



北美地产学堂

NORTH AMERICA REAL ESTATE ACADEMY

2020





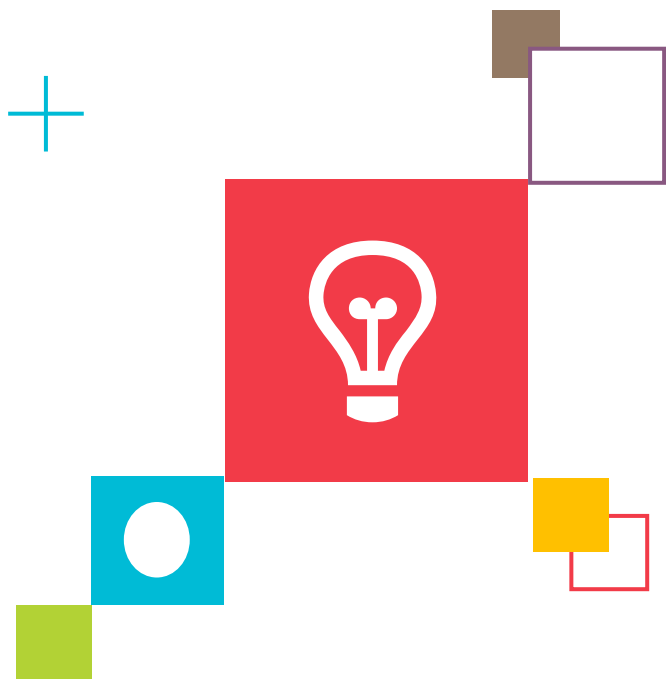
北美地产学堂
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地产不良期票的投资

Investment In Non-Performing Notes

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第三讲：法拍

学习目标

- 了解法拍的基本概念
- 熟知法拍程序



Objectives

- **Understand Foreclosure Principles**
- **Comprehend Foreclosure Processes**



理解法拍的重要性

利用法拍督促屋主偿还贷款



Importance of Understanding Foreclosure

Use foreclosure to force homeowners to take actions/respond to request for making payments.



法拍的类别



非司法法拍—使用信托契约，无需经过法庭审理，常见于西海岸，例如加利福尼亚州



司法法拍—使用抵押贷款，常见于东海岸



Types of Foreclosure



Non-judicial foreclosure – using Deed of Trust, no court involved, most common type in West Coast, e.g. California

