

INDEX

ACCELERATION OF DEBT.

Intent to accelerate, overt act required, 3-3.

ADVERTISEMENT.

Personalty, sale of, 4-10.
Power of sale foreclosure, 3-11, 3-12.

AGENCY.

Trustee in deed of trust, agent of both mortgagor and mortgagee, 2-3, 4-8.

APPENDICES.

County, customs of sale by, Appen. C.
Internal Revenue Service instructions for forms completion, Appen. D.
Statutes relating to foreclosure, Appen. A.
Trustee's checklist, Appen. B.

ASSIGNMENT.

Deed of trust, 1-3.
Notice of sale, contents, 3-9.
Records search, 3-4.
Substitution of trustee (assigned deed of trust), form, 7-4.

ATTORNEY'S FEES.

Attorney as trustee, 2-4.
Reasonableness, 2-4.

ATTORNEYS.

Fair Debt Collection Practices Act, coverage, 3-6.

BANKRUPTCY.

Automatic stay, 6-4.
Complaint to lift, form, 7-17.
De-acceleration of debt, 3-3.
Deeds in lieu of foreclosure, 5-1.
Federal loans, 3-14.
Fraudulent transfer, 6-5.
Income from property, 4-23.
Records search for, 3-4.
Rents, effect upon, 4-23.
Voidable preference, 6-6.

BENEFICIARIES.

Deed of trust, disclosure of name of beneficiary, 1-2.
Notice of sale, name of beneficiary, 3-9.

COMPREHENSIVE

ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT.

Toxic waste cleanup, purchaser's potential liability for, 4-18.

CONFLICT OF INTEREST.

Trustee in deed of trust, 2-7.

CONSIDERATION.

Cash payment, 4-13.
Check, payment by, 4-13.
Contract to waive default and extend indebtedness, 3-2.
Foreclosure sale set aside, inadequate consideration, 3-6.
Sales price, 4-12.

CONSTITUTIONAL LAW.

Deed of trust, nonjudicial foreclosure, 1-4, 3-6.
Subdivisions, sale of, 4-11.

CONSTRUCTION LIENS.

Records search for, 3-4.

COURTHOUSE.

Posting of notice of sale, 3-9, 3-10.

CROPS.

Tenant, rights of, 4-19.

DAMAGES.

Wrongful foreclosure, 6-2.

DEED IN LIEU OF FORECLOSURE.

Deficiency, 5-2.
Estoppel affidavit, form, 7-15.
Mortgagee, remedies of, 5-1.

DEEDS OF TRUST.

Acceleration of debt, 3-3.
Acknowledgment, 1-3.
Assignment, 1-3.
Attorney's fees, 2-4.
Content—
Description of property, 1-2.
Forms, 1-2, 7-1.
Name of beneficiary, 1-2.
Parol evidence to prove, 1-2.
Rents, assignment of, 1-2.

DEEDS OF TRUST—Cont'd.

Content—Cont'd.

Statutory requirements, 1-2.

Crops, 4-19.

Default, 3-2.

Execution, 1-3.

Fees of trustee, 2-4.

Fixtures, 4-19.

Foreclosure, see **Foreclosure.**Form, 7-1. See **Forms.**

Historical background, 1-1.

Homestead, 1-3.

Legislative intent, 1-1.

Notice to mortgagor, 3-6.

Personalty, loan secured partly by,
4-10.

Power of sale—

Death of owner, effect of, 4-2.

Due process challenge, 1-4.

Generally, 1-4.

Notice to mortgagor, 3-6.

Preference for, 1-1.

Printed forms, 1-2.

Priorities—

Generally, 4-16.

Purchase money mortgage, 1-5.

Recording, 1-3.

Purchase money mortgage, 1-5.

Recording, 1-3.

Substitution of trustee (assigned deed
of trust), form, 7-4.

Trustee's authority, 2-2.

