

FORECLOSURE FREQUENTLY ASKED QUESTIONS

Q. What is a foreclosure?

A. When a secured creditor, usually a bank, attempts to recover monies owed to them based on a promissory note by selling the collateral. In more simple terms you have probably borrowed money from a bank or mortgage company in order to purchase or refinance a home. In exchange for lending you the money, you made a promise that if you could not pay them back they could take the house. I will refer to the events associated with these actions as the foreclosure process.

Q. Can the bank just come and kick me out of my house?

A. No. Only an order of the court can force you to leave your home. Ultimately you may be evicted but there are procedures within the court system that the mortgage holder must follow first for the foreclosure and then another set for the eviction.

Q. Can you explain some of the steps in the foreclosure process?

A. In Massachusetts it works like this. (Other states may have similar procedures but almost all states have a fairly unique system of foreclosure. If you are already in the foreclosure process you would be well advised to consult with an attorney that is familiar with the laws in your state.)

Pre-Foreclosure

- 1. Customer misses mortgage payment.**
- 2. Late notice send by bank.**
- 3. Customer misses additional payments.**
- 4. Bank attempts in writing and by phone to contact customer and resolve situation.**
- 5. No arrangements are agreed upon and customer continues to miss payments.**
- 6. Bank issues demand for payment under the note in full, based on the acceleration clause. Most mortgage notes contain language which basically says if you fail to pay the bank under the terms of the note with monthly payments as promised they can accelerate the note, meaning that the full amount is due on demand. For example if your mortgage is \$100,000 with payments of \$1000.00 per month you are only required to pay \$1000.00 per month unless you miss these payments and the bank subsequently demands the balance based on**

this acceleration. Once this happens you legally owe the full balance of \$100,000.00 plus back interest, plus late charges, plus legal fees all at once. You will find from this stage on the bank will not accept monthly payments. They will instead demand much more to reinstate the loan. Although I consider this step in the pre foreclosure category, once demand has been made and the note has been accelerated you should already have contacted an attorney who is an expert in dealing with these matters.

7. No payments or arrangements acceptable to the bank are made.

Formal Legal Foreclosure Process

1. Bank sends by sheriff or by certified mail Notice of Intent to Foreclose.
2. Bank begins action in the court system to foreclose.
3. Legal notices (see soldiers and sailors notice below) as required by law begin to be published in local papers.
4. No payment or settlement arrangements are made with the lender.
5. Notice and waiting periods expire.
6. Court holds hearing regarding banks claim.
7. Court issues order allowing bank to foreclose. (Beware, one foreclosure firm will begin 2 and 6 at the same time shortening the process.)
8. Legal notice of actual foreclosure sale and advertisements published in local papers.
9. No payment arrangements or settlements reached with the bank.
10. House sold at auction to highest bidder.

Q. How long does this process usually take?

A. From the time you miss your first payment to the final foreclosure sale its not uncommon for six months or more to pass. In some states this could be more and in others considerably less. Texas residents could find the foreclosure process completed in only around 45 days. It will also depend a great deal on your mortgage holder and how aggressively they pursue your case.

Q. When in the foreclosure process do I have to move out of my house?

A. YOU DON'T!!!!!!!!!! The foreclosure process even when followed through to completion only transfers ownership of the house from you to the high bidder. This transfer of ownership becomes complete at a closing following the foreclosure auction. After the auction you automatically become a tenant in the house you formally owned. At

this point the new owner must follow the legal procedures in your state for eviction.

Q. What is the eviction process?

A. Again this will vary widely from state to state and you should be consulting with an attorney with expertise in this field if your case has gone this far. The process in Massachusetts is as follows:

- 1. When someone has taken your house at foreclosure they can send you a legal notice to leave the premises under a 72 hour notice.**
- 2. If you fail to leave after the 72 hours has elapsed the new owner must go to court to present his case before a judge that you should be evicted.**
- 3. At a hearing the judge will decide if you are to be evicted or not as well as how long you may stay in the house before you must go. Your willingness to pay rent will play a large role in granting more time.**
- 4. If the judge finds against you and you are unhappy with his ruling you have 10 days to appeal his decision.**
- 5. If you have been ordered evicted and you have not moved out on your own by the day designated by the court the new owner may obtain an execution of the eviction judgment which will give a sheriff the right to physically remove you from the premises.**
- 6. A sheriff gives you notice of the execution and as little as 48 hours to move.**
- 7. Anything left in the house is moved by the sheriff into storage, where you will have to pay fees to get it back, locks are changed, resistance at this point may subject you to arrest.**

Q. How long does the eviction process take?

A. From the day you are given you notice until a sheriff might pack up and move your possessions out of your house you can expect a 6 week to 6 month time frame, with the average coming closer to 10 weeks.

