that your mortgage company reviews your circumstances to see if you are eligible to avoid foreclosure before they can sell your house at foreclosure. This review is called loss mitigation analysis. If this analysis is completed before your foreclosure is filed and you have a document called a “Final Loss Mitigation Affidavit” in the packet of paper that you receive, you should refer to column 1 below. If the analysis was not completed, you will have a “Preliminary Loss Mitigation Affidavit” in your packet of paper and you should look at column 2 below to understand the foreclosure process.

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Maryland Foreclosures

- After the Order to Docket is Filed,
- If you receive a PRELIMINARY LOSS MITIGATION AFFIDAVIT when you are personally served with court papers when the foreclosure action is filed, your lender must also include the following documents:
 - • A Loss Mitigation Application and a description of the eligibility requirements
 - • Instructions for completing and returning the application to the attorney handling the foreclosure for the lender
 - • An envelope preprinted with the address of the attorney handling the foreclosure for the lender

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Maryland Foreclosures

- If you receive a FINAL LOSS MITIGATION AFFIDAVIT, your lender must also include the following documents:
- • A Request for Foreclosure Mediation Form
- • An envelope preprinted with the address of the Clerk of the Circuit Court
- • An envelope preprinted with the address of the foreclosure attorney handling the foreclosure for the lender

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Maryland Foreclosures

- Mediation
- If your home is your principal residence and your lender filed a foreclosure action after July 1, 2010, you may request mediation when your lender initiates foreclosure proceedings with the court system. Lenders will need to file one of two documents with the Circuit Court at the Order to Docket phase:
- As part of the Final Loss Mitigation Affidavit, your lender must send you a "Request for Foreclosure Mediation" form. You have 25 days from the time you receive this form to complete it and file the request for mediation with the Circuit Court. Homeowners must pay a non-refundable \$50 fee when they formally file this request for mediation.
- This is the only time you will be offered the opportunity to request foreclosure mediation. **Commercial and other non-owner occupied properties are not eligible for foreclosure mediation.**

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Maryland Foreclosures – Timeline #1

Where the Order to Docket or Complaint to Foreclose includes the “Final Loss Mitigation Affidavit.”

- Day 1 – Missed mortgage payment
- Day 45 – Notice of Intent to Foreclose (Mailed by Regular and Certified)
- Day 90 – Order to Docket or Complaint to foreclosed filed in Circuit Court
- Day 105 – Last day for homeowner to request foreclosure mediation

If not requested property may be sold on day 135, if requested..

- Day 110 – Circuit court sends the request to the Maryland Office of Administrative Hearings by this day.
- Day 170 - Foreclosure mediation must take place buy this day unless postponed
- Day 185 – Sale can be held unless motion to stay is filed

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Maryland Foreclosures – Timeline #2

Order to Docket or Complaint to Foreclose includes the “Preliminary Loss Mitigation Affidavit.”

- Day 1 – Missed mortgage payment
- Day 45 – Notice of Intent to Foreclose (Mailed by Regular and Certified)
- Day 90 – Order to Docket or Complaint to foreclosed filed in Circuit Court
- Day 118 – “Final Loss Mitigation Affidavit” and mediation form sent by mail
- Day 133 – Last day to request foreclosure mediation

Property may be sold on day 148 unless mediation request or motion to stay sale

- Day 138 – Mediation request sent to Maryland Office of Administrative Hearings
- Day 198 – Foreclosure mediation must take place by this date unless postponed
- Day 213 – Sale can be held unless motion to stay is filed

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Maryland Foreclosures

- Lenders law firm files Order to Docket
 - Can file anytime after 45 days from when the notice of intent to foreclose is sent (but not earlier than 90 days after the default)
 - **Borrower must personally be served with court papers when foreclosure action is filed. If the lender tries to serve court papers twice in person, they may serve by posting on property and mailing by certified mail**
 - Lender must wait 45 days after court papers are served before selling property at auction. Earliest a lender can sell after default is 135 days
- Homeowner must file mediation request within 25 days from final loss mitigation affidavit

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Maryland Foreclosures

- If homeowner does not request mediation, the sale can occur:
 - 45 days after the homeowner has been serviced with the Order to Docket if it has a final loss mitigation affidavit filed with it; or
 - 30 days after the final loss mitigation affidavit is served if it is filed after the Order to Docket is filed
- If homeowner does request mediation, it will occur with 65 days of the circuit court receiving request
- Office of Administrative Hearings (OAH) files a report with the court within 7 days of the mediation. If no agreement in mediation, lender schedules home for foreclosure sale. Can schedule as soon as 15 days after mediation
- Homeowner may file a motion to stay if they have valid defense on why lender doesn't have right to foreclose, must be filed 15 days after mediation

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Maryland Foreclosures

- When lender schedules the foreclosure sale, they must notify homeowner
 - Notice must be provided no later than 10 and no sooner than 30 days before scheduled sale
 - An advertisement of foreclosure sale is published at least once a week for 3 weeks. Sale is held no more than 1 week after publication date
 - Attorney for the lender must send notice by certified mail of date time and place of sale to:
 - Borrower
 - Current owners of property
 - Any junior lien holders who have recorded a notice requesting notification of the sale
 - Occupants of the property including tenants

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Maryland Foreclosures

- Once the foreclosure sale has occurred, lender must file report of sale with Circuit Court. Must be filed within 30 days after sale
- The Court Clerk issues a notice that the sale will be ratified within 30 days of Clerk's notice which is published in the newspaper
- If homeowner wishes to file exceptions to sale it must be filed with court within 30 days after the clerk's notice. **Exceptions based solely on whether the sale process was not followed. It does not enable homeowners to challenge whether overall process was handled correctly or if improperly denied loan modification. Those challenges need to be heard by the Court prior to the sale.**
- Circuit Court ratifies the sale after the time for exceptions has past or if exceptions have been overruled

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Maryland Foreclosures

- The purchaser from the foreclosure sale files a Motion for Entry of Judgement Awarding Possession
 - The Court must issue an order granting possession
 - After the entry of judgment, purchaser must send an eviction notice prior to executing the writ of possession
 - After the eviction notice is served, purchaser must file a request for writ of possession
 - Sheriff then executes the writ and evicts former homeowner

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Options in Foreclosure Situations

- Borrower must call lender!- ask for loss mitigation, asset recovery...
- For temporary problems
 - Reinstatement: Lender agrees to accept total owed in lump sum by a certain date. Has up until one business day before auction to pay and stop foreclosure sale
 - Forbearance: Lender allows borrower to reduce or suspend payments for a short amount of time after another option is agreed upon to bring the loan up to date. This is used when a borrower will have enough money at a specific time in the future due to bonus, investment, tax refund etc..
 - Repayment plan: Borrower obtains agreement to resume making regular payments in addition to a portion of the past due payments each month

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Options in Foreclosure Situations – Long Term

- Mortgage Modification: If borrower can make payments , but don't have enough to make account current, lender can change terms of original loan to make payments more affordable. Examples...
 - Adding the missed payments to existing loan balance
 - Changing the interest rate, including making an adjustable rate into a fixed
 - Extending the number of years you have to repay
- Claim Advance: If your mortgage is insured you may qualify for a interest free loan from your mortgage guarantor to bring your account current. Repayment of loan may be delayed for several years

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Options in Foreclosure Situations – Keeping the Home is Not an Option

- Sale: if you can no longer afford the home, lender will usually give you a specific amount of time to find a purchaser and pay off the total amount owed. Expected to obtain realtor to aggressively market
- Short Sale: if property's sales value is not enough to pay the loan in full, lender must approve that they will accept less than the full amount owed. Include a period of time for realtor to market property
- Assumption: qualified buyer may be allowed to assume mortgage even if original loan documents say non-assumable
- Deed-in-lieu: Lenders allows borrower to voluntarily give back property and forgive the debt. Must attempt to sell the home for its fair market value for at least 90 days before this option. May not be available if there are other liens such as judgments from other creditors or tax liens

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Other Pre-Sale Options

- Injunctions: requires a valid defense and payment into the court
- Bankruptcy: Must be filed before the sale occurs. May stay or temporarily stop a foreclosure however, not always the best option and are variety of filings with different consequences.
- Credit Counseling: The Maryland Department of Housing and Community Development (DHCD) supports a network of 31 agencies that provide foreclosure prevention assistance. They are a critical link to assisting individuals facing foreclosures, acting as a resource to negotiate terms with mortgage servicers and advising on best actions to take to save their homes