Trustees, see **Trustee.****DEFAULT.**

Notice of sale, contents, 3-9.

DEFICIENCY.

Mortgagee, remedies of, 5-2.

DESCRIPTION OF PROPERTY.

Deed of trust, 1-2.

Notice of sale, 3-9.

ESTOPPEL.Affidavit (for deed in lieu of
foreclosure), 7-15.**FAIR DEBT COLLECTION
PRACTICES ACT.**

Attorneys, coverage of Act, 3-6.

**FEDERAL DEPOSIT INSURANCE
CORPORATION.**Land or junior mortgage owned by,
4-15.**FIXTURES.**

Priority of security interests in, 4-19.

FORECLOSURE.

Acceleration, 3-3.

Accounting by trustee, 4-22.

Advertisement, publication of, 3-11,
3-12.

Newspapers, 3-12.

Authority of trustee, 2-2.

Crops, 4-19.

Death or personal disability of
mortgagor, effect of, 4-2.

Deeds in lieu of foreclosure, 5-1.

Default, 3-2.

Disability of mortgagor, effect of, 4-2.

Disaster, effect of, 4-1.

Duties of trustee, 2-3.

Federal loans, 3-14.

Fixtures, 4-19.

Injunction of sale, 6-1.

Judicial—

Complaint for, form, 7-16.

Generally, 5-3.

Military service of mortgagor, effect of,
4-3.

Moratorium on sale—

Death of mortgagor, 4-2.

Disability of mortgagor, 4-2.

Disaster, 4-1.

Military service of mortgagor, 4-3.

Affidavit of no military service,
form, 7-14.

Notice of trustee's sale—

Advertisement—

Advertisement requirements,
3-11.

Newspapers, 3-12.

Notice to mortgagor, 3-6.

Notice to second mortgagees, 3-7.

Place of sale, 4-7.

Redemption, 3-16, 4-20.

Reinstatement of loan, 3-15.

Statutes relating to foreclosure, list of,
Appen. A.Trustee, see **Trustee.**

Wrongful foreclosure, 6-2.

FORMS.

Affidavits—

Estoppel affidavit (for deed in lieu of
foreclosure), 7-15.

Foreclosure sale, 7-13.

Military service, 7-14.

Posting, 7-12.

Automatic stay, complaint to lift, 7-17.

FORMS—Cont'd.

Commissioner, appointment of, complaint for, 7-16.
 Deed of trust, 7-1.
 Judicial foreclosure, complaint for, 7-16.
 Lead-based paint hazard disclosure, 7-18.
 Notice of sale to I. R. S., 7-7.
 Notice to mortgagor, 7-5.
 Notice to second mortgagee, 7-6.
 Resignation of trustee, 7-2.
 Substituted trustee's deed (first mortgage), 7-10.
 Substituted trustee's notice of sale, 7-8.
 Substitution of trustee, 7-3.
 Assignment of deed of trust, 7-4.
 Tax forms, I. R. S. instructions for, Appen. D.
 Trustee's deed (second mortgage), 7-11.
 Trustee's notice of sale, second mortgage, 7-9.

FRAUD.

Bankruptcy, fraudulent transfer, 6-5.
 Deed in lieu of foreclosure, 5-1.

FUTURE ADVANCE CLAUSE.

Junior lienholder, effect on, 4-14.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND.

Toxic waste cleanup, purchaser's potential liability for, 4-18.

HOLIDAY.

Sale, date of, 3-9, 4-4.

HOMESTEAD.

Deed of trust, 1-3.

INJUNCTION.

Sale, injunction of, remedy of mortgagor, 6-1.

LEAD PAINT.

Disclosure, form, 7-18.
 Lead-Based Paint Hazard Reduction Act, 4-18.1.

LIS PENDENS.

Records search, 3-4.

MILITARY SERVICE.

Affidavit of no military service, form, 7-14.

MORTGAGEE.

