

Foreclosure Overview

Foreclosure is the legal action that your financial institution can use to take back your home when you miss your monthly mortgage payments. When this happens, you lose your house, which is sold at a Public Auction. Foreclosure will seriously affect your ability to qualify for credit in the future, so you should avoid it if at all possible.

There are several ways of avoiding foreclosure and dealing with it when you receive the foreclosure notice. First of all you should never ignore letters from your lender. When you have problems making payments contact your lender right away. Explain your situation and provide them with your financial information. If you qualify, your bank can offer one of the solutions explained below.

If you had temporary financial problems and you have recovered but your net income is now less than it was before the default, you may qualify for refinancing or mortgage modification. You may be able to refinance the debt and/or extend the term of your mortgage loan. This may help you catch up by reducing the monthly payments to a more affordable amount.

Another alternative in case of temporary problems may be a special forbearance. Your lender may be able to arrange a repayment plan based on your financial situation. They may even provide for a temporary reduction or suspension of your payments. In short, your missed payments may be put at the end of the mortgage loan period. You may qualify for this if you have recently lost your job or your source of income or if you had an unexpected increase in living expenses. You will have to provide your lender with proof that you would be able to meet the requirements of the new payment plan.

Partial claim is another option. Your lender may be able to work with you to obtain an interest-free loan from HUD to bring your mortgage current. When your bank files a partial claim, HUD will pay your lender the amount necessary to bring your mortgage up to date. You must execute a promissory note, and a lien will be placed on your property until the promissory note is paid in full. The promissory note is interest-free and will be due if you sell or leave your property, or when your mortgage matures. To qualify for this method your loan must be at least 4 months delinquent, and your mortgage may not be in foreclosure. You must prove that you'll be able to begin making full mortgage payments.

You also may want to try a pre-foreclosure sale or a short sale. This will allow you to sell your property and pay off your mortgage loan to avoid foreclosure and damage to your credit rating. You may qualify for this solution if the amount of mortgage you owe is significantly lower than the Fair Market Value of your house. Due to the nature of this transaction, you may not be able to get a full price for your property and the lender must agree to take a loss. In most cases, you can expect less than the market value of the house. Remember, it is not a "dream deal", but considering the circumstances it may be your best option. Money received from such sale will allow you to pay off the lender(s). If you decide that a pre-foreclosure sale is your best solution, please contact me immediately regarding listing your home for sale. Time is crucial and we must get started right away. I understand the urgency of your special circumstances and will work diligently to get your home sold within your appropriate time frame.

During times of distress, there are many scams that prey on people who have fallen on hard times promising to solve their problems if you would sign over the title to your property to them or pay them a fee up front or sign a Power of Attorney. It is illegal for anyone to ask you to do this and you should stay away from these people. NEVER SIGN YOUR TITLE OVER TO ANYONE INCLUDING A POWER OF ATTORNEY and NEVER PAY ANYTHING UP FRONT.

Here are the most used options available for stopping the foreclosure process

Loan Modification: A Borrower can negotiate with his/her lender to get their loan in good standing again. There are many options available to you to get a modification approved like a separate payment plan for your delinquency or even adding the delinquency to the end of your loan. You can even lower your monthly payment by having the lender reduce your interest rate and in some case extend the terms of the loan. With this option you need to qualify.

Reinstatement: Pay your lender(s) all of your past due payments to bring your mortgage current.

Refinance: As part as the Housing Stimulus Law for 2009, if you and your property qualify, you may be able to do a refinance. Strict guidelines apply.

Reverse Mortgage: Must have large equity. Must be 62 years of age.

Sell Your Home: The old fashion way by hiring a Realtor. You may simply sell your home before the Foreclosure Sale Date. Sometimes the home owner is unable to sell the home outright at the desired sale price and this is not an option.

