

A Maryland Judiciary Production
My Laws, My Courts, My Maryland
The Foreclosure Process

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In this video, we will talk about the foreclosure process. First, we'll define some terms you're likely to see or hear during a foreclosure. We'll talk about the timeline of events that you can expect to happen in your case. We'll also spell-out what happens during a foreclosure sale of a home. Finally, we'll give you some helpful resources. This video focuses on residential property. It does not address commercial or business properties.

[STEPS: Frequently-used terms.]

First, we'll define the people or organizations involved in the process.

You may be called the homeowner, a mortgagor or grantor.

The bank, organization or individual that holds your mortgage is called the lender.

The servicer is the organization or individual that collects your payments and is the "face" of your lender. They may or may not be the same entity.

The substitute trustee is usually the law firm representing the lender. This is who will handle the sale and other foreclosure matters.

Now, let's define some terms used throughout the process

First, the term foreclosure. It's a legal process. It's what allows the lender to sell your home if you don't make your payments on time. The lender will use foreclosure to try to get back some of the money you owe on your mortgage loan.

Notice of Intent to Foreclose is the first notice that you will get from the lender. The lender MUST send you this document before filing any foreclosure papers with the court.

Loss mitigation refers to the ways you can avoid having the lender sell your home. In some cases you may be able to negotiate changes to the terms of the loan so you can keep your home. Even if you cannot afford to stay in your home, there may be options for you that are more favorable.

If you can't work out an agreement with the lender on your own, you may request foreclosure mediation. In mediation, a trained neutral person, called a mediator, will help you discuss options with your lender. Mediation may help you reach an agreement that will allow you to keep your home. Or, you may resolve the matter in a way that is better for both you and the lender.

[STEPS: Timeline]

Now that you're familiar with some terms, let's go over a typical timeline for a foreclosure case.

Your lender may begin the foreclosure process if you default on the loan. When you miss a payment and fall behind on the mortgage, you are in default. This can happen even if

you are just one day late paying your mortgage. You can usually fix a default by paying the lender what you owe. You will also pay interest and fees.

What happens during foreclosure?

PHASE 1: You get a notice. Before the lender can begin the court process for foreclosure, the lender must send you a Notice of Intent to Foreclose. You must be at least 45 days late on your payments before the lender can send you the Notice of Intent to Foreclose. Read the notice carefully.

PHASE 2: Loss Mitigation - Ways to avoid foreclosure. When the lender sends you the Notice of Intent to Foreclose, the lender must also include a loss mitigation application. Remember, loss mitigation refers to options to avoid having your home going to foreclosure. Complete the application and return it as soon as possible. Be sure to keep a copy of the application for your records. On the application you will provide information about your finances. You may have to attach documents like your paystub and tax returns. You will also have an opportunity to explain why you are in default. Your lender will use the information you provide to determine if you are eligible for a loan modification or other alternatives to foreclosure. Loss mitigation can include agreeing to move out in exchange for money. That is sometimes called “cash for keys.” Or, it might include asking the bank to allow you to sell your home for less than you owe. That is often called a “short sale.” There is no guarantee that you will get a modification. Still, be sure to submit the application in order to determine if you qualify.

The lender must also send you information about housing counselors. Reach out to them and to the lender if you are trying to save your home. Get help as soon as you can. Once a

Notice of Intent to Foreclose is sent to you, the lender must wait 45 days before filing foreclosure papers with the court.

PHASE 3: The lender starts the foreclosure process in court. After that 45-day waiting period, the lender may file an Order to Docket with the court. This starts the courts case. The lender must send you a copy. When you receive the Order to Docket, the lender must include either a preliminary or a final loss mitigation affidavit.

If the lender files a *preliminary* loss mitigation affidavit, it means the lender did not do a loss mitigation analysis before filing the Order to Docket with the court. The lender must then wait 28 days before filing a *final* loss mitigation affidavit with the court.

If the lender files a *final* loss mitigation affidavit with the Order to Docket, it means that the lender has completed the loss mitigation analysis. The final loss mitigation affidavit should tell you why you aren't eligible for a loan modification.

When the lender files a final loss mitigation affidavit, he or she will also send you information on how to request mediation. If you do not request mediation, the sale can happen 45 days after the Order to Docket was filed. If the loss mitigation affidavit was not filed with the Order, then the sale cannot take place until 30 days after the affidavit was filed.

