



*Helping Older Persons with Legal &
Long-Term Care Problems*

Seniors & Mortgage Foreclosure

1. 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 lender or mortgage service company is required to file the foreclosure lawsuit in the County Court of Common Pleas where the property is located.

[1]

2. 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. [2]

After you receive the complaint, you have 28 days to respond to the complaint by filing an “answer” with the court. [3] 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. [4] 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.

3. How Can I Find An Attorney?

If you are 60 years of age or older, you can contact Pro Seniors at 1-800-488-6070 to make an appointment to speak with a Pro Seniors Legal Hotline Attorney on the phone about your foreclosure. [5] If you are under age 60, call Ohio’s Save The Dream program at 1-888-404-4674 and see <http://www.ohiolegalservices.org/>, 1-866-LAW-OHIO (1.866.529.6446) to find legal help. [6]

4. 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. [\[7\]](#)

After a judgment is entered against you, the county sheriff will receive an order of sale and the property will be appraised prior to sale. [\[8\]](#) Then, the sale will be scheduled and advertised in the local newspaper for at least three weeks. [\[9\]](#) The required minimum bid at the sale is two-thirds of the property’s appraised value. [\[10\]](#)

If there is a winning bid at the auction, the lender asks that the sale be confirmed. [\[11\]](#) 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, the former homeowner, are still living in the house, the new buyer can ask the sheriff to evict you. [\[12\]](#)

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

- Talk to your lender/servicer:

Get on the phone with your mortgage loan servicer as soon as possible. This may take some patience, but it is important that you talk to them. Explain what is going on and ask to participate in a workout resolution.

- Look for help:

Contact a housing counselor who has been approved by the U.S. Department of Housing and Urban Development. [\[13\]](#) They may be able to help you negotiate with your lender or find another resource to help you. If you live in Cincinnati, dial 211, the United Way Helpline, and ask for the Homeowner Preservation Initiative, Foreclosure Prevention Project for Emergency Mortgage Assistance Counseling.

- 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 cancelling cable, cell phones or other subscriptions, reducing discretionary spending and paying your monthly mortgage payment before other 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 later in the process 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.

6. What Should I Watch Out For When Looking For Help?

There are unscrupulous companies and individuals who take advantage of people in foreclosure. Some are schemes in which the 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. [\[14\]](#)

In order to avoid scams and unnecessary expenses, be sure to work with a HUD (US Department of Housing and Urban Development) approved housing counselor. [\[15\]](#) You should also not hesitate to contact your loan servicer directly for help. Although it may be embarrassing for you to admit to financial problems, the lender deals with this issue every day and has options that may help you keep your house.

7. 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 his/her principal residence.

To qualify, borrowers have to be at least 62, own their home outright or carry a mortgage small enough to be paid off by the proceeds. There are no income or credit qualifications, although homeowners are responsible for paying the annual taxes, property insurance and maintenance. No loans have to be repaid until the owners move or die, in which case the bank takes its share and anything left goes to the heirs. [\[16\]](#)

A reverse mortgage can be useful for a senior facing foreclosure. Sometimes, a borrower cannot make the mortgage payment, but has a low mortgage balance that can be paid off with proceeds from the reverse mortgage. As with any loan, homeowners should be very careful when considering a reverse mortgage. It is not the right choice for everyone and 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.

If you are 60 years of age or older, call Pro Seniors at 1-800-488-6070 to make an appointment to speak with a Pro Seniors Legal Hotline Attorney on the phone about your foreclosure.

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Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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Endnotes: *[Click the endnote number "[1]" to return to the text]*

[1] [Ohio Revised Code § 2323.07](#) Sale of foreclosed property

[2] [Ohio Rules of Civil Procedure, Rule 4\(C\)](#) Summons: plaintiff and defendant defined

- [3] [Ohio Rules of Civil Procedure, Rule 12\(A\)\(1\)](#) When answer presented; Generally
- [4] [Ohio Rules of Civil Procedure, Rule 5\(D\)](#) Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint; Filing
- [5] [Pro Seniors, Inc., Senior Legal Hotline](#)
- [6] [Save The Dream Ohio](#)
- [7] [Ohio Rules of Civil Procedure, Rule 55\(A\)](#) Default; Entry of judgment
- [8] [R.C. §2329.01](#) Property subject to levy and sale;
[R.C. §2329.17](#) Lands to be appraised
- [9] [R.C. §2329.26](#) Notice of date, time and place of sale
- [10] [R.C. §2329.20](#) Land not to be sold for less than two thirds of appraised value
- [11] [R.C. §2329.31](#) Confirmation and order for deed
- [12] [R.C. §2329.37](#) Effect of deed
- [13] [A list of HUD Approved Housing Counseling Agencies](#)
- [14] [Foreclosure, Mortgage Delinquency - Scam Alert](#)- AARP Bulletin (October 2011)
- [15] [A list of HUD Approved Housing Counseling Agencies](#)
- [16] [Are Reverse Mortgages Helpful or Hazardous?](#) – AARP Bulletin (April 2013)