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Short Sales

- A short sale is the sale of a home where the net proceeds are not enough to cover the sellers obligations, including mortgage payoff, closing costs, property taxes, transfer tax and commission
- In same cases these sellers may be in default on their mortgage and are potentially facing foreclosure.
- Life changes such as divorce or job transfer may force a sale if their property, but some sellers find themselves owing more than they can realize from the sale of their property

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Short Sales

- A short sale is an arrangement between homeowner and lender holding the mortgage to accept an offer for less than the total amount to pay off the home loan.
- Lenders determine eligibility due to hardship of owner and accepts as their loss. Simply owing more than the home is worth is not considered a hardship. Hardships include...
 - Unexpected hospitalization and medical expenses
 - Job loss
 - Death of a family member, or similar catastrophic situation
- Additionally a budget must show seller's expenses exceed their income/ assets and there is no way to repay the lender

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Short Sales – The Agent's Role

- Practice Tip #1: Make sure the "potential short sale" box in the MLS listing is checked. The contract of sale will require the approval of a lender and a buyer would likely consider this an important factor when making a decision about whether or not to make an offer
- Practice Tip #2: Be sure to include a "Third Party Approval" and Short Sale Addendum in the contract. This is an absolute necessity for ensuring that the parties understand the contract is contingent on the agreement of the lender to accept the net proceeds of the sale as payment for underlying debt. Also MAR recently published a Short Sale Addendum designed to assist parties. Options include automatic termination of the contract if lender doesn't approve in a specified time

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Short Sales – The Agent's Role

- Practice Tip #3: Short sales are more complex than traditional and seller may be in very emotional state facing losing their home. Some sellers may be in denial and have waited until the last minute. Facing foreclosure they turn to you for help. Realtors should be careful to avoid making misleading statements or false promises. If a client has any specialized tax or legal needs, they should be advised to seek professional assistance
- Realtors should be careful not take undertake representation of a client if they don't believe the services they will be rendering are within their field of competence.

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Tenant Rights

- Under both federal and state law, tenants have a right to have their lease survive foreclosure
- Most of the time the foreclosure sale purchaser becomes the new landlord and is bound by the terms of the lease.
- If the new owner wants the tenant to leave the owner must sent the tenant a notice to vacate the property at lease 90 days in advance
- You do not have to have a written lease for these protections to apply. Verbal and month to month agreements are usually protected too


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Buying Foreclosures

- Not glamorous
 - Advertisement is the contract and terms
 - Buyer pays all the transfer taxes
 - Buyer carries property from date of sale, and pays interest from date of sale
- Certified Funds
- No contingences
 - As is - where is. No opportunity to inspect
- Eviction issues
 - Tenants have right to remain under current law. Owners must give up possession
- Lien Issues
- Potential Benefits?? – Below market price


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Underwriting Foreclosures in a Pandemic Year


2021 Underwriting Considerations



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WHAT WE ARE GOING TO DISCUSS

Foreclosures

- Title Insurance Requirements
- Other Usual Considerations



2021 Foreclosure Specific Considerations

- COVID-10 Economic Impact
- Executive and Legislative Responses to COVID-19

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Will there be a Foreclosure Tsunami???




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FORECLOSURE

Title Insurance Requirements


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When to review – 3 year rule (from ratification)



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Review of Underwriting Checklist – Docs to Review




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<p></p> <p>REVISED MARYLAND FORECLOSURE CHECKLIST</p> <p>Real Property Sections 7-105.1(p), 7-105.2(a), and 7-105.3(f) authorize an action for failure to comply with the provisions of these sections, to be brought within three years after the date of the order ratifying the sale. As such, failure to comply with the items listed below can result in a claim being made up to three years after the date of ratification.</p> <p>A. Obtain items one through six below and review same:</p> <ol style="list-style-type: none"> 1. Order to Docket (Obtain copy of the Order to Docket) Compliant to Foreclose and copies of items marked with an asterisk (*), confirm filing of the others by reference to Court's Docket). <ul style="list-style-type: none"> 1. *Affidavit of Default. 2. Notice of Intent to Foreclose. 3. The original or a certified copy of the deed of trust. 4. *A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or secured party. 5. *A copy of the debt instrument accompanied by an affidavit certifying ownership of the debt instrument; a copy of any "lost note affidavit". 6. *A copy of the deed of appointment of a substitute trustee. 7. Affidavit re: Servicemembers Civil Relief Act. 8. Preliminary or Final Loss Mitigation Affidavit. 9. Report/Statement re: Pre-filing Mediation (as of 10-1-2012). 2. Proof of Service of Process of Order to Docket. <ul style="list-style-type: none"> — Borrower and record owner. Personal service or substitute service (i.e. served by leaving the papers with a resident of suitable age and discretion at the borrower's and record owner's dwelling house or usual place of abode) required. Note: If service of process on the borrower or record owner was not made as set forth above, was service made by posting and mailing? Such service must be supported by an affidavit stating that on at least two different days a good faith effort was made to serve the borrower or record owner and service was not successful, and that the plaintiff effected service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. 3. Notice of Sale. <ul style="list-style-type: none"> — Record owner and borrower by certified mail and first-class mail. All junior lienholders of record 30 days or more before the sale, including beneficiaries under a deed of trust, judgment creditors, and HOA and Condo fee holders by certified mail first-class mail. Affidavit of compliance filed with the court identifying each junior interest by name and address is sufficient. If a junior interest is not so listed obtain proof of notice from the foreclosing trustee. — "All Occupants" by first class mail. <p>Attachment: MD-2012-004 STANDARD - REV. MARYLAND FORECLOSURE CHECKLIST Page 1 of 2</p>	<p>To County or Municipal Corporation in which property is located: written notice not less than 15 days before sale.</p> <p>If IR's not less than 25 days before the sale for items filed 30 days or more before the sale, if applicable, has 120 days passed since the sale of property in which the IR's held a subordinate lien?</p> <p>Publication – Must state the time, place, and terms of the sale and be made at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale.</p> <ol style="list-style-type: none"> 4. Report of Sale. 5. Order of Ratification of Sale. 6. Substitution of Purchaser Order, if any. 6. Obtain copy of the Docket and review same for the following items. <ul style="list-style-type: none"> Final Loss Mitigation Affidavit (if Preliminary Loss Mitigation Affidavit was filed with Order to Docket). <ul style="list-style-type: none"> — Bond — Purchaser's Affidavit — Clerk's notice following sale (order nisi). — Were there any Motions to Stay or Clemency filed? If so, contact your underwriter. — Were exceptions to the sale made? If so, has the time for filing Notice of Appeal passed (i.e. 30 days following entry of the order of ratification)? If exceptions had been filed and overruled and less than 30 days has passed following the order ratifying the sale, contact your underwriter. — Has any appeal been filed? If so, contact your underwriter. — Were any "Corrective Affidavits" filed? If so, contact your underwriter. — Are there any pending "Show Cause" or other motions? If so, contact your underwriter. C. Consider the following items. <ul style="list-style-type: none"> — Did any defendant the Bankruptcy at any time prior to Final Ratification? If so, need a lift stay order. — Is the property vacant? If not, do not close your transaction. — If lender was purchaser, has more than 30 days passed since ratification of sale? — Are there any attempted rescissions of the foreclosed Deed of Trust filed in the Land Records? If so, contact your underwriter. <p>Attachment: MD-2012-004 STANDARD - REV. MARYLAND FORECLOSURE CHECKLIST Page 2 of 2</p>
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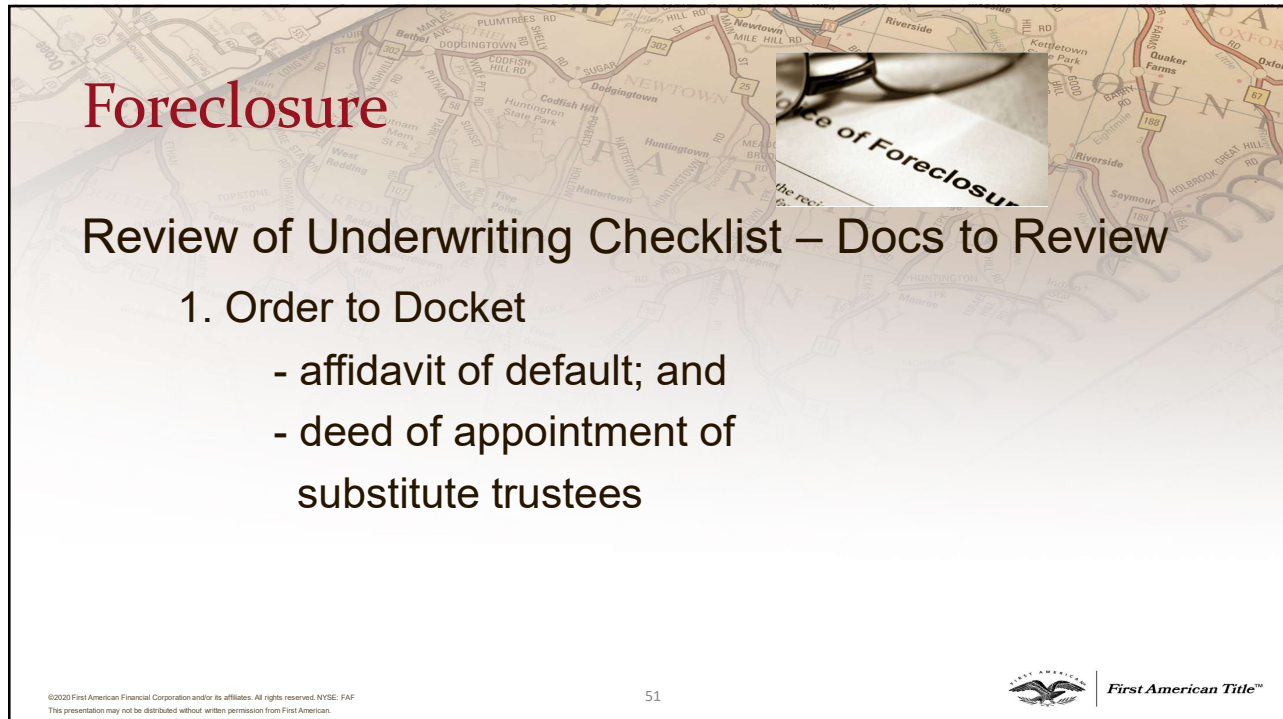
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Foreclosure