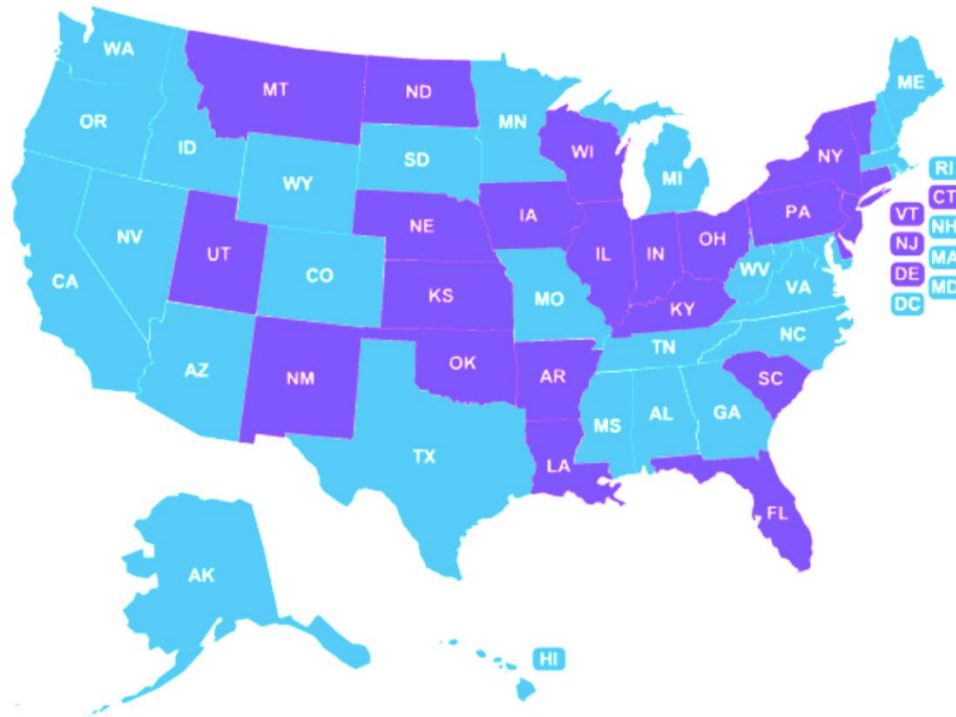


Judicial foreclosure – using mortgage, common in East Coast



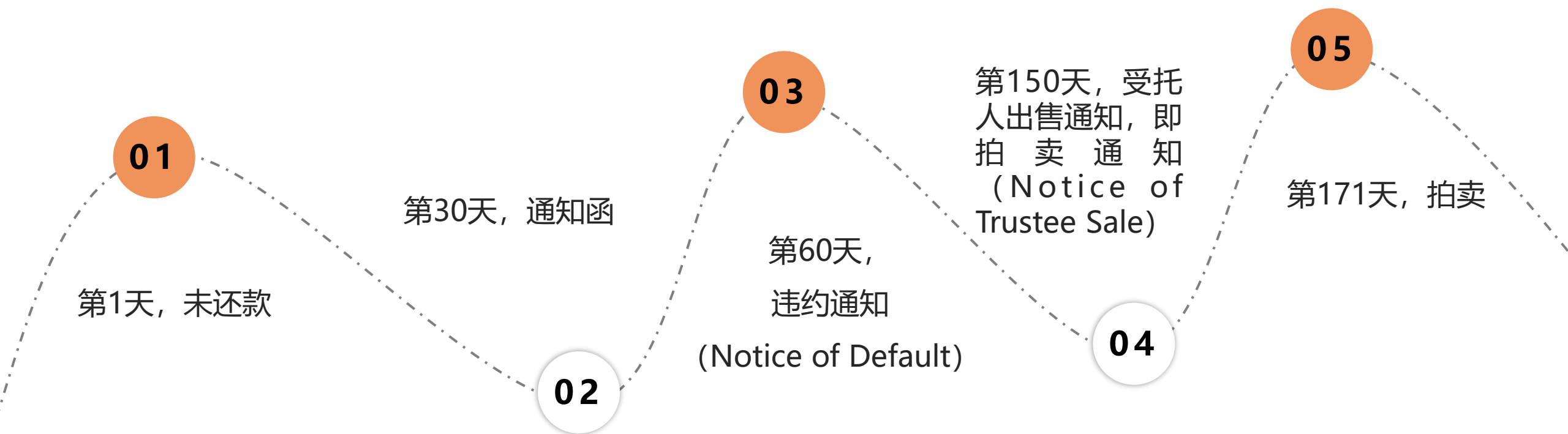
Types of Foreclosure

Light Blue States denote primarily Notice or Non-Judicial Foreclosure States



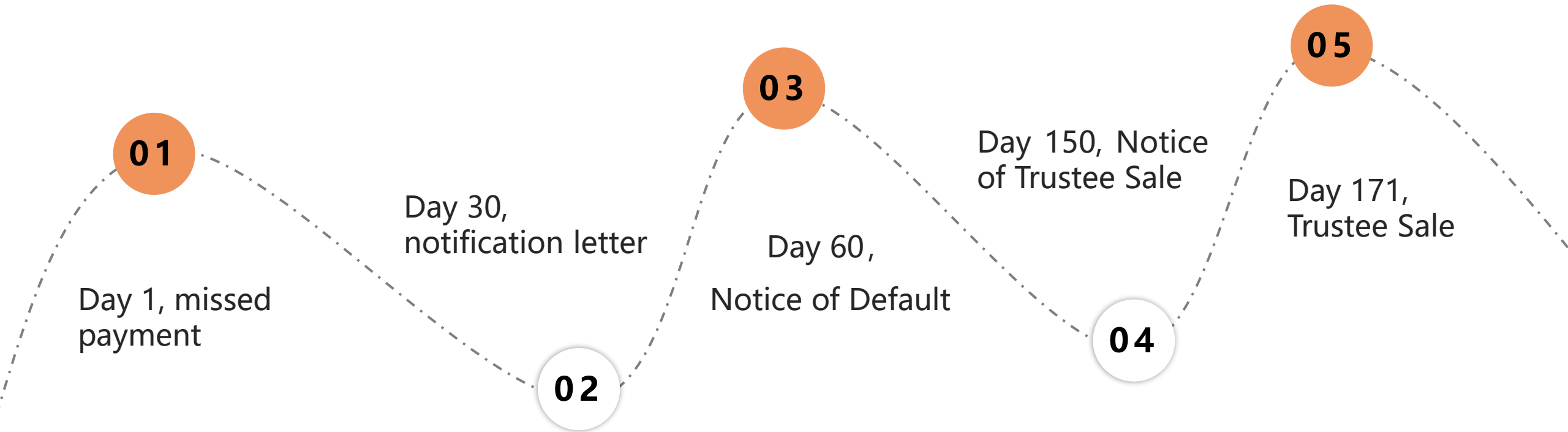
Courtesy of Sequoia Real Estate Partners

