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## Forms Committee Presents Check List for Foreclosure Proceedings Involving Loans Insured or Guaranteed by the Federal Housing Administration or the Veterans Administration

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## FORMS COMMITTEE PRESENTS CHECK LIST FOR FORECLOSURE PROCEEDINGS INVOLVING LOANS INSURED OR GUARANTEED BY THE FEDERAL HOUSING ADMINISTRATION OR THE VETERANS ADMINISTRATION\*

Some loans have been insured or guaranteed by both FHA (for conciseness Federal Housing Administration will be abbreviated to FHA, and Veterans Administration to VA), and VA. Sometimes you will foreclose the FHA first loan and sometimes the VA is the first loan. All references to the other department will not apply unless otherwise indicated in an appropriate footnote. The addresses for foreclosure purposes are:

- (FHA) State Director  
Federal Housing Administration  
555 New Customhouse  
Denver, Colorado
- (VA) Loan Guaranty Division  
Veterans Administration  
Denver Federal Center  
Denver 12, Colorado

Proceedings to foreclose should be taken in the following order:

1. As a preliminary to foreclosure, the mortgagee or its servicing agent has already notified FHA by filing in duplicate form 2068.<sup>1</sup> Then at the time the foreclosure is actually filed another form 2068, in duplicate, should be sent. No comparable procedure is necessary on a VA foreclosure.

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\* By Sub-Committee on District Court Forms, Royal C. Rubright, Chairman. The parent committee is the Forms Standardization Committee of the Colorado Bar Association, Donald M. Leshner, General Chairman.

For standard pleading samples to be used in foreclosure by the Public Trustee, see 28 DICTA 461-473 and 29 DICTA 1-6; see also the excellent article by Percy S. Morris, *Foreclosure by Sale by Public Trustee of Deeds of Trust in Colorado*, 28 DICTA 437-459.

This present article is believed necessary because, in addition to the normal procedures of foreclosure, there are certain technical requirements prescribed by the Federal Housing Administration and the Veterans Administration governing foreclosure. The forms and procedures are contained in manuals and regulations not readily available to the average practicing lawyer. The Forms Committee hopes that the check list will guide readers through the complications so that a title will finally be accepted by the FHA and the VA. The article does not attempt to repeat any of the statutory steps outlined in the former DICTA articles, but it will give some practical hints and set forth an orderly method of procedure.

The problems have been discussed with the FHA and VA and it is believed that the steps outlined comply with their regulations.

<sup>1</sup> Mortgagee's handbook published by the Federal Housing Administration in Washington, D. C. issued July 1952, Sec. 1103, provides the first notice is to be filed 60 days after default occurs which is 30 days after date the delinquent payment is due. Each 60 days thereafter the mortgagee shall file another form 2068.

2. Obtain Note and Trust Deed and abstract and make a photostatic copy of

- (a) The Note
- (b) The Trust Deed
- (c) Assignment of Rents, if any
- (d) Assignment of the Trust Deed, if any.
- (e) Statement of account showing the delinquency, the date of delinquency, the monthly payments, the interest, the amount in the tax reserve, and the insurance reserve.

3. Prepare and file with the Public Trustee:

- (a) Notice of Election and Demand (Two signed copies for the Public Trustee, one for your file and one for the lender). VA loan—one copy for VA. (VA copies are necessary if you foreclose a VA first or if there is a VA second trust deed).
- (b) Copies of Notice of Public Trustee's Sale. Two copies for Public Trustee, one to mail to each person having recorded interest in title, one for your file, one for lender (and one for VA—see 3(a)).
- (c) \$50.00 deposit check (current Denver amount).
- (d) Original Note.
- (e) Recorded original Trust Deed.
- (f) Recorded Assignment of Trust Deed, if one exists.

4. After Notice of Election and Demand has been recorded, send abstract to be brought to date to include the recorded Election and Demand.<sup>2</sup>

- (a) Send Form 2068 to FHA (make four copies; one for your file, one for the lender and two for the FHA).
- (b) Send VA a copy of (1) Election and Demand, (2) Notice of Public Trustee's Sale.<sup>3</sup>

5. Before delivering abstract, or stub-abstract to the Public Trustee, compile list <sup>4</sup> of names and addresses of the original mortgagor, subsequent lienors and grantees,<sup>5</sup> and furnish the list to the Public Trustee (three copies; two to Public Trustee, one for your file).