Acceleration of debt, 3-3.
 Deeds in lieu of foreclosure, generally, 5-1.
 Possession of property by, 4-24.
 Power to purchase, 4-8.
 Remedies of, see **Remedies**.
 Second mortgagee, notice to—
 Appraisal, 3-7.
 Default notice, form, 7-6.
 Fair dealing, 3-7.

MORTGAGES.

Deed of trust, see **Deeds of Trust**.
 Power of sale, 1-4.
 Second mortgages—
 Effects of sale on, 4-14.
 Federal Deposit Insurance Corporation, mortgage owned by, 4-15.
 Junior federal tax liens, 3-8.
 Notice, 3-7.
 Form, 7-6.
 Priorities, 4-16.
 Resolution Trust Corporation, mortgage owned by, 4-15.
 Tax liens, 4-20.

MORTGAGOR.

Bankruptcy of, see **Bankruptcy**.
 Death or personal disability of, 4-2.
 Military service of, 4-3.
 Notice to—
 Due process challenge of, 3-6.
 Fair Debt Collection Practices Act, 3-6.
 Form, 7-5.
 Generally, 3-6.
 Remedies of, see **Remedies**.
 Wrongful foreclosure, 6-2.

NAMES.

Deed of trust, name of beneficiary, 1-2.
 Notice of sale, contents, 3-9.

NEWSPAPER.

Publication of notice of foreclosure sale, 3-9, 3-11, 3-12.

NOTICE.

Advertisement—
 Advertisement requirements, 3-11.

NOTICE—Cont'd.**Advertisement—Cont'd.**

Newspapers, 3-11.

Courthouse, posting of notice of
foreclosure sale, 3-9, 3-10.

Default—

Mortgagor, notice to, form, 7-5.

Second mortgagees, notice to, form,
7-6.

Federal Foreclosure Act, 3-14.

I. R. S., to, form, 7-7.

Junior federal tax liens, 3-8.

Mortgagor, to, 3-6.

Form, 7-5.

Newspaper, publication of notice of
foreclosure sale, 3-9, 3-11, 3-12.

Resignation of trustee, form, 7-2.

Second mortgagees, to, 3-7.

Default of mortgagor, 7-6.

Form, 7-6.

Trustee's notice, form, 7-9.

Substituted trustee—

Assigned deed of trust, notice of,
form, 7-4.

Sale by, form, 7-8.

Substitution, notice of, form, 7-3.

Trustee's sale, form, 7-9.

OMNIBUS BUDGET**RECONCILIATION ACT.**

Federal tax lien, ten-year, 3-8.

PREPARATION FOR SALE.**Acceleration—**

De-acceleration of debt, 3-3.

Overt act required, 3-3.

Ad valorem taxes, 3-13.

Advertisement requirements—

Proof, 3-11.

Time period, 3-11.

Default, 3-2.

Fair Debt Collection Practices Act, 3-6.

Federal Foreclosure Act, 3-14.

Foreclosure of federal loans, 3-14.

Junior federal tax liens—

Notice, 3-8.

Omnibus Budget Reconciliation Act,
3-8.

Newspapers, publication of notice of
foreclosure sale, 3-9, 3-11, 3-12.

Notice of sale—

Contents, 3-9.

Purpose, 3-9.

Specificity, 3-9.

Terms of sale, 3-9.

Notice to mortgagor, 3-6.

PREPARATION FOR SALE—**Cont'd.**

Notice to second mortgagees, 3-7.

Posting requirements—

Courthouse door, 3-10.

Timing, 3-10.

Records search—

Bankruptcy, 3-4.

Tax liens, 3-4.

Title insurance, 3-4.

Redemption, 3-16.

Reinstatement of loan, 3-15.

Review of loan documents—

Enforceability, 3-1.

Instruction letters, 3-1.

Junior mortgages, 3-1.

Substituted trustee—

Expressly allowed, 3-5.

Recording, 3-5.

