



WELCOME!

WE WILL BE WITH YOU SHORTLY.

Vermont Foreclosure Law and 2020-2021 Current Developments

Presented by Vermont Attorneys Title Corporation





Judicial
Foreclosure



Non-
Judicial
Foreclosure



Strict
Foreclosure



Deed in
Lieu of
Foreclosure





POST July, 2012

- Complaint must be recorded
- All intervening liens foreclosed
- Certificate of Non-redemption required to be recorded
- Confirmation Order transfers title

PRE July, 2012

- Complaint must be recorded
- All intervening liens foreclosed if Judgment Order is recorded within 30 days of Redemption date
- Certificate of Non-redemption not required to be recorded
- Confirmation Order transfers title

Judicial Foreclosure 12 V.S.A., Chpt. 172, §§ 4945-4954

- Complaint – Commences action and establishes notices
 - V.R.C.P. 80.1
 - “Shall set forth... the names of all parties in interest and, as to each party in interest, the date of record of the instrument upon which the interest is based...”
 - Title review
- Junior lien holders
 - Recorded AFTER the Mortgage but BEFORE the Complaint
- Intervening lien holders
 - Recorded AFTER the Complaint

Title Search - Junior Lien Holders

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION

DOCKET # ST. ALBANS CITY CLERK'S OFFICE

RECEIVED FOR RECORD / DISCHARGE

WELLS FARGO BANK, NA
Plaintiff

41.30 A.D. 18
at 11 o'clock 21 minutes A M
and recorded in Book 280 Pages 119
Attest: [Signature] City Clerk

v.

RICHARD P. [REDACTED] DAWN A. [REDACTED], MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AS NOMINEE FOR GMAC MORTGAGE
CORPORATION DBA DITECH.COM
OCCUPANTS OF: 89 Aldis Street, Saint Albans VT
Defendants

**NOTICE TO DEFENDANTS: YOU MUST ENTER YOUR APPEARANCE IN ORDER
TO RECEIVE NOTICE OF THE FORECLOSURE JUDGMENT WHICH WILL SET
FORTH THE MONEY WHICH YOU MUST DEPOSIT TO REDEEM THE
PREMISES AND THE PERIOD OF TIME ALLOWED TO DEPOSIT THIS AMOUNT.**

COMPLAINT

1. Wells Fargo Bank, NA, ("Plaintiff") has a care of address at 3476 Stateview Blvd
2. Fort Mill, SC 29715.
3. Upon information and belief Defendant Richard P. Bouchard is a resident of the

Title Search - Junior Lien Holders

NONE.

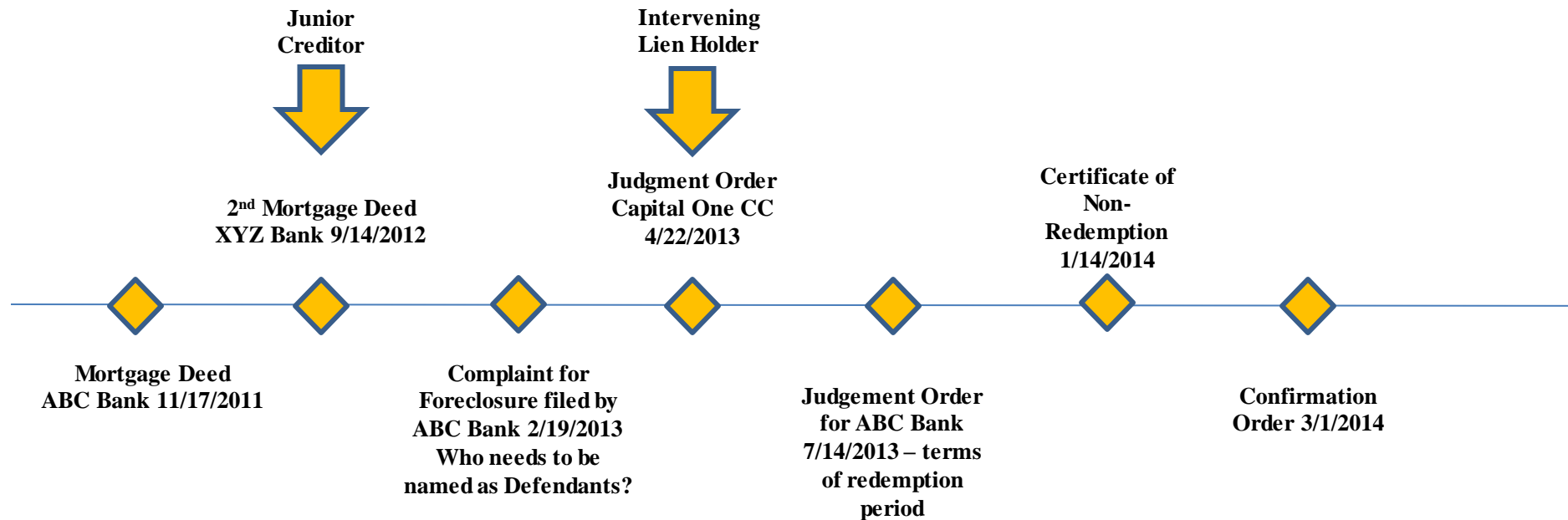
18. The following individuals may have some claim or interest or lien upon the Mortgaged Premises, as described in the judgment order, which interest is junior and inferior to that of the Plaintiff and are hereby joined in this action as Defendants under VRCF Rule 80.1(b):