法拍程序 (加州)



如果过程中屋主将违约金额还清, 贷款人则必须终止法拍程序

Foreclosure Process (California)

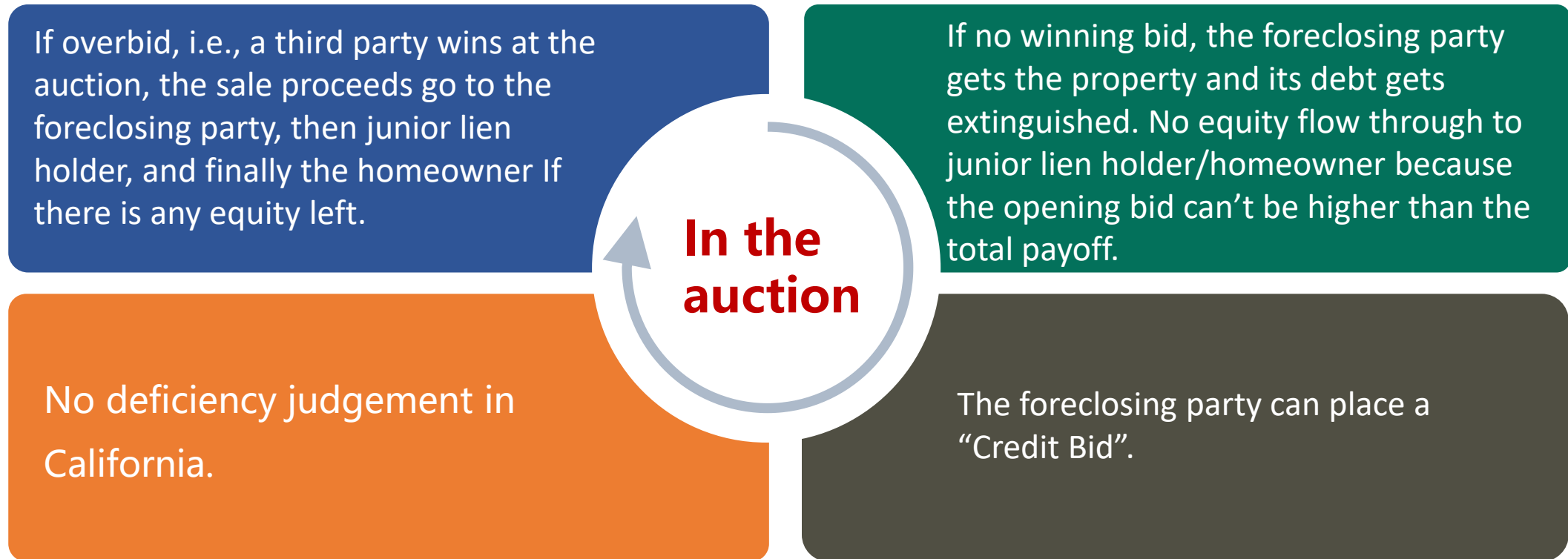


The lender must stop foreclosure process if the owner can cure the default

受托人出售 (Trustee Sale) — 拍卖 (Auction)



Trustee Sale - Auction



债务种类



担保债务 (Secured Debt)

