

# Backman Title Services

www.backmantitle.com

## Practical Advice about Trustee Sales

### Finding Properties in Default

From county recorder's office or create account at <https://backmantitle.com/member-documents/>

### Finding Properties Scheduled for Trustee's sale

Posted on the real property, at the recorder's office, from newspaper legal notices found for free at <https://www.utahlegals.com/>, & some trustee websites.

#### Common trustees

Marlon Bates: 801-531-7870 <https://www.scalleyreading.net/>

Paul Halliday: 801-355-2886 <https://www.hwmlawfirm.com/foreclosures/>

James Woodall: 801-254-9450 <https://www.carrwoodall.com/>

Jax Pettey: 801-984-0055 [http://www.petteylegal.com/foreclosure\\_bids.php](http://www.petteylegal.com/foreclosure_bids.php)

Smith-Knowles: 801-476-0303 [http://www.smithknowles.com/pending\\_foreclosure.php](http://www.smithknowles.com/pending_foreclosure.php)

SEB Legal: 801-449-9749 <https://www.seblegal.com/foreclosure-disclaimer>

Miller Harrison: 801.692.0799 <https://www.millerharrisonlaw.com/upcoming-foreclosures>

Richards Law PC: 801-274-6800 <http://richardshoalaw.com/foreclosure-sales/>

1. Notice of Default recording to Trustee's Sale ~120 days
2. Posting notice of trustee's sale: at least 20 days prior by mail, on door, & office of recorder
3. Advertising begins at least 10 days, but no more than 30 days prior to trustee's sale

### Bidding at the trustee sale

Max amount of opening bid: Unpaid principal, accrued interest, escrow advances/maintenance costs & costs of sale/attorney/trustee's fees (57-1-28).

Have cashier's check made in your name for the minimum deposit amount determined by trustee.

High bidder endorses cashier's check to Trustee.

Trustee's deed delivered to high bidder after receipt of balance of bid (usually due next day).

### Evaluation Advice & Tools

- |   |   |
|---|---|
| 1. Know your max bid prior to showing up  | 5. Verify zoning , CCR, Dedicated Plat, Survey & CCR's for future use and/or rental plans |
| 2. Evaluate county records & NOD  | 6. Know if property is occupied (eviction time & cost)                                    |
| 3. What survives a trustee sale? HOA dues & special assessments, sewer bills, assessments from tax authorities, property tax bill, federal tax lien (180 days), Issues with water rights. | 7. Bid on correct trust deed (1 <sup>st</sup> lien?)                                      |
| 4. Consider future costs of selling (Net Sheet)   | 8. Understand construction service liens  |
|   | 9. Be willing to walk away from a bad deal  |

#### Corporate

(801) 288-8818

#### Bountiful

(801) 295-7676

#### Layton

(801) 774-8818

#### Ogden

(801) 475-6100

#### Midvale

(801) 263-1500

#### Lehi

(385) 336-8390

#### Provo

(801) 224-9020

#### St. George

(435) 688-8808

## What do you need to know?

### Know the players

1. **Seller-** authorization form requirements
2. **Default Lender-** primary contact
3. **Trustee-** They should know the listing agent
4. **Jr. Lien Holders-** From seller's & title report
5. **Bankruptcy Court-** From seller & title report, can't list or sell property w/o approval
6. **Mortgage Insurance Company-** They can stop the approval
7. **The buyer, their lender & title company-** restrictions on contract changes, costs, & timing

### Know the tools

1. Preliminary Title Report
2. Estimated settlement statement /Net sheet- for deficiency calculation  
<https://backmantitle.com/seller-net-sheet/>
3. Notice of default timeline
4. Trustee website
5. CFPB Requirements & Utah Code
6. MERS
7. HOA Registry
8. Utah Bar attorney search

### Know the foreclosure timeline

CFPB Pre-default (~120 days)

NOD to Auction (~120 days)

