



## Losing Your Home to your Homeowner's Association

### Can a Homeowner's Association (HOA) foreclose on my house?

Yes! If you get behind on your Homeowner or Condo Association assessments, the Association can foreclose on your house!!

### What exactly are homeowner "assessments"?

When you buy a condo or a townhome, you are joining the condo or homeowner association ("HOA"). There are some neighborhoods with individual houses that also have homeowner associations, but those are rare. There are monthly dues that you pay as part of your membership. There are also other payments and obligations that come up and are charged to your account. These monthly dues and other charges are your "assessments." These should be described in the **HOA Declaration**, which you should have gotten when you bought your home. HOA Declarations are usually public documents. You can ask your HOA's management company for a copy or find a copy in your county's property records.

Unless the Declaration says otherwise, these charges are counted as part of your "assessments" that you pay to the HOA:

- Normal monthly fee, or "dues."
- Fees for operation costs and services. These are things like: fees for insurance or costs of snow removal or lawn care and necessary maintenance and repairs.
- Reasonable charges for paperwork costs of the HOA, like sending statements about unpaid assessments, or copies of HOA records.



Your monthly assessments could also include:

- Late charges.
- Fines for violations of the declaration, bylaws, and rules and regulations of the HOA. The HOA has to give you notice and a chance for a hearing.
- Interest accrued on late payments.
- Lawyer fees

## **Try to fix unpaid assessments as soon as possible! There are things you can do!**

You want to try to fix late issues *before* the HOA refers your account to the HOA lawyer. Once that happens, your costs go way up.

You have the right to ask for a statement showing what the unpaid assessments are and the amount. Ask in writing. The HOA has 10 days to give this to you.

If you disagree with the amount or reason for any of the assessments, find out what the procedure is with your HOA to argue your side. You can probably find that information in the Declaration or bylaws or rules and regulations. It might be a hearing or appeal process.



If you still disagree after the hearing or appeal process, there are a couple of options for what to do next.

- **If you have the money** to pay what they claim you owe, you can pay them. But when you pay, submit a written statement that you don't agree with the amounts charged. Then, you can sue the HOA in conciliation court to try to get the money back. For more information on conciliation court, see our Fact Sheet [Conciliation Court](#).
- **If you don't have the full amount** the HOA says you owe, but you want to avoid everything getting worse, and having to pay HOA lawyer's fees, try to come to a repayment agreement with the HOA board or management company. If you reach an agreement to pay what you owe over time, get it in writing! Don't agree to something you can't afford.

## **The HOA can take steps against you for unpaid assessments**

The most important thing to know is that if you are behind on what you owe the HOA they can foreclose and take your home. They can do this even if you don't owe a lot. When you bought your home, you entered into a contract with the HOA to follow its rules. This includes making payments on time. If you miss payments, or refuse to pay fines, the HOA can take your home.

As soon as your assessments are late, or fines go unpaid, the HOA automatically has a **lien** against your home. A lien is a "right" to your home. They have the lien for as long as you owe them money. The lien doesn't have to be recorded, but HOAs usually record liens in the county property records office. This makes it a public record and also keeps you from selling the property without paying.

Although this is rare, instead of foreclosing, the HOA could decide to sue you in court. See our fact sheet [What to Do if You Are Sued](#). It's important to know that an HOA can foreclose a lien on your home or they can sue you for breach of contract. **BUT they can't do both at the same time.** If the HOA decides to foreclose, they have to dismiss any existing lawsuits against you, or show that any judgment they already won can't be collected. So, an HOA can't sue you, collect the money, and also foreclose.

## What happens when an HOA decides to foreclose?

The HOA can foreclose using the courts (judicial foreclosure) or foreclose out of the courts (foreclosure by advertisement). If they choose out of the courts, they simply need to advertise in the paper and give you proper notice. In either case, the HOA has to follow the same rules and procedures that a bank would in a foreclosure on a mortgage.

There is a period of time that you have a chance to pay the unpaid assessments or fines you owe. It is the period between the time you get a notice that you are behind and the foreclosure sale. If you can catch up, it is called “reinstate.”



**Important:** you DON’T have to pay lawyer fees to catch up and reinstate. You still owe those lawyer fees, but an HOA can’t take your unit away for owing those fees.

If you can’t reinstate, there will be a foreclosure sale. After the sale, you get a 6-month “redemption period.” If you can pay the HOA what you owe during this time, you keep the house. During the redemption period, you also have to pay the lawyer fees that have built up and any other amounts owed, including late fees and interest.

Or you can sell the house during the redemption period for enough to pay the HOA *and* pay off any mortgages on the property. Anything left over is yours.

You can keep living in the house during the 6-month redemption period.

If you don’t pay what you owe to the HOA, or sell, you must move out of the house by the end of the redemption period. Once the redemption period ends, if you haven’t paid, the HOA owns the house. They can file an eviction to remove you from the house. Finding rental housing with an eviction on your record can be really, really hard, so the best thing to do is move before the 6 months are up.

For more information on how foreclosures work, see our Fact Sheet [Your Rights in Foreclosure](#).

## Should I keep paying my mortgage?

If you have a mortgage on the home that was current when the HOA foreclosed, you need to decide whether to keep making mortgage payments.

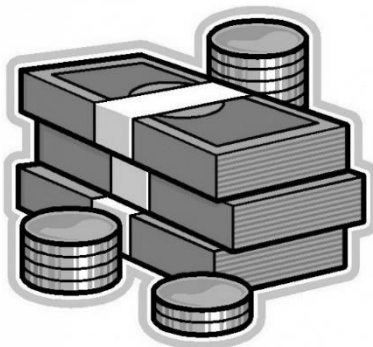
- If you think there is a good chance you can catch up and pay your HOA assessments during the redemption period, then keep making your mortgage payments.
- If you know you won’t be able to catch up on HOA payments and redeem the home, you should think about stopping your mortgage payments. Save the money to move. Not paying the mortgage has about the same negative effect on your credit as the foreclosure.

## A Last Note on the Problem of Lawyer's Fees

In a "normal" bank foreclosure on a mortgage, the bank can only charge a certain amount of lawyer's fees associated with the foreclosure.

**In an HOA foreclosure by advertisement, there is no limit to what a lawyer can charge the homeowner.** Any limit would be in the HOA bylaws and declaration, and there is usually no limit. If the HOA decides to use judicial foreclosure (which is very rare), the lawyer's fees are reviewed by the judge.

This means that once an HOA decides its lawyer will handle the lien and foreclosure, the lawyer can charge whatever they want.



**All the lawyer's fees are passed on to *your* bill as the homeowner, not to the HOA.** BUT those fees can't be charged to you during the period between getting the notice you are behind and a foreclosure sale. If you are trying to pay the HOA what you owe so you can keep the home, it gets more and more expensive after it is "referred" to an HOA lawyer.

Unlimited lawyer's fees also make getting legal help hard. Even free legal help. Even if you qualify for legal aid, it often works against you because it runs up the HOA lawyer's bill.

After an HOA refers a case to its lawyer, your lawyer can only talk to that lawyer, not to the HOA or HOA management company. And the HOA lawyer charges for every phone call, fax, letter, etc. Those charges are pushed onto your bill. Often, it works out better and cheaper if you can work out a repayment plan directly with the HOA board or management company well before the case is referred to the HOA lawyer. But if you find yourself in foreclosure by your HOA, it may still make sense to talk to a lawyer to see if you have any options.

***Fact Sheets are legal information NOT legal advice. See a lawyer for advice.***

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

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