Mortgage Electronic Registration Systems, Inc., as nominee for GMAC Mortgage Corporation DBA Ditech.com, by virtue of a mortgage deed in the amount of \$26,500.00 dated September 25, 2003 and recorded November 18, 2003 in Volume 173 at Page 106 of the City of St. Albans Land Records.

COUNT I

FORECLOSURE OF REAL PROPERTY

Judicial Sale Foreclosure – Post 7/2012





- 1st Bite of the Apple: Judgment Order - Redemption date

STATE OF VERMONT
FRANKLIN UNIT, CIVIL DIVISION

VERMONT SUPERIOR COURT
DOCKET NO: 464-11-15 FRCV

WELLS FARGO BANK, N.A.

v.

PALISADES COLLECTION, LLC
OCCUPANTS OF: 262 Lake Street, St. Albans VT

Palisades Collection, LLC
Vermont Superior Court
FEB 15 2017
FILED: Franklin Civil

JUDGMENT AND DECREE OF FORECLOSURE BY JUDICIAL SALE

This foreclosure action was brought before the Franklin County Superior Court by complaint of Wells Fargo Bank, N.A. filed November 18, 2015 and served upon Timothy P. Wimble, Karen L. Wimble and Palisades Collection, LLC on or before November 23, 2015. Judgment was granted to Wells Fargo Bank, N.A. on January 25, 2017 on the basis of default judgment. The Accounting was entered without hearing. Pursuant to V.R.C.P. 80.1 (g) and V.R.C.P. 58,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. **Judgment.** There is presently due and owing the principal amount of \$128,419.52, accrued interest as of January 26, 2017 of \$15,633.32, court costs of \$453.63, reasonable attorneys' fees of \$2,250.00, recording fees in the amount of \$40.00, and additional amounts allowed in the accounting of \$7,777.80, making the total amount due Plaintiff as of January 26, 2017 the sum of \$153,882.42, plus interest accruing at the

made in further aid of this description.

4. **Redemption.** It is further ordered that unless Timothy P. Wimble and Karen L. Wimble pays to the Clerk of the Court on or before August 15, 2017 the date of redemption payable to the Court, before 4:30 p.m., the sum of \$153,882.42, together with any amounts established under paragraph 2 above, and together with per diem interest of \$44.71 from January 26, 2017 to the date of redemption, then the Plaintiff may file a motion for a writ of possession.

It is further ordered that unless Palisades Collection, LLC pays to the Clerk of the Court on or before August 10, 2017 before 4:30 p.m., the sum of \$153,882.42, together with any amounts established under paragraph 2 above, and together with per diem interest of \$44.71 from January 26, 2017 to the date of redemption, then such party shall be foreclosed and forever barred from all equity of redemption in the Mortgaged Property.

5. Mortgagor Defendants' Additional Right to Redeem.

Defendants/Mortgagors Timothy P. Wimble and Karen L. Wimble may also redeem up to the date of the judicial sale, described in paragraph 7 below, by payment of the redemption amount pursuant to 12 V.S.A. § 4949(a).



- 2nd Bite of the Apple: Judgment Order - Additional Right to Redeem (date of judicial sale)

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS TRUSTEE FOR RMAC TRUST, SERIES 2016 CTT
Plaintiff

v.