### Know the consequences of a short sale for the seller

1. Payoff in full?
2. Short/deficient payoff- Full debt forgiveness?
3. Deferred payment schedule?
4. Release of lien on property only?
5. Deficiency judgment?
6. Consequence on credit score?
7. Consequence on ability to borrow again?
8. Approval packet & hardship letter

### Know what you are asking the lien holders to accept

1. What is the current property value?
2. How much are the total property liens encumbrances?
3. What are the costs of sale?
4. HOA reinvestment fees
5. UTOPIA and Assessment charges
6. Solar panel payoffs
7. How much of a loss are you asking lien holders to take?
8. How much time will the transaction take?
9. What does the closing calendar look like?
10. How much time is required for approval before & after settlement and closing?

### Know the approval letter

1. Expiration date
2. Payoff amount/Lien release amount
3. Payoff & settlement statement match
4. Additional proceeds/per diem?
5. Payment type restrictions (wire/cashier's check)
6. Restrictions on other lien payoffs
7. Restrictions on costs of sale
8. Restrictions on paid closing costs
9. Debt forgiveness/deficiency judgment
10. 1099-S form & tax laws
11. Impact on borrower credit
12. Arm's length requirement
13. Final Settlement statement approval
14. Postponement of pending foreclosure/trustee sale

#### **Corporate**

(801) 288-8818

#### **Bountiful**

(801) 295-7676

#### **Layton**

(801) 774-8818

#### **Ogden**

(801) 475-6100

#### **Midvale**

(801) 263-1500

#### **Lehi**

(385) 336-8390

#### **Provo**

(801) 224-9020

#### **St. George**

(435) 688-8808

## Pre-Notice of Default Requirements from the CFPB

- “By 36 days after a homeowner has misses a payment or can’t pay the full amount, the servicer must make a good faith effort to contact by telephone or at an in-person meeting.”
- “Before a borrower becomes 45 days delinquent, the servicer must send a written notice to the borrower or borrower’s agent encouraging the borrower to contact the servicer, providing the phone number for the personnel assigned to the borrower, and giving the borrower examples of loss mitigation options the servicer offers. The borrower must also receive information about how to find a housing counselor”
- “A mortgage servicer may not make a first notice or filing for foreclosure until the borrower is more than 120 days delinquent. The 120-day period under the rules is designed to give borrowers time to learn about workout options and file an application for mortgage assistance.”
- “In addition, if the borrower has already submitted a complete application for mortgage assistance – often called a loss mitigation application – the mortgage servicer may not begin the foreclosure process while a borrower is being evaluated for a loss mitigation plan.”
- “Of course, a loss mitigation plan might not prevent foreclosure if the borrower stops making payments under the plan:”

## 2013 Changes to the Utah Code 57-1-24.3

(2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary or servicer shall:

(i) designate a single point of contact; and

(ii) send notice by United States mail to the default trustor.

(b) A notice under Subsection (2)(a)(ii) shall:

(i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of default;

(ii) state:

(A) the nature of the default;

(B) the total amount the default trustor is required to pay in order to cure the default and avoid the filing of a notice of default, itemized by the type and amount of each component part of the total cure amount; and

(C) the date by which the default trustor is required to pay the amount to cure the default and avoid the filing of a notice of default;

(iii) disclose the name, telephone number, email address, and mailing address of the single point of contact designated by the beneficiary or servicer; and

(iv) direct the default trustor to contact the single point of contact regarding foreclosure relief available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief.

(3) Before the expiration of the three-month period described in Subsection [57-1-24\(2\)](#), a default trustor may apply directly with the single point of contact for any available foreclosure relief.

(4) A default trustor shall, within the time required by the beneficiary or servicer, provide all financial and other information requested by the single point of contact to enable the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure relief for which the default trustor applies.

(5) The single point of contact shall:

(a) inform the default trustor about and make available to the default trustor any available foreclosure relief; (b) undertake reasonable and good faith efforts, consistent with applicable law, to consider the default trustor for foreclosure relief for which the default trustor is eligible; (c) ensure timely and appropriate communication with the default trustor concerning foreclosure relief for which the default trustor applies; and (d) notify the default trustor by United States mail of the decision of the beneficiary or servicer regarding the foreclosure relief for which the default trustor applies.

