

Foreclosure When You Have a Deed of Trust

Introduction

If your house is in foreclosure, your best chance to keep your home is to act quickly and with the help of a housing counselor or an attorney. Both a housing counselor and an attorney can help you evaluate options that may be available to help save your home from foreclosure.

◆ Read this publication only if you have a deed of trust. If you have a real estate contract or a mortgage, read our publication called [Foreclosure/Forfeiture](#), available at www.washingtonlawhelp.org.

What is a Deed of Trust?

A deed of trust is a recorded document that shows the homeowner owes a certain amount of money to the bank for their home. In Washington, *most banks finance home purchases with a deed of trust*. When you have a deed of trust, the bank can foreclose on your home without going to court.



What is Foreclosure?

If you fall behind on your home loan payments, the bank may try to take your house back. The process that the bank must go through to take your house back is generally called foreclosure.

The Foreclosure Process

The foreclosure process usually begins with a homeowner failing to make a regularly scheduled loan payment. This is called default.¹ From the moment of default the bank must comply with each step in the foreclosure process before it can take your house back.

The foreclosure process described here includes recent changes in the foreclosure process that will not go into effect until July 22, 2011.

Step 1:

Pre-Foreclosure Notice: A bank may send you a number of letters if you miss a payment, but the first notice that they are required to send by law is a notice that informs you of your right to “meet and confer,” which means that you can request an in-person meeting.

- If you do not request a meeting with the bank, the bank must wait *30 days* before it can continue on to the next step and send you a notice of default.
- If you do request a meeting with the bank, then the bank must wait *90 days* before it can send you a notice of default.

Step 2:

Notice of Default: *Immediately* following, or maybe even preceding, receiving a notice of default the homeowner can have a housing

¹ A homeowner may also be in default if they fail to pay their property taxes or their insurance, they intentionally damage their house, or they violate other provisions of the Deed of Trust.

counselor or attorney request **mediation**. Mediation provides a neutral setting where both the homeowner and the bank are obligated to act in good faith, exchange paperwork, and discuss alternatives to foreclosure. A homeowner cannot independently request mediation and **MUST** be referred to mediation by an attorney or a housing counselor. For more information on mediation see: [Homeowner’s Guide to Foreclosure Mediation](#).

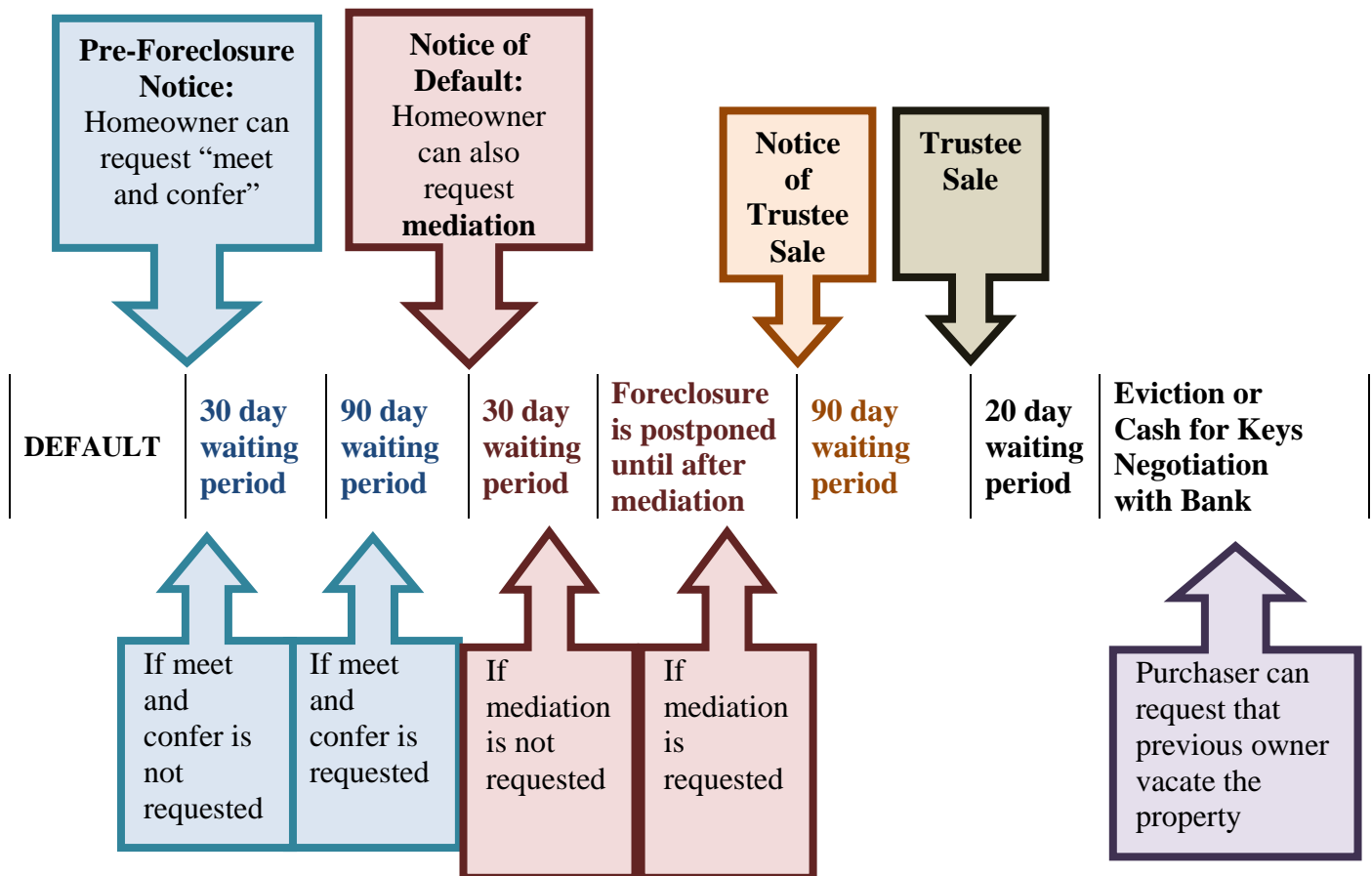
- If mediation is not requested, the bank must wait *30 days* from sending the notice of default before it can publish the notice of trustee sale
- If mediation is requested, the bank may not publish the notice of trustee sale until after mediation has taken place.

