

We've Decided to Foreclose... Now What?

🏠🏠🏠 By: Melinda Banks

Our clients whose communities have statutory foreclosure rights pursuant to the Georgia Condominium Act or Property Owners Association Act are using this authority now more than ever. If we secure a judgment against a delinquent owner in your community and your judgment order includes the right to foreclose the judgment lien, we will notify you when the judgment is entered and ask if the Association is interested in pursuing foreclosure. Should your community choose to move forward with foreclosure of its judgment lien, the logical next question many boards face is, "What happens next?"

First, we obtain a comprehensive title search as required by the county attorney in most metro area counties to schedule the sheriff's sale, also known as the foreclosure auction. Your community's collection attorney here at NowackHoward will review the title results and discuss how the title history may affect the Association at sale. We may use this information to make recommendations about your bidding strategy or the value of the home.

Next, we prepare a package of information that will be sent to the sheriff's office for the county attorney to review. The documents required to schedule the foreclosure auction include a foreclosure advertisement, a copy of the judgment, and the title search packet. The whole package goes to the county attorney for review, and once it is approved, the attorney will send it back to the sheriff for coordination of the sale.



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The next step is that the sheriff's office advertises the foreclosure for four consecutive weeks in the legal newspaper. Once the four weeks has elapsed, and if full payment of the judgment debt has not been made nor a settlement agreement reached, the property is auctioned on the courthouse steps on the first Tuesday of the following month. Sometimes, if the delinquent owner has not paid by the date of the sale, he or she will come to the courthouse steps with payment in hand to stop the sale and satisfy the debt. Other times, the owner may file bankruptcy to avoid the sale. However, in cases where the owner simply does not have the means to satisfy the obligation, the property is sold at the foreclosure auction.

The property is sold to the highest bidder at the auction, and the sale proceeds are used towards satisfying the judgment (after payment of sheriff's fees). The association may bid on the property and obtain the property as a result. If the association is not interested in owning the property, a third party may purchase the property. Excess funds from the sales price beyond our lien amount, if any, are paid to the owner and/or superior lien holders.

After the sale, the new owner is given a sheriff's deed, which gives the owner the right to possess the property. The new owner is responsible for evicting the previous owner, through court action for a Writ of Possession, if the previous owner does not leave the property voluntarily. Once the Writ of Possession is granted, the sheriff's office is notified that the former owner should be removed from the property. The sheriff will then go to the property and provide notice to the owner of the eviction, typically giving the owner seven days to vacate the premises. If the former owner has not vacated the property within the allotted time, the sheriff will return to the property and remove the former owner and their possessions from the premises. Once removed from the property, the locks are changed so that the former owner can no longer gain access.

Your community's collection attorney will be happy to discuss the specifics further and make recommendations if your community decides to move forward with foreclosure against any delinquent owners. We will be happy to counsel your association regarding the individual nuances of the case at each step of the process. Please contact us if you would like more information about your community's foreclosure rights.

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