

# **FORECLOSURE GUIDE**

## *LEARN ABOUT YOUR RIGHTS AND OPTIONS IN A FORECLOSURE*



**The Nineteenth Judicial Circuit  
Center for Self-Representation  
18 North County Street  
Waukegan, Illinois 60085**

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## **DISCLAIMER**

This information guide was prepared to answer general questions and give general advice about the law in Illinois. When reading this guide, keep in mind that the information is for assisting readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this, and because of unanticipated changes in the law, the 19th Judicial Circuit makes no claim as to whether the use of this guide will achieve the result you desire and disclaims any responsibility for the consequences of any action taken in reliance upon the information in this guide. It is always a good idea to seek legal advice from an attorney who is licensed to practice in the State of Illinois. This guide was based upon information developed by the Legal Assistance Foundation of Chicago and is gratefully used by the 19th Judicial Circuit with their permission.



## **I HAVE JUST RECEIVED MY FORECLOSURE PAPERS. WHAT HAPPENS NOW?**

A foreclosure is a type of lawsuit filed by a lender to collect the money allegedly past due on a mortgage loan (a loan secured by your home). Soon after a foreclosure is filed you will be "served": either someone from the sheriff's department or a private process server (someone hired by the lender) will hand-deliver to you (or someone else in your household) a summons and a complaint. The complaint will set forth the facts of the foreclosure case being filed against you. The summons will tell you when and where to file an answer. Upon receiving your foreclosure papers you should do the following:

- Call your mortgage company to find out how much they claim is owed, and, if you agree you are behind, see if you can enter into some kind of workout plan.
- Seek legal help regarding any possible legal claims you may have to defend against the foreclosure.
- File an appearance and answer, or other appropriate response at the Lake County Courthouse within thirty days of receiving the foreclosure papers. There is a fee to file an appearance. If your income is low enough, you may be able to get the filing fee waived. By following this procedure, you will be entitled to receive notice of all future court proceedings and notice of any foreclosure sale that is scheduled.
- Whether or not you have filed an appearance, you may wish to attend court on the first day of your case and let the judge know what you are planning to do. If you are considering defending against the foreclosure, the judge may give you extra time (usually 28 days) to seek the advice of an attorney. The extra time can also help you to explore the options explained below. You can call the plaintiff's attorney at any time to find out your next court date or call the Office

of the Circuit Clerk at 847-377-3209 or visit at 18 N. County Street, Waukegan, Illinois, 60085.

## How much time do I have?



From the date you are served, in addition to any legal defense to the foreclosure, you have the following rights:

### 1. Reinstatement

- ▶ You have 90 days from the date you are served to reinstate the loan, that is, to bring your loan current and pay off what you owe (past due payments, late fees, costs and fees paid by the lender to foreclose, and other allowable expenses).
- ▶ In most cases, lenders will voluntarily allow you to reinstate even beyond this 90-day period, up until the end of the redemption period (see below). It is important to realize, though, that reinstatement after the initial 90-day period is at the discretion of the lender.

### 2. Redemption

- ▶ Subject to a few limited exceptions, you have 7 months from the date you are served to pay off your loan in full, either by refinancing the loan or by selling the house or by other means. This is called your right to redeem, and the 7-month period is called the redemption period.
- ▶ Sometimes you can have longer. The redemption period also runs for 3 months after a foreclosure judgment is entered, so, depending on when a judgment is entered, the redemption period can run longer than 7 months from service.
- ▶ Once the redemption period expires, the lender will hold a foreclosure sale at which it and others can bid for the sale of the property.
- ▶ You have no control over the house once it goes to sale; you can only refinance, sell the house, or file bankruptcy before the house is sold at the foreclosure sale.
- ▶ There is a helpful resource which provides an Illinois Mortgage Foreclosure Timetable at [www.illinoislegaladvocate.org/index.cfm](http://www.illinoislegaladvocate.org/index.cfm).

## What are my options?

Unless you have a legal defense to the foreclosure, there are four general options that you should consider. It usually makes sense to consider them in the following order (but you can consider more than one at a time). You can think of your exploration of each of these four options as one step in a four-step PLAN:

**P** = Pursue a Workout

**L** = Learn about Refinancing

**A** = Ask about Bankruptcy

**N** = Negotiate a Sale



### Option 1: Pursue a Workout

**Be extremely cautious about working with any person or agency charging you an up-front fee to pursue a workout with your lender—any such person or agency might be committing fraud.**

One of the ways you can reinstate your loan is by working with your mortgage company to fashion a "workout" or "workout plan." Exploring the possibility of a workout is sometimes called "loss mitigation" or "loan mitigation." The resulting plan is often called a "forbearance" or "repayment" plan. Basically, this is a way for you to reinstate your mortgage over time, without bringing the mortgage current all at once. Often the lender will ask you to pay a lump sum toward what is owed, then something like one-and-a-half monthly payments per month for a set period of time. Or, the lender may agree to put your missed payments at the back of the loan. Sometimes, the lender will even be willing to reduce your interest rate.

