

Frequently Asked Questions

Q. What is a foreclosure?

A. In simple terms: You have not been making the payments and they are taking back the house. You borrowed money using your house as collateral with the agreement that if you could not pay it back, then the lender could take the house.

Q. Can the bank just come and kick me out of my house?

A. No. Sometimes people are told by collectors "Just leave the keys in the mailbox". You still have time until the sale has actually occurred, and then the house is no longer yours.

Q. How long does the foreclosure process usually take?

A. From the time you miss your first payment to the final foreclosure sale it's not uncommon for five months or more to pass. In some states this could be more and in others considerably less. It will also depend a great deal on your mortgage holder and how aggressively they pursue your case.

Q. Can you explain some of the steps of the foreclosure process?

A. Each state is slightly different, but a basic overview is as follows:

Pre-Foreclosure:

1. Customer misses mortgage payment.
2. Late notice sent to homeowner by bank.
3. Customer misses additional payments.
4. Bank attempts in writing and by phone to contact homeowner and resolve situation.
5. No arrangements are agreed upon and homeowner continues to miss payments.
6. Bank issues demand for payment under the note in full, based on the acceleration clause. Most mortgage notes contain language which basically says if you fail to pay the bank under the terms of the note with monthly payments as promised they can accelerate the note, meaning that the full amount is due on demand. For example, if your mortgage is \$100,000 with payments of \$1000.00 per month you are only required to pay \$1000.00 per month unless, you miss these payments and the bank subsequently demands the balance based on this acceleration. Once this happens you legally owe the full balance of \$100,000.00 plus back interest, plus late charges, plus legal fees all at once. You will find from this stage on the bank will not accept monthly payments. They will instead demand much more to reinstate the loan. Although I consider this step in the pre-foreclosure category, once demand has been made and the note has been accelerated you should already have contacted a foreclosure specialist who is an expert in dealing with these matters.
7. No payments or arrangements acceptable to the bank are made.
8. After 3 months have passed when the lender first filed a Notice of Default, a Trustee Sale Date is set which is normally 3 weeks out.
9. The highest bidder at the sale is now the new owner of your property and sends a Marshall to formally evict you from your home with only an hour to collect your personal belongings while the locks are being changed.

Formal Legal Foreclosure Process:

1. Bank sends Notice of Intent to Foreclose.
2. Immediately following the notice, bank files action in the court system to foreclose.
3. Legal notices (see soldiers and sailors notice below) as required by law are published in local papers.
4. No payment or settlement arrangements are made with the lender.
5. Notice and waiting periods expire.
6. Court issues order allowing bank to foreclose. (Beware, as several of these steps happen so quickly that the process can be very short)
7. Legal notice of actual foreclosure sale published in local papers.
8. House sold at auction to highest bidder.

Q. When should I be alarmed?

- A.** Most people aren't alarmed until they receive a notice of default (in some states a Lis Pendens or a Notice of Intent). At this point you should be very alarmed. You should already have a foreclosure specialist helping you to protect your position at this point.

Q. When in the foreclosure process should I move out of my house?

- A.** YOU DON'T MOVE OUT!!!! Doing this gives up the majority of your rights. STAY in your house. What you need is advice and coaching – Knowing ALL of your options will give you power and having a plan that you can see will work will give you peace of mind.

Q. Once the foreclosure process starts is there anything I can do to stop it?

- A.** Yes. If working from your first late payment there are at least 10 or 20 different ways to resolve the situation. The longer you wait, however, the more some of these options will become unavailable.

Q. At what point will I have absolutely no options left?

- A.** Never. You have not lost until the fight is over. Even after a foreclosure, even after an eviction you still have as much right to buy your house back in the open market as anyone else. Realistically if you have not been able to save the house before a sheriff evicts you, chances are strong you will never be able to structure a deal to buy the house back. This is largely based on the assumption that you hired a capable attorney and had the ability to strike a deal. If so, you would have done so long before a sheriff removed you from the house. Although possible, I have not yet seen anyone repurchase a home after a physical eviction.

Q. I am receiving a lot of mail from people that claim they can help me where are they getting my address?

- A.** Due to the legal nature of the foreclosure process, your name and address may be part of public information offered through the court system and ultimately published in certain journals and publications.

