

A Maryland Judiciary Production  
*My Laws, My Courts, My Maryland*  
**The Foreclosure Process**

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In this video, we will talk about the foreclosure process. First, we'll define some terms you're likely to see or hear during a foreclosure. We'll talk about the foreclosure timeline in two parts: The first part will address what happens *before* your lender starts the court case; the second part will cover what you can expect *after* your lender begins the court foreclosure process. We'll also spell-out what happens during a foreclosure sale of a home. Finally, we'll give you some helpful resources and checklists. Foreclosure is a very complicated process. Get help as early as you can. This video focuses only on residential property.

**[STEP 1: Frequently-used Terms.]**

**First, we'll define the people or organizations involved in the process.**

You may be called the homeowner, a mortgagor, or grantor.

The bank, organization, or individual that holds your mortgage is called the lender.

The servicer is the organization or individual that collects your payments and is the "face" of your lender. The lender and the servicer may or may not be the same entity.

The substitute trustee is usually the law firm representing the lender. This is who will handle the sale and other foreclosure matters.

**Now, let's define some terms used throughout the process.**

When your mortgage payment is one day or more past the due date, your loan is said to be in default.

The term foreclosure refers to a legal process that permits a lender to sell your home.

Usually after a delinquency letter has been sent, the first official notice that you will get from the lender is a Notice of Intent to Foreclose. The lender MUST send you this document before filing any foreclosure papers with the court.

Loss mitigation refers to the ways you may avoid having the lender sell your home. In some cases you may be able to negotiate changes to the terms of the loan so you can keep your home. Loss mitigation may also include a short sale, cash for keys, or a deed in lieu.

A loss mitigation application is a document that the lender must include with its Notice of Intent to Foreclose. The lender will use the information on this form to determine if you are eligible for a loan modification or other loss mitigation.

An Order to Docket is the document that the lender files with the court stating that the lender intends to foreclose on your house. This is the start of the court case for foreclosure. The lender is required to send you a copy.

You have the right to request foreclosure mediation. A trained mediator is a third party neutral person who does not represent you or the lender. The mediator will help you discuss options with your lender.

Once the foreclosure process is nearly complete, and the court has approved the lender's request to sell the house, you can file a document referred to as exceptions after the sale.

Finally, a Motion for Entry of Judgement Awarding Possession and a Request for Writ of Possession are legal documents that allow a new owner to take possession of your house. The purchaser of the house files these documents after the court approves the foreclosure sale.

### **[STEP 2: Timeline: Before the Court Case]**

Now that you're familiar with some terms, let's go over a typical timeline for a foreclosure case. First, we'll go over the events that happen before the lender begins the foreclosure process in court.

Your lender may begin the foreclosure process if you default on the loan. When you miss a payment and fall behind on the mortgage, you are in default. This can happen even if you are just one day late paying your mortgage. You can usually fix a default by paying the lender what you owe. You may also have to pay interest and fees.

Once you have fallen behind on payments, a notice is the first sign that your lender is about to start the court process for foreclosure. You will receive a Notice of Intent to Foreclose in the mail.

If you get a notice, you can get help immediately by contacting the Maryland HOPE initiative. Maryland HOPE is a state program to help homeowners who are facing foreclosure. The Maryland HOPE hotline can connect homeowners with free housing counseling and legal services.

The lender must also include a loss mitigation application with your Notice. Remember, loss mitigation refers to ways you may avoid having your home go to foreclosure. Complete the application and return it as soon as possible. Do not put it off or delay returning it. Be sure to keep a copy of the application for your records along with the date you returned it to the lender or servicer. On the application you will provide information about your finances. You may have to attach documents like your paystub and tax returns. You will also get a chance to explain why you are in default. Your lender will use this information to determine if you are eligible for a loan modification or other alternatives to foreclosure.

What could happen if you do qualify for loss mitigation? The lender will contact you to discuss possible alternatives to foreclosure. Loss mitigation can include agreeing to move out in exchange for money. That is sometimes called “cash for keys.” Or, it might include the bank allowing you to allow you to sell your home for less than you owe. That is often called a “short sale.”

Keep in mind that there is no guarantee that you will get a loan modification or other alternatives. Still, be sure to submit the application in order to determine if you qualify.

In addition to the Notice and the Application, the lender must also send you information about housing counselors available through Maryland HOPE. You should reach out to the counselors to assist you with your loan modification application. They can help you communicate with your lender if you are trying to save your home. Get help as soon as you can.

As soon as your lender mails you that first packet – the one with the Notice, the Application, and the information on housing counselors -- a clock starts ticking. It's not long before the lender may file foreclosure papers with the court.

Let's review the checklist of action that you may take before the lender files foreclosure papers in court:

- Did you receive a Notice of Intent to Foreclose in the mail?
- Did you fill out the loss mitigation application and submit it? Did you keep a copy?
- Did you review the housing counselor information?
- Did you contact a counselor?
- Did you contact Maryland HOPE?
- Did you make a note on your calendar about 45 days after the postmark on the lender's packet? That could be the earliest date on which the lender may begin the court foreclosure process.

