

## **FORECLOSURE AND SHORT SALE CONSUMER RESOURCE GUIDE**

### **Overview**

**Homeowners and homebuyers in today's real estate market face unique challenges. Of special concern are issues arising out of the possibility of foreclosure on their homes, and possible alternatives. Foreclosures in the state have risen significantly.**

**ERA Jensen and Feinstein have created this Resource Guide to assist you in meeting the challenges of potential foreclosure. It includes general information about foreclosure and "short sales", as well as articles, publications and useful links.**

### **What is Foreclosure?**

**At the time of settlement, you signed a paper work agreeing that the mortgage company has a right to take ownership of the property through a process called foreclosure if you stop paying your monthly mortgage payments.**

**When you miss mortgage payments, in some cases for as short a period as 45 days, you are considered in default on your mortgage. Mortgage lenders can move your loan into collections, which can be the start of the foreclosure process.**

**If you are having trouble keeping up with your mortgage payments, or if you have received a notice from your lender asking you to contact them, don't ignore it. Contact your lender immediately to try to work out your options.**

### **Foreclosure Law**

**General information about the foreclosure process in Illinois can be found at:  
<https://www.realtytrac.cm/foreclosure-lasw/illinois-foreclosure-laws.asp>**

- Notice of Sale / Auction**

**It usually takes 2-3 months for the sheriff to properly advertise and give notice of the sale. The sheriff posts the sale notice on the property and in other public places at least 14 days before the sale date. The notice should include the date, time, and location of the sale, as well as a brief property description and the location. The notice should also be delivered to the borrower at least 10 days before the sale date. The notice of sale is published in two local newspapers chosen by the sheriff, appearing no more than three times per week for two weeks before the sale.**

**Generally, the sale is conducted by the sheriff and takes place at the property or at the local courthouse. After the sale, confirmation of the sale occurs within 1-3 months, and the sheriff transfers ownership to the**

winning bidder. Prior to confirmation, the borrower may contest the sale procedure, but the borrower has no right of redemption after the sale.

### Options in Foreclosure Situations

From: <http://www.hud.gov/offices/hsg/sfh/econ/econ.cfm#4>

### Call your Lender!!!

*(To get to the right person, you may need to ask for the department that handles loss mitigation or workouts or asset recovery or home preservation and be persistent.)*

#### 1. If your Problem is Temporary, discuss:

- **Reinstatement:** The lender agrees to accept the total amount owed to them in a lump sum by a specific date.
- **Forbearance:** The lender allows you to reduce or suspend payments for a short period of time after which another option must be agreed upon to bring your loan current. A *forbearance* option is often combined with a *reinstatement*, for example, when you know you will have enough money to bring the account current at a specific time in the future due to a hiring bonus, investment, insurance settlement, or a tax refund.
- **Repayment Plan:** You may be able to get an agreement to resume making your regular monthly payments, in addition to a portion of the past due payments each month until you are caught up.

#### 2. If it appears that your situation is long-term or will permanently affect your ability to bring your account current, discuss

- **Mortgage Modification:** If you can make the payments on your loan, but you don not have enough money to bring your account current or you cannot afford the total amount of your current payment, your lender may be able to change one or more terms of your original loan to make the payments more affordable. Your loan could be permanently changed in one or more of the following ways: (i) Adding the missed payments to the existing loan balance; (ii) Changing the interest rate, including making an adjustable rate into a fixed rate; (iii) Extending the number of years you have to pay.
- **Claim Advance:** If your mortgage is insured, you may qualify for an interest-free loan from your mortgage guarantor to bring your account current. The repayment of the loan may be delayed for several years.

#### 3. If keeping your Home is NOT an Option, discuss:

- **Sale:** If you can no longer afford your home, the lender will usually agree to give you a specific amount of time to find a purchaser and pay off the **total amount owed**. You will be expected to obtain the services of a real estate professional who can aggressively market the property.
- **Pre-foreclosure Sale of “Short Sale”:** If the property’s sales value is not enough to pay the loan in full, the lender must approve that they will accept less **than the full amount owed**.

This option can also include a period of time to allow your real estate agent to market the property and find a qualified buyer. (Ask if there is monetary help available to pay other lien holders and/or help toward paying a few moving costs.)

## **ILLINOIS FORECLOSURE TIMELINE**

The Illinois foreclosure timeline is typically anywhere between 210 and 270 days. A mortgage is a written agreement between a mortgage company and a home buyer. The mortgage makes your house collateral for your home loan. Collateral is security for a loan, so if you do not pay the mortgage company, they can try to take your house. This process is called a mortgage foreclosure.

