

# Frequently Asked Questions - Foreclosures

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## ***How Fast Can A Foreclosure Happen?***

In Arizona, a foreclosure can be completed in less than four months from the time the loan becomes delinquent. The mortgage company can record a Notice of Default, which is the first step in the foreclosure process as soon as the loan is 31 days delinquent. Typically, the first indication a homeowner gets that a foreclosure has commenced is notification of the Notice of Default. Once the Notice of Default has been recorded, the foreclosure can be completed in 91 days.

## ***How Can I Stop The Foreclosure?***

The best way to stop the foreclosure is to bring the loan current. To do that you would need to pay all delinquent amounts as well as the costs and fees incurred by the mortgage company to file and process the foreclosure. Many borrowers are not able to bring the loan current and are forced to look at other alternatives to avoid foreclosure. Even if you are well into the foreclosure process, most lenders are willing to grant you additional time to remedy the situation if they believe it is reasonably likely they can avoid acquiring your property through foreclosure. Among the alternatives, the lender might be receptive to:

Get the property sold so you can save your equity.

If you don't have equity, cooperate in a Short Sale and accept a discounted payoff as "full payment" on the loan.

A Forbearance Agreement in which you agree to both stay current on the loan going forward and to a schedule of repayment on delinquent amounts.

## ***What Options Do I Have To Avoid Foreclosure?***

There are several things you can do to avoid foreclosure. It is usually best to let your lender know, right away, that you intend to solve the problem so they won't have to get the property in foreclosure. Here are some of your options:

- Sell Your Property
- Refinance
- Negotiate a Forbearance Agreement
- Do Nothing
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## ***If My Lender Forecloses, Can They Come After Me For The Loss?***

In order for your lender to recover losses incurred on your mortgage as a result of foreclosure, the lender would need to do a Judicial Foreclosure. Arizona is one of seven non recourse states, which does not allow for a deficiency judgment on purchase money loans on residential real estate on single family homes on 2.5 acres or less. The lender of purchase money is normally left with the proceeds generated at the Trustee's Sale or from a sale after acquiring the property at the Trustee's Sale. This is another reason why lenders would prefer to work with the homeowner to solve the problem and avoid getting the property through foreclosure. There are different rules that apply to HELOC (Home Equity Line of Credit). Please give us a call to find out more or consult a qualified real estate attorney.

## ***Can I Just Deed My Property To Someone And Avoid Foreclosure?***

Deeding your property to a third party does not eliminate your obligations related to the loan. Unless the mortgage is paid off when you deed the property, you will almost certainly remain as the party primarily responsible for the repayment of the loan. If the lender eventually forecloses, it will be on your credit record. If you deed your property to a third party you also give up control of the property. It is nearly always a bad idea to simply deed your property to a third party. Do not deed your property to someone without paying off the loan unless you have consulted with an attorney.

#### ***What will a Foreclosure do to my credit?***

A completed foreclosure is the most damaging event your credit status can encounter – worse than bankruptcy. A foreclosure on your credit record will negatively influence your ability to borrow money for years.

For most people, it is well worth the time and effort to solve the problem before the foreclosure is done.

#### ***What does a Notice of Default mean?***

If a Notice of Default has been recorded against your property it means your lender has started the formal foreclosure process. In Arizona, a borrower must be 31 days delinquent before a lender can commence a foreclosure action by recording a Notice of Default. A borrower has over three months (91 days) from the recording of the Notice of Default to work something out with their lender and avoid the completion of the foreclosure. Once the Notice of Default has been recorded, it is important to act to avoid losing the property and having a foreclosure on your record.

**Important Point:** Many second loans are charging the loan off and sending it to a collection agency well before the first lien holder forecloses on the property making it much harder to complete a short sale. If you are not making payments, time is of the essence in seeking your options.

#### ***Can I try a Forbearance Agreement to avoid Foreclosure?***

Yes, you can and you should look at a Forbearance Agreement as an option to avoid foreclosure.

**FORBEARANCE AGREEMENT** – An agreement between a mortgage company and a borrower in which the borrower promises to stay current on the mortgage going forward and agrees to a repayment plan for delinquent payments and costs and fees associated with the foreclosure action. A Forbearance Agreement is a tool that allows the borrower to keep the property.

The lender will expect you to show that the delinquency was due to circumstances out of your control (injury, illness, job loss) and that the financial difficulties have been corrected.

#### ***I Have Heard Of Foreclosure Scams, What Should I Look For?***

Unfortunately, there are those who will try to take advantage of your temporary hardship. These people will try to convince you that they can provide a quick and easy solution to your mortgage problem. However, if it seems too good to be true, it usually is. Here are a few examples of the scams you could encounter:

*“Sign the deed to the property to us and we will take care of everything.”*

Sometimes called the “Bailout Scam,” the investor tells the homeowner that he will be allowed to stay in the home and pay “rent” to the investor until a long term solution can be worked out. Once the owner signs the deed to the property over to the investor, big trouble usually follows. If the investor has the deed, the investor has control. Nevertheless – the homeowner who signed over the deed is still responsible for the loan. The investor nearly never makes the mortgage payments and the homeowner is hit with the foreclosure.

*“For a consulting fee, I will work with your lender to find a solution.”*

Your lender will work with you directly if you want to arrange to make up past payments and keep your property. This would normally involve a Forbearance Agreement. There is no need to pay someone else what you can do with a little effort.

#### ***Will A Short Sale Stop A Foreclosure?***

While the Short Sale itself does not stop the foreclosure, lenders normally work with a homeowner and delay the foreclosure if necessary, if they receive a legitimate Short Sale proposal. The key here is to

submit a complete, well organized, Short Sale proposal. The lender does not want your property, and would rather resolve the situation before the foreclosure is complete.

***If My Lender Has Started A Foreclosure, Can I Still Sell My Property?***

Absolutely, in fact, your lender would rather you sell the property than allow the foreclosure to continue.

Your lender does not want to take your property through foreclosure. Even if you have no equity in the property, the lender wants to find a solution. This is precisely why lenders agree to a Short Sale and accept a discounted payoff to fully satisfy the loan. In a Short Sale, the lender in nearly all cases, pays all the closing costs – including title fees, escrow fees and the real estate commission.

***Should I Speak With My Lender When They Call?***

It is best that you not avoid calls or letters from your mortgage company, particularly if a foreclosure is pending. Your mortgage company does not want to take your property through foreclosure. The mortgage company would rather look for options to avoid foreclosure. When speaking with your mortgage company, be honest about your circumstances and listen for them to possibly suggest options. The mortgage company knows the best way for them to limit losses on a delinquent mortgage is to work with the homeowner. Be sure to keep notes of all conversations you have with the mortgage company including dates and times of calls, the name of the representative with whom you spoke and the details of the conversation.