

WHAT IT MEANS FOR YOU AND YOUR FUTURE

# FORECLOSURE

# WE WELCOME

If you've fallen behind on your mortgage payments, the threat of foreclosure can become overwhelming. Struggling homeowners might feel inclined to simply accept their fate—there's no getting out of foreclosure, *right*? But when it comes to mortgage foreclosure, remember that you have options.

Understanding those options and what you can do if your house is in foreclosure can help you mitigate the damage done to your credit and overall financial health. It might even help you take action to *keep* your home. We've gathered some general information regarding foreclosures to help you get an idea of how it works. State laws vary significantly, so work with a legal professional to determine the laws governing your foreclosure proceedings.

Our goal is to help educate and guide you through this process as best we can. I know this might be an uncertain time, however, know that we are here for you.



SAM CALHOUN

# CONTENTS

WELCOME

---

WHAT IS FORECLOSURE

---

TYPES OF FORECLOSURES

---

FORECLOSURE STEPS

---

HOW TO AVOID FORECLOSURE

---

COMMON QUESTIONS

---

GLOSSARY

---



---

# WHAT IS FORECLOSURE?

When purchasing a home and securing a mortgage, you enter into a contractual agreement with a bank or lender. This agreement entails the lender providing upfront financing for the home purchase, while you commit to making regular monthly payments over a specified term.

In the event that you begin to fall behind on your payments or cease making them altogether, the lender has the legal right to initiate foreclosure proceedings on the property. Foreclosure allows the lender to reclaim the property and sell it in order to recover the outstanding loan amount.

The basis for this process lies in the fact that mortgage loans are typically secured by the property itself, meaning the home serves as collateral. Consequently, if payments are not made as agreed upon, the lender can exercise their right to seize the property.

It's important to note that the term "homeowner" can be somewhat misleading in this context. In reality, you are considered the "borrower" in the mortgage agreement, which functions as a secured loan secured by the property purchased, less any initial down payment. This arrangement is documented through a mortgage or deed of trust, which places a *lien* on the property.



---

# TYPES OF FORECLOSURE



In the United States, individual states follow either a judicial or nonjudicial foreclosure process, typically depending upon whether they are a mortgage state or deed of trust state. However, you may safely assume that all states allow some form of the judicial foreclosure process.

We have highlighted below some important points to remember about each type of foreclosure. This is a general overview and in no way represents each process in its entirety.

It is important to remember that neither judicial nor nonjudicial foreclosures are one-size-fits-all. Each state follows its own established foreclosure laws and procedures. Consult with a foreclosure specialist in your state to protect your rights during a foreclosure.

## JUDICIAL FORECLOSURE

The lender seeks to foreclose by filing a civil lawsuit against the borrower and serving the borrower with a formal summons and foreclosure complaint.

The foreclosure process is handled through the local court system. The court appoints a referee to conduct the foreclosure auction on the courthouse steps.

The lender records a lis pendens with the county clerk where the property is located. This lis pendens becomes a lien on the property and gives notice of the pending foreclosure auction.

The court grants a judgment permitting the lender to conduct the foreclosure auction.

The Notice of Foreclosure Sale (NFS), which announces date, time and place of the auction, is published and sometimes posted (depending on the locale) for a certain period of time prior to auction.

Generally, the borrower can stop the foreclosure by repaying what he owes up to the moment of sale.

The process can take from four to eight months to complete if no one raises any legal objections to the foreclosure.

## NON-JUDICIAL FORECLOSURE

This is followed in deed of trust states. A deed of trust conveys an interest in real property to a third party (the trustee) to hold as security for repayment of a debt.

The trustee has the authority to initiate foreclosure proceedings by virtue of a power of sale clause included in the mortgage or deed of trust.

The trustee records a Notice of Default (NOD) with the county clerk where the property is located. This document gives notice of an impending foreclosure and grants the borrower a period of time in which to object to the lender's claim or pay what he owes.

The borrower may not stop the foreclosure after the expiration of this time period.

Following the expiration of a predetermined amount of time (which varies from state to state), the trustee records a Notice of Trustee's Sale (NTS) with the county clerk. This notice establishes the date, time and place of the foreclosure auction.

