

# Indiana Legal Services, Inc

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## Foreclosure

### **What is Foreclosure?**

A foreclosure is when a lender (like a bank or mortgage company) takes the title of your property by forcing a sheriff's sale of your home after you fail to pay part of the debt. If you fall behind on your mortgage payments, the lender can then sue for foreclosure and take over your property. This will force you to move out of your home, and could also affect your credit rating and your ability to get loans in the future.

### **What should I do if I receive a letter from my lender about foreclosure?**

HUD recommends the following actions if you receive a letter about foreclosure:

- **Do not ignore the letter.** Instead, you should call or write to your lender and explain your current financial situation. You will need to give them your current financial information. The lender might be able to offer you some help if the lender knows your financial situation.
- **Stay in your home for the time being.** You might not be able to qualify for certain kinds of assistance if you leave the property. As long as a court has not ordered you to leave the property, you can stay.
- **Contact a housing counseling agency.** These organizations can give you information about programs and services offered by both private and public organizations. Their services are usually free of charge. Be cooperative; these agencies are there to help you try to stay in your home.

### **What happens during the foreclosure process?**

There are two major phases to the foreclosure process:

- **Pre-Foreclosure**
  1. You miss several mortgage payments (usually around 3-4 before the process begins).
  2. The bank sends you late notices. If you don't respond, they try to contact you and resolve the situation.
  3. You continue to miss payments and are not able to agree on payment arrangements with the bank.
  4. The bank/mortgage company demands that the mortgage be paid in full, including back interest, late fees and legal fees.

5. You still do not make payments acceptable to the lender.

- **Formal Foreclosure**

1. You receive a formal foreclosure notice.
2. The lender files a foreclosure action in court.
3. The court holds a hearing and issues a foreclosure order, which gives the bank the legal right to sell the home. [Note: If you do not file an Answer in the foreclosure case, you will lose by a default judgment and the court will not even schedule a hearing. It is very important to file an Answer in the foreclosure case].
4. Your notice and waiting periods expire. (Generally, the lender has to wait 3 months after filing the foreclosure before being able to sell the property. The lender has to wait a little longer for mortgages before 1975).
5. Legal notice of the foreclosure sale is published in local papers.
6. The house is sold to the highest bidder or the bank takes possession of the house.
7. You are evicted from the house, and notified of any debt still outstanding after the sale.

### **If the bank takes my home in a foreclosure, can they still sue me for money?**

Yes, generally the mortgage contract provides that you are liable for the balance due on the mortgage after the home is sold. If the bank takes the home and sells it, but doesn't sell it for as much as you still owe on it, the bank can ask the court to enter a judgment against you for the difference.

### **I just want to sell my home, but the lender is threatening foreclosure. Can I sell my home or is it too late?**

Yes, you can sell your home. You should tell your lender that you want to try to sell your home, and the lender may give you a certain amount of time to try to sell your home and pay off the money owed to the lender. You should try to sell your home for the amount you owe the lender. If you sell your home for less than you owe the lender and you can't pay the whole mortgage/fees, then the lender could still sue you and get a judgment against you for the rest of the money owed. (It is possible that the lender will agree to accept the money you get from the sale and not sue you for the difference. This is something to discuss with the lender).

### **My house is in foreclosure, but now I can pay what I owe. Is it too late?**

If the court has not issued a judgment of foreclosure yet, and you can pay the interest, principal and costs that are due, the foreclosure case will be dismissed.

If the court has issued a final judgment of foreclosure, but the home hasn't been sold to a new owner yet, you can pay what you owe and stop the foreclosure. This is called "redemption." To redeem the property, you must pay the judgment, interest and costs ordered by the court. (This is generally done when you are able to get a new mortgage on the property, and you use the new mortgage to pay off this old mortgage).

You need to pay the money owed to the clerk of the court that has issued the foreclosure judgment, or to the sheriff if the sheriff has received the judgment and is preparing for sale.

**I see advertisements for companies who will help me avoid the foreclosure. Can these companies help me?**

Maybe, but you must be very careful. There is a possibility that you will be dealing with a scam artist, who is trying to take advantage of your financial situation. To avoid getting caught in a scam, HUD suggests:

1. Don't sign anything you don't understand.
2. Get all promises in writing.
3. Beware of a contract that does not formally release you from mortgage debt.
4. Check with a lawyer before entering into any deal.
5. If you're selling your house, make sure there are no complaints against the prospective buyer (through the Attorney General's Office etc.)

**Where can I get help or more information?**

You can contact a private attorney or your local legal services agency if you are facing foreclosure. An attorney may be able to help. You may want to consider bankruptcy as an option because bankruptcy can sometimes help you keep your home. See also the Related Links to the right of this article for other agencies that may be able to help.

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