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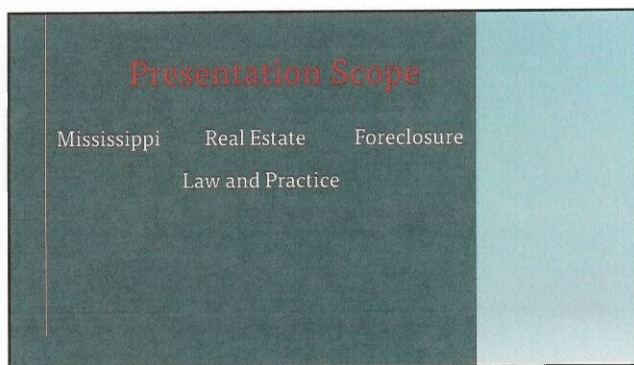
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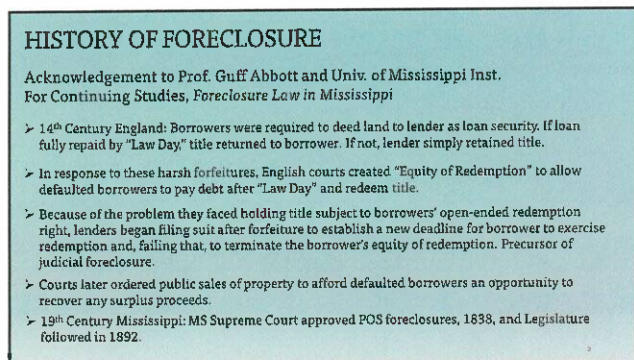
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Q: What's going on in a foreclosure?

A: Nothing positive.

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Doug Sanders, pro golfer:

"I'm working as hard as I can to get my life and my cash to run out at the same time. If I can just die after lunch on Tuesday, everything will be perfect."

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BORROWER'S VIEW

Loss of home, business

Credit problems

Extreme stress

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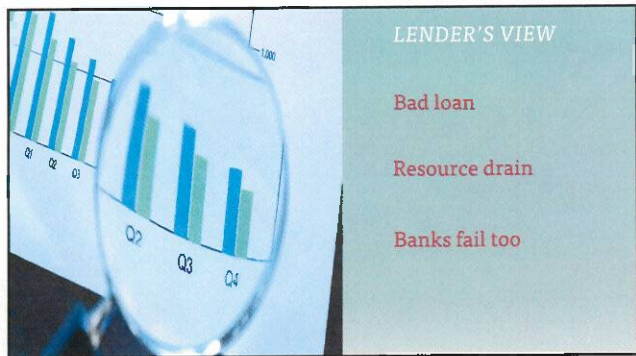
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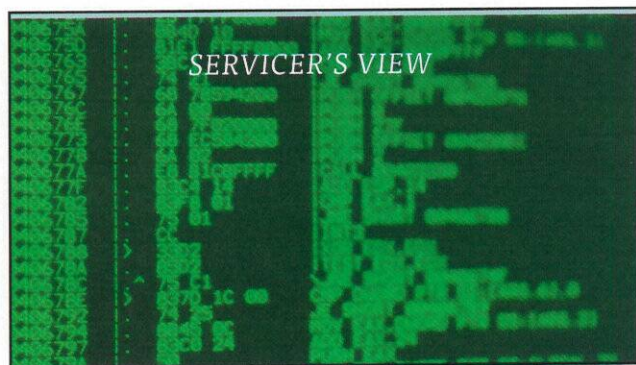
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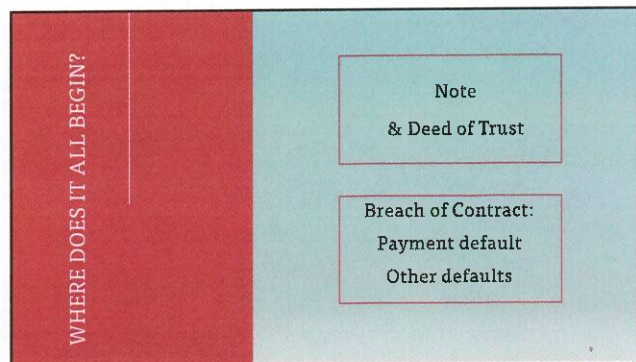
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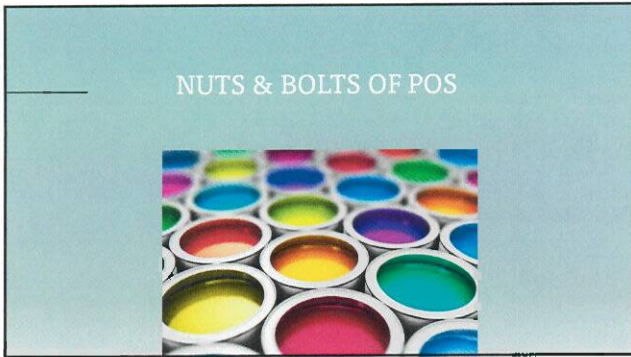
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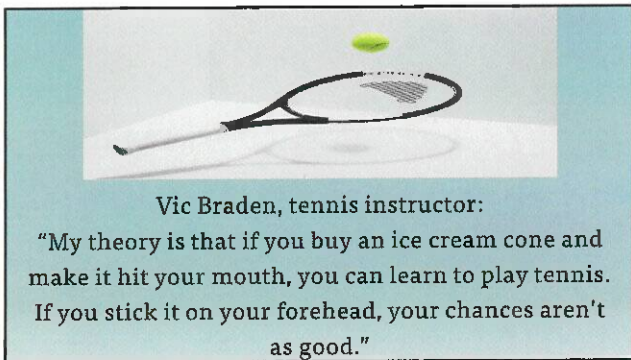
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§ 89-1-55. How lands sold under mortgages and deeds in trust.