有抵押品 (Collateral) , 如房屋抵押贷款、汽车贷款等。



无担保债务 (Unsecured Debt)

无抵押品, 如信用卡债务、学生贷款等。

Types of Debt



Secured Debt

Has collateral, e.g. home mortgage, car loan



Unsecured Debt

Has no collateral backing, e.g. credit card debt, student loan

如果第一顺位贷款方启动法拍程序

- 后顺位贷款方将失去房屋抵押权且变为无担保债务 (Unsecured Debt)
- 后顺位贷款方可以偿还第一顺位贷款
- 税务相关的债务常为超级债务 (Super liens)
- 国税债务有120天的赎回期 (Redemption Period)
- 加州的物业债务有90天赎回期 (各州情况可能会不同)
- 在一些需要进行司法程序法拍的州，赎回期的时间会有所不同

If The Senior Lien Holder Is The Foreclosing Party

- Junior liens get wiped off the property and become unsecured debt
- Junior lien holder has the right to bring the senior lien current
- Subject to tax liens as super lines
- IRS lien has a 120-day redemption period
- HOA lien in California has a 90-day redemption period (varies in different states)
- In some judicial states, there might be a redemption period of various length

如果第二顺位贷款方启动法拍程序

- 第二顺位贷款方得到房屋所有权后仍需承担第一顺位贷款 (subject to senior liens)
- 更大的风险, 更大的杠杆
- 要求第一顺位贷款方提供法拍通知 (Request for Notice)
 - 提示
 - 额外保护
 - 郡档案办公室 (County Recorder Office)

If The Second Lien Holder Is The Foreclosing Party

- The junior lien holder takes the property subject to the senior liens
- Subject to senior liens means greater leverage (and risks)
- Request for Notice to senior lien holder
 - Reminder
 - Extra protection
 - County Recorder Office

屋主能得到什么？

法拍后，屋主将得到偿还掉所有贷款后的剩余净值。



What Does The Owner Get?

The owner will get the remaining equity, if any, after satisfying all the lien holders.



竞标的缺点

- 1 产权保险公司不会对法拍的房屋提供产权保险。
- 2 大多数的法拍会在最后一刻被改期，甚至被取消。
- 3 在得到房屋产权之前不能看到法拍屋内部的情况。
- 4 得到法拍屋后，如果屋内住有持有有效期内的合法租赁合同的租客，可能需要按照合同继续执行（各州情况有所不同）。如果没有合法租赁合同，也有可能需要花费时间和金钱驱赶租客。
- 5 驱赶租客过程可能不易。
- 6 前屋主或租客可能会故意破坏房屋。
- 7 需要投入大量现金资金。
- 8 无法谈判，不能讨价还价。

Drawbacks To Bid At The Auction

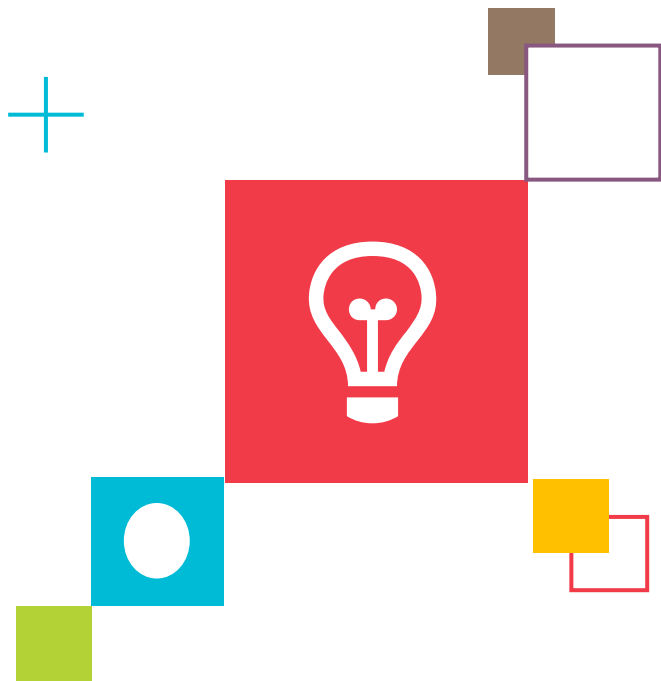
- 1 No title insurance for auction properties
- 2 Most of the auctions get cancelled at last minute
- 3 Cannot see the inside of the property before you get it
- 4 May have to honor the valid leasing agreement if there is any, or spend time and money to evict the tenant (varies in different states)
- 5 Eviction can be tough
- 6 Owner/tenant may damage the property
- 7 Capital intense, cash only
- 8 Cannot negotiate, no leverage

