



## YOUR RIGHTS IN FORECLOSURE

**BE CAREFUL!** Foreclosure is complicated and confusing. Make sure you understand the process and your rights.

### THE STEPS OF THE FORECLOSURE PROCESS

- If you miss some mortgage payments, your lender sends you a notice letter telling you that you are in “default” on your loan. The notice says that you must pay a certain amount of money to catch up on your mortgage. They may use terms such as “cure” the default, or “reinstate” the mortgage. Both of those mean that you need to catch up on your payments.
- If you do not catch up on your payments within 1 month of getting the notice from your lender, the lender can start the foreclosure process.
- You will know that your home is in foreclosure because you will get a letter from a local attorney. The letter will say that they have been hired by your lender to foreclose if you do not catch up on your payments. The letter will give you an amount that you need to pay to avoid foreclosure.
- If you do not catch up, there will be a sheriff’s sale of your home. The attorney must publish a notice of the sale in a special newspaper at least 6 weeks before the sale happens. If you are living in the home that is being foreclosed, a copy of the notice of sheriff sale **MUST BE SERVED** on you or someone in your household at least 4 weeks before the sale date. This means the papers have to be handed to someone in person.
- At the sheriff’s sale, your home will be sold to the highest bidder, which is usually the bank.



### WHAT HAPPENS AFTER THE SALE?

- After the sale, you can no longer “catch up” on your mortgage payments. But you do have 6 months to try and “redeem”. This is called the redemption period. This means that if you can pay the sheriff the same amount as the highest bidder plus other costs, you get to keep your house. The other costs may include taxes, assessments, attorney fees, sheriff fees and any interest that has built up until the day you pay.
- During the 6 month period after the sale you can also try and sell the house. If you can sell the house for enough to pay off the amount bid by the highest bidder, plus other costs (the same amount you would have to pay to redeem), you get to keep any money that is left over.

- You can live in your house during the 6 month redemption period, even if you cannot redeem. If you do not move by the end of the 6 month redemption period, the new owner (usually the bank) can file an eviction in court to have you removed from the property. **NOBODY can kick you out of the property without filing an eviction and getting a court order.** BUT, it is a good idea to move before the end of the redemption period so you do not end up with an eviction on your record. An eviction on your record will make it harder for you to rent an apartment or house in the future.

## WHAT CAN I DO TO STOP THE FORECLOSURE?

- If you have fallen behind on your mortgage payments, **DO NOT WAIT** for the foreclosure to start. You should try and get help right away by calling a mortgage foreclosure prevention counselor. The number is listed at the end of this fact sheet. You can also try calling your lender directly. Many lenders have programs to help you re-structure your mortgage so that you can avoid foreclosure. Tell your lender you want to apply for a “Home Affordable Modification”.

If you qualify for this government program, you will be able to lower your monthly payments and add your missed payments to your principal balance. Even if you do not qualify for this program, your lender may have other ways to help you lower your payments.

The longer you wait, the more difficult it will be for anyone to help you reach a solution that will avoid foreclosure.



- Any time **before** the sheriff sale, you have the right to catch up on your payments plus costs and fees that will be listed on the attorney letter or in a letter from your lender. If you pay those amounts, the lender **must** stop the foreclosure process, and you can keep your house. Your mortgage will be back on track at this point because you have paid everything you owe. You must keep making regular mortgage payments if you want to avoid going into a foreclosure again.
- A new law was passed in 2009 that lets you postpone your sheriff sale for 5 months. To do this, you have to file an affidavit with certain information in it with the county recorder’s office. Then you give a copy of the affidavit to the sheriff’s office, and the foreclosing attorney. **You need to do this at least 15 days before the sheriff sale is scheduled to happen.** Also, if you do this, **you only get a 5 week redemption period** after the sale instead of the normal 6 months.

You may want to consider postponing the sale if you have reason to believe that you only need a little bit more time to catch up on your payments. For example, if you just got a new job or if you are expecting a sum of money from some other source in the near future. However, since your redemption period is shortened to 5 weeks, postponing the sale does not give you any additional time in your home. If you want to try and postpone your sale, you should contact an attorney right away for advice about how to do this. Or, you can look on the Home Ownership Center’s website at <http://www.hocmn.org> for instructions and a sample affidavit.

## LOOK OUT FOR SCAMS!

When your house is in foreclosure, you will probably be contacted by several people and companies who will offer to help you. You should be very careful when dealing with anyone who is not part of a non profit organization that you are familiar with. Some companies will tell you that they will contact your lender and arrange for a modification of your loan with payments that you can afford. They will charge you \$1,500 - \$3,000 or more to do this. **You should not give money to anyone (other than directly to your lender) to help you get a loan modification.** The non-profit foreclosure prevention counselors are available throughout the state, and they will help you do this for free. Also, you can contact the lender yourself to try and negotiate with them.

Someone may also offer to buy your home and then rent or sell it back to you. They say that they want to help you, and that this will give you a chance to save your home or fix your credit. **Be careful!** This may be an illegal scam called “equity stripping.” Some people giving these deals want to take your home so they can profit from the equity you have earned. You always have other options. Do not sign anything that could put your home and equity at risk without talking to a trusted real estate or legal professional or a foreclosure prevention counselor.

## WHERE CAN I GET HELP?

Call the Home Ownership Center at (651) 659-9336 in the metro or 1 (866) 462-6466 outside the metro. You can also go to their website at [www.hocmn.org](http://www.hocmn.org). Their foreclosure prevention counselors will talk to you about your situation, identify your options, and help you make a plan to avoid foreclosure of your home.



To find other Legal Aid Society materials, including the fact sheets mentioned in this document, go to [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets).

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