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FORECLOSURE

When you borrow money to buy a house or land, the creditor usually takes a security interest in the property you buy. This means that if you don't pay, the creditor can foreclose upon (or take back) that property. However, you have important legal rights that protect you.

When may my mortgage company foreclose on my home?

- Almost all mortgages in Virginia are secured by a Deed of Trust. A Deed of Trust is a deed of the property from you to a Trustee, who usually is a lawyer. The Trustee has the power to sell your property if you don't keep the promises in the Deed of Trust. This includes your promise to pay the mortgage payments on time, in full, every month.
- Your Deed of Trust will tell you clearly what terms the creditor must follow before it starts foreclosure. This includes such important things as how many days advance notice the creditor must give you before starting foreclosure.
- The Consumer Financial Protection Bureau (CFPB), which is a federal agency, has set forth rules that say there can't be a foreclosure on some mortgages until the borrower is at least 120 days behind in payments. This does not apply to all mortgages. You should consult with an attorney to see if this applies to your situation.

I don't think I can make my mortgage payments but I don't want to go through a foreclosure. What are some of my options?

- Contact your lender immediately to ask about loan modification. You may be able to restructure the terms of your loan to make your monthly payments more affordable. This may include reducing the interest rate or extending the period of the loan. The lender cannot foreclose while you are trying to work out a modification.

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- Refinancing may be an option, depending on your interest rate and the amount of time left on the mortgage. Be careful, as some refinancing offers can end up costing you more, or are scams. Look for reasonable rates and terms and have a knowledgeable advisor review the proposed loan if you have any questions. Refinancing usually includes special fees, so you may need to have a significant amount of cash to pay up front.
- If you have not yet received a foreclosure notice and you cannot afford to continue paying for your home, you may want to find a realtor and sell it.
- You may be able to negotiate with your lender to accept a deed in lieu of foreclosure. This means you voluntarily turn over your home to the lender to prevent foreclosure. You should not agree to this unless the lender agrees to something in exchange, such as releasing you from liability for the balance remaining on the mortgage.
 - Have an attorney review the written agreement before signing.
- Be suspicious of any “foreclosure assistance or rescue company” that contacts you through the mail or by phone. Many of these operations are fraudulent; at best they charge a lot and cannot guarantee that they will save your home.
- Call HOME (Housing Opportunities Made Equal) in Richmond at (804) 354-0641. They do not charge for their services. They can give you advice and may even help you with your loan. (<http://phonehome.org>)

I received a notice saying that my house payments are going to be accelerated. What does that mean?

- It means that the creditor is saying you’re in default and that all the money you owe, in the past and in the future, is due right now.
- If you make all missed payments plus any late fees, within 10 days of the due date, the creditor may not accelerate your loan.
- When a loan is accelerated, you no longer have the right to make monthly payments. You must pay it all at once.

I am more than 10 days late with my house payment. Is it too late for me to catch up?

- No, it may not be too late, depending on how past due you are, the amount you are delinquent and what type of loan you have. You may be able to catch up unless you have received a notice that your loan has been accelerated.
- In order to avoid foreclosure, you must pay all missed payments plus any late fees.

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- When you are 30 to 60 days past due, your alternatives are limited to those offered through the collection department of your mortgage company. Your options depend on how past due you are, the amount you are delinquent, and your loan type (e.g., FHA, VA, Conventional). You will need to contact your mortgage company to learn about your specific options. Those options are:
 - Reinstatement, or
 - Repayment
- If you are 60 or more days past due and unable to bring your loan current, you should contact the Loss Mitigation Department at your mortgage company and request a loan workout package.
- If you have received an acceleration notice, you may want to consider filing bankruptcy in order to keep your house and land. There are many factors involved in a decision to file bankruptcy. You should consult with an attorney. (See below for more information on bankruptcy.)

How does a foreclosure work?

- If your mortgage is secured by a Deed of Trust, the foreclosure will be done by a Trustee.
- You will probably receive at least one letter from the Trustee, so that you will know who it is.
- You will also receive a copy of the foreclosure notice that will be advertised in a local newspaper. It will tell you who the Trustee is, where the foreclosure sale will be held, and when it will take place.

What are the requirements that must be met before a foreclosure sale is allowed?