TIMOTHY P. [REDACTED] KAREN L. [REDACTED] AND PALISADES COLLECTION,
LLC
OCCUPANTS OF: 262 Lake Street, St. Albans VT
Defendants

CERTIFICATE OF NON-REDEMPTION

I, Gina Lumbr, Clerk/Deputy Clerk, of the Franklin
County Unit, Civil Division, State of Vermont, the same being a Court of record and
having a seal, hereto attached, DO HEREBY CERTIFY that the within and foregoing is a
true and complete copy of the Judgment Order and Decree of Foreclosure in a cause
entitled: U.S. Bank National Association, not in its individual capacity but solely as
Trustee for RMAC Trust, Series 2016 CTT v. [REDACTED] and
Palisades Collection, LLC, the Franklin County [REDACTED] 1-
15 Frev. and that the same is a true and complete copy of the whole thereof, the same
having been filed in said Court on February 15, 2017.

I FURTHER CERTIFY that [REDACTED] and Palisades
Collection, LLC, nor anyone on their behalf, did not, within the time limited therefore,
tender to the Clerk of this Court for the benefit of the plaintiff, the sums due in equity for
redemption of the lands and premises situated in the City of St. Albans, County of
Franklin, the same being more particularly described in a mortgage of record in Volume
Page 316, St. Albans Land Records.

By failure of the defendants to redeem said lands and premises, the said
defendants, their heirs, executors, administrators and assigns, and all persons claiming
under them are foreclosed and forever barred from all equity of redemption in the said
premises.

IN WITNESS WHEREOF, I herunto set my hand and affix the seal of the
Court at St. Albans, Vermont this 5th day of April
2018.

ST. ALBANS CITY CLERK'S OFFICE
RECEIVED FOR RECORD / DISCHARGE
4/16 A.D. 18
at 11 o'clock 00 minutes 4 M
and recorded in Book 279 Pages 184
Attest: [Signature] City Clerk

Gina Lumbr
Clerk/Deputy Clerk
Franklin Unit, Civil Division

12 V.S.A. § 4947 Foreclosure; recording

- (a) Confirmation order. Following the sale, the plaintiff shall file with the court a report on oath of the sale, together with a request for confirmation of the sale, which shall include an accounting of the sale proceeds, and a proposed order confirming the sale. Copies of the report of the sale and request for confirmation shall be deposited with the clerk of the court, to all parties who appear in a certified copy of the judgment to the effect of and to the plaintiff to be the creditor of last known address. The court may issue an order of confirmation of the sale without hearing, unless the court in its discretion determines that a hearing is necessary. The order of the court confirming the sale shall be conclusive evidence as against all persons that the foreclosure and sale were conducted in accordance with this section.
- (b) Transfer of title. The subsequent purchaser, mortgagee, or assignee of the interest in the property is foreclosed and is not to be affected by the filing of the judgment or the recording of the sale as provided in section 4932 of this chapter.

A U C T I O N

ST. ALBANS CITY CLERK'S OFFICE
RECEIVED FOR RECORD / DISCHARGE
10/28 A.D. 2019
at 9 o'clock 00 minutes A.M.
and recorded in Book 285 Pages 231
Attest: [Signature] City Clerk

STATE OF VERMONT

VERMONT PROPERTY TRANSFER TAX
32 V.S.A. CHAP. 231
-ACKNOWLEDGEMENT-
Return Rec'd-Tax Paid-Board of Health Cert. Rec'd
VL Land Use & Development Plans Act Cert. Rec'd.
Return No. 6829
Signed: [Signature] Clerk
Date 10/28/19

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
DOCKET # 469-12-17 Frev

WELLS FARGO BANK, N.A.
Plaintiff

v.

[Redacted]

Defendants

SEP 24 2019
Vermont Superior Court
FILED

CONFIRMATION ORDER

This foreclosure action was filed by Plaintiff, Wells Fargo Bank, N.A., by Complaint filed February 22, 2017, against Defendant [Redacted]. A Judgment Order and Decree of Foreclosure was issued by this Court on November 28, 2018, which Order provided for the public sale of the property unless the property was redeemed by a Defendant in this action. Since no Defendant redeemed their interest in this property, a public auction sale of the property was held on August 12, 2019. A Report of Sale has been filed with the Court by Plaintiff's Counsel, Bendett & McHugh, P.C.

