

FORECLOSURE

Know Your Rights: A Fact Sheet from Nevada Legal Services, Inc.

What should I do if I am unable to pay my mortgage?

If you think you will be unable to pay your mortgage, contact your lender. Often times lenders can offer forbearance plans until you are able to resume your mortgage payments.

Does my lender have to go to court to foreclose on my home?

Most people borrow money from a bank or another lender to buy a home. In exchange for the loan, the lender holds a lien against the property. If the borrower misses payments, then the loan goes into default and the lender can sell the property to pay off the loan. This process is called mortgage foreclosure.

Trust deed foreclosures comprise the majority of foreclosures in Nevada. A trust deed foreclosure is **non-judicial**, meaning your bank, lender, or mortgage servicer does not need to go to court to foreclose and sell your home. If you have missed a mortgage payment, the lender or servicer begins the foreclosure process by recording and mailing a Notice of Default and Election to Sell. This is notice to you that the non-judicial foreclosure process has begun.

When can my lender start the foreclosure process?

Pursuant to NRS 107.500, at least 30 days after you miss your first mortgage payment before your lender must send you a letter telling you of the lender's right to foreclose and offering a list of foreclosure alternatives. If the homeowner does not resolve the delinquency within the next 90 days, the bank can record a Notice of Default. Additionally, under guidance from the Consumer Financial Protection Bureau, the Notice of Default can be recorded no earlier than 120 days after the homeowner defaults. 12 CFR § 1024.41.

When happens if I am not able to stop the foreclosure?

If you are unable to pay off the default or work out a foreclosure alternative with your lender, 3 months after the Notice of Default is recorded, your lender can begin the process to sell your home. Your lender must record a Notice of Sale at least 21 days before the sale date and send the Notice of Sale to you.

At the foreclosure sale, the lender (or some one else) purchases the property (gaining title). After the sale, the lender or other new owner may serve you with a 3 day notice to quit. If you remain after 3 days, the lender may serve you with a summons and complaint asking a court to evict you. This court action is called an unlawful detainer action. The new purchaser may not enter your home or change the locks until after serving a summons and complaint for unlawful detainer and completing the lawsuit.



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www.nevadalegalservices.org

Resources

You can access additional information and forms on the NLS website at nslaw.net.

For a sample Petition for Foreclosure Mediation Assistance visit www.civillawselfhelpcenter.org.

You can also check out our YouTube videos at our Nevada Legal Services Now! Channel.

What can I do to stop the foreclosure of my home?

Your lender is required by federal and state law to notify you of any alternatives to foreclosure and notify you of the right to request foreclosure mediation in Nevada. Do NOT ignore your mail. Your lender is often required to mail notice to you of your options to try to avoid foreclosure.

Your bank must include notice of the Foreclosure Mediation Program when they mail you the Notice of Default pursuant to NRS 107.086. If you elect mediation within 30 days of receiving a Notice of Default, your lender MUST sit down with you and the mediator to discuss information and proposals to avoid foreclosure.

In order to request mediation, you must file a Petition for Foreclosure Mediation Assistance in District Court in the county where your home is located, pay a \$25 filing fee and deposit \$250 with the court for the Mediator's fee.

What options do I have to try to negotiate with my lender?

Loan Modification: Your lender may be able to modify your mortgage to make your monthly payments more affordable. A loan modification permanently changes the terms of your loan and can include reduction in the interest rate, forbearance of the amount of delinquency, or extension of the term of the loan. Government guaranteed or subsidized loans, such as USDA, VA or FHA loans, often have stricter requirements of lenders to work with you to avoid foreclosure.

If you are ineligible for home retention options at mediation, you may be eligible for other alternatives to avoid the foreclosure sale, such as a short sale or a deed-in-lieu of foreclosure.

Please Note: Lenders have a set of servicing guidelines to determine if you are eligible for a modification. Not everyone is eligible for a modification at mediation and you are not guaranteed any particular outcome through the mediation program.

Avoid scams and foreclosure prevention companies!

If any business claims it can immediately stop your foreclosure: be very careful. Often foreclosure scam businesses have you sign blank documents or even a deed of your property to the business. Many scammers ask you to sign immediately without consulting anyone else. You may end up as a renter or be evicted from your own home!

Non-Judicial Foreclosure Timeline

Lender mails a letter providing its right to foreclose and a list of foreclosure alternatives	At least 30 calendar days after borrower defaults and 30 days before recording the Notice of Default
Lender records a Notice of Default and Affidavit attesting to the power of sale	At least 30 after issuing borrower foreclosure alternatives letter or after 120 days pursuant to CFPB guidance
Lender mails Notice of Default and Notice of Mediation	Same day as Notice of Default is recorded
Homeowner filed Petition for Foreclosure Mediation	Within 30 days of receiving Notice of Default
Reinstatement or make good deficiency in performance or payment (become current)	Within 35 days of recordation of the Notice of Default
Foreclosure Mediation	If elected and \$200 fee paid, must be held within 135 days
Record Notice of Sale and Mail Notice of Sale	At least 3 months after recording Notice of Default or after conclusion of mediation if a certificate of completion of the mediation issues
Time to Redeem (pay off entire mortgage debt)	No later than 5 days before sale date
Sale by Auction	Scheduled at least 21 days after Notice of Sale is recorded