Colorado Legal Services

Legal help for low-income Coloradans seeking assistance with civil legal needs

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Frequently Asked Questions About Foreclosures in CO

What is a foreclosure?

Foreclosure is a legal term used to describe when a creditor who holds a mortgage on your home is requesting that it be sold in order to satisfy or repay amounts that are past due.

The most common reason that a foreclosure occurs is for failure to make payments in accordance with the terms of a promissory note. As a result, you (the homeowner) lose the rights to the property that you own. A foreclosure can also seriously affect your ability to qualify for credit in the future.

In Colorado, the most common form of foreclosure is through the Public Trustee. The Public Trustee is an appointed official whose job includes conducting foreclosure sales. Less common in Colorado is a judicial foreclosure, which is most commonly utilized in situations involving recovering delinquent assessment liens owed to homeowners associations.

Does the mortgage company have to wait until I am behind a certain number of months before they can start foreclosure?

If your mortgage is subject to the Real Estate Settlement Procedures Act, or RESPA, then it cannot initiate a foreclosure until a mortgage loan account is more than 120 days delinquent. Most mortgage companies are subject to RESPA, though if not (your loan is privately financed), then the lender would not have to wait such period.

What should I do if I fall behind on my mortgage payments?

If you cannot make your mortgage payments, the first step in avoiding foreclosure is to talk with your mortgage lender. You may ask for time to catch up on your delinquent payments or for reduced payments. Many lenders are willing to enter into some type of repayment agreement if you fell behind on your payments due to an unforeseen crisis or hardship.

It is important that you do not ignore the letters you are receiving from your lender. If you are having problems making payments due to losing your job, immediately call or write your lender(s). Most lenders have a Loss Mitigation Department that deals with borrowers who are behind on their payments.

You may wish to contact a HUD-approved housing counseling organization for assistance in attempting to communicate with your lender. If you wish to find a housing counseling organization, you can call the Colorado Foreclosure Hotline at 1-877-601-HOPE (4673).

HUD-approved counseling organizations will not charge you for their services and are trained to help borrowers enter into workouts with the lender. Beware of companies that claim to help people with loan modifications for a fee, since many of them are not regulated at this time, and they may end up doing you more harm than good.

When you contact your lender, you should explain your situation and be prepared to provide them with financial information, such as monthly income and expenses and an explanation of the circumstances that caused you to fall behind on your payments. Without this information, they may not be able to help.

It is also very important for you to stay in your home for now because you might be able to qualify for additional assistance. However, if you abandon your property you may not be able to qualify for additional assistance.

Lastly, try to seek any additional assistance that you can qualify for. For a list of additional options and assistance that may be available to borrowers with FHA-insured or VA-insured mortgages, see the question below on FHA/VA options. Also,if your loan is owed by Fannie Mae or Freddie Mac, then there may be some loan workout options available to you under their guidelines. If you cannot qualify for additional assistance, then you may have to consider selling your house if you do not believe that your financial situation will improve.

If you have fallen behind on your mortgage payments, it is likely that your lender will refuse to accept any payments that you send that do not fully bring the loan current, including late fees and costs. If you send a payment to your lender and the lender returns it to you, it is recommended that you set aside your mortgage payments in the safe place because it is possible that you might need the money to cure the arrears (pay the debt) or the lender may request as a condition of a workout that you pay them a certain amount of money.

I got a foreclosure notice - what should I do?

If a foreclosure starts you will receive notices from two different sources: One set of notices will be sent to you by the Public Trustee of the county where your home is located. The other set of notices will be sent to you by the attorney who is representing the lender with the foreclosure. The notices from the Public Trustee will tell you the date of the foreclosure sale and advise you of your rights pursuant to the foreclosure statute. You will also receive some court papers from the foreclosing lender's attorney. These papers will refer to a motion that is being filed by the lender asking the District Court of the county where your house is located for an order authorizing the foreclosure sale. This is typically referred to as a Motion under Rule 120.

You have 7 days prior to the date set for hearing in which to file a response with the court. If you do not file a response 7 days prior to the hearing, the order will be entered authorizing the sale, even if you appear at court. In most cases, the court will generally only decide on the issue of whether you are in default under the terms of your mortgage, i.e. whether you fell behind in your mortgage payments. If you dispute that your lender has the right to foreclose on the house and you dispute that you are in default for other reasons, then you should consider filing a response.

There is a filing fee for filing a response to a motion under Rule 120, though this fee might be waived by the court if you have a low income. You can request that the court waive (not require) a filing fee by completing a Fee Waiver request form. Go here to find the correct forms on the Colorado Judicial Branch website.

In order to determine whether you have a defense to a lender's motion under Rule 120, we stongly urge you to seek the assistance of an attorney.

I got a foreclosure notice, and now an investor has approached me about helping to save my house? What should I do?

