

Foreclosure / Forfeiture

Introduction

If you fall behind in your monthly house payments, the seller or lender may try to take your house back. This is generally called foreclosure. If your house is foreclosed, you may lose not only your house, but also all the money you've invested in it.



The information here is general information only. For help with your own personal situation, visit a lawyer in person or get advice from a lawyer by calling a legal

hotline.

- If you're low-income and **don't** live in King County, call: CLEAR at 1-888-201-1014, 9:15 a.m. – 12:15 p.m., Monday through Friday.
- If you live in **King County**, call the King County Bar Association's Neighborhood Legal Clinics at (206) 267-7070 between 9:00 a.m. and noon, Monday – Thursday, to schedule a free half-hour of legal advice.

◆ You'll see citations in this packet. Citations tell you the law that supports the statement that comes before the citation. Use citations to look up the law at your local law library or online at <http://apps.leg.wa.gov/rcw/>, or to tell the court when you're trying to make a legal argument. RCW stands for Revised Code of Washington, which is the law of Washington State. The references to the law are up to date as of the date this packet is published. The law sometimes changes before the packet can be updated.

There can be many different reasons why homeowners get behind on their mortgage payments. Perhaps it's because of a job loss, decrease in income or an increase in debts. If you're behind on your mortgage payments, you could lose your home.

If you believe that you may need a lawyer, and legal services can't help you, try to find an attorney who'll charge you a reduced fee for your first appointment by checking the yellow pages of your telephone directory under "Attorneys." There may also be a listing for a referral program operated by your local bar association.

How was my home financed?

The foreclosure procedure will vary depending on the type of financing you used when you bought your house. Financing of a home is usually through one of the following methods:

1. Mortgage

2. Deed of Trust
3. Real Estate Contract

Look at the documents you signed when you bought your home to figure out what type of financing you have.

What is the procedure for foreclosing on my house?

A. Mortgage (see RCW 61.12)

If you fall behind in your monthly mortgage payments, the lender (usually a bank or mortgage company) can begin the foreclosure procedure immediately, although they often wait until you've missed several payments.

A mortgage can only be foreclosed by filing a court action in the Superior Court of the county where your house is located. The lender must notify you of the lawsuit by serving you with court papers called a Summons and Complaint. In the lawsuit, the lender will ask for a money judgment against you for the full unpaid balance of the mortgage. The lender also will ask the court to order the county sheriff to sell your home at public auction (sheriff's sale) to pay the money judgment against you.

If you receive court papers, see a lawyer immediately. Your lawyer can determine whether you have any defenses to the foreclosure and can advise you on how to protect your interests in other ways. If the judge orders your home sold by the county sheriff at the sheriff's sale, you still have several rights:

- If you can claim your home as a homestead under Washington law, you may be able to live in your home for at least eight months after the sheriff's sale. In some cases, you may be able to live in your home for up to twelve months after the sheriff's sale.

- Anytime during the foreclosure action and up until eight months after the sheriff's sale, you have the right to sell your home and pay off the mortgage debt. In some cases, you have this right up until twelve months after the sheriff's sale. In either case, you may be able to sell your home for enough money to pay off the mortgage debt and keep the surplus funds from the sale, if any, for yourself.
- Whether or not you live in your home after the sheriff's sale, you may be able to buy back ("redeem") your house from the purchaser at the sheriff's sale up until eight months after the sheriff's sale, or in some cases, twelve months after the sheriff's sale.

If your house is sold for less than the balance you owe on the mortgage, you may be liable to the lender for the difference.

B. Deed of Trust (see RCW 61.24)

If you have a deed of trust and you fall behind in your payments, the lender has the option to foreclose on your house without going to court. Or the lender can foreclose on the deed of trust like it's a mortgage, by going to court.

If the lender forecloses on your house without going to court, s/he must first give you a *Notice of Default* and then, at least 30 days later, give you a *Notice of Trustee's Sale* and *Notice of Foreclosure*. When you receive any of these notices, see a lawyer immediately.

- You can avoid foreclosure by making up the delinquent payments at any time until 11 days before the sale. You'll also have to pay the lender's expenses in starting the foreclosure process.

- The house can't be sold until at least 190 days have passed from the date you fell behind in your payments. You can continue to live in the house during this period.
- If your house is sold, you must move out within 20 days after the sale or an eviction action may be filed against you. If you fail to move within 20 days after the sale, the purchaser may immediately file an eviction (unlawful detainer) action, after providing you notice. [R.C.W. 61.24.060](#). For additional information on how unlawful detainer actions work, please see our publication [Eviction and Your Defense](#).
- Once your house is sold, you have no right to get it back and the money you've put into the house will be lost.
- If your house is sold for less than you owe the lender, you ordinarily can't be required to make up the difference.

