How to Fight Foreclosure

Foreclosure is a legal process that allows a mortgage lender or municipality where you pay property taxes to seize your property as a way to pay off what you owe in payments or back taxes. However, just because the lender or county files a foreclosure complaint against you doesn't mean they'll automatically win. Knowing how to stop foreclosure proceedings may help you keep a roof over your head for a lot longer and even save your property outright.

Part 1: Trying to Work with the Lender

1

Reach out to the lender and explain your situation.

If you think you'll be at risk for missing a monthly payment or possibly several, putting you at risk of foreclosure, reach out to your lender immediately. Don't sweep the problem under the rug. As weird as it may sound, it's in the lender's best interest *not* to foreclose on you, as it costs close to $30,000 by some estimates for the lender to foreclose. That's time, hassle, and money down the drain for the lender; they want to avoid foreclosure if at all possible. Talking to your lender will start a dialogue in which both parties can talk about possible solutions before foreclosure becomes the only option.

- Let the lender know if your problems are temporary. If you've incurred unexpected medical bills or have been laid off, for example, the lender is more likely to give you a reprieve until you've got your head above water. They might ask you to make a payment in 1 lump sum, or even freeze your monthly payments if you're lucky.

2

Try to modify the loan in your dialogue with the lender.

As far as the lender is concerned, 50% of something is better than 100% of nothing. That means they'll often be willing to modify the terms of your loan to get you paying *something*, even if it's not the original monthly amount.

- Try to extend the amortization period. Amortization period is a fancy word for the life of the loan. If you make the life of the loan longer, your monthly payment will go down.
- Change the interest rate. The interest rate of your loan is determined by your credit rating, as well as other factors. Suffice it to say that it can be lowered in order to make monthly payments more manageable.
- Switch from an adjustable rate to a fixed rate. Adjustable rate mortgages (ARMs) usually start off with a pretty low interest rate and then shoot up over the life of the loan. They look nice to start off with but they actually end up being pretty expensive. Switching from an ARM to a fixed rate — where the interest rate stays the same for each monthly payment — can save you a lot of money as well as make the monthly payment much more manageable.

3

Ask for forbearance.

Asking for forbearance is a temporary way