

Foreclosure Report

Survey of State Foreclosure Laws

State: **Alabama**

Statutory citation: Ala. Code §§ 35-10-1 to 35-10-30 and 6-5-247 to 6-5-256

Most Common Method of Foreclosure: Non-judicial; Power of Sale in Mortgage

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) how long is the reinstate period or when does the right expire?		
(b) do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) are there any limitations on the right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No.	
6. Is there a state emergency fund or similar program available to assist borrowers in default?	No.	
7. Does state law provide any protections for borrowers after the foreclosure sale?	No.	
(a) right of redemption?	Limited Right. Borrower may redeem within one year after foreclosure by paying to the buyer the purchase price plus interest and costs, but only if borrower surrenders possession of property within ten days after written demand for possession. §§ 6-5-251 and -252.	
(b) limitations on deficiency judgments?	No.	
(c) accounting or other procedure for foreclosure sale proceeds and return of surplus?	No statutory system for accounting and return of surplus.	State courts have general equitable powers to review and set aside sales on unconscionability grounds.
i. accounting for sales proceeds?	No statutory requirement.	Distribution of proceeds and surplus according to common law rules.
ii. prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Alaska**

Statutory citation: Alaska Stat. §§ 34.20.070, .090 and .100.

Most Common Method of Foreclosure: Non-judicial; Power of Sale in Deed of Trust

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) how long is the reinstate period or when does the right expire?	Anytime before foreclosure sale; by paying the amount that would have been due if there had been no default, plus attorney fees and costs actually incurred by trustee because of the default. [Sale may occur four months after default. Notice may be sent not less than 30 days after default, and not less than three months before foreclosure sale.] § 34.20.070.	
(b) do borrowers receive a written notice of the right to reinstate?	Not specified in statute.	Courts imply duty of mortgage holder to provide reinstatement

Consumer Protection Provisions	Statutory Cite & Description	Comments
		calculation upon borrower's request, but not required in notice.
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	Not specified in statute.	
(d) are there any limitations on the right to reinstate?	If two or more prior default notices have been recorded, trustee may refuse to accept cure. § 34.20.070(b)	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No..	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail is sufficient. § 34.20.070(c).	Notice may be delivered personally instead of by mail. § 34.20.070(c).
6. Is there a state emergency fund or similar program available to assist borrowers in default?	No. (see comment)	In 2008 new legislation authorized the Alaska Housing Finance Corp. to provide funds for payments and loans to homeowners to avoid foreclosure. Alaska Stat. Ann. § 18.56.090. Details about the implementation are not yet available.
7. Does state law provide any protections for borrowers after the foreclosure sale?		
(a) right of redemption?	No. § 34.20.090.	If judicial foreclosure, one year for "judgment debtor" § 09.35.250.
(b) limitations on deficiency judgments?	Yes. Deficiency forbidden after power of sale foreclosure of deed of trust. § 34.20.100. No prohibition after judicial foreclosure.	
(c) accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. accounting for sales proceeds?	No statutory procedure for disbursement of proceeds and return of surplus after power	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	of sale foreclosure.	
ii. prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Arizona**

Statutory citation: Ariz. Rev. Stat. Ann. §§ 33-741 to -749 and 33-801 to -821

Most Common Method of Foreclosure: Non-judicial; Power of sale in Deeds of Trust
(Judicial foreclosure for some existing mortgages, which were common prior to 1971).

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	Existing mortgages, which were common prior to 1971, may only be foreclosed judicially. §§ 33-721 and 33-801(9)
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) how long is the reinstate period or when does the right expire?	By payment to the officer any time before 5 p.m. on the last business day before the foreclosure sale. § 33-726 and § 33-813. Foreclosure may take place 91 days after notice. § 33-807.	Foreclosure sale on mortgage may take place 20 days after notice of intent to forfeit. Time mortgage foreclosure may be initiated varies from 30 days after default, if less than 20% of the purchase price has been paid, up to nine months if 50% or more of the price has been

Consumer Protection Provisions	Statutory Cite & Description	Comments
		paid. § 33-742.
(b) do borrowers receive a written notice of the right to reinstate?	No for deed of trust. § 33-808.	Yes for mortgages. § 33-743(B).
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) are there any limitations on the right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No.	
6. Is there a state emergency fund or similar program available to assist borrowers in default?	No.	
7. Does state law provide any protections for borrowers after the foreclosure sale?	Yes, but limited.	
(a) right of redemption?	No.	If judicial foreclosure on mortgage, judgment debtor may redeem within 6 months after the sale date, or within 30 days after the sale date if the property was abandoned. § 12-1282.
(b) limitations on deficiency judgments?	Deficiency prohibited for purchase money mortgages of parcels of 2.5 acres or less, used for one or two-family dwelling. Anti-deficiency provision does not apply if the court finds that debtor committed or permitted voluntary waste, in which case creditor may obtain judgment for diminution in price resulting from such waste. § 33-729 and 33-814(G).	
(c) accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. accounting for sales proceeds?	For deed of trust, must notify consumer within fifteen days after sale if there are	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	surplus proceeds. § 33-812(B).	
ii. prompt return of surplus proceeds?	No statutory time frame.	Trustee distributes proceeds through all statutory priorities, or can refer to court for determination of issues related to payments for junior lienholders and borrower.

Foreclosure Report

Survey of State Foreclosure Laws

State: **Arkansas**

Statutory citation: Ark. Code Ann. §§ 18-50-101 to 18-50-116 (power of sale); §§ 18-49-101 to 18-49-106 (judicial foreclosure); §§ 23-53-101 – 23-53-106 (high cost home loans).

Most Common Method of Foreclosure: Non-judicial; Power of sale in mortgage.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	Mortgages of agricultural land may not be foreclosed by power of sale. § 18-50-116(c).
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) how long is the reinstate period or when does the right expire?	Any time after the filing of the notice of default (no end point specified, so possible up to the date of sale, which may take place on the 91 st day after notice) § 18-50-114.	Borrower must pay the amount then due (without acceleration) plus costs and expenses actually incurred, and trustee's and attorney's fees. § 18-50-114.
(b) do borrowers receive a written notice of the right to reinstate?	No.	Prescribed notice states that "you may lose our property if you do not take immediate action" but

Consumer Protection Provisions	Statutory Cite & Description	Comments
		does not specify what actions may be taken.
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No.	Certified and first class mail is sufficient. § 18-50-104(b).
6. Is there a state emergency program or similar fund available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) right of redemption?	No. § 18-50-108.	If judicial foreclosure, within one year by payment of the purchase price plus interest and the costs of the sale. Right of redemption may be waived in mortgage. § 18-49-106.
(b) limitations on deficiency judgments?	Yes, deficiencies are limited to the lesser of the indebtedness (including costs, etc.) minus the fair market value of the property, or the indebtedness (including costs, etc.) minus the sale price. § 18-50-112.	No bid at sale may be accepted that is less than 2/3's of the indebtedness. § 18-50-(b)(3). Action for a deficiency after a non-judicial foreclosure must be brought within one year after date of sale.
(c) accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. accounting for sales proceeds?	No (see comment)	Trustee distributes in accordance with statutory order of priorities, including to junior

Consumer Protection Provisions	Statutory Cite & Description	Comments
		lienholders.
ii. prompt return of surplus proceeds?	No statutory time frame.	Surplus must go to borrower, but no time requirement specified. §18-50-109(b).

Foreclosure Report

Survey of State Foreclosure Laws

State: **California**

Statutory citation: Cal. Civ. Code §§ 2924 to 2924I and Cal. Civ. Pro. §§ 580a to 580d.
[Judicial foreclosure, Cal. Civ. Proc. Code §§ 725a – 730.5.].

Most Common Method of Foreclosure: Non-judicial; Power of Sale in Deed of trust
(Generally judicial foreclosure used only if there are problems requiring court resolution or if likelihood for recovery of deficiency judgment).

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. (a) Is there a right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) how long is the reinstate period or when does the right expire?	May cure anytime between the filing of the notice of default and five business days before the scheduled trustee's sale, by paying the amount due without acceleration, plus certain costs and expenses actually incurred, which are limited by statute. Civ. Code § 2924c.	
(b) do borrowers receive a written notice of the right to reinstate?	Yes. Notice of default must include detailed description of right to cure. Civ. Code §	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	2924c	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No, but notice of default must inform borrower that an itemization of the amounts needed to cure may be requested. § 2924c(b)(1) and general availability of right to cure. § 2924c(a)(1)(C) and (D).	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	Effective Sept. 6, 2008 holder cannot file notice of default until 30 days after contacting borrower to explore options for borrower to avoid foreclosure. Must advise homeowner of opportunity for conference with lender and schedule within 14 days of request. Cal. Civ. Code § 2923.5..	Requirement to offer meeting with lender applies to loans made from Jan. 1, 2003 to Dec. 31, 2007.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No.	Notice sent by certified or registered mail, and regular first class mail, plus posting and publication. Civ. Code § 2924b.
6. Is there a state emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) right of redemption?	None, unless there is a deficiency judgment in judicial foreclosure. Two-year right of redemption if court grants deficiency judgment. Civ. Pro. § 729.010.	
(b) limitations on deficiency judgments?	Deficiency not permitted if power of sale foreclosure. Civ. Pro. § 580d. No deficiency upon judicial foreclosure of purchase money mortgage on owner-occupied dwelling with four or fewer units, or for failure to complete purchase by contract for deed. Civ. Pro. §§ 580b. When deficiencies are permitted, amount is limited by the fair market value of the property. Civ. Pro. § 580a and § 726(b).	A junior mortgagee may pursue deficiency against the borrower if its lien has been voided through foreclosure of a senior lien.
(c) accounting or other procedure for		

Consumer Protection Provisions	Statutory Cite & Description	Comments
foreclosure sale proceeds and return of surplus?		
i. accounting for sales proceeds?	Within 30 days after sale, trustee must notify persons with claims on the proceeds.	Civ. Code § 2924j and § 2924k.
ii. prompt return of surplus proceeds?	If there is no dispute, must pay claims within 30 days after that period. If trustee cannot determine priority of claims within 90 days, must turn funds over to court, which may hold hearing.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Colorado**

Statutory citation: Colo. Rev. Stat. §§ 38-38-100.3 to 38-38-114, Colo. R. Civ. Pro. Rule 120.

