



Helping Older Persons With
Legal & Long-Term Care
Problems

Seniors and Mortgage Foreclosure

1. What Is Foreclosure?

Foreclosure is a legal process used by a bank or mortgage servicer to have the court order the sale of real estate because the homeowner has not made all of the mortgage payments or has otherwise not complied with the mortgage agreement.

In Ohio, a bank or mortgage servicer is required to file suit with the appropriate documents in the local Court of Common Pleas.

2. What Should I Do If A Foreclosure Complaint Has Been Filed Against Me?

Once the foreclosure case is filed against you in court, you are a defendant in the lawsuit and will receive a copy of the complaint by certified mail and/or through delivery by a deputy sheriff.

After you receive the complaint, you have 28 days to respond to the complaint with an "answer." The "answer" must be in writing and filed with the clerk of courts, with a copy mailed to the attorney for the bank. You can draft an answer yourself "*pro se*" (without an attorney) or you can find an attorney to help you.

You can still work with your lender even after a foreclosure suit is filed. If you file an answer, the court proceedings will take longer than if you do not. While a borrower can proceed "*pro se*" and work directly with their lender, it is always a good idea to get legal advice and/or representation if possible. A lawyer may find legal defenses and be able to stop the foreclosure.

3. How Can I Find An Attorney?

If you are 60 years of age or older, you can contact Pro Seniors at 1-800-488-6070. If you are under age 60, call Ohio's Save The Dream program at 1-888-404-4674 to find legal help.

4. What Happens If I Don't Respond To A Foreclosure Complaint?

If you do not file an “answer” to the complaint, the foreclosure process can move very quickly. A default judgment will be entered against you and the servicer will get an order of sale. A default judgment means that because you have not responded to the servicer’s claims, you are therefore not disputing the claims in the complaint.

After a judgment is entered, the county sheriff receives an order of sale and the property is appraised. Then, the sale is scheduled and advertised in the local newspaper for at least three weeks. The minimum bid at the sale is two-thirds of the property’s appraised value.

If there is a sale at the auction, the servicer asks that the sale be confirmed. This means that the court will approve the sale, order a new deed for the buyer, and distribute the money from the sale.

At this point in the foreclosure process, you, the foreclosed homeowner, lose the right to reside in the property. The house is now owned by the new buyer and if you, the former homeowner, are still living in the house, the new buyer can ask the sheriff to evict you.

5. What Should I Do If I Am Behind Or Having Trouble Making My Mortgage Payments, But A Foreclosure Has Not Been Filed?

- Talk to your lender/servicer:

Get on the phone with your mortgage loan servicer as soon as possible. This may take some patience, but it is important that you talk to them. Explain what is going on and ask to participate in a workout resolution.

- Look for help:

Contact a housing counselor who has been approved by the U.S. Department of Housing and Urban Development. They may be able to help you negotiate with your lender or find another resource to help you.

- Make your home a priority:

If you are almost but not quite able to afford your mortgage payment, look for changes you could make to your budget. Consider cancelling cable, cell phones or other subscriptions, reducing discretionary spending, and paying your home loan before other unsecured debt like credit cards.

If you cannot make your entire mortgage payment and your lender refuses a partial payment, deposit the funds that are refused in your bank account. Continuing to deposit your monthly mortgage payments into your bank account, shows a good faith effort on your part and the money will be useful later in the process if you attempt to negotiate a lower payment or any other mortgage workout.

6. What Should I Be Wary Of When Looking For Help?

There are unscrupulous companies and individuals who take advantage of people in foreclosure. Some are schemes in which the homeowner unwittingly transfers title to the real estate to a “rescuer.” In some, a homeowner ends up renting his or her own property. Others simply take payment for “phantom help;” the homeowner pays fees for foreclosure help that is never delivered. In other cases "counseling agencies" offer to perform services for a fee that you could do yourself or with the help of a HUD approved housing counselor, such as negotiating a workout.

In order to avoid scams and unnecessary expenses, be sure to work with a HUD (US Department of Housing and Urban Development) approved housing counselor. You should also not hesitate to contact your loan servicer directly for help.

7. What Is A Reverse Mortgage?

A reverse mortgage is a particular type of home loan available only to older adults. It converts some of the equity in a home into cash. It is different from a traditional mortgage in that repayment is not required until the borrower passes away or no longer uses the home as his/her principal residence.

A reverse mortgage can be useful for a senior facing foreclosure. Sometimes, a borrower cannot make the mortgage payment, but has a low mortgage balance that can be paid off with proceeds from the reverse mortgage. As with any loan, homeowners should be very careful when considering a reverse mortgage. It is not the right choice for everyone. Be sure to talk to a housing counselor who has been approved by the U.S. Department of Housing and Urban Development.

Call Pro Seniors for legal information and advice by telephone, free to all residents of Ohio age 60 or older.

8. Resources.

Ohio - Save the Dream
<http://www.com.ohio.gov/SavetheDream>
888-404-4674

US Department of Housing and Urban Development (HUD)

<http://www.hud.gov>

Hamilton County Homeowner Preservation

<http://www.cincinnati-oh.gov/noncms/211>

Dial 211

Ohio Legal Services Association

<http://www.ohiolegalservices.org/>

1-866-LAW-OHIO (1.866.529.6446)

Ohio State Bar Association

<http://www.ohioabar.org>

AARP –

Information on Reverse Mortgages

<http://www.aarp.org/money/revmort>

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Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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