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# Foreclosure

WHAT IT MEANS FOR YOU AND YOUR FUTURE

HOW TO NICE

# meet you

If you've fallen behind on your mortgage payments, the threat of foreclosure can become overwhelming. Struggling homeowners might feel inclined to simply accept their fate—there's no getting out of foreclosure, right? But when it comes to mortgage foreclosure, remember that you have options.

Understanding those options and what you can do if your house is in foreclosure can help you mitigate the damage done to your credit and overall financial health. It might even help you take action to keep your home. We've gathered some general information regarding foreclosures to help you get an idea of how it works. State laws vary significantly, so work with a legal professional to determine the laws governing your foreclosure proceedings.

Our goal is to help educate and guide you through this process as best we can. I know this might be an uncertain time, however, know that we are here for you.

*J. Krystal Rivera*

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"I believe in creative expression, experimentation and empathy"

# WHAT IS FORECLOSURE?

When you purchased your home and took out a mortgage, you agreed to a deal with your bank or lender. They gave you the financing upfront to pay for the home, and in return, you signed a contract agreeing to pay a specific amount each month for a set number of years.

If you start falling behind on your payments, or stop making your mortgage payments completely, the bank or lender can foreclose on the property and sell it as a way to make back the funds that were lost.

This happens because mortgage loans are secured by real estate, meaning your home is used as collateral. Since your home is the collateral, it can legally be seized by your lender when you fail to make payments.

To understand foreclosure, it helps to keep in mind that the word "homeowner" in this case is actually a little misleading. "Borrower" is a more apt term. That's what a mortgage, or deed of trust, is: a loan agreement for the purchase price of the home, minus the down payment. This document puts a lien on the purchased property, making the loan a "secured loan."