Most Common Method of Foreclosure: Non-judicial; Power of Sale by Public Trustee, with court supervision.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	Yes. Holder must seek court order allowing trustee to sell. Borrower or other interested persons may file responses and receive a hearing on the issues of existence of default, right to sell, and issues raised by Servicemembers Civil Relief Act. Colo. Rev. Stat. Ann. § 38-38-105 and Colo. Rule Civ. Proc. 120	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?		
(a) how long is the reinstate period or when does the right expire?	Up to noon on the day of the foreclosure sale, but must give notice 15-day prior notice of intent to cure. § 38-38-104	
(b) do borrowers receive a written notice of the right to reinstate?	Yes. Notice of sale must include explanation of right to cure. § 38-38-103 (c).	
(c) does the notice include an itemization of all fees and other	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
amounts necessary to reinstate?		
(d) are there any limitations on the right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Publication and mail. (also posting for notice of hearing). §§ 38-38-103 and C.R.C.P. 120.	
6. Is there a state emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	Redemption by lienholders allowed only within specified periods. § 38-38-302.
(b) Limitations on deficiency judgments?	Former owner may raise as a defense that minimum bid based of fair market value of the property was not made by the holder or its attorney prior to sale. § 38-38-106	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Excess proceeds are paid into escrow until after any redemption period (redemption by junior lienors is permitted), after which they are paid out in a specified order, with any remaining proceeds to borrower.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Connecticut**

Statutory citation: Conn. Gen. Stat. §§ 49-1 to 49-31j; Conn. Rules Superior Ct. 23-16 to 23-19.

Most Common Method of Foreclosure: Judicial – strict foreclosure, but court has discretion to order sale.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. Conn. Gen. Stat. Ann. §§ 49-1, 49-24, 49-25, Conn. Rules Superior Ct. 23-16 to 23-19.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.		
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on the fees and costs that can be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?		
(a) How long is the reinstate period or when does the right expire?	No. In foreclosure decree court sets a deadline date (“law day”) for redemption by payment of debt in full. No established statutory redemption period. Court has discretion to order sale or allow strict foreclosure without sale. § 49-24 and § 49-25.	Certain unemployed or underemployed homeowners as defined by statute may request that the court restructure the debt, and the foreclosure proceedings will be stayed while payments are made on the restructured debt. §49-31e and 49-31f.
(b) Do borrowers receive a written notice of the right to reinstate?	No, but 2007 amendments to § 49-10a require mortgage holder to give reinstatement figures as well as payoff	Homeowners must be notified of rights to protection from

Consumer Protection Provisions	Statutory Cite & Description	Comments
	amounts within 7 days in response to written request from homeowner or interest forfeiture sanctions can be imposed.	foreclosure. § 49-31e.
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		Protection pursuant to §§ 49-31e et seq. is available only for unemployed or underemployed homeowners, who have not had a foreclosure action brought against them in the past seven years, nor received or applied for emergency mortgage assistance within two years. Homeowner who seeks this protection may not raise defenses to the mortgage. § 49-31f.
(d) are there any limitations on the right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	See 3a, above. If emergency mortgage assistance is sought (see item 6, below) certain loss mitigation activities are required.	Under § 15-20 of P.A. 08-176 effective July 1, 2008, Chief Court Administrator to implement statewide foreclosure mediation program. Period for mediation ends 90 days after return date for summons and complaint; no judgment to be entered while mediation pending.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. personal service is primary method of service of summons and complaint. Conn. Gen. Stat. Ann. § 52-57.	
6. Is there a state emergency fund or similar program available to assist borrowers in default?	Yes. See §§ 8-265cc through 8-265kk. Emergency mortgage assistance. Available to mortgagors who have suffered financial hardship due to circumstances beyond their control. [defined in § 8-265cc], but who expect to be able to resume full payments within 36 months, § 8-265ff. Participation in this program requires the agreement of the mortgagee. Includes notice, etc.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	requirements not found in general foreclosure statute: notice of rights pursuant to this program, face-to-face meeting, or phone conference,. Foreclosure delayed while this process is going on. Borrower who receives financial relief under this program may not file defense, counterclaim or set-off in the foreclosure action. §§ 8-265ee.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. After judgment and before sale, may pay amount due plus costs of sale. § 49-25.	
(b) Limitations on deficiency judgments?	Yes. Deficiency limited to difference between the plaintiff's claim and the valuation of the property (as determined at a hearing) . § 49-14.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Yes, proceeds of sale must be brought into court, to be disposed of pursuant to a supplemental judgment, rendered when the sale is ratified. § 49-27.	
ii. Prompt return of surplus proceeds?	Not specified in § 49-27, though court may determine when surplus released.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Delaware**

Statutory citation: Del. Code tit. 10, §§ 5061 to 5067.

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. Action for writ of scire facias, show cause hearing available. Tit. 10, § 5061	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No	
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?	No	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Personal service must be attempted. If two failures, service by mail and posting permitted. Tit. 10 § 3105; Superior Ct. Rules of Civil Procedure, Rule 4(f)(4).	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No specific statutory program, but see comment.	The Delaware State Housing Authority operates a Delaware Emergency Mortgage Assistance Program (“DEMAP”). Homeowners in default may apply for assistance under through a local housing counseling agency.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	After confirmation of sale, surplus goes to homeowner. Time limit not specified. Court must confirm sale before deed transfers. Tit. 10 § 5061 and 5065 to 5067.	
ii. Prompt return of surplus proceeds?	No statutory time frame, though court may determine when surplus released.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **District of Columbia**

Statutory citation: D.C. Code §§ 42-815 to 42-816

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Yes. Up to five days before sale. § 42-815.01.	
(b) Do borrowers receive a written notice of the right to reinstate?	No. § 42-815 prescribes certain information – with additional information to be prescribed by regulation. D.C. Mun. Regs. Tit. 9, § 3100. 2 does not require disclosure in the notice of the right to cure. But §§ 3100.5 through .7 require the recorder of deeds, “if he or she deems it advisable,” to make a reasonable effort to ascertain whether the owner knows of the intended sale and the existence of the mortgage or deed of trust. If the owner does not know of	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	this, or has a defense, the recorder should advise him or her to seek legal advice.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	Yes. Residential borrowers only (owner-occupied, one unit) once in two consecutive years. § 42-815.01.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail. § 42-815.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	In an optional (for mortgagees) judicial procedure there is a provision for redemption before judgment, § 42-805.
(b) Limitations on deficiency judgments?	No.	Deficiency is also available after judicial foreclosure and sale. § 42-816.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	If mortgage holder buys at sale, gets credit for debt and pays proceeds minus expenses to trustee.	Borrower must initiate judicial proceeding to challenge distribution of proceeds.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Consumer Protection Provisions	Statutory Cite & Description	Comments

Foreclosure Report

Survey of State Foreclosure Laws

State: **Florida**

Statutory citation: Fla. Stat. Ann. §§ 702.01 to .10, 45.031 to 45.0315; and 494.0078 to 494.00797 (high cost home loans).

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. § 702.01.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	For high-cost home loans only: before acceleration, creditor must provide 45 days notice of right to cure, amount needed to cure, and contact information. May not charge fees or penalty for exercise of cure, except those fees permitted by the Florida Fair Lending Act. Borrower not liable for any attorney fees or costs prior to or during cure period. If lender has provided two such notices, for two separate incidents, no right to cure third or subsequent instance of default. § 494.00794.
3. Is there a state law right to cure the default and reinstate the loan before	Yes.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
the foreclosure sale?		
(a) How long is the reinstate period or when does the right expire?	Borrower may reinstate before judgment by paying amount due under contract and costs and fees. § 45.0315. May stop sale by payment of judgment amount plus fees and costs until certificate of sale filed or other limit set by court. <i>Id.</i>	
(b) Do borrowers receive a written notice of the right to cure?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	As of the end of 2008, several judicial circuits had implemented some form of foreclosure mediation system by administrative order (several orders effective Dec. 1, 2008). Mediation to be scheduled within 45 days of service of summons and complaint and completed 45 days after initial scheduling date.	Under certain programs, homeowner notified of availability of mediation with summons and complaint. Consideration of summary judgment stayed pending lender's certification of completion of mediation.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Service of summons and complaint by publication permitted only when personal service cannot be made with due diligence. § 49.011.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes, up to date clerk files certificate of sale. § 45.0315.	
(b) Limitations on deficiency judgments?	Court has discretion as to deficiency judgments. §§ 702.06, 45.031(8).	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales	Clerk disburses funds in accordance with	

Consumer Protection Provisions	Statutory Cite & Description	Comments
proceeds?	final decree, and files a report. § 45.031 to § 45.0315.	
ii. Prompt return of surplus proceeds?	Official who conducted sale gives notice of surplus, any interested party has 60 days to make claim, sale confirmed if so objection in 60 days.	New statute, § 45.032 and §45.034 regulates surplus retrieval consultants.

Foreclosure Report

Survey of State Foreclosure Laws

State: **Georgia**

Statutory citation: Ga. Code Ann. §§ 44-14-160 – 191; §§ 7-6A-1 to 7-6A-11 (high cost home loans).

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		High Cost Home Loans only: Right to cure and reinstate up to the time of sale. Fees limited by Georgia Fair Lending Statute. § §706A-5(11) to (13).
(b) Do borrowers receive a written notice of the right to reinstate?		High Cost Home Loans: Detailed explanation of right to cure must be sent at least 14 days before the foreclosure notice. § 7-6A-5(11).

