

Worried About Foreclosure? What You Should Know – Alabama

Receiving notice that your house is about to be foreclosed upon is one of the most traumatic things you can go through. However, when you sign your mortgage or deed of trust at the real estate closing and it is recorded in your County's Probate Judge's office, you give your lender the right to foreclose on the property if you default on the loan or fail to repay the loan according to the terms of the loan. Here are some basics about the foreclosure process and where you can find help:

What, exactly, is a foreclosure?

Q: I am behind in my mortgage payments and worried about foreclosure.

A: Foreclosure is the method used by a lender (such as a bank or mortgage company) to take ownership and possession of the property used to collateralize your mortgage if you get behind in your payments. In Alabama, lenders do not have to sue you in court first in order to foreclose on your property. Lenders do have to publish the foreclosure date in a local newspaper for three consecutive weeks prior to the foreclosure sale. You may also receive a letter from your lender advising you of their intentions.

Q: Who can start a foreclosure?

A: Your lender can initiate a foreclosure, either in its own name or in the name of a servicing company it may have hired to collect your loan payments and administer your account.

Q: How soon will I face foreclosure?

A: Most mortgage agreements state that if you fall behind even one payment, the lender has the right to call the entire loan balance due and start foreclosure. Although few lenders proceed that way after only a one-late payment, by the time a loan is three months delinquent, most lenders are looking closely at whether to foreclose.

Q: Can I prevent having a foreclosure started against me?

A: Yes! If you fall behind in your mortgage payments, contact your lender or servicing company immediately. Foreclosures are costly and time-consuming to lenders, and often the proceeds of a foreclosure sale are insufficient to pay off the loan. Most lenders have a "workout" or "loss-mitigation" department you can call at a toll-free number to discuss possible solutions other than foreclosure. If you are unable to reach a workout agreement with your lender; or if you think that you may have claims or defenses against your lender (such as the misapplication of payments or escrow account errors, etc.); or you may contact the Alabama State Bar or you may contact Legal Services Alabama at 1-877-393-2333.

Q: What are my options prior to foreclosure?

A: The most common is a repayment agreement, sometimes called a "forbearance plan." Terms vary, but generally you must resume payments and arrange to pay the past-due amount over a short period of time.

Another workout option is called "loan modification," which can lower your interest rate or extend the final due date of the loan to make your monthly payments lower.

Q: How is a foreclosure sale conducted?

A: After the sale has been published in a local

newspaper for three consecutive weeks, your lender's representative will announce the sale on the steps of your County's courthouse on the published sale date. Any member of the public may attend the sale and bid on the property. The property will be sold to the highest bidder. In most cases the highest bidder is your lender.

Q: Is there any way I can keep my house after a foreclosure has been started against me?

A: Yes. You may be allowed by your lender to pay the money you owe in order to bring your account current (known as "reinstating" your loan) or you may pay off the loan in full. To reinstate your loan, you probably will have to pay your lender's attorney fees and costs in addition to late charges and interest that will have accumulated. To pay off the loan in full, you might refinance through a new lender.

Q: What if I don't want to keep the house?

A: One option is to sell the property privately instead of having it sold at a foreclosure sale. If you or your agent sells your house prior to the foreclosure sale the



amount of the sale usually must be enough to pay off the loan in full (although lenders occasionally take less).

Another possibility is to ask your lender to take the house back in what is called a “deed-in-lieu” of foreclosure. In a deed-in-lieu, the lender forgives your obligation to repay the remainder of the debt in exchange for the property. Depending on how much you owe compared to the value of your property, a deed-in-lieu may protect you from a “deficiency balance”. On some types of mortgages a lender can pursue a judgment against you for the amount you still owe after the sale if the proceeds of the sale are not enough to pay off the debt. If a judgment for this “deficiency balance” is obtained through a lawsuit filed against you by the lender after the foreclosure sale, the lender could then garnish your wages or bank accounts or take other steps to collect the deficiency. Lenders will usually accept a deed-in-lieu only if there are no other liens against the property and you already have, or agree to vacate the property within a very short period of time.



Q: Can bankruptcy help me avoid foreclosure?

A: Yes, depending on the type of bankruptcy case you file. Bankruptcy is a complex matter; if you are considering it, you may want to consult an attorney with bankruptcy experience. The Alabama State Bar has a referral list of attorneys experienced in this area.

Q: What about companies that advertise “Foreclosure Bailouts”?

A: BE CAREFUL! If someone approaches you to help stop your foreclosure, have any documents given to you by that person reviewed carefully by an attorney or someone else who is knowledgeable before you sign them or before you give any money to anyone. If you need help, contact the Alabama State Bar or you may contact Legal Services Alabama at 1-877-393-2333.

The material contained in this pamphlet provides general information and is intended to inform, not to advise. It is always best to consult an attorney about your legal rights and responsibilities. This pamphlet is published by the Alabama State Bar as a public service. Copies of this pamphlet and others are available on the Alabama State Bar’s Web site at: www.alabar.org/brochures.

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