The sooner you contact your mortgage company to pursue a possible workout the better, because the process of formulating a workout and being approved for one may take a long time. You should ask for the loss mitigation department. Each time you talk with a representative from your lender you should take notes in-

cluding date, time, name of representative, and what was said, including the next steps.

Make sure to get any agreement in writing, and keep a copy. Understand that most agreements do not lead to the dismissal of the foreclosure case until you have completed the plan. Before agreeing to a proposed workout, make sure you have sufficient income to afford the payments. If you do not, you run the risk of ending up back in foreclosure.

**You may want to contact a HUD-certified housing counseling agency to help you pursue a workout.** These are non-profit agencies certified by the United States Department of Housing and Urban Development. They will not charge you a fee. The Affordable Housing Corporation of Lake County [AHCLC] has counseling services available to any Lake County resident free of charge. Currently, AHCLC requires all prospective clients to attend a 90-minute education session (exceptions may be made for those with a judicial sale pending within 30 days). Attendees have the option of moving on to individual counseling from there. Classes are offered on weekends and evenings. You may review AHCLC's current schedule on their website ([www.ahclc.org](http://www.ahclc.org)) or by calling 847/263-7478. Services are offered in English and Spanish. Lake County Housing Authority also offers mortgage counseling services and can be reached at 847-223-1170.

**Be aware that a new federal program may help you if:**

- You're having trouble paying your mortgage on your primary residence, and
- The mortgage was dated before January 1, 2009 and is for less than \$729,000
- Your mortgage (including principal, interest, taxes, and insurance and associations dues) requires you to pay more than 31% of your current gross income.

You can learn more at <http://makinghomesaffordable.gov>.



## Option 2: Learn about Refinancing

If you can't enter into a workout with your current lender, you may redeem your loan (pay it off) by refinancing it, that is, by taking out a new loan that pays off the current one(s). Realize, however, that the payments on your new loan will most often be higher than your old loan payments, and your interest rate may increase. Before obtaining a refinance, make sure you can afford the new loan, or you will end up back in foreclosure owing even more money than before.

It may be helpful to have a HUD-certified housing counseling agency [like the Affordable Housing Corporation of Lake County (AHCLC) [www.ahclc.org](http://www.ahclc.org) discussed above] review a proposed refinance loan before you sign it.

- ❖ Be wary of solicitations through the mail, telephone, or in person by entities that offer to refinance your home. It is best to refinance with a credit union, a bank or finance company you have a good history with, or based on a recommendation from a trusted family member or friend.



## Option 3: Ask about Bankruptcy

If you want to save your home and are unable to complete a workout or refinance, you may want to consider filing a chapter 13 bankruptcy. Once you file a bankruptcy, the foreclosure case will be "stayed" (stopped), at least temporarily. When you file a chapter 13 petition, you are asking the bankruptcy court to approve a "plan" where you make monthly plan payments and catch up on your past due mortgage debt in a period of time between 3 and 5 years. If the court thinks you can afford the proposed plan, it will confirm the plan and give you a chance to make your payments and complete the plan. If the court thinks you cannot afford a plan, or if you do not follow through on your plan payments, or you do not file your bankruptcy properly, your bankruptcy will be dismissed and the lender will go back to foreclosure court. The lender will also go back to

foreclosure court if you don't make your ongoing mortgage payments. If this happens, it will increase what you owe to the lender.

When you are sued in a foreclosure case, you will receive many advertisements in the mail. Many will be from bankruptcy attorneys offering to save your home through a bankruptcy. Despite this heavy advertising pressure, realize that a chapter 13 bankruptcy will not work for many borrowers, for example, borrowers who have suffered a permanent loss of income, or who couldn't really afford their homes in the first place. It is only appropriate for borrowers who suffered a temporary setback and who are now in a better financial position. Many chapter 13 bankruptcies fail; they end up stopping the foreclosure for only a short time and cost the borrower money they desperately need.