Consumer Protection Provisions	Statutory Cite & Description	Comments
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail, or statutory overnight delivery. § 44-14-162.2.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	For deficiency judgment, court must confirm the sale. Petition to confirm sale must be filed within 30 days after the sale. Key issue is whether property “brought its true market value.” § 44-14-191.	At hearing to confirm sale, court shall rule upon the legality of the notice, advertisement, and regularity of the sale.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	No.	For deficiency judgment, court must confirm the sale.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Hawaii**

Statutory citation: Haw. Rev. Stat. §§ 667-1 to 667-42

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No under standard procedure. Yes under alternate procedure. § 667-22 and 667-24. Under alternate procedure must give notice of default, with detailed explanation of right to cure, sixty days before notice of sale. § 667-25, § 667.27.	Hawaii law provides two power of sale procedures, the standard one in §§ 667-5 et seq. and the “alternate” procedure found in §§ 667-21 to 667-42, for mortgages executed after 7/1/1999.
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No. Statute expressly allows inclusion of attorney’s fees and costs.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No under standard procedure. Yes under alternate procedure.	
(a) How long is the reinstate period or when does the right expire?	No under standard procedure. Yes under alternate procedure. Up to three business days before sale, by paying delinquent amount plus costs and fees incurred by mortgagee because of default and proposed sale. § 667-27.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(b) Do borrowers receive a written notice of the right to reinstate?	Yes, in notice of sale. § 667-27.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. The procedures for service of the notice of sale under the standard procedure are at sec. 667-5 and allow service by posting and advertisement. For the alternate procedure, sec. 667-22 provides that the notice of sale has to be “served” on the mortgagor. Sec. 667-21 defines “serve” for the alternate procedure by reference to the general rule for service of process at sec. 634-35 and 634-36. This latter section provides that summons and complaints can be served either personally or by certified mail.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. § 667-27.	
(b) Limitations on deficiency judgments?	Yes, deficiency claims under alternate procedure are prohibited, § 667-38. For Standard (pre-1999 mortgages). deficiency claims allowed.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Surplus to mortgagor § 667-31.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
ii. Prompt return of surplus proceeds?	Affidavit of Sale to be recorded 30 days after sale. § 667.3.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Idaho**

Statutory citation: Idaho Code Ann. §§ 45-1505 to 45-515

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes. Must pay delinquent amount, costs and fees actually incurred, trustee's fee (regulated by statute) and attorney fees if contract so provides. § 45-1506(12).	
(a) How long is the reinstate period or when does the right expire?	For 115 days after recording of notice of default. § 45-1506(12).	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
loan is foreclosed?		
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Mail is sufficient for owner, but personal service must be attempted at least 3 times on adult occupant, with posting in a conspicuous place at each attempt. § 45-1506.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. § 45-1508.	
(b) Limitations on deficiency judgments?	Yes. Deficiency limited to the lesser of the difference between the debt and the fair market value (as found by the court) or the difference between the debt and the sale price. Action for deficiency must be brought within three months after sale. § 45-1512.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee applies proceeds in statutory order, with any surplus to debtor. § 45-1507.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Illinois**

Statutory citation: 735 Ill. Comp. Stat. 5/15-1501 to 1605; 815 Ill. Comp. Stat. 137/100 and 137/105 (High Risk Home Loans)

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially? OR	Yes. All mortgages. 735 Ill. Comp. Stat. § 5/15-1405.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No, except for high risk home loans.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		For high risk home loans, creditor must advise borrower who is 30 days late of availability of credit counseling, hold off on foreclosure if a debt management plan is worked out, and must give 30 days notice of right to cure before accelerating the loan. May not charge fees or penalty for exercise of cure, except those fees permitted by statute. Borrower not liable for any attorney fees or costs prior to or during cure period, and no fees in excess of \$100 incurred by holder after expiration of the 30-day period but before holder files a foreclosure action 815 Ill. Comp. Stat. § 137/100 and 137/105.

Consumer Protection Provisions	Statutory Cite & Description	Comments
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	90 days after service of summons. § 5/15-1602.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	If court specifically finds that borrower has exercised right to reinstate, the right may not be exercised again for five years from date of dismissal of earlier foreclosure. § 5/15-1602.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Complaint in foreclosure action is treated like that in any other civil action. 735 ILCS 5/2-203 (a) states that “except as otherwise expressly provided” the summons must be personally served.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. In general until the later of 7 months after service of complaint or 3 months after judgment. Special right of redemption for home mortgage if purchaser is the mortgagee, and sale price is less than amount specified in § 1603(d). 735 Ill.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	Comp. Stat. §§5/15-1603 and 1604.	
(b) Limitations on deficiency judgments?	No. Deficiency is explicitly permitted. § 5/15-1508.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Person who conducts sale must report to court; court confirms sale and directs the disposition of proceeds. § 5/15 - 1508.	
ii. Prompt return of surplus proceeds?	Court must review conduct of sale “promptly” after it occurs; order distribution of proceeds. § 5/15 - 1512.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Indiana**

Statutory citation: Ind. Code §§ 32-29-1-3, 32-29-7-1 to 32-29-7-14 and 32-30-10-1 to 32-30-10-14, and 24-9-5-1 to 24-9-5-3 (high cost home loans).

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. Ind. Code § 32-29-1-3.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes. If before final judgment, any interest or installment are due, but no other installments are due, and defendant pays the principal and interest, plus costs, at any time before judgment, the foreclosure must be dismissed. Stay can be lifted if a subsequent installment is missed. § 32-30-10-11.	
(a) How long is the reinstate period or when does the right expire?	Anytime before final judgment. After judgment, if defendant pays principal and interest due, proceedings must be stayed. Court can remove stay upon further default. . § 32-30-10-11(b).	For high cost home loans, right to cure and reinstate up to the time of transfer of title. § 24-9-5-2.
(b) Do borrowers receive a written notice of the right to reinstate?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?	Stay can be lifted if a subsequent installment is missed. § 32-30-10-11.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Service according to rules of civil procedure, which permit the service of a summons and complaint by certified mail or other public means by which a written acknowledgement of receipt may be requested ...” Ind. Rules of Trial Procedure, Rule 4.1(A)(1).	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	Deficiency permitted only if there is a written agreement, and the time limits prescribed in § 32-29-7-3 have not been waived. §§ 32-30-10-7 and 32-29-7-5.	State courts retain general equitable powers to limit deficiency claims.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Sheriff pays surplus to court for determination of surplus, including any surplus to debtor. § 32-29-7-9; 32-30-10-14.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Iowa**

Statutory citation: Iowa Code 654.1 to 654.26

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes.	Power of sale not permitted for one- or two-unit owner-occupied residences, or for agricultural land. §§ 654.1 and 655A.9.
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Before accelerating the debt or initiating foreclosure on a one- or two-unit owner-occupied dwelling, or on agricultural land, creditor must give debtor 30 days (45 for agricultural land) to cure default by tendering the lesser of the amount demanded in the notice or the unpaid installments (or tendering other performance needed to cure default). Right to cure not required if debtor has previous default within 365 days (or two previous defaults at any time for agricultural land). 654.2A to 654.2D. Written notice with detailed information about the default and right to cure must be given to debtor.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No express limitation.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No express limitation.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?	No.	Note that various provisions allow a foreclosure to be stayed, if the borrower admits default, and default resulted from certain climatic conditions or a state of economic emergency (up to two year delay - § 654.15) or if lender chooses foreclosure without right of redemption (one year delay for one-or two- unit residence or agricultural land. § 654.20).
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Rules of Civil Procedure 1.302 and 1.305 prescribe the process by which “original notices” (defined as the notice that an action has been filed) are personally served. Upon filing an affidavit that personal service “cannot be had”, service by publication is permitted.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the		

Consumer Protection Provisions	Statutory Cite & Description	Comments
foreclosure sale:		
(a) Right of redemption?	Yes. Creditor may elect foreclosure without right of redemption, in which case borrower can obtain one year delay of foreclosure of one-or two- unit residence or agricultural land. § 654.20. Otherwise, same as redemption for sale under general execution, § 654.5 One year from day of sale. Debtor entitled to possession during redemption period. For first six months, debtor's right to redeem is exclusive, § 628.3. Note, however, that mortgage may provide for a six-month redemption period, in which case lender waives right to deficiency, § 628.26. For agricultural land, borrower may redeem homestead (a parcel of up to 40 acres, which contains principle residence) separately. § 654.16.	
(b) Limitations on deficiency judgments?	Deficiency available – but waived if creditor elects foreclosure without right of redemption, and borrower does not exercise right to delay foreclosure. § 654.26.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Surplus to mortgagor. § 654.5 and § 654.7	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Kansas**

Statutory citation: Kan. Stat. Ann. §§ 60-2410 to 60-2415

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail, or various other methods that result in a receipt, may be used to serve process in a civil action. § 60-303.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Redemption period varies from 3 to 12 months, depending on percentage of debt which has been paid. § 60-2414. The three month redemption period may be extended for another three months if owner loses primary source of income after foreclosure.	
(b) Limitations on deficiency judgments?	Deficiency allowed, but court can deny confirmation of sale if price is inadequate, or set an upset price. § 60-2415.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Court must confirm sale. § 60-2415.	Court may exercise its equitable powers to refuse to confirm sale.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Kentucky**

Statutory citation: Ky. Rev. Stat. Ann. §§ 426.440, 426.525, 426.500, 426.530, 426.540. § 360.100 (high cost home loans)

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. § 425.525.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	For high cost home loan, lender must give 30 days notice of default and right to cure, including the amount needed to cure and that date when it must be paid. (Late charges are limited by statute.) § 360.100(2)(s).
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right		

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Rules of Civil Procedure, Rule 4.01 allows summons and complaint in civil action to be served by registered or certified mail.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Within one year, if sale does not bring in at least two-thirds of property's appraised value. §§ 426.220 and 426.530.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Court must confirm sale. § 426.500. Officer makes disbursements and distributes surplus to homeowner.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Louisiana**

Statutory citation: La. Code Civ. Proc. §§ 2631 to 2724

Most Common Method of Foreclosure: Judicial; “Executory proceeding”

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes, but very limited. (see comments).	Executory process resembles a hybrid between judicial and power of sale, If a mortgage contains a confession of judgment, creditor can petition the court for an order of seizure “without prior citation and judgment.” Debtor will then have to seek injunction or suspensive appeal to contest this.
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	Debtor may seek “suspensive appeal” or injunction to challenge order of seizure. Debtor may need to post bond. §§ 2642 and 2751 – 2754.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written		

Consumer Protection Provisions	Statutory Cite & Description	Comments
notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	For executory proceeding to foreclose personal service of citation not required. § 1201, 1243, 2640. In non-executory foreclosure personal service of citation is required. § 1201.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	Deficiency available in executory process action only if property is appraised pursuant to § 2723 and § 2771.	State courts apply “upset bid” requirement strictly against mortgage holder.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Sheriff distributes proceeds under statutory priorities. La. Code of Civil Pro. § 2373. Party with claim must intervene to challenge distribution. La. Code Civ. P. § 2643.	
ii. Prompt return of surplus proceeds?	No.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Maine**

Statutory citation: Me. Rev. Stat. Ann. tit. 14, §§ 6101 - 6325

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. Natural persons' mortgages, or any mortgage on owner-occupied property with four or fewer units, must be foreclosed judicially. § 6203-A	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. For certain residential mortgages, 30 days notice before acceleration.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	Right to cure by paying amount due plus "reasonable" late charges, interest and attorney fees. § 6111.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No. Note, however, that parties to foreclosure action are explicitly permitted – though not required – to make agreements for payments to bring mortgage current, and foreclosure proceedings will be stayed while these payments are made as agreed. § 6321.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Proceeding is commenced “in accordance with the Maine Rules of Civil Procedure.” Rule 4(c) permits service by mail. Personal service is required if defendant does not return signed acknowledgement of service in 20 days.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No, but see comment.	2007 Maine legislation authorized the Maine Housing Authority to make loans toward certain single family loans to prevent foreclosure. 30-A-M.R.S.A. § 4722BB.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. For mortgages executed after 10/1/75, ninety days after date of judgment, by paying the judgment amount with interest; for older mortgages, one year, unless the mortgage provides otherwise. § 6322.	
(b) Limitations on deficiency judgments?	Yes. Limited to the amount established as of the date of the sale. Also, if the mortgagee is the purchaser, by the fair market value as of the date of the sale. §§ 6323 and 6324.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Report must be filed with court. Parties have 30 days from the date of receipt of the report to file exceptions to the accounting. § 6324.	
ii. Prompt return of surplus	No specific statutory time frame, and	Section 6324 provides that

Consumer Protection Provisions	Statutory Cite & Description	Comments
proceeds?	requirement to pay surplus to mortgagor does not apply until after report of sale if filed with the court. Note that statute does not set deadline for filing of report and Maine court has held that 17-month delay in filing report was not unreasonable.	any surplus must be paid to the mortgagor. If the mortgagor has not appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the mortgagor, and, if the surplus remains unclaimed after 6 months, the clerk shall pay the surplus to the Treasurer of State.