<sup>2</sup> Many of the newer properties do not have abstracts and the lender has a Mortgagee's Title Policy. In this case, order a stub-abstract beginning with the date of recording of the deed of trust you are foreclosing. It should include all entries subsequent, to and including the Notice of Election and Demand. Where abstract companies can furnish photographic entries, request them to save yourself time in listing the addresses shown in the recorded documents, and to avoid errors.

<sup>3</sup> These are required by Section 36:4319 of the VA regulations.

<sup>4</sup> 28 DICTA p. 467. In this article reference will be made to the former DICTA articles, rather than the statutes because the valuable explanatory statements and suggestions in the articles help one to comply with the statutes.

<sup>5</sup> Attorneys often add their names to the list. The receipt of the Notice of Sale reminds them to verify the fact that the mailing was made within 10 days after first publication as required by COLO. STAT. ANN., c. 40, § 64 (1935); see 28 DICTA 448.

6. File motion in District Court for an order for Public Trustee's Sale.<sup>6</sup> Pay the docket fee. This is the proceeding under Rule 120:

- (a) Prepare Order for Hearing<sup>7</sup> (three copies—original to file, one for VA, one for your file).
- (b) Take along:
  - (1) Notices of Hearing Date,<sup>8</sup> (original to file, one for the Clerk to post in his office, one for VA, one for your file, and one for mailing to each person having recorded interest in property). (The list will be the same as in number 5 above).
  - (2) Stamped envelopes addressed to each person to whom the notice is to be mailed by the Clerk of the Court.
  - (3) Certificate of Mailing and Posting,<sup>9</sup> to be signed by the Clerk of the Court (four copies, two for Clerk, one for your file, one for VA).
- (c) Mail VA:
  - (1) Motion for Order
  - (2) Order for Hearing
  - (3) Notice of Hearing Date
  - (4) Certificate of the Clerk of District Court showing mailing and posting.<sup>10</sup>

7. Check the newspaper to see that the Notice of Public Trustee's publication is in the paper and that it is properly printed and published for proper time.<sup>11</sup>

8. Check with Public Trustee to be sure that Notices were mailed by the Public Trustee within 10 days from the first publication.<sup>12</sup>

9. Prepare and have entered by the District Court the Order authorizing Public Trustee's Sale.<sup>13</sup> (Four copies, original to file, one for the Public Trustee, one for VA and one for your file).

10. Attend Public Trustee's sale on date set. Check with Public Trustee a day or two before to determine the Public Trustee's costs and to inform the Public Trustee of any taxes paid, court costs under the Rule 120 proceedings, water bill or other items paid pursuant to the provisions of the Trust Deed. You will thus establish the proper amount of your bid. It need not be paid in cash since you are bidding as holder of note. If the costs incurred by Public Trustee exceed your cash deposit you must pay that amount in cash at the sale. The Public Trustee normally pre-

<sup>6</sup> 28 DICTA 461.

<sup>7</sup> 28 DICTA 464.

<sup>8</sup> 28 DICTA 464.

<sup>9</sup> 28 DICTA 465.

<sup>10</sup> 28 DICTA 447.

<sup>11</sup> 28 DICTA 447.

<sup>12</sup> 28 DICTA 448.

<sup>13</sup> 28 DICTA 469.

pare the Certificate of Purchase, and gives you the original after the sale. The Public Trustee records the duplicate within ten days after the sale.<sup>14</sup> Send form 2068 in duplicate to FHA (one copy for your file); send detailed statement of bid to VA (one copy for your file, one to lender).

11. Prepare a Return of Sale and file with District Court.<sup>15</sup> (three copies; file original, one for VA and one for your file).

12. Prepare and have entered by District Court the Order Approving Sale.<sup>16</sup> (Four copies; file original, one for Public Trustee, one for VA and one for your file).

13. When redemption period expires<sup>17</sup> the Public Trustee will ordinarily prepare the Public Trustee's Deed. It is to be hoped that VA will redeem if you have foreclosed the FHA first Trust Deed. In this event your worries are over. If redemption is not made by VA, the Public Trustee's deed will issue to your client.

The procedure for collecting on the insurance or guaranty when (a) only a FHA loan is foreclosed or (b) where only a GI loan is foreclosed, is an administrative problem which your client will normally handle without aid from you and the problems are beyond the scope of this article. We therefore leave you proudly and firmly grasping your perfect and indefeasible Public Trustee's Deed as you walk into your client's office to collect your fee. As you are now keenly aware—having followed all of the above steps—you earned it! We only hope we have made the path a little easier.

<sup>14</sup> 28 DICTA 454.

<sup>15</sup> 28 DICTA 472.

<sup>16</sup> 28 DICTA 472.

<sup>17</sup> 28 DICTA 457.

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