(6) Notice of a trustee's sale may not be given under Section [57-1-25](#) with respect to the trust property of a default trustor who has applied for foreclosure relief until after the single point of contact provides the notice required by Subsection (5)(d).

(7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with respect to the trust property of a default trustor who has applied for foreclosure relief if, in the exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

(a) determines that the default trustor does not qualify for the foreclosure relief for which the default trustor has applied; or

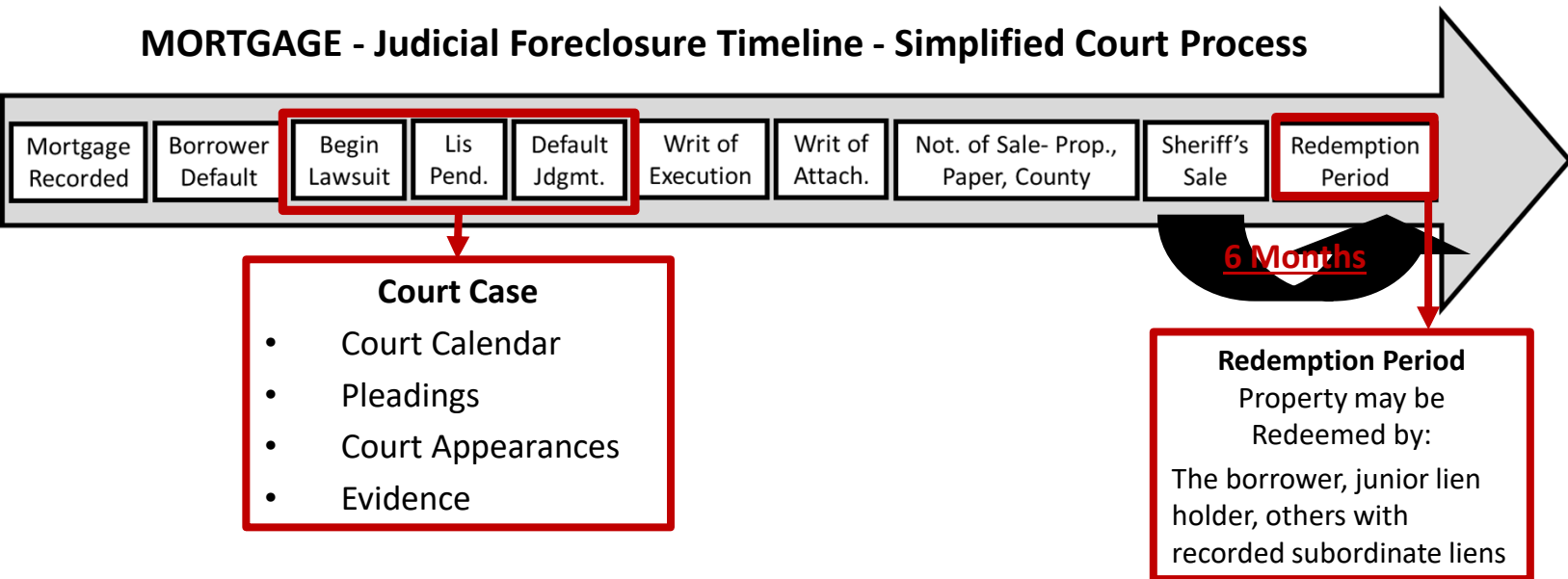
(b) elects not to enter into a written agreement with the default trustor to implement the foreclosure relief.

In Utah, both judicial and non-judicial foreclosures are available options for lenders to enforce security interests in real property. Judicial foreclosures in Utah are typically processed through the district court. While non-judicial foreclosures are more common in Utah, judicial foreclosure may still be pursued under certain circumstances.

