



LEGAL ASSISTANCE FOUNDATION OF  
METROPOLITAN CHICAGO

# 4-Step Foreclosure PLAN

Learn about your rights and options in a  
foreclosure



**LEGAL ASSISTANCE FOUNDATION OF  
METROPOLITAN CHICAGO**

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## **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 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, and give you additional information about your rights. Upon receiving your foreclosure papers you should do the following:

1. Call your mortgage company to find out how much is owed, and to see if you can enter into some kind of workout plan.
2. Seek legal help regarding any possible legal claims you may have to defend against the foreclosure.
3. File an answer or appearance at the Daley Center within thirty days of receiving the foreclosure papers. If your income is low enough, you will be able to get the filing fee waived. By filing an answer, you will be entitled to receive notice of all future court proceedings and notice of any foreclosure sale that is scheduled.
4. Whether or not you have filed an answer, you should 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 will 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 visit the Circuit Court Cook County website to view your upcoming court dates at: <http://198.173.15.34/?section=CASEINFOPage&CASEINFOPage=2400> (select "CHANCERY" under division name and input either your case number or name to find your case).
5. There is a "help desk" for foreclosure cases in Room 1303 of the Daley Center (13<sup>th</sup> Floor). They can provide you with basic information on your case, and can also help you to file simple motions on a "pro se" (unrepresented) basis.

## How much time do I have?

From the date you are served, regardless of whether you have 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**

- 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. 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.

(See the attached Illinois Mortgage Foreclosure Timetable for more details on the foreclosure process and timeline.)

## 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= Look into refinancing**

**A= Ask about bankruptcy**

**N= Negotiate a sale**



### Option 1: Pursue a workout

One of the ways you can reinstate your loan in the 90 days after being served (or later, if the lender is willing) 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.” 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. Each time you talk with a representative from your lender you should take notes including date, time, name of representative, and what was said, including 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.

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. **Do not work with any person or agency which charges you an up-front fee to pursue a workout with your lender—any such person or agency is probably committing fraud and violating the law.**



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.



## 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 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 bankruptcy will not work for most

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. Most bankruptcies fail: they end up stopping the foreclosure for only a few months 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 (like Century 21, Remax, Coldwell Banker, etc.). 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 (since it must be sold within the redemption period discussed above). 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 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. Ask your bank about the tax liability associated with a short sale prior to entering into an agreement.
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.



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:

1. **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 is too late for you to take any action yourself.

2. **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 will typically 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.



### **Protecting Yourself**

Below are a few things to look out for before exercising your options.

1. 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.
2. 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.
3. Bring your own attorney to any signing to make sure everything is processed legally and you understand what you are signing.
4. Do not feel pressured to sign or give money to anyone promising to help you.
5. Seek out the help of one of the HUD-certified housing counseling agencies named in the attached list.

### **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 make sure and 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 court house and file a notice stating that you are entitled to the extra money from the sale. You can do this at the Daley Center in Room 1303 at the Pro-Se Desk.



Guard yourself from predators that offer you a deal to “help” you get your surplus. You are entitled to the money and do not need assistance in obtaining it. These predators will charge you huge fees for doing something that is very straightforward.

## **Helpful agencies**

Attached is a list of HUD-Certified Counseling Agencies. Below are some legal agencies which may lead you to lawyers who can provide you legal advice or representation regarding your home, mortgage, or foreclosure.

## **Legal Referrals**

1. Chicago Volunteer Legal Services
  - [www.cvls.org](http://www.cvls.org)
  - 312-554-2000
  
2. Chicago Legal Clinic
  - [www.clclaw.org](http://www.clclaw.org)
  - 773-731-1762
  
3. Chicago Bar Association (lawyer referral service)
  - [www.chicagobar.org](http://www.chicagobar.org)
  - 312-554-2000
  
4. Cook County Bar Association (lawyer referral service)
  - 312-630-1157

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

1. [www.illinoislegalaidonline.org](http://www.illinoislegalaidonline.org)
2. [www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com)