- ❖ Before filing a chapter 13 petition, make sure you have enough income to cover your bankruptcy plan payments in addition to all of your regular monthly expenses—including **the ongoing mortgage payments that you will have to make every month.**



## Option 4: Negotiate a Sale

If you simply cannot afford to keep your home through a workout, refinance, or bankruptcy, you should try to sell your home under the most favorable circumstances possible, so that you can get as much of your equity (money left over after paying off debts) as possible. The best option is to sell your home with an accredited realtor. If you decide to sell your home, put it on the market as soon as possible so you have the maximum amount of time possible to sell it. If you find you are unable to sell the house or think there is little or no equity in the home, your lender may be willing to work with you in the following ways:

1. **Short Sale:** In a short sale, the proceeds from the sale fall short of what you owe the mortgage company. Some mortgage companies are willing to accept this and forgive any additional amount you owe on the loan. Be aware that under a short sale you may be liable for taxes on whatever debt was

forgiven on the home. The bank may send a 1099 form which states the amount of forgiven debt as taxable income that you must report on your income taxes. Tax law is complicated and changes quickly so, if you don't have a tax advisor, ask your bank about the tax liability associated with a short sale prior to entering into an agreement. Since negotiating a short sale is a specialized skill with many extra responsibilities, you might consider seeking out a realtor with experience in short sales and foreclosures.

- 2. Deed-in-lieu of foreclosure:** With a deed-in-lieu, you sign over the home to the mortgage company to satisfy the loan. Again, you owe nothing else on the loan. You can sometimes do this before a foreclosure case is filed.



## Protecting Yourself

❖ A home in foreclosure will attract many potential scam artists. All sorts of real estate "rescuers" and "helpers" and "brokers" and "advisors" and "investors" will tell you that they will help you save your home, when all they are looking for is a fast buck. In many cases they are trying to steal your home, or the remaining equity in your home. Keep an eye out for "Mortgage Rescue Fraud Scams" which usually come in two forms.

**Phantom Help:** These come in the form of solicitations promising to help you get out of your foreclosure if you pay preliminary fees. The solicitors have no intention of stopping the foreclosure and will lead you on until it is too late for you to take any action yourself.

**Sale-leaseback or buyback agreement:** In this type of agreement, a "rescuer" will propose that you sign over your home to them or another "investor," pay rent, and later buy back the home, usually after a year. The rescuer has no intention of having you buy back your home, but instead intends to take the equity from your home. You could lose your home and your equity and face a fast-track eviction (since you are no longer the owner of record). In most cases, it is better to sell your home at a fair

market rate and keep the equity for yourself, rather than enter into one of these agreements.

Here are a few things to consider before exercising your options.

- ▶ Do not respond to any solicitations that come through the mail, telephone, or in person. Also do not respond to any posters on any poles or bus stops that offer foreclosure help. If you really need help, be proactive, seek good recommendations, and reach out for help.
- ▶ If you do not speak English, bring a trustworthy translator to every meeting you have with any agency. You also have the right to have the documents explained to you in your own language.
- ▶ Bring your own attorney to any signing to make sure everything is processed legally and you understand what you are signing.
- ▶ Do not feel pressured to sign or give money to anyone promising to help you.

## **After the Foreclosure Sale**

If you are not able to exercise any of the above 4 options, and your home is sold in a foreclosure sale, you should be sure to find out if there was a "surplus." If your home is sold for more than the judgment amount, you are entitled to the surplus (the extra money). You may call the plaintiff's attorney to find out if there was any surplus amount. If so, you should go down to the courthouse and file a notice stating that you are entitled to the extra money from the sale. You can do this at the Lake County Courthouse, 18 N. County Street, Waukegan, Illinois, 60085.

- ❖ **Guard yourself from offers to "help" you get your surplus for a fee. You are entitled to the money and the procedure is simple.**

## Helpful Agencies

Here are some agencies which may lead you to lawyers who can help you:

Lake County Bar Association  
7 North County Street  
Waukegan, IL 60085  
847-244-3140  
[www.lakebar.org](http://www.lakebar.org)

Prairie State Legal Services  
325 West Washington Street  
Waukegan, IL 60085  
847-662-6925  
800-942-3940

You will be asked to bring documents to your first appointment.

These are HUD-certified housing counseling agencies which may be able to assist you regarding your home, mortgage, or foreclosure and will not charge a fee:

Affordable Housing Corporation of Lake County  
Libertyville, Illinois  
<http://www.ahclc.org>  
847-263-7478

Lake County Housing Authority  
33928 N. Rte. 45  
Grayslake, IL 60030  
847-223-1170  
<http://www.lakecountyhousingauthority.org>

These are helpful websites which can provide further information regarding your home, mortgage, or foreclosure.

<http://makinghomesaffordable.gov>  
<http://www.lakebar.org/lake-county-bar-public/foreclosure>  
[www.illinoislegalaid.org](http://www.illinoislegalaid.org)  
[www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com)