PHASE 4: Mediation. At this point, there is still another chance for you to work with your lender to avoid having your home sold. When the lender files the final loss mitigation affidavit, it must also send you instructions on how to request post-file mediation. If you want to try mediation, you must file your request within 25 days of receiving the final loss mitigation affidavit.

Foreclosure mediation costs \$50. If you cannot afford the fee, you may file a motion asking the court to waive the fee.

Within five days of receiving your mediation request, the court should forward your request to the Office of Administrative Hearings or “OAH.” That office usually schedules foreclosure mediations within 60 days. At mediation, you meet with the lender’s attorney, the lender (who is usually on the phone), your attorney (if you have one) and a neutral party called an Administrative Law Judge (ALJ). If you own your home with a spouse or relative, that person must also attend.

So you know, some lenders offer pre-file mediation. Pre-file mediation happens *before* the lender files an Order to Docket with the court. Not all lenders participate in pre-file mediation. If you did not go to pre-file mediation, you are entitled to post-file mediation under Maryland law. For more information about foreclosure mediation, watch the My Laws, My Courts, My Maryland video *Foreclosure Mediation*.

After mediation, OAH must file a report with the court within seven days. That report states whether you and the lender reached an agreement in mediation.

PHASE 5: Your house goes up for sale. If you do not reach an agreement, the lender can schedule your house for a foreclosure sale. The lender can schedule the sale as soon as 15 days after your mediation. If you think you have a good reason that the lender does not have the right to foreclose on your home, file a motion with the court. You have 15 days after mediation to file the motion. Bankruptcy may also be an option for you at this point. If you are considering bankruptcy, talk to an experienced bankruptcy attorney.

If you did not request foreclosure mediation, the lender may schedule a sale of your home

- 45 days after you have received the Order to Docket, if it has a final loss mitigation affidavit filed with it; or
- 30 days after the final loss mitigation affidavit is served, if it is filed after the Order to Docket.

[STEPS: What happens at a foreclosure sale?]

The lender must tell you when it plans on selling your home. You must get that notice at least 10 days before the sale date. The sale takes place on the courthouse steps, not at your home. You do not have to move out of your home on the sale date. You do not have to move until the court awards legal possession of the house to a new owner.

After the foreclosure sale, the lender must file a report of sale with the court. The lender has 30 days after the sale to file the report. After the report is filed, the court clerk will issue a notice and the court has 30 days to approve the sale.

You may still challenge the sale of your home. But, you must do it within 30 days from when the lender filed the report of sale. Do this by filing exceptions to the sale. Exceptions are reasons that the court should not approve the sale of your house. Exceptions are usually limited to problems in how the home was sold. For instance, an exception could be that the lender didn't properly advertise the home for sale. If you think there was a problem with how your home was sold, talk to a lawyer immediately. The court will consider your exceptions. If the time for filing exceptions has passed, or if the court denied your exceptions, the court will approve the sale.

After the court approves the sale, the purchaser of your house can file a Motion for Entry of Judgment Awarding Possession. If the court grants this motion, the new purchaser will have legal possession of the house. The purchaser must also send you an eviction notice. The new owner may also file a request for writ of possession. Once the new owner has filed those documents with the court, a sheriff will schedule a time for the eviction.

[STEPS: Resources]

Maryland HOPE offers help for foreclosure prevention. You do not have to pay for housing counseling. MD Hope can refer you to free housing counseling resources. It can also refer you to free or reduced-fee legal resources. It is important to reach out to counselors and to be proactive in this process. Be your own advocate.

Remember, foreclosure begins with a default. Then the lender sends you a Notice of Intention to Foreclose, followed by an Order to Docket. You are entitled to mediation if you request it within 25 days after the lender files the final loss mitigation affidavit. If you don't reach an agreement in mediation, the lender can sell your home 15 days after mediation. After the sale, the lender must file a report. You have 30 days after that report is filed to file exceptions to the sale. If the court approves the sale, the new owner may file a motion asking the court to award them possession of the home. If the court approves that motion, the purchaser can send you an eviction notice and ask that the sheriff evict you. If you are facing foreclosure, get help immediately by contacting MD HOPE at mdhope.dhch.maryland.gov.

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