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Arizona Judicial Foreclosure vs. Trustee's Sale Remedies – Which Remedy is Best for your Commercial Deed of Trust?

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	SAME OR SIMILAR RESULT?	JUDICIAL FORECLOSURE	TRUSTEE'S SALE
CHARACTERISTICS			
Notice of Default	Yes	Given pursuant to terms of the loan documents. Typically must send the Notice by registered or certified mail.	Given pursuant to terms of the loan documents. Typically must send the Notice by registered or certified mail.
Cure Period	Yes	Check the loan documents for the length and conditions of a cure period, if any.	Check the loan documents for the length and conditions of a cure period, if any.
Initiating the Remedy	No	Prepare and file a Summons and Complaint in Superior Court. Serve the defendants, guarantors, all persons holding legal or equitable title, secured creditors, and other lien claimants. Record lis pendens against title to the property.	Order TSG. Prepare and record a Substitution of Trustee. Prepare a Statement of Breach and election to pursue remedies detailing the current defaults. Prepare and record a Notice of Trustee's Sale.
After the Remedy has been Initiated	No	Wait 20 – 30 days for defendants' Answer. If none, prepare and serve Notice of Default. Wait another 20 days. Then move for default judgment. Wait 1-3 months for Judge to sign the default judgment. If an Answer is filed, defendants will likely state counterclaims and defenses to foreclosure. Hire appraisal expert. Commence discovery (depositions, interrogatories, etc.). Motions practice occurs, including summary judgment motion. Obtain trial date, likely 1-2 years after the Answer is filed. Trial is held and judgment of foreclosure is given. Judgment may also be given for possession of the	Wait 90 – 100 days for the auction date. Issue 5 day and 30 day Notices. Post the property and publish the Notice of Trustee's Sale. On 91 st day after recording the Notice of Trustee's Sale, hold the auction.

		<p>property.</p> <p>Sheriff is ordered to sell the property at public auction.</p> <p>Property must be posted not < 15 days before the Sheriff's Sale and the sale must be published at least once/week for 3 weeks before the sale.</p>	
Debtor's Equitable Right of Redemption	No	Exercisable at any time after judgment for foreclosure but prior to Sheriff's Sale.	N/a.
Public Auction	No	<p>Auction is conducted by the sheriff on the steps of the courthouse.</p> <p>Sheriff's certificate of sale is issued to winning bidder and recorded.</p>	<p>Auction is conducted in the trustee's office.</p> <p>Trustee's Deed is immediately issued to the winning bidder and recorded. Title not insurable until 30-day valuation hearing period expires (see below).</p>
Debtor's Statutory Right of Redemption	No	Judgment debtor has 6 months to redeem after public auction, except redemption is not available if debtor files for a market value hearing. Additionally, lender may request the Court order that a 30-day redemption applies if the property is abandoned and non-agricultural.	None.
Debtor's Right of Reinstatement	No	Filing of the judicial foreclosure cuts off borrower's right to reinstate, although borrower can pay off the entire indebtedness, plus lender's costs and expenses of the attempted judicial foreclosure, to avoid the public auction.	May be exercised any time prior to the Trustee's Sale. Debtor must pay all amounts currently owed, plus lender's costs and expenses of the attempted Trustee's Sale.
Deficiency Judgment (assume the property is exempt from anti-deficiency statutes)	No	Typically prayed for in the Complaint for judicial foreclosure but must be sued for not later than 90 days after Sheriff's Sale.	<p>Either prayed for in an action:</p> <p>(i) on the Note, combined with a request for an appointment of receivership, filed concurrently with commencing the Trustee's Sale process,</p> <p>Or</p> <p>(ii) for a deficiency judgment not later than 90 days after the Trustee's Sale.</p> <p>Any deficiency judgment includes interest on the amount of the deficiency from the date of the Trustee's Sale at the rate provided in the deed of trust or in any of the</p>

			contracts evidencing the debt, together with any costs and disbursements of the action.
Value of the Property Credited to the Indebtedness	Yes	<p>Credit against the indebtedness = the fair market value of the real property or the sales price of the real property at a Sheriff's Sale, whichever is greater.</p> <p>Fair market value is as of the date of the Sheriff's sale.</p> <p>Debtor (borrower, guarantors) must apply to the court for a fair market valuation hearing not later than 30 days after the Sheriff's Sale. This hearing is held on a priority basis, typically 3-6 months after application.</p>	<p>Credit against the indebtedness = the fair market value of the real property or the sales price of the real property at the Trustee's Sale, whichever is greater.</p> <p>Fair market value is as of the date of the Trustee's Sale.</p> <p>Debtor (borrower, guarantors) must request a fair market valuation hearing in the deficiency proceeding or in a separate action not later than 30 days after the Trustee's Sale. This hearing is held on a priority basis, typically 3-6 months after requested.</p>
"Fair Market Value"	Yes	"Fair market value" means the most probable price, as of the date of the Sheriff's Sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress.	"Fair market value" means the most probable price, as of the date of the Trustee's Sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress.