

LawHelpNewMexico

Advancing Fairness and Justice for All

www.lawhelpnewmexico.org



Foreclosure

Court Process

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 foreclose on your home, the lender who owns your mortgage must file a lawsuit and get a foreclosure judgment. The first step in that process is filing a Complaint with the court. If you are served with a court summons and Complaint, you must file an answer at the court within 30 days. Detailed instructions and a form you can use for your Answer are available at www.KeepYourHomeNewMexico.org.

Help is available for free, so look for a HUD-certified housing counseling agency near you and legal resources in New Mexico. You should never pay anyone to help you stop a foreclosure (except a licensed New Mexico attorney) and you should never hire an out-of-state legal service to help you because only New Mexico lawyers can practice in our courts. To see a list of certified housing counseling agencies in New Mexico from the U.S. Department of Housing and Urban Development, click [here](#). For legal resources and how to contact a lawyer, click [here](#).

If you are behind on your mortgage payments or in foreclosure, you should seek help right away; don't wait. However, if you have a court deadline (such as your deadline to file an Answer) and you haven't been able to get legal help yet, you should file your Answer anyway. Missing a deadline or court hearing can only hurt your case.

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 judge can enter an automatic foreclosure judgment against you. Further details and court forms are available at www.keepyourhomenewmexico.org.

Can I be evicted?

You cannot be evicted from your home until the judge orders it, usually at the very end of the court case after the house has been auctioned. You cannot be evicted except by the sheriff with a court order.

Foreclosure Settlement Mediation Programs

Some judicial districts have mediation programs specifically tailored for foreclosure cases. If you live in one of these districts, your judge may order you to attend a mediation workshop and participate in mediation to try to settle your case. In the mediation program, a neutral mediator will work with you and the bank's attorney to see if a settlement is possible. If your case is not resolved in mediation, the lender may move forward with the foreclosure in the court case. Even if you don't live in a district with a foreclosure mediation program, you can ask the judge to appoint a mediator for your case.

Alternatives, Loss Mitigation, and Working with the Bank

There are a number of options for homeowners who are trying to save their homes or transition out of their homes. 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 not trust anyone who tells you they will help you get a loan modification for a fee.

1. LOAN MODIFICATION

If your income has changed and you can't afford your mortgage payments or you are too far behind to catch up, a loan modification could help by rewriting the terms of your loan to bring it current or lowering the amount of the monthly payments. The loan modification process is separate from the court process, so even if you are working with your bank on loss mitigation, you must still file an Answer with the Court and comply with court deadlines.

Every mortgage loan and bank has different programs and requirements for loan modifications and how to qualify for them. You should contact your mortgage servicer or the Plaintiff's attorney if you would like to apply for a loan modification in addition to working with a HUD-Certified Housing Counselor.

2. OTHER ALTERNATIVES TO FORECLOSURE

Sell Your Home

If your home is worth enough to pay off the mortgage, you can hire a real estate agent for free and sell the home to resolve the foreclosure.

If you owe more than the home is worth, you may be able to sell your home on a short sale, meaning that the mortgage company agrees to accept less than the full amount due. The potential benefit to the homeowner from a short sale is avoiding a foreclosure judgment and the risk of still owing money to the bank after the foreclosure. However, if you are behind on mortgage payments that will still be reflected on your credit report.

Reinstatement – Pay the past due amount

You have the right to bring your mortgage loan current at any time before the end of the foreclosure case by paying the entire amount past due including fees. If you think you have the ability to do this, you should request a reinstatement quote from the Plaintiff's attorneys' office and follow the payment instructions on the quote.

Refinance

A delinquent mortgage loan can be refinanced and paid off with a new loan. Many homeowners are unable to qualify for refinance because of poor credit, insufficient income or insufficient equity in the home. A reverse mortgage may be an option for homeowners over 62 years old because they typically do not have these requirements.

Pay-Off or Redemption

You can pay off your entire mortgage debt during a foreclosure to keep the home if you are able to do so. You can also sell your home and use the proceeds to pay off the mortgage.

You also have the right to redeem your home after it has been sold at a foreclosure auction by paying the sale price plus costs. The right to redeem typically only runs for 30 days after the judge approves the sale. If you want to redeem, you should contact the Plaintiff's attorney as soon as possible.

Deed in Lieu of Foreclosure

A deed-in-lieu means that the homeowner deeds their home to the lender instead of going through the foreclosure process. The possible benefit of this is avoiding a foreclosure judgment and the risk of still owing money to the bank after the foreclosure. However, if you are behind on mortgage payments that will still be reflected on your credit report.

Cash for Keys

Payments from the foreclosing lender to the homeowner, sometimes called "Cash for Keys" or "Relocation Assistance/Incentive" are when a bank offers to pay the homeowner money to voluntarily move out by an agreed date and leave the house clean. If you are interested in this type of agreement, you should contact the bank's attorney and make an offer for when you can move and how much money you would like to be paid.

Bankruptcy

Bankruptcy does not automatically resolve a foreclosure, but it may in some cases postpone it or allow the homeowner to repay past due amounts through the bankruptcy case. Keep in mind that filing a bankruptcy usually costs between \$300 and \$3,000.

The New Mexico State Bar has a free workshop in Albuquerque and Las Cruces where you can receive a consultation with a bankruptcy lawyer to see if bankruptcy can help in your case.

If you are not sure what option is right for you, you can consult with a HUD-Certified Housing Counselor or a New Mexico licensed attorney.

