



REAL NEWS....

A Publication of Campbell & Brannon, L.L.C.

FREQUENTLY ASKED FORECLOSURE QUESTIONS

By: J. Michael Campbell, Attorney at Law

- 1. Will the lender foreclose if I miss only one payment?** Probably not. Institutional lenders typically refer a delinquent loan to the foreclosure attorney when the borrower has missed three or four payments
- 2. Will I be notified of the foreclosure action?** Yes. Lenders begin the collection process with letters and telephone calls when the lender has not received the mortgage payment that was due that month. Most conventional security deeds require that the lender provide the borrower with 30 days written notice of the default before the lender can call the loan due and begin the foreclosure process. The foreclosure attorney must mail a copy of the proposed newspaper ad to the borrower at least 30 days prior to the foreclosure sale date.
- 3. Will the lender sue me for its losses after the foreclosure sale?** It depends. The holder of the first mortgage (security deed) will get the property or most of its debt at the foreclosure sale. Therefore, the holder of the first mortgage will rarely pursue the borrower after the foreclosure sale. However, since the second mortgage rarely receives any money from the foreclosure of the first mortgage, the holder of the second mortgage will often pursue collection activity after the foreclosure sale of the first mortgage.
- 4. Must the lender file suit in order to foreclose a loan in Georgia?** No. Georgia is one of 22 states in which the foreclosure process is "Non-Judicial". Georgia security deeds authorize the lender to conduct foreclosure sales of the property according to Georgia law if the borrower is in default.
- 5. When and where are foreclosure sales conducted?** Foreclosure sales are conducted only on the first Tuesday of each month unless that day is January 1 or July 4, in which event the foreclosure sale is conducted on the following day. Foreclosure sales may be conducted at any time between 10 a.m. and 4 p.m. on the courthouse steps of the county in which the property is located.
- 6. Where and when is the property advertised for foreclosure sale?** The foreclosure advertisement is published in the designated newspaper in the county in which the property is located, such as the Fulton County Daily Report or the Marietta Daily Journal. The ad must be published once per week for four weeks immediately preceding the foreclosure sale date.
- 7. What happens if the borrower has died, moved, been divorced, or conveyed the property to a third party?** The lender forecloses on the property, not the borrower, and therefore the foreclosure sale would not be stopped in any such event.

- 8. What is the usual sale price at foreclosure sale?** The lender often bids the total debt of principal, accrued interest, and its costs since this will get the loan paid in full and the lender probably has not had the opportunity to determine the fair market value of the property prior to foreclosure sale.
- 9. How can I buy property at foreclosure sales?** The terms of sale are cash on the courthouse steps so you would need to have a bank check or checks payable to yourself that you could endorse to the foreclosing lender or its law firm for the full amount of your bid.
- 10. Should I have the title examined before I buy property at foreclosure sale?** Yes. The lender will convey title to the property without warranty of title and subject to all taxes and title problems. You cannot assume that the title is clear.
- 11. What liens are extinguished by a foreclosure sale?** All junior liens and security deeds are extinguished by the foreclosure of a prior security deed. Examples of liens that are thus extinguished are equity line loans, judgments, homeowner liens, and federal tax liens. However, a federal tax lien is not extinguished unless the IRS is notified in writing of the foreclosure sale 25 days prior to the sale and the IRS has 120 days after the sale in which to redeem the property from the purchaser at foreclosure sale by paying the sale price. Property taxes and solid waste bills are not extinguished by a foreclosure sale. Water bills may or may not remain as liens against the property.
- 12. Does a bankruptcy filing stop a foreclosure?** Yes, generally speaking, a bankruptcy filing stops a foreclosure immediately upon filing. The lender will usually file a motion in the bankruptcy court seeking permission to start the foreclosure process again if the borrower does not abide by his or her repayment plan.
- 13. Must I vacate the home on the day of foreclosure sale?** No. After a foreclosure sale the lender will have the home inspected and if the property is occupied the lender will file a dispossessory action to evict the borrower. The process takes about four weeks. Lenders are required to honor the terms of existing leases on the property in some circumstances.

EVICTIONS AND LANDLORD-TENANT ISSUES

By Collin Gravitt, Attorney at Law

There are generally three times when a landlord must evict a tenant, (1) non-payment of rent; (2) failure to surrender premises at the end of the lease term; and (3) breach of any rules on the lease.

The landlord must make a **WRITTEN** demand for the tenant to give up possession and vacate immediately, and all of the terms regarding notice and termination must be complied with in order for a valid eviction to occur.