Review of Underwriting Checklist – Docs to Review

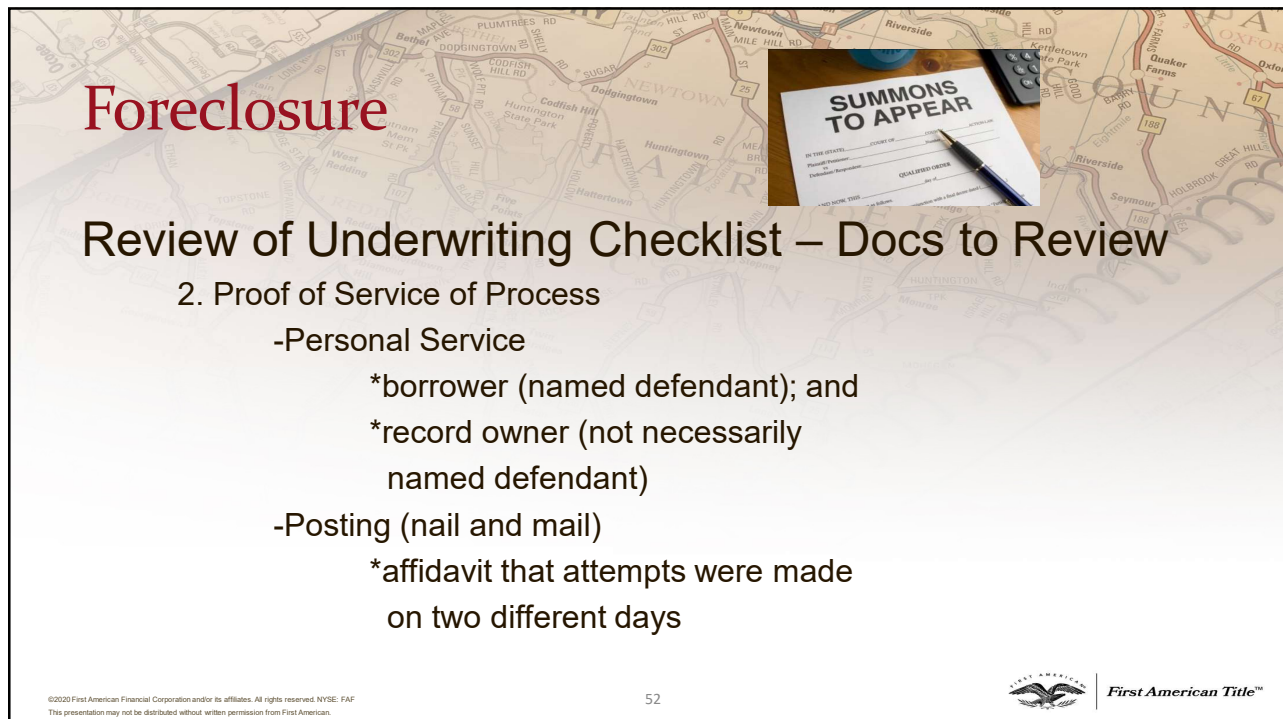
1. Order to Docket
 - affidavit of default; and
 - deed of appointment of substitute trustees

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Review of Underwriting Checklist – Docs to Review

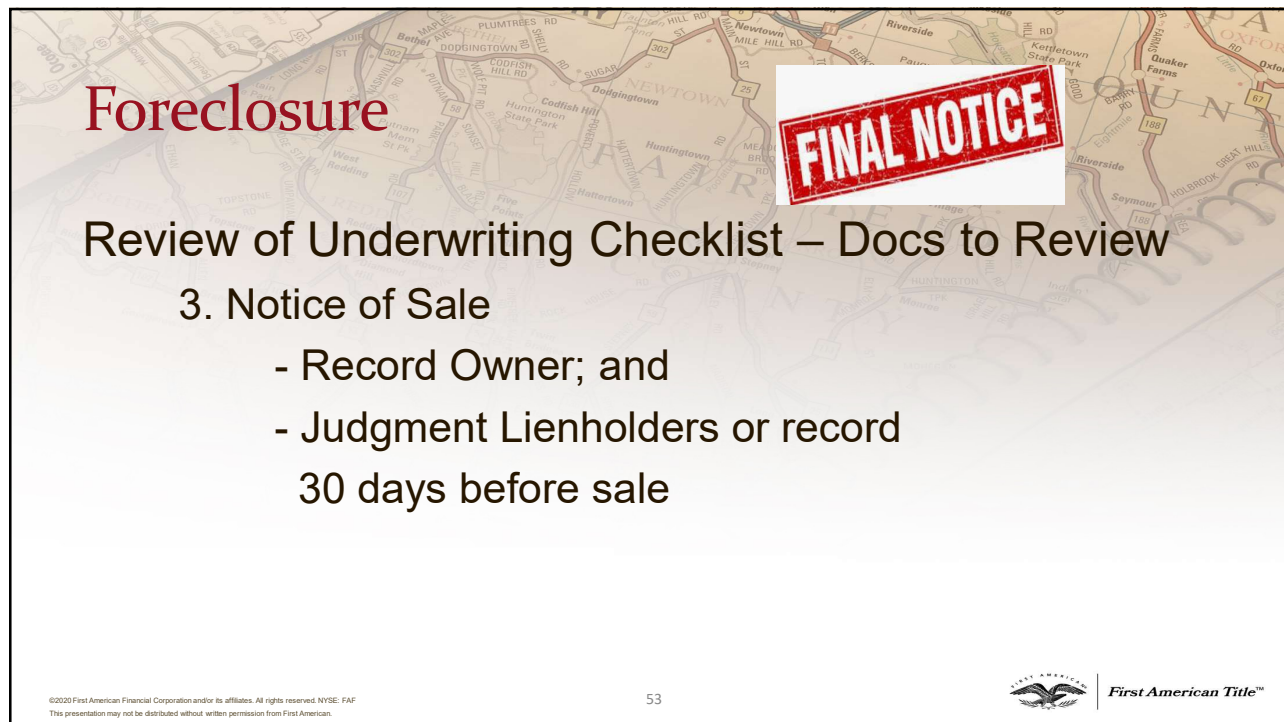
2. Proof of Service of Process
 - Personal Service
 - *borrower (named defendant); and
 - *record owner (not necessarily named defendant)
 - Posting (nail and mail)
 - *affidavit that attempts were made on two different days