- Section 111 of Mississippi Constitution
- Sell in county where land located or grantor's residence
- If land in 2 or more counties, parties may contract in which county to be sold
- Advertise for 3 consecutive weeks
- In a newspaper published in county where land located or if none, then in paper of general circulation in that county
- Post notice at courthouse
- Notice must disclose names of original mortgagors

**STATUTORY REQUIREMENTS**

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Read the Note and Deed of Trust and any related agreements. Details matter.

CONTRACT REQUIREMENTS

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DOCUMENT REVIEW



- Identify parties
- DOT executed
- Date of loan maturity
- Establish default
- Notice requirements
- Location of property
- Confirm POS

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TITLE REVIEW

- Vesting status
- DOT properly recorded
- Priority position
- Assignments recorded
- FTLs
- Ad valorem taxes
- Other liens, issues



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Description errors  
 (Scrivener's Affidavit)  
 Omitted/Unresolved heirs  
 (Heirship Affidavit)  
 Title not vested in Borrower  
 Life Estates  
 Spouse didn't execute DOT  
 on Homestead Property  
 Priority not as expected  
 Uncancelled DOT  
 Trustee not named  
 Missing Assignments

**TITLE ISSUES**

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**DOCUMENT PREPARATION**



- Assignment
- Substitution of Trustee
- Notice of Sale Elements
- Scheduling date of sale considerations  
 (3x or 4x, holidays, lender preferences)
- Notice to Borrower (FDCPA required?)
- Notice to IRS (30/25/120) (26 USC § 7425(b))
- Notice to Junior Lienors

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**POSTING & PUBLICATION OF NOTICE OF SALE**

- Where is sale?
- Who is posting?
- Where is posting board?
- When posted?
- What is Clerk's posting fee?
- Affidavit of Posting
- What newspaper is publishing?
- What is publication deadline?
- Proof of Publication

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18

Don Meredith, Dallas Cowboy quarterback:

“Coach Tom Landry is such a perfectionist that if he was married to Raquel Welch, he would expect her to cook.”



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STOPPING A SALE



- ❖ Reinstatement
- ❖ Bankruptcy
- ❖ Injunction/TRO
- ❖ Forbearance Agreement
- ❖ Sale of Note & DOT
- ❖ Gap FTL
- ❖ Mistake in process
- ❖ Government mandate

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DATE OF SALE

- ✓ Check PACER & SCRA
  - ✓ Announcements at Sale
    - ✓ Calling Sale
      - ✓ Lender credit bids
        - ✓ Third-party bidding
          - ✓ Receiving third-party funds
            - ✓ Continuing Sale



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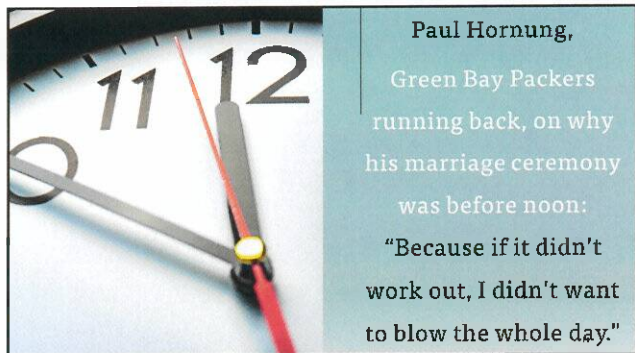
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Paul Hornung,  
Green Bay Packers  
running back, on why  
his marriage ceremony  
was before noon:  
“Because if it didn’t  
work out, I didn’t want  
to blow the whole day.”

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**BIDDING CONSIDERATIONS**

- Goal of Sale
- Appraisal
- Commercial reasonableness
- Determining deficiency
- Third-party bidders

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- Prepare, execute, record Substitute Trustee’s Deed
- Update title
- Disburse sale proceeds
- Distribute surplus proceeds
  - Priority of downstream lienors
  - Disbursement Agreement—Ratify & Indemnify
  - Separate Trustee’s fee

