

Missouri Legal Services

Legal aid programs providing free legal help to the low-income and disadvantaged in Missouri



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Home Foreclosures

How to Avoid Losing Your Home in a Mortgage Foreclosure

Missouri your mortgage company does not have to file a lawsuit in court to foreclose. It only has to send you one letter by certified mail notifying you of the date your home will be sold. Then it can foreclose, whether or not you receive the certified mail letter.

If you fall a couple of months behind in payments, your mortgage company may start to foreclose. Because a foreclosure sale may make it impossible for you to keep your home, it is very important to take whatever action you can to try to stop the foreclosure *before the foreclosure sale date*. Always check your mail carefully for a certified mail letter (*or notices from the post office that they are holding a letter for you*) and be sure to read the letter. If you get a foreclosure notice, *do not delay* taking action.

How Can I Prevent a Foreclosure?

Pay any past-due mortgage payments that you owe. Catching up on missed payments is the best way to prevent a foreclosure. Cut unnecessary expenses to increase your income to cover your missed payments. Look for ways to increase your income, such as through unemployment compensation, disability income and food stamps. Have a garage sale. Consider a bank loan, pension loan or withdrawal from an IRA to pay this debt. If you dispute that you owe the debt, consult a lawyer about your rights. Make getting your mortgage current your first priority after food and utilities.

Contact your mortgage company about a workout agreement. It is possible that you and your lender can agree to a workout agreement (sometimes called a forbearance agreement or repayment plan) to bring your account current and avoid a foreclosure sale. To negotiate a workout agreement, it is best if you involve a housing counselor or an attorney.

File a Chapter 13 bankruptcy. If you can't catch up on your payments and you can't negotiate a

workout agreement, you could file a Chapter 13 bankruptcy to stop the foreclosure sale of your home and have a court-supervised workout. *This must be filed with the Bankruptcy Court before the sale.* In a Chapter 13 bankruptcy, you would have the opportunity to save your home by paying your mortgage payments, plus monthly payments on your mortgage arrearages, through the Bankruptcy Court. So your income must be large enough to pay your mortgage payment, your other household living expenses, plus pay monthly payments on your past-due mortgage debt. For advice on filing bankruptcy, consult an attorney.

Offer a deed-in-lieu of foreclosure. This is where you and your lender agree that you will deed your home back to the lender and move out. By doing this, you will lose any equity you have in the home, but the lender may agree to cancel your debt. Keep in mind, however, that cancellation of debt may have adverse income tax consequences.

Sell your home. If you can't afford to pay the mortgage on your home, talk to a real estate agent about the possibility of selling your home. Ask what fee the agent would charge to sell your home, the estimated time before your home might sell, and the selling prices of comparable homes. You may want to contact more than one real estate agent, so that you can compare information before you decide whether to sell your home. Ask your lender to agree in writing (through an agreement sometimes called a pre-foreclosure sale) that you can have a certain amount of time to sell your home before a foreclosure will occur. That will permit you to market your home to obtain the best price, and it will buy you time to consider and pursue other options. A sale will also avoid the effect of a foreclosure on your credit history, and if your house is worth more than you owe, you may get some money from the sale!

Refinance your home loan. This may be a viable solution for you, particularly if you have sufficient equity in your home to create realistic refinancing options that *avoid* higher interest rates, excessive fees and costs, consolidation of other debts that may only put you at greater risk of losing your home, and higher monthly payments. Keep in mind that if you are behind in your mortgage payments, you may find it difficult to find a reputable lender to refinance your mortgage. Walk away from predatory mortgage lenders who promise low-cost refinancing and low-interest rates, but then (*just before the foreclosure sale*) sock you with a higher interest rate and thousands of dollars in excess fees and refinancing costs. The best rule of thumb is to *be wary of refinancing if you are facing foreclosure.* Check on other alternatives first. Ask lots of questions about the loan fees and charges and *read everything* in your loan documents very carefully before you sign!

Consult an attorney immediately. An attorney can help you negotiate a workout agreement, advise and help you with a Chapter 13 Bankruptcy if that is appropriate for you, as well as help you consider your other options. If your mortgage loan has a high interest rate, very expensive fees, terms you never agreed to, requires a large balloon payment, or charges a pre-payment penalty, an attorney can advise you of your available remedies if your loan terms violate any applicable laws.

What Happens After a Foreclosure Sale of My Home?

Once the foreclosure sale has taken place, the new owner must send you a written notice to leave the home. If you do not vacate the home, the new owner can sue you under the Missouri Unlawful Detainer statute. Under this law, the owner can sue you for *double* the rental value of your home and for possession of your home. So it is important that you move from the home by the date in your notice to vacate, or contact the new owner to try to negotiate for additional time to move from the house. You may want to offer to pay a reasonable sum in rent for the additional time you want to stay in the house.

Although you can be sued if you stay in the home after the foreclosure sale, the new owner cannot legally remove you and your possessions from the home without a court order. *If an eviction without a court order is attempted, you should contact the police immediately.*

Will I Still Owe the Mortgage Debt After the Foreclosure Sale?

Maybe. Often your mortgage company is the only bidder for the home at a foreclosure sale, and the house is sold to the mortgage company for the amount of the debt. If that happens, then you do not owe additional debt to your mortgage company after the sale. However, if your home is sold at foreclosure for less than the amount than you owe, then your mortgage company could sue you for the difference. If you are sued for this debt, consult an attorney immediately.

Where Can I Get Help if I am Facing a Foreclosure Sale?

Contact a free [Legal Aid lawyer](#) immediately.

Contact a housing counselor. To negotiate a forbearance agreement, preforeclosure sale, or deed-in-lieu of foreclosure, you may also contact a housing counselor for assistance. There are many HUD-certified, free [housing counseling agencies](#) in Missouri.

Notice

Prepared by Missouri legal aid lawyers. January, 2006. Sometimes the laws change. We cannot promise that this information is always up-to-date and correct. If the date above is not this year, call us to see if there is an update. We provide this information as a public service. It is not legal advice. By sending you this information, we are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.