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Foreclosure

Review of Underwriting Checklist – Docs to Review


3. Notice of Sale

- Record Owner; and
- Judgment Lienholders or record

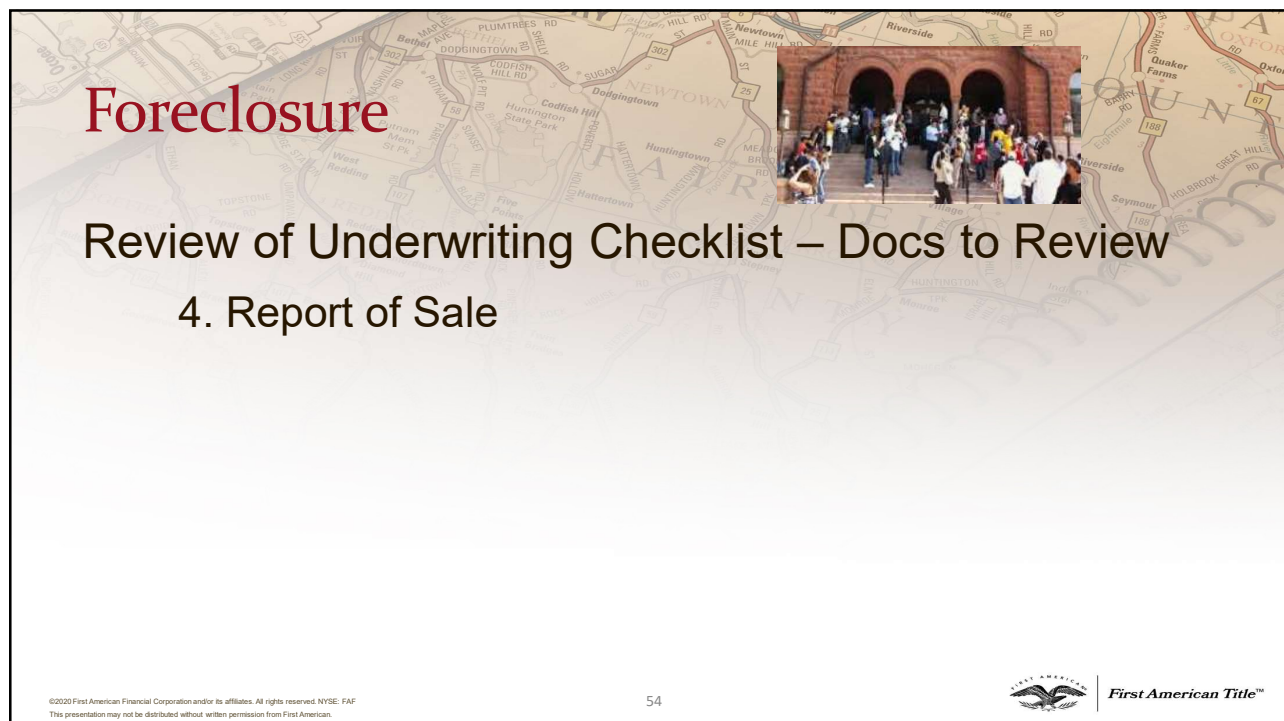
30 days before sale

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Foreclosure

Review of Underwriting Checklist – Docs to Review

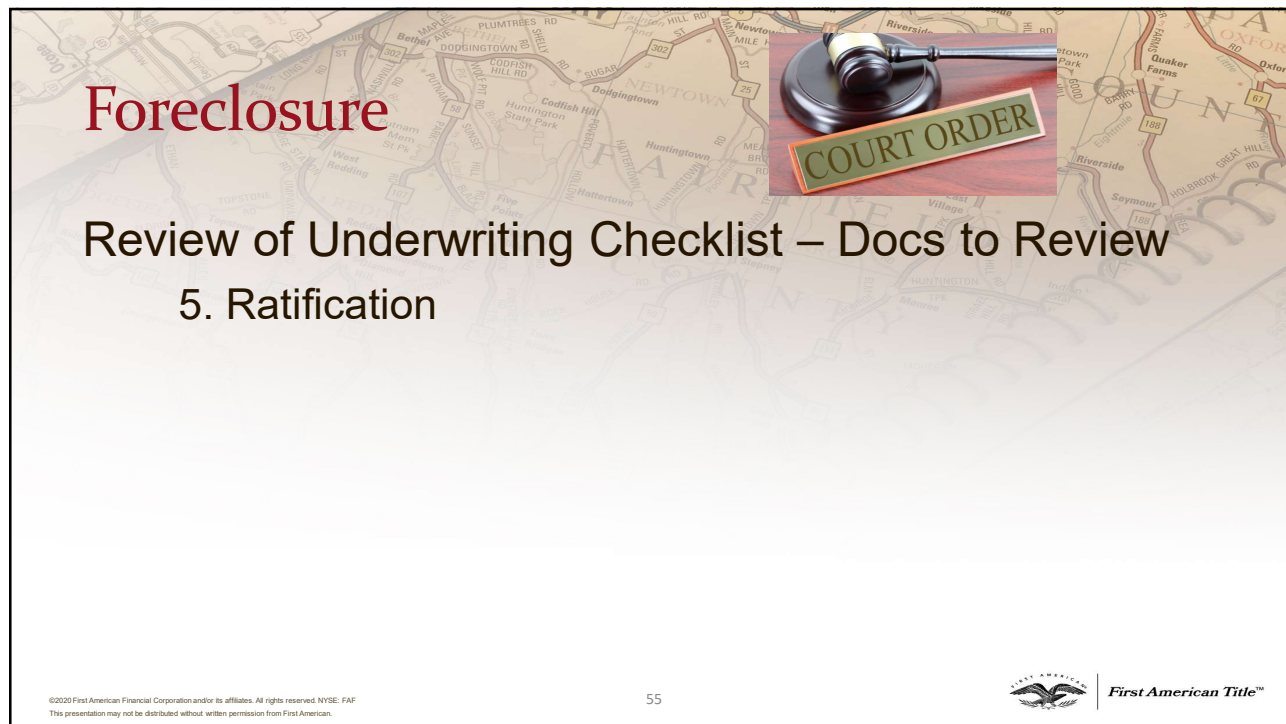
4. Report of Sale

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Review of Underwriting Checklist – Docs to Review

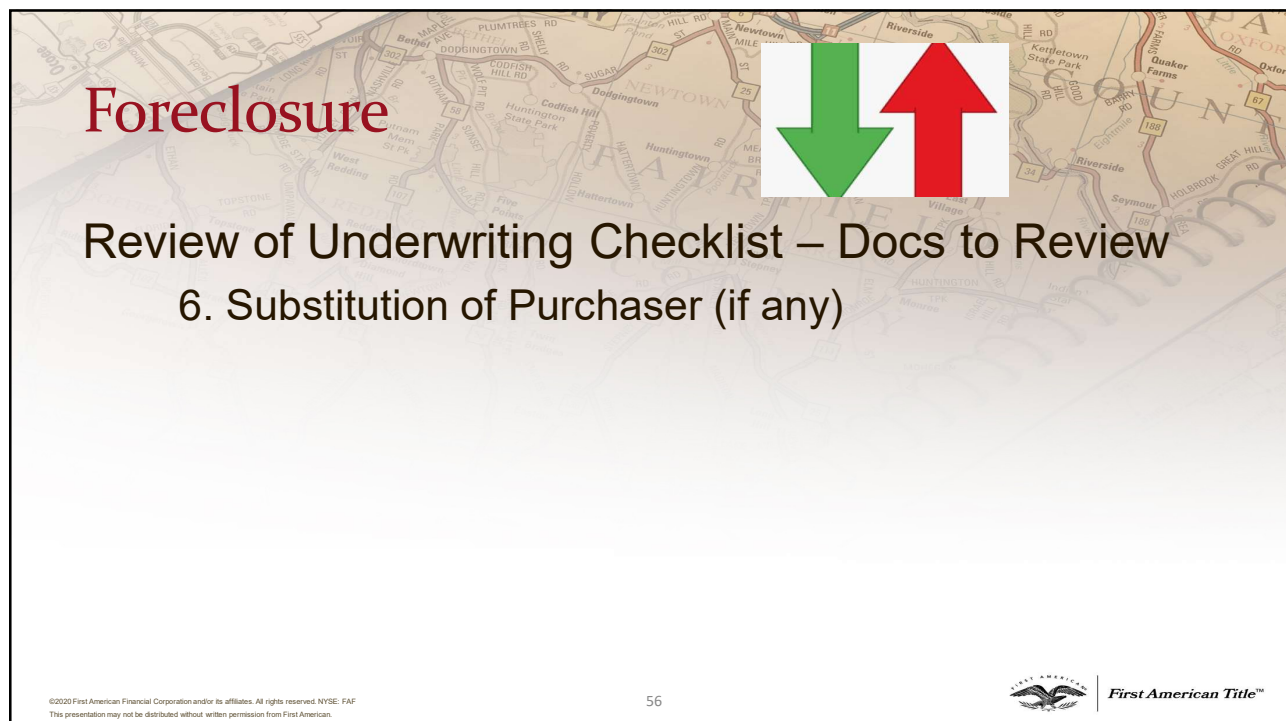
5. Ratification

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Review of Underwriting Checklist – Docs to Review

