

When may a creditor foreclose?

In Virginia, a creditor (someone to whom you owe money) may not foreclose unless **you're more than 10 days late** with a payment. If you make all missed payments and any late fees, within 10 days of the due date, a creditor may not foreclose. If you are more than 10 days late with all or part of a payment, the creditor may foreclose.

However, if your creditor has agreed to accept your late payments or change your due date, foreclosure may not be allowed.

How do I avoid foreclosure of my home?

All homeowners are subject to events beyond their control that may make it hard to pay the mortgage. If you fall behind on your mortgage, **call and write your lender and clearly explain** your situation. Keep in mind that you can only keep your home if you can afford to pay your mortgage.

What else should I be doing?

BEWARE OF SCAMS. There are people who may try to take advantage of your financial difficulty. These people or companies claim to be counseling agencies that can help you.

Often these companies will ask you to pay large sums of money up front in exchange for services. They may also try to rush you through the process and make promises they cannot keep. Remember, **if it sounds too good to be true, it probably isn't true.** If you have doubts, contact an attorney before you pay anyone or sign anything.

What are the alternatives to foreclosure?

Your options depend on how past due you are, the amount you are delinquent or behind, and your loan type (for example, FHA, VA). When you are **30 to 60 days past due**, your alternatives are limited to those offered through the collection department of your mortgage company. These options are reinstatement or repayment.

If you are **60 or more days past due** and unable to bring your mortgage current, you should contact the Loss Mitigation Department at your mortgage company. Ask for a loan workout package. If you can afford to pay your mortgage, you may be able to keep your house through a loss mitigation option.

What if I do not qualify for a loss mitigation option?

In this case, you may need to give up ownership of your home. You still have a couple of ways to avoid foreclosure.

1. **Pre-foreclosure sale:** this means selling your house before a foreclosure sale at fair market value. In some cases, this may be less than the amount you owe on the house.

2. **Deed in lieu of foreclosure:** this involves returning the property to the lender before a foreclosure sale. This usually is granted only if you can't sell the property.

A mortgage default counseling service can help you figure out the best option.

Is a foreclosure done through court?

No. Under Virginia law, foreclosures are done outside of court. Virginia is a *non-judicial* state therefore the Trustee simply sells your property, usually at a public auction to the highest bidder. Before doing this, the Trustee must follow the rules set forth in your Deed of Trust. The Deed of Trust and *may* also include some additional protections for the mortgagee.

Do I have to move right after the foreclosure sale?

A foreclosure only affects who owns the property. **A foreclosure does not affect who has the right to use or occupy the property.** If the new owner wants possession of the property, the new owner must file an unlawful detainer action in court.

Must a creditor give me notice before a foreclosure?

The Trustee (a person who has the power to sell your property if you don't keep the promises in the Deed of Trust) must give you written notice, by certified or registered mail, telling you the time and place of the sale. You must get this at least 14 days before the sale.

Also, the Trustee must **advertise the foreclosure sale** in a newspaper of general circulation before the foreclosure sale. The Trustee must strictly follow the advertising requirements. If the Trustee does not do this, a court may set aside or void a foreclosure sale.

This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.

If you have a specific question, please consult Legal Aid WorksSM at:

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