Records search, 3-4.

Refusal to act, 3-5.

PRIORITIES.

Crops and fixtures, 4-19.

Generally, 4-16.

Purchase money mortgage, 1-5.

Recording, 1-3.

Second mortgages—

Effects of sale on, 4-14.

Notice, 3-7.

Tax liens, 4-20. See also **Tax Liens.**

PURCHASE MONEY**MORTGAGES.**

Priorities, 1-5.

RECORDING.

Substituted trustee, 3-5.

REDEMPTION.

Junior federal tax liens, 4-20.

REMEDIES.

Deeds in lieu of foreclosure, 5-1.

Form, 7-15.

Foreclosure, see **Foreclosure.**

Mortgagee's remedies—

Alternatives, 5-4.

Deeds in lieu of foreclosure, 5-1.

Deficiency action, 5-2.

Judicial foreclosure, 5-3.

Mortgagor's remedies—**Bankruptcy—**

Automatic stay, 6-4.

Fraudulent transfer, 6-5.

Voidable preference, 6-6.

REMEDIES—Cont'd.**Mortgagor's remedies—Cont'd.**

- Injunction of sale, 6-1.
- Redemption, 3-16.
- Statute of limitations, 6-3.
- Wrongful foreclosure, 6-2.

Redemption, 3-16.**RENTS.**

- Assignment of, in deed of trust, 1-2.
- Bankruptcy, effects of, 4-23.
- Deed of trust, assignment of rents, 1-2.
- Disaster relief, 4-1.
- Income from property, rights to, 4-23.
- Property sold, 4-23.

RESOLUTION TRUST CORPORATION.

- Land or junior mortgage owned by, 4-15.

SALE.

- Acceleration of debt, 3-3.
- Accounting by trustee, 4-22.
- Adjournment of sale, 4-6, 4-13.
- Advertisement—
 - Contents of, 3-11.
 - Newspaper, selection of, 3-12.
- Affidavit of foreclosure sale, form, 7-13.
- Americans with Disabilities Act, liability of purchaser under, 4-25.
- Attorney's fees, 2-4.
- Authority of trustee, 2-2.
- Cash, 4-9, 4-13.
- Check, payment by, 4-13.
- Consideration, inadequacy of, 4-12.
- Costs of sale, 4-16.
- County, customs of sale by, Appen. C. Crops, 4-19.
- Customs of sale by county, Appen. C.
- Day of sale, 2-2, 4-4.
- Death or personal disability of mortgagor, effect of, 4-2.
- Disaster, effect of, 4-1.
- Federal Deposit Insurance Corporation, land or junior mortgage owned by, 4-15.
- Fixtures, 4-19.
- Income from property, 4-23.
- Junior federal tax liens, right to redeem, 4-20.
- Junior lienholders, 4-14.
- Federal Deposit Insurance Corporation, 4-15.

SALE—Cont'd.**Junior lienholders—Cont'd.**

- Federal tax liens, 3-8. See also **Tax Liens.**
- Future advance clauses, 4-14.
- Improvements, 4-14.
- Resolution Trust Corporation, 4-15.
- Lead-Based Paint Hazard Reduction Act, 4-18.1.
- Disclosure, form, 7-18.
- Method of payment, 4-13.
- Military service of mortgagor, effect of, 4-3.
- Moratorium on sale—
 - Death or personal disability of mortgagor, 4-2.
 - Disaster, 4-1.
 - Military service of mortgagor, 4-3.
- Notice of sale, advertisement—
 - Contents of, 3-11.
 - Newspaper, selection of, 3-12.
- Parcels, 4-9, 4-11.
- Personalty, loan secured partly by, 4-10.
- Persons who may purchase, 4-8.
- Place of sale, 4-4, 4-7.
- Possession of property, 4-24.
- Power of sale—
 - Death of owner, 4-2.
 - Deeds of trust, 1-4.
 - Due process challenge, 1-4.
 - Notice to mortgagor, 3-6.
- Price, 4-12.
- Priorities—
 - Disbursement, 4-16.
 - Fixtures, 4-19.
- Procedural requirements, 4-9.
- Resolution Trust Corporation, land or junior mortgage owned by, 4-15.
- Soldiers' and Sailors' Civil Relief Act, 4-3.
- Subdivisions, sale in, 4-11.
- Time of sale, 4-5.
- Customary hour of sale by counties, table, Appen. C.
- Title evidence or insurance after sale, 4-17.
- Toxic waste cleanup, purchaser's liability for, 4-18.
- EPA ruling, 4-18.
- Fleet Factors case, 4-18.
- Trustee—
 - Duties, 2-3, 2-5.
 - Purchase by trustee, 2-6, 4-8.