6. Substitution of Purchaser (if any)

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Summary of Documents to Review

1. Order to Docket
2. Service of Process
3. Notices
4. Report of Sale
5. Ratification of Sale
6. Substitution of Purchaser (if any)


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 REVISED MARYLAND FORECLOSURE CHECKLIST	
<p>Real Property Sections 7-105.1(p), 7-105.2(e), and 7-105.3(f) authorize an action for failure to comply with the provisions of these sections, to be brought within three years after the date of the order ratifying the sale. As such, failure to comply with the items listed below can result in a claim being made up to three years after the date of ratification.</p> <p>A. Obtain items one through six below and review same:</p> <p>1. Order to Docket (Obtain copy of the Order to Docket) Compliant to Foreclose and copies of items marked with an asterisk (*), confirm filing of the others by reference to Court's Docket).</p> <ul style="list-style-type: none"> ___ 1. *Affidavit of Default. ___ 2. Notice of Intent to Foreclose. ___ 3. The original or a certified copy of the deed of trust. ___ 4. *A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the secured party or the agent or attorney of the plaintiff or secured party. ___ 5. *A copy of the debt instrument accompanied by an affidavit certifying ownership of the debt instrument; a copy of any "lost note affidavit". ___ 6. *A copy of the deed of appointment of a substitute trustee. ___ 7. Affidavit re: Servicemembers Civil Relief Act. ___ 8. Preliminary or Final Loss Mitigation Affidavit. ___ 9. Report/Statement re: Pre-filing Mediation (as of 10-1-2012). <p>2. Proof of Service of Process of Order to Docket.</p> <p>___ Borrower and record owner. Personal service or substitute service (i.e. served by leaving the papers with a resident of suitable age and discretion at the borrower's and record owner's dwelling house or usual place of abode) required.</p> <p><i>Note: If service of process on the borrower or record owner was not made as set forth above, was service made by posting and mailing? Such service must be supported by an affidavit stating that on at least two different days a good faith effort was made to serve the borrower or record owner and service was not successful, and that the plaintiff effected service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property.</i></p> <p>3. Notice of Sale.</p> <p>___ Record owner and borrower by certified mail and first-class mail.</p> <p><i>All junior lienholders of record 30 days or more before the sale, including beneficiaries under a deed of trust, judgment creditors, and HOA and Condo fee holders by certified mail first-class mail. Affidavit of compliance filed with the court identifying each junior interest by name and address is sufficient. If a junior interest is not so listed obtain proof of notice from the foreclosing trustee.</i></p> <p>___ "All Occupants" by first class mail.</p> <p>Attachment: MD-2012-004 STANDARD - REV. MARYLAND FORECLOSURE CHECKLIST Page 1 of 2</p>	
<p>To County or Municipal Corporation in which property is located: written notice not less than 15 days before sale.</p> <p>___ If 3 not less than 25 days before the sale for items filed 30 days or more before the sale. If applicable, has 120 days passed since the sale of property in which the IR's held a subordinate lien?</p> <p><i>Publication - Must state the time, place, and terms of the sale and be made at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale.</i></p> <p>4. Report of Sale.</p> <p>5. Order of Ratification of Sale.</p> <p>6. Substitution of Purchaser Order, if any.</p> <p>B. Obtain copy of the Docket and review same for the following items.</p> <p>Final Loss Mitigation Affidavit (If Preliminary Loss Mitigation Affidavit was filed with Order to Docket).</p> <p>___ Bond</p> <p>___ Purchaser's Affidavit</p> <p>___ Clerk's notice following sale (order nisi).</p> <p>___ Were there any Motions to Stay or Clemency filed? If so, contact your underwriter.</p> <p>___ Were exceptions to the sale made? If so, has the time for filing Notice of Appeal passed (i.e. 30 days following entry of the order for ratification)? If exceptions had been filed and overruled and less than 30 days has passed following the order ratifying the sale, contact your underwriter.</p> <p>___ Has any appeal been filed? If so, contact your underwriter.</p> <p>___ Were any "Corrective Affidavits" filed? If so, contact your underwriter.</p> <p>___ Are there any pending "Show Cause" or other motions? If so, contact your underwriter.</p> <p>C. Consider the following items.</p> <p>___ Did any defendant the Bankruptcy at any time prior to Final Ratification? If so, need a lift stay order.</p> <p>___ Is the property vacant? If not, do not close your transaction.</p> <p>___ If lender was purchaser, has more than 30 days passed since ratification of sale?</p> <p>___ Are there any attempted rescissions of the foreclosed Deed of Trust filed in the Land Record? If so, contact your underwriter.</p> <p>Attachment: MD-2012-004 STANDARD - REV. MARYLAND FORECLOSURE CHECKLIST Page 2 of 2</p>	

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Exceptions to Sale



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Other Considerations



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Other Considerations

1. Bankruptcy Filings



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Other Considerations

2. Is the Property Vacant?

-Investors in cash
deals exception



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Other Considerations

3. Exceptions to Sale

- Insuring after ratification
if no exceptions, etc.



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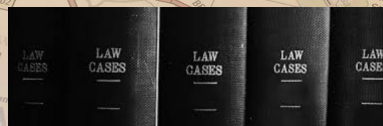
Other Considerations

4. Deed of Appointment of Substitute Trustees

- Recorded by POA
no recorded POA

**Svrcek v. Rosenberg* (2012)

*However, recorded POA
needed for deed



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Other Considerations

5. Estate Notice / Lack of Notice

-MD law does not require an estate to be opened

*However, if an estate is open, notice is required

-Case by case analysis

*We look to efforts to notify site and/or family members



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Other Considerations

6. Leasehold: later fee simple acquisition

-Lender can foreclose in fee simple

-Deeds of Trust contain a “general warrant of title” rather than a leasehold grant only

-Borrower’s acquisition of ground rent passes to trustees by “estoppel by deed”



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Other Considerations

7. Property in two counties

-MD Rule 14-306

*Record certified copy in the other county of:

- a. docket entries;
- b. complaint;
- c. report of sale; and
- d. ratification



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Other Considerations

8. Condo/HOA Liens (Maryland Contract Lien Act)

-Super-Priority of 4 months (up to \$1,200)

-Wiped out by notice

*If the association still makes demands – options:

- a. new demand; b. seller pays; or
- c. exception in policies

-Utility Liens

**Select Portfolio, Inc. v. Saddlebrook West Utility Company*



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Other Considerations

9. Junior U.S. Interests

- 120 day IRS right to redeem (waiver required)
- 1 year for other federal tax liens (e.g., SBA liens) (waiver required)



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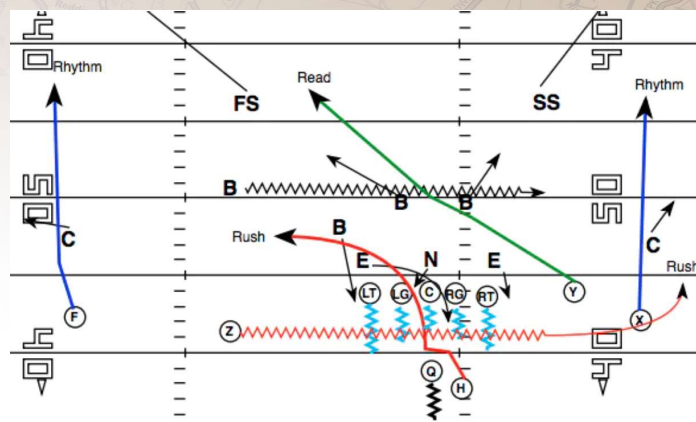
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Tampa Bay Y-Off Trio Weak Play-Action Post Dig 12 Personnel Package



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Other Considerations

10. Borrower in Possession Example: The greatest risk to insuring foreclosure properties arises when the foreclosed owner/borrower or his successor in interest is still in possession of the property. In many cases, these parties have nowhere else to go, and will stall for time by contesting the validity of the foreclosure. The motivation to contest a foreclosure diminishes when the borrower has vacated or abandoned the property.

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Other Considerations

11. Significant Equity Example: Equity, or value remaining in the property, is the second leading motivation for a borrower to contest the validity of a foreclosure. If there is simply no equity or value in the property as it was encumbered prior to the foreclosure, there is little reason for the borrower to want title. On the other hand, if the property is presently worth substantially more than the liens that previously encumbered the property, there is motivation to attack the foreclosure in order to get the benefit of that equity.

