TRLA Texas RioGrande Legal Aid

Foreclosure

When can a lender start a foreclosure? Most loans from a bank must be 120 days delinquent before any foreclosure activity starts. However, smaller lenders can sometimes start foreclosure even if you are only 1 day late. *In most cases, the lender is only required to send you two notices* before a foreclosure sale.

How can I prevent a foreclosure? Talk with your lender about a payment plan, a temporary forbearance, or a loan modification. Pay what you can. If your payments are not accepted, save them until you can pay in full. For free foreclosure prevention counseling, contact a HUD housing counselor. You can find one in your area here: https://www.consumerfinance.gov/find-a-housing-counselor/. The earlier you apply for assistance the more rights and options you will have.

What is loss mitigation? Loss mitigation refers to ways to prevent foreclosure. If you're behind in payments, ask your lender for a loss mitigation application packet. For most servicers, *if your application is complete and received at least 37 days before a scheduled sale, the lender must stop all foreclosure activities.* If your lender starts foreclosure after you timely submitted your complete application, you have a right to file a suit to stop the sale.Your lender may be able to offer you a repayment plan, lower your monthly payment by changing your loan terms (modification), or temporarily postpone or reduce your payment (forbearance). Your lender may also offer you options that do not allow you to stay in the home, such as deed in lieu or short sale. . All of these options may affect your credit.

What is the foreclosure process? For most loans, the lender is only required to send you 2 notices by certified mail. If you fail to collect the notices, you are not protected. You simply will not know what is happening with your loan. The first notice must give you at least 20 days to resolve the delinquency or other default and must inform you that the lender intends to accelerate the loan. If you do not cure the default, the lender can refuse to accept any payments except for the full payoff balance of the loan. This is called acceleration. Once the loan is accelerated, the lender can post the property for foreclosure. The law requires the lender to mail the notice by certified mail at least 21 days before foreclosure. The lender must also post the notice at the courthouse and file it with the county clerk. Because this is a public record, you may begin receiving offers to buy your house, file for bankruptcy, or other solicitations. The foreclosure sale can only happen on the first Tuesday of a month.

REAL PROPERTY

Is there a court process? For most loans, no. If you have a home equity loan, home equity line of credit, property tax loan, owe assessments to a homeowner's association, or are in default on a reverse mortgage, your lender must obtain a court order in order to foreclose. You should respond to the lawsuit in writing and appear for any hearings set by the court. You can ask for more time, request a referral to mediation, and make sure that the other side proves up their case.

Can bankruptcy prevent foreclosure? Filing for bankruptcy will delay foreclosure, but will not wipe out your lien or allow you to stay in the home without making payments. Chapter 13 is a reorganization in which certain debts are repaid over time, and the home can be saved. Chapter 7 is a liquidation and may delay a foreclosure or provide more time to apply for loss mitigation.

Can I refinance or sell my home to avoid foreclosure? If you are behind in payments, refinancing is usually not an option. You can sell if the sale proceeds would pay off the mortgage and the cost of the sale.

Can I be sued for a deficiency? Lenders rarely sue for a deficiency because of the time and expense involved. If you are sued for a deficiency, you may be able to discharge the debt in bankruptcy.

Can I stay in my home during foreclosure? You do not have to move out on the sale date. If you are still living in the home after a foreclosure, the new owner will have to evict you. You have a right to attend hearings and make an appeal. Some lenders will pay moving expenses in order to avoid the time and expense of an eviction proceeding (called "cash for keys").

