



## CONFIRMING, DENYING, OR REDOING FORECLOSURES

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Every economic downturn requires members of the bench and bar to become acquainted with the foreclosure confirmation process outlined in O.C.G.A. § 44-14-161. Georgia law allows non-judicial foreclosures of real property mortgages, but requires lenders to "confirm" the foreclosure sale in order to pursue a monetary judgment against a foreclosed debtor, through a judicial process enacted in 1935 during the midst of the Great Depression.

The foreclosure confirmation process rewards lenders and borrowers with counsel who are versed in the intricate and obscure foreclosure confirmation process. A lender can secure possession of the real estate collateral, and also obtain a money judgment in an expedited process if the lender carries its various burdens under the foreclosure confirmation statute. On the other hand, a borrower and the borrower's guarantors can convert a large amount of liability into a "non-recourse" loan by prevailing in a confirmation proceeding.

The limited issues in a foreclosure confirmation proceeding include whether the property sold at a foreclosure sale brought its true market value, and whether the foreclosure sale was conducted with proper legal notice, advertisement, and legal regularity. The confirmation hearing/trial is a bench trial proceeding. Pursuant to O.C.G.A. § 44-14-161(c), the confirmation trial can be held with as few as five days notice.

Traps for the unwary abound for the lender as well as the borrower. The lender must file the confirmation petition and "report" the sale within thirty (30) days of the sale. Procedural requirements for the foreclosure, such as new

notice requirements for residential foreclosures enacted in 2008 and codified in O.C.G.A. § 44-14-161.2, must be satisfied. The confirmation statutes are strictly construed. The lender must obtain a hearing date and personally serve the borrower and guarantors with notice of the trial.

The borrower and guarantors must act quickly to catch up with the lender in being prepared for trial. They must engage counsel, engage an appraiser and obtain an appraisal to rebut the lender's case regarding the fair market value of the collateral, and request the Court for an opportunity to conduct discovery and prepare for trial.

An uncontested foreclosure confirmation trial can take less than five minutes, while a contested trial can take days, with a battle of experts and lay witnesses testifying about real estate values and various aspects of the foreclosure. The potential outcomes are a confirmation of the sale, which will allow the lender to file a subsequent proceeding to pursue a deficiency judgment; a denial of confirmation, which will relieve the borrower and guarantors from further financial liability on the loan; or a resale of the foreclosure if there are errors in the foreclosure and the lender can persuade the Court to permit a "do-over." The high stakes of a foreclosure confirmation proceeding allow good lawyering to occur in bad financial times in one more type of legal proceeding.

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