Foreclosure Report

Survey of State Foreclosure Laws

State: **Maryland**

Statutory citation: Md. Code Ann. Real Prop. §§ 7-105.1 to 7-105.8 and Maryland Rules §§14-201 to - 209, and 14-305 and -306

Most Common Method of Foreclosure: Non-judicial; Power of Sale (sale must be ratified by court)

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No. Rule 14-209(b) allows borrower to move for injunction to stay the sale. Motion must include a statement whether debtor admits any amount is due (in which case that sum must be paid into court), and a detailed statement of facts showing that either the debt is fully paid, or there is no default, or fraud was used by the secured party in obtaining the lien.	
2. Is there a state law right to cure the default before loan is accelerated?	No. But see general right to cure before foreclosure sale, Item 3 below.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Up to 1 business day before foreclosure sale. § 7-105.1(h). (Foreclosure may take place the later of 90 days after default or 45 days after required notice of intent. § 7-105.1(b)(1)).	Secured party may obtain a waiver of the time limits, if it can show that the mortgage was obtained by fraud, or that

Consumer Protection Provisions	Statutory Cite & Description	Comments
		no payments have been made, or that the property has been destroyed, or that the default occurred after the stay was lifted in a bankruptcy. § 7-105.1(b)(2)
(b) Do borrowers receive a written notice of the right to reinstate?	Notice of intent must include information about right to cure. § 7-105.1(c)(4).	Notice must also inform homeowner about available counseling services.
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes, for order to docket. § 7-105.1(e). The other two notices (notice of intent and notice of sale) may be served by mail.)	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Yes, Bridge to Hope Loan Program. Required notice that accompanies an order to docket states that “Housing counseling and financial assistance are available through the Maryland Department of Housing and Community Development ...” § 7-105.1(d).	The Maryland Department of Housing and Community Development also operates a “Lifeline Refinance Program” to assist with certain high cost loans.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
i. Accounting for sales proceeds?	An audit is required when sale is ratified. Maryland Rules §§ 14-207(d) and 14-305 – 306.	A party may file exceptions to the sale within 30 days after the filing of the report of sale. Rule 14-305(d). There must be court approval of both judicial and non-judicial sales.
ii. Prompt return of surplus proceeds?	Subject to court review process.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Massachusetts**

Statutory citation: Mass. Gen. Laws Ann. Ch. 244, §§ 14, 17B, 18, and 35A (Ch. 183C, § 9 for high cost home mortgages)

Most Common Method of Foreclosure: Non-judicial; Power of sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	Requirement for a land court proceeding to determine whether borrower is an active duty service member. This is only issue that can be raised.
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. For owner-occupied dwelling with four or fewer units, lender may not accelerate for 90 days after giving of required notice of default and right to cure. The right to cure may be exercised only once in a five year period. Ch. 244 § 35A.	High Cost Home Mortgages: may not accelerate until consumer has been contacted in writing and afforded a “reasonable opportunity” to pay the outstanding balance. Ch. 183C, § 9.
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	Yes. Cure amount may include the amount due (without acceleration), plus late fees, which are limited by Ch. 183, § 59, and per diem interest, but not attorney fees accrued before or during the cure period, nor any fee for exercising the right to cure. Ch. 244 § 35A.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	See above.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No Registered or certified mail, plus publication. MGLA Ch. 244, § 14.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. MGLA Ch. 244, § 18.	
(b) Limitations on deficiency judgments?	No.	Mortgagee that intends to seek a deficiency must give borrower 21 days [instead of the usual 14] notice before foreclosure, and disclose that it intends to seek a deficiency. MGLA Ch. 244, § 17A.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Within sixty days after sale, holder or its representative must provide former homeowner with a detailed accounting for	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	the proceeds. Ch. 183, § 27.	
ii. Prompt return of surplus proceeds?	No statutory time frame for release of surplus.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Michigan**

Statutory citation: Mich. Comp. Laws §§ 600.3201 to 60.3280.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Publication and posting. § 600.3208.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Yes, for homeowners who have a Michigan's Save the Dream Mortgage Refinance Programs (MSHDA) mortgage and are experiencing temporary non-recurring difficulty paying the monthly MSHDA mortgage payments. Short term loans up to \$3,000, non-interest bearing, are available.	The Michigan State Housing Development Authority operates a program to provide assistance in refinancing adjustable rate mortgages.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Redemption period varies from one month to one year, depending on size of parcel, number of units, percentage of original loan outstanding, and whether property is abandoned. § 600.3240.	
(b) Limitations on deficiency judgments?	If mortgagee is directly or indirectly the purchaser, defendant may raise as defense or setoff that the value of the property at the time of sale equaled the amount of the debt, or that the sale price was substantially less than the property's true value. § 600.3280.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	After satisfying mortgage debt and costs of sale, individual who conducted sale disburses surplus to borrower; but if receives notice of claim by other lienholder, refers to court for determination of payment. § 600.3252.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Minnesota**

Statutory citation: Minn. Stat. §§ 580.01 to 580.30 and 582.30.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	May cure and reinstate up to the time of sale, by bringing loan current and paying certain fees and costs. § 580.30.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	2008 legislation requires additional notice of availability of counseling services. § 580.021. Does not establish any cure right.
(d) Are there any limitations on right to reinstate?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes, if service by mail not acknowledged. Notice served on occupant “like a summons.” § 580.03. Civil Procedure Rule 4.05 permits service by regular mail, with a stamped return envelope and an acknowledgement form enclosed. If the defendant does not fill out and return the form, personal service must be made, as required by Rule 4.02.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Foreclosure advice notice, which must be served with notice of sale, includes warnings about scams and advice to consult the Minnesota Housing Finance Agency. §§ 462A.209 et seq. This agency may fund programs (by non-profits and political subdivisions) to provide assistance to prevent mortgage foreclosures – including financial assistance to certain delinquent borrowers § 462A.209(7). May provide funds for mortgage, tax, etc. payments for up to six months, for a maximum of \$5500 per family. Agency may require repayment agreements.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. Redemption period of six or twelve months, depending on date of mortgage, size of property, and whether use is agricultural. § 580.23.	
(b) Limitations on deficiency judgments?	Deficiency not available in power of sale foreclosure if six month redemption period is applicable. § 582.30(2).	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales	Mortgagee distributes proceeds in priority	

Consumer Protection Provisions	Statutory Cite & Description	Comments
proceeds?	defined by statute, including any remaining surplus to mortgagor. § 580.90.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Mississippi**

Statutory citation: Miss. Code §§ 89-1-55 to 89-1-59.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Anytime up to the sale, may cure and reinstate by paying the delinquent amount and certain fees, costs, etc. § 89-1-59.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
loan is foreclosed?		
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Advertisement and posting. § 89-1-55.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	Deficiency permitted, § 11-5-111.	No statutory limitation on deficiency claims, but courts will apply equitable standards including fair market value limitation, particularly if lender buys at sale. <i>See e.g.</i> Hartman v. McInnis, 2007 WL 4200613 (Miss. Nov. 29, 2007).
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?	No.	
i. Accounting for sales proceeds?	No specific statutory provision regarding mortgage foreclosure sale proceeds.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Missouri**

Statutory citation: Mo. Rev. Stat. §§ 443.290 to 443.453

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail. § 443.325.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. If mortgage holder is purchaser, borrower may redeem up to one year after sale, but must give notice of intent to redeem within ten days before the sale, or at the sale. Borrower must post bond. § 443.410; § 443.420; § 443.430.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	No statutory provision for foreclosure sales. Trustee has discretion to file interpleader action.	Terms of deed of trust or common law address distribution of proceeds.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Montana**

Statutory citation: §§ 71-1-222 to 71-1-235 and §§ 77-1-301 to 71-1-321 (Small Tract Financing Act, which applies to parcels of 40 acres or less.)