It can take up to 12 months to complete a foreclosure, depending upon the state.

The *majority* of foreclosures in **Colorado** are **non-judicial**. Here, the lender can proceed with foreclosure without filing a formal lawsuit, but only if the mortgage contains a "power of sale" clause. This clause allows the lender to sell the property if the borrower defaults on payments.



---

# MISSED MORTGAGE PAYMENTS

It all starts when the homeowner — the borrower — fails to make timely mortgage payments. Usually, it's because they can't, due to hardships such as unemployment, divorce, death or medical challenges.

If you're in this tough situation, it's essential that you talk to your lender as soon as possible. There are several options to help keep you in your home.

The foreclosure process costs the lender a lot of money, and they want to avoid it just as much as you do.

Sometimes, a borrower may intentionally stop paying the mortgage because the property might be underwater (in other words, the amount of the mortgage exceeds the value of the home) or because he's tired of managing the property.

Whatever the reason, the bottom line is that the borrower can't or won't meet the terms of the loan.



---

# NOTICE OF DEFAULT

After three to six months of missed mortgage payments, your lender will file a Notice of Default with the local recorder's office. Your lender will also send one to you via certified mail, and depending on your state, might post the notice on your front door. This notice specifies how much you owe in order to bring your mortgage back into good standing.

A Notice of Default could show up on your credit report and affect your score. This can make it more challenging to obtain other types of credit or refinance your mortgage.

This official notice is intended to make borrowers aware they are in danger of losing all rights to the property and may be evicted from the premises. In other words, they're in danger of foreclosure.

A Notice of Default doesn't equate to the lender immediately or automatically foreclosing on your home, and it doesn't mean you don't have options to prevent the foreclosure from happening. You can put a stop to the proceedings by getting current on your payments.





---

# PRE-FORECLOSURE



Preforeclosure is the time period between the Notice of Default and the auction or sale of your home. During this time, if you can get your hands on the amount specified in the Notice of Default, you'll be able to stop the foreclosure process from going any further. The exact amount of time you have depends on your state. During preforeclosure, you might also have the option to sell your home and pay back the money owed, in what is called a short sale.

---

# NOTICE OF SALE

If you don't have the money to bring your mortgage into good standing within the allotted time frame, your lender will file a Notice of Sale, and your home will be placed up for auction at a specified time and location.

How the Notice of Sale is published depends on your state. For example, in North Carolina, the notice must be published in a local newspaper and posted on the door of the local courthouse, while in California, it must be posted on the property as well as a public place in the county.

Because the Notice of Sale is public information and has been advertised, several buyers, including investors, might be interested in buying your home. Depending on laws in your state, you might have the ability to exercise right of redemption (meaning you can reclaim your home) up until the foreclosure sale, or even after.



## COLORADO:

The public trustee then mails the borrower what's called a "combined" notice at two separate times:

- The first time will be no more than 20 calendar days after the recording of the NED.
- The second is no more than 60 calendar days nor less than 45 calendar days before the first scheduled sale date.

This notice includes specific information, like the date and place of sale and the right to cure. The trustee publishes this notice in a newspaper, as well. (Colo. Rev. Stat. § 38-38-103).





# EVICTION

---

Following the auction and sale of your home, you'll generally have a few days to gather your belongings and move to a new residence. If you do not voluntarily move out, law enforcement personnel are legally allowed to remove you and your belongings from the premises.



---

# HOW TO AVOID FORECLOSURE

If you've received a notice of default, don't panic – as we mentioned before, you still have a few options to avoid foreclosure. Let's go over a few of those options now to see what might be right for your situation.

## ASK FOR FORBEARANCE

Forbearance allows borrowers to pause mortgage payments for a limited time while they rebuild savings, increase income or decrease debt after experiencing financial difficulties.

The payments aren't erased, but there are plenty of options to resolve the delinquency: repayment plans, loan modification, deferral, partial claims, etc.