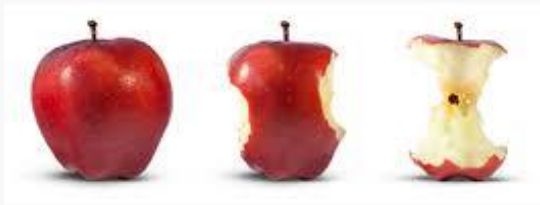
Therefore, based on the Report of Sale and all other pleadings filed with the Court, and the opposition, if any, and good cause appearing, the Court hereby finds the following:

1. That the duly noticed sale of the subject land and premises was held by Plaintiff August 12, 2019.
2. That Wells Fargo Bank, N.A. was the high bidder at the public sale.
3. The real property which is the subject of this foreclosure action is described as follows:

Being all and the same land and premises conveyed to the Mortgagee herein by Warranty Deed of Matthew A. Brouillard dated April 30, 2014, and recorded in



Other Redemption Rights



- * Judgment Order
- * Confirmation Order

records, transfer of title is effectuated pursuant to 12 V.S.A. §4533 (b). The Confirmation Order shall further state that the public sale is confirmed and the title is transferred subject to and without disturbing the right of the United States of America to redeem the property within one (1) year from the date of transfer.

10. **Deficiency Claim.** Any motion for a deficiency judgment based on a claim in the Complaint shall be filed at the same time as the motion for confirmation pursuant to V.R.C.P. 80.1 (j)(2); otherwise any claim for a deficiency judgment will be dismissed at the time of entry of the Confirmation Order.

11. **United States' Post-Sale Redemption Rights.** In the event that the lien of the United States of America has not been fully satisfied from the proceeds of the sale, the United States shall have one (1) year from the transfer of title to the purchaser at the public sale in which to redeem the Mortgaged Property. In the event that the purchaser at the public sale is

Ways around United States Redemption Rights...? YES!

United States Redemption Rights – many not applicable or limited to 120 days

- * Release from US Atty's Office
- * Hazard Premium
- * Exception for capital improvements
- * Exception for the redemption period



Short Sale Letters



- Compliance with terms included in Short Sale letter/confirmation
- Include express statement upon compliance with terms, lender will issue a discharge of the Mortgage

GMAC Mortgage

August 13, 2010

Account Number:
Property Address: MILLWOOD DRIVE
SPRINGFIELD, VA 22152

Date: and

This letter serves to address the recent offer received on the above-referenced property. We are prepared to accept the offer in question as full satisfaction of the outstanding debt, and we will release the lien on the subject property once the following conditions are met:

1. We must receive minimum total net proceeds of \$ inclusive of tax escrow adjustments, based on a sale price of \$.
2. Closing costs associated with the sale are limited to \$ with a maximum of in Real Estate Commissions.
3. If the account includes escrow for the payment of your taxes and/or insurance premiums, in order to accurately determine the amount we must receive from closing, no further amounts will be paid or advanced from that escrow account after the date of this letter. Furthermore, any and all funds in that escrow account will be used toward the payoff of your loan.
4. Sellers are to net zero.
5. Final closing shall occur on or before September 30, 2010.
6. Net proceeds, cash contributions, and the HUD-1 Settlement Statement are due in our office within 24 hours of closing. Proceeds from the sale and required documentation must be express mailed to:

GMAC Rescap
3451 Hammond Avenue
Waterloo, IA 50702
Attention: Payment Processing

or wire funds to:

JP Morgan Chase Bank, NA
Mail Code KY1 -7102
Grade Lane
Louisville, KY 40213
Building 7, Suite 709

ABA Routing Number:
Account Number:
Mortgage Account Number:
Customer Name: and

7. We must receive full disclosures of any and all affiliations that may exist between Buyers, Sellers, Realtors, Escrow Agents, Attorneys, or any other parties involved in the sales transaction prior to closing.
8. The buyer must be approved for applicable financing.
9. The agreement is not contingent upon any other terms or conditions that may accompany the pending offer.