Q. Once the foreclosure process starts is there anything I can do to stop it?

A. Yes. If working from your first late payment there are at least 10 or 20 different ways to resolve the situation. The longer you wait, however, the more some of these options will become unavailable. You may also wish to visit a site explaining much more about [foreclosure and how to stop it](#) including a [tool](#) to analyze your own situation and an article on the [top 10 mistakes people make when facing foreclosure](#).

Q. At what point will I have absolutely no options left?

A. Never. You have not lost until you decide the fight is over. Even after a foreclosure, even after an eviction you still have as much right to buy your house back in the open market as anyone else. Realistically if you have not been able to save the house before a sheriff evicts you, chances are strong you will never be able to structure a deal to buy the house back. This is largely based on the assumption that you hired a capable attorney and had the ability to strike a deal. If so, you would have done so long before a sheriff removed you from the house. I actually handle many cases which have been resolved after the foreclosure auction with the result that the homeowner keeps their house. Although possible, I have not yet seen anyone repurchase a home after a physical eviction.

Q. I am receiving a lot of mail from people that claim they can help me where are they getting my address?

A. Because of the legal nature of the foreclosure process your name and address may be part of public information offered through the court system and ultimately published in certain journals and publications.

Q. What kind of people send these letters and can they really help me?

A. Many groups of people try to contact homeowners in foreclosures:

- **Mortgage Brokers.** If there is enough equity in your home they can help you to refinance and stop the foreclosure by paying off your current mortgage in full. This solution often works well, but you must be careful because the interest rate and closing costs on these types of loans can be high. Due to your credit situation you will pay much more than at a bank, but some brokers may try to charge even more points or interest than another just to gouge the debtor for more fees if they think they can get it. Keep your eyes open and a **foreclosure prevention loan can save the day.**
- **Chapter 13 Attorneys.** If you have the financial ability to complete the chapter 13 plan this also provides a valid way to save the house, just beware that many of these attorneys will be more than happy to file a chapter 13 for you whether it is the best option or not. It is my personal feeling that this should be an option of last resort unless your personal circumstances dictate this as the best solution for you. Keep away from lawyers running "bankruptcy mills" as I call them. These firms may offer low fees but will let paralegals

handle your entire case, never really getting to know your situation or giving you the personal attention you need. Read more about [chapter 13 bankruptcy](#) or find a [chapter 13 attorney near you](#) to learn more.

- **Mortgage Negotiators.** Some people hold themselves out as professionals who can save you from foreclosure, other than those who fall into the crooks category below, some can be quite skilled at negotiating "repayment plans". Homeowners can arrange these plans with the banks themselves in easy cases. These [professional foreclosure negotiators](#) can help in cases where the people seem to be failing at getting a "repayment plan" done with the bank on their own or where the bank's terms seem too demanding. Often more favorable terms can be reached by a professional.
- **Private Financiers.** Two very distinct groups fall into this category. The most useful for people wanting to save their home from foreclosure will be [private mortgage financiers who will help arrange a new home loan](#), even when they have been turned down by other high risk lenders. Other investors will want to buy the house from you. Keep a sharp eye on what they are doing for you and what they want for themselves. Sometimes these people can help save your home, other times they don't care about anyone else and depending on how they set things up they can make your situation even worse. Remember there are [many ways to save a house from foreclosure](#). You do not need to sell your house unless you do not want to live there anymore or you can not afford the payments even if you got a new mortgage or could catch up on the old mortgage.
- **Your Mortgage Holder.** Especially those involved with government backed mortgages will offer ways for you to reinstate your existing mortgage. While I have seen some of these letters which can be down right misleading compared to what the banks will realistically do, reinstating an existing mortgage is a viable option and in many cases the best option. Sometimes a [mortgage mitigation professional](#) can adjust terms to lower payments and stop the foreclosure in its tracks, in some cases even moving arrearages to the balance and extending the mortgage term.
- **Crooks and Con Artists.** I include in this group not only those who will take your money with promises to keep the house take your money and provide no services but also groups which do no more than take your money as an illegal referral fee and then pass your name onto a chapter 13 attorney. In the worst cases I have heard of groups that will take title to your home, force you to pay them rent with the promise that they can save your home, with the result that either they save your home keeping any equity for themselves or in the alternative collect rent from you until the home is sold. Furthermore, since you would no longer own your home Chapter 13 would be lost as an option.

Q. How will I know which is the best option for me?

A. This is a tremendously complicated question. The answer will depend upon your assets, liabilities, income, expenses and the underlying reason why the house is in foreclosure. The best solution will also depend upon the type of mortgage you have and where in the foreclosure process you are when you make the decision to save the house.

Q. Is there anyone familiar with all of these options that can help me take the best course?

A. Law firms that specialize in residential foreclosures from the debtor's side should be familiar with all of these options. This does not mean a bankruptcy firm who may only deal in bankruptcy but a firm who in addition regularly reinstates mortgages for clients as well as refinances clients through mortgage companies. Finding such a group may be difficult. While it should not be substituted for a lawyer, we have put together an interactive form using an online program to review your circumstances and offer some help on [how to stop your own foreclosure](#).