SALE—Cont'd.

Trustee purchasing from himself, 2-6, 4-8.

Trustee's deed, 4-21.

STATUTE OF LIMITATIONS.

Deficiency action, 5-2.

Installment note, suit following foreclosure or sale, 6-3.

Judicial foreclosure, 5-3.

TAX LIENS.

Ad valorem taxes, 3-13.

I. R. S. instructions for forms, Appen. D.

Junior federal tax liens, 3-8.

Notice required, 3-8.

Redemption of, 4-20.

Notice to I. R. S., form, 7-7.

Omnibus Budget Reconciliation Act, 3-8.

Priority of, 4-16, 4-20.

Records search, 3-4.

Redemption, 4-20.

TIME.

Customary hour of sale by counties, table, Appen. C.

Notice of sale, 3-9.

Sale, of, 4-5.

TITLE INSURANCE.

Records search, 3-4.

Sale, after, 4-17.

TOXIC WASTE CLEANUP.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 4-18.

Fleet Factors case, 4-18.

Purchaser's potential liability for, 4-18.

TRUSTEE.

Accounting by, 4-22.

Adjournment of sale, 4-6.

Agent of mortgagor and mortgagee, 2-3.

Authority, 2-2.

Bid, refusal to accept, 2-2, 2-5.

Checklist, Appen. B.

Compensation, 2-4.

Conflict of interest, 2-7.

Deed of trustee, 4-21.

Deed (second mortgage), form, 7-11.

TRUSTEE—Cont'd.

Delegation of power, 2-5.

Duties, 2-3, 2-5.

Fairness, duty of, 2-3.

Impartiality, 2-3.

Ministerial acts, 2-5.

Notice of sale, form—

Second mortgage, 7-9.

Substituted trustee, first mortgage, 7-8.

Possession rights, 4-24.

Posting, affidavit of, form, 7-12.

Power of sale—

Deed of trust, in, 2-3.

Exercise of, 1-4.

Power to purchase, 4-8.

Qualifications—

Conflict of interest, 2-7.

Generally, 2-1.

Relationship to mortgagee, 2-1.

Records search, 3-4.

Refusal to act, 2-8.

Resignation, form, 7-2.

Substituted trustee—

Authority, 2-8.

Deed, first mortgage, form, 7-10.

Delegation of power, 2-5.

Expressly allowed, 3-5.

Form, 7-3, 7-4.

Notice of sale (first mortgage), form, 7-8.

Original trustee's refusal to act, 3-5.

Recording, 3-5.

Trustee purchasing from himself, 2-6.

VETERANS AFFAIRS,**DEPARTMENT OF.**

Deed of trust suggested by, 1-1.

Grantee in trustee's deed, 4-21.

Guaranty of loan by—

Title insurance necessary, 4-17.

Vacancy of land not required, 4-24.

Notice to mortgagor, required by, 3-6.

WAIVER.

Advertisement of foreclosure sale,

waiver not permitted, 3-11.

Default, 3-2.

WRONGFUL FORECLOSURE.

Mortgagor, remedies of, 6-2.