Q. What kind of people send these letters and can they really help me?

A. Many groups of people try to contact homeowners in foreclosures:

1. **Real Estate Brokers/Agents:** Some agents just want to list your house on the local MLS, hope to find a buyer and hope they can get a short sale approved. The real estate companies, brokers and agents that we work with are properly trained in the area of short sales and assisting home owners avoid foreclosure.
2. **Mortgage Brokers:** If there is enough equity in your home they can help you to refinance and stop the foreclosure by paying off your current mortgage in full. This solution often works well, but you must be careful because the interest rate and closing costs on these types of loans can be high. Due to your credit situation you will pay much more than at a bank, but some brokers may try to charge even more points or interest than another just to gouge the debtor for more fees if they think they can get it.
3. **Investors:** Some are ethical and some are un-ethical. **NEVER GIVE A POWER OF ATTORNEY TO AN INVESTOR OR SIGN YOUR TITLE TO YOUR PROPERTY OVER TO THEM.**
4. **Chapter 13 Attorneys:** If you have the financial ability to complete the chapter 13 plan and this also a viable way to save the house. Be aware that many of these attorneys will be more than happy to file a chapter 13 for you whether it is the best option or not. It is my personal feeling that this should be an option of last resort unless your personal circumstances indicate this as the best solution for you. Keep away from lawyers running "bankruptcy mills" as I call them. These firms may let paralegals handle your entire case, never really getting to know your situation or giving you the personal attention you need.
5. **Crooks and Con Artists:** I include in this group those whom will take your money with promises to keep the house, and provide no services. In the worst cases I have heard of groups that will take title to your home, force you to pay them rent with the promise that they can save your home. The result is they either save your home keeping any equity for themselves or in the alternative collect rent from you until the home is sold. Furthermore, since you would no longer own your home Chapter 13 would be lost as an option.

Q. How will I know which is the best option for me?

A. This is a tremendously complicated question. The answer will depend upon your assets, liabilities, income, expenses and the underlying reason why the house is in foreclosure. The best solution will also depend upon the type of mortgage you have and where in the foreclosure process you are when you make the decision to save the house

Q. From your experience how do you find that most of these cases are settled?

A. Our latest statistics indicate the following: Approximately 40% of clients refinance approximately 35% of clients file a chapter 13 approximately 20% reinstate their existing mortgage and about 5% are unable to save their homes or use a more unusual method.

Q. What happens to the money paid by the new purchaser?

A. Monies will be distributed in order of priority. First priority will be real estate taxes. If monies are available after taxes monies will go to the first mortgage then the second mortgage, third mortgage etc., etc. The next money will go to any lien holders or attaching creditors. This process will continue until all liens and encumbrances on the property are paid. If by some chance there is still money left over it goes to the former home owner.

Q. May I bid at my own auction?

A. Yes, if you have the required deposit. Remember this is a non-refundable deposit and if you are the successful bidder you must be able to refinance the home within the specified period of time required under the terms of the auction. Also, be aware that some of the old debts may merge and become reinstated.

Q. What happens at the actual foreclosure sale?

A. Any given sale may be a bit different and it will look like this:

1. The Auctioneer will read various legal notices and legal descriptions of the property.
2. He or she begins taking bids on the property.
3. If the Auctioneer has not already pre-qualified bidders by asking for their deposit checks, when a bid is made by a party the Auctioneer will ask for their deposit check. For most residential auctions this will be \$5,000.00
4. The Auctioneer will solicit bids for higher amounts. Depending on the auction increments will be set by the Auctioneer. Examples of increments maybe \$100.00, \$500.00 or \$1,000.00. This process will continue until it has become clear to the Auctioneer that the high price has been reached.
5. The Auctioneer will announce the standard "going once, going twice, going three times, sold!" and the auction is concluded.
6. Foreclosure deeds and purchase papers will be drawn up by the new purchaser and the mortgage holder.
7. A grace period will be given to allow the purchaser to line up financing. In most cases this should be thirty days.
8. A closing will take place and the new owner will formally take title to the property.

