

# CONSUMER'S GUIDE TO THE NEW JERSEY FORECLOSURE PROCESS



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In the State of New Jersey, if you do not pay your mortgage, the mortgage lender can foreclose on the property but only after following certain specified procedures. As a judicial foreclosure state, lenders in New Jersey must go to court in order to take your house back. The New Jersey Fair Foreclosure Act sets forth the rules that lenders must follow before and during the foreclosure process.

The term foreclosure refers to the court-ordered sale of property that was used as collateral for your mortgage loan. It is important to know that a lender cannot automatically take a house away from you, even if you have not paid the mortgage and are in default. The lender must go through the foreclosure process set forth below. This article presents a general overview of that process. Since each person’s situation is unique you should contact an experienced foreclosure attorney for advice specific to your situation.

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## When Does the Process of Foreclosure Start?

### Step 1: You Default on Your Loan.

You are considered to be in default when you miss one loan payment or breach your loan agreement in some other way. Under federal law, in most situations, the lender cannot file the foreclosure complaint until you are more than 120 days behind on your mortgage payment. The lender sometimes will send a letter to the homeowner after the first payment is missed.

### Step 2: The Lender Sends You a Notice of Intention to Foreclose

If it is a residential property, the New Jersey Fair Foreclosure Act requires that the lender send a Notice of Intention to Foreclose at least 30 days before the lender can file a complaint (sue you). The Notice of Intention to Foreclose must be sent by regular and certified mail, and starting on August 1, 2019, it cannot be sent more than 180 days before the complaint is filed. The law requires that certain information be included in the notice, such as: (1) the reason for the default; (2) the amount you must pay to cure the default and reinstate the loan; (3) your right to cure the default; (4) the name and address of the holder of the note and mortgage; (5) a representative that you can contact; and (6) information on New Jersey's foreclosure mediation program.

If you can cure the default (pay the full amount owed) at this point, the lender must accept your payment and cannot charge you attorney's fees or court costs. The mortgage lender usually waits until you have missed three mortgage payments before sending you a Notice of Intention to Foreclose.

## What Happens When a Foreclosure Lawsuit is Filed?

### Step 1: The Lender Files A Foreclosure Complaint

If the homeowner does not cure the default within 30 days after receiving the Notice of Intention to Foreclose, the lender can file a foreclosure complaint. Beginning on August 1, 2019, the complaint cannot be filed more than 180 days after the Notice of Intention is sent to the homeowner. If more than 180 days have elapsed, the lender must send another Notice of Intention to Foreclose before it can file the foreclosure complaint. The complaint is filed with the Office of Foreclosure which is a part of the Superior Court of New Jersey, and is located in Trenton. The Office of Foreclosure handles the foreclosure, and the case is not treated as contested unless the homeowner files an answer. The complaint must state all of the facts that give the mortgage lender the right to foreclose. The lender who files the complaint is called the plaintiff and the homeowner who is sued is called the defendant.

The complaint is a public document. Therefore, once it is filed you will likely receive legal and other advertisements offering to help you save your home. If you begin to receive several foreclosure related advertisements, it typically means that a foreclosure complaint has been filed against you.

### Step 2: The Plaintiff (Lender) Serves You with a Summons and Foreclosure Complaint

The lender must personally serve you with a copy of the summons and complaint. In certain situations, the lender may also send you a copy of the summons and complaint by regular and certified mail. Therefore, once the complaint has been filed, you can expect to have someone come to your house to personally serve you with a copy of the complaint. If you refuse to accept service,

or the lender cannot serve you, the lender will ask the court for permission to serve you by publishing the information in a local newspaper.

When you get the summons and complaint, you will again receive information about New Jersey's foreclosure mediation program. If you want to participate in the mediation program, you generally must make your request within 60 days of the date you received the complaint. If you do not request mediation within that 60-day time period, you will not be permitted to participate absent "exceptional circumstances." Importantly, the mediation program does not stop the foreclosure process from continuing.

If you have been served with a foreclosure complaint you should contact an experienced foreclosure defense attorney who can carefully review your case and identify any defenses you might have to the foreclosure.

### Step 3: You File an Answer to the Foreclosure Complaint.

The homeowner has the right to defend against the foreclosure lawsuit in court. To do so, you must file a contesting answer to the foreclosure complaint which details the reasons why the lender does not have the legal right to foreclose. You have 35 days from the date you are served with the summons and complaint to file a written answer.

It is also possible to file counterclaims against the mortgage lender if they have committed any violations, including:

- Failure to honor your loan modification;
- Violations of the Truth in Lending Act (TILA);
- Refusing to accept your payments to reinstate the mortgage; and
- Violations of the Real Estate Settlement Protection Act (RESPA).

## Step 4: The Office of Foreclosure Reviews the Answer to Determine if it is a Contesting or Non-Contesting Answer.

Your answer is filed with the Office of Foreclosure, which then reviews it to determine if it is a non-contesting or a contesting answer.

### **If you file a contesting answer:**

A contesting answer is one that challenges the lender's right to foreclose. If the Office of Foreclosure determines that a contesting answer has been filed, it will transfer the case to the Superior Court in the county in which the property is located where it will then be assigned to a judge. The judge will set a schedule for the matter to be litigated and will ultimately resolve the legal and factual issues raised in the complaint and answer. Once the Chancery Judge has resolved the legal and factual issues, if the foreclosure case has not been dismissed it will be returned to the Office of Foreclosure for entry of final judgment.