## APPLY FOR A REFINANCE

While this won't be an option if you've already begun the foreclosure process, refinancing can also be a solution. If you fear you're headed toward foreclosure, refinancing into a more affordable payment can help you avoid defaulting on the loan. This can only really be done if you've yet to miss a payment, so unfortunately this option isn't feasible for everyone.

If you're struggling financially and having a hard time making payments, contact your loan servicer or lender.

## GET APPROVED FOR A REPAYMENT PLAN

Unexpected life circumstances happen to everyone, but lenders and servicers are aware of this and will work with you to find a solution before your home has to be foreclosed upon. If you faced financial difficulties for a time that have since resolved themselves, contact your servicer about what options you may have.

You may be able to get approved for a repayment plan to help make your loan current again. Under these arrangements, borrowers will typically pay a specified amount extra each month until the missed payment balance is satisfied, upon which they'll return to making regular mortgage payments like before.

# HOW TO AVOID FORECLOSURE

---

## ASK FOR A MORTGAGE REINSTATEMENT

Similar to the repayment plan above, if your financial hardship has passed and you have the means to repay your mortgage normally going forward, you can also ask for mortgage reinstatement. Under mortgage reinstatement, you make a lump-sum payment for all of the payments you missed, and your mortgage will once again be current.

## SIGN A DEED IN LIEU

If you can't catch up on mortgage payments or don't qualify for any retention loss mitigation option and know you won't be able to go forward, you can still sign a deed in lieu of foreclosure and avoid the repercussions of the typical foreclosure process. When you sign a deed in lieu, you voluntarily give your lender the deed to your home.

When you turn over the deed, your lender releases you from anything you might owe on the mortgage. You lose the home but avoid the serious detriment a foreclosure can inflict on your credit, which may harm your ability to find another place to live for years to come. It's important to note that a deed in lieu will also negatively affect your credit, though likely not to the same extent.

While this option isn't the greatest as it involves you walking away from the home, it does allow you to avoid the many downsides of the foreclosure process. Keep in mind that you may not always be able to qualify for a deed in lieu. If your home is in poor condition, you have other liens or tax judgments on your property, or your lender simply thinks they can recover more lost money by going through foreclosure, they could deny a deed in lieu of foreclosure.

## APPLY FOR A SHORT SALE

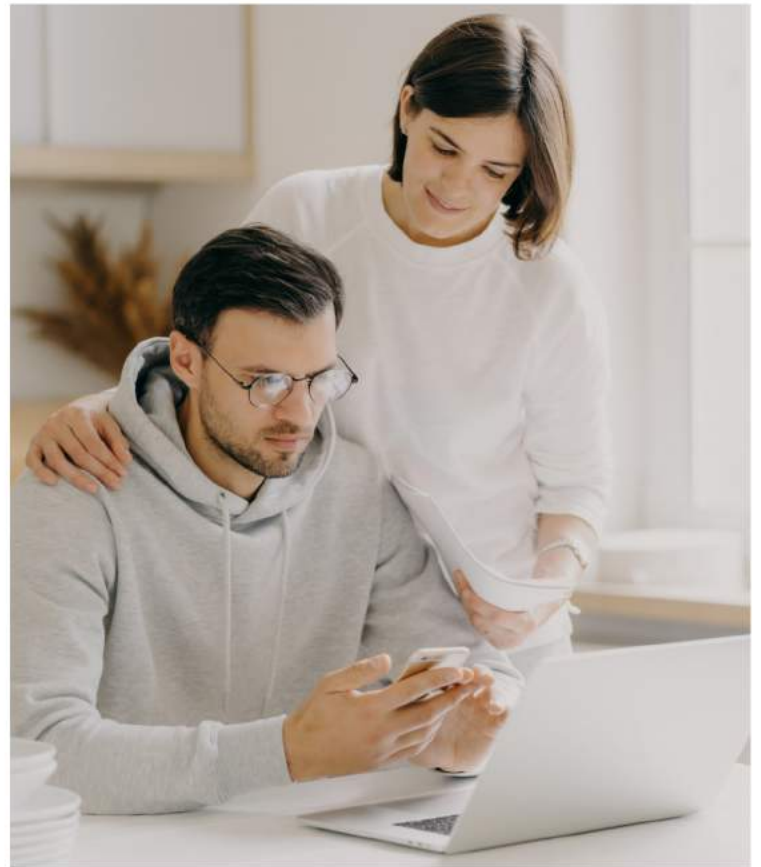
A short sale is when you sell your home for less than what you owe on the mortgage. The lender has to approve this and will receive all the proceeds of the sale. The borrower must be able to prove financial hardship and the home must be worth less than the borrower owes on it for a short sale to be considered.



