

Mortgage Foreclosure in South Carolina

Definitions you need to know:

- **Mortgage:** A loan arrangement in which a borrower pledges her house to a lender to secure repayment of money.
- **Debtor:** A person who borrowed from and, therefore, owes money to a lender. Also called the Mortgagor.
- **Lender:** The person or company, often a bank, which loaned the money. Also called the mortgagee.
- **Secured Debt:** A loan arrangement in which the borrower agrees to hand over her/his property if she fails to repay the borrowed money.
- **Collateral:** Property, usually your house and/or land, which the bank will try to take if you fail to make payments on your mortgage.
- **Default:** A debtor's failure to repay the money borrowed from a lender.
- **Sub-prime Loans:** High-cost loans intended for people with imperfect credit histories.
- **Arrearage:** The total amount of all payments the borrower failed to make, plus any interest and fees the bank charges.

What can I do if I am behind on my payment?

- Speak with your lender about a way to catch up on your payments.
- It is important to make sure you talk with someone who has the right to work out a payment plan.
- There are non-profit groups that can help. Some do it for free. For more information, call the SC Homeownership Resource Center (800) 320-0350.
- Once you get court papers from your lender, talk with a lawyer. Regardless of how nice the lender has been so far, once you are served with papers, he will pursue the lawsuit until he collects his payment or a deal is reached.
- If you fail to work out a deal before the court orders the foreclosure, the lender **can** sell your house, no matter how close you were to an agreement.
- If you want to work something out with your lender, do it as soon as possible. Lenders are less

likely to work with you if you wait until the end of the foreclosure process.

- Remember: Lenders want to know what has caused you to fall behind in your payments and whether you will be able to catch up.
- It does not help you to sign an agreement that you will not be able to fulfill.

What if my lender keeps trying to contact me, but I don't want to talk?

- It never helps to ignore the lender's letters or calls, but you do not have to put up with rudeness or harassment.
- The lender is trying to decide whether she should continue with the foreclosure process. Therefore, you **should** respond when contacted by her.
- Be sure to document all correspondence between you and your lender. This includes saving copies of any letters you send or receive, keeping a list of all phone calls, and keeping organized records of payments and copies of your loan documents.
- If you are not comfortable talking to the lender yourself or cannot understand what they are asking of you, then contact someone to help explain.

What if someone who was not my original lender is contacting me?

- Your home loan may have been sold to a different lender or an investment trust. In addition, the bank that made your loan may have hired a different company to service the loan. Some common servicers are Litton and OCWEN.

What is the legal process used to foreclose?

- A mortgage is created when a person (a borrower) pledges (or mortgages) a house and/or his land to a lender to secure the repayment of his/her loan.
- If a borrower falls behind in her payments, a lender will then try to foreclose the home in order to resell it to repay the money it lent.
- South Carolina law says that all foreclosures must be done in court and only a judge can order the sale of your house.
- Therefore, if you fall behind in paying your mortgage, a lender will file papers with the court and ask for permission to take your home and sell it to cover the loan.
- You will be "served" a piece of paper to let you know that this process has begun, and then you have 30 days to send an answer to the lawyers and

to make any claims you may have against the lender.

- If you do not serve and file an answer, the court will give a "default judgment," and the lender can then sell your property and use that money to pay off the debt and the legal costs for bringing the foreclosure.
- If you do answer or make a counter-claim, then there will be a hearing to see if you will be allowed to keep your home or if the property must be sold.
- If the court gives the lender permission to sell the property, the lender must advertise the sale for three weeks in a local newspaper and then the house is sold on the courthouse steps.

Are there ways the lender and I can work together to prevent me from losing my home?

Yes. Your lender might modify your loan. The largest modification program is a federal government program called the Home Affordable Modification Program (HAMP). Your lender **must** offer you a chance to apply for HAMP if your loan could be eligible for the program. If you qualify for HAMP, your total house payment could be reduced to 31% of your gross household income. Also, many lenders have in-house programs that allow you to temporarily lower your payment while you get back on your feet. They can be complicated, and it is best to go through a qualified housing counseling program to help you through this process.

Remember: Just because you are talking to your lender, she will not necessarily stop the foreclosure process.

If you find yourself in default, and the foreclosure process has begun:

- Take it very seriously. You could lose your home. Contact a lawyer to determine whether you have any defenses or counterclaims to the foreclosure. There are defenses and counterclaims that you may not even know about that may force the bank to work with you to save your home.
- You can always sell your own home. If you do decide to do this, talk to a few different realtors to get a better idea of what your house is worth.
- You may be able to sell your home for less than you owe, this is called a "short sale". The lender must agree to accept this and write off the rest of what you owe.

- OR you can sign a “deed-in-lieu” of foreclosure. This means that you are deeding the house back to the lender. The lender will then forgive the mortgage and cancel the foreclosure. This will still be on your credit report. You will not be able to stay in the home unless you ask for these terms up front and agree to pay rent.
- If you find yourself behind in your payments but want to try to keep your house, you should contact a housing counselor.
- You may also want to ask a lawyer to look at your closing papers to see if any laws were broken and could be used as legal grounds to save your home.
- The lawyer can also see if the lender has broken any consumer laws throughout the lending or foreclosure process.
- Ultimately, if you do not have the money to make payments, you may file bankruptcy. (See more details below.)

Can bankruptcy save my home?

- To stop a foreclosure, in most situations, the debtor may file a bankruptcy petition, which usually involves relief under Chapter 13.
- Chapter 13 bankruptcy is for debtors who have a regular source of income.
- This is a frequent choice for people facing foreclosure because it may allow a debtor to keep his home by proposing a plan to repay his debt over time—usually three to five years.
- A debtor may still be up to date with his mortgage payments at the time of filing for bankruptcy and keep his home if he has other debts that will threaten the future mortgage payments.
- If a debtor is behind on payments and worried about foreclosure, by filing bankruptcy, he can keep making payments but also propose a plan that includes payment over time to catch up on the rest of his unpaid debt.
- Most likely a debtor will have to continue to pay the lender directly, while also paying back the arrearage according to the bankruptcy plan.
- A good thing about bankruptcy is that creditors will stop harassing you—they cannot call, write or file lawsuits against you. If a creditor does not stop, you should tell him that you filed bankruptcy and he must stop contacting you.
- A bad thing about filing bankruptcy is that your case becomes a public record. Also, a bankruptcy remains on your credit record for 10 years. Over

time, however, it becomes less harmful to your credit and making regular payments can rebuild your credit. When in bankruptcy, you will not be able to use any credit cards, even if they are not cancelled in Chapter 13.

This brochure is for information only. If you have problems with a “Payday Lender” or check casher, you may want to contact your local legal services program by calling the Legal Aid Telephone Intake Service for a referral at 744-9430 in Columbia or toll free (888)346-5592 from other places in the state.

If you are finding yourself in trouble with debt, you may also contact your local United Way for the name and number of the consumer credit counseling agency in your area. They may be able to assist you in working out a payment plan with your creditors.

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LEGAL JUSTICE CENTER

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What to Do When You are Facing Foreclosure