pro seniors
Advocacy. Empowerment. Justice.

Seniors and Mortgage Foreclosure

What Is Foreclosure?

Foreclosure is a legal process used by a bank or mortgage servicer to have Common Pleas Court order the sale of real estate because the homeowner has missed one or more mortgage payments or has otherwise not complied with the mortgage agreement. In Ohio, the foreclosure lawsuit must be filed in the County Court of Common Pleas where the property is located. The county prosecutor can also file a foreclosure case if the homeowner has failed to pay property taxes.

What Should I Do If A Foreclosure Complaint Has Been Filed Against Me?

Once the foreclosure case (complaint) is filed against you in court, you are a defendant in the lawsuit and will receive a copy of the complaint by certified mail and/or through delivery by a deputy sheriff.

After you receive the complaint, you have 28 days to respond to the complaint by filing an "answer" with the court. The answer must be in writing and filed with the clerk of courts. You are also responsible for mailing a copy to the attorney for the lender. You can draft an answer yourself *pro se* (without an attorney) or you can find an attorney to help you. An answer is not required, but if you fail to file an answer, you are not contesting the foreclosure and the foreclosure will proceed very quickly. You can still work with your lender even after a foreclosure lawsuit is filed. While a borrower can proceed *pro se* and work directly with their lender, it is always a good idea to get legal advice and/or representation, if possible. A lawyer may find legal defenses and be able to stop or significantly delay the foreclosure.

How Can I Find An Attorney?

If you live in Ohio and are aged 60 years or older, you can speak about your foreclosure with a Pro Seniors Legal Helpline Attorney. You can make a free appointment by calling (800) 488-6070. You can also contact your local legal aid by calling 1-866-LAW-OHIO (866) 529-6446.

What if I Cannot Obtain an Attorney?

Check with your county court. Some have help centers or clinics that can provide information and sometimes limited legal advice. Ohio Legal Help's website has information on foreclosure and a template for an answer.

What Happens If I Don't Respond To A Foreclosure Complaint?

If you do not file an "answer" to the foreclosure complaint, the foreclosure process can move very quickly. A default judgment will be entered against you and the lender will get an order of sale. A default judgment means that because you have not responded to the servicer's claims, you are therefore not disputing the claims in the complaint.

After a judgment is entered against you, an order of sale will be issued, typically to the county sheriff, and the property will be appraised prior to sale. The sale will be scheduled and advertised in the local newspaper for at least three weeks. The required minimum bid at the sale is two-thirds of the property's appraised value. If there is a winning bid at the auction, the lender asks that the sale be confirmed. This means that the court will approve the sale, order a new deed for the buyer and distribute the money from the sale.

At this point in the foreclosure process, you, the foreclosed homeowner, lose the right to reside in the property. The house is now owned by the new buyer and if you are still living in the house, the new buyer can ask the sheriff to evict you.

What Should I Do If I Am Behind Or Having Trouble Making My Mortgage Payments, But A Foreclosure Has Not Been Filed?

1. Talk to your lender/servicer
   a. Call your mortgage loan servicer as soon as possible. This may take patience, but it is important that you talk to them. Explain what is going on and ask to participate in a workout resolution.
   b. If you are in foreclosure for failure to pay property taxes (you do not have a mortgage), call the County Treasurer to ask for the payoff amount and if you have any options.

2. Look for help - Contact a housing counselor who has been approved by the U.S. Department of Housing and Urban Development. If you live in Cincinnati, dial 211 for the United Way.

3. Make your home a priority - If you are almost but not quite able to afford your mortgage payment, look for changes you could make to your budget. Consider using your library's services, canceling subscriptions, and reducing discretionary spending. Consider paying monthly mortgage payments before unsecured debt like credit cards.

If you cannot make your entire mortgage payment and your lender refuses a partial payment, deposit the funds that are refused in your bank account. Continuing to deposit your monthly mortgage payments into your bank account shows a good faith effort on your part and the money will be useful if you attempt to negotiate a lower payment or any other mortgage workout. Avoid the big mistake of not having saved your mortgage payments and not being able to catch-up your mortgage payments after you negotiate a mortgage workout.

What Should I Watch Out For When Looking For Help?

The unscrupulous may take advantage of people in foreclosure. There are schemes where a homeowner unwittingly transfers title to the real estate to a "rescuer." In some scams, a homeowner ends up renting his or her own property. Others simply take payment for "phantom help;" meaning that the homeowner pays fees for foreclosure help that is never delivered. In other cases, "counseling agencies" offer to perform services for a fee that you could do yourself or with the help of a HUD approved housing counselor, such as negotiating a workout.

In order to avoid scams and unnecessary expenses, be sure to work with a HUD (U.S. Department of Housing and Urban Development) approved housing counselor. You should not hesitate to contact your loan servicer directly for help. Although it may be embarrassing to admit to financial problems, the lender deals with this issue every day and has options that may help you keep your house.

What Is A Reverse Mortgage?

A reverse mortgage is a particular type of home loan available only to older adults. It converts some of your home equity into cash. Home equity is the amount your home is worth minus the amount still owed on the mortgage. A reverse mortgage is different from a traditional mortgage in that repayment is not required until the borrower passes away or no longer uses the home as their principal residence.

To qualify, borrowers must be at least 62, have satisfactory credit, and carry a mortgage small enough to be paid off by the proceeds.

A reverse mortgage can be useful for those with difficulty paying their mortgage. Sometimes, a borrower struggles to make the mortgage payment, but has a low mortgage balance that can be paid off with proceeds from the reverse mortgage.

Reverse mortgages have a high cost, and borrowers must still pay expenses that are part of the escrow on a traditional mortgage payment: property taxes and homeowners insurance. Borrowers must also maintain the property and continue to pay any HOA fees.

There are reverse mortgage scams. Be sure to talk to a housing counselor who has been approved by the U.S. Department of Housing and Urban Development.

Form #LFS041d

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