



Jewish Housing Association of Metropolitan Detroit

UNDERSTANDING FORECLOSURES

What is Foreclosure?

Foreclosure is a legal process by which a bank, a mortgage company or other creditor holding a lien on your home, attempts to obtain possession of a homeowner's property in order to satisfy a debt. The foreclosure is the result of non-payment of the mortgage (the first mortgage, second mortgage and/or home equity line of credit). However, people also may lose their homes due to unpaid property taxes. As a result of the completion of the foreclosure, the homeowner loses the rights he or she had to the property.

Foreclosure is a time consuming process on the part of the lending party and so a borrower should understand that just because you are served with a Foreclosure Notice does not mean you will be evicted from your home imminently within receipt of such notice. Below is a brief description and time line of the various stages of foreclosure.

Foreclosure Timeline:

Day 1:

Mortgage payment is due today, usually the first day of the month. Borrower misses it.

Day 16 – 30:

Servicer sends "demand" or breach" letter to the borrower pointing out that terms of the mortgage have been violated.

Day 60 – 105: NEW MICHIGAN STATUTE

If no payments are made on the loan, servicer refers loan to foreclosure department. Mortgage company hires a local attorney or other firm to initiate foreclosure proceedings. At any time prior to commencing foreclosure, the attorney or mortgage company must send a letter to the borrower giving the borrower 14 days to request a loan modification. As long as the borrower requests this relief, the foreclosure will be postponed for 90 days while the parties attempt to negotiate a loan modification.

After this process, assuming no loan modification or other work out is possible, the attorney files a notice of sale date in a local newspaper or legal newspaper over a 4 to 6-week period prior to the Sheriff's Sale Date. At the Sheriff's sale, the property may be bid for sale and the mortgage may be acquired by a third party subject to the redemption period.

Day 105 –299:

The attorney may adjourn the sale at his/her discretion. If, for instance, you can make some sort of payment agreement prior to the Sheriff's sale, the attorney may be willing to cancel the sale. Prior to the Sheriff's sale, you can stop the process by paying the

*payments that are delinquent and currently owed plus attorney's fees, publications costs and any other expenses incurred by the mortgage company by initiating the foreclosure. It is advisable to attempt some communication prior to the Sheriff's sale taking place if you want to have the best chance of keeping your home. **Should you hire a bankruptcy attorney, it is important to do so before a Sheriff's Sale takes place.** After the sale a redemption period begins, which can differ in a few circumstances. However, for most cases, the redemption period is six months. During the redemption period, you retain the right to redeem the home for the ENTIRE amount of the mortgage loan balance. You may also be able to negotiate with the attorney; however this is very difficult once the sale has already taken place.*

Day 300+

After expiration of the redemption period, Mortgagee/Attorney must go to the District Court and get a Writ of Restitution to remove you from your home. The exact number of days allowed to voluntarily leave the home would be completely dictated by the District Court's internal process. It would therefore be important to voluntarily seek alternate living arrangements during the redemption period to avoid having a Sheriff forcibly remove you from the home.

Definitions:

Mortgagor (the homeowner)– the person who borrows money to purchase real property (your home).

Mortgagee (the bank or lender) – the person or business making a loan that is secured by the real property of the person (**mortgagor**) who owes him/her/it money.

Foreclosure - The forced sale of real estate to pay off a loan on which the owner of the property has defaulted (failed to live up to the terms of the Mortgage and Note). The foreclosure usually requires publication of notice of a Sheriff's Sale at the county in which the property is located in.

Key components:

Sheriff's Sale – Placing the real estate (your home) up for bid to the highest bidder in public auction to repay the mortgagee the sum owed by the mortgagor. The auction must be advertised in either a public newspaper or legal publication for a period of four to six weeks prior to the actual sale date. During this time you can continue to live in the home.

Redemption period – the time period in which a mortgagor may retain the real property by paying the mortgagee a lump sum. Once the redemption period is up, A Writ of Restitution is issued which gives title of your home to the lender (mortgagee) and allows the local authorities to forcibly evict you from the home. The redemption period is usually six months as long as you continue to live in your home.

Write of Restitution – A Writ of Restitution is a formal legal document issued by the District Court giving the sheriff the right to forcibly evict anyone still remaining in the home after the redemption period has expired. The time table to obtain a Writ is very different from one District Court to another. It is highly advisable that you locate other housing prior to this time.