In a judicial foreclosure, the lender files a lawsuit in the district court to obtain a court order to foreclose on the property. This process generally involves filing a complaint, providing notice to the borrower, and conducting a court-supervised auction to sell the property. The specific procedures and requirements for judicial foreclosures in Utah can be found in the Utah Code.

Under judicial foreclosure, various types of liens, including mortgages, construction service liens, judgments, and HOA liens, can be foreclosed upon. While judicial foreclosure of deeds of trust is less common in Utah, it may still be possible if the deed of trust document provides for a judicial foreclosure process. Judicial foreclosure can also be used to clear any clouds on title by joining appropriate parties to the lawsuit and seeking a court declaration of ownership, like a quiet title action.

## MORTGAGE - Judicial Foreclosure Timeline - Simplified Court Process



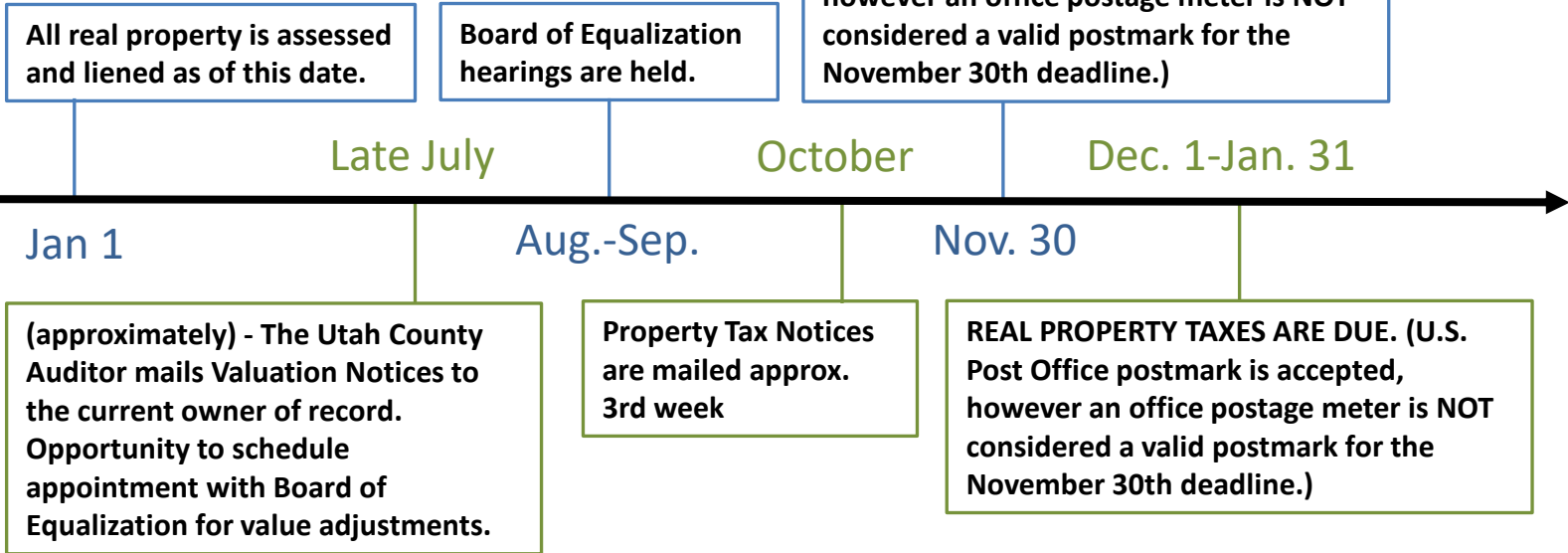
## Judicial Foreclosure Quick Facts

- Estimated to be multiples of the cost and take 3 times as long as a non-judicial foreclosure
- Approximate time needed is at least a year (including 6-month redemption period)
- Borrower reinstatement requires that actions must be filed with court
- All parties with interest in property must be served notice/summoned
- Notice is posted in 3 public places 20 days before sale and published for 3 consecutive weeks
- Auction conducted by county sheriff and title conveyed by Sheriff's Deed (no warranty)
- The property may be redeemed by the borrower or junior lienholders within 180 days by paying off the senior lien, plus an additional percentage by Rule.
- Title is unmarketable during the redemption period



