



Foreclosure (old)

Court Processes and Foreclosure: Receiving a Complaint

How do I know if I am in foreclosure?

New Mexico is a judicial foreclosure state, which means that, in order for a bank to proceed with a foreclosure, the lender who owns your mortgage must proceed through the court system. The lender will be the Plaintiff in the lawsuit, and the first document filed in the foreclosure action will be the Plaintiff's Complaint. In the Complaint, the lender will demand payment or that you forfeit the property. You will also receive a Summons that will require you to respond within 30 days.

Read your complaint and take note of any deadlines. Then, think about what you want to happen to your home.

- Do you want to stay in your home, and try to negotiate for a lower monthly payment?
- Do you just need a temporary reduction in payments? Or
- Do you want to sell your home and focus on minimizing any financial losses?

Help is available for free, so look for a HUD-certified housing counseling agency near you and never ever pay someone to help you negotiate with the lender! To see a list of certified housing counseling agencies in New Mexico from the U.S. Department of Housing and Urban Development, click [here](#).

What should I do once I have been served with the Complaint for Foreclosure?

You will have 30 days to respond from the day you receive the Complaint and the Summons. To respond, you must file an Answer with the District Court. You should also file an Entry of Appearance, which will require the lender to keep you informed about new developments in your case. You should file with the District Court that is named in the top left-hand corner of your complaint. If you live in Albuquerque, you will probably file with the Second Judicial District Court on the southwest corner of Central and Fourth Street. You should make three copies of everything you file with the court: one to be kept on file at the courthouse, one to keep for your

records, and one to send to the Plaintiff's attorney.

If you need help answering your complaint, the clerks at the courthouse may be able to help you find forms or direct you to organizations that can guide you through the foreclosure process. If you can, it is always best to try to hire an attorney. The State Bar Association can help refer you to lawyers who specialize in this area of law. You may also be able to receive free legal services, but be forewarned that there are eligibility requirements for these services and not all organizations will have the resources to help everyone in need of legal advice. You will also be required to sign a retainer agreement with any attorney (including those who don't charge you) before you can get advice about your rights and how the foreclosure will proceed.

What happens if I don't respond to the Complaint?

If you don't respond to the Complaint within 30 days of receiving it, the lender (Plaintiff) can file a Motion for Default Judgment. This may result in an automatic judgment in favor of the lender!

If you don't feel comfortable writing the Answer by yourself, the United South Broadway Corporation offers workshops where you can get information on the foreclosure process and receive forms that will help you respond to the Complaint. Workshops are completely free and open to anyone. Call (505) 764-8867 for information on times and locations.

Easing the Effects of Foreclosure: Alternatives, Loss Mitigation, and Working with the Bank

There are a number of options for homeowners who are trying to save their homes or minimize potential losses. This section will provide a basic overview of the types of loss mitigation. Remember: your chances of successfully negotiating with a bank will increase if you work with an HUD-certified housing counselor at one of the local counseling agencies. HUD-certified housing counseling is always free, and you should be very wary of anyone who asks you to pay for these types of services.

1. Applying for a LOAN MODIFICATION

If you find that you are unable to make mortgage payments under the terms of your current mortgage, getting a loan modification could help by reducing your interest rates or lowering your monthly payments by extending the amortization period. A loan modification is often the best way to prevent a foreclosure because ultimately it will permanently change the terms of your mortgage agreement.

Loan modifications are a type of loss mitigation that occurs separately from the foreclosure

action. The loss mitigation department at a bank may not be in close contact with the department that works on foreclosures, and you should keep this in mind throughout the foreclosure process. Even if a bank is working with you on loan modification, they may also continue with the foreclosure action. For more information on loan modifications and how they work, click on [this link to see a useful fact sheet from the U.S. Department of Housing and Urban Development](#).

The first step will be to take stock of your situation, by figuring out what type of modification might be available to you and where you are in the foreclosure process.

STEP 1: What kind of Loan do you have?

When considering your options for loss mitigation, the first step is to figure out whether your loan is government sponsored. Having a government-sponsored loan can qualify you for certain loss-mitigation programs, but it can disqualify you from others. If you do have a government-sponsored loan, contact your government agency to see what types of options might be available to you.

Government agencies that may sponsor your loan:

FHA (Federal Housing Administration)

If your loan is sponsored by the FHA, it will say so at the top of your mortgage note. See [HUD's webpage on the FHA](#) for more information.

Fannie Mae and Freddie Mac

It may be unclear whether Fannie Mae, Freddie Mac, or a private entity owns your mortgage.

To see whether your mortgage is owned by one of these government entities, go to [Fannie Mae Loan Lookup](#) and [Does Freddie Mac Own Your Mortgage?](#) for assistance in determining whether either of them has your loan. Freddie Mac's loan lookup tool will ask for your social security number.

VA Home Loans Program

VA Home Loans are private loans that are guaranteed by the government. They are only available for homes that are personally occupied by eligible veterans. For more information on VA Home Loans, go to the [United States Department of Veterans' Affairs website](#) on home loans.

USDA Home Loans

Like VA Home Loans, USDA Home Loans are only available for a certain group of eligible borrowers. Generally, these loans are for people who meet income requirements and live in rural areas as defined by the USDA. For more information on USDA Home Loans, go to the [USDA's Rural Development Website](#).

STEP 2: If you don't have a government-sponsored loan, are you eligible for a HAMP Loan Modification?