Sell Your Home by Doing a Short Sale: This is when you owe more than your house is worth. Hire a qualified Realtor who specialize in Short Sale. He/She may be able to negotiate a Short Sale on your behalf with your lender(s). In this instance the lender may take less than what you owe on the loan to avoid a lengthy and costly foreclosure process. This is a good option to minimize the impact on your credits. Some tax consequences may apply as for foreclosure.

Deed-in-lieu of Foreclosure: You simply give the home back to the lender and walk away. Strict restrictions apply. The consequences are similar than a foreclosure. Not the best option.

Bankruptcy: This is a last resort. This will only save your home temporarily. If you miss one payment during this process the lender will put you right back into foreclosure. Chapter 7: Debt Elimination/Liquidation - Chapter 13: Restructuration of your debts.

Foreclosure: You may elect to allow the home to be entered into mortgage foreclosure. This is the most damaging to you. The lender will take your home and all of your equity. If there is no equity, your lender may get a deficiency judgment against you and want you to repay the shortage or "deficiency". This is the most damaging to your credit and your ability to acquire another home loan. Plus the foreclosure stays on your credit record for 5 to 7 years. Tax consequences may apply.

FORECLOSURE TERMS GLOSSARY

ASSIGNMENT OF DEED OF TRUST: a written document that transfers the beneficial interest in a note and deed of trust from one to another.

AUTHORIZATION TO SIGN AS AGENT AGREEMENT: written document given by a beneficiary authorizing an agent to sign a document (such as a notice of default).

BANKRUPTCY: a legal proceeding which allows a debtor to discharge certain debts or obligations without paying the full amount or allows the debtor time to reorganize his financial affairs so he can fully pay his debts. (A bankruptcy does not discharge obligations secured by a deed of trust.)

BENEFICIARY: the lender their successor for whose benefit a trust is created and to whom the debt is owed.

BID AUTHORIZATION LETTER: your written authorization instructing the trustee to make the initial opening bid at the trustee's sale on the lender's behalf. This form will also advise our office of any additional amounts to be included in the opening bid, (total Debt), such as funds advanced by you to pay delinquent real estate taxes, etc.

BREACH: the failure without legal excuse to perform any promise made in a contract. A breach is stated in the notice of default.

CLAIM DATA: an itemization of the trustee's fee and expenses provided to the lender when the notice of default records and again at publication. A claim date is furnished for the lenders information and is not an invoice.

DECLARATION OF DEFAULT: a written document that instructs the trustee to prepare and record a notice of default and if necessary, to sell the secured property in order to satisfy the unpaid obligation. This document does not require the acknowledgment of a notary public or recording and is merely retained by the trustee in their foreclosure file.

DEED OF TRUST: a written document, describing the real property that is being given as security for the repayment of an obligation.

EVICTIION: See "Unlawful Detainer."

EXTENSION AGREEMENT: an agreement (normally written) giving additional time to pay an obligation.

FEDERAL TAX LIEN: an obligation to the United States government as a result of non-payment of taxes.

FORECLOSURE (non-judicial): a popular term used to describe the procedure followed in enforcing a creditor's rights when a debt secured by any lien on property is in default; however, the correct term for a "Foreclosure" involving a deed of trust is a "Trustee's Sale Proceeding."

FORECLOSURE MITIGATION a process whereby a property owner agrees in writing to allow a third-party to communicate directly with their lender during the process of foreclosure. This rapidly growing service segment is used to assist homeowners with saving their home from foreclosure through reinstatement, modification and/or other potential options.

ENDORSEMENT/DATE DOWN: A continuation of the trustee's sale guarantee policy which reports any changes in the status of ownership of the property being foreclosed. Such "date downs" are requested from the title company prior to publishing the notice of trustee's sale and on the morning of the trustee's sale.

INVALID: not legally sufficient; no binding force.

JUNIOR LIEN: a legal claim upon real property recorded subsequent (or recorded prior but has subordinated) to another legal claim upon the same real property.

LIMITED POWER OF ATTORNEY: a recorded document which authorizes someone to act as attorney-in-fact in a specific manner for someone else.