## Timeline for Real Property Taxes

from: <http://www.utahcounty.gov/Dept/Treas/TaxCalendar.asp>



## What are property tax sales?

**Definition 1:** "A Tax Sale is **the public auction of any real property with taxes that have been delinquent** for four years from the final tax payment deadline (five years including by the date of the sale)." from [http://www.webercountyutah.gov/Clerk\\_Auditor/tax\\_sale.php](http://www.webercountyutah.gov/Clerk_Auditor/tax_sale.php)

**Definition 2:** "Any property not redeemed by March 15th following the lapse of four years from the date when the property became delinquent will be included in the Annual Delinquent Tax Sale held in May. **This sale allows the county to recapture taxes due on any parcel that is more than four years delinquent.**"

From <http://www.utahcounty.gov/taxsale/FAQ.asp>

## How the Auction proceeds-Undivided Interest Bidding for Homes and other Improved Property:

"Improved parcels or parcels with homes or other buildings on them are sold for a percentage of the ownership share or Undivided Interest. The term "Undivided Interest" refers to the percentage of ownership the winning bidder will get in the complete or undivided parcel. Utah County does not subdivide parcels through the tax sale process. The bidding will start with an opening bid that includes taxes, penalties, interest, and the administrative cost of the sale for 100% of the undivided interest. **As bidding continues, the percentage of ownership will be bid down.** The winner bidder will be final remaining bidder who, for the amount of taxes, penalties, interest and fees due, accepts the lowest percentage of ownership in the property. The remaining percentage of ownership not sold will be retained by the original owner."

Tax Sale Information from Utah County: <http://www.utahcounty.gov/taxsale/FAQ.asp>

## When will I get the deed to the property I bought at the Tax Sale?

"We will mail a Tax Deed to the new owner within **thirty days after the sale** is ratified by the County Commission."

From [http://www.webercountyutah.gov/Clerk\\_Auditor/tax\\_sale.php](http://www.webercountyutah.gov/Clerk_Auditor/tax_sale.php)

## What form of payment is accepted? Is a financing plan available?

### From Weber County

*"The successful bidder on a parcel must pay the full amount to the Weber County Treasurer in cash or with bank certified funds. There is no financing available through Weber County.*

*If the amount of the sale is less than \$2,000, the Treasurer may accept a personal check as a deposit at the time of the Tax Sale with the understanding that cash or bank certified funds for the entire amount of the sale will be paid to the County Treasurer by 5:00 p.m. on the day of the sale.*

*If the amount of the sale exceeds \$2,000, the successful bidder must pay a non-refundable deposit of \$1,000 cash or bank certified funds on the day of the sale, with the balance due and payable to the County Treasurer by 5:00 p.m. within five (5) business days from the day of the sale."*

From: [http://www.webercountyutah.gov/Clerk\\_Auditor/tax\\_sale.php](http://www.webercountyutah.gov/Clerk_Auditor/tax_sale.php)

## Property Tax Sale Cautions

### From Utah County:

***"What ownership rights are granted with a Tax Deed? County Ordinance 21-5-14. Disclaimers by the County with respect to Sale Procedures and Actions. (a) Properties sold during the annual real property tax sale shall be conveyed by Tax Deed. This form of deed is not a warranty deed.*** The County makes no representations as to the title conveyed, nor as to the purchaser's right of possession of the property. Similarly, the County makes no warranties or representations as to whether the property is buildable or developable, nor does the County make any representations regarding whether the property complies with applicable zoning regulations. ***The County does not warrant or represent that any property purchased during the Tax Sale is habitable or in any particular condition.*** The County also makes no warranties or representations regarding the accuracy of the assessment of the property or the accuracy of the description of the real estate or improvements thereon. ***Any bidder who wishes to understand exactly what will happen when a Tax Deed is issued by the county for a specific property must consult their own legal counsel*** or title company. No employee or elected official of Utah County can provide any type of legal or non-legal advice related to the tax sale. Any information given by phone, mail, or email that conveys information beyond the scope of the procedures of the tax sale will be considered the unqualified personal opinion of the individual and does not officially represent the county's position."