- The Trustee must give you written notice, by certified or registered mail, at least 14 days before the sale is to take place. The notice must state the date, time, and place of the sale.
- The Trustee must also advertise the foreclosure sale in a local newspaper of general circulation:
 - The number of times depends on the Deed of Trust.
 - If the Deed of Trust doesn't say how many times, the Virginia Code states the number of times (§55-59.2 Code of Virginia):
 - At least once a week for four successive weeks, or
 - At least once a day for five consecutive days, if the property is located in a city or neighboring county.
- The foreclosure sale may not take place until at least 8 days after the first advertisement and it must take place within at least 30 days of the last ad.
- The trustee sells your property, usually through auction at the courthouse.

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Will I get any of my money back after the foreclosure sale?

- It is very unlikely that you will get any money – usually, the sale is for less than the value of the home and you will still owe money.

When do I have to move if my house is sold at a foreclosure sale?

- You do not have to move until the new owner gives you notice to move in writing.
- Even then, you have the right to stay in the house until the new owner files an Unlawful Detainer (eviction) in court and the Judge says you must move.
- If the judge rules in the favor of the new owner, the judge must give you at least 10 more days in which to move.
- If you have not moved by the end of the 10 days, the sheriff, based on the court order can execute a Writ of Possession. This allows the sheriff to remove you and your belongings from the home, but you must receive at least 72 hours advance notice.
- The new owner may not cut off the utilities, lock you out, or remove you or your belongings from the home without first going to court.

Can a bankruptcy stop a foreclosure sale?

Bankruptcy means you ask the court to excuse you from your duty to repay your creditors. A person or business you owe money to is called a creditor. Bankruptcy allows you to discharge (get rid of) most of your debts, but also keep a certain amount of property. Two kinds of bankruptcy apply to individuals and married couples not in business. These are a Chapter 7 (or straight) bankruptcy and a Chapter 13 (debt adjustment) bankruptcy.

Once you file for bankruptcy, most – but not all – debt collection must stop. This is called the “automatic stay.” Filing for bankruptcy stops foreclosures, repossessions, utility cutoffs, debt collection lawsuits, garnishments, levies, attachments, evictions where a judgment of possession has not been entered, and most other actions to collect debts. However, filing for bankruptcy does not stop an eviction where a judgment of possession has been entered, or an eviction based on illegal drug use or danger to property.

In Chapter 7 bankruptcy, what happens to a house I’m buying?

If you’re buying a house, you may have to give it back to the creditor. In a Chapter 7, there are a number of ways you can keep your house. If you are current on your payments, you may “reaffirm” the debt by agreeing to keep the debt even though you filed bankruptcy. However, if you are behind in your payments, you may have to file a Chapter 13 to keep property you’re buying on credit. A final way to

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keep property is to “redeem” it. This means you pay the creditor what the property is now worth, not what you still owe on it. (This rarely happens because it requires you to have a large sum of money.)

Even if you can use one of these ways to keep your house in a Chapter 7, you still may lose the house to the Bankruptcy Court if you have more “equity” in it than you can protect under Virginia’s debtor exemption laws. (Equity means the fair market value minus the amount you still owe on the house.) Issues like this need to be carefully reviewed by a bankruptcy attorney.

In a Chapter 13 bankruptcy, what happens to a house I’m buying?

In a Chapter 13 bankruptcy, you may not have to give back, redeem, or reaffirm a house you’re buying. Instead, you may be able to keep a house you’re buying even if you’re behind on payments. To keep the house where you live, you must make current payments, and you get three to five years to catch up missed payments.

My son/daughter just got called up for military service and now s/he has received a foreclosure notice on her/his house.

- The “Servicemembers Civil Relief Act” is a federal law that contains special rules for men and women called up for active duty.
- Generally, the act prohibits the sale, foreclosure, or seizure of property while the person is on active duty.
- This applies only if the mortgage was signed before the person was called up or signed up for regular military service.
- The act also protects the service member’s spouse and children.
- You may first want to call the lender and tell them that your child is in active duty to see if they will stop the foreclosure.

Resources:

Foreclosure Prevention Counseling: 1-888-995-HOPE (4673). A HUD approved agency to any homeowner having trouble paying mortgage. 24 hours a day.

<http://hopenow.com>

Virginia Lawyer Referral Service 1-800-552-7977; some lawyers charge \$35.00 for an initial interview.

Housing Opportunities Made Equal (804) 354-0641 – Advice, legal representation, and debt counseling:

www.phonehome.org

Avoiding Foreclosure: Virginia: <http://www.hud.gov/local/va/homeownership/foreclosure.cfm>

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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