Q. From your experience how do you find that most of these cases are settled?

A. Our older statistics indicate the following: Approximately 40% of clients refinance Approximately 35% of clients file a chapter 13 Approximately 20% reinstate their existing mortgage, most with the help of a [professional foreclosure negotiator](#) and about 5% are unable to save their homes or use a more unusual method. More recent trends and lending criteria indicate fewer people refinancing.

Q. What is a "Soldiers and Sailors" answer date?

A. In Massachusetts during World War Two an act was passed to stop foreclosures on anyone in active military service. Unless the debtor is in active service this is just one hearing in the process. In most cases it's significance is that the real foreclosure date will be 3-6 weeks following the soldiers and sailors answer date. You do not need to appear at the hearing or answer unless you are currently in the military.

Q. What happens at the actual foreclosure sale?

A. Although any given sale may be a bit different the process will go like this:

1. The Auctioneer will read various legal notices and legal descriptions of the property.
2. He or she begins taking bids on the property.
3. If the Auctioneer has not already pre-qualified bidders by asking for their deposit checks, when a bid is made by a party the Auctioneer will ask for their deposit check. For most residential auctions this will be \$5,000.00
4. The Auctioneer will solicit bids for higher amounts. Depending on the auction increments will be set by the Auctioneer. Examples of increments maybe \$100.00, \$500.00 or \$1,000.00. This process will continue until it has become clear to the Auctioneer that the high price has been reached.
5. The Auctioneer will announce the standard "going once, going twice, going three times, sold!" and the auction is concluded.
6. Foreclosure deeds and purchase papers will be drawn up by the new purchaser and the mortgage holder.
7. A grace period will be given to allow the purchaser to line up financing. In most cases this should be thirty days.
8. A closing will take place and the new owner will formally take title to the property.

Q. What happens to the money paid by the new purchaser?

A. Monies will be distributed in order of priority. First priority will be real estate taxes. If monies are available after taxes monies will go to the first mortgage then the second mortgage, third mortgage etc., etc. The next money will go to any lien holders or attaching creditors. This process will continue until all liens and encumbrances on the property are paid. If by some chance there is still money left over it goes to the former home owner.

Q. May I bid at my own auction?

A. Yes if you have the required deposit. Remember this is a non-refundable deposit and if you are the successful bidder you must be able to refinance the home within the specified period of time required under the terms of the auction. Also beware that some of the old debts may merge and become reinstated.

Q. What does this mean when debts merge?

A. Let's say for example that the first mortgage is foreclosing and forecloses out the second and third mortgage. The second and third mortgage holder no longer has any right or title to your home. You may still owe this money but they have no right to foreclose on the home nor do they have any security interest in the home in any way.

If you had filed a chapter 7 bankruptcy prior to the sale and received a discharge after the sale you would not only not owe them any money and they would no longer have a security interest either. Your debt for all intents and purposes will be extinguished completely. If someone else buys your home at the auction the bank, the second and third mortgage holders have lost all their right to the property but on the other hand if you buy the property back the debt may "merge" back to the property with you and reattach, as if the auction never foreclosed them out.

Q. What happens when a property is auctioned subject to a first mortgage?

A. This happens when the mortgage is being foreclosed by the second mortgage holder. They can only foreclose from their position. Let us say for example there are outstanding taxes of \$10,000.00 and a first mortgage of \$90,000.00 on the property with the second mortgage foreclosing. At the auction the second mortgage would foreclose from their position subject to the first mortgage and the taxes. You find at this type of auction at a bid of \$1.00 is the same as bidding \$100,000.00. To own the house out right one would have to satisfy the first mortgage and the taxes.

Q. What happens if no one at the auction bids an amount high enough to cover my debt?

A. If the mortgage were \$150,000.00 and the high bid at the auction was \$100,000.00 the \$50,000.00 balance would be called a deficiency. Under most loans in most states you would still be responsible for the \$50,000.00 as an unsecured debt and the bank would have legal rights roughly the same as what would exist on a credit card debt to pursue you.

Q. Is there any special redemption period after the foreclosure during which I could buy the house back?

A. Many states have such a redemption period. In Massachusetts there is no redemption period for the foreclosure of a real estate mortgage. There is however a redemption period if your house is sold at a sheriff's sale or for back real estate taxes.

Q. What is the difference between a foreclosure and a sheriff's sale?

A. Foreclosure auctions will be held by a mortgage holder after a default. A sheriff's sale would be held by a lien holder or attaching creditor after default.

Q. At the foreclosure sale will the attorney's and potential bidders have to come inside the house?

A. No. More than likely they will come onto the front lawn. If you would like to invite them inside the house you are welcome to but you are under no obligation to and they can not make you let them in. If you know you are going to lose the house and are hoping for a high bid so you will have little or no deficiency you may invite them in (assuming the house is nice inside) otherwise don't.