



**THE
NINETEENTH JUDICIAL CIRCUIT
COURT OF LAKE COUNTY'S**

**RESIDENTIAL
MORTGAGE FORECLOSURE
BOOKLET**



Lake County Courthouse
18 North County Street
Waukegan, Illinois 60085

Prepared by
The Judges and Administrative Office
of the Nineteenth Judicial Circuit

The materials contained herein are accurate as of the publication date of December 2019, but are subject to legislative or administrative amendments after this date.

INTRODUCTION

The Constitutions of the United States and the State of Illinois afford to each and every citizen the right of self-representation.

In general, any person involved in a legal dispute is encouraged to seek the advice of a lawyer of his or her choice.

Because of the nature of Residential Mortgage Foreclosure cases, many homeowners choose to represent themselves. If you have made that choice and are involved as a defendant in a residential mortgage foreclosure matter in Lake County, you should read this booklet.

Although this guide presents the legal procedures as completely as possible, it is not designed to take the place of sound legal advice. If you do not fully understand the information in this booklet, find the procedures to be complicated, or need advice, you may decide to talk to a lawyer about your case. The choice is yours.

Chief Judge
Nineteenth Judicial Circuit

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A. GENERAL INFORMATION

The purpose of this booklet is to explain to homeowners the timeline and basic procedures of residential mortgage foreclosures in Lake County, Illinois. Because procedures differ from county to county, this information may not apply elsewhere.

The Center for Self-Representation offers information, forms, and legal research assistance for homeowners who want to represent themselves in mortgage foreclosure cases. The Center is located in the William D. Block Memorial Law Library, which is located in the main lobby of the Lake County Courthouse and Administration Building, 18 North County Street, Waukegan, Illinois, 60085. Hours are Monday through Friday from 8:00 a.m. until 5:00 p.m. Much of the Center for Self-Representation information is available 24 hours a day online at <http://www.19thcircuitcourt.state.il.us>.

You may ask court staff general questions regarding procedures, but court personnel are prohibited from giving legal advice. If you need legal advice, see a lawyer. If you want to hire a lawyer, you may contact the Lake County Bar Association by telephone to obtain a list of attorneys by practice area and their contact information. If you do not have the money to afford your own lawyer, you may contact Prairie State Legal Services by telephone for an appointment. You may also contact the Lake County Volunteer Lawyers Program at the same number. The phone numbers are included on the Telephone Listing on page 12 of this booklet.

B. ELECTRONIC FILING

Effective January 1, 2018, the Supreme Court of Illinois has required that all documents must be electronically filed. Specific information and instructions on how to electronically file documents can be found at: <http://19thcircuitcourt.state.il.us/2114/How-to-Electronically-File-Your-Forms-Od>. Please note that an email address is required in order to create an account, and all documents must be filed in PDF format.

If you do not have access to a computer or need help e-filing, visit our Circuit Clerk's office where you can use a public computer terminal.

Staff are available there to help assist you with the e-filing process and answer questions you may have. However, staff cannot give legal advice or file documents on your behalf.

If you are unable to e-file, you may qualify for an exemption from e-filing. A Certification for Exemption From E-filing form may be obtained from the Circuit Clerk or online at the Circuit Clerk's website at <https://lakecountycircuitclerk.org/court-forms>. The form must be completed and filed with your other papers.

C. RESIDENTIAL MORTGAGE FORECLOSURE CASES

A residential mortgage foreclosure case begins when the lender files a lawsuit against the homeowner for non-payment of their mortgage. Homeowners are not required to have attorneys, but may choose to have one. Rules for mortgage foreclosure procedures are set forth in the following:

1. US Code of Federal Regulations (available online at https://www.govregs.com/regulations/title12_chapterX);
2. 735 Illinois Compiled Statutes at section 5/15-1101 through section 5/15-1706 (available online at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>);
3. Illinois Supreme Court Rules 99.1, 113—192 (available online at <https://www.state.il.us/court/SupremeCourt/Rules/>); and
4. the Uniform Rules of Practice of the Nineteenth Judicial Circuit under chapter 6 and 7 (available online at <http://www.19thcircuitcourt.state.il.us/1254/Local-Court-Rules.>)

Publications of these materials may also be found in the William D. Block Memorial Library located in the lobby on the first floor of the Administration Building.

D. LENDER FILES SUIT

The lender will send notice to a homeowner if a homeowner misses two mortgage payments. If the homeowners misses a third mortgage payment, the lender will likely send a notice of acceleration to the homeowner and contact an attorney to begin the foreclosure process. A homeowner must have typically missed at least 4 mortgage payments before the lender will file a mortgage foreclosure suit.