Step 3: Notice of Trustee Sale: The notice of trustee sale will list the date on which your house will be sold. The sale cannot be scheduled for at least 90 days from when the notice of the trustee sale is published. *You can avoid foreclosure by making up your late payments as late as 11 days before the trustee sale.* Some banks may accept payments even later.

Step 4: Trustee Sale: Your home will be sold at auction. After 20 days the buyer can request that the previous owner leave the residence. Renters living in foreclosed properties can remain in the property for at least 90 days after the sale.

Step 5: Eviction or Cash for Keys negotiation

Foreclosure Timeline



How to Avoid Scams

Unfortunately, there are dishonest people and businesses that take advantage of homeowners facing foreclosure. Many advertise “foreclosure rescue” or “home loan modification” services. Some may take your money and then allow your home to go into foreclosure anyway. Others charge fees for services that you can receive for free or at low cost from a HUD (Department of Housing and Urban Development) certified agency.

Here are some general guidelines for avoiding scams:

- Don't: sign over your deed to someone who promises to give it back later.
- Don't: pay a large fee up front to someone who promises to modify your loan.
- Don't: give anyone direct access to your credit card or bank account.
- Do: work with licensed individuals and companies
- Do: use a HUD approved housing counseling agency for free or at low cost.
- Do: consult an attorney.

See the *Foreclosure Resources* section of this publication for information on how to locate a HUD certified agency, verify an individual's license, or contact an attorney.

Alternatives to Foreclosure

Do NOT wait until foreclosure has started. Take action as soon as you fall behind on your payments. Your best chance to keep your home is to act quickly and with the help of a housing counselor or an attorney

If your bank has already started the foreclosure process, and your home is financed by a deed of trust, you have several options:

- Refinance
- Loan modification
- Sale

- Short sale or deed in lieu
- Strategic default
- Bankruptcy

Refinance: When you refinance a loan, you can shop among several banks and possibly obtain a new loan with more affordable payments than your current loan. To obtain refinancing, you usually need good credit. But even if you do have good credit, banks may not approve you for a new loan.

Modification: In a loan modification, your current bank may change the terms of your loan to lower your monthly payments. If your loan is held by Fannie Mae, Freddie Mac, or other participating banks, you can apply for modification under the Making Home Affordable program (<http://makinghomeaffordable.gov/>). This program can suspend foreclosure proceedings while the bank determines if you qualify for a modification. If you qualify, the bank should offer you a modification. Even if you don't qualify for the government program, the bank may be able to offer you a loan modification based on terms decided by the bank.

Sale: You can sell your house and satisfy your debt if your house is worth more than you owe on it. If you sell for more than the amount owed on your loan, you keep the additional money. However, if your bank has already started foreclosure proceedings, it may foreclose on your house before you have the chance to complete a sale. If you choose to sell your house, contact a real estate agent to list your house and inform your bank that you're attempting to sell it.

Short Sale or Deed-In-Lieu: With a short sale, your bank can agree to let you sell your house for less than you owe in order to satisfy your loan. With a deed-in-lieu, you give your house to the bank to satisfy your loan. In either case, you'll lose your house. If you have more than one loan, all your banks must agree to allow a short sale or deed-in-lieu. If you agree to a short sale or deed-in-lieu, you should usually

not agree to a “deficiency judgment,” where you still owe the rest of your loan to the bank.

Strategic Default: For a strategic default, you’d stop making payments on your house and allow the bank to foreclose. This would allow you to save money until the bank takes the house. After foreclosure, you’d owe no more money to the bank for your primary loan, but you’d lose your house and be less able to obtain credit in the future. If you have more than one loan, you’ll still be liable for the debts on your second or third loans.

