

## Guidelines for Preparing for and Bidding at a Foreclosure Auction

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*Swinomish Indian Tribal Community, the trustee, auctioneer, and deputy do NOT provide legal advice and do NOT do any eviction proceedings on behalf of buyers. Once the Trustee's Deed or other vesting document is issued and recorded, the foreclosure file is closed. The information below is provided only as an informational tool and is not intended to serve as legal advice. You should consult with an attorney of your choice regarding your legal rights and obligations as a bidder at the foreclosure sale.*

### BEFORE THE FORECLOSURE AUCTION

- PLEASE BE ADVISED that the lender or trustee may pull or continue a property sale from the sale list at any time up until the sale begins. Some of the reasons a property can be pulled include, without limitation, bankruptcy filing or the lender asking to continue the sale
- RESEARCH THE CONDITION OF TITLE. It is your responsibility to research the property and title before coming to the sale to bid. The trustee, auctioneer, or deputy cannot and does not guaranty or represent that the security being foreclosed upon is a first lien. It could be a second or third lien, in which case liens in higher positions will not be eliminated. For example, the foreclosure of second mortgage does not eliminate a first mortgage, which will remain on title after the foreclosure auction and become the responsibility of the new owner. In addition, there could be property taxes or assessments or other liens, such as mechanic's liens, judgment liens, or homeowner association (HOA) liens against the property that may not be eliminated by the foreclosure auction. If you don't know how to check the "condition of title" or the "chain of title" to the property, you may wish to hire a title company or attorney to do the research for you. Title companies can run title reports for a relatively low amount considering the potential risk of a lien that may remain on the property's title and left to the responsibility of the next owner. Purchasing title insurance may also protect you from hidden liens.
- RESEARCH THE PHYSICAL CONDITION. It is your responsibility to research the physical condition of the property. The sale will be made "as is, where is, and with all faults," meaning the property is sold in whatever condition it then exists in and the buyer is buying it with all known and unknown flaws and defects. Keep this in mind when preparing financially for the sale, as repairs and updates may be needed. It would be wise to drive by any property of interest to you. You cannot gain access onto the property or inside any dwellings unless you are granted specific permission by the owner. Photos may be available online.
- OBTAIN THE FUNDS YOU WISH TO PURCHASE THE PROPERTY. IMMEDIATE FUNDS ARE REQUIRED AT THE FORECLOSURE AUCTION. If you are the highest, successful bidder, you will be required to have sufficient funds with you to pay the entire amount of the successful bid at the close of bidding. You will NOT be allowed at any time to go to the bank or anywhere else to get the money once the bidding starts. Auctioneers, trustees, and deputies cannot accept personal checks, any kind of money orders, payroll checks, or third-party checks endorsed or made out to the trustee. The only acceptable forms of payment include properly signed:
  - a) Cashier's check;
  - b) Certified check; or

- c) Official bank or official teller's check or wire transfer certified or issued by a state-chartered bank, savings and loan association or credit union or a federally chartered bank, savings bank or credit union licensed to do business in the State of Washington).
- **Practice Tip:** To determine your maximum bid, you can consult with a local real estate agent, who may be able to pull local comparables and advise you of the price limit that works well for you.
- Forms of payment must be made out to "Swinomish Indian Tribal Community". If you provide funds for more than your successful bid, a refund check will be issued to you in approximately 7 to 10 business days once the trustee is assured that good and sufficient funds are collected in the trustee's bank account.
  - **Practice Tip:** Bidders often bring one cashier's or certified check with their maximum bid amount to the auction. If they successfully bid for a lower amount than their maximum, they await the refund check. Alternatively, some bidders bring multiple cashier's or certified checks (e.g., in multiples of \$10,000 or so) and provide only the necessary checks needed for the purchase to the auctioneer if they are successful.

#### AT THE FORECLOSURE SALE

- Meet at the location stated in the foreclosure ad. It will be an area open to the general public and is often outside, rain or shine.
- Arrive early to the sale location in order to check-in with the auctioneer. LATE BIDDERS WILL NOT BE ACCEPTED ONCE THE REVIEW STARTS.
- Check-in with the auctioneer. The auctioneer will add your name to the list of bidders and will verify the funds you have available for the sale. *It is recommended you be discrete about the funds you have available so your maximum bid remains confidential from other bidders.*
  - **Practice Tip:** Normally, the auctioneer (who could also be the trustee or deputy) will not be wearing any identifying clothing or name tag. Instead, look for someone with a clip board and/or papers and ask if they are conducting the foreclosure sale.
- The auctioneer will announce the address of the property. This will be your last chance to add your name to the list of bidders. The sale begins with the auctioneer verbally reviewing sale procedures and established policies. Additional bidders will not be accepted after this review starts.
- Sales are conducted without disruptions by attendees. No information EXCEPT BIDS is to be verbalized or otherwise provided by attendees during the auction. The auctioneer or trustee must be able to clearly hear the bids as they are being made. Flyers, cards, or other information for your "business" are not allowed during the sale.
- The opening bid will be announced by the auctioneer or trustee. The opening bid at the auction will not necessarily be the amount due and listed in the published notice of foreclosure. The second bid must be for at least \$1.00 over the amount of the opening bid AND sufficient to bring the bid to a whole dollar amount (no penny amounts). For example, if the opening bid is \$123,089.12, the lowest second bid that can be made is \$123,091.00.
  - **Practice Tip:** It is helpful to develop a formula for your personal bidding before arriving at the auction. For example, bring a sheet with a list of increments you would like to bid

in. Once an amount is reached, you can cross it off your list and bid the next number you have listed. Also, don't feel restricted to \$1.00 increments. You can be more aggressive and/or strategic by bidding in increments of \$100, \$1,000, or not round numbers that don't end in 0.

- If you are the successful bidder, you must immediately provide the full amount of the bid funds to the auctioneer or trustee.

#### **AFTER THE SALE**

- The successful bidder will be asked to fill out and sign a Receipt of Funds before they leave the sale location. The name used on this form will be used to issue the deed or other vesting document to the property. Please make sure it is accurate and legible.
- A vesting document will be issued and RECORDED by the trustee or deputy of the sale within 14 business days after confirmation of sufficiency and transfer of funds. It will then be mailed to the successful bidder at the address provided on the Receipt of Funds.
- After the sale, the successful bidder **does not automatically have immediate right of access to the property**. Transfer of title will not occur until the vesting document is recorded.

**ALL SALES ARE FINAL.** If you discover or determine that you do not want the property sold to you and purchased by you at foreclosure auction, you cannot get a refund and the sale cannot be "undone" by the lender, trustee, or deputy.