



## **Issues Relating To Finance**

### **U.S.A. – OKLAHOMA Crowe & Dunlevy**

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**1. What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

A mortgage is the basic instrument used to secure a lien on real property. An absolute deed, intended as security for the payment of money, is deemed to be a mortgage. 46 Okla. Stat. § 1 (2001). Deeds of trust are subject to mortgage laws. 46 Okla. Stat. § 1.1 (2001). Contracts for deed are deemed to be mortgages and subject to rules of foreclosure. 16 Okla. Stat § 11A (2001).

**2. Describe national or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

No mortgage of real property shall be recorded unless a mortgage tax in the amount described below is paid. Mortgage tax is assessed at the rate of \$.10 for each \$100.00 and each remaining fraction thereof, of indebtedness secured by a mortgage where the maturity date of indebtedness is five years or more; \$.08 for each \$100.00 for each mortgage where such mortgage is for four years or more but less than five years; a tax of \$.06 for each \$100.00 where such mortgage is for three years or more but less than four years; a tax of \$.04 for each \$100.00 where such mortgage is for two years or more but less than three years; and a tax of \$.02 for each \$100.00 where such mortgage is for less than two years. Additionally, the county treasurer shall collect a certification fee of \$5.00 on each mortgage presented for certification. Such tax and certification fee may be paid by the mortgagor, the mortgagee or any other interested party. Mortgage tax may be paid by the mortgagor, the mortgagee or any other interested party. 68 Okla. Stat. §1904 (2001). If the principal indebtedness secured is not determinable from the terms of the mortgage, the mortgage shall be taxable upon the value of the

property covered by the mortgage, which shall be determined by the county treasurer to whom the mortgage is presented for taxation, unless at the time of presenting the mortgage for taxation, the owner of the mortgage files with the county treasurer a sworn statement of the maximum amount secured by the mortgage. Such amount shall be the basis for assessing the tax levied. 68 Okla. Stat. § 1906 (2001).

**3. Describe manner in which a lien secured by real property is foreclosed.**

Mortgage on real estate can be judicially foreclosed in the district court of the county in which the real property is located. 12 Okla. Stat. § 131, 686 (2001). Property must be appraised, unless waived, and if not waived, may not be sold for less than two-thirds appraised value. Sale cannot be held less than thirty days after first publication of notice of sale. Order of sale must conform to judgment. 12 Okla. Stat. § 760-65 (2001). Party for whom judgment rendered is entitled to reasonable attorney's fee. 42 Okla. Stat. § 176 (2001). Sale must be confirmed by the court. 12 Okla. Stat. § 765 (2001). Sheriff executes foreclosure deed. 12 Okla. Stat. § 766 (2001). Mortgages can be nonjudicially foreclosed pursuant to the Oklahoma Power of Sale Mortgage Foreclosure Act, 46 Okla. Stat. § 40 et seq. (2001). Such power must be granted by the mortgagor to the mortgagee in the mortgage. 46 Okla. St. § 43A.1 (2001). In order for the power to be enforceable, the mortgage must state in bold and underlined language, substantially as follows: A power of sale has been granted in this mortgage. A power of sale may allow the mortgagee to take the mortgaged property and sell it without going to court in a foreclosure action upon default by the mortgagor under this mortgage. 46 Okla. Stat. § 43A.2.a (2001).

**4. Describe any significant costs of or impediments to foreclosing a lien on real property.**

None.

**5. What is the customary time period for foreclosing a lien on real property?**

The customary time period for a judicial or non-judicial foreclosure on real property is between four and six months.

**6. Are there national or other governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.**

There are no such state or local governmental permissions required.

**7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?**

For commercial loans, the ceiling is 45% per annum. 14A Okla. Stat. § 5-107 (2001). For consumer loans, the ceiling is 10% per annum, 14A Okla. Stat. § 3-201 (2001), but the ceiling may be raised to 13% where the loan is primarily secured by interest in land and other conditions are met, 14A Okla. Stat. § 3-105 (2001). Corporations are prohibited from pleading usury in any suit to recover indebtedness. See 18 Okla. Stat. § 1129 (2001). Oklahoma has not opted out of application of the Federal usury law of 12 U.S.C.S. § 1735f-7a(b) applicable to certain residential federally related mortgage loans.

8. **Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.**

No mortgage or conveyance shall be valid unless in writing and signed by both husband and wife, where both are living and not divorced or legally separated. 12 Okla. Stat. § 2 (2001).