If the tenant doesn't vacate the property immediately, the landlord will then file a dispossessory action affidavit in the Magistrate Court of the county where the property lies. This affidavit will include the names of the landlord and tenant, the grounds for eviction, assert that the landlord has demanded possession to the tenant, and the amount of rent or other money owed.

The Magistrate Court will then issue a summons to the Sheriff who will serve the tenant in one of three ways: (1) personal delivery to the tenant at home; (2) to an adult at the home; or (3) "Tack and Mail" –the summons is tacked on the door of the home and on the same day sent via 1st Class Mail to the tenant's last known address. This method is to be used only if the first two services methods do not work.

The tenant must answer within seven (7) days from the date of service. If the tenant fails to answer by the 7th day, the tenant is then in default. The Court will then grant a **Writ of Possession** and the Sheriff can then remove the tenant immediately. If the tenant answers the summons, a trial ensues. The tenant is allowed to retain possession of the property during this process. The landlord, however, has the right to request the Court to order the tenant to pay rent into the Registry of the Court. If payment is ordered and not made into the Registry of the Court, the Court will issue the Writ of Possession to the landlord and the tenant will be subject to eviction.

If the trial continues and the Court rules for the landlord, the tenant will be ordered to move out after 7 days and to pay past due rent. The tenant, however, can appeal the judgment in a dispossessory case such as this within 7 days from the date of the Order/Judgment issued by the Court.

If there is an appeal, a non-jury trial is set by the Court **or** a jury trial case may be requested up to 30 days from the filing of the appeal. After that, the judge or jury will decide the issues and may either order an eviction or allow the tenant to retain possession if the facts reveal that is the correct ruling.

A couple of notes and caveats to this whole process need to be addressed. If a dispossessory affidavit was served by the "tack and mail" method and the tenant did not file an answer, the Court **may not** award rent or other demands to the landlord. Also, there is no uniformity in the eviction process among the various counties in Georgia regarding court forms and fees. A tenant can cure the default or non-payment by paying the past rent or court costs (this is the amount shown in the dispossessory affidavit) within 7 days from being served the summons. If the landlord does not accept the tender, the tenant should file an answer and assert the "tender defense" which can only be used once every 12 months.



REAL NEWS....

A Publication of Campbell & Brannon, L.L.C.

Campbell & Brannon, L.L.C. is a full service mortgage banking law firm. Our firm has a team of experienced attorneys providing foreclosure, bankruptcy, eviction, litigation and REO services in addition to residential and commercial closings. We are committed to utilizing the latest technological advances and have implemented a custom foreclosure, bankruptcy, eviction and REO tracking software program to handle all matters effectively and efficiently. In addition to our attorneys, we have a highly experienced team of legal assistants with proficiency in all our practice areas.

Perimeter

One Lakeside Commons
990 Hammond Drive
Suite 800
Atlanta, GA 30328
770.396.8535 Phone
770.396.8617 Fax

Buckhead

One Buckhead Plaza
3060 Peachtree Road, NW
Suite 1735
Atlanta, GA 30305
404.504.8700 Phone
404.504.8710 Fax

Alpharetta

One Northwinds Center
2475 Northwinds Parkway
Suite 150
Alpharetta, GA 30009
770.521.1180 Phone
770.521.1136 Fax

Kristi M. Bone	kbone@campbellandbrannon.com	Perimeter
Camille W. Brannon	cbrannon@campbellandbrannon.com	Buckhead
J. Michael Campbell	mcampbell@campbellandbrannon.com	Perimeter
Steven S. Golden	sgolden@campbellandbrannon.com	Alpharetta
Collin Gravitt	cgravitt@campbellandbrannon.com	Perimeter
Raymond J. Kearns	Rkearns@campbellandbrannon.com	Perimeter
Janet Litt	jlitt@campbellandbrannon.com	Perimeter
Susanne O. Logan	slogan@campbellandbrannon.com	Perimeter
Zachary G. McElveen	zmcelveen@campbellandbrannon.com	Buckhead
Kevin M. Salisbury	ksalisbury@campbellandbrannon.com	Alpharetta
Ansley Vinson	avinson@campbellandbrannon.com	Perimeter
Whit J. Wood	wwood@campbellandbrannon.com	Buckhead
Jack A. Wotton	jwotton@campbellandbrannon.com	Buckhead
Mark A. Young	myoung@campbellandbrannon.com	Alpharetta



If you would like to request our newsletter be sent to an alternate email address or you would like to be deleted from our distribution list, please contact Robyn Page at 678.420.4382 or email: newsletter@campbellandbrannon.com