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Other Considerations



12. **Procedural Defects Example:** Any defect in the foreclosure process may give the borrower the means by which to attack the foreclosure and title of the purchaser at foreclosure and/or REO purchaser. Of particular importance in any involuntary sale is the issue of *sufficient notice to all parties* with an interest in or lien on the land being sold, giving rise to the basic due process of law considerations of notice and the opportunity to be heard. Any involuntary sale, whether deed of trust foreclosure, tax sale, sheriff's sale or condominium lien foreclosure sale, is high-risk because of a possible challenge to the sale based on an alleged failure or insufficiency of notice.

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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

COVID-19 Governmental Responses



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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

Executive and Legislative Responses to COVID-19

Federal Government:

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- U.S. Department of Housing and Urban Development (HUD) Mortgage Letter 2020-04
- Fannie Mae Lender Letter LL-2020-02
- Freddie Mac of Veterans Affairs Circular 26-20-08
- U.S. Department of Agriculture pursuant to Rural Development Section 502 Single Family Housing Guaranteed Loan Program March 17, 2020 Bulletin
- U.S. Department of Veterans Affairs Circular 26-20-8

State of Maryland:

- Executive Order of the Governor Temporarily Prohibiting Evictions of Tenants Suffering Substantial Loss of Income Due to COVID-19
- Court of Appeals of Maryland Second Amended Administrative Order Lifting the Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments Involving Residents



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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

Executive and Legislative Responses to COVID-19

Title Requirements:

1. Foreclosures must be completed through ratification prior to March 13, 2020
2. All others require:
 - a. Verified Declaration of Exemption from Moratorium; or
 - b. Court order lifting of the stay of the moratorium

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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

COVID-19 ECONOMIC IMPACT




**ECONOMIC
IMPACT
CONTINUES**

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Will there be a Foreclosure Tsunami???

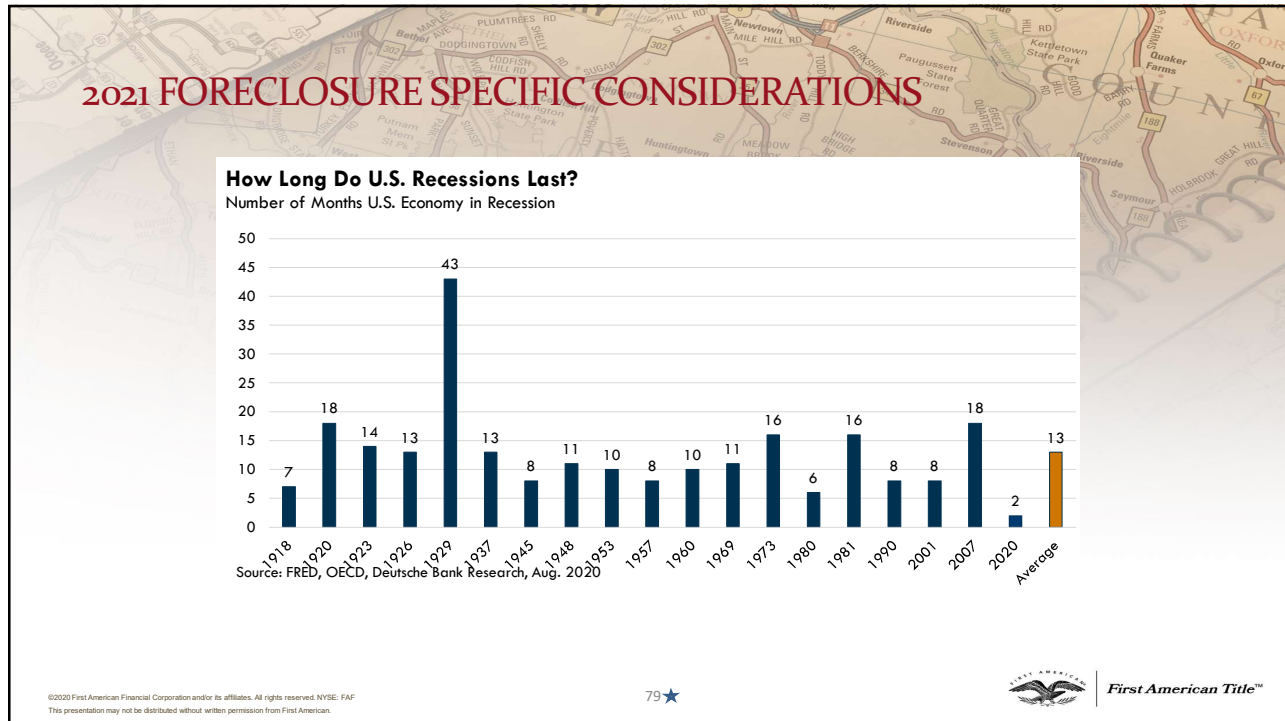


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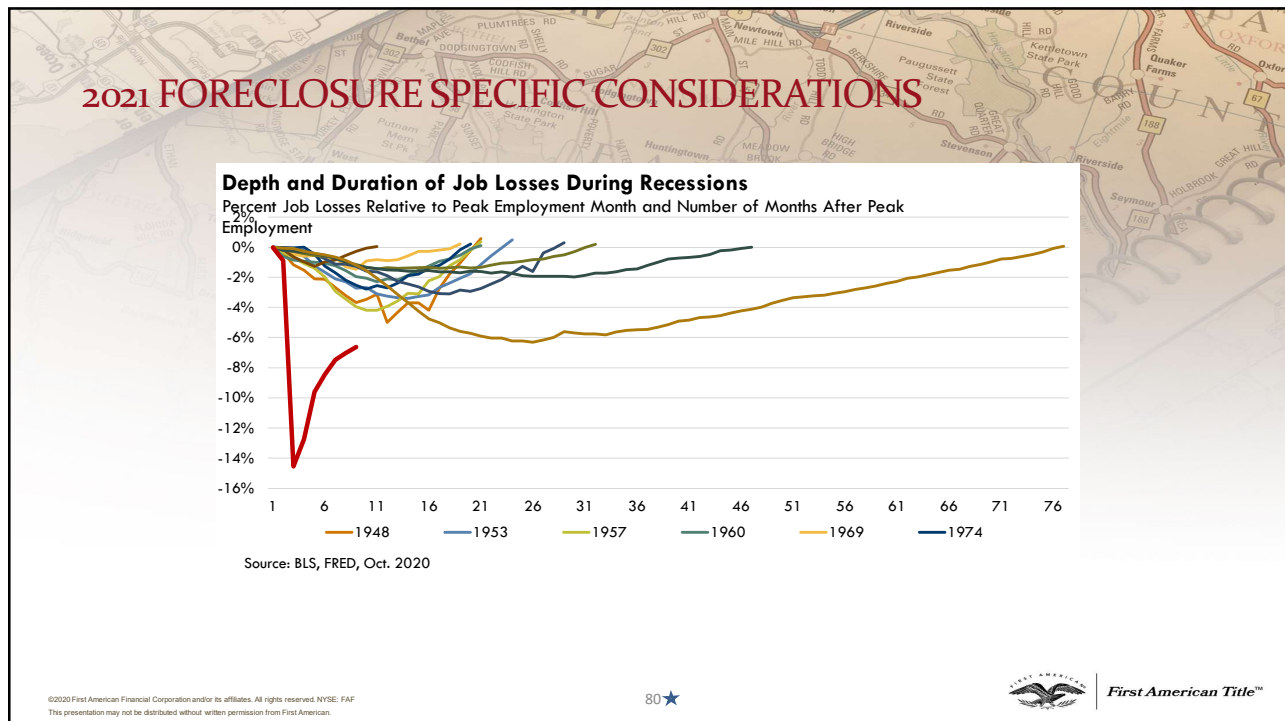
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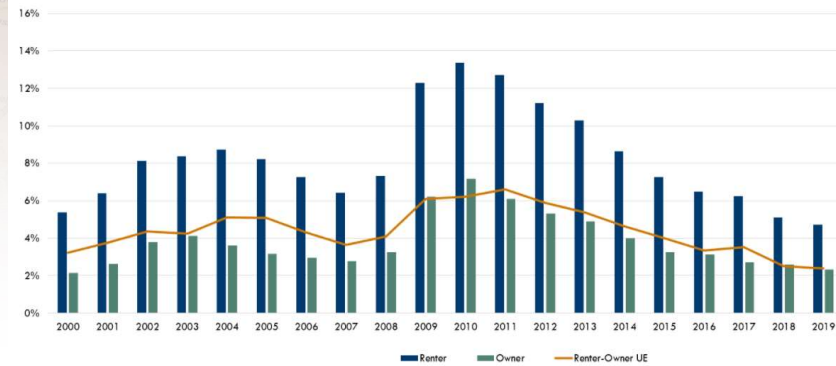


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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