HAMP stands for "Home Affordable Modification Program." Banks who received TARP funding from the government are required to review homeowners facing foreclosure for a loan modification through the HAMP program. Homeowners with Fannie Mae, Freddie Mac, FHA, VA or USDA home loans are not eligible for HAMP, although these entities offer other types of loan modification programs.

A HAMP modification can:

Reduce your monthly mortgage payment to 31% of your gross monthly income.

Reduce your interest rate to as low as 2% for the first 5 years.

Extend your amortization period to stretch out loan payments.

Give you \$5,000 toward your principle loan balance if you make all the new monthly payments on time for the first five years.

In order to receive a permanent loan modification under HAMP, you will have to make payments during a three-month trial period plan. The United South Broadway Corporation recommends making trial period plan payments for as long as the lender will accept them, even if the lender does not give you a permanent loan modification within three months.

STEP 3: If your loan is owned by a private lender and you aren't eligible for HAMP, see if your lender will consider giving you an in-house loan modification.

Through an in-house loan modification program, you may be able to get a loan modification similar to the one offered by HAMP.

In-house loan modification programs vary by lender, so you should see what kind of loans they might be willing to offer you. A HUD-certified housing counselor can also help you communicate with the bank.

2. Other Types of LOSS MITIGATION and ALTERNATIVES TO FORECLOSURE

Loss Mitigation and Foreclosure

If a loan modification does not work for you, there are lots of other ways to lessen the detrimental effects of foreclosure with loss mitigation.

Refinancing

This option is generally only available to borrowers with good credit. Refinancing is where

another lender agrees to pay off your existing mortgage and enter into a new loan with you. Requirements for refinancing include:

Being current on your mortgage, and

Having no payments more than 30 days late within the past year. Your new loan also cannot exceed 125% of the home's current market value.

Forbearance

A forbearance is an agreement with the lender in which the lender agrees not to foreclose and reduces or suspends payments for a given period of time. Unlike a loan modification, a forbearance agreement is not a permanent solution for homeowners facing foreclosure. However, getting a forbearance can help people who are unable to make mortgage payments because of unforeseen problems like sudden illness or temporary unemployment.

Bankruptcy

Bankruptcy is an option for borrowers who have a lot of debt and can no longer pay their creditors. The idea is that bankruptcy typically helps borrowers by liquidating assets to pay debts or creating a repayment plan. Bankruptcy is handled through the federal bankruptcy courts. As always, it is best to hire an attorney to handle a bankruptcy proceeding, and you can get recommendations for lawyers who specialize in this area from the [New Mexico State Bar](#). You can also go to the website for the United States Bankruptcy Court for the District of New Mexico to get [free forms for pro se \(self-represented\) litigants](#).

The New Mexico State Bar also offers a series of [workshops](#) in Albuquerque and Las Cruces, in which you can hear a presentation on bankruptcy followed by free one-on-one consultations.

There is no guarantee that bankruptcy will save your house. However, it can give you time to work with the bank on a repayment plan, get caught up on payments, or work on applying for a loan modification.

Reinstatement

In a reinstatement agreement, the homeowner repays the missed payments and the lender allows the homeowner to continue making payments at the rate that is on the original mortgage and note. The lender may also be able to offer you a forbearance if you are able to show that additional funding, like a bonus or tax refund, will be available in the future. If you are able to reinstate, the foreclosure action can be dismissed, but be aware that there may be late fees or other charges associated with a reinstatement plan.

Pay-Off and Redemption

A pay-off is a situation in which the borrower pays off the entire loan in full plus all associated fees and charges. If you are able to do this at any time during the foreclosure proceeding, the foreclosure action can be dismissed.

After a foreclosure sale, the pay-off is called redemption. In New Mexico, the Right of Redemption period is usually 9 months. In general, this means that if you are able to pay the equivalent of the highest bid for your home within 9 months of the foreclosure sale, you may redeem the property.

Short Sale/Deed in Lieu of Foreclosure

When other options have failed, a short sale can be a good alternative to foreclosure. In a short sale, the bank allows the borrower to pay off the loan by selling the home for less than its full value. The money from the sale goes to the bank, and the borrower is able to walk away. Before you agree to a short sale, make sure to find out whether there is deficiency – a remaining balance on the mortgage debt that has not been forgiven by the bank.

A deed-in-lieu is a similar instrument in which all interest in a property is given back to the lender, and in exchange, the lender forgives the debt. A deed-in-lieu is often preferable to foreclosure because the homeowner has more bargaining power and can incur less damage to a credit score.

Reverse Mortgage

Reverse mortgages allow certain homeowners age 62 or older to convert home equity into cash, without having to sell their houses. Instead of making payments to the lender, the lender will make payments to you – and you won't have to pay them back until you die, move, or sell the home. Your estate will be used to repay the cash you received from the reverse mortgage plus interest and other fees, and if there is any remaining equity then it will go to your heirs.

A reverse mortgage can be a good idea in some situations – but consumer protection groups want to make sure you know what you're getting into before you agree to one. See "Reverse Mortgages: Get the Facts Before Cashing in on Your Home's Equity" from the Federal Trade Commission and "Frequently Asked Questions about HUD's Reverse Mortgages" from HUD for more information.

Cash for Keys

Cash for Keys is a program that can help cover relocation costs for homeowners who have to vacate. In order to receive Cash for Keys, the homeowner must agree to move out on a set date, and leave the home in "broom swept" condition – meaning that the home has already been completely cleaned and there is no damage other than normal wear and tear. Cash for Keys typically provides between \$1,000 and \$3,000.

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