In an "unopposed" mortgage foreclosure the borrower decides that there is no reason to try to stop the foreclosure. So, the borrower agrees to go forward as quickly as possible and not fight the foreclosure. If you are going to try to stop the foreclosure your process and timeline will be different. This will give you an idea of how long the foreclosure will take and when you will have to actually move out. This timeline is only a general guideline for an unopposed housing foreclosure case. The time frame for your case may be different.

**Third Missed Payment** Usually after the third missed mortgage payment, the loan is sent to the lender's attorney for foreclosure. A foreclosure action is a lawsuit filed to end your mortgage and take away your house. After the lender's attorney gets the information about your loan, he or she orders a title report. A title report is a document that states who owns, or has "title," to the property. This report also shows if you have any unpaid deeds of trust or mortgages on the property. Finally, the title report shows if you have any other limits on how your property can be used such as liens (the right to force the sale of your property to pay a debt) or covenants (an agreement about the use of your property).

**30 Days Later** The lender's attorney reviews the title report and writes the Foreclosure Complaint (a court document that says you have not paid your mortgage for a certain amount of time and the property is now being offered for foreclosure). The attorney also writes up other papers such as a Summons (a court order that you appear in court at a certain day and time). The lender's attorney reviews the title report to find if you have

any other mortgages on your property or if a mechanic's lien has been filed. A mechanic's lien is a claim against your property usually filed by a workman because you did not pay him for work done on your home.

7 Days Later The Foreclosure Complaint is filed in court and the summons is ready for service. Service is when legal papers are given to the opposite party. A Lis Pendens is recorded with the Recorder of Deeds. A Lis Pendens is a document that is filed with the recorder of deeds which stops you from selling your home until the foreclosure case is over.

Within 60 Days The Foreclosure Complaint is served, or given, to all parties by the Sheriff or a special process server. If a party cannot be reached in person, they can be served by putting a notice in the newspaper.

14 Days Later The lender's attorney reviews the court file to make sure that all parties have been served. Then the attorney sends a notice of motion (asking for a Foreclosure Judgment to be entered). The notice of motion will tell you when the court date is. You should go to court on that date.

You have 90 days after receiving the notice of motion to reinstate your mortgage. You reinstate your mortgage by paying all the money you owe on the mortgage and all costs and fees. If you do this, you cannot reinstate your mortgage again for 5 years. At the court date, any of these things can happen: · You can ask for a "continuance" to hire a lawyer. A "continuance" means that you're asking the court not to make a decision today, and to set a new court date to give you more time; · You can ask for more time to file an "appearance" and "answer". An appearance and answer are the forms you will need to file if you're going to represent yourself instead of getting a lawyer, and you think you have a defense to the foreclosure case; · The court could set your case for trial if you have some defense available to you; · If you have no defense to the foreclosure then the court may enter a judgment against you. But it is not likely that this will happen at the first court date. 21 to 60 Days Later

If you lose at trial or you do not reach an agreement with the mortgage company then a Judgment of Foreclosure and Sale (saying that you no longer own the property or have any interest in the property) will be entered against you in court. Once a Judgment of Foreclosure is entered your redemption period (when you can try to keep your house by paying off the overdue money within a certain amount of time) begins. Your redemption period ends: · 7 months after the date of service of the foreclosure complaint if you are living in the home · 6 months after the date of service if you are not living in the home, or · 3 months after the judgment is entered, whichever is later.

In order to redeem your mortgage, you must pay the amount of the judgment of foreclosure, which includes all money owed under the mortgage, all court costs, attorney fees and taxes. Within 7 Days after the Redemption Period Ends The foreclosure sale (of your property) takes place. The mortgage company must do certain things before the foreclosure sale can take place. A notice of sale must be published at

least 3 weeks in a row, once per week. The notice must be published in a newspaper "of general circulation," in the real estate section. It will usually be posted in a local paper. The notice may be published during the redemption period. The mortgage company does not have to mail you a notice of the sale.

21 to 30 Days Later The mortgage company will bring a motion in court to ask for confirmation of the foreclosure sale. A court will usually confirm a foreclosure sale unless you can prove one of the following: · Notice was not given in the right way · The terms of sale were unreasonable · The sale was conducted fraudulently (in a dishonest way) · Justice was not done You can go the sale if you want to.

If the sale price is less than the amount of money that you needed to redeem the property and the mortgage company purchased your property, you have a special right to redeem. This special right to redeem ends 30 days after the sale is confirmed. In order to redeem, you must pay the sale price, any additional costs and expenses approved by the court and any interest.

When the court confirms the sale they will give possession of the property to the buyer. This could be the mortgage company or a third-party buyer. The court will usually give you 30 days from the date the order is entered to leave the property.

30 Days Later You no longer have the right to stay in your house and the mortgage company can ask the court to have the sheriff remove you from the property if you do not do so by yourself.

After You Have Left the Property The foreclosure deed, which is a written document that says your property has been foreclosed, is recorded so that it is public record