E. SERVICE ON HOMEOWNER

The lender's attorney must make arrangements to serve the homeowner with the Complaint and Summons. The homeowner has 30 days from the date of service to file an Answer and Appearance. The Appearance and Answer can be found at: <http://www.illinoiscourts.gov/Forms/approved/Circuit.asp>.

You must be sure to send the file-stamped Appearance and Answer to the lender's attorney. The email address for the lender's attorney can be located on the last page of the Complaint and on the Summons.

After you are served with the Complaint and Summons you have the option to participate in the Court's voluntary mediation program. When you are served with the Complaint and Summons you should also receive information regarding the mediation program. Make sure you read this information and comply with the deadlines for participating in this mediation program. If you enter the mediation program, it extends the deadlines for the filing of your Appearance and Answer.

F. AM I REQUIRED TO HAVE A LAWYER REPRESENT ME?

You do not have to have an attorney represent you, but attempting to represent yourself in foreclosure proceedings may be too complex for some people to handle on their own. If you chose to represent yourself, the court will expect you to follow the same rules and procedures as a lawyer. You may find yourself facing a lawyer at every court appearance. In mortgage foreclosure cases, trials do not normally occur and there are no witnesses as most evidence is proven to the court by sworn documentation. So, you may wish to consider having a lawyer represent you.

G. COURT COSTS

Plaintiff and defendant must each pay fees or costs *before* getting into court. These fees and costs are listed on the Fee Schedule on the Circuit Clerk's website.

H. WHAT CAN I DO IF I CANNOT AFFORD THE FILING FEE?

There is a filing fee associated with filing an Appearance and Answer in a mortgage foreclosure case. You may, however, ask to have the fees partially or completely waived. To obtain a fee waiver, begin by filling out an Application and Order for Waiver of Court Fees. You can obtain this form from the Circuit Clerk or at the Law Library and Center for Self-Representation. The form is also available online at the Circuit Clerk's website at <https://www.lakecountycircuitclerk.org/court-forms>. After you have completed the form, the Circuit Clerk will tell you how to have an informal hearing on the fee waiver application. The Judge will decide whether to grant a waiver and will enter an order accordingly.

I. WHAT HAPPENS IF I FAIL TO FILE AN APPEARANCE AND ANSWER?

If you fail to file an Appearance and/or Answer, the lender's attorney will file a Motion for Default. This Motion can be filed after 30 days have passed from the date of service.

J. WHAT HAPPENS IF I FILE AN APPEARANCE AND ANSWER?

If you filed an Appearance and/or Answer, the lender's attorney will likely file a Motion for Summary Judgment and Judgment of Foreclosure. You will be given notice of the court date for a hearing on the Motion for Summary Judgment and Judgment of Foreclosure. You should show up to court on the date in the Notice of Motion to ask for time to file a written response to the lender's motions. If you do not show up to court on the day the motions are set for presentment, a summary judgment order and judgment of foreclosure may be entered against you.

K. REINSTATMENT OF LOAN

You have **90 days from the date of service** to pay your missed mortgage payments and bring the note current (which also includes any additional amounts such as costs and expenses required by the

mortgage upon default). If you pay all the amounts due and owing within the 90 days and the loan is reinstated, the foreclosure suit will be dismissed and the mortgage documents shall remain in full force and effect as if no default or acceleration had occurred.

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.

L. RIGHT TO REDEEM (REDEMPTION)

The right to redemption exists for 7 months from the date you are served. You can pay off your loan in full, either by refinancing, selling the house or by other means. This is called your right to redeem.

The redemption period also runs for 3 months after a judgment of foreclosure is entered. This means you must pay the note in full, plus foreclosure costs, post-judgment interest, and other expenses of the lawsuit by the date provided in the judgment of foreclosure. Again, the right to redeem is typically **7 months** after service of process **or 3 months** after entry of judgment of foreclosure, **whichever is later**.

There are exceptions to the redemption period which can shorten the period of redemption. Additionally, the court does not have any authority to extend the redemption period as the period is set by statute.

M. WHAT IS A MOTION TO VACATE?

A default judgment of foreclosure will be entered against you if you fail to file an Appearance or an Answer on a timely basis. If defaulted, you may file a Motion to Vacate in order to set aside the default judgment and contest the mortgage foreclosure. The court has discretion to vacate the judgment of foreclosure if you have a valid reason for not having filed your Appearance and Answer on time prior to confirmation of the sale (see below). Instructions and forms for a Motion to Vacate can be found at: <http://www.illinoiscourts.gov/Forms/approved/Circuit.asp>. You must give notice of the court date along with the Motion to the lender's attorney.

