



## FAQ on Foreclosure by Market Sale (“FBMS”)

**Question:** **What is Foreclosure by Market Sale (“FBMS”)?**

**Answer:** The process that allows for an additional method of foreclosure which will support the real estate market by selling foreclosed residential properties at market prices. It is overseen and then approved by the Court in order to close the sale while the property is in foreclosure. FBMS is only available in Connecticut and not in other states.

**Question:** **When is it effective?**

**Answer:** The law is effective January 1, 2015 for persons who are in default but where a foreclosure has not yet been filed.

**Question:** **Who can utilize the new procedure?**

**Answer:** Owners of 1-4 family owner-occupied property who are in default on their first mortgage.

**Question:** **At what point can a homeowner tell their lender that they want a FBMS?**

**Answer:** At any time once they are in default and the homeowner did not “cure” during the 30 day cure period, paying all past due payments. Default for most mortgages occurs at 90 days late. Once you’re in default you have a cure period of 30 days to fix it by paying all past due amounts. However, the law states the lender must provide a notice to the homeowner of the availability of a FBMS when the lender wants to start the foreclosure process. When this occurs the homeowner is at least 120 days or more late (90 days plus the 30 day cure period). This notice may be combined with other notices the lender is required to provide.

**Question:** **How does the homeowner make an election under the law?**

**Answer:** The FBMS notice provides the homeowner with the name and contact information of a representative with the lender so the homeowner can pursue the FBMS.

**Question:** **Can the lender refuse to provide the notice or decline to offer a FBMS?**

**Answer:** No, the law is part of Connecticut’s foreclosure law, and the lender may not file a conventional foreclosure starting January 1, 2015 without filing an affidavit with the Writ, Summons, and Complaint that (1) the notice has been given and (2) the homeowner has not elected a FBMS.

**Question:** **Can the lender refuse to undertake a FBMS?**

**Answer:** Yes, the lender can refuse. However, the lender still must inform the Court that an election was made by the homeowner. In addition, the lender must then participate in the foreclosure mediation program.

**Question:** **The homeowner made the election and the lender was willing to participate. Now what?**

**Answer:** The lender must order an appraisal and the homeowner must allow the appraiser to examine the interior of the property in order to obtain the most accurate appraisal. The lender must provide the homeowner with a copy of the appraisal.

- Question:** Can the homeowner or the homeowner's agent provide comparable sales information to the appraiser?  
**Answer:** Yes, but the appraiser is not required to include it when determining the appraisal.
- Question:** Once the homeowner has received the FBMS notice, how long does the homeowner have to respond?  
**Answer:** 60 days from the date printed on the notice. This deadline date is required to also be expressly written on the notice.
- Questions:** Must the property be listed for the fair market value as determined by the appraiser?  
**Answer:** No. The appraisal is an important piece of information, but is not binding on either the homeowner or the lender.
- Question:** Who determines the list price?  
**Answer:** It is negotiated and determined by agreement between the lender and the homeowner.
- Question:** May the homeowner enlist the services of an attorney, real estate broker or debt negotiator to deal with the lender?  
**Answer:** Yes.
- Question:** What about other terms and conditions of the listing?  
**Answer:** Like a standard listing contract, duration, commission and list price need to be agreed upon by lender, brokerage and the homeowner. The real estate broker must agree to submit all offers to both the lender and the homeowner.
- Question:** Can the lender require the use of a particular real estate broker or list of brokers?  
**Answer:** No. The law prohibits this.
- Question:** Must the lender also sign the listing?  
**Answer:** No. So long as there is evidence of the lender's assent to the terms of the listing, there is no requirement that the lender actually countersign the listing.
- Question:** Can the agent use the agent's usual listing agreement?  
**Answer:** Yes, provided that the broker includes in the listing that all offers must be presented to both the homeowner and lender when the homeowner's broker receives them.
- Question:** How does this legislation impact the MLS?  
**Answer:** The property may be placed in the MLS and a cooperating broker payment may be offered.
- Question:** How will the seller and buyer's broker be compensated?  
**Answer:** At the Court hearing for final approval for the terms of the FBMS. The Court determines the expenses of sale including any broker commission as set forth in the listing agreement and agreed to by the lender. It then orders the committee who conducts the closing to pay those commissions as part of the expenses of sale.
- Question:** An offer comes in. What do I do with it?  
**Answer:** All offers must be submitted immediately to the homeowner and the lender.
- Question:** Can the lender or homeowner counter offer?  
**Answer:** Yes, but the offer must still be submitted to the lender at the time the offer is received regardless of whether it is countered, accepted or rejected by the homeowner.

**Question:** Can the offer contain contingencies?

**Answer:** Yes, the law specifically states that an offer is not disqualified just because it contains usual and customary contingencies for mortgaging and inspections. All offers should be made contingent on Court approval.

**Question:** What/When if the parties reach an agreement (buyer, homeowner, lender)?

**Answer:** The homeowner will sign the purchase contract upon receiving lender approval. Within 30 days, the lender must begin the second phase of the foreclosure process which is the Court proceeding.

**Question:** How does the sale get final approval? At what point during the FBMS process does the Court approve this?

**Answer:** The Court will hold a Hearing for final approval of the terms where the Court determines the expenses of sale (including commissions), determines the buyer's out-of-pocket expenses and appoints a committee to conduct the closing.

**Question:** What happens with second mortgage holders or other mortgages and liens that are subsequent to the first mortgage?

**Answer:** They will be given a "right of first refusal" date. The second mortgage holder will have the opportunity to purchase the property on the same terms and conditions as the accepted offer. If the second mortgage holder does so, the commissions and the buyer's expenses as determined by the Court are paid out of the sale proceeds.

**Question:** If subsequent lienholders do not act by the "right of first refusal" date, what happens to subsequent liens?

**Answer:** They are wiped out and title passes free and clear.

**Question:** What if a subsequent lienholder purchases the property by their law date?

**Answer:** The proposed FBMS buyer must be reimbursed from the sale proceeds for any costs and expenses associated with contract as determined by the Court.

**Question:** What if in the FBMS the sale proceeds exceed the foreclosure debt?

**Answer:** After the FBMS Court hearing granting final approval, the Court may render a supplemental judgment ordering the distribution of proceeds exceeding the foreclosure debt to the party or parties entitled to it as required by law. This may include subsequent lienholders and/or the homeowner.

**Question:** What if the parties (buyer, homeowner, lender) wish to renegotiate one or more of the terms of sale after obtaining final approval from the Court?

**Answer:** This is not expressly addressed in the law, however we anticipate the parties may do this but will then be required to return to Court for approval of the new and modified terms.

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