POST July, 2012

- Complaint must be recorded
- All intervening liens foreclosed
- Certificate of Non-redemption required to be recorded
- Confirmation Order transfers title

PRE July, 2012

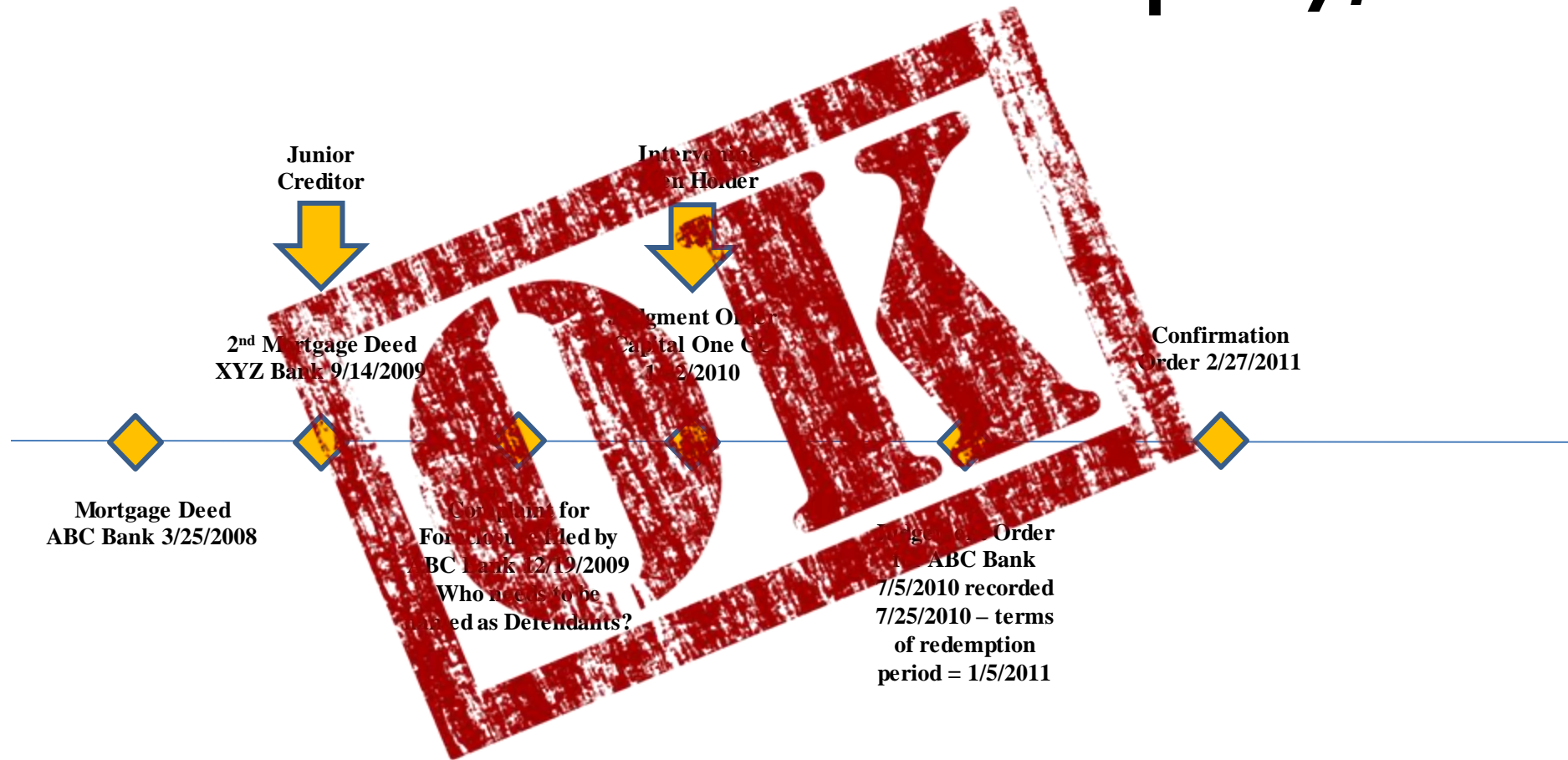
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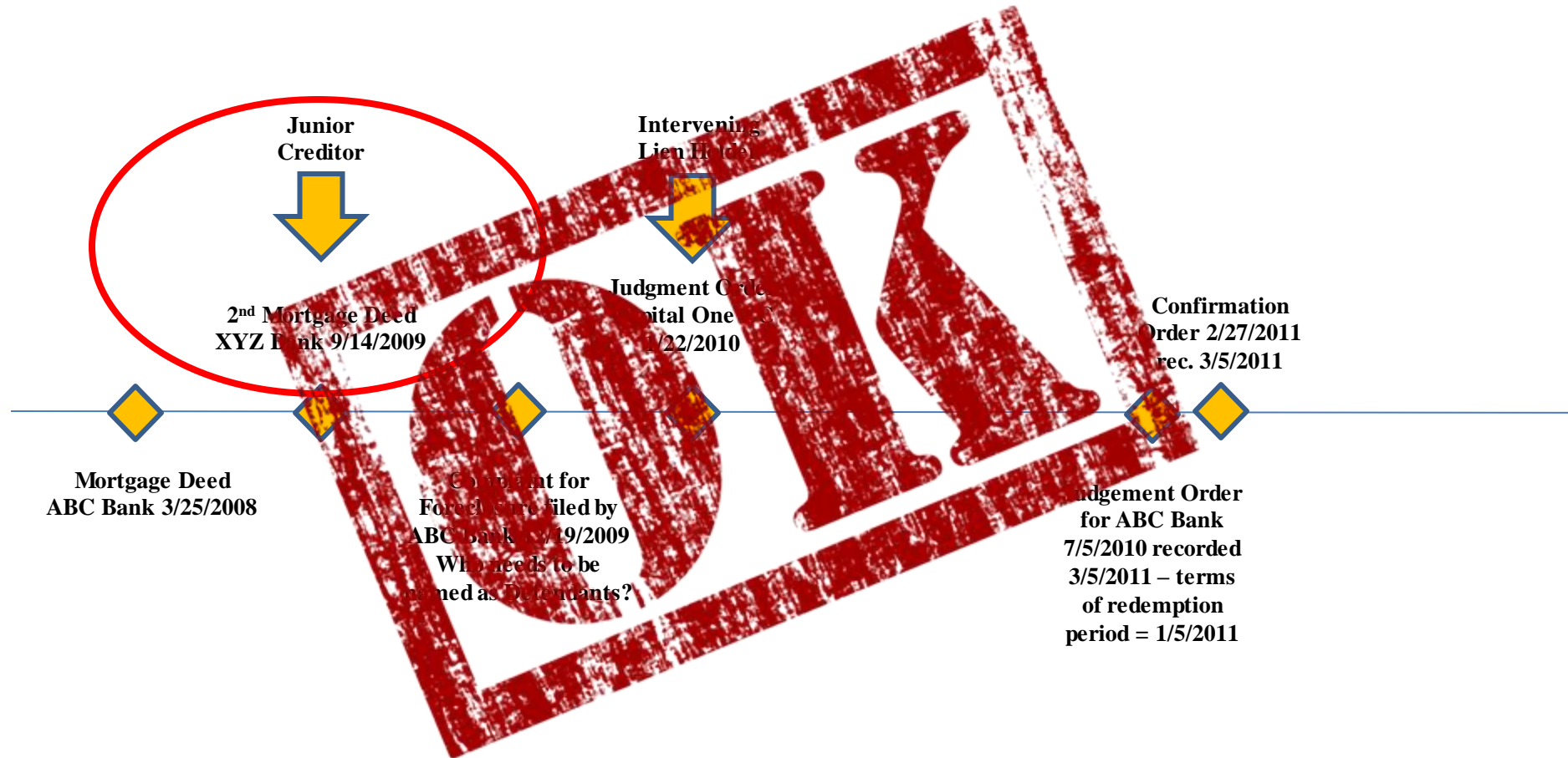
12 V.S.A. Chpt. 163, §§ 4523-4533a
Repealed 2012