The Hardship of Renting

Renter-Owner Unemployment Rates, Renter-Owner UE Difference, %



Source: First American Calculations, IPUMS CPS, 2019

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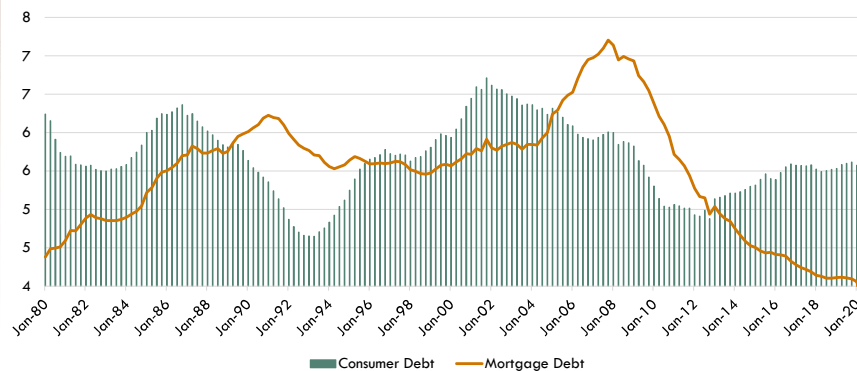
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2021 FORECLOSURE SPECIFIC CONSIDERATIONS

Mortgage Debt at Historic Low

Mortgage and Consumer Debt Service Payments as a % of Disposable Personal Income, %



Source: Board of Governors of the Federal Reserve System. FRED. Q2 2020

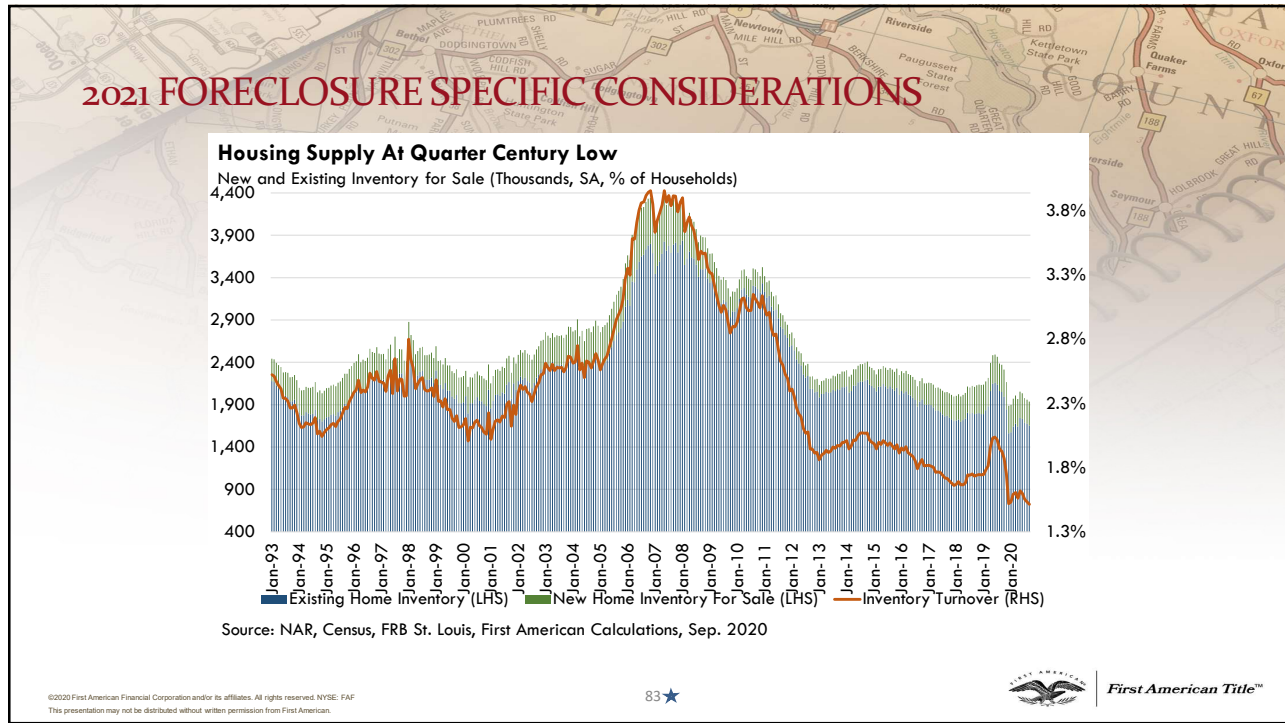
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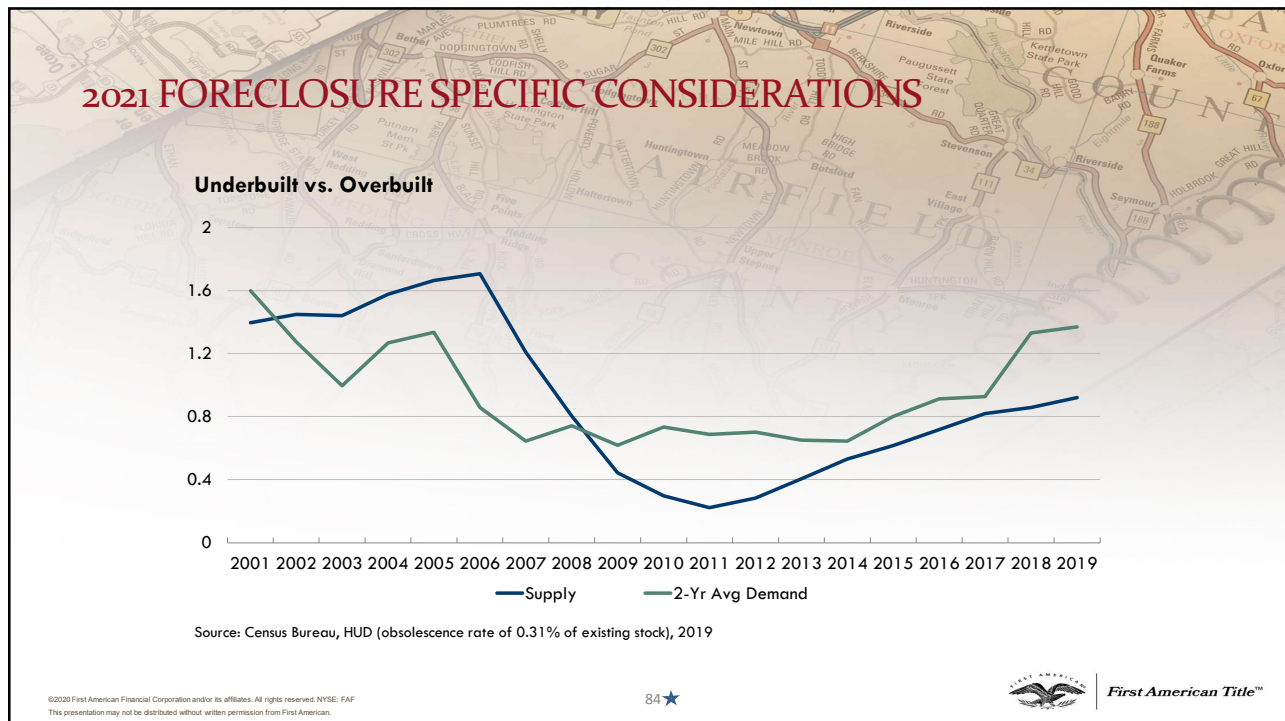