from: <https://www.utahcounty.gov/Dept/auditor/taxadmin/taxsale/formsfaqs.html>

### From Weber County:

- *"Weber County makes no warranties or representations as to the title or other attributes of the property. If you purchase property, you do so at your own risk.*
- *For example, the County does not guarantee or represent:*
  1. *That the property will not be subject to later redemption by the IRS or other governmental agency;*
  2. *That the property is not involved in current litigation or won't be involved in future litigation;*
  3. *That the property is suitable for habitation, building, or development;*
  4. *That the property complies with zoning laws;*
  5. *That the assessment or description of the property is accurate; or*
  6. *Anything else. You buy at your own risk.*

*It is extremely important for each bidder to research the property. The addresses listed on the tax sale list are the property owner's mailing address and not necessarily the property address. The below links are provided for help in researching parcels."*

From: [http://www.webercountyutah.gov/Clerk\\_Auditor/tax\\_sale.php](http://www.webercountyutah.gov/Clerk_Auditor/tax_sale.php)

## Notice Requirements Jordan v. Jensen, 2017

- Unless the County gives proper notice to interested parties, the tax sale does not cut off lien holder rights.
- Title insurance underwriters require a quiet title action after a tax sale.
- A summary of Jordan v. Jensen can be found here: <https://www.cbclaw.com/Newsletters/Going-Once-Twice-Sold-Maybe-Getting-Title-To-Property-From-A-Tax-Sale-In-Utah-May-2017.shtml>



## Warranty Deed

Grantor conveys & warrants the title with 5 statutory covenants:

1. the grantor lawfully owns fee simple title to and has the right to immediate possession of the premises;
2. the grantor has good right to convey the premises;
3. the grantor guarantees the grantee, the grantee's heirs, and assigns in the quiet possession of the premises;
4. the premises are free from all encumbrances;
5. the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the premises in the grantee, the grantee's heirs, and assigns against all lawful claims whatsoever.

## Trustee's Deed

A conveyance without covenant or warranty, expressed or implied, given to the grantee following a trustee's sale.

## Personal Representative's, Guardian's, or Conservator's Deed

Conveyances made without covenant or warranty by approved representatives named in decrees or letters issued by the court.

Evidence of capacity of the grantor is attached to the conveyance.

## Divorce Decree

A certified copy of a decree of divorce can be recorded as a conveyance if the legal description and parcel number for the property is included in the decree.

## Grant Deed

The effect of a grant deed is not enumerated in the Utah Code. If recorded, a grant deed has the effect of a quit claim deed.

## Special Warranty Deed

Grantor conveys & warrants the title with 2 statutory covenants:

1. the granted property is free from all encumbrances made by that grantor; and
2. the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the property in the grantee, the grantee's heirs, and assigns against any lawful claim and demand of the grantor and any person claiming or to claim by, through, or under the grantor.

## Quit Claim Deed

A conveyance without warranty of all right, title, interest, and estate of the grantor

## Sheriff's Deed

A conveyance without covenant or warranty, expressed or implied, given to the grantee following a sheriff's sale. & 6-month redemption period

## Revocable Transfer on Death Deed

A conveyance without warranty where the grantor's interest in real property transfers to named beneficiaries.

Deed must be executed with the completed form  
Deed can be revoked by recording a revocation, recording a new transfer on death deed, or transferring the property to someone else during the grantor's lifetime.

## Tax Deed

A conveyance without warranty from the county to the high bidder from a property tax sale.

1. Tax deeds do not extinguish creditor rights
2. Tax deeds are not insurable & title underwriters require quiet title actions after tax sales.

## Patent

A conveyance of real property from the Federal Government