

**ANSWER TO QUESTION NO. 7**

**(1) National Bank properly foreclosed on Jamie's mortgage.**

Michigan law allows for a mortgagee to *foreclose by advertisement*, which thereby allows mortgagees to forego judicial proceedings where there has been a default in the mortgage, such as failure to pay. MCL 600.3201; MCL 600.3204. However, in order to do so, certain conditions must be met. First, because non-judicial foreclosure is contract-based, there must be a power of sale clause in the mortgage; also, the mortgage must have been properly recorded, and it must not otherwise be in foreclosure at the time the mortgagee seeks to foreclose. MCL 600.3201; MCL 600.3204(1)(c); MCL 600.3204(1)(b). Second, the mortgagee must *publish notice* that the mortgage will be foreclosed by sale "by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated." MCL 600.3208, see also MCL 600.3212. Third, within 15 days after the first publication of the notice, the mortgagee must post a *copy of the notice* in a conspicuous place upon a part of the premises. MCL 600.3208. A *public foreclosure sale* must be held on the set date, and within 20 days of the sale, the purchaser must record the deed with an accompanying affidavit setting forth the information regarding redemption, MCL 600.3216; MCL 600.3232.

In this case, National Bank properly foreclosed by advertisement on Jamie's property after Jamie defaulted on her mortgage. The facts specifically note that the mortgage document contained a power of sale clause and was properly recorded by National Bank. National Bank properly published for four consecutive weeks in the local newspaper notice of the sale, and properly posted notice of the sale prominently on the property within 15 days of the first publication. (Note: it is irrelevant if Jamie received actual notice of the sale either through publication or as located on the property.) Finally, National Bank purchased the property on the set date at the sheriff's sale and properly recorded its new deed. A mortgagee may, in good faith, purchase the property at the sale. MCL 600.3228.

Note also: because this property is not Jamie's principal residence, separate notice by mail and other services are not required to be given pursuant to MCL 600.3205a in order to foreclose by advertisement. MCL 600.3205a has otherwise been

repealed by the Legislature, which will become effective on July 5, 2011.

**(2) Even though the property has been properly foreclosed, Jamie may exercise her right to redeem the property.**

The statutory right of redemption provides the homeowner of a foreclosed property the right to recover the property from the purchaser by paying the amount the purchaser paid for the property, taxes, insurance, fees, and interest that has accumulated. MCL 600.3240(1)-(2); *Gerasimos v Continental Bank*, 237 Mich 513, 518519 (1927). In order to exercise the right of redemption, however, a homeowner must act within the time period set by statute. See MCL 600.3240(7)-(12). Subject to exceptions not applicable here (e.g., abandonment), for a residential home subject to a mortgage excused after January 1, 1965, where the outstanding balance is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is 6 months from the date of the sale. MCL 600.3240(8).

Even though the property has been validly foreclosed, Jamie may redeem the property by paying National Bank the purchase price, as well as taxes, insurance, and other fees and interest accumulated within the statutory period. Because Jamie's mortgage was executed after January 1, 1965, and because the outstanding balance (\$80,000) is more than 66-2/3% of the original mortgage (\$100,000), and because none of the other statutory exceptions regarding the redemption period apply here, the redemption period applicable here is 6 months from the date of the sale. Jamie must thus actually tender the redemption amount to a proper person within 6 months, and by doing so she can recover the property and enjoy full privileges and liabilities of ownership. See *Flynn v Korneffel*, 451 Mich 186 (1996); *Schulthies v Barron*, 16 Mich App 246 (1969). Jamie thus has until September 15, 2011 to redeem.

**(3) Local Bank's preexisting mortgage remains as a valid encumbrance on the property.**

Generally, foreclosures wipe out junior interests (those that come later in time), but do not displace senior interests (those that came earlier), and thus the purchaser of a property at a foreclosure sale takes the property subject to senior interests. Michigan statutory law explicitly provides that "no person having any valid subsisting lien upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such [foreclosure] sale, nor shall his rights or interests be in any way affected thereby." MCL 600.3236.

Here, Local Bank's mortgage was executed and validly recorded prior to the mortgage of National Bank. Therefore, even though National Bank has foreclosed on its mortgage, Local Bank's mortgage (a senior interest) remains as a valid encumbrance on the property, to which National Bank (as the purchaser at the foreclosure sale) or Jamie (if she redeems within the redemption period) will be subject.