Judicial Sale Foreclosure – pre 7/2012



Judicial Sale Foreclosure – pre 7/2012





Assignment of Mortgage

Post-Judgment. Merger occurs at time of Confirmation Order

“Corrective” Assignments

Standing disrupted

Possible coverage

Substitution of Parties

VRCP Rule 25 Substitution of Parties (c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Property Descriptions

Mortgage Schedule A vs. reference to Confirmation Order

Non-Judicial Foreclosure 12 V.S.A. §§ 4961-4970



Statutory Procedure - Non-Judicial

1. Notice of intention to foreclose to mortgagor
2. 30 days or more later – Notice of Sale sent to mortgagor, tenants and junior lien holders
3. Notice of sale published three consecutive weeks
4. 60 days after Notice of sale to mortgagor, tenants and junior lien holders and must be 21 days after first publication – sale can take place at property
5. Within 90 days of sale –Foreclosure deed and mortgagee affidavit recorded

Non-
Fore

OTHER CONSIDERATIONS:

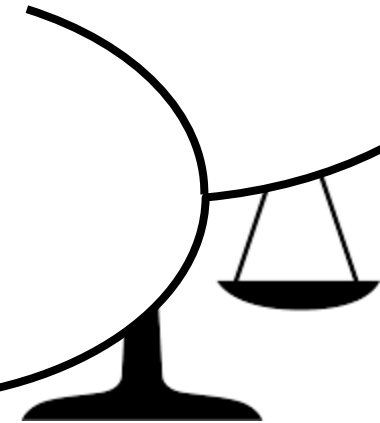
- Cannot be conducted for farm land or owner-occupied residence
- No transfer of title to foreclosing Lender
- Mortgage Discharge required
- Statutory Foreclosure Deed

* Aff

* Aff

* Lender (s

* Attorney (pre



Affidavit

NOW COMES _____, who holds the office of _____ for _____ [insert name of foreclosing lender] (hereinafter "Lender") and, under oath, says upon his/her personal knowledge:

1. Lender has in its possession the original Mortgage executed by _____ in favor of Lender on _____, 20__, which Mortgage is of record in Book __, Page __ of the _____ Land Records. A true copy of the original Mortgage, now in the Lender's possession, is attached hereto as **Exhibit A**.

2. Lender has in its possession the original Promissory Note(s) executed by _____ on _____, 20__. A true copy of the original Promissory Note, now in the Lender's possession, is attached hereto as **Exhibit B**.

Dated _____, State of _____ this ____ day of _____, 20__.

Lender

By:

Its duly authorized agent

|
State of _____
County of _____

This record was acknowledged before me on _____, 20__ by _____ as duly authorized agent of _____, Lender.

Before me,

Notary Public

Affidavit

Relating to Foreclosure By Power of Sale Pursuant to Chapter 172, Subchapter 4 of 12 VSA

Now Comes _____, attorney for _____ and sets forth the following based on the affiant's own personal knowledge:

1. I am an attorney licensed to practice law in the State of Vermont and am currently in good standing. I understand that Connecticut Attorneys Title Insurance has been asked to insure title to the within described lands and it has asked for assurances that the provisions of Chapter 172, Subchapter 4 of 12 VSA were complied with. I hereby certify that they have been.
2. The lands and premises foreclosed and sold are all and the same conveyed to _____ ("Record Title Holder(s)") by deed of _____ dated _____ and of record in Book _____, Page _____ of the _____ land records. The Record Title Holder(s) mortgaged the property to _____ ("Lender") by mortgage dated _____ and of record in Book _____, Page _____ of the _____ land records (the "Mortgage"). The property has an address of _____ in the city/town of _____, Vermont (the "Property")
3. Based on information obtained from the Department of Defense Manpower Data Center for Military Status Report Military Service Report, none of the Record Title Holder(s) are persons in the Military Service as defined in the Servicemen's Civil Relief Act of 2003.
4. On _____, 20____ (at least 30 days prior to service of a notice of sale pursuant to 12 VSA §4952(c)) and in compliance with the provisions of 12 VSA §4965, I mailed by registered or certified mail the original of the attached copy of the Notice of Intent to Foreclose to the Record Title Holder(s). The Notice of Intent to Foreclosure complied with the requirements of 12 VSA §4962 and provided for a cure ending on _____, 20____.
5. [If applicable] In addition, I mailed by certified mail Notice of Intent to Foreclosure to the following junior lienholders:
 - a. _____ with an address of _____.
 - b. _____ with an address of _____.
6. The mortgage default was not cured by _____, 20____.
7. On _____, 20____ a Notice of Public Sale providing for a sale date of _____, 20____ was mailed by registered or certified mail to the Record Title Holder(s) and parties with an interest in the property per the Service List attached to the notice.
8. Pursuant to 12 VSA §4963, Notice of Sale was published once in each of three successive weeks in _____ (a newspaper of general circulation in the town where the land lies) the first publication no less than 21 days before the sale. Publication occurred on the following dates: _____; _____; and _____, 20____.
9. Pursuant to 12 VSA §4964 and not less than 60 days prior to sale, a copy of the Notice for Public Sale dated _____, 20____ was recorded on _____, 20____ in Book _____, Page _____ of the _____ land records.
10. In compliance with 12 VSA §4966, sale of the Property occurred on _____, 20____ at _____ o'clock in the fore/after noon at the Property. The sale was conducted by _____, a Vermont licensed auctioneer.

