

Foreclosure Process Issues

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- Two types of foreclosure: very different processes
- Regardless of type, time frames and requirements vary widely from state to state
 - › Broad range of timelines from first missed payment to title transfer
- Loan servicers exhaust all home retention options:
 - › Beginning within a month of a missed payment
 - › Continue all the way to title transfer
 - › Efforts include, but not limited to, outbound calls and solicitations to educate borrower on foreclosure alternatives
 - Modification programs
 - Short sales
 - Deeds in lieu

- Court Proceeding:
 - » Begins when lender files a complaint and records the notice in public land records announcing claim on the property
- Complaint:
 - » Announces claim to potential buyers, creditors, interested parties
 - » Describes the debt, default, and amount owed
 - » Asks the court to allow the lender to foreclose and take possession of the property
- Homeowner served notice of complaint by:
 - » Mail, in person, or publication
 - › Requirements vary by jurisdiction

- Borrowers may dispute any of the facts in the complaint by:
 - » Answering the complaint
 - » Filing a separate lawsuit
 - » Attending a hearing
- If the borrower shows material differences of facts:
 - » Case goes to trial to determine whether foreclosure should occur
 - » However, the vast majority of judicial foreclosure cases are undisputed because the borrower is in default and cannot offer facts to the contrary

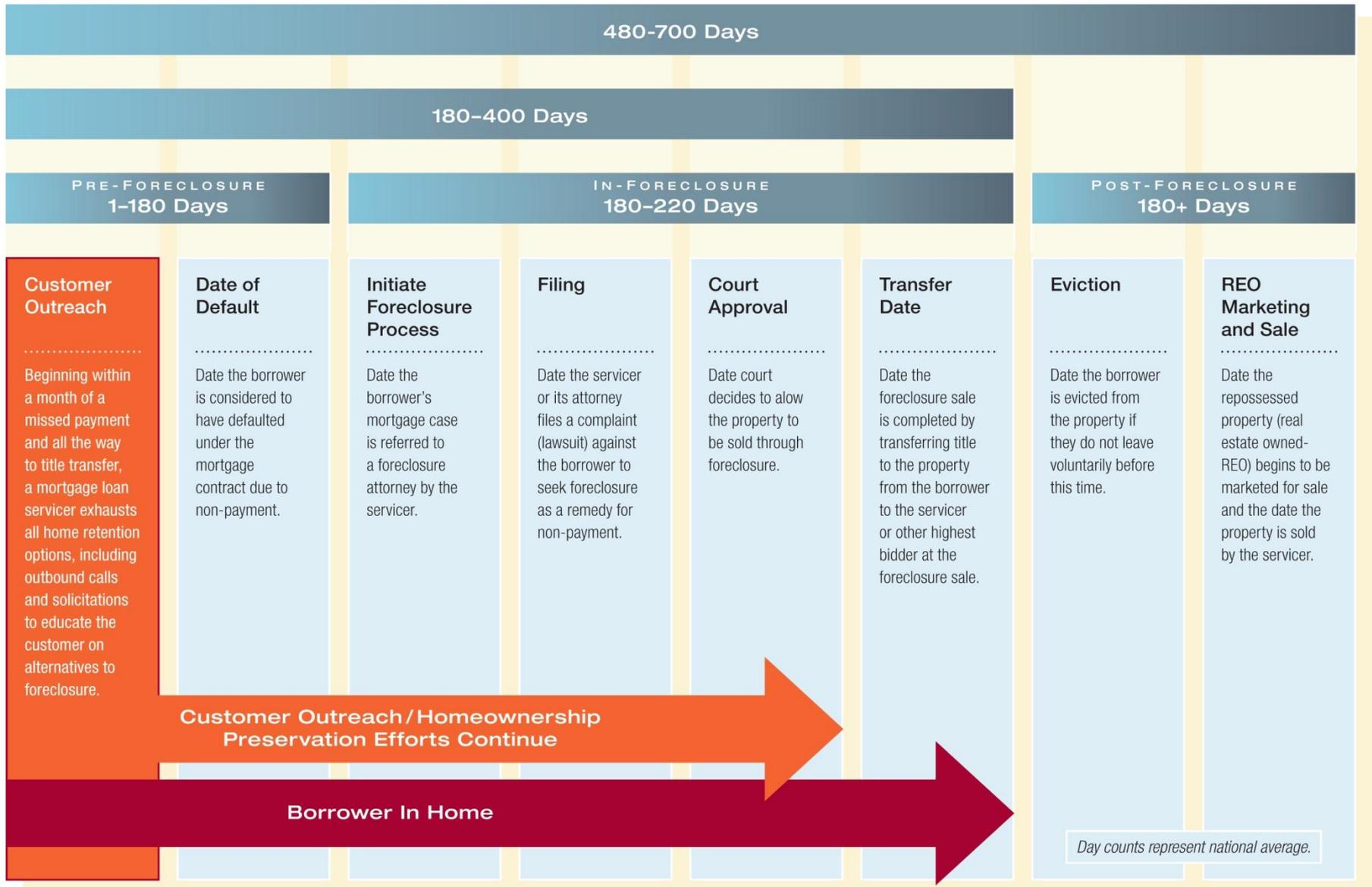
- Court determines whether:
 - » Homeowner did default
 - » The debt is valid
- Issues judgment in favor of servicer for total amount owed
 - » Includes costs for the foreclosure process
- Judge determines final amount owed
 - » Servicer submits paperwork through an affidavit that itemizes the amounts due
- Court authorizes sheriff's sale
 - » Open to anyone, must be held in a public place
 - » Procedures differ by locality