Most Common Method of Foreclosure: Non-judicial: Power of Sale (two different procedures)

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No. Montana has two power of sale procedures, the general one in §§ 77-1-222 et seq. and the more recent “small tract financing act,” 77-1-301 et seq. which applies to parcels of 40 acres or less.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	General, no. Small Tract: yes, may reinstate and cure anytime up to time of sale, by paying delinquent amount plus certain costs and fees. § 71-1-312.	
(a) How long is the reinstate period or when does the right expire?	See above	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	General, yes, in-person service on occupant and mortgagor. § 71-1-224. Small tract, no, registered or certified mail. § 71-1-315.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Small Tract: no, purchaser takes possession ten days after sale, no redemption, §§ 71-1-318 and 71-1-319. General: yes, up to one year after sale, and borrower may remain on property during redemption period if it is a residence. § 71-1-229.	No redemption right after judicial foreclosure of small tract property. § 71-1-228 and § 71-1-229.
(b) Limitations on deficiency judgments?	Yes. Deficiency not allowed after power of sale foreclosure. §§ 71-1-232, 71-1-317.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee distributes along statutory priorities, but may deposit surplus with county treasurer for distribution by order of court. Surplus to borrower. § 71-1-316.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Nebraska**

Statutory citation: Neb. Rev. Stat. §§ 76-1005 to 76-1018

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes, by paying the delinquent amount, plus costs and fees actually incurred, up to the greater of \$50 or 1% of the delinquent amount. § 76-1012.	
(a) How long is the reinstate period or when does the right expire?	One month after filing of notice of default (two months for agricultural land). § 76-1012.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail. § 76-1008.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. § 76-1010.	
(b) Limitations on deficiency judgments?	Yes. Creditor must bring action within 3 months after sale. Deficiency limited to the lesser of the difference between the amount owed and the fair market value of the property, or the difference between the indebtedness and the sale price. § 76-1013.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee applies proceeds in accordance with statutory priorities. § 76-1011.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Nevada**

Statutory citation: Nev. Rev. Stat. §§ 107.080 to 107.100 and 40.455 to 40.463.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. May cure within 35 days after recording of notice of default. § 107.080(3).	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	Yes. Notice of default must describe the deficiency in performance or payment, and costs and fees limited to those incident to preparation or recordation of the notice.	For certain high-cost home loans, additional notice required, sixty days before date of sale, warning debtor of impending loss of home, and providing contact information for the lender, the state office of credit counseling, certain other agencies, and legal services. § 107.085. [See high cost home loan statute, §§ 598D.010 to 598D.150.]
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written		

Consumer Protection Provisions	Statutory Cite & Description	Comments
notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail for both notices. § 107.080(2) through (4).	For certain high cost home loans, personal service required unless excused by the court. § 107.085.
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. § 107.080(5).	
(b) Limitations on deficiency judgments?	Yes. Deficiency limited to lesser of difference between indebtedness and fair market value, or difference between indebtedness and sale price. §§ 40.455 and 40.459.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee distributes proceeds under statutory priorities with surplus to debtor, but may refer for interpleader action if there are disputed claims. § 40.462.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	See Nev. Rev. Stat. § 40.463, which regulates contracts between debtors and third parties who offer to assist debtors in recovery of surplus after

Consumer Protection Provisions	Statutory Cite & Description	Comments
		foreclosure sale. Contracts that violate the statute are void. Fees charged must be reasonable.

Foreclosure Report

Survey of State Foreclosure Laws

State: **New Hampshire**

Statutory citation: N.H. Rev. Stat. Ann. §§ 479:18 and 479:25 to 479:26.

Most Common Method of Foreclosure: Non-judicial: Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	Notice of sale must contain specified language informing homeowner of right to petition court to enjoin sale, subject to a bond requirement. § 479:25(II).
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
engage in loss mitigation before the loan is foreclosed?		
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail permitted. § 479:25(II)	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. Redemption only before sale, by paying full amount due. § 479:18.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee must report to court within ten days after sale. Court may confirm sale or order resale. §§ 479:23. Court may confirm or set sale aside. § 479:24. Any interested person may be heard or intervene in confirmation process.	
ii. Prompt return of surplus proceeds?	No statutory time frame, though court may determine when surplus released.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **New Jersey**

Statutory citation: N.J. Stat. Ann. §§ 2A:50-1 to 2A:50-21 and 2A:50-53 to 2A:50-62
(residential mortgage only)

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. § 2A:50-2 through 2A:50-2.3.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Right to cure thirty days before commencement of judicial action to foreclose. § 2A:50-56.	Notice must include information about lender contacts.
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	Yes.	<i>See Spencer Savings Bank SLA v. Shaw</i> , 949 A.2d 218 (N.J. Super. 2008) (statute bars assessment of attorney's fees during period between notice and commencement of foreclosure lawsuit.
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	n/a	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Up to the time of judgment, may cure and reinstate by paying delinquent amount and certain costs, fees, etc. § 2A:50-56.	
(b) Do borrowers receive a written notice of the right to reinstate?	Yes. Detailed notice must include explanation of how to cure, and contact information for assistance programs and legal assistance. § 2A:50-56. Right may be	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	exercised once in 18 months, measured from the date of reinstatement. § 2A:50-57. Judgment in foreclosure action may be delayed up to forty five days, if debtor submits a statement of good faith belief that debtor will be able to cure within that time. § 2A:50-58.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	Yes.	Attorney's fees recoverable after commencement of foreclosure action, subject to regulations. § 2A:50-56(6),(7).
(d) Are there any limitations on right to reinstate?	Yes. Right may be exercised once in 18 months.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	On Oct. 16, 2008, the Chief Justice of N.J. Supreme Court initiated a program to require mediation in a foreclosure cases. Program to begin in selected counties with intent to expand statewide. Legislature appropriated \$12 million in Jan. 2009 to support mediation programs.	Under program mediation is mandatory if homeowner files answer. Homeowner can also request mediation at any time and move for stay of sale to complete mediation. Stay of sale must be approved by court on case by case basis.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Personal service is primary method of service for foreclosure complaint and summons. N.J. Rule of Court 4:4-4(a).	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Mortgage Stabilization Program and Housing Assistance Recovery Program created Dec. 2008 appropriate funds for loans to avoid foreclosure.	Statute effective Sept. 2008 has provided for stay of interest increases on certain adjustable rate mortgages. 46:10B-42/
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes, but only if creditor sues for and recovers a deficiency, the foreclosure judgment and sale is opened, and debtor has six months from date of judgment to redeem, by paying the amount of the judgment with interest, costs, and reasonable expenses. § 2A:50-4.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(b) Limitations on deficiency judgments?	Yes. Creditor may bring action on the note within three months for a deficiency. Amount is limited by fair market value of the property. Creditor's recovery of a deficiency judgment gives debtor six month right of redemption. §§ 2A:50-3 to 2A:50-4.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Sheriff or officer pays out proceeds according to court's judgment; surplus is paid into court; court supervises disposition of surplus. § 2A:50-37.	
ii. Prompt return of surplus proceeds?	Court orders distribution of surplus in confirming sale.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **New Mexico**

Statutory citation: 48-7-7, 39-5-1- to 39-5-23 (judicial), 48-10-1 to 48-10 (power of sale), 58-21A-1 to 58-21A-1 (high cost home loans).

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No. The power of sale statute was amended in 2006, to remove the prohibition on powers of sale in residential deeds of trust. As power of sale is likely to be the more common method for post-2006 contracts, both procedures are summarized.	High cost home loans must use judicial foreclosure. § 58-10A-(6)(E).
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	High cost home loan, lender must give notice 30 days before initiating foreclosure, describing the default, the sum necessary to cure, and contact information for the lender. Borrower may cure anytime up to the time of sale. Fees are regulated by statute. § 58-21A-6
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before	No (except for procedure described above for high cost home loans).	

Consumer Protection Provisions	Statutory Cite & Description	Comments
the foreclosure sale?		
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Judicial: mail or commercial courier service with a signed receipt is sufficient, N.M. Rules Ann. rule 1-004(E) and (F). Power of sale: registered or certified mail. § 48-10-11 and 48-10-12.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. Up to nine months after sale. §§ 39-5-17 to 39-5-21 and 48-10-16.	
(b) Limitations on deficiency judgments?	Yes. Deficiency forbidden for power of sale foreclosure on property of low income household, § 48-10-17.	Low income defined as less than 80% of median for household size based on loan application income.
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Power of sale. Trustee distributes along statutory priorities, may chose to deposit surplus with clerk of court for court to determine. Surplus to borrower. § 48-10-15.	
ii. Prompt return of surplus	No statutory time frame.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
proceeds?		

Foreclosure Report

Survey of State Foreclosure Laws

State: **New York**

Statutory citation: N.Y. Real Prop. Act. Law §§ 1301 to 1391

Most Common Method of Foreclosure: Judicial (see comments)

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes.	Provision for residential mortgages listed to sunset on 7/1/2009. § 1401.
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Anytime before judgment, may pay delinquent amount, plus certain specified costs and fees, and mortgage will be reinstated. After judgment and before sale, may pay delinquent amount and certain costs and fees, after which foreclosure proceeding will be stayed. § 1341.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	Notice that must be served with summons and complaint (for residential mortgages) advises homeowner that help may be available from "government agencies, legal aid entities, and

Consumer Protection Provisions	Statutory Cite & Description	Comments
		other non-profit organizations” and provides a phone number for a banking department hotline for referrals. § 1303 (notice also warns about homesaver scams). Additional new summons language warns homeowners generally to act to protect legal rights. § 1320.
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	The Chief Judge of the New Your State Unified Courts issued a report establishing a Statewide Program for Residential Owner Occupied Foreclosures in June 2008. The initial pilot program was to operate in Queens and expand statewide.	Under program notice of availability of mediation to be served with complaint. Defendant can request extension of time to complete mediation. Working with counselor or attorney required.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Personal service is primary method of service for foreclosure complaint and summons. CPLR Rule 308. Alternative mail service with defendant’s voluntary acknowledgement is permitted under CPLR 312-a.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	The New York “Keep the Dream Mortgage Refinancing Program” operated by the State of New York Mortgage Agency (“SONYMA”) is authorized to provide refinancing for certain adjustable rate high risk mortgages.
7. Does the state statute provide any protection for consumers after the		

Consumer Protection Provisions	Statutory Cite & Description	Comments
foreclosure sale:		
(a) Right of redemption?	No redemption after sale. § 1352.	
(b) Limitations on deficiency judgments?	Deficiency available if debtor was served in-hand, or appeared in foreclosure action. Limited by fair market value of the property. § 1371.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Seller must report to court within thirty days after sale. Sale must be confirmed by court. § 1355	
ii. Prompt return of surplus proceeds?	Seller must pay surplus into court within five days of receipt. § 1354. Court causes distribution to “such persons as are entitled thereto. § 1362.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **North Carolina**

Statutory citation: N.C. Gen. Stat. §§45-21.1 – 45-21.38.