---

# WHAT SHOULD I DO IF I RECEIVE A NOTICE OF DEFAULT?

If you ever find yourself unable to keep up with mortgage payments, contact your lender immediately and inform them of your situation. Lenders will work with their borrowers and want to do everything they can to help give you options to stay in your home and take care of repayment. Foreclosure is an expensive process and foreclosure properties often sell for far less than what it would take to satisfy the lender's loss on the loan. If you receive a notice of default – though preferably before – you should talk to your servicer and lender right away to discuss your options.



---

## WHERE CAN I FIND HELP IF I'M FACING A FORECLOSURE PROCEEDING?

If you're facing a judicial foreclosure, note that the US Department of Justice maintains a list of free or low-cost legal service providers. Despite the fact that judicial foreclosures are a public court proceeding, there won't be an attorney assigned to help you.

Depending on your situation, defending a foreclosure to keep your home isn't always the best option. If you have a genuine defense, however, hiring a lawyer might be crucial. For those who choose to advocate for themselves, the National Consumer Law Center also offers advice on how best to proceed.



# WHAT SHOULD I DO IF I RECEIVE A NOTICE OF DEFAULT?

---



## A WORD OF WARNING: BEWARE OF MORTGAGE SCAMS

---

Facing foreclosure and the possibility of being forced out of your home can be extremely upsetting and can make homeowners feel desperate. Be aware: there are scammers out there that attempt to frighten homeowners into believing their home is being foreclosed upon in order to steal money from them. Before agreeing to anything or paying any money to a party that attempts to contact you about foreclosure, make sure the request is legitimate. The Consumer Financial Protection Bureau offers resources to help you spot and avoid foreclosure scams.

## THE BOTTOM LINE: WORK WITH YOUR LENDER TO AVOID FORECLOSURE

---

No one wants their home to be foreclosed upon – and fortunately, before you reach that point you have many options to avoid the foreclosure process. If you ever find yourself struggling to make mortgage payments, reach out to your lender immediately to see what help they can offer you. It benefits both lenders and borrowers to avoid foreclosure, so never be afraid to reach out. Early and frequent communication is key.

## DO I HAVE TO MOVE OUT OF MY HOUSE WHEN IT'S IN FORECLOSURE?

---

Generally, you do not have to move out until the foreclosure process is complete, which can take a few months or up to a year or longer. However, once your house is sold, you have to leave the property. You might have some time after the sale date to live in the home, but that timeframe varies by state. It could be a few days or a few weeks.

If you remain on the premises beyond your legal rights, the homeowner or lender will start a formal eviction process.

## CAN I KEEP THE PROFITS FROM A FORECLOSURE SALE?

---

If the sale of the home yields profits, the lender is not entitled to excess proceeds over the loan balance plus any fees owed for the foreclosure process. In short, any money earned above the balance and foreclosure costs goes to the borrower.

## DO I OWE MONEY IF THE HOUSE SELLS FOR LESS THAN I OWE?

---

In the event that your home sells for less than the balance owed, the lender can file something called a deficiency judgment. This is a lawsuit that requests the lender to pay the remainder of the loan amount. For example, if you owe \$300,000 on your mortgage, but the house only sells for \$275,000, the deficiency is \$25,000. A lender might try to collect the outstanding balance.

Some states, however, have anti-deficiency laws or restrict deficiency judgments after foreclosure. Colorado is not one of them, and therefore lenders are able to bring a formal lawsuit to collect any deficiency.

