



The Foreclosure Process

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FORECLOSURE

- Legal process the lender must follow to end your ownership rights to your home if one fails to make their mortgage payments

DEFAULT

- “Default” is when the borrower has not paid the mortgage payment timely
- Many loans define “default” when your mortgage payment is more than 30 days late
- Most lenders/servicers will wait three months before starting the foreclosure process



NOTICE OF ACCELERATION/DEFAULT

- Letter from your lender/servicer
- Notification to borrower that they are in default and that the lender/servicer may “accelerate” the terms of the loan
- “Acceleration” = payment in full — now
- Notice often required by agreement between lender and borrower — check your note and mortgage



COMPLAINT

- The beginning — what must be filed to foreclose
 - Lender/servicer must file with court if they seek to foreclose in Ohio



COMPLAINT (continued)

- Read CAREFULLY
- Check for:
 - Name of plaintiff (who is suing?)
 - Date of default
 - Amount owed
 - Copies of documents mentioned in complaint



DOCUMENTS TO BE ATTACHED

- NOTE
 - Your agreement to pay for house
- MORTGAGE
 - Lender’s “security” in house to foreclose if borrower does not pay
- ASSIGNMENT
 - Agreement between original lender and some other entity to whom the lender sold the note

SERVICE

- The court is required to “serve” (deliver a copy) to the borrower
- Also serve anyone else who has a lien secured by your house
 - Taxes
 - Judgments
- Copy will probably be served personally, certified mail or ordinary mail

SERVICE (continued)

- Date of service is important — clock starts ticking



ANSWER

- The name given to the response the borrower (or any other) makes to the COMPLAINT
- 28 days to serve (mail) copy of answer to all parties, but especially plaintiff
- 3 more days to file original with court
- Keep copy for your records



Answer (continued)

- Caption, case number, judge's name

BANK OF JOE :
(plaintiff) : Case No. 2007 CVF 7777
:
v. : JUDGE JUDY
:
LINDA SNIPPY :
(defendant) :

ANSWER (continued)

- Deny all information you believe is incorrect
- If you do not know whether or not it is correct, say “I don’t know”
- If you don’t know who plaintiff is, say so

ANSWER (continued)

- Check for documents:
 - Note
 - Mortgage
 - Assignment
- If documents not attached, say so

ANSWER (continued)

- Tell your story, but try to be brief
- Do NOT misstate or exaggerate — it can and will be used against you
- If you have been negotiating with lender/servicer, say so
- If you have made a deal, say so
- If you have copy of agreement, attach it

ANSWER (continued)

- *ALWAYS* tell court of any communication or agreement with the Plaintiff
- Judge will not know what is happening between you and the lender unless you tell him

DEFAULT JUDGMENT

- Occurs if borrower does not respond (answer)
- Everyone (including court) assumes borrower does not care or agrees with plaintiff if no response
- Lender's attorney files Motion for Default with court
- Can happen as quickly as 31 days from service

DEFAULT JUDGMENT

(continued)

- Borrower probably will not get copy — not required
- Court may “grant” motion quickly (or not)
 - “granting motion” = judgment in foreclosure



SUMMARY JUDGMENT

- What the plaintiff will file if borrower files ANSWER
- Borrower will get copy sent to him
- Local rules will determine how much time to serve/file response (typically 14 days)



SUMMARY JUDGMENT

(continued)

- “No genuine issue of material fact”
 - This is the standard used by courts
 - Why details all become important, like:
 - Amount owed
 - Date of default, and
 - Proper documents attached



SUMMARY JUDGMENT

(continued)

- Disputes on these and other issues may cause court to DENY Motion for Summary Judgment
- If court GRANTS Motion = judgment in foreclosure
- Goal is to avoid judgment
- At any time, if borrower makes agreement with lender/servicer, copy to court and to attorney for plaintiff

TRIAL

- Will probably never happen
 - VERY FEW foreclosure trials
- Most cases resolved when plaintiff is granted Default Judgment or Summary Judgment
- Does not matter if you see a trial date on papers court serves you — no guarantee
- Plaintiffs want to avoid trials because:
 - Expensive
 - Time-consuming

JUDGMENT

- Court makes Decision, granting judgment
- Plaintiff's attorney prepares judgment ORDER and gives to court for judge to sign
- Can happen very fast or slow
- Borrower may or may not get a copy (probably not if default judgment)
- Court should at least inform borrower that such a document has been filed
- House may now be set for sale

SHERIFF SALE

- Done differently in each county
 - However, each county will have a procedure
- Notice of Publication (of the sale)
 - When
 - Where
 - How much
 - Terms of sale

SHERIFF SALE (continued)

- Appraisal — hired by sheriff to determine price
- Must sell for at least two-thirds of appraised value
- Sale is a public sale; an auction

SALE

- Winning bidder becomes buyer/new owner
- Winning bidder usually = plaintiff
 - Paper transaction to pay off mortgage debt
- Plaintiff's lawyer prepares Confirmation of Sale

SALE (continued)

- Confirmation includes:
 - Purchase price
 - Distribution of monies
 - Cancellation of mortgage
- Typically done in 30 days

SALE (continued)

- If borrower owed MORE than purchase price, deficiency judgment for amount remaining
- If borrower owed LESS than purchase price, borrower should get some money back
- Plaintiff will also collect
 - Filing fees
 - Document, appraisal fees
 - Attorney fees
 - Late fees
- *So pay-off amount will always be greater than amount stated in complaint



NOTICE OF EVICTION

- NOT a new case (as when a tenant is evicted by his or her landlord)
 - Homeowner will get notice from the Sheriff's Department
- Length of time on notice may vary
 - 88 counties — 88 ways to do this
- Contact Sheriff's Office to see if they will be flexible about the move-out date