

**Purchase of Property**

Mortgage created:

- Promissory Note
- Deed of Trust with the **Power of Sale**, if Default occurs

**DEFAULT****ELECTION & DEMAND FILED**

with Public Trustee

*Election & Demand invokes the **Power of Sale** to the Public Trustee  
- Filing includes Notice of the Right to Cure & Right to Redeem*

**RULE 120 ACTION**

In District Court

*Rule 120 is intended to restrict the taking of property under the Power of Sale without a fair opportunity to appear and be heard*

**Moving Party files Verified Motion**

Hearing: NLT 20 days, and  
no more than 30 days  
after filing the Verified Motion

**Verified Motion:** includes:Filed in District Court  
by the Moving Party

- Copy of the instrument containing the Power of Sale, and
  - Must verify military status and that venue is proper, and
  - Description of the property being sold, and
  - Specification of default, and facts justifying the invoking of the Power of Sale, and
  - Name and last known address of:
    - Grantor of Deed of Trust, and
    - Owner of Record of the property, and
    - Any person believed to be personally liable for the debt, and
    - Any person who has acquired an interest in the property
- 'Verified' means the document is sworn to, and signed in front of a Notary*

**Moving Party Issues Notice  
of Intent to Invoke the Power of Sale**

Must be filed & served  
NLT 15 days before the  
hearing, by mailing  
and by posting on  
property

**Verified Notice:** includes:Must be served by the Moving party  
NLT 15 days prior to the hearing

- Description of the Instrument containing the Power of Sale, and
- Description of the property being sold, and
- Time and Place of Hearing, and
- Description of the Right to File a Response, and
- Reference to the last day for filing such a Response, and
- Advisement as to venue for the matter, and
- Return address of the Moving Party

**Verified Response (if any)**

Must be filed & served  
NLT 5 days before the Hearing

**Verified Response:**Must be filed and served on Moving Party  
NLT 5 days before the Hearing

- Set forth the facts being relied on, and
- Copies of all documents in support of position

Generally, no appointment of counsel  
unless Responding Party is military**RULE 120 HEARING**

If no Response was  
timely filed, Court may  
grant the Motion  
without a Hearing

**Issues before the Court:**

(Very Narrow Scope)

- 1) Existence of Default or other circumstances authorizing the Power of Sale under the terms of the Instrument, and
- 2) Whether Responding Party is in the military

**Defenses available to the Responding Party:**

- Not Real Party in Interest
- Waiver
- Estoppel
- Action barred under federal Servicemember's Civil Relief Act

**RULING OF THE COURT****Findings of the Court:**

- 1) Whether venue is proper, and
- 2) Whether there is a reasonable probability Default has occurred, and
- 3) Whether an Order authorizing sale is proper, and
- 4) Whether Responding Party is in the military

Decision in a Rule 120 action is not appealable

28 August 2024