



Your Rights in Foreclosure

Be Careful!

Foreclosure is complicated and confusing. Make sure you understand the process and your rights. Talk to a lawyer or foreclosure prevention counselor.

The Steps of the Foreclosure Process

- If you miss some mortgage payments, your mortgage company (also called the servicer) 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 like “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, most mortgage companies can start the foreclosure process as soon as you are 120 days, or 4 months behind. But it could be sooner.
- You know that your home is in foreclosure because you get a letter from a law firm. The letter says they have been hired by your mortgage company to foreclose if you don’t catch up on your payments. The letter may give you an amount that you need to pay to avoid foreclosure. If it doesn’t, call the law firm to find out.
- Any time **before** the sheriff’s sale, you have the right to “reinstate” your mortgage. To reinstate, you must pay the amount you are behind on your mortgage plus costs and fees. Ask the mortgage company or its lawyer how much you have to pay to reinstate. Do this as soon as possible. You may also ask the sheriff for the amount. But you must ask in writing at least 7 days before the sale.



If you pay those amounts, the mortgage company **must** stop the foreclosure process, and you can keep your house. Your mortgage is back on track at this point because you paid everything you owe. You must keep making regular mortgage payments if you want to avoid going into foreclosure again.

- If you do not catch up, there is a sheriff’s sale of your home. The lawyer must publish a notice of the sale in a special newspaper at least 6 weeks before the sale happens. If you want to find that notice, call your county property records department and ask. 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. This means the papers have to be handed to someone in person. The papers have to be served at least 4 weeks before the sale date.

- At the sheriff's sale, your home is sold to the highest bidder, which is usually the bank. You don't have to go to the sheriff's sale.
- You can also lose your home to foreclosure if you fall behind on your Homeowner Association (HOA) payments! The HOA can file a lien on your home for the amount you are behind. They can include lawyer fees in the amount. Then they can foreclose on the lien. See our Fact Sheet [*Losing your Home to your Homeowner's Association*](#).

What CAN'T the mortgage company do?

- If you apply for a loan modification or other workout option, your mortgage company must decide if you qualify for help BEFORE it forecloses on your home. If it does both at the same time, it's called "dual tracking." That is illegal.
- A mortgage company can't start the foreclosure process if you applied for a loan modification or other workout option AND they haven't decided on your application yet.



Even if the foreclosure process has already started, a mortgage company **must stop the sheriff's sale** if you apply for a loan modification or other option at least 7 business days before the sale is scheduled to happen.

If you plan to apply for a loan modification, don't wait until the last minute. Send all the paperwork to the mortgage company as soon as you can. Call the Home Ownership Center at (651) 659-9336 in the metro or 1-(866) 462-6466 outside the metro for help getting a loan modification.

What does the mortgage company HAVE TO do before the foreclosure sale?

Before a mortgage company can sell your home at a sheriff's sale, it must:

- tell you in writing of any available loan modification or other option that could help you lower your payments or keep your home.
- help you understand what documents the mortgage company needs so they can review your application for help.
- review a submitted application and decide if you qualify for help. If you do qualify for help, they must give you the chance to accept the loan modification or other option for help.
- give you the chance to appeal if the mortgage company denies your application for help.

What happens after the sheriff's sale?

- After the sale, you can no longer just “catch up” on your mortgage payments. But you do have 6 months to try and “redeem.” This time is longer if you have paid off more than one third of the original principal mortgage amount, or if you have a reverse mortgage. For these, you have 12 months to try and redeem.

This time is called the redemption period. This means that if you can pay the sheriff the same amount as the highest bidder (usually the bank) plus other costs, you get to keep your house. The other costs may include taxes, assessments, lawyer fees, sheriff fees and any interest that has built up between the day of the sale and the day you pay. This usually means you have to pay the entire mortgage amount plus fees.

- If the bank can prove to a court that the house is vacant, a court may shorten the redemption period to 5 weeks instead of the normal 6 or 12 months. The bank must serve you with court papers if it asks a court to shorten the redemption period. You have the right to prove the house isn't vacant and get the longer 6- or 12-month redemption time.
- During the redemption period you can try to sell the house. This is a good option if you have equity in your house and it is worth more than what was paid at the sheriff's sale. Equity means your house is worth more than the amount you owe on your loan. If you can sell the house for enough to pay off the amount paid by the highest bidder, plus other costs (the same things you would have to pay to redeem), you get to keep any money that is left over.

BUT, if you are trying to sell your house, you **MUST** sell it **BEFORE** the end of the redemption period. If the sale is not completed before the end of the redemption period, **YOU LOSE THE HOUSE AND ALL OF THE EQUITY IN IT.** If you decide to sell your house, start the process as soon as possible. That process may include talking to a real estate agent of your choice.

- You can live in your house during the redemption period, even if you can't redeem or sell the house. If you do not move by the end of the redemption period, the new owner (usually the bank) must 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 can make it really hard for you to rent a home or apartment 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. Try to get help right away by calling a mortgage foreclosure prevention counselor. The number is at the end of this fact sheet and should be on your foreclosure notice also.



You can also try calling your mortgage company. Many of them have programs to help you re-structure your mortgage so that you can avoid foreclosure.

If you qualify for a modification program, you can probably lower your monthly payments and change other terms of the loan to make it more affordable. Even if you do not qualify for one of these programs, your mortgage company may have other ways to help you avoid foreclosure.

The longer you wait, the harder it is for anyone to help you avoid foreclosure.

- If you think you were eligible for a loan modification or other option to help you keep your home, but you were denied, call a lawyer or your local legal aid office.

If you think you were eligible and were denied but the sale has already taken place, you can still go to court and ask that the foreclosure sale be undone. But you must start the court case BEFORE the end of the redemption period. Talk to a lawyer as soon as possible if you want to ask the court to undo a foreclosure sale.

Postponing a Sale

Minnesota law lets you postpone your sheriff sale for 5 months. It can be postponed up to 11 months for families and people who are entitled to a 12-month redemption period. To do this, you have to file an affidavit with certain information in it with the county recorder's office. This usually costs money. It depends on where you live.



After you file the affidavit with the county recorder, you must give copies of the affidavit to the sheriff's office, and to the foreclosing lawyer (the bank's lawyer).

You need to complete this process at least 15 days before the sheriff's 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 or 12 months. You can only postpone the sale once in the foreclosure.

You may want to postpone the sale if you think you only need a little bit more time to catch up on your payments or qualify for a loan modification. For example, if you just got a new job or if you are expecting a sum of money from some other source soon, postponement may be a good idea.

If you can't catch up or qualify for a loan modification, it's usually not worth filing to postpone. Postponing the sale does not help you get more time in your home because your redemption period is shortened to 5 weeks.

If you want legal advice about how to postpone your sale contact a lawyer right away. You can also go online to create forms and get other information.

[You can create a Foreclosure Sale Postponement Affidavit online.](#)

Go to www.lawhelpmn.org/forms



- Look under “Housing”
- Click on “Foreclosure Sale Postponement”

You can [read more about postponement](#) and find a housing counselor at the Minnesota Home Ownership Center: www.hocmn.org.

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 mortgage company 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 mortgage company) to help you get a loan modification.**

Non-profit foreclosure prevention counselors are available throughout the state, and they will help you do this for free. Also, you can contact the mortgage company 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. 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.

You can also call your legal aid office at 1-(877) 696-6529. Or look for help from other programs at www.lawhelpmn.org/providers-and-clinics.

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

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