

# UNDERSTANDING ALABAMA'S RIGHT OF REDEMPTION

What You Need to Know to Negotiate REO Sales



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EXCLUSIVE TO REO MAGAZINE

**THE STATE OF ALABAMA IS A NON-JUDICIAL FORECLOSURE STATE.** While the ease of foreclosing on a property is less restrictive, the tradeoff is that Alabama has one of the largest redemptive periods in the nation—one year. Most REO managers know that foreclosed property in Alabama can be sold and conveyed during the redemptive period.

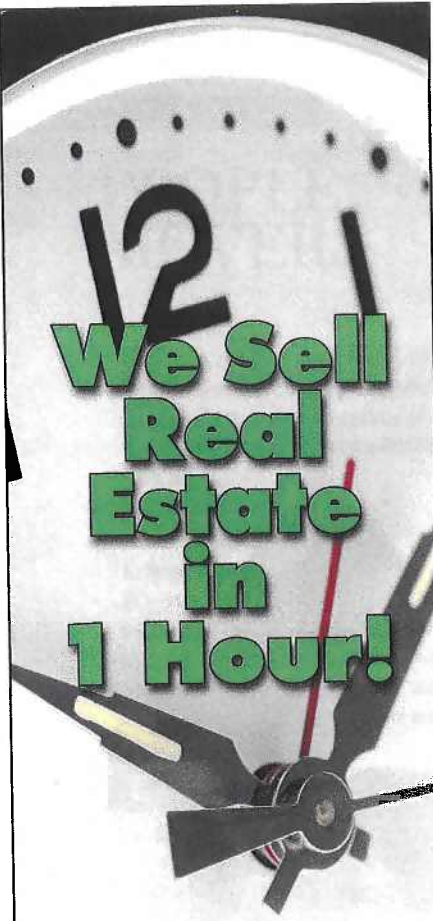
Rights of redemption are codified in Alabama code section 6-5-247 through 6-5-257. The one-year right of redemption runs from the date of foreclosure sale and is granted to a number of individuals, including foreclosed debtors, junior lien holders, judgment creditors and heirs of foreclosed debtors. Generally, in order to redeem a foreclosed property, the redeeming party

must pay the amount of the foreclosure bid plus 12 percent interest calculated from the date of the foreclosure sale and “lawful charges.” Lawful charges include ad valorem taxes paid by the vested owner, homeowner’s insurance and “necessary repairs.” There is, unfortunately, no clear definition as to what constitutes necessary repairs, but as a general rule: If the repairs are required

for the maintenance and upkeep of the house, the costs are includable. Cosmetic repairs generally are not.

The foreclosed debtor can lose his/her right of redemption under Alabama law. Failure to deliver possession of the property to the titled owner within 10 days of receipt of written demand to vacate the premises could result in the foreclosed debtor losing any future right to redeem. Likewise, a right to redeem is transferable under Alabama law. A foreclosed debtor can, by agreement, transfer his/her right to redeem to a third party. This third party can exercise the right to redeem accordingly.

In order to properly redeem a foreclosed property in Alabama, the redeeming party must provide written notice to the current vested owner expressing an intent to redeem. The vested party has



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10 days from the service of notice to provide a written payoff to the inquiring redemptive party. Failure to provide the payoff statement within that timeframe could result in the vested party losing the right to collect for improvements.

In the event money is remitted for the redemption payoff, a redemption deed is prepared and delivered to the redeeming party. If redemption is by the foreclosed debtor, all junior liens are revived as a result of the redemption.

### Sale of REO property

Each and every sales contract entered into with a prospective buyer of REO property where the right of redemption has not expired should clearly reflect that the sale is subject to the one-year right of redemption and that the buyer acknowledges this fact. This disclosure should be clear and conspicuous. Basically, there are two scenarios whereby a foreclosed property can be sold in Alabama during the redemptive period.

The first scenario is where the purchase is a cash sale. The buyer accepts the property with the understanding that the property is subject to a right of redemption and the redemptive period has not expired. Should the sales price exceed the foreclosure bid, then the buyer accepts the risk that in the event of redemption, he/she may lose part of their investment. An owner's title policy delivered to the buyer after closing will contain an exception on Schedule B-2 for the remaining redemption period and provide no affirmative coverage. As stated earlier, the buyer would hold harmless the seller should a redemption take place by the disclosure signed in the contract.

The second scenario involves a new lender financing the property to be sold. Most lenders will require affirmative coverage over the one-year right of redemption on the loan commitment issued at closing. Where the new loan amount exceeds the foreclosure bid price, title companies will generally not give affirmative coverage as a matter of course. The seller has two options should this occur.

A redemption bond can be purchased, whereby a surety bond company indemnifies the title company over the

one-year right of redemption, allowing the title company to issue affirmative coverage on the loan policy. Most surety bond companies will write the bond provided that the loan amount does not exceed the foreclosure bid price of more than 30 percent. The cost of the bond is usually ten dollars per thousand of the total amount of the loan. So, with a \$90,000 mortgage, the bond would cost \$900. Usually, the contract is silent as to who will bear the cost of the bond and this cost is generally not considered a normal closing cost under Alabama custom. REO managers should carefully scrutinize and address this possibility in all contracts entered into in Alabama, or at least should have a property drafted disclosure with respect to the right of redemption. Where the seller has been notified by a potential redeeming party of his/her intent to redeem, a redemption bond cannot be purchased regardless of whether the redemption actually takes place or not.

Where the loan amount exceeds the foreclosure bid price by more than 30 percent, a bond cannot be purchased. In this case, the seller can indemnify the title company over the one-year right of redemption. In order for this to occur, the title underwriter would have to authorize and approve the indemnification agreement. Most major underwriters will accept indemnification where the seller is a major bank.

Obviously, the seller would be responsible to pay the difference between the remaining mortgage balance of the purchaser's loan and amount required to effectively redeem the property. It should be noted again that affirmative coverage for the one-year right of redemption is *only* provided on a loan policy and will never inure to the benefit of a purchaser. 🏠

**EDITOR'S NOTE** Jeff Underwood, Esq. is partner at the law firm of Sirote & Permutt P.C. in Alabama. The firm's Mortgage Banking Practice Group focuses on serving the needs of its national, regional and local mortgage banking clients in the areas of foreclosure, bankruptcy, REO closings, evictions, title curative work, regulatory compliance and all related legal matters. More information about the firm can be found online at [www.sirote.com](http://www.sirote.com).