### **[STEP 3: Timeline: The Court Process]**

The lender begins the formal court process by filing an Order to Docket with the court. The lender must send you a copy of the Order to Docket. The lender must also include either a preliminary or a final loss mitigation affidavit.

If the lender sends a *preliminary* loss mitigation affidavit, it means the lender did not do a loss mitigation analysis before filing documents in court. If the lender sends a *final* loss

mitigation affidavit, it means that the lender has completed the analysis. The final loss mitigation affidavit must tell you why you aren't eligible for loss mitigation.

The lender will also send you information on how to request mediation. At this point, there is still another chance for you to work with your lender to avoid having your home sold. If you want to try mediation, you must file your request quickly. Foreclosure mediation costs \$50. If you cannot afford the fee, you may ask the court to waive the fee.

At mediation, you meet with the lender's attorney, the lender (who is usually on the phone), your attorney (if you have one), and a mediator. If you own your home with a spouse or relative, that person must also attend. For more information about foreclosure mediation, watch the My Laws, My Courts, My Maryland video *Foreclosure Mediation*.

If you do not reach an agreement in mediation, the lender can schedule your house for a foreclosure sale. If you think you have a good reason why the lender should not be permitted to foreclose on your home, immediately file a motion with the court. The sale can be set as early as 15 days after mediation occurs.

Let's review a checklist of the steps you may take during the first stages of the foreclosure process:

- Did you receive the Order to Docket in the mail?
- Did you contact Maryland HOPE?
- Did you fill out the request for mediation?
- Did you submit the mediation request on time and pay the fee?
- Did you watch the video *Foreclosure Mediation*?

#### **[STEP 4: What Happens at a Foreclosure Sale?]**

The lender must tell you when he or she plans on selling your home. You must receive that notice at least 10 days before the sale date. The sale usually takes place outside the courthouse, not at your home. You do not have to move out of your home on the sale date. You do not have to move until the court awards legal possession of the house to a new owner.

After the foreclosure sale, the lender must notify the court that the sale has taken place. The court must approve the sale. You may still challenge the sale of your home. Do this by filing exceptions within 30 days of the sale. In your document, state the reasons that the court should not approve the sale of your house. Exceptions are very limited, usually restricted to problems regarding how the home was sold. If you think there was a problem with how your home was sold, talk to a lawyer immediately. The court will consider your exceptions. If the time for filing exceptions has passed, or if the court denied your exceptions, the court will approve the sale.

After the court approves the sale, the purchaser of your house can file a Motion for Entry of Judgment Awarding Possession. If the court grants this motion, the new purchaser will have legal possession of the house. The purchaser must also send you an eviction notice. The new owner may also file a request for writ of possession. Once the new owner has filed those documents with the court, a sheriff will schedule a time for the eviction.

Let's review a checklist of steps you may take during and after the foreclosure sale

- Did you receive notice of the sale?
- Was the sale properly conducted?
- Have you considered speaking to an attorney about filing exceptions to the sale of your house?

- Did you receive an eviction notice and prepare to move?

### [STEP 5: Resources]

Maryland HOPE offers free help for foreclosure prevention. **You do not have to pay for housing counseling.** Maryland HOPE can refer you to free housing counseling resources. It can also refer you to free or reduced-fee legal resources. It is important to reach out to counselors and to be proactive in this process. Be your own advocate. Remember, help is available from a number of housing and legal aid organizations, including those listed here. (NARRATOR: DO NOT READ THE LIST.)

- Maryland HOPE: 877-462-7555 OR [mdhope.dhcd.maryland.gov](http://mdhope.dhcd.maryland.gov)
- Civil Justice: 410-706-5649
- Community Legal Services (Prince George's County): 240-391-6413
- Maryland Legal Aid Bureau: 888-213-3320
- Maryland Volunteer Lawyers Service: 443-451-4067 or 800-510-0050
- Public Justice Center (tenants only): 410-625-9409
- Pro Bono Resource Center of Maryland: 800-396-1274, ext. 3052
- St. Ambrose Housing Aid Center: 410-366-8550

Finally, the Home Affordability Modification Program (HAMP) is a federal program set up to help eligible homeowners with loan modifications on their home mortgage. Free expert advice is available by phone.

Let's summarize what you have heard in this video. Remember, foreclosure begins with a default. If you default, the lender will send you a Notice of Intention to Foreclose, followed by an Order to Docket. You are entitled to mediation if you request it in a timely manner. If you don't reach an agreement in mediation, the lender can sell your home. After the sale, the lender must file a report. You have 30 days after that report is filed to file exceptions to the sale. If the court approves the sale, the person who buys the house at the foreclosure sale may ask the court to award him or her possession of the home. If the court approves that request, the purchaser may send you an eviction notice and ask that the sheriff evict you. If you are facing foreclosure, get help immediately by contacting Maryland HOPE.

This has been a production of the Access to Justice Department of the Administrative Office of the Courts and the Maryland Volunteer Lawyers Service. For more information, visit [www.mdcourts.gov/accesstojustice](http://www.mdcourts.gov/accesstojustice).