LIS PENDENS: a recorded notice of pending legal action, which notifies prospective purchasers and encumbrances that any interest acquired by them in a property litigation is subject to the decision of the court.

MODIFICATION AGREEMENT: a written document, signed by the beneficiary and the borrower that alters the terms of either the note of deed of trust.

NON-MILITARY AFFIDAVITS: a sworn statement, in writing from the beneficiary or his agent which declares that the property owner is not entitled to any rights under the Soldier's and Sailors Civil Relief Act of 1940.

FORECLOSURE TERMS GLOSSARY

NOTE: a written document, (promise to pay), that sets forth the amount of the obligation and the terms of repayment.

NOTICE OF DEFAULT: a written document that gives constructive notice of a trustor's failure to perform his obligation under a deed of trust. This document does not require the acknowledgment of a notary public.

NOTICE OF RESCISSION: a written document that cancels or annuls the effect of a notice of default when a default has been cured (reinstated). This document does not require the acknowledgment of a notary public, but must be recorded with the county recorder in the county in which the property is located.

NOTICE OF TRUSTEE'S SALE: a written document that sets forth the day, date and time of the trustee's sale, describes the property to be sold and gives an estimate of the opening bid. This document is prepared by the trustee and does not require the acknowledgment of a notary public must be recorded with the county recorder in the county in which the property is located at least 14 days prior to the scheduled sale date. We must arrange for the notice of trustee's sale to be published in a qualified newspaper in the city (or judicial district), in which the property is located. This publication must appear for 3 consecutive weeks, with the first publication date being at least 20 days prior to the scheduled sale.

POSTPONEMENT: a verbal announcement made at the time and place of the scheduled trustee's sale that establishes a new date for the trustee's sale. The sale cannot be changed from the originally noticed location.

PRE-PUBLICATION PERIOD: the three month period following the recording of the notice of default. Prior to 1986 this period was called the reinstatement period.

PRESENT OWNER, CURRENT OWNER, NEW OWNER: the successor to the trustor named in the deed of trust and now the owner of the property.

PROMISSORY NOTE: See "Note."

PUBLICATION LETTER: this letter is sent to the lender by the trustee. When completed and returned, it authorizes the trustee to proceed with the scheduling of the trustee's sale and preparation of the notice of trustee's sale.

PUBLICATION PERIOD: this is the interval beginning the day after the pre-publication period expires and ending with the conducting of the trustee's sale. During the publication period, the notice of trustee's sale is published, posted, recorded, and copies are mailed to all entitled parties. The publication period is normally 30 to 40 days.

RECONVEYANCE: a recorded document which gives notice that the loan secured by the identified deed of trust has been paid in full.

RESCISSION: See "Notice of Rescission."

REINSTATEMENT: a curing of a default and restoration of the loan to current status through payment of past-due amounts together with the fee and expenses of the trustee.

REINSTATEMENT PERIOD: this is the interval from the date the notice of default is recorded until five business days prior to the date of sale during which time a default may be reinstated/cured.

REQUEST FOR NOTICE: a recorded document which requests a copy of any notice of default and any notice of sale to be sent to the requester at the address shown. See California Civil Code section 2924b(1).

RETURN AND ACCOUNT OF SALE BY TRUSTEE: an itemization prepared by the trustee or his agent and sent to the successful bidder at the sale. It gives a complete accounting of the successful bid.

REQUEST TO PREPARE NOTICE OF DEFAULT: See "Transmittal Form."

SHORT SALE The term short sale describes an expedited property sale and escrow process used to quickly relieve a property owner of their obligation. In most cases, investors provide a cash settlement and/or re-structure agreement for homeowners needing to sell their property quickly.

FORECLOSURE TERMS GLOSSARY

SOLDIER'S AND SAILOR'S RELIEF ACT: an act passed by Congress in 1940, for the financial protection of those persons serving in the military service. This act is the reason for the completion of the nonmilitary affidavit forms.