11. The Property was sold in its entirety to the highest bid of _____ (\$____) which bid was made by _____.
12. Record Title Holder(s) did not redeem their interest in the Property at any time prior to the public sale by paying the full amount due under the Mortgage, including costs and expenses.
13. Pursuant to 12 VSA §4961, the Property described in the Mortgage does not include: farmland or a dwelling house owned by a natural person. The Property had been operated as a commercial property. The mortgage contained a power of sale.
14. The mortgagee has, or will within 90 days of sale, complied with the provisions of 12 VSA 4967.

Dated at _____ this ____ day of _____, 20____.

Printed Name: _____

State of Vermont
County of _____

This record was acknowledged before me on _____, 20____ by _____.

Before me, _____
Notary Public

Strict
Foreclosure
12 V.S.A § 4941



Checklist

- Complaint recorded
- Judgment Order recorded
 - * No public sale
 - * No substantial value/equity
 - * Transfers property to foreclosing lender
- Certificate of Non-Redemption recorded
- Writ of possession (need not be recorded)
- Deed from foreclosing lender
- No Confirmation Order
- No Mortgage Discharge

In Re Chase, 328 B.R. 675 (Bankr. D. Vt. 2005).

- Strict Foreclosure process does not create a presumption of value and foreclosure may be voided if the court determines that consideration for the transfer was less than the “reasonably equivalent value.”
- “Reasonably equivalent value” under Bankruptcy Code and Vermont's fraudulent transfer statute under 9 V.S.A. § 2288.
- Title 11 U.S.C. § 548 Fraudulent transfers and obligations

The trustee may avoid any transfer... of an interest of the debtor in property ... if the debtor voluntarily or involuntarily received less than reasonably equivalent value for such transfer...



9 V.S.A. § 2288 Transfer or obligation voidable as to present or future creditor

A transfer made ...by a debtor is voidable as to a creditor ... if the debtor made the transfer or incurred the obligation:

...

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

...

(B) ...believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

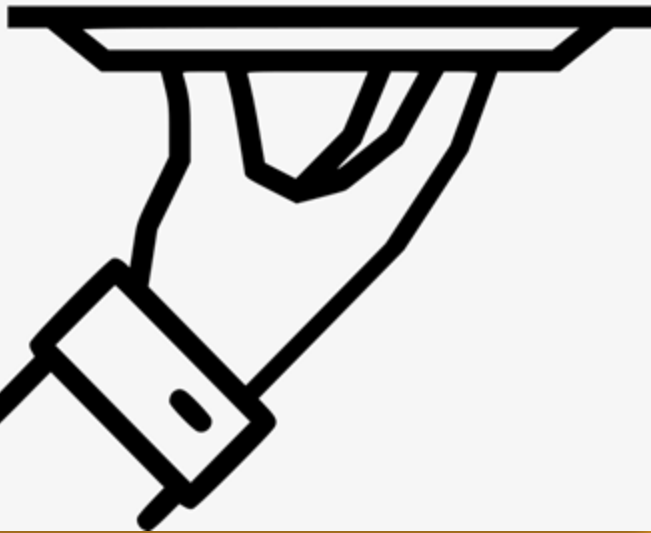


110,927.64

÷

152,000.00

.73364



Math anyone...?

- Debt owed to creditor divided by fair market value
- Debt to Value ratio (DTV):
 - DTV = 90-100% presumption of validity
 - DTV = 80-90% no presumption
 - DTV < 80% presumption of fraud
- Debt = principal and interest and attorney fees owed on the day of the Deed in Lieu (included in DIL?)
- Value = appraised value (preferred) or assessed value with applied CLA (common level of appraisal) at time of DIL
- Merger
- Statute of Limitations – 4 years after DIL

Voidable Transactions Deed in Lieu

- Title 9 – Section 2293
Extinguishment of claim of relief
- ... not later than **four years** after the transfer was made or the obligation was incurred

Voidable Transaction Tax Sale

- Title 9 – Section 2293
Extinguishment of claim of relief
- pursuant to the provisions of 32 V.S.A. chapter 133, subchapter 9 for a tax sale, not later than **two years** after the tax collector's deed is delivered to the successful bidder at the tax sale
- 7/1/2018 statutory amendment





Jones v. Flowers, 547 U.S. 200 (2006).

- Due process requirement that a state give notice to an owner before selling his property to satisfy his unpaid taxes.
- Holding: after a mailed notice was returned unclaimed, a state was required by the Due Process Clause of the Fourteenth Amendment to take additional reasonable steps to notify the owner before the sale could proceed.
- Marketability vs. Insurability

Procedural Due Process