



Foreclosure when You Have a Mortgage

(Judicial Foreclosures)

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- ❖ Read this only if you live in the state of Washington.
 - ❖ You can find all the fact sheets we link to here at WashingtonLawHelp.org.
 - ❖ **COVID-19 alert:** [Read COVID-19 \(Coronavirus\): If you have a Mortgage on your Home](#) if the pandemic affects your ability to pay your mortgage.
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If you are buying your home under a Deed of Trust, the bank does not have to take you to court! Read [Foreclosure When you have a Deed of Trust](#) instead of this.

If you are renting from someone who has lost the home in foreclosure, read [I am a Tenant Living in a Foreclosed Property. What are My Rights](#) instead of this.

If you are buying a home under a real estate contract, read [Forfeiture of Your Real Estate Contract](#) instead of this.

Should I read this?

Yes, **if both these are true:**

- You have a mortgage.
- You are in foreclosure **or** you might fall behind in payments.

You must **act fast** and with help from a housing counselor and/or lawyer. They can help figure out how to save your home. Call NJP's **Foreclosure Prevention Unit (FPU)** at 1-800-606-4819 to see if you can get free legal help.

You should also read:

- [My Rights During Foreclosure](#)
- [Short Sales: A Homeowner's Guide](#)

What is foreclosure?

You might get behind on your mortgage payments for many reasons. Maybe you lost your job or income. Maybe you have gotten more in debt.

If you fall behind, the seller or lender may try to take your home back. **Foreclosure is what we call the process of trying to take your home.** If they foreclose on your home, you may lose it **and** everything you have invested in it.

The information here is general. Call NJP's Foreclosure Prevention Unit (FPU) at 1-800-606-4819 to see if you can get free legal help. Other contact info is below.

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- ❖ **A foreclosure is serious.** Your home and credit rating are at risk. See a lawyer right away if served with court papers or notices. If you cannot afford a lawyer, contact your local legal services office or county bar association. See below.
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Do I have a mortgage?

Yes, if you have a **security deed** using language like that found in [RCW 61.12.020](#).

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- ❖ State mortgage law is here: [RCW 61.12](#).
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I have a mortgage. What can happen if I get behind on my monthly payments?

The lender (usually a bank or mortgage company) can start the foreclosure process immediately. They may wait until you miss several payments.

How will I know the lender has started the foreclosure process?

The lender must file a court action in Superior Court in the county where your home is located. The lender must let you know about the lawsuit by serving you with a **Summons and Complaint**. The lawsuit asks the court to order the sheriff to sell your home at public auction (sheriff's sale) to pay the judgment against you.

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- ❖ If your home sells for less than you owe on the mortgage, you may owe the lender for the difference.
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The bank served me with a Summons and Complaint. What should I do?

See a lawyer right away. They can

- Figure out if you have any defenses.
- Advise other ways to protect your interests.

The judge already ordered the sheriff to sell my home. Do I have any rights?

Yes:

- You might be able to claim your home as a homestead under Washington law ([RCW 6.13](#)). Then you may be able to live in your home for at least eight months after the sheriff's sale.
- Anytime during the foreclosure action and up until eight months after the sheriff's sale, you can sell your home and pay off the mortgage debt. You may be able to pay off your mortgage debt **and** keep any extra profit for yourself.
- Even if you do not live in your home after the sheriff's sale, you may be able to buy it back ("redeem" it) from whoever bought it at the sheriff's sale up until eight to twelve months after the sale.

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- ❖ Your home may sell for less than what you owe on the mortgage. Then you may owe the lender for the difference.
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Can I avoid or stop a foreclosure?

Do not wait until the foreclosure action starts! Contact the lender or seller as soon as you think you might fall behind. Tell them:

- Why you might fall behind.
- What you can do to catch up.

Are there alternatives to foreclosure?

If you can start making payments again, you can ask the lender to “**recast**” the loan. This means spreading the payments you missed over the rest of the loan. Your monthly payment will go up a little.

The lender might let you make **partial payments on the back amount**, on top of your monthly payments, until you catch up.

If your payments are too high, you may be able to “**refinance**” the loan. You can shop among banks and try to get a new loan with lower payments. You get the original loan canceled and a new one to pay off what you owe. This will probably cost you more in the end.

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- ❖ To get refinancing, you usually need good credit. Even then, banks may not approve you for a new loan.
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You may **deed the home back to the lender or seller**. You lose your home **but** avoid the costs of a foreclosure action.

You may be able to **sell the home yourself before the foreclosure sale** and save some equity if the home is worth more than you owe. If it sells for more than you owe, you keep the extra. If you decide to sell, have a real estate agent list it. Tell your

www.WashingtonLawHelp.org

bank you are trying to sell the home. Read [Short Sales: A Homeowner's Guide](#) to learn more.

You may be able to file for **chapter 13 bankruptcy** and present a plan for catching up on your mortgage. Visit WashingtonLawHelp.org to learn more. Look under “money & debt.”

You also have up to eight to twelve months to **sell your home after the sheriff's sale in court-involved cases only**. [RCW 6.23.020\(1\)](#).

You may qualify for a **federal program that changes loan terms** to make it easier and more affordable to pay. Visit www.makinghomeaffordable.gov to learn more.

If you are on **active military duty**, talk to your JAG attorney or an attorney who specializes in military law. You may have other legal rights.

❖ **FHA, HUD, RHD, and VA mortgages:** Talk to a lawyer. You may be entitled to lower monthly payments or a temporary suspension (pause) of your payments.

I am facing foreclosure because of unpaid property taxes.

If you are a senior citizen or have a disability and you face foreclosure due to unpaid property taxes, you may be able to have those taxes lowered or delay paying them. Contact a lawyer or your County Assessor. Read [Property Tax Exemptions for Senior Citizens and Disabled People](#).

Do I have to pay the bank any remaining balance after the sheriff's sale?

Maybe. If you only have one home loan, the foreclosure usually settles your debt. This is true even if the home sells at auction for less than you owe. **You still owe on any other loans.**

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- ❖ If the home sells at auction for more than you owe, you can ask for the difference.
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Can I get my home back after foreclosure?

No. If it sells at auction for more than you owe, you do have a right to ask for the extra amount. You can sue for damages if they did not conduct the foreclosure lawfully.

Where can I get more help?

Foreclosure Prevent Unit –Call NJP's Foreclosure Prevention Unit (FPU) at 1-800-606-4819 to see if you can get free legal help.

Legal Hotline: If you have a low income and live **in King County**, call 2-1-1 or toll-free 800-621-4636 weekdays, 8:00 AM – 6:00 PM. If you have a low income and live **outside King County**, call CLEAR: 888-201-1014 (toll-free) weekdays, 9:15AM – 12:15 PM.

Lawyer Referral: Local bar associations can refer you to local lawyers. This may **not** be low-cost. See www.wsba.org/Legal-Community/County-Bar-Associations for a list of local numbers.

Housing Counselors: Call the [Washington Homeownership Resource Center](http://WashingtonHomeownershipResourceCenter.org) www.homeownership-wa.org at 877-894-4663. They can put you in touch with a housing counselor.

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