# section one

TYPES OF FORECLOSURE



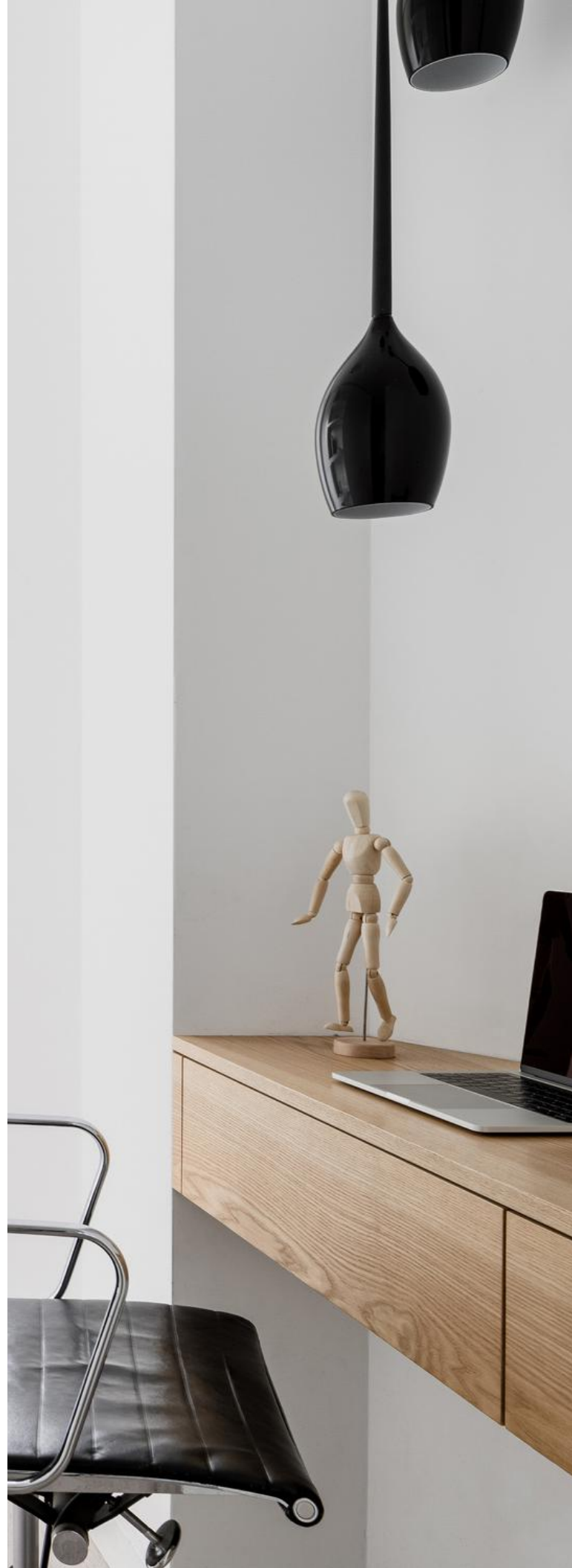


# Types Of Foreclosure

In the United States, individual states follow either a judicial or nonjudicial foreclosure process, typically depending upon whether they are a mortgage state or deed of trust state. However, you may safely assume that all states allow some form of the judicial foreclosure process.

We have highlighted below some important points to remember about each type of foreclosure. This is a general overview and in no way represents each process in its entirety.

It is important to remember that neither judicial nor nonjudicial foreclosures are one-size-fits-all. Each state follows its own established foreclosure laws and procedures. Consult with a foreclosure specialist in your state to protect your rights during a foreclosure.



# TYPES OF FORECLOSURE

## Judicial foreclosure

The lender seeks to foreclose by filing a civil lawsuit against the borrower and serving the borrower with a formal summons and foreclosure complaint.

The foreclosure process is handled through the local court system. The court appoints a referee to conduct the foreclosure auction on the courthouse steps.

The lender records a lis pendens with the county clerk where the property is located. This lis pendens becomes a lien on the property and gives notice of the pending foreclosure auction.

The court grants a judgment permitting the lender to conduct the foreclosure auction.

The Notice of Foreclosure Sale (NFS), which announces date, time and place of the auction, is published and sometimes posted (depending on the locale) for a certain period of time prior to auction.

Generally, the borrower can stop the foreclosure by repaying what he owes up to the moment of sale.

The process can take from four to eight months to complete if no one raises any legal objections to the foreclosure.

## Nonjudicial foreclosure

This is followed in deed of trust states. A deed of trust conveys an interest in real property to a third party (the trustee) to hold as security for repayment of a debt.

The trustee has the authority to initiate foreclosure proceedings by virtue of a power of sale clause included in the mortgage or deed of trust.

The trustee records a Notice of Default (NOD) with the county clerk where the property is located. This document gives notice of an impending foreclosure and grants the borrower a period of time in which to object to the lender's claim or pay what he owes.

The borrower may not stop the foreclosure after the expiration of this time period.

Following the expiration of a predetermined amount of time (which varies from state to state), the trustee records a Notice of Trustee's Sale (NTS) with the county clerk. This notice establishes the date, time and place of the foreclosure auction.

It can take up to 12 months to complete a foreclosure, depending upon the state.

# section two

STEPS TO A FORECLOSURE





# MISSED MORTGAGE PAYMENTS

It all starts when the homeowner — the borrower — fails to make timely mortgage payments. Usually, it's because they can't, due to hardships such as unemployment, divorce, death or medical challenges.

If you're in this tough situation, it's essential that you talk to your lender as soon as possible. There are several options to help keep you in your home.

The foreclosure process costs the lender a lot of money, and they want to avoid it just as much as you do.

Sometimes, a borrower may intentionally stop paying the mortgage because the property might be underwater (in other words, the amount of the mortgage exceeds the value of the home) or because he's tired of managing the property.

Whatever the reason, the bottom line is that the borrower can't or won't meet the terms of the loan.





# Notice Of Default

After three to six months of missed mortgage payments, your lender will file a Notice of Default with the local recorder's office. Your lender will also send one to you via certified mail, and depending on your state, might post the notice on your front door. This notice specifies how much you owe in order to bring your mortgage back into good standing.