作业

Homework



- 整理自己所在州的Foreclosure时间线及法律法规。（不在美国的学员可以自己挑选任意一个州来调查整理信息）



第四讲：破产

学习目标

- 了解破产程序
- 学习如果操作破产



Objectives

- **Get to Know the Bankruptcy Process**
- **Learn How to Handle the Bankruptcy Process**



了解破产的重要性

**很多屋主会利用破产作为手段来拖延
法拍程序。**



Importance of Understanding Bankruptcy

A significant percentage of homeowners will file bankruptcy as a tactic to delay foreclosure.



第13章—债务重组 (Reorganization)

- 《破产法》的这一章规定对有固定收入的个人的债务进行调整。
- 借款人仍对部分债务负责，但法庭决定这些债务重组中的条款细则。
- 第13章允许债务人保留房产并按时偿还债务，通常为3至5年。

Types of Bankruptcy

Chapter 13 – Reorganization of Debtor's Debt

- This chapter of the Bankruptcy Code provides for adjustment of debts of individual with regular income.
- Debtor is still responsible for some debts, but court determines the terms of the debt reorganization.
- Chapter 13 allows a debtor to keep property and pay debts over time, usually 3 to 5 years.

第7章—清算 (Liquidation)

债务人放弃一切（“financially dead”），法庭将接管所有财务事项并做出决定。

- 《破产法》的这一章规定了“清算”，即出售债务人的非豁免财产以及将收益分配给债权人。
- 担保债务优先获得偿还。
- 无担保债务将根据债务人的能力偿还（经常是没有偿还），破产执行程序的最后如果仍有未还清的未担保债务，该部分债务视为清零。
- 大多数人选择申请破产第13章，少数人选择申请第7章。

Types of Bankruptcy

Chapter 7 - Liquidation

The person gives up on everything (“financially dead”) , and the court will take all your financial matters and make decisions (trustee).

- This chapter of the Bankruptcy Code provides for “liquidation” – the sale of a debtor’ s nonexempt property and the distribution of the proceeds to creditors.
- Secured debts get paid first.
- Unsecured debts can be paid with whatever the debtor can afford (often none). At the end of the case, any remaining unsecured debt is discharged.
- Not many people file Chapter 7, most file Chapter 13.

破产程序—第7章

- 递交申请表开启破产程序
- 破产受托人接管
- 递交 “521文件 ”等材料，比如报税记录，2个月的银行对账单，工资单
- 出席债权人会议（ “341 meeting” ），宣誓并回答问题
- 通过经济状况审查（收入vs.支出）以证明符合受破产第7章的保护。如果不符合条件，仍可申请第13章。
- 受托人将出售债务人的非豁免财产，除非债务人可以重新证明仍对部分债务负责，即仍将继续按条款偿还（需要法庭的批准）。
- 一般需3至6个月完成破产第7章的程序
- 申请破产第7章后的八年内，不能第二次申请；或者在第13章内所有债务被解除（Discharge）后的六年内不能再次申请第7章。
- 担保债务中的个人债务部分将被解除。
- 税费和子女抚养费仍将保留。

Bankruptcy Process – Chapter 7

- Submit court forms to initiate the bankruptcy process.
- Bankruptcy trustee takes over.
- Submit “521 documents” etc., e.g., tax returns, 2-month bank statements and paychecks.
- Attend the meeting of creditors (“341 meeting”), answering questions under oath.
- Pass the means test (incomes vs. expenses) to be eligible for Chapter 7 protection. If not, eligible, you can still file for Chapter 13.
- Trustee will seize and sell nonexempted properties unless you can re-affirm the debt (need court approval).
- Typically it takes 3 – 6 months to complete and be discharged.
- Can’t file another Chapter 7 after eight years since you first file Chapter 7, or six years after a Chapter 13 discharge.
- Personal liability on secured debt will be discharged.
- Back taxes and child support will survive Chapter 7.