Most Common Method of Foreclosure: Non-judicial; Power of sale with prior hearing before clerk.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	Opportunity for hearing before clerk of court. Issues which may be considered are existence of valid debt, default, right to foreclosure, and proper notice. Clerk’s findings may be appealed to a judge, within ten days. § 45-21.16. (There is also a procedure to enjoin a sale, upon legal or equitable grounds, including inadequacy of the amount bid or price offered. Homeowner must post a bond. § 45-12.34. The notice of hearing must advise the homeowner of the existence of this procedure).	Recent legislation enacted in North Carolina, which will expire on October 31, 2010, requires that mortgage holders foreclosing a “subprime” loan as defined in the law must include in the initial foreclosure notice either a statement of compliance with the subprime preforeclosure notification requirement or a statement that the loan is not “subprime.” If the court clerk determines that the certification is “materially inaccurate” it may be grounds for dismissal of the foreclosure action without prejudice and for payment of borrower costs defending the action.
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Legislation enacted in 2008 requires servicers to send borrowers notice 45 days before initiating foreclosure, informing borrowers of amount owed and contacts for lender information and housing counseling. § 53-243.11(21).	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		Written notice of hearing (filed ten days before hearing, the second of three required notices) must disclose “any right of the debtor to pay the indebtedness or cure the default, if such is permitted.” N.C. Gen. Stat. Ann. § 45-21.16(c)(5).
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	Commissioner of Banks may suspend foreclosures up to 60 days upon evidence of violation of servicer obligations. § 53-243.12, § 45-21.16B, §45-104-105. Commissioner to require servicers and brokers to provide data on fees, charges, and other characteristics of loans. § 53-243.10.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Notice of hearing is served like a summons §45-21.16. Civil procedure rules permit registered or certified mail or the use of certain delivery services. N.C. Gen. Stat. § 1-1A Rule 4(j)(1)(c) - (e); 4(d)(2)(A)(v).	
6. Is there a State emergency fund or similar program available to assist	Yes. Homeowner must be a worker who has lost his or her job in a designated county	

Consumer Protection Provisions	Statutory Cite & Description	Comments
borrowers in default?	even if he or she does not live in that county. Short-term zero interest loans are available for: lesser of \$20,000 or 18 months of monthly mortgage payments; or the minimum amount required to bring the mortgage current.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. May redeem, by paying amount of obligation, plus expenses of sale, during the period when upset bids are permitted – ten days after sale, or after filing of upset bid. N.C. Gen. Stat. Ann. §§ 45-21.20 and 45-21.27.	
(b) Limitations on deficiency judgments?	Yes. Borrower may show the market value of the property as defense to deficiency action if mortgagee was purchaser at sale. § 45-21.36. No deficiencies at all on purchase money mortgages if mortgagee was seller. § 45-21.38.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Statute ranks priorities for distribution; trustee pays surplus to court in specific instances defined by statute. § 45-21.31.	
ii. Prompt return of surplus proceeds?	Preliminary report of sale must be filed by trustee within five days of sale. § 45-21.26. Surplus must be paid to “the person entitled to it”, but no time frame provided. N.C. Gen. Stat. Ann. § 45-21.31(b).	

Foreclosure Report

Survey of State Foreclosure Laws

State: **North Dakota**

Statutory citation: N.D. Cent. Code §§ 32-19-01 to 32-19-41;

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Power of sale foreclosures forbidden, except for certain mortgages held by the state or its agencies. § 35-22-01.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Thirty day cure period after pre-foreclosure notice of default and before commencement of any action or proceeding to foreclose. May cure by paying delinquent principal, interest, and advances for taxes, insurance and maintenance. Notice of default must include itemization of amounts required to cure.§§ 32-19-20 to 32-19-21 and 32-19-28.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	The sections permitting reinstatement were repealed in 2005. §§ 32-19-12 and 32-19-13.
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an		

Consumer Protection Provisions	Statutory Cite & Description	Comments
itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Summons and complaint served in accordance with rules of civil procedure. § 32-19-29. Personal service is primary method of service, with service by publication allowed only with court approval and upon a showing of due diligence to complete personal service. N.D. R. Civ. P. 4(e)(1)(C).	Notice of intent to foreclose may be served by mail. § 32-1-9-22.
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes, within sixty days of sale (one year for agricultural land measured from filing of foreclosure action). Owner has paramount right to redeem § 32-19-18.	
(b) Limitations on deficiency judgments?	Yes. Deficiencies not permitted for foreclosures of residential property of four or fewer units on 40 acres or less; for agricultural land of more than 40 acres, amount must be based on appraised value. § 32-19-03.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	After initial distribution to mortgagor and for expenses of sale, surplus is brought into court and disbursed under court supervision. § 32-19-10.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
ii. Prompt return of surplus proceeds?	Court orders distribution of surplus, no statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Ohio**

Statutory citation: Ohio Rev. Code Ann. §§ 2323.07, 5301.39, 5721.18

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.		
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	Chief Justice of Ohio Supreme Court in early 2008 proposed that county common please courts develop foreclosure mediation program. Supreme Court promulgated	Homeowner defendant can request extension of time to answer complaint in order to complete

Consumer Protection Provisions	Statutory Cite & Description	Comments
	general guidelines in November 2008. A number of county courts have adopted their own procedures under the general guidelines.	mediation. Court can order mediation to proceed under pre-existing mediation system, or allow normal scheduling to proceed.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail is permitted by Ohio Civil Rule 4.1(1).	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Borrower can pay amount of judgment, with costs and interest, before confirmation of sale and redeem. § 2329.33.	
(b) Limitations on deficiency judgments?	Property cannot be sold for less than 2/3 of appraised value. § 2329.20 and 2 2329.17.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Officer pays surplus to court; court must confirm sale and distribution. § 2329.44	Confirmation must be determined within reasonable time after sale. Court must make “careful examination of the proceedings of the officer making the sale.” § 2329.31 and § 2329.44.
ii. Prompt return of surplus proceeds?	Notice to debtor within 90 days of sale indicating any surplus debtor may claim. Surplus must be paid to borrower on demand. § 2329.31.	Statute requires back up mailing efforts if notice returned as undelivered.

Foreclosure Report

Survey of State Foreclosure Laws

State: **Oklahoma**

Statutory citation: Okla. Stat. title 12, §§ 686, 764 to 765, 773 (judicial); title 46, §§ 41 to 49 (power of sale); title 42, §§ 18 to 20 (redemption).

Most Common Method of Foreclosure: Non-judicial; Power of sale with borrower right to elect judicial foreclosure

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	Yes. Power of sale may be used for homestead property only if <i>borrower</i> chooses to allow it. After creditor begins power of sale foreclosure, borrower may require judicial. (A borrower who allows a power of sale foreclosure receives certain benefits – a right to cure, and the ability to bar a deficiency. Tit. 46, § 41).	Mortgage document must include disclosure that if borrower sends a written notice by certified mail to the mortgage holder that a “judicial foreclosure is elected” at least ten days before the home is to be sold under the power of sale, the mortgage holder must stop the power of sale foreclosure and bring a judicial proceeding.
2. Is there a state law right to cure the default before loan is accelerated?	Yes, if borrower allows power of sale foreclosure of homestead property. Thirty-five day notice before acceleration. Must describe default and amount needed to cure. (Not required if there have been four defaults within 24 months.) Title 46, § 44.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Notice of sale for power of sale foreclosure must be personally served. Title 46, § 45. Other notices, for judicial foreclosure or power of sale notice of intent, may be served by mail. Title 12, § 764, title 46, §§ 44 and 45. Summons and complaint in judicial foreclosure may be served personally or by mail. 12 Okla. Stat. Ann. § 2004.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes, up to confirmation of sale (judicial or power of sale). Title 42, §§ 18 to 20, title 46, § 43(B).	
(b) Limitations on deficiency judgments?	Yes, if borrower allows power of sale foreclosure on homestead property, borrower may bar deficiency judgment. Must file notice at least ten days before foreclosure sale. Title 46, § 43. Otherwise, the mortgagee must move for a deficiency judgment within ninety days of sale. Okla. Stat. tit. 12, § 686. A deficiency judgment is limited by the market value of the property on the date of sale. Okla. Stat. tit. 12, § 686.	
(c) Accounting or other procedure for		

Consumer Protection Provisions	Statutory Cite & Description	Comments
foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	After the sale, notice of the confirmation hearing must be given to all persons who received the Notice of Sale. Objections may be filed. Okla. Stat. tit. 12, § 765.	Sheriff holds proceeds pending court review.
ii. Prompt return of surplus proceeds?	Surplus to borrower. No statutory time frame. Title 12, § 773, Title 46, § 48.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Oregon**

Statutory citation: Or. Rev. Stat. §§ 86.735 to 86.795.

Most Common Method of Foreclosure: Non-judicial; Power of sale.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Up to five days before sale, may cure and reinstate. Fees limited to the lesser of \$1000 or amount actually spent for attorney and trustee fees. §§ 86.753.	
(b) Do borrowers receive a written notice of the right to reinstate?	Yes. Notice of sale (120 days before sale) must disclose right to cure. § 86.745.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No, but up to 15 days before sale, borrower may request a detailed written statement of the amount needed to cure. §§ 86.757 and 86.759.	
(d) Are there any limitations on right	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Notice of sale must be personally served on occupant of property. (Three tries required. Posting on premises at time of first two unsuccessful attempts, mail addressed to “occupant” if third attempt fails). § 86.750.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No redemption after sale. § 86.770(1).	
(b) Limitations on deficiency judgments?	Yes. No deficiency allowed after power of sale foreclosure. No deficiency after judicial foreclosure of residential mortgage. § 86.770(2).	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee applies proceeds in accordance with statutory order.	
ii. Prompt return of surplus proceeds?	Surplus to borrower. No statutory time frame. § 86.765.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Pennsylvania**

Statutory citation: 35 Pa. Stat. Ann. §§ 1680.402c to 1680.409c; 41 Pa. Stat. Ann. §§ 403, 404, 406; Pa C.S.A. § 8103, Pa. R.C.P. 1141 to 1150.

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Notice of intent to foreclose must be sent to borrower at least 30 days before acceleration. 41 Pa. St. Ann. § 403.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	Yes. No attorneys' fees may be charged prior to or during 30-day period. 41 Pa. St. Ann. § 406. (See 3 below for discussion of reinstatement after 30-day period).	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	After notice intent to foreclose, and up to one hour before the beginning of bidding at the sale, may cure and reinstate by paying the delinquent amount plus certain fees. 41 Pa. St. Ann. §§ 404 and 406. Attorney's fees limited to \$50 if no foreclosure complaint filed; must be reasonable and actually incurred.	
(b) Do borrowers receive a written notice of the right to reinstate?	Yes. Notice of intent to foreclose must include notice of right to cure/reinstate. 42	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	Pa. St. Ann. § 403c. If the Housing Finance Agency has funds available for emergency assistance, notice must also inform homeowner of the availability of this assistance. 36 Pa. Stat. Ann. §§ 403c and 409c.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No, though notice must state exactly “what some of money” must be tendered to cure. 41 Pa. St. Ann. § 403.	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No state-wide program. In First Judicial District (Philadelphia) the President Judge has implemented Residential Mortgage Foreclosure Diversion Pilot Program with Order of April 16, 2008. Sheriff sales stayed pending conciliation conferences. Must be certification of completion of conciliation session before foreclosure sale can proceed.	Allegheny County (Pittsburgh) court implemented Residential Mortgage Foreclosure Program in January 2009. Stays proceedings for up to 90 days for mediation sessions.
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Service in foreclosure actions conforms to general civil rules requiring personal service. Pa. R.C.P. 1141(b), incorporating Rules 402 and 410. The notice of intent to foreclose under 41 Pa. Stat. Ann. § 403 must be served by certified mail.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Yes. The Pennsylvania Housing Finance Agency is empowered to provide emergency mortgage assistance for owner-occupied one or two unit dwellings. 35 Pa. St. Ann. §§ 1680.402c to 1680.409c	Program is in effect only if the agency has sufficient funds. 35 Pa. Stat. Ann. § 1680.409c.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	Creditor may sue for deficiency after sale. If creditor is directly or indirectly the purchaser, deficiency limited by fair market	

Consumer Protection Provisions	Statutory Cite & Description	Comments
	value of property. 42 Pa. Con. St. Ann. § 8103(a).	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Sheriff files proposed schedule of distribution of proceeds. If objections filed, sheriff refers to court for distribution under court order. Pa. R. Civ. P. 3136.	
ii. Prompt return of surplus proceeds?	Sheriff must file report within 30 days of sale; waits 10 days for objections; distributes proceeds after 10 days if no objections; sends proceeds to court if objections made.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Puerto Rico**

Statutory citation: P.R. Laws Ann. tit.30, §§ 2701 to 2725.

Most Common Method of Foreclosure: Judicial (Summary Procedure)

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. § 2701.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. Right to cure for 20 days after notice of default and before beginning judicial foreclosure; mortgagee must provide notice of this right. Borrower must pay delinquent amount, which does not include attorney fees. § 2703.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	Yes.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	30 days after issuance of writ, borrower may pay the “amounts claimed” and reinstate. § 2710.	
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right	No.	The thirty day period

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?		cannot be extended. § 2710.
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Summons must be served by marshal. § 2714.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. § 2710.	
(b) Limitations on deficiency judgments?	Deficiency not available through summary foreclosure proceeding, but available through alternative procedures.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Court must carefully examine record of conduct of sale. § 2725. Court orders distribution of proceeds. § 2726.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Rhode Island**

Statutory citation: R.I. Gen. Laws §§ 34-27-1 to 34-27-5, 34-11-22 and 34-23-3

Most Common Method of Foreclosure: Non-judicial; Power of Sale.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Mail and publication. §§ 34-27-4 and 34-11-22.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	Some limited assistance available under “emergency housing assistance, § 42-55-22.3 administered by the department of human services and the housing and mortgage finance corporation.
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	For rare foreclosure by process of law or by peaceable and open entry, up to three years after mortgagee takes actual possession of property. § 34-23-3.
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	No.	Creditor or its attorney makes distribution sale proceeds, pays surplus to mortgagor. § 34-11-22.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **South Carolina**

Statutory citation: S.C. Code Ann. §§ 15-39-610, 29-3-610 to 29-3-790, 37-23 -10 to 37-23-85 (high cost home loans).

Most Common Method of Foreclosure: **Judicial**

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. S. C. Code Ann. § 29-3-630.	After maturity of debt and not more than twelve months before sale, borrower may agree to amount of debt, and power of sale may be exercised §§ 29-3-630 and 29-3-640).
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. South Carolina Rules of Civil Procedure, Rule 4(d)(8) permits service by certified mail.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No redemption after sale. Redemption possible for five days after sheriff “takes” property. § 15-39-610.	
(b) Limitations on deficiency judgments?	Deficiency judgments permitted, §§ 29-3-660 and 29-3-670, but borrower may seek an appraisal within thirty days after sale. The right to an appraisal cannot be waived in a residential mortgage or consumer credit transaction. Deficiency is limited by the appraised value. §§ 29-3-680 to 740.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Court’s foreclosure decree sets out payment of claims. § 29-3-630 and § 29-3-650.	§ 15-39-900 applicable to judicial sales generally and payments to prior judgment creditors.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **South Dakota**

Statutory citation: §§ 21-48-1 to 21-48-26 (power of sale); 21-47-1 to 21-47-25 (judicial); 21-49-11 to 21-49-40 (180-day redemption mortgage).

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	Yes. After being notified of foreclosure by power of sale, borrower may demand judicial foreclosure. No reason need be given. §§ 21-48-9.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	South Dakota law also provides for a “180 day redemption mortgage”, §§ 21-49-11 to 21-49-40, which includes a 20-day right to cure before acceleration, § 21-49-13(1).
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No, in power of sale foreclosure. In foreclosure by action, borrower may cure default and stay the proceedings by paying into court the amount then due, with costs and disbursements. §§ 21-47-8 to 21-47-10.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?	.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Notice of power of sale typically served personally. § 28-48-6.1	Civil procedure statute allows service by publication and mailing only if court finds that defendant cannot be found in South Dakota, § 15-9-7. Section 15-2-31 states that an action is “commenced” when the summons is delivered to the sheriff for service.
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes. After judicial foreclosure one year general redemption period. § 21-52-11. But loan documents may provide that statute with shorter 180 day period for redemption applies. § 21-49-12 and § 21-49-38.	
(b) Limitations on deficiency judgments?	Yes. If power of sale foreclosure and property purchased directly or indirectly by creditor, deficiency limited by fair market value of property. § 21-48-14. If borrower and creditor agree to a voluntary foreclosure pursuant to §§ 21-48A-1 to 21-48A-5, there is no deficiency and no surplus. § 21-48A-1. If judicial foreclosure, court can refuse to confirm judicial sale if fair market value not bid at sale; burden of proof on lender seeking deficiency to establish value. § 21-47-16.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Surplus is paid into court, and borrower and junior lienholders are notified. §§ 21-48-16 and 21-47-18.	
ii. Prompt return of surplus proceeds?	No statutory time frame for distribution of surplus.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Tennessee**

Statutory citation: Tenn. Code Ann. §§ 35-5-101 to 35-5-111, 66-8-101 to 66-8-103;
§§ 45-20-101 to 45-20-111 (high cost home loans).

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	Injunction procedure available, to seek stay of power of sale foreclosure sale. Issues are whether debt has been paid, or whether “circumstances of fraud...vitiates the contract.” See §§ 23-29-201 to 23-29-204.
2. Is there a state law right to cure the default before loan is accelerated?	No.	Borrowers with high cost home loan must receive detailed notice of right to cure for 30 days after date notice served: nature of default, amount needed to cure, deadline for cure, contact information for lender. § 45-20-104 No attorney’s fees may be included in cure amount.
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before	No.	Yes, for high cost home loans.

Consumer Protection Provisions	Statutory Cite & Description	Comments
the foreclosure sale?		
(a) How long is the reinstate period or when does the right expire?		For high cost home loans only, right to cure and reinstate up to 3 days before foreclosure sale. § 45-20-104
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		For high cost home loans only, this right may not be invoked more than once in any 12-month period. § 45-20-104
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail. § 35-5-101(e).	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. Redemption period of two years, but right to redemption may be waived in mortgage or deed of trust, and is routinely waived. 66-8-101 to 66-8-103.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales	No court supervision over distribution of	Mortgagor must bring

Consumer Protection Provisions	Statutory Cite & Description	Comments
proceeds?	proceeds.	legal action to challenge distribution.
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Texas**

Statutory citation: Tex. Prop. Code Ann. §§ 51.001 to 51.003.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	For residential mortgage, mortgage servicer must give 20 days notice of “right to cure default” before giving notice of sale. § 51.002(d).	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
loan is foreclosed?		
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail or posting allowed. § 51.002.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	If court determines that fair market value is greater than sale price, borrower is entitled to an offset. § 51.003.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	No statutory regulation of distribution of proceeds. Courts follow common law standards that set priorities.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Utah**

Statutory citation: Utah code Ann. §§ 57-1-19 and 57-1-23 (power of sale) to 57-1-34;
78-37-1 to 78-37 9 (judicial foreclosure)

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Within three months after notice of default, borrower may pay the sum then due, including costs and fees actually incurred, and reinstate the mortgage. § 57-1-31	
(b) Do borrowers receive a written notice of the right to reinstate?	Notice of default must describe the default – but no requirement that right to reinstate be explained. § 57-1-24.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?	No.	
(d) Are there any limitations on right	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified mail is sufficient for both notice of default and notice of sale. §§ 57-1-24 and 57-1-25.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	Six month redemption period for judicial foreclosure. § 78B-6-906.
(b) Limitations on deficiency judgments?	Yes. Action for deficiency must be brought within three months after sale. Amount is limited to the difference between the debt (including specified costs, fees, etc.) and the fair market value. § 57-1-32.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee applies proceeds in statutorily prescribed order, with surplus to borrower. (Or trustee may exercise discretion to pay proceeds into court). § 57-1-29.	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Vermont**

Statutory citation: Vt. Stat. Ann. tit. 12 §§ 4526, 4528, 4531, 4532; Vt. Rules Civ. P. Rule 80.1

Most Common Method of Foreclosure: Judicial (strict foreclosure)

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	For owner-occupied one- or two-unit residence, or for farmland, judicial foreclosure is mandatory. Vt. Stat. Ann. tit. 12, § 4531a(a). For foreclosure by “strict foreclosure,” there is no foreclosure sale and the borrower’s property rights are terminated at the expiration of the time period set by the court’s foreclosure decree. Vt. Stat. Ann. Tit. 12 § 4528.	A non-judicial power of sale procedure exists, but may not be used for owner-occupied one- or two-unit dwelling. In the judicial proceeding, a sale (instead of strict foreclosure) is available on “the written motion of any party to any suit for foreclosure” or “at the discretion of the court” or in cases where strict foreclosure is forbidden by application of certain federal laws, or when the court finds there is substantial value in the property in excess of the debt. Vt. Stat. Ann. Tit. 12 §§ 4528(b), 4531(b).
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Service according to Vt. Rule Civ. P. Rule 4. Personal service must be attempted; service by mail allowed if personal service cannot be accomplished “with due diligence.” Vt. Rule Civ. P. Rule 80.1.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	The Department of Children and Families may provide rental or mortgage arrearage assistance to certain eligible families. This is not an entitlement, and is limited to funds appropriated. Available only to families with at least one dependent child, who have had income reduced by an extraordinary event [defined] and the payments will prevent, not just postpone, homelessness. Tit. 33, § 2114.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	In judicial strict foreclosure with no sale, homeowner can redeem for 6 months from judgment and retain possession. 12 V.S.A. § 4528. In judicial foreclosure with sale, may