Judicial Foreclosure

States using judicial procedures as the primary way to foreclose:

- Connecticut
- Delaware
- Florida
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- New Jersey
- New Mexico
- New York
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- South Carolina
- South Dakota
- Vermont
- Wisconsin

Judicial Foreclosure



- Requirements vary widely by state
 - » Procedures established by state statute
 - » No court intervention
 - » Mortgage documents in non-judicial states give lenders the “power of sale” outside of the judicial process in the event of an uncured default
- When default occurs, servicer mails the borrower a default letter
 - » In many states, a notice of default is recorded at or around the same time

Non-Judicial Foreclosure

- Homeowner may cure the debt during a prescribed period
- If the borrower does not cure:
 - » Notice of Sale is:
 - Mailed to the homeowner
 - Posted in public places
 - Recorded at the county recorder's office
 - Published in newspapers/legal publications
- Borrower may file suit to enjoin the sale if he/she disagrees with the facts
- Public auction held at expiration of legally required notice period.
 - » Highest bidder becomes owner of the property

- Delinquency rates decreased to a seasonally adjusted rate of 9.13% of all loans outstanding
 - › Decrease of 72 basis points from the Q2 2010
 - › Decrease of 51 basis points from one year ago
- Foreclosure actions were started on 1.34% of loans in Q3 2010
 - › Increase of 23 basis points from Q2 2010
 - › Decrease of eight basis points from one year ago

Blight Prevention: Accelerated Transfer Of Abandoned Property

- Goal: to move vacant/abandoned properties quickly into the hands of new owners who will care for the property's upkeep.
- Shortening the foreclosure timeline for abandoned properties is an effective tool to prevent blight, crime, and safety hazards associated with vacant homes
- Colorado HB 1249:
 - » Effective from August 2010 until August 2013
 - » Shortens the time to foreclosure sale from 110-125 days to 45-60 days
 - » Court may order an expedited sale if clear and convincing evidence proves the property is abandoned and no appearance is made to oppose the motion
 - » Affidavit affirming that the property is vacant must accompany the motion for expedited foreclosure sale
 - » Documentary evidence and/or pictures of the conditions must be attached to the affidavit