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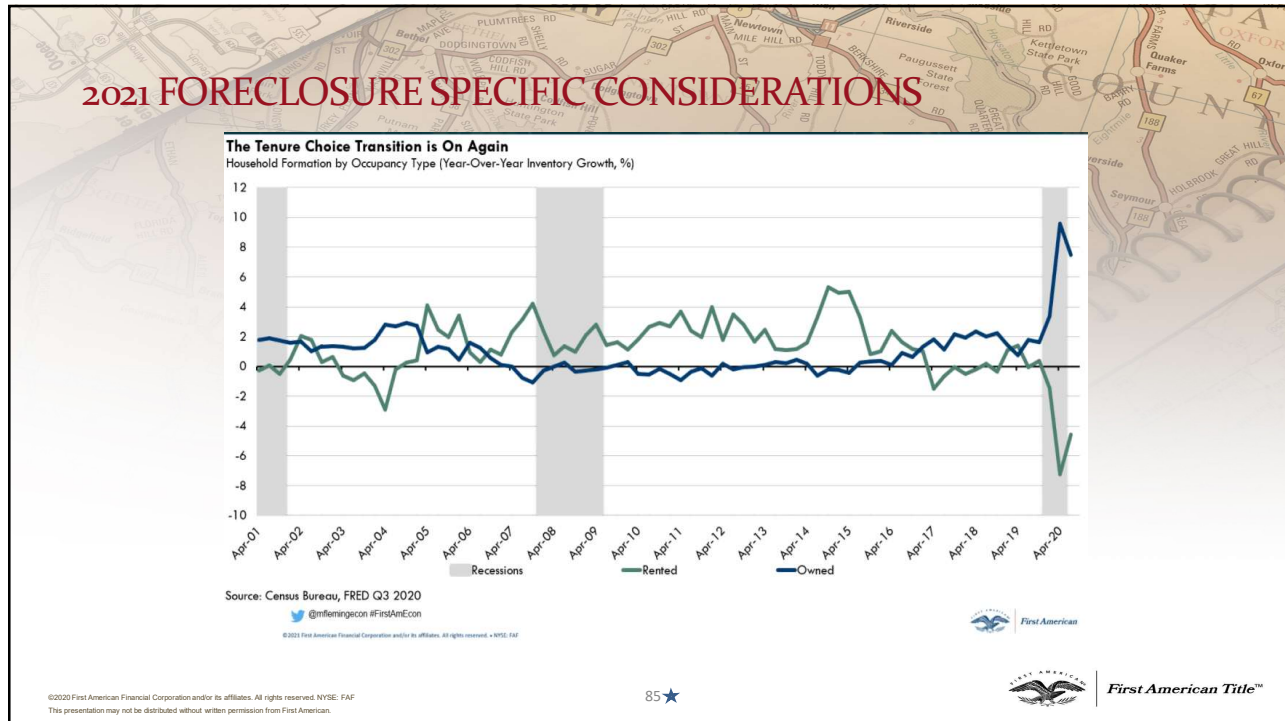
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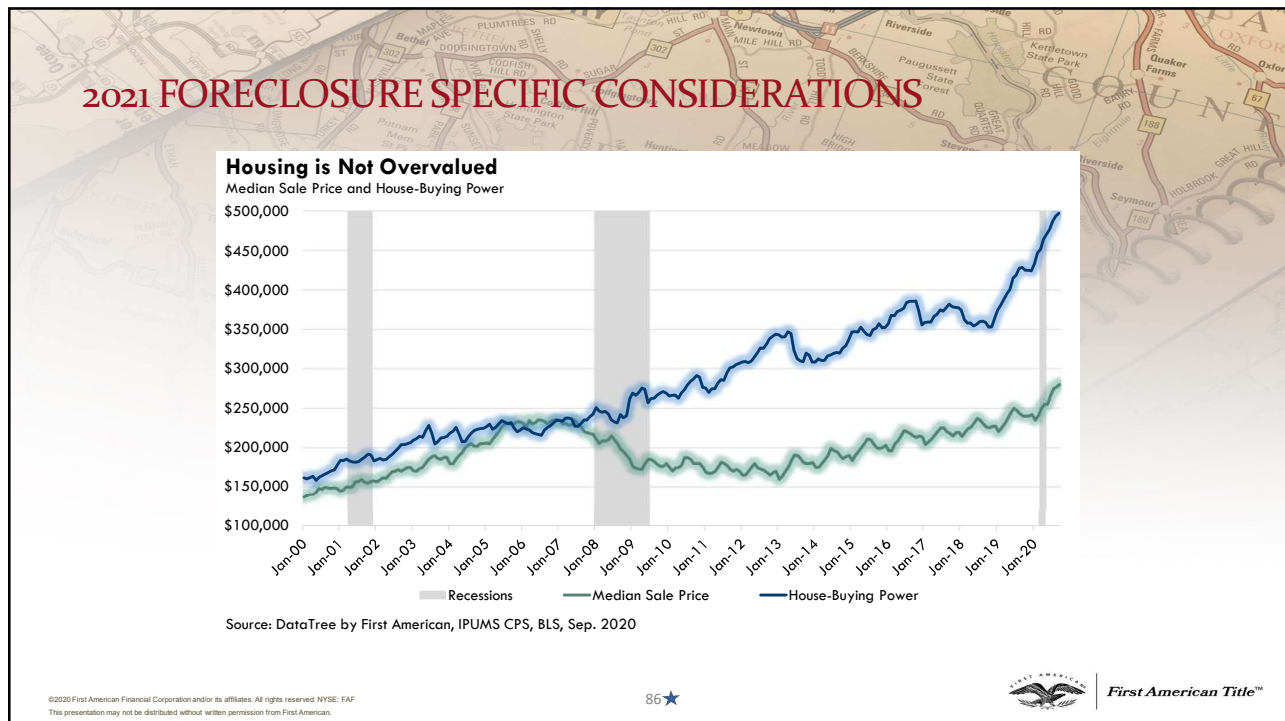
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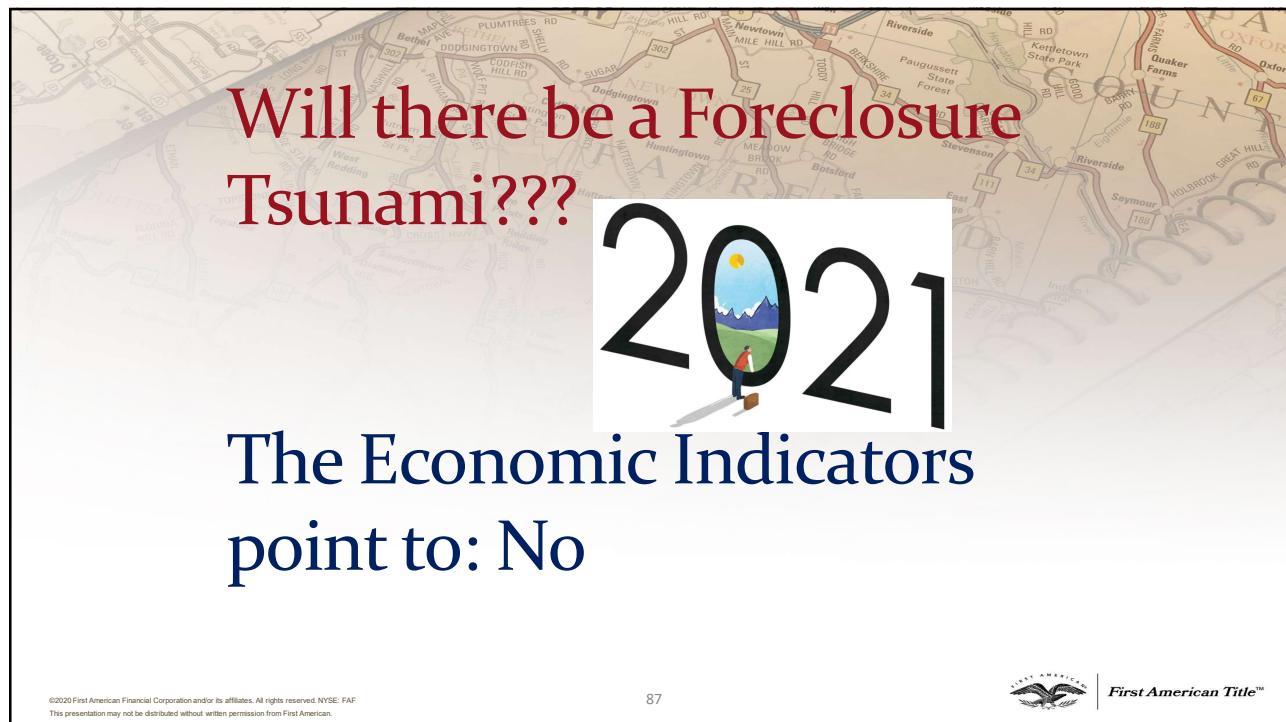
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Will there be a Foreclosure Tsunami???

2021

The Economic Indicators point to: No

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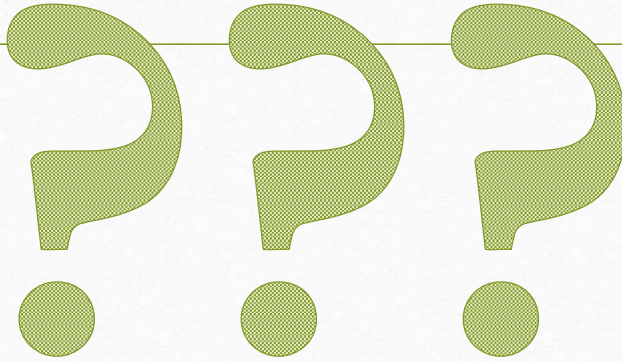
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Question and Answer



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