A Notice of Default could show up on your credit report and affect your score. This can make it more challenging to obtain other types of credit or refinance your mortgage.

This official notice is intended to make borrowers aware they are in danger of losing all rights to the property and may be evicted from the premises. In other words, they're in danger of foreclosure.

A Notice of Default doesn't equate to the lender immediately or automatically foreclosing on your home, and it doesn't mean you don't have options to prevent the foreclosure from happening. You can put a stop to the proceedings by getting current on your payments.

A man and a woman are sitting at a desk, looking stressed. The man is in the foreground, resting his head on his hand with his eyes closed. The woman is in the background, also looking down with a distressed expression. There is a laptop and some papers on the desk.

# Pre-foreclosure

Pre-foreclosure is the time period between the Notice of Default and the auction or sale of your home. During this time, if you can get your hands on the amount specified in the Notice of Default, you'll be able to stop the foreclosure process from going any further.

The exact amount of time you have depends on your state. During pre-foreclosure, you might also have the option to sell your home and pay back the money owed, in what is called a short sale.





# Notice of Sale

If you don't have the money to bring your mortgage into good standing within the allotted time frame, your lender will file a Notice of Sale, and your home will be placed up for auction at a specified time and location.

How the Notice of Sale is published depends on your state. For example, in North Carolina, the notice must be published in a local newspaper and posted on the door of the local courthouse, while in California, it must be posted on the property as well as a public place in the county.

Because the Notice of Sale is public information and has been advertised, several buyers, including investors, might be interested in buying your home. Depending on laws in your state, you might have the ability to exercise right of redemption (meaning you can reclaim your home) up until the foreclosure sale, or even after.

# Eviction

Following the auction and sale of your home, you'll generally have a few days to gather your belongings and move to a new residence. If you do not voluntarily move out, law enforcement personnel are legally allowed to remove you and your belongings from the premises.

# section three

HOW TO AVOID A  
FORECLOSURE





# HOW TO Avoid Foreclosure

If you've received a notice of default, don't panic - as we mentioned before, you still have a few options to avoid foreclosure. Let's go over a few of those options now to see what might be right for your situation.

## **ASK FOR FORBEARANCE**

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Forbearance allows borrowers to pause mortgage payments for a limited time while they rebuild savings, increase income or decrease debt after experiencing financial difficulties.

The payments aren't erased, but there are plenty of options to resolve the delinquency: repayment plans, loan modification, deferral, partial claims, etc.

## **APPLY FOR A REFINANCE**

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While this won't be an option if you've already begun the foreclosure process, refinancing can also be a solution. If you fear you're headed toward foreclosure, refinancing into a more affordable payment can help you avoid defaulting on the loan. This can only really be done if you've yet to miss a payment, so unfortunately this option isn't feasible for everyone.

If you're struggling financially and having a hard time making payments, contact your loan servicer or lender.

## **GET APPROVED FOR A REPAYMENT PLAN**

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Unexpected life circumstances happen to everyone, but lenders and servicers are aware of this and will work with you to find a solution before your home has to be foreclosed upon. If you faced financial difficulties for a time that have since resolved themselves, contact your servicer about what options you may have.

You may be able to get approved for a repayment plan to help make your loan current again. Under these arrangements, borrowers will typically pay a specified amount extra each month until the missed payment balance is satisfied, upon which they'll return to making regular mortgage payments like before.

## **ASK FOR A MORTGAGE REINSTATEMENT**

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Similar to the repayment plan above, if your financial hardship has passed and you have the means to repay your mortgage normally going forward, you can also ask for mortgage reinstatement. Under mortgage reinstatement, you make a lump-sum payment for all of the payments you missed, and your mortgage will once again be current.

## SIGN A DEED IN LIEU

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If you can't catch up on mortgage payments or don't qualify for any retention loss mitigation option and know you won't be able to go forward, you can still sign a deed in lieu of foreclosure and avoid the repercussions of the typical foreclosure process. When you sign a deed in lieu, you voluntarily give your lender the deed to your home.