Beware! Many of the people who will contact you are out to make money from your situation and are looking for ways to get at the equity that you have in your house. For this reason, you should be very cautious about dealing with individuals who contact you with an offer to help while your house is in foreclosure. In many instances, a person will contact you and offer some type of foreclosure relief or offer you some type of solution that they state will allow you to remain in your house. For example, they might say, "we may be able to save your house from foreclosure". You should be very skeptical of promises! In most circumstances, entering into such an agreement could not only ensure that you will lose your home, but also could result in you losing all of the value or equity in your home.

There are many foreclosure "scams" that exist. Examples of such foreclosure "scams" include a proposal where you agree to sell your property to an investor or other person and they lease it back to you with a promise to let you buy back the house at some point in the future. Often, the person or company does not put the agreement (in this example, called a "sale/lease-back" option) in writing or they may instruct you to sign papers that are different from what they tell you when they first meet you. If they do put the agreement in writing, it is important that you not sign the document until you have someone review it, preferably an attorney. If the person insists that you sign immediately, or does not want to give you copies of the agreement to review at your leisure nor provides you with an address or telephone number or any other information about themselves, be extremely cautious about doing business with that person!

Another scam is where the person will ask you to sign a document called a "deed," which can be either in the form of a Quitclaim Deed or Warranty Deed. If you sign either of these, you may be giving up all your rights of ownership in the house. Never sign a deed unless you understand that you are giving up your ownership of the property.

If my house is in foreclosure, am I required to move out?

No, not unless the house goes to foreclosure sale. It is very important to remember that you are still the owner of your home, even if it is being foreclosed, all the way up to the time of the foreclosure sale. A foreclosure takes time to run its course, often at least 4 months.

Once a foreclosure sale has occurred, you are no longer the owner of the house. After the Public Trustee sale, a holder of a lien that is junior to the lien that is being foreclosed may be able to redeem, or pay the amount that was bid at the sale, in order to keep its rights in the property.

Once all the redemption periods have ended, or if there is no redemption period, at the close of business eight business days after the sale date, then a deed to the property will be issued by the Public Trustee to either the purchaser in the event that no one redeems the property or to the party that redeems the property. Once the deed to the property is issued, then the new owner has the right to ask you to leave the property. If you do not leave the property, then the new owner has the right to remove you from the house by filing an eviction action against you. If the loan is owned by HUD, then you may receive a notice which could provide you with more time to occupy the house even after the deed is issued.

Should I declare bankruptcy to address the foreclosure?

Possibly, but not in all circumstances. One way to stop a foreclosure is to file a Chapter 13 bankruptcy. A Chapter 13 is a reorganization where the debtor proposes a plan to repay his/her creditors over time. You may be able to keep your home if you can make payments on the past due amounts over a period of up to five years and at the same time make your current mortgage payments as they become due. These payments, of course, would be in addition to of all your everyday monthly living expenses. Chapter 13 requires that you have a regular source of income.

Unfortunately, not all individuals will qualify for Chapter 13. Furthermore, to prevent foreclosure, Chapter 13 bankruptcy must be filed before the foreclosure sale takes place. Since Chapter 13 is very complicated, you are urged to consult with an attorney who practices consumer bankruptcy law.

What about creditors who tell me they are going to put a lient on my house? Can they do that, and can they take my house away from me?

Possibly, but not in all circumstances. One way to stop a foreclosure is to file a Chapter 13 bankruptcy. A Chapter 13 is a reorganization where the debtor proposes a plan to repay his/her creditors over time. You may be able to keep your home if you can make payments on the past due amounts over a period of up to five years and at the same time make your current mortgage payments as they become due. These payments, of course, would be in addition to of all your everyday monthly living expenses. Chapter 13 requires that you have a regular source of income.

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What options are available to me under my loan to avoid foreclosure?

In almost all cases, the answer to this is "yes." What options are available to you will depend on the type of loan that you have and who owns the loan.

Use this list of resources to figure out what your loan type is.

- FHA insured loan (see HUD mortgagee letters) - look for FHA loan # on deed of trust.
- Fannie Mae owned loans (Fannie Servicing Guide)
- Freddie Mac-Owned Loans (Freddie Servicing Guide)
- VA insured Loans
- USDA Loans

What options might be available to me to address my mortgage default and avoid foreclosure?

Again, the type of options available to you will depend upon the type of mortgage loan that you have. These options are commonly referred to as "loss mitigation" options.

Some alternatives under loss mitigation include:

- Reinstatement: Your lender may be willing to discuss accepting the total amount owed to them in a lump sum by a specific date. They will often combine this option with a forbearance.
- Forbearance: Your lender may allow you to reduce or suspend payments for a short period of time after which another option must be agreed upon to bring your loan current. A forbearance option is often combined with a reinstatement when you know you will have enough money to bring the account current at a specific time in the future. The money might come from a hiring bonus, investment, insurance settlement, or a tax refund.
- Repayment Plan: You may be able to get an agreement to resume making your regular monthly payments, in addition to a portion of the past due payments each month until you are caught up.

