

# Utah Legal Services

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## Foreclosure

### What is Foreclosure?

Foreclosure means your creditor is trying to take your house and sell it to collect the money you owe. This happens when you get behind on your payments.

### What do words used in a foreclosure mean?

Understanding the legal terms used with foreclosure can help you help yourself. Some definitions are:

- **DEFAULT** - A mortgage or contract is in default and foreclosure proceedings can begin as soon as you are late on one payment. Depending on the language in your loan documents, the lender may have to give notice before beginning a foreclosure.
- **DELINQUENT PAYMENT** - A mortgage payment is delinquent when it is not made on the day that it is due or within any "grace period" allowed by the lender.
- **FORBEARANCE** - An agreement where the lender agrees not to foreclose if you catch up your past due payments over a period of time. These payments will bring the loan current.
- **FORECLOSURE SALE** - The forced sale by which your lender sells your property to pay your loan. A foreclosure sale has a bad affect your credit rating and future loans. The foreclosure sale takes place at the county courthouse.
- **DEED IN LIEU OF FORECLOSURE** - To avoid foreclosure when you know you will be unable to make your payments, you may consider handing over your deed to the lender. This is also called voluntary repossession. It means you are giving your house back to the lender. This may still affect your credit rating, but you may be able to avoid the cost of the foreclosure process.
- **JUDGMENT** – This is an order saying you owe money to the lender. The lender is then able to get the money through a foreclosure sale. In a non-judicial foreclosure your lender is not required to obtain a judgment before holding a foreclosure sale.
- **DEFICIENCY JUDGMENT** - A lender may be able to obtain additional money from you to recover there losses if the house sells for less than loan and cost to recover the money.

## **How can I avoid foreclosure?**

To avoid foreclosure, pay your monthly mortgage. The lender does not want to foreclose on your property because it takes time and money to go through the process.

## **What if I can't make a house payment?**

If you cannot make a payment, it is important to contact your mortgage company to agree to make payments. Be sure to get any payment plan in writing. Discuss with your lender how much you owe and how long it will take to catch up on any missed payments. Be prepared to answer

- why you fell behind on your payment,
- what your current financial resources are, and
- if you have a realistic plan for repaying the money you owe.

If you go to your lender with a good attitude and are honest, your problems will likely be easier to solve.

You may also ask your lender about modifying the loan. That might reduce your monthly payments to an affordable level. For more information on this possibility, speak with a foreclosure counselor at Salt Lake Community Action Program. Their number is 801-359-2444 or 888-995-HOPE.

## **What are the different kinds of foreclosure procedures?**

In Utah, there are three different kinds of foreclosures. They are trust deed foreclosure, mortgage foreclosure, and uniform real estate foreclosure.

### **What is a Trust Deed Foreclosure?**

To foreclose on a Trust deed, a creditor must follow these steps:

1. A trustee records a Notice of Default at the county recorder's office. The Notice of Default includes the reason the trustee believes your loan is in default. A trustee must give written notice of the default to the borrower and anyone who has filed a Request for Notice. This is usually done by registered mail. Always arrange to get letters sent by registered mail. The notice is valid even if you fail to sign for it or pick it up from the post office.
2. You will receive a copy of the Notice of Default. If you suspect you are in default, you should check with the county recorder to see if a notice of default has been filed. You may also file a request for notice with the county recorder's office so you are notified of any default. A notice of default does not mean you have to move out, but you will have to move once the sale of the property is final.
3. After the Notice of Default is filed, you must make a payment plan with your creditor. You will have to pay any past due payments, late fees, collection fees, and legal fees. This

must be done within three months of the recording of the Notice of Default. Otherwise, after three months the trustee can issue a Notice of Sale and you will have to pay the entire loan to avoid losing your property.

4. If you do not cure the default, the trustee must give written notice of the time and place of the sale. This is done by:
  - Placing an ad in a newspaper once a week for three straight weeks. The last notice must occur more than 10 days but less than 30 days before the date of sale; and,
  - Posting a Notice of Sale at least 20 days before the date of sale
    - on the property and
    - in at least three locations in the county where the property is located.
5. The sale can be postponed by the trustee.
  - Once the Notice of Sale has been issued, you can only redeem the property if you pay
    - the entire loan balance
    - plate fees,
    - collection fees, and
    - legal fees.
  - If you cure the default, you should ask the trustee to file a Cancellation of Notice of Default.
6. If the house sold for less than what you owe the lender, they may, within three months after the sale, sue you for the rest of the debt owing and expenses. This is called a deficiency judgment. The deficiency judgment is limited to the amount the debt, interest, costs, and expenses of sale is more than the fair market value of the property at the date of the sale. The fair market value is the value of the property to the normal buyer on the date of sale. The fair market value is not always the amount the property sold for at the Trustee's Sale.

## **What is a Mortgage Foreclosure?**

When a trust deed or mortgage goes into default, the lender has the right to declare the entire balance of the loan due and file a lawsuit to collect the debt. To foreclose on the property in this manner, the mortgage holder must file a summons and complaint and serve them on you. You must file a response to these papers in court. It is not a defense that you cannot afford the payments.

Once the mortgage holder has a judgment against you, a sheriff can serve an order called a writ of execution that allows your house to be sold to satisfy what you owe on the mortgage.

Once the property sells, you have six months to redeem the property. To redeem the property, you must pay the amount the property was purchased for at the foreclosure sale plus any costs incurred by the mortgage holder, plus a 6% redemption fee.

If you do not redeem the property, the purchaser will get a deed after six months. You will have to move out. You do not have to pay rent during the six month redemption period.

The mortgage holder is entitled to a deficiency judgment if the foreclosure sale price is less than the full amount owed. Unlike the trust deed foreclosure, the mortgage holder is entitled to

judgment based on the price of the property at the foreclosure sale rather than the fair market value of the property at the time of the sale.

## **What is a Uniform Real Estate Contract Foreclosure?**

If you are buying a house using a Uniform Real Estate Contract and the seller wants to foreclose, they must give you a written notice that says what part of the contract you have defaulted on.

After you receive a notice, you have the time limit provided under the contract, to cure the default. If you fail to cure the default, the contract may allow the seller to choose one of the following:

- The seller may declare that you are a tenant at will and keep all payments that have been made under the contract. However, if you have a lot of equity in the property, the court can refuse to enforce this provision. The court might force the seller to proceed under options (2) or (3), or force the seller to return a portion of your payments.
- The seller may bring suit and recover judgment for all late payments, costs, and legal fees.
- The seller may treat the contract as a mortgage and proceed under the mortgage foreclosure statutes.

## **How can I get more help if my house is being foreclosed?**

Foreclosure can hurt your credit rating and cost you time and money. Many foreclosures can be avoided with good budgeting, money management, and financial planning. If you find yourself in financial trouble with a possible foreclosure, you should call a foreclosure counselor at a consumer credit counseling service.

If you have further questions, try calling the Community Action Program in Salt Lake at 359-2444 or Utah Legal Services, (801) 328-8891 in the Salt Lake area or 1-800-662-4245 statewide toll free.

## **What if I am a tenant who rents but does not own the property?**

If you receive a notice of deficiency or notice of a foreclosure sale you should continue to pay your rent just as before. Only when the home is sold will there be a new owner. After the foreclosure sale takes place, the new owner may end your tenancy with proper notice. Proper notice could be a five (5) day tenant-at-will notice.

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