Q. What does this mean when debts merge?

A. Let's say for example that the first mortgage is foreclosing and forecloses out the second and third mortgage. The second and third mortgage holder no longer has any right or title to your home. You may still owe this money but they have no right to foreclose on the home nor do they have any security interest in the home in any way. If you had filed a chapter 7 bankruptcy prior to the sale and received a discharge after the sale you would not owe them any money and they would no longer have a security interest either. Your debt for all intents and purposes will be extinguished completely. If someone else buys your home at the auction the bank, the second and third mortgage holders have lost all their right to the property but on the other hand if you buy the property back the debt may "merge" back to the property with you and reattach, as if the auction never foreclosed them out.

Q. What happens when a property is auctioned subject to a first mortgage?

A. This happens when the mortgage is being foreclosed by the second mortgage holder. They can only foreclose from their position. Let us say for example there are outstanding taxes of \$10,000.00 and a first mortgage of \$90,000.00 on the property with the second mortgage foreclosing. At the auction the second mortgage would foreclose from their position subject to the first mortgage and the taxes. You find at this type of auction at a bid of \$1.00 is the same as bidding \$100,000.00. To own the house out right one would have to satisfy the first mortgage and the taxes.

Q. What happens if no one at the auction bids an amount high enough to cover my debt?

A. If the mortgage was \$150,000.00 and the high bid at the auction was \$100,000.00 the \$50,000.00 balance would be called a deficiency. Under most loans in most states you would still be responsible for the \$50,000.00 as an unsecured debt and the bank would have legal rights roughly the same as what would exist on a credit card debt to pursue you. Most banks will make a bid on the property for the amount outstanding on the mortgage including interest and court costs. If there are no bids higher than that made by the bank, the property goes to the bank and the bank takes it in as Real Estate Owned (REO). The banks will do this to protect their interest and this allows them to keep the property, which will hold its value, in lieu of their mortgage payments.

Q. What is the difference between a foreclosure and a sheriff's sale?

A. Foreclosure is the entire process by which a mortgage holder takes back the property pledged as collateral on the loan. The sheriff's sale is held to sell the foreclosed property for the highest price possible in order to satisfy the amount owed on the mortgage. The foreclosure process is not complete until the sheriff's sale and the sheriff's deed conveys the property to the winning bidder.

Q. Is the seller going to get hit with a tax bill or a 1099 if you do a short sale?

A. The Mortgage Forgiveness Act of 2007 was signed into law on 12-20-07 and is now official effectively getting rid of the question, "Will I be taxed on the short sale." Prior to this action, forgiven mortgage debt due to foreclosure, short sale, or deed in lieu of foreclosure, was potentially taxable income to the borrower. This was the subject of much media attention and led to many questions and concerns from Sellers wondering whether or not they were going to get "hit with taxes" on the short sale. The new law, however, temporarily waives these taxes for debts forgiven (as high as 35%) from the beginning of 2007 to the end of 2009.

For a copy of the [Mortgage Forgiveness Debt Relief Act of 2007](http://www.govtrack.us/congress/bill.xpd?bill=h110-3648), go to <http://www.govtrack.us/congress/bill.xpd?bill=h110-3648>

Q. What if I'm in bankruptcy?

A. Since a bankruptcy prevents debt collection activity, and foreclosure is a collection activity, and a Short Sale is an alternative to foreclosure, most lenders will not discuss a short sale if the property is in bankruptcy. We will not even get past the gatekeepers.

Q. What if there is a Renter, can I still list the property as a Short Sale?

A. As long as the renter is aware of the situation and is willing to cooperate with the current owner then, yes.

Q. Does the short sale service negotiate IRS liens?

A. Yes and No. We will attempt to have an IRS lien removed or released from the Property. When we succeed you will pay an Approval Success Fee. However, we will not negotiate the liability nor will we dispute the validity of an IRS lien. These are negotiations that should be handled by your tax attorney, not us. However, if nobody disputes the validity or amount of the lien, we will attempt to get it removed.

Q. Will the seller receive any proceeds from the sale?

A. No. In order for the lenders to agree to a short sale, the seller must not receive any proceeds.

Q. Can buyers ask for credit back from the sale?

A. Yes. They may ask for credit back for closing costs.

Disclaimer: We are not attorneys nor are we credit counselors. The information that we are presenting here is general information and should not be confused with legal advice. If you require legal advice, please consult with your attorney. All information provided is deemed reliable, but not guaranteed. You **MUST** seek advice from an Attorney or CPA regarding your legal rights and tax implications of a Short Sale.