

**Mortgagee Right to
foreclosure or sale**

Introduction

- **Meaning of foreclosure**
- A suit to obtain '[a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Essentials of Right to foreclosure

- The debt has become due for payment.
- There are no contrary intentions expressed in the mortgage deed as to the time fixed for repayment etc.
- Mortgage money has become due but not paid.
- Mortgagor has not got a decree of redemption of the mortgaged property.
- Mortgage money has become due but mortgagor has not paid or deposited the amount in Court.
- Mortgagee should not be mortgagee of public works like canal, railway etc.
- A trustee or legal representative of mortgagee cannot file a suit for foreclosure but for sale only.

Case laws

- **1993SCMR92)(2004 MLD472)**
- **LD1995 SC410**
- **IN anomalous mortgage suit for foreclosure may be granted under contract of mortgage,(AIR1936 Pat.211(222))**
- **Right of foreclosure can only arise when money becomes due.AIR 1961 Andh pra 175 (Pr 4)**
- **The only remedy of mortgagee by conditional sale is to institute suit for foreclosure. (AIR 1942.Nag 88)**