When you turn over the deed, your lender releases you from anything you might owe on the mortgage. You lose the home but avoid the serious detriment a foreclosure can inflict on your credit, which may harm your ability to find another place to live for years to come. It's important to note that a deed in lieu will also negatively affect your credit, though likely not to the same extent.

While this option isn't the greatest as it involves you walking away from the home, it does allow you to avoid the many downsides of the foreclosure process. Keep in mind that you may not always be able to qualify for a deed in lieu. If your home is in poor condition, you have other liens or tax judgments on your property, or your lender simply thinks they can recover more lost money by going through foreclosure, they could deny a deed in lieu of foreclosure.

## APPLY FOR A SHORT SALE

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A short sale is when you sell your home for less than what you owe on the mortgage. The lender has to approve this and will receive all the proceeds of the sale. The borrower must be able to prove financial hardship and the home must be worth less than the borrower owes on it for a short sale to be considered.



# WHAT SHOULD I DO IF I RECEIVE A NOTICE OF DEFAULT?

If you ever find yourself unable to keep up with mortgage payments, contact your lender immediately and inform them of your situation. Lenders will work with their borrowers and want to do everything they can to help give you options to stay in your home and take care of repayment. Foreclosure is an expensive process and foreclosure properties often sell for far less than what it would take to satisfy the lender's loss on the loan. If you receive a notice of default - though preferably before - you should talk to your servicer and lender right away to discuss your options.

## **WHERE CAN I FIND HELP IF I'M FACING A FORECLOSURE PROCEEDING?**

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If you're facing a judicial foreclosure, note that the US Department of Justice maintains a list of free or low-cost legal service providers. Despite the fact that judicial foreclosures are a public court proceeding, there won't be an attorney assigned to help you.

Depending on your situation, defending a foreclosure to keep your home isn't always the best option. If you have a genuine defense, however, hiring a lawyer might be crucial. For those who choose to advocate for themselves, the National Consumer Law Center also offers advice on how best to proceed.

## **A WORD OF WARNING: BEWARE OF MORTGAGE SCAMS**

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Facing foreclosure and the possibility of being forced out of your home can be extremely upsetting and can make homeowners feel desperate. Be aware: there are scammers out there that attempt to frighten homeowners into believing their home is being foreclosed upon in order to steal money from them. Before agreeing to anything or paying any money to a party that attempts to contact you about foreclosure, make sure the request is legitimate. The Consumer Financial Protection Bureau offers resources to help you spot and avoid foreclosure scams.

## **THE BOTTOM LINE: WORK WITH YOUR LENDER TO AVOID FORECLOSURE**

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No one wants their home to be foreclosed upon - and fortunately, before you reach that point you have many options to avoid the foreclosure process. If you ever find yourself struggling to make mortgage payments, reach out to your lender immediately to see what help they can offer you. It benefits both lenders and borrowers to avoid foreclosure, so never be afraid to reach out. Early and frequent communication is key.



# section four

COMMON QUESTIONS



# Common Questions

1/

## **DO I HAVE TO MOVE OUT OF MY HOUSE WHEN IT'S IN FORECLOSURE?**

Generally, you do not have to move out until the foreclosure process is complete, which can take a few months or up to a year or longer. However, once your house is sold, you have to leave the property. You might have some time after the sale date to live in the home, but that timeframe varies by state. It could be a few days or a few weeks.

If you remain on the premises beyond your legal rights, the homeowner or lender will start a formal eviction process.

2/

## **CAN I KEEP THE PROFITS FROM A FORECLOSURE SALE?**

If the sale of the home yields profits, the lender is not entitled to excess proceeds over the loan balance plus any fees owed for the foreclosure process. In short, any money earned above the balance and foreclosure costs goes to the borrower.