If it appears that your situation is long-term or will permanently affect your ability to bring your account current:

- Mortgage Modification: If you can make the payments on your loan, but you do not have enough money to bring your account current or you cannot afford the total amount of your current payment, your lender may be able to change one or more terms of your original loan to make the payments more affordable. Your loan could be permanently changed in one or more of the following ways:
- Adding the missed payments to the existing loan balance.
- Changing the interest rate, including making an adjustable rate into a fixed rate.

- Extending the number of years you have to repay
- Claim Advance: If your mortgage is insured, you may qualify for an interest-free loan from your mortgage guarantor (sometimes referred to as a “partial claim”) to bring your account current. The repayment of this loan may be delayed for several years.

If you have a mortgage guaranteed by the Veterans Administration, assistance for borrowers in foreclosure may also include in addition to those listed above, an option called refunding, which is when th VA elects to purchase a loan from the lender and take over servicing responsibilities. This is VA’s final attempt to keep the borrower in their home. Refunds can be considered if VA determines it is in the best interest of the borrower and the government.

If you want to avoid foreclosure of your home or need assistance in working with your lender on loss mitigation, we recommend you contact a HUD-approved housing counselor (click here for a list), or call the Colorado Foreclosure Hotline at 1-877-601-HOPE (4673).

If you have a VA-insured mortgage loan, then we recommend that you, as soon as possible after your second payment is missed, contact the Denver VA Regional Loan Center by clicking here. Before contacting the VA, locate your VA loan number (which is different from your mortgage company loan number). The VA loan number is usually located on the settlement papers that you received at your loan closing.

My name is still on a house where I no longer live and now it's being foreclosed. Can I be held responsible?

Perhaps. A house can be foreclosed on whether or not you are living at that residence.

If your name is on the mortgage because you have co-signed for the loan, then you can be held responsible for making all payments required under the terms of the mortgage. In addition, you can also be responsible for any deficiency, or whatever amounts that might be owed in the event that the lender is not able to fully satisfy the outstanding loan balance from the sale of the house.

My house is valued at $200,000 and I owe $100,00. It's being foreclosed and will be sold. What happens to my $100,000 equity?

Equity is the money that you would get if you were to sell your house and pay off the mortgages or liens that may be recorded against it. It is possible that you may have equity in your home despite being in foreclosure.

However, if your property is foreclosed and you fail to take any steps to protect your equity, then you risk losing the equity in your home. Since a foreclosure sale cuts off your ownership rights, then you could lose not only your home, but potentially all equity that exists in the house as well.

It is important to note that many of the people who will contact you are out to make money from your situation and are looking for ways to get at the equity that you have in your house. For this reason, you should be very cautious about dealing with individuals who contact you with an offer to help while your house is in foreclosure.

I'm in foreclosure and I've tried to sell my house but I owe more than it's worth. What are my options?

One option is to pursue a "short sale." If you owe less than what is owed on the mortgage, then you can try to negotiate with your lender to see if they will accept less than the full amount so that the house can be sold. This is known as a "short sale."

Before you put your home on the market for a short sale, it's best to talk with a tax advisor about possible tax repercussions. It's likely the IRS will consider the difference between the value at which you sell your home and the mortgage balance as "income" on which you'll have to pay taxes.

If you wish to pursue a short sale, then you will want to find a real estate agent who understands your situation. Agents typically take a much lower commission on short sales, and it often takes much longer to actually close the sale once the seller accepts an offer. But many agents sympathize with financial problems brought on by unexpected circumstances, and may want to help. Short sales take much longer to close than more conventional sales, so plan accordingly. Do not be pressured into doing a short sale, however, since sometimes a realtor may try to convince you to do this when you may end up not getting any money from it. While a short sale may sound helpful for your credit, this may not always be the case.

The option of last resort would be to stay in the home until the end of the foreclosure, which is when the house went to foreclosure sale, the redemption periods (if any) have ended and a confirmation deed is issued to the new owner. If you stay beyond the date by which the deed is issues to the new owner, you will need to move from the property in order to avoid being evicted.

I've heard that some people who were in foreclosure may be entitled to money after the sale. What is this about?

If your house goes to foreclosure sale and is purchased for more than the total owed to the lender and to all other lien holders, you may have funds due to you. These “overbid” proceeds are first applied to any deficiency as indicated on the holder's bid. Upon the expiration of all redemption periods, any remaining overbid is paid to junior lienors who have filed a notice of Intent to Redeem (and whose liens have not been redeemed) up to the unpaid amount of such lien. Any remaining overbid belongs to the owner. The Public Trustee will publish a notice of overbid funds in a local newspaper. If you believe that you may be entitled to any overbid funds, then you should contact the Public Trustee shortly after the sale. The Public Trustee holds these funds for 6 months, and after that it will be paid into the state’s unclaimed funds registry. Also, please note that it is illegal for anyone to charge you a finder’s fee to recover these overbid funds until at least 2-1/2 years after the foreclosure sale.

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