Consumer Protection Provisions	Statutory Cite & Description	Comments
		redeem until sale. 12 V.S.A. § 4532(i). Sale cannot take place within 7 months of filing of foreclosure complaint.
(b) Limitations on deficiency judgments?	In strict foreclosure without sale, mortgage holder must plead claim for deficiency and obtain separate judgment, limited by fair market value of property. In judicial foreclosure with sale, lender must ask for deficiency in complaint, debt limited by fair market value if lender buys at sale. Vt. R.C.P. 80.1(j)(2). <i>See</i> Reporter's Note to Rule 80.1, 1982 amendments.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	After sale, seller reports to court within ten days. Court confirms or sets aside. Order of confirmation directs the distribution of proceeds; surplus to borrower. Vt. Rules Civ. P. 80.1(j)(1).	
ii. Prompt return of surplus proceeds?	Timing in accordance with court motion practice.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Virginia**

Statutory citation: Va. Code §§ 55-59 to 55-66.6.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	Under high cost loan statute, may cure 10 days before notice of acceleration, plus 30 additional days if homeowner responds to notice. Lender required to make good faith efforts at loss mitigation. § 55-59.1:1.
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No. (Except that deed of trust <i>may</i> provide for cure and reinstatement. § 55-60(5a).)	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Regular mail is permitted. §§ 55-59.1 and 55-59.2	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No.	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Within six months of sale, trustee must account for proceeds to the commissioner of accounts of the court where deed was recorded. § 26-15. Commissioner must settle account and report to court. Judge must review report within 15 days. May confirm or decline to do so. If no objection, report final 15 days after filing with court. §26-33. Surplus goes to the borrower. §§ 26-15 and 55-59.4(3)	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Virgin Islands**

Statutory citation: : V.I. Code Ann. Title 28, §§ 531 to 538 (judicial foreclosure); see also title 5, §§ 484 and 492 to 496 (sale and redemption procedure).

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	Yes.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes. Liens on real property, except for judgment liens, whether created by a mortgage or otherwise “shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature.” Title 28, § 531.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Up to time of sale, by paying delinquent amount, plus costs of action. Title 28, § 538.	
(b) Do borrowers receive a written notice of the right to reinstate?	No.	
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes. Summons and process in civil matters is to be served “in same manner as required to be served by Rule 4 of the Federal Rules of Civil Procedure. V.I. R. Terr. Ct. Rule 27. Rule 4 (e) requires personal service on either the defendant, a person of suitable age at the defendant’s usual place of abode, or the defendant’s authorized agent.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Yes, for six months after confirmation of sale. title 28, § 535, title 5, §§ 492, 493 and 496.	
(b) Limitations on deficiency judgments?	Creditor who seeks deficiency must sue on the note at the same time it seeks foreclosure.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Sale of real property must be confirmed by court. Judgment debtor has five days to object. Proceeds are paid into court. Debtor who waives objections receives any surplus before confirmation. Title 5, § 489.	
ii. Prompt return of surplus proceeds?	See (c)(i), above.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Washington**

Statutory citation: Wash. Rev. Code §§ 61.24.020 to 61.24.140

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No. (except for farmland).§ 61.24.020 and 61.24.030.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	May bring action to restrain the sale. § 61.24.130. Borrowers must be advised of this right in the notice of default and notice of sale. §§ 61.24.030 and 61.24.040.
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes.	
(a) How long is the reinstate period or when does the right expire?	Up to 11 days before sale date, by paying amounts of principal and interest due, and certain reasonable expenses and fees actually incurred. § 61.24.040 and 61.24.090.	
(b) Do borrowers receive a written notice of the right to reinstate?	Yes. Notice of sale must disclose right to cure and deadline, and itemize cure amount. § 61.24.040	
(c) does the notice include an	Yes. Notice of sale must itemize cure	

Consumer Protection Provisions	Statutory Cite & Description	Comments
itemization of all fees and other amounts necessary to reinstate?	amount. § 61.24.040	
(d) Are there any limitations on right to reinstate?	No.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Registered or certified and first class mail. §§ 61.24.030 and 61.24.040.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	Yes. Emergency Mortgage Assistance. Loans of the lesser of up to \$20,000 or 24 months mortgage payments, for applicants who meet guidelines, on a first-come first-served basis. May be repaid over a period of up to 20 years. Available only to applicants who meet income guidelines, have been unable to keep current because of loss of employment, and are seeking employment or enrolled in a training program. §§ 43.63A.610 to 43.63A.640.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No redemption after non-judicial sale. § 61.24.050.	8 months to redeem after judicial sale of non agricultural property if no deficiency claimed. § 6.23.020.
(b) Limitations on deficiency judgments?	Yes. No deficiency allowed following power of sale foreclosure of home loan. § 61.24.100.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Surplus is paid to court clerk, and distributed as ordered by court. § 61.24.080	
ii. Prompt return of surplus proceeds?	No statutory time frame.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **West Virginia**

Statutory citation: W.V. Code §§ 38-1-3 to 38-1-15 and §§ 46A-1-102(13) and (15) and 46A-2-106.

Most Common Method of Foreclosure: Non-judicial; Power of sale.

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	Yes. For consumer loans or consumer credit sales, explicitly defined to cover interests in land, § 46A-1-102(13) and (14), the state Consumer Credit Protection Act provides a right to cure and re-instate, for ten days after notice of default. Notice of default, which may be sent five days after default, must disclose this right. Consumer may cure by paying the delinquent amounts and delinquency or deferral charges. This right may be exercised three times over the life of the loan. § 46A-2-106.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?	No.	
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written		

Consumer Protection Provisions	Statutory Cite & Description	Comments
notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail and publication. § 38-1-4.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	No. 38-1-6. See also <i>In re Bardell</i> , 374 B.R. 588 (N.D. W. Va. 2007) which holds that “West Virginia law provides no right to a mortgagor to redeem the property after a foreclosure sale.”	
(b) Limitations on deficiency judgments?	No.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	Trustee disburses proceeds along statutory priorities; must file account with clerk of county court within two months after sale. Surplus to borrower. §§ 38-1-7 and 38-1-8.	
ii. Prompt return of surplus proceeds?	See (c)(i), above.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Wisconsin**

Statutory citation: Wis. Stat. §§ 846.01 to 846.25 and 815.31.

Most Common Method of Foreclosure: Judicial

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?		
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	Yes.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	n/a	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?		
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	Yes. Can cure and reinstate by bringing the amount due into court. § 846.05.	
(a) How long is the reinstate period or when does the right expire?	If cure and reinstatement is done before judgment, case is dismissed. If cure and reinstatement takes place after judgment, case is stayed; if borrower misses another payment, the foreclosure will proceed. (Note § 428.103, which regulates attorney fees and late charges.) § 846.05.	
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right	Yes. § 428.103 regulates attorney fees and	

Consumer Protection Provisions	Statutory Cite & Description	Comments
to reinstate?	late charges. In foreclosure cases, 5% of the amount adjudged due the creditor; or if the dispute is settled prior to judgment, a reasonable fee based on the time, nature and extent of the work involved, but not to exceed 2 1/2 % of the unpaid principal balance of the loan.	
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	Yes, for foreclosure complaint. The general civil procedure statute requires personal service of summons; if this cannot be accomplished by due diligence, publication and mailing are permitted. § 801.11. Notice of sale, No. Publication and posting. § 815.31.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Not after sale. Redemption permitted up to the time of sale. (12 months after judgment unless creditor waives right to deficiency. If deficiency waived, 6 months.) § 846.13.	
(b) Limitations on deficiency judgments?	For certain small parcels, used for residence, farm, or non-profit purposes creditor may waive its right to deficiency. In this case, foreclosure sale may occur six months after judgment, instead of the usual 12. § 846.101. Before confirming a sale and rendering a deficiency judgment, court must be satisfied that the fair market value of the premises sold has been credited on the debt. § 846.165.	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		

Consumer Protection Provisions	Statutory Cite & Description	Comments
i. Accounting for sales proceeds?	After payment of mortgagee's debt court must approve disbursement of surplus to "the party entitled thereto." § 846.08 and 846.10(3).	.
ii. Prompt return of surplus proceeds?	No statutory time frame, follows court confirmation of sale.	

Foreclosure Report

Survey of State Foreclosure Laws

State: **Wyoming**

Statutory citation: Wyo. Stat. Ann. §§ 34-1-101 to 34-1-113, 1-18-103.

Most Common Method of Foreclosure: Non-judicial; Power of Sale

Consumer Protection Provisions	Statutory Cite & Description	Comments
1. Do borrowers have easy access to the courts prior to sale?	No.	
(a) most commonly used residential mortgage instrument is required to be foreclosed judicially?	No.	
(b) specific procedure exists in non-judicial foreclosure state for borrower to easily access judicial review.	No.	
2. Is there a state law right to cure the default before loan is accelerated?	No.	
(a) is the servicer/ holder prohibited from imposing legal fees and foreclosure costs during the cure period?		
(b) Is there a statutory limit on fees and costs that may be imposed during the cure period?	No.	
3. Is there a state law right to cure the default and reinstate the loan before the foreclosure sale?	No.	
(a) How long is the reinstate period or when does the right expire?		
(b) Do borrowers receive a written notice of the right to reinstate?		
(c) does the notice include an itemization of all fees and other amounts necessary to reinstate?		
(d) Are there any limitations on right to reinstate?		
4. Is the servicer/ holder required to engage in loss mitigation before the loan is foreclosed?	No.	

Consumer Protection Provisions	Statutory Cite & Description	Comments
5. Is personal service of the Notice of Sale or Foreclosure Complaint required?	No. Certified mail is sufficient. § 34-4-104.	
6. Is there a State emergency fund or similar program available to assist borrowers in default?	No.	
7. Does the state statute provide any protection for consumers after the foreclosure sale:		
(a) Right of redemption?	Three months from date of sale. § 1-18-103 (applies explicitly to foreclosure by advertisement).	
(b) Limitations on deficiency judgments?	No. <i>See</i> § 34-4-113(c).	
(c) Accounting or other procedure for foreclosure sale proceeds and return of surplus?		
i. Accounting for sales proceeds?	If there is a surplus, then creditor must serve a copy of sale results within ten days after sale, upon the borrower and certain lienholders. Surplus to the mortgagor. §§ 34-4-104 and 34-4-113.	
ii. Prompt return of surplus proceeds?	See (c)(i), above.	Mortgagee handles distribution of proceeds without court supervision.