3/

## **DO I OWE MONEY IF THE HOUSE SELLS FOR LESS THAN I OWE?**

In the event that your home sells for less than the balance owed, the lender can file something called a deficiency judgment. This is a lawsuit that requests the lender to pay the remainder of the loan amount. For example, if you owe \$300,000 on your mortgage, but the house only sells for \$275,000, the deficiency is \$25,000. A lender might try to collect the outstanding balance.

Some states, however, have anti-deficiency laws or restrict deficiency judgments after foreclosure.

4/

## **DO I OWE PROPERTY TAXES WHEN MY HOUSE IS IN FORECLOSURE?**

Legally, you're required to pay property taxes as long as you own the home. Sometimes, the lender pays the taxes in order to sell the home. If taxes become overdue, the government can seize the property, which would make it difficult or impossible for the lender to recoup what they're owed. Taxes are attached to homes—not people—so once the property is sold the taxes are the responsibility of the new owner.

# section five

FORCLOSURE GLOSSARY  
OF TERMS



# FORECLOSURE TERMS

## **BANK-OWNED PROPERTY:**

In deed of trust states (nonjudicial foreclosure), this is a document that tells a trustee to prepare and record a Notice of Default and sell the foreclosed property at auction.

## **COMPLAINT:**

In judicial foreclosures, this is the document that describes why the lender is foreclosing. This document is served on the borrower along with a summons. It begins the foreclosure action.

## **DECLARATION OF DEFAULT:**

In deed of trust states (nonjudicial foreclosure), this is a document that tells a trustee to prepare and record a Notice of Default and sell the foreclosed property at auction.

## **DEED IN LIEU:**

This is the document that allows a borrower to give ownership of a foreclosed property to the lender as a way of satisfying the unpaid loan to avoid foreclosure.

## **DEED OF TRUST:**

A document that transfers ownership of a property from the borrower to a trustee until the borrower has paid the loan to fully buy the property.

# FORECLOSURE TERMS

## **DEED OF TRUST STATES:**

This term describes the U.S. states (nonjudicial states) that use deeds of trust to secure a loan.

## **DEFENDANT:**

The term given to the borrower being sued in a foreclosure action.

## **DEFICIENCY JUDGMENT:**

In some cases, a lender can go to court after the completion of the foreclosure process to sue the borrower if the payoff is less than the debt owed (e.g., the borrower owes \$250,000, but the property sells for only \$200,000).

## **FORECLOSURE:**

This is the legal process a lender uses to take a property from a borrower for non-payment of the loan. Foreclosure rules vary from state to state. Some states (generally states that use mortgages vs. deed of trust states) require lenders to go to court; others don't. In either case, the lender takes the foreclosed property to sell to make its money back.

## **FULL RECONVEYANCE:**

In deed of trust states, this is a document the trustee uses to release a property back to the borrower after the loan is paid.



# FORECLOSURE TERMS

## **JUDGMENT OF FORECLOSURE SALE:**

In judicial foreclosures, this is a court document that tells the referee to sell a foreclosed property at auction. It also sets the total amount the borrower owes to the lender. This amount covers the unpaid loan, interest and legal fees.

## **JUDICIAL FORECLOSURE:**

When a borrower fails to pay the mortgage for several months, the lender seeks to foreclose on the property by filing a civil lawsuit against the borrower and serving the borrower with a formal summons and foreclosure complaint. This begins the judicial foreclosure process, which is handled through the local court system. The court appoints a referee to conduct the foreclosure auction on the courthouse steps.

## **JUNIOR LIEN:**

A lien filed at the county clerk's office after the deed of trust or mortgage. Liens may be judgments, unpaid taxes, or second and third mortgages. What makes them "junior" is the fact that they are "second" to the primary mortgage.

## **LIEN:**

A lien is any legal claim upon a property that reveals either a debt or a non-monetary interest in the property. Liens are typically recorded with the clerk of the county in which the property is located.



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## FINAL THOUGHTS

We would love to work with you, please reach out if you have any questions.

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*thank you!*