

FORECLOSURE

HOW TO AVOID FORECLOSURE & WHAT TO DO IF YOU ARE SERVED FORECLOSURE PAPERS

BEFORE THE MORTGAGE COMPANY FILES COURT PAPERS

Actions You Can Take Before your Mortgage Company Files Papers

If you have a FHA mortgage, pay close attention to any letters receive.

If you have a Farmers Home Mortgage, you may get a letter saying you are behind on your payments. Call the Farmers Home office and ask for help with your mortgage. They may be able to give you interest credit; delay your payments, or some other help. If you are turned down, you can ask for an appeal hearing.

If you have a Veteran's Administration loan (VA loan), contact the VA as soon as you are behind in your mortgage payments.

If you do not have a VA or FHA mortgage, you can write a letter to the mortgage company requesting to pay the bank payments over time. The mortgage company may accept your offer.

You can also choose to try and sell your house if you know that your monthly payments are too high for you. Before you sign any papers to sell your house, make sure you understand what you are signing. If you do not know what you are signing, do not sign it. Do not sign a deed selling you house unless you want to sell your house. Do not sign any blank papers.

IF YOU ARE SERVED COURT PAPERS FOR FORECLOSURE

If the banker mortgage company has started a foreclosure suit against you, you will be served court papers by the sheriff or by a process server. You will probably receive a summons, a complaint, and maybe an order to show cause. These papers come with deadline! You must respond to them within 20 days. So, as soon as you get them, read them. Try to talk with an attorney about them so you can get some advice about what to do.

If you respond to the papers yourself, this is what you should do:

1. On plain white paper, point out anything that you believe is untrue or wrong in the court papers you received. Type or print clearly.
2. Write down the reasons why there should be no foreclosure. These are called "affirmative defenses".

One defense might be that the mortgage company accepted late payments from you for several months but then filed a foreclosure when you were late again, without giving a new written notice that payments are due on time.

Another possible defense may come up when a home improvement company has placed a mortgage on your home to pay for its home improvement. A defense may be that the home improvement was not done properly. The judge may still rule that you owe money on the mortgage but it may be an amount less than the mortgage company asked for.

Other defenses are possible. Any reason that would make it unfair for the mortgage company to take over your home should be written down as a defense.

3. Once you have written your answer, you should sign it. Even though it is not required, it's best to sign the answer in front of a notary. You will need to take a valid driver's license or other form of ID with you to the notary.
4. Then write on your answer that you are mailing a copy to the lawyer for the bank or mortgage company. Put the date that you are doing that on your answer.
5. When you have done all of the above, take your original answer to the court clerk and file it. There is no charge for this.
6. You may have received an "order to show cause". That paper will tell the date and time that a judge will decide whether to foreclose on the house. You can go to that "show cause" hearing and tell the judge why there should be no foreclosure.
7. If the judge decides that the house should be foreclosed he will set a day and time for the sale. That day will be at least 20 days after the hearing, but probably not more than 35 days after the hearing. If you need more time than that, tell the judge. It will be up to him to decide if you should get more time.
8. At the sale, someone will purchase the house. That new buyer cannot take possession of the house or force you out for at least 10 days after the sale.
9. If you have not moved from the house by the time the new buyer is entitled to move in, you will be served a "Writ of Possession" by the sheriff. It will give you 24 hours to move. You must be out by the end of that time.
 - ⇒ If you do not file an answer or if you do not show up at the "show cause" hearing, a default can be entered against you. This would be like automatically losing the case. The next piece of paper you could receive would be the notice to leave the house.

*****Going through a foreclosure is very stressful. You should get legal advice so you can make informed decisions. *****

OTHER OPTIONS TO CONSIDER

You may wish to sell your home. You have the right to do so until the sale of the house. This may be the best way for you to get back the equity you have in the home. If you want to do this, contact a realtor.

You may want to consider bankruptcy. In some situations where the household has a steady source of income, it can help you save your home. Talk to an attorney who does bankruptcies to get advice.

You have the right to “redeem” your home up until the sale of the house. To redeem your home, you must pay all amounts that are owed on the mortgage, plus attorney fees, and the court costs that went with the foreclosure. If you do that, it can stop the foreclosure sale.

This handout is intended to give only general advice and is not intended as a substitute for individual legal advice. If you have a question about the information in this handout, or if you have a situation not covered in this handout, you should contact an attorney, you may wish to call the Florida Rural Legal Services office nearest you. The Fort Myers office is located at 3210 Cleveland Avenue, Suite 101, Fort Myers, FL 33901. Their office number is (239) 334-4554 or call toll free to: 1 (800) 476-8937.