N. JUDICIAL SALE

When a judgment of foreclosure is entered and the redemption period has passed without the homeowner having paid off the full judgment amount identified in the judgment of foreclosure, the property may be sold by the Sheriff. A Notice of Judicial Sale shall be published for three consecutive weeks in a newspaper and served on all interested parties. The service and publication must be between **7 and 45 days** prior to the Sheriff's Sale. There are exceptions to this rule.

The Lake County Sheriff will hold a public sale to the highest bidder. If the judicial sale is continued by oral announcement by a selling officer, further written notice or publication of a second sale need not be provided if the sale occurs within 60 days.

O. WHAT IS A MOTION TO STAY FORECLOSURE SALE?

A Motion to Stay a Foreclosure Sale may be filed. Instructions and a form for a Motion to Stay can be found at: <http://www.illinoiscourts.gov/Forms/approved/Circuit.asp>. You must file the motion electronically and give notice of the court date along with the Motion to the lender's attorney.

You might consider filing a Motion to Stay a Sale because you have applied for a loan modification and the lender has not yet responded to your application or because you have contracted to sell the property to a third party purchaser.

P. WHAT IS A MOTION TO CONFIRM THE SALE?

Once the public sale has occurred, the lender's attorney will provide you notice for a court hearing to confirm the sale based on the report of sale and distribution and the certificate of sale from the Sheriff. The report of sale and distribution shall identify the purchaser, the amount of the bid, the total amount owed to the lender and whether there is a surplus or a deficiency after subtracting the sales price from the amount owed.

If there is a surplus, the homeowner can file a Motion to Turnover Surplus Funds to have the surplus proceeds from the sale returned to the borrower. If surplus funds exist and a motion is not filed, then the surplus is forfeited to the state.

A blank notice of motion and motion can be found here: <http://www.illinoiscourts.gov/Forms/approved/Circuit.asp>. Notice of the Motion along with Motion must be filed electronically and provided to the lender's attorney and anyone that has filed an Appearance in the case.

If there is a deficiency because the total proceeds of sale is less than the total amount due to the lender, the lender may seek either a personal deficiency or an in rem deficiency. A personal deficiency allows the lender to pursue the homeowner's other assets to collect the deficiency. An in rem deficiency limits the lender to pursue collection of the unpaid balance only against the property that is the subject of the mortgage foreclosure.

The court must approve the sale unless it finds that a) notice of sale was not proper; b) the terms of the sale were unconscionable; c) the sale was conducted fraudulently; or d) justice was otherwise not done. A purchaser, at a judicial sale, generally will not receive possession of the property for 30 days after the entry of the order confirming sale. The Order Confirming Sale will typically authorize the Sheriff to remove the homeowner from the home after 30 days.

Q. CONSENT FORECLOSURE

The lender and homeowner may enter into a consent foreclosure and agree to the foreclosure. When a consent judgment is entered, the homeowner loses its right of redemption and reinstatement and the lender waives any claim for a deficiency judgment against the homeowner.

R. OTHER OPTIONS

Workout: You can pursue a "workout" option by contacting your mortgage company. This is also known as "loss mitigation" or "loan mitigation." The resulting plan may be referred to as a "forbearance" or "repayment" plan. This is a way for you to reinstate your mortgage over a period of time. You may be asked to make a lump sum payment or pay higher monthly payments over a period of time. If this is a desired option, be sure to contact the mortgage company as soon as possible because the process for approval can take a long time.

If you enter into an agreement like this, you should be aware that the underlying lawsuit will likely not be dismissed right away because the lender wants to make sure that you can complete the plan. Additional information on workout plans can be found at: www.ahclc.org. You can also contact the Lake County Housing Authority at 847-223-1170. You can also find federal programs which may assist you at: <http://makinghomesaffordable.gov>.

Refinancing: If a workout plan fails, you can payoff your loan by refinancing it. This would require a greater mortgage amount and may lead to higher monthly payments and/or a higher interest rate. You should be very careful of solicitations by mail, telephone or in person contact offering you assistance in refinancing your residence.

Bankruptcy: Filing a chapter 13 bankruptcy allows you to make monthly payments to pay back past due debt during a period of time which is usually 3 to 5 years. This may be your next option if the workout and refinancing do not work. The bankruptcy court will only approve the plan if it thinks that you can afford it. You should note that a bankruptcy filing stays the foreclosure case until the bankruptcy is over whether by dismissal or discharge or the bankruptcy stay is lifted to allow the mortgage foreclosure suit to proceed. Be cautious about solicitations for bankruptcy because filing a chapter 13 bankruptcy is designed for homeowners who suffered a temporary setback and are now in a better financial position.

Sale: If none of the other options identified herein work for you, you can still attempt to sell your home. You should list the house as soon as possible with an accredited realtor. You want the house listed quickly so that you have the maximum amount of time to sell the house.