## DO I OWE PROPERTY TAXES WHEN MY HOUSE IS IN FORECLOSURE?

---

Legally, you're required to pay property taxes as long as you own the home. Sometimes, the lender pays the taxes in order to sell the home. If taxes become overdue, the government can seize the property, which would make it difficult or impossible for the lender to recoup what they're owed. Taxes are attached to homes—not people—so once the property is sold the taxes are the responsibility of the new owner.



---

# GLOSSARY OF FORECLOSURE TERMS

We know a short sale or a foreclosure is a scary hurdle to face, we want to make sure you're as educated about your rights as possible.

## BANK-OWNED PROPERTY:

This is a property owned by a bank or a lender. This happens when a borrower fails to make the mortgage payments and the property goes to a foreclosure auction. If the property is not sold, it is repossessed by the bank/lender. This is also known as real estate owned (REO).

## COMPLAINT:

In judicial foreclosures, this is the document that describes why the lender is foreclosing. This document is served on the borrower along with a summons. It begins the foreclosure action.

## DECLARATION OF DEFAULT:

In deed of trust states (nonjudicial foreclosure), this is a document that tells a trustee to prepare and record a Notice of Default and sell the foreclosed property at auction.





---

# GLOSSARY OF FORECLOSURE TERMS

## DEED IN LIEU:

---

This is the document that allows a borrower to give ownership of a foreclosed property to the lender as a way of satisfying the unpaid loan to avoid foreclosure.

## DEED OF TRUST:

---

A document that transfers ownership of a property from the borrower to a trustee until the borrower has paid the loan to fully buy the property.

## DEED OF TRUST STATES:

---

This term describes the U.S. states (nonjudicial states) that use deeds of trust to secure a loan.

## DEFICIENCY JUDGMENT:

---

In some cases, a lender can go to court after the completion of the foreclosure process to sue the borrower if the payoff is less than the debt owed (e.g., the borrower owes \$250,000, but the property sells for only \$200,000).

## DEFENDANT:

---

The term given to the borrower being sued in a foreclosure action.

## FORECLOSURE:

---

This is the legal process a lender uses to take a property from a borrower for non-payment of the loan. Foreclosure rules vary from state to state. Some states (generally states that use mortgages vs. deed of trust states) require lenders to go to court; others don't. In either case, the lender takes the foreclosed property to sell to make its money back.

## FORECLOSURE AUCTION:

---

The actual sale of the foreclosed property, usually on the courthouse steps in the county where the property is located. In judicial foreclosures, a "referee" is named by the court to hold the sale. The referee then turns the foreclosed property over to the new owner by Referee's Deed.

## FULL RECONVEYANCE:

---

In deed of trust states, this is a document the trustee uses to release a property back to the borrower after the loan is paid.

## LIEN:

---

A lien is any legal claim upon a property that reveals either a debt or a non-monetary interest in the property. Liens are typically recorded with the clerk of the county in which the property is located.

---

# GLOSSARY OF FORECLOSURE TERMS

## JUNIOR LIEN:

---

A lien filed at the county clerk's office after the deed of trust or mortgage. Liens may be judgments, unpaid taxes, or second and third mortgages. What makes them "junior" is the fact that they are "second" to the primary mortgage.

## JUDGMENT OF FORECLOSURE SALE:

---

In judicial foreclosures, this is a court document that tells the referee to sell a foreclosed property at auction. It also sets the total amount the borrower owes to the lender. This amount covers the unpaid loan, interest and legal fees.

## JUDICIAL FORECLOSURE:

---

When a borrower fails to pay the mortgage for several months, the lender seeks to foreclose on the property by filing a civil lawsuit against the borrower and serving the borrower with a formal summons and foreclosure complaint. This begins the judicial foreclosure process, which is handled through the local court system. The court appoints a referee to conduct the foreclosure auction on the courthouse steps.





We hope you found this information valuable, and it could be beneficial for you or someone you know who might be facing these challenges. If you need assistance, please reach out to us. We have helped many clients successfully navigate foreclosure issues by utilizing their home equity to settle debts and balances. We're here to lend a helping hand whenever you need it.

# THANK YOU!

Direct: 303-564-3872 Office: 720-515-3130  
sam@calhounre.com | www.calhounre.com

## FIND OUT WHAT YOUR HOME IS WORTH