STATEMENT: an itemization of the trustee's fee and expenses incurred at the conclusion of the foreclosure proceeding (cancellation, reinstatement, payoff or completed sale).

SUBSTITUTION OF TRUSTEE: a written document that appoints a successor trustee to the trustee named in the deed of trust, (or present trustee). This document must be acknowledged by a notary public and recorded with the county recorder in the county in which the property is located.

TOLL: to temporarily stop. Frequently used to describe the tolling (stopping) during bankruptcy of any further acts in foreclosure.

TRANSMITTAL FORM: (TS138): this is the "Request to Prepare Notice of Default" transmittal form which is completed by the lender and forwarded to T.D. Service Company together with the note, deed of trust, assignments and other necessary loan documents.

This form sets forth all pertinent information to enable us to prepare the default documents.

TRUSTEE'S DEED UPON SALE: a written document which is prepared and signed by the trustee when the secured property is sold at a trustee's sale. This document transfers successful bidder at the sale; must be recorded with the county recorder in the county in which the property is located.

TRUSTEE'S SALE: the public auction of the real property, described in the deed of trust, to satisfy the unpaid obligation.

TRUSTEE'S SALE GUARANTEE POLICY: a policy of title insurance given to the present trustee when a trustee's sale proceeding has been initiated. This policy provides the names of the current owner, all liens and encumbrances recorded and other information pertinent to the foreclosure process. The information is insured to be correct by the title company.

TRUSTEE'S SALE PROCEEDING (foreclosure): the term used to describe the non-judicial procedure followed by the trustee in enforcing a creditor's rights when a debt secured on real property is in default.

TRUSTOR: the borrower (or property owner) at the time the deed of trust was created. Trustor is often used to refer to the current owner.

TS138: See "Transmittal Form."

UNLAWFUL DETAINER ACTION (eviction): a legal action to remove someone who has unjustly retained possession of real property after one's right to possess has terminated.

VALID: a condition that is legally sufficient; that will be upheld by the courts.

VOID: having no legal force or binding effect. Incurable.

VOIDABLE: a condition capable of being made void, although not necessarily void in itself.

Loss Mitigation Acronyms

ARM	Adjustable Rate Mortgage
BAH	Basic Allowance for Housing
BAQ	Basic Allowance for Quarters
BAS	Basic Allowance for Subsistence
CAIVRS	Credit Alert Interactive Voice Response System
C&V	Construction and Valuation Section (Appraisals)
COE	Certificate of Eligibility
CRV	Certificate of Reasonable Value
CVS	Certificate of Veteran Status
ETS	Expiration of Term of Service
GPM	Graduated Payment Mortgage
IRRRL	Interest Rate Reduction Refinance Loan
LAPP	Lender Appraisal Processing Program
LES	Leave and Earnings Statement
LGC	Loan Guaranty Certificate
MCC	Mortgage Credit Certificate
MCRV	Master Certificate of Reasonable Value
NOV	Notice of Value
PITI	Principal, Interest, Taxes, and Insurance
POA	Power of Attorney
PUD	Planned Unit Development
RLC	Regional Loan Center
ROL	Release of Liability
SOE	Substitution of Entitlement
SOS	Statement of Service
URLA	Uniform Residential Loan Application
VA	Department of Veterans Affairs
VAAS	Veterans Appraisal Assignment System
VHA	Variable Housing Allowance
VOD	Verification of Deposit
VOE	Verification of Employment
VOI	Verification of Income