Your lender may be willing to work with you to sell the house by way of a short sale. A short sale is when the proceeds from the sale are less than what you owe the mortgage company. If you choose this option, make sure you ask the bank and consult your tax advisor/accountant about any possible tax liability.

S. FORECLOSURE MEDIATION

If you did not participate in the voluntary mediation program at the beginning of your case, or if you did and your financial circumstances have changed, you may ask the court to refer the case to mediation. A motion for mediation in foreclosure can be found at <https://www.lakecountycircuitclerk.org/court-forms>.

When you were served with the Complaint and Summons you also received information regarding the mediation program. Make sure you read this information and comply with the deadlines for participating in this mediation program. If you enter the mediation program, it extends the deadlines for the filing of your Appearance and Answer.

Residential foreclosure mediation is a free program designed to help both parties expedite their progress through the court system. The mediation program is voluntary, and the objective of mediation is to resolve the case short of going to trial. Parties who decide to mediate will meet with the designated mediator in an attempt to reach a possible settlement in the case. If mediation is unsuccessful, the matter will proceed to trial.

T. WHAT CAN I DO IF I DISAGREE WITH THE JUDGE'S DECISION?

One option available to a party disagreeing with the Judge's decision is to file a Motion to Reconsider and Notice of Motion within 30 days of the judgment date. There are no ready to use forms for a Motion to Reconsider. You may visit the Law Library and Center for Self-Representation in the courthouse to look at form templates in legal form books. You also may want to seek the advice of an attorney to learn which option might be best for you.

Another option available is to appeal a Judge's decision to the Second District Appellate Court in Elgin, Illinois. There is a Notice of Appeal form now available at: <http://www.illinoiscourts.gov/Forms/approved/appellate>. You also may want to seek the advice of an attorney to learn which option might be best for you.

U. MISCELLANEOUS SUGGESTIONS

1. The Circuit Clerk will assign a number to each mortgage foreclosure case. Write down the number and refer to it in all dealings with the Circuit Clerk and Sheriff.
2. If you should change your address, phone number or email address after you file your Appearance, be certain to notify the Circuit Clerk and the opposing party of your new address by completing a Change of Address form. The form is available online at the Lake County Circuit Clerk's website.
3. All residential mortgage foreclosure court sessions are open to the public. You may attend any of these courtroom proceedings to familiarize yourself with the procedures. The courtrooms are opened at 8:45 a.m. and 1:15 p.m. Wednesdays, Thursdays and Fridays for foreclosure cases.
4. Court reporters are not provided in residential foreclosure cases. If you want a transcript of your trial, you must arrange for a court reporter at your own expense.
5. If you need additional information, you may call the Office of the Circuit Court Clerk or the William D. Block Memorial Law Library and Center for Self-Representation. **Remember**, court staff are not allowed to give legal advice. An additional resource which provides an Illinois Mortgage Foreclosure general timetable is available at: www.illinoislegaladvocate.org/index.cfm.
6. An approximate Lake County timeline for a residential mortgage foreclosure case can be found at:

<https://www.lakecountycircuitclerk.org/court-forms>

GLOSSARY OF TERMS

Answer - the homeowner's written statement where the homeowner responds to each paragraph in plaintiff's Complaint by admitting or denying what is alleged in a specific paragraph.

Appearance - the formal document by which a homeowner submits to the jurisdiction of the court.

Circuit Clerk - the elected official responsible for maintaining the court records, issuing Summons and subpoenas, collecting fines, and carrying out other business activities which support the Circuit Court.

Complaint - the initial document filed by the lender in a mortgage foreclosure case stating the claims against the homeowner.

Counterclaim - a claim presented by a homeowner against the lender following the claim of the lender.

Defendant - in a mortgage foreclosure case it is the person(s) or corporation from which the lender wants to obtain a judgment of foreclosure.

Evidence - any form of proof presented by a party for the purpose of supporting its arguments before the court.

Hearsay - evidence based on what a witness has heard someone else say rather than what the witness has personally experienced.

Inadmissible - evidence that under the rules of evidence cannot be admitted or received in court.

Plaintiff - in a residential mortgage foreclosure case the lender seeking to foreclose a mortgage against a homeowner.

Stay - the time period where court proceedings are stopped and the deadlines are suspended.

TELEPHONE LISTING

Law Library and Center for Self-Representation	847.377.2800
Circuit Clerk of the Circuit Court—Chancery Division	847.377.3212
Lake County Bar Association Lawyer Referral Service	847.244.3143
Prairie State Legal Services	847.662.6925

NOTES

Court Date: _____

Time: _____

Room: _____

Case No. _____

Additional copies of this pamphlet are available on the Nineteenth Judicial Circuit website: <http://www.19thcircuitcourt.state.il.us>.