The lender will try to convince the court either by a motion (written request) or at a

trial that it has the right to foreclose on your property. The defendant (you, the homeowner) must convince the court that the lender does not have the legal right to foreclose for the reasons stated in the contesting answer.

### **If you do not file an answer, or if you file a non-contesting answer:**

When the homeowner does not file an answer within 35 days of being served with the summons and complaint, or files a non-contesting answer (an answer which admits the lender's allegations), the lender will file papers asking the court to enter a default. This means that you will not be able to file an answer unless you get permission from the Court to vacate the default.

### Step 5: Lender's Notice of Intent to Seek Final Judgment

Fourteen days before the lender files a request for the court to enter final judgment, the lender must send a Fair Foreclosure Act Notice to give the homeowner one last chance to pay the arrears and cure the default. If the homeowner sends a letter via certified or registered mail, return receipt requested, within 10 days saying they have a reasonable likelihood of getting the funds to reinstate (pay what you owe), they will have 45 days from the date of receipt of the letter to cure the default.

### Step 6: Lender's Request for Entry of Final Judgment

After the appropriate time passes from the service of the Fair Foreclosure Act Notice, the lender will file a motion for entry of final judgment with the court. The homeowner must be served with the motion. The final judgment entitles the lender to foreclose on the property. The homeowner does have the right to challenge the amount due even if an answer to the foreclosure complaint was not filed. The homeowner must support its challenge with documentation that shows that the amount due is incorrect.

### Step 7: Lender Obtains Final Judgment

After the lender obtains a final judgment, the lender is no longer required by law to allow you to pay the arrears and reinstate the loan and can require you to pay the full amount of the final judgment. You can apply for a loan modification after final judgement, as long as a complete application is submitted at least 37 days prior to the date of the Sheriff's sale.

## The Sheriff's Sale Process

Once the Court grants final judgment to the lender, the court will also issue a Writ of Execution directing the county sheriff to sell your house to the highest bidder at an auction. This is truly the final stages of the foreclosure process. Oftentimes the bank purchases the house. You will receive a notice telling you when your house is scheduled to be auctioned at the sale. A notice will also be posted in the newspaper.

### Homeowner is Entitled to Two Adjournments of the Sheriff Sale

A homeowner is entitled to two adjournments of the sheriff's sale. Currently each adjournment is for 2 weeks, but beginning July 29, 2019 the length of each adjournment will be increased to 30 days. Beginning on July 29, 2019, there will be a 5-adjournment limit for the Sheriff's sale (twice at the request of the lender, twice at the request of the homeowner and once if both the lender and the homeowner agree to an adjournment.)

To obtain these stays of the sale you must go to the county sheriff in person before the sale takes place a fee by cash or money order. Contact the sheriff's office in your county to find out the amount of the fee. You do not have to prove good cause or appear before a judge to obtain these stays.

After using your 2 adjournments, you need to file a motion with the court to ask that the sale be stayed or file a bankruptcy and receive the protection of the automatic stay to stop the sale.

## **Filing Bankruptcy to Stop the Foreclosure and Sheriff's Sale**

At any point in the foreclosure process, up to the date of the Sheriff's Sale, you can file a bankruptcy proceeding, which puts a hold on the foreclosure case and any scheduled sheriff's sale. A Chapter 13 bankruptcy may allow you to avoid the foreclosure and save your home by curing the past due payments and/or seeking a loan modification. You should contact an experienced bankruptcy attorney to carefully review your situation and advise you of your options.

## **What Happens After the Sheriff's Sale?**

### [Redemption-Getting the Property Back](#)

After your property is sold at a sheriff's sale, you have 10 days to get the property back, which is called the redemption period. In order to redeem the property, you must pay the full amount of the foreclosure judgment plus certain other amounts owed. A bankruptcy filed after the sheriff's sale extends the period of time in which you can redeem the property for an additional 60 days. At that point, you cannot raise any defenses to the foreclosure in bankruptcy court.

### [Proceeds of the Sheriff's Sale and Deed Transfer](#)

The money from the sheriff's sale is paid to the lender to make up for the homeowner's failure to pay. If the house sells for more than the amount of the foreclosure judgment, then the homeowner may be entitled to the difference. If the house sells for less than the amount of the foreclosure judgment, then the lender has the right to sue the homeowner for the rest of the money that the homeowner owes, which is called the deficiency. The deed to the property will be transferred to the lender at any time after the time to redeem expires.

After the sheriff's sale, the successful bidder at the sale will need to obtain a Writ of Possession in order to make you leave the property. After the sheriff's sale you will receive a notice from the Sheriff telling you when you must vacate the house. If you do not move out of the house by that date, the Sheriff can come and remove you and your belongings.

### **In Foreclosure? We Can Help**

Let Levitt and Slafkes, P.C. help you keep your home. Contact Levitt and Slafkes, P.C.'s experienced New Jersey foreclosure defense attorneys to help you through the New Jersey Foreclosure Process. If you're facing a foreclosure in New Jersey and want information about different ways to fight the foreclosure in court or save your house with bankruptcy or a loan modification please give us a call at 973-313-1200 or contact us online.

The information contained within this guide should not be construed to be either formal legal advice nor the formation of a lawyer/client relationship. The law office of Levitt & Slafkes, P.C. has been designated by an act of Congress as a debt relief agency. We have proudly assisted consumers in seeking Bankruptcy relief for over 30 years.