**POST SALE**

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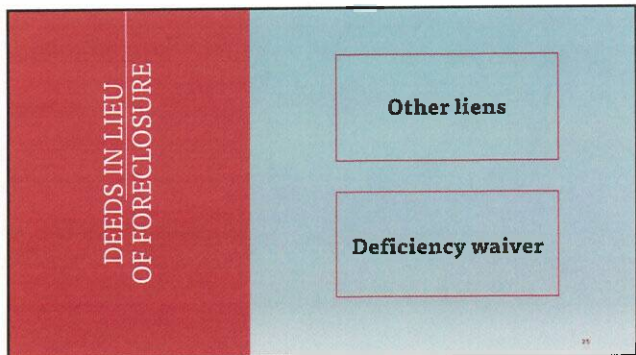
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DEEDS IN LIEU OF FORECLOSURE

Other liens

Deficiency waiver



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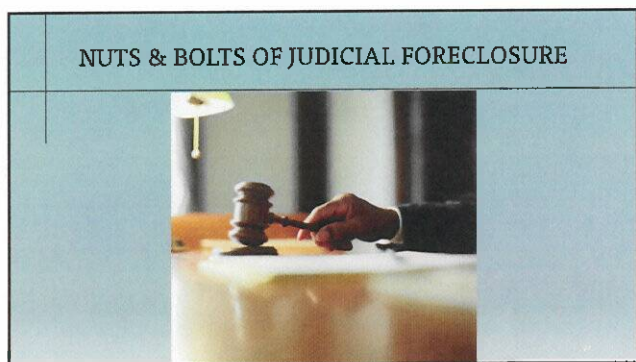
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NUTS & BOLTS OF JUDICIAL FORECLOSURE



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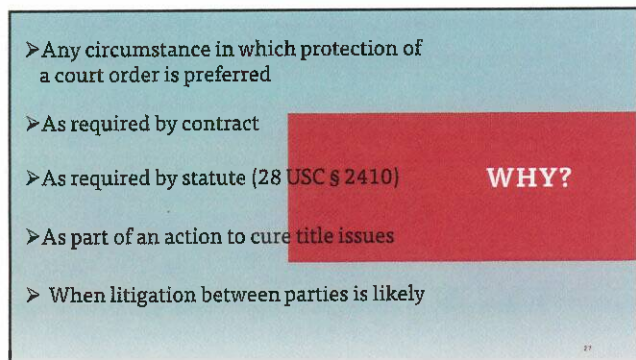
> Any circumstance in which protection of a court order is preferred

> As required by contract

> As required by statute (28 USC § 2410) **WHY?**

> As part of an action to cure title issues

> When litigation between parties is likely



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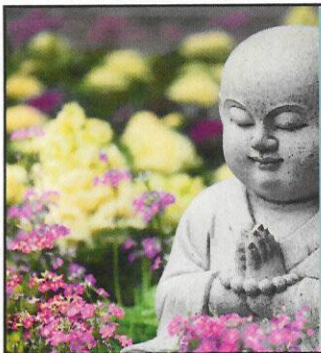
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"A Judgment  
 signed by a  
 Chancellor covers a  
 multitude of sins."  
 -JMark 24:7

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**GETTING STARTED**

- Complaint
- Who are the parties?
- Service of process
- Default and proffer
- Answer, discovery, motion practice, litigate

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**JUDGMENT AND PROCEEDINGS THEREON**

- ❖ Judgment appointing Commissioner and authorizing foreclosure sale subject to confirmation
  - Who is the Commissioner?
  - Include title curative adjudications
- ❖ Conduct foreclosure sale as POS, subject to confirmation
- ❖ Commissioner's Report of Sale
- ❖ Motion to Approve Commissioner's Report
- ❖ Final Judgment
- ❖ Commissioner's Deed

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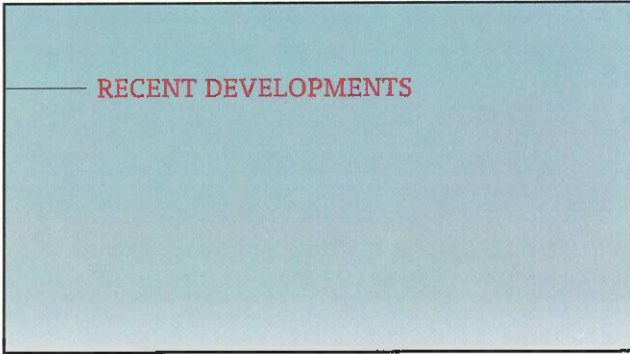
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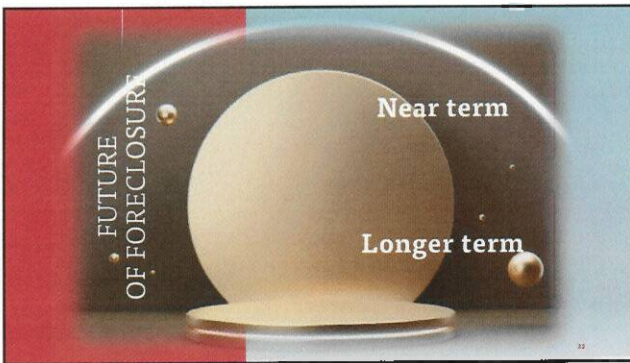
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**THANK YOU**

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McKay Lawler Franklin &  
Foreman, PLLC  
mfranklin@mckaylawler.com  
[www.mckaylawler.com](http://www.mckaylawler.com)  
601-572-8778

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