



NATIVE HAWAIIAN LEGAL CORPORATION

Serving Hawai'i since 1974

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COTENANT FORECLOSURES

This information is intended for general information only; we are not providing legal assistance. We urge you to seek legal advice from an attorney before making any decisions regarding cotenant foreclosures. There may be variations within the County governments.

When real property taxes, either all or a portion, are not paid when due, it becomes delinquent (overdue in payment). The County may let the delinquent taxes build up for three years, but will eventually sell the land, and any improvements you may have made, at a tax foreclosure auction. The practice varies from County to County.

(1) If the auction proceeds, the successful bidder receives a tax deed from the county tax office. If the tax deed is recorded at the Bureau of Conveyances within 60 days, the delinquent taxpayer has one year to redeem (to buy back) the property by paying the price paid at auction, the buyer's costs and expenses, and 12 percent interest. This is an automatic "right of redemption".

If the delinquent taxpayer does not pay these items and there is a balance remaining after the back taxes and any outstanding mortgages and liens (for example, money judgments and mechanic's liens) are paid off, the County will distribute the balance of the proceeds to the former landowners, in proportion to their ownership interest. If one cotenant has constructed improvements and if he/she can prove he/she paid for those improvements he/she may be reimbursed for the value of those improvements.

(2) If, prior to the start of the tax foreclosure auction proceeding, one or more cotenants pays the back taxes, including interest and penalties, the person(s) buying out the other cotenants (the "creditor cotenant(s)") may, within 90 days, record at the Bureau of Conveyances a "Notice of Lien" against the debtor cotenant(s). After the lien is recorded, the creditor cotenants have three years within which to initiate a foreclosure proceeding against the debtor cotenant(s) in the circuit court having jurisdiction over the real property.

This is a judicial proceeding. There is no automatic right to redemption, as there would be in a County tax foreclosure sale. Both creditor and debtor cotenants may bid at the auction, along with third parties. If a cotenant is the successful bidder, that person will become the owner of the entire property upon payment of the purchase price and after the court confirms the sale. After the costs tied to pursuing the foreclosure action are deducted and the mortgages and liens paid off, the court will distribute the balance remaining, if any, to the remaining cotenants in proportion to their ownership interest.

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