

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