If the lender forecloses on your deed of trust like a mortgage, s/he must follow the procedures for foreclosing a mortgage described in the preceding section. You'll have the same rights in the foreclosure action as a person with a mortgage.

C. Real Estate Contract (see [RCW 61.30](#))

If you have a real estate contract and you fall behind in your payments, the seller can end ("forfeit") your contract without going to court. The seller may also foreclose your contract like a mortgage.

If the seller intends to forfeit your real estate contract without going to court, s/he must first send you a Notice of Intent to Forfeit, and then send you a Declaration of Forfeiture. If

you receive any of these notices, see a lawyer immediately.

- Your real estate contract can't be forfeited until at least ninety (90) days have passed from the date the seller records the Notice of Intent to Forfeit.
- You can avoid forfeiture by making up the delinquent payments at any time until the date stated in the Notice of Intent to Forfeit. You'll also have to pay the seller's expenses in starting the forfeiture action if payment of these expenses is required by the terms of your contract.
- If your real estate contract is forfeited, you must move out within ten (10) days after the day the seller records the Declaration of Forfeiture. If you don't move out, the seller may start a lawsuit to evict you.
- If your real estate contract is forfeited, the money you have put into the house will be lost. You won't, however, owe the seller any more money.

If the seller forecloses your real estate contract like a mortgage, s/he must follow the procedure for foreclosing a mortgage described in an earlier section. You'll have the same rights in the foreclosure action as a person with a mortgage.

How can I avoid foreclosure?

Don't wait until a foreclosure action has been started. Contact the lender or seller as soon as you fall behind. Explain why you fell behind and what arrangements you can make to catch up on your payments.

A. Possible Alternatives to Foreclosure

- If you can start making payments again, you can ask the lender to “recast” the loan. The payments you missed will be spread over the rest of the loan, increasing each monthly payment by a small amount.
- The lender may allow you to make partial payments on the back amount, in addition to your monthly payments, until you’re caught up.
- If your payments are too high, you may be able to “refinance” the loan. The original loan will be canceled and a new loan made to pay off the balance that you owe. Even though the new loan may have lower monthly payments, it will probably cost more in the long run.
- You may deed the house back to the lender or seller. You’ll lose your house if you do this, but you’ll avoid the additional costs of a foreclosure action.
- You may be able to sell the house yourself before the foreclosure sale or forfeiture and save some of your equity.
- You may be able to file a chapter 13 bankruptcy petition and present a plan for catching up on your house payments. See www.washingtonlawhelp.org for more detailed information on chapter 13 bankruptcy. (Look under “consumer & debt.”)
- You also have up to eight months (and in some cases twelve months) to sell your house after the sheriff’s sale when your mortgage has been foreclosed, your deed of trust has been

foreclosed through a court proceeding, or your real estate contract has been forfeited through a court proceeding. [RCW 6.23.020\(1\)](http://www.washingtonlawhelp.org). (If your deed of trust is foreclosed without a court proceeding, you can’t sell your house after the trustee’s sale. If your real estate contract is forfeited without a court proceeding, you can’t sell your house after the contract has been forfeited.)

- You may be eligible for a new federal program which would allow you to modify the terms of your loan and make it easier and more affordable for you to pay. For more information, see <http://www.makinghomeaffordable.gov>.
- If you’re on active military duty, you may have additional protections under both state and federal law. Consult with your JAG attorney or an attorney who specializes in military law.

B. Special FHA, HUD, RHD¹, and VA Requirements

If you have an FHA or HUD insured loan, a VA guaranteed loan, or a RHD-financed home, there may be special requirements that the lender must follow if you fall behind in your payments. Contact an attorney to be sure your rights are protected. In some cases you may be entitled to a reduction in your monthly payments or a temporary suspension of your monthly payments.

¹ Formerly FmHA.

C. Foreclosures for Unpaid Property Taxes and/or Special Assessments

If you're a senior citizen or are disabled, and you're facing a foreclosure action because of unpaid property taxes and/or special assessments, you may be eligible to have your property taxes reduced or to postpone payment of your property taxes or special assessments under two different programs in Washington. Contact the County Assessor's Office where you live or an attorney for more information. Or read our publication [Property](#)

[Tax Exemptions for Senior Citizens and Disabled People](#) at our website, www.washingtonlawhelp.org.

◆ **Remember:** A foreclosure is very serious. Not only is your home in jeopardy, but also your credit rating. See a lawyer immediately if you're served with any court papers or notices. If you can't afford a lawyer, contact your local legal services office or your county bar association.

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This publication provides general information concerning your rights and responsibilities. It isn't intended as a substitute for specific legal advice. This information is current as of the date of its printing, July 2009.

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