破产程序—第13章

- 递交申请表开启破产程序
- 破产受托人接管
- 根据债务人在第13章中的还款方案开始执行还款。不可拖欠子女抚养费或者离婚生活费
- 递交“521文件”等材料，例如报税记录，2个月的银行对账单，工资单
- 出席债权人会议（“341 meeting”）宣誓并回答问题。债权人可能会反对债务人提出的还款方案，债务人可根据要求作出修改
- 出席听证会确定重新还款方案
- 提出索赔证明（Proof of Claim），也可以反对债权人提出的索赔证明
- 如果债务人无法执行，则此破产申请作废
- 如果第13章破产申请作废，可立即重新递交申请
- 通常是5年的还款方案。在第一次申请第13章并解除债务后的两年内，或者在通过第7章还清债务的四年内，不能再次申请破产第13章。

Bankruptcy Process – Chapter 13

- Submit court forms to initiate the bankruptcy process.
- Bankruptcy trustee takes over.
- Begin to make payments under *debtor's* Chapter 13 payment plan. Stay current on child support or alimony during the case.
- Submit “521 documents” etc., e.g., tax returns, 2-month bank statements and paychecks.
- Attend the meeting of creditors (“341 meeting”), answering questions under oath. Creditor may object to debtor’s plan. You may file a modified plan per objections.
- Attend confirmation hearing to confirm the repayment plan.
- File or object a proof of claim from creditors.
- If you can’t perform, the case could be dismissed.
- If a Chapter 13 is dismissed, you could refile immediately.
- Typically it’s a five-year plan. Can’t file another Chapter 13 and expect to be discharged before two years after filing the first Chapter 13, or four years after a Chapter 7 discharge.

为什么屋主主要申请破产（第13章）？

- 债务重组（Reorganization），即摆脱无担保债务，并重新协商担保债务
- 拖延法拍
- 可以多次申请

Why Do Homeowners File Bankruptcy (Chapter 13)?

- Debt re-org, i.e., get rid of unsecured debt and get new terms for secured debt.
- Delay foreclosure by getting an injunction.
- Can file multiple times.

破产结果



解除 (Discharged)

当破产案件完成后，根据法庭判决，某些债务得以取消，债权人不得再像债务人收取这部分债务。



撤销/驳回 (Dismissed)

- 案件不成立，被驳回，或者债务人自愿要求撤销（法庭决定是否批准撤销要求）
- 多数破产第13章的案件最终被驳回
- 在第13章破产申请中，如果案件没有因为有损裁决因素被驳回（without prejudice），可立即重新申请破产第13章。如果案件因为因为有损裁决的因素被驳回（with prejudice），则需要90天到1年的时间才能再次申请。

Bankruptcy Decisions



Discharged (Eliminated)

- Creditors are now prohibited from collecting from you after a bankruptcy case is completed.
- Terms (interest, etc.) can be modified (not on the primary residence).



Dismissed

- The case can't be completed, or the debtor voluntarily request dismissal which the court may or may not approve (hard in Chapter 7).
- Most Chapter 13 cases are dismissed.
- Debtor could file another chapter 13 bankruptcy, shortly if dismissed "without prejudice" or 90 day to one year if "with prejudice" .