Chapter 13 Bankruptcy: In chapter 13 bankruptcy, you can temporarily postpone foreclosure of your home while a court allows you to restructure your debt. If you can continue to make your current home loan payments while also paying off the delinquent amount over three to five years, then you may be able to keep your home. If the court determines that you cannot afford your loan, however, your house will still be subject to foreclosure.

Options available to deed of trust homeowners facing foreclosure:

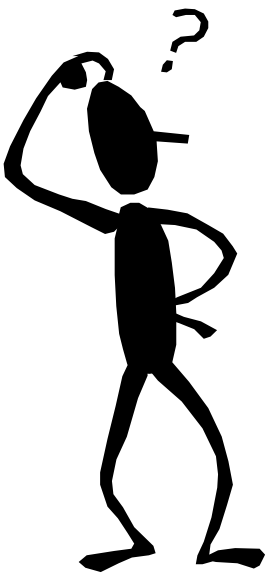
<u>Option</u>	<u>When to consider</u>	<u>Pros</u>	<u>Cons</u>
Loan Refinance	<ul style="list-style-type: none"> You earn enough income to afford payments after refinancing. 	<ul style="list-style-type: none"> Keep your home. You can shop for a loan with any bank. 	<ul style="list-style-type: none"> You need to have good credit. Banks may not approve a new loan.
Loan Modification	<ul style="list-style-type: none"> You earn enough income to afford payments after modification. 	<ul style="list-style-type: none"> Keep your home. Bank should modify your loan if you qualify for a federal program. 	<ul style="list-style-type: none"> Not everyone qualifies. Only available with your current bank.
Sell your house	<ul style="list-style-type: none"> You owe less than your house is worth (you have equity). 	<ul style="list-style-type: none"> Fully satisfy your debt. Keep proceeds from the sale. 	<ul style="list-style-type: none"> You must find replacement housing. Bank may foreclose before you can sell.
Short Sale or Deed in Lieu of Foreclosure	<ul style="list-style-type: none"> You owe more than your house is worth (loan is underwater). 	<ul style="list-style-type: none"> Your debt is fulfilled and you owe no more money (depending on agreement). 	<ul style="list-style-type: none"> You sell your home or you deed it to your bank. Bank may not agree. Hurts your ability to obtain credit later.
Strategic Default	<ul style="list-style-type: none"> You owe more than your house is worth. You only have one home loan. 	<ul style="list-style-type: none"> Your debt is fulfilled and you owe no more money on your primary loan. 	<ul style="list-style-type: none"> Bank takes your home. Hurts your ability to obtain credit later. You must still pay additional loans.
Bankruptcy	<ul style="list-style-type: none"> You’ll need to make your current home loan payments, <u>plus</u> payments on delinquent amounts and other debts. 	<ul style="list-style-type: none"> Debt payments are restructured. Keep your home if you can make new payments. 	<ul style="list-style-type: none"> You must pay off delinquent amounts and other restructured debts over 3-5 years. Hurts your ability to obtain credit later.

Special Cases

If you have an FHA- or HUD-insured loan, a VA-guaranteed loan, or an RDH- (formerly FmHA) financed home, there may be special requirements that the bank must follow if you fall behind in your payments. In some cases you may be entitled to a reduction in your monthly payments or a temporary suspension of your monthly payments.

If you're a senior citizen or disabled, and you're facing a foreclosure action because of unpaid property taxes and/or special assessments, you may be eligible for two different programs in Washington that can reduce or postpone the amount you owe in unpaid property taxes or special assessments.

If you fall into any of these categories, contact an attorney to be sure your rights are protected.



Frequently Asked Questions:

Q: Can I live in my house during foreclosure?

A: *Yes.* You may continue to live in your house throughout the foreclosure process and at least 20 days after the date of the sale.

Q: If my house is auctioned off, do I have to pay any remaining balance to the Bank?

A: *Maybe.* If you only have one home loan, then your debt is settled once your house is foreclosed – even if the house sells at auction for less than you owe. However, you do remain liable for additional loans. Also, if the house sells at auction for more than you owe, you have a right to request the extra amount.

Q: Can I get my house back after foreclosure?

A: *No.* You have no right to get your house back after foreclosure. However, if the house sells at auction for more than you owe, you have a right to request the extra amount. You may also sue

for damages if the foreclosure wasn't conducted lawfully.

Foreclosure resources

This publication contains general information only. For help with your personal situation utilize one or more of the following services:

Legal Hotline: If you're low-income and **do not** live in King County, call CLEAR: 888-201-1014 (toll-free). Lines open 9:15 AM – 12:15 PM, Monday through Friday.

Legal Hotline: If you're low-income and live in **King County**, call 211 (from within King County) or 800-621-4636 (toll-free). Lines open 8:00 AM – 6:00 PM, Monday through Friday.

Lawyer Referral: Local bar associations can refer you to local lawyers (**not** necessarily low-cost services). See <http://www.wsba.org/atj/contact/lawref.htm> for a list of local referral numbers.

Housing Counselors: Find a HUD-approved housing counselor at <http://www.hud.gov/local/wa/homeownership/hsgcounseling.cfm> or call 877-894-HOME (877-894-4663).

Homeownership Information: Information on homeownership and foreclosure at <http://homeownership.wa.gov>

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