Most Commonly Used

NOD	Notice of Default
NOS	Notice of Sale

State	Security Instrument	Foreclosure Type	Initial Step	# of Months	Redemption	Deficiency
Alabama	Mortgage	Non-judicial	Publication	1	12 months	Allowed
Alaska	Trust Deed	Non-judicial	Notice of Default	3	None	Allowed
Arizona	Trust Deed	Non-judicial	Notice of Sale	3	None	Allowed
Arkansas	Mortgage	Judicial	Complaint	4	None	Allowed
California	Trust Deed	Non-judicial	Notice of Default	4	None	Prohibited
Colorado	Trust Deed	Non-judicial	Notice of Default	2	75 Days	Allowed
Connecticut	Mortgage	Strict	Complaint	5	None	Allowed
Delaware	Mortgage	Judicial	Complaint	3	None	Allowed
Dist. of Col.	Trust Deed	Non-judicial	Notice of Default	2	None	Allowed
Florida	Mortgage	Judicial	Complaint	5	None	Allowed
Georgia	Security Deed	Non-judicial	Publication	2	None	Allowed
Hawaii	Mortgage	Non-judicial	Publication	3	None	Allowed
Idaho	Trust Deed	Non-judicial	Notice of Default	5	None	Allowed
Illinois	Mortgage	Judicial	Complaint	7	None	Allowed
Indiana	Mortgage	Judicial	Complaint	5	3 months	Allowed
Iowa	Mortgage	Judicial	Petition	5	6 months	Allowed
Kansas	Mortgage	Judicial	Complaint	4	6-12 months	Allowed
Kentucky	Mortgage	Judicial	Complaint	6	None	Allowed
Louisiana	Mortgage	Exec. Process	Petition	2	None	Allowed
Maine	Mortgage	Judicial	Complaint	6	None	Allowed
Maryland	Trust Deed	Non-judicial	Notice	2	None	Allowed
Massachusetts	Mortgage	Judicial	Complaint	3	None	Allowed
Michigan	Mortgage	Non-judicial	Publication	2	6 months	Allowed
Minnesota	Mortgage	Non-judicial	Publication	2	6 months	Prohibited
Mississippi	Trust Deed	Non-judicial	Publication	2	None	Prohibited
Missouri	Trust Deed	Non-judicial	Publication	2	None	Allowed
Montana	Trust Deed	Non-judicial	Notice	5	None	Prohibited
Nebraska	Mortgage	Judicial	Petition	5	None	Allowed
Nevada	Trust Deed	Non-judicial	Notice of Default	4	None	Allowed
New Hampshire	Mortgage	Non-judicial	Notice of Sale	2	None	Allowed
New Jersey	Mortgage	Judicial	Complaint	3	10 days	Allowed
New Mexico	Mortgage	Judicial	Complaint	4	None	Allowed
New York	Mortgage	Judicial	Complaint	4	None	Allowed
North Carolina	Trust Deed	Non-judicial	Notice Hearing	2	None	Allowed
North Dakota	Mortgage	Judicial	Complaint	3	60 days	Prohibited
Ohio	Mortgage	Judicial	Complaint	5	None	Allowed
Oklahoma	Mortgage	Judicial	Complaint	4	None	Allowed
Oregon	Trust Deed	Non-judicial	Notice of Default	5	None	Allowed

State	Security Instrument	Foreclosure Type	Initial Step	# of Months	Redemption	Deficiency
Pennsylvania	Mortgage	Judicial	Complaint	3	None	Allowed
Rhode Island	Mortgage	Non-judicial	Publication	2	None	Allowed
South Carolina	Mortgage	Judicial	Complaint	6	None	Allowed
South Dakota	Mortgage	Judicial	Complaint	3	180 days	Allowed
Tennessee	Trust Deed	Non-judicial	Publication	2	None	Allowed
Texas	Trust Deed	Non-judicial	Publication	2	None	Allowed
Utah	Trust Deed	Non-judicial	Notice of Default	4	None	Allowed
Vermont	Mortgage	Judicial	Complaint	7	None	Allowed
Virginia	Trust Deed	Non-judicial	Publication	2	None	Allowed
Washington	Trust Deed	Non-judicial	Notice of Default	4	None	Allowed
West Virginia	Trust Deed	Non-judicial	Publication	2	None	Prohibited
Wisconsin	Mortgage	Judicial	Complaint	Varies	None	Allowed
Wyoming	Mortgage	Non-judicial	Publication	2	3 months	Allowed