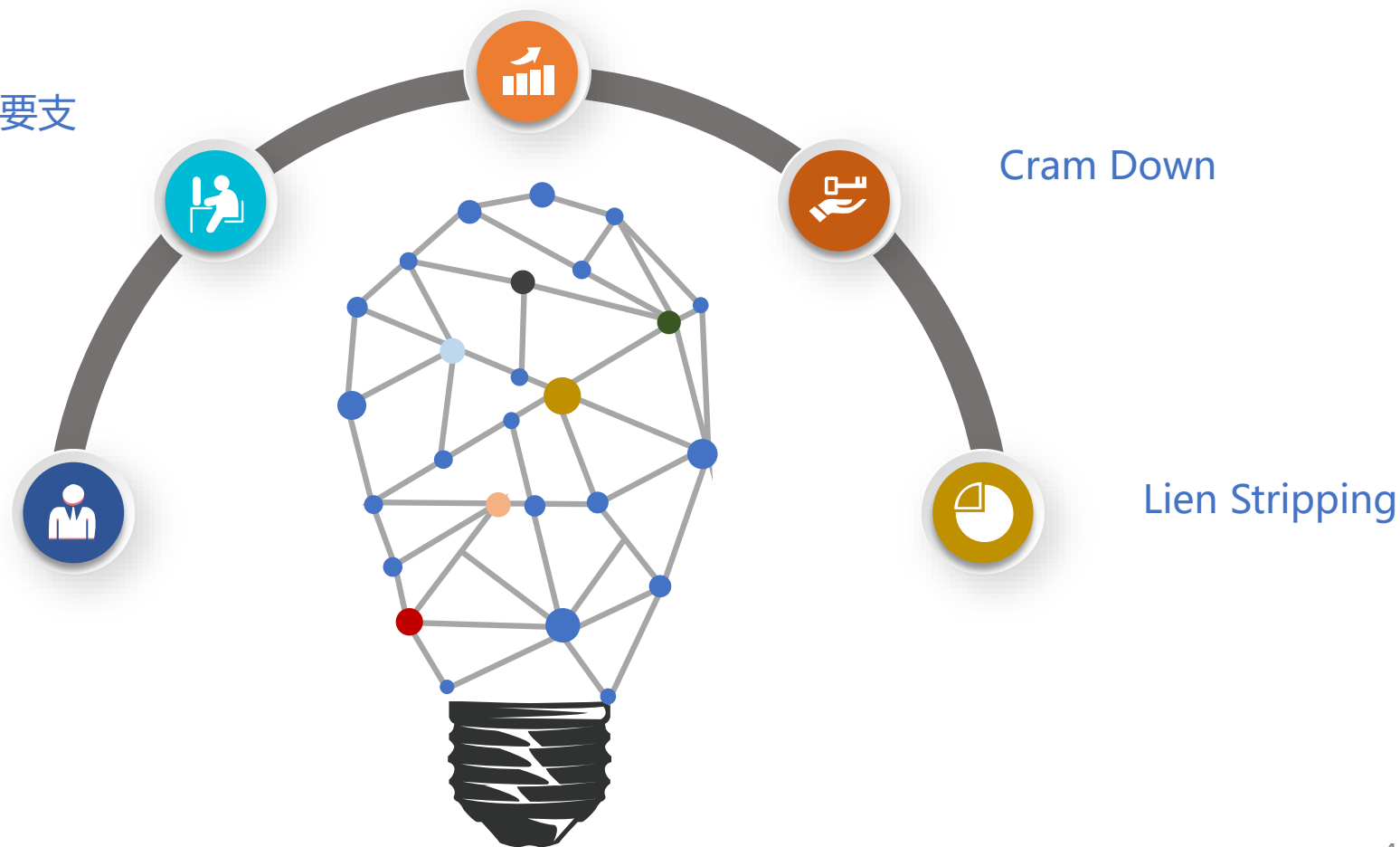
破产与投资

破产对于投资人来说意味着什么？

之前三个月的过期欠款通常将被分散到接下来的60个月内还清，在此期间仍需按时偿还每月应付的还款额

在第13章中，借款人需要支付每月的还款额

一旦申请破产，其他所有程序都要无条件停下来（驱赶住户，法拍等），相当于法庭给债务人一个喘息的机会



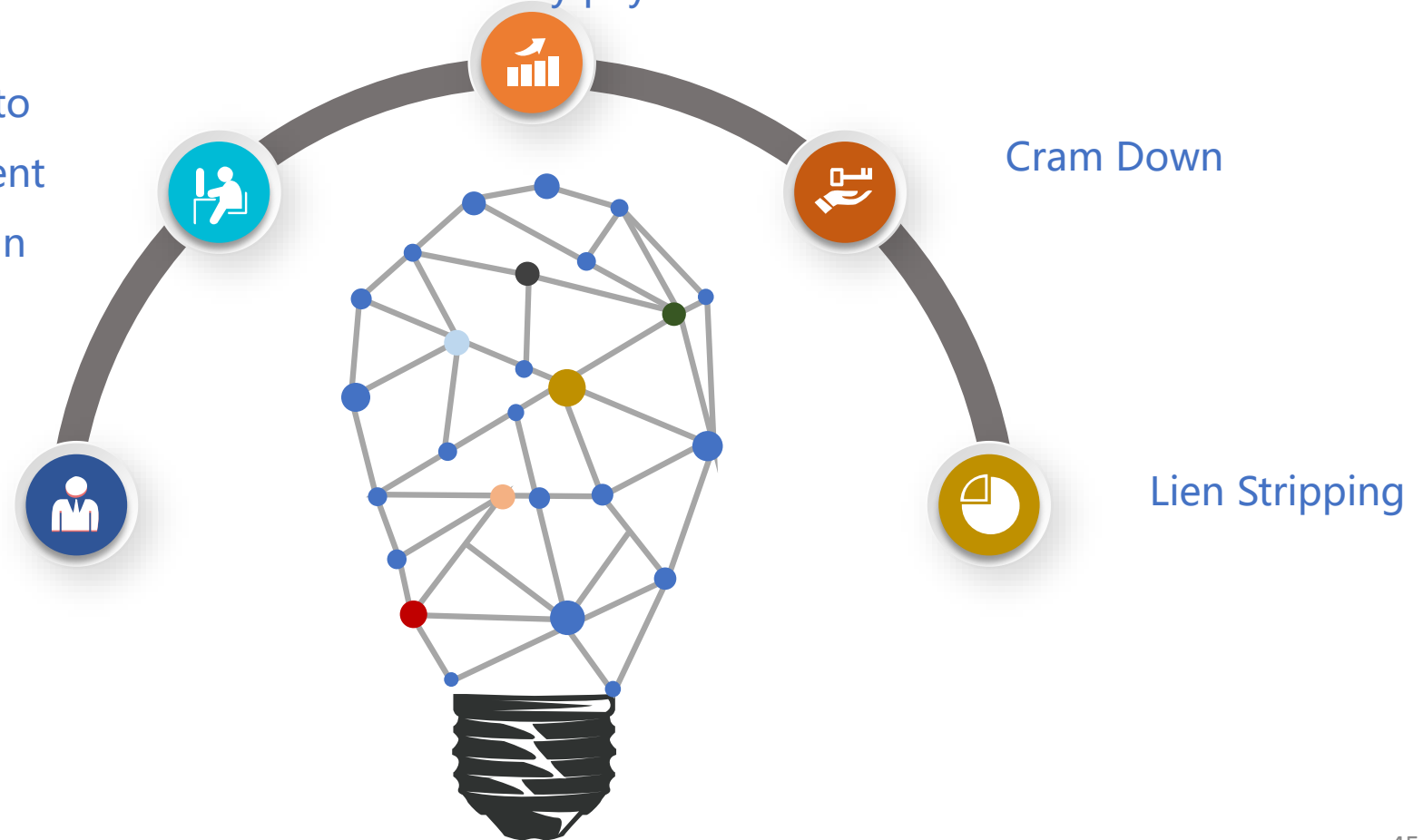
Bankruptcy & Investment

What Does Bankruptcy Mean to Investor?

The borrower needs to start paying the current months' payments in Chapter 13

Once file bankruptcy, other procedures, e.g. eviction, foreclosure, etc., must be terminated.

Three deferred payments are usually spread over the next 60 months in addition to the regular monthly payment.



两种手段



Cram Down

- Cram down 是法庭强制的一种贷款修改 (Loan Modification)
- 部分债务可能被视为无担保债务，例如：一个价值\$500,000的房产有\$600,000的贷款，这部分贷款就有可能变为\$500,000的担保债务和\$100,000的无担保债务)
- 条款（利率等）可重新协商修改（非主要住所）(Primary Residence)

Lien stripping

- 剥夺抵押权
- 如果房产的价值小于第一顺位贷款（"under water"），则后顺位贷款都会变成无担保债务



Cram Down

- Cram down is a court-mandated loan modification.
- A portion could become and be treated as unsecured debt. (\$600K debt on a \$500K property can be changed to \$500K secured debt and \$100K unsecured debt.)
- Terms (interest, etc.) can be modified (not on the primary residence).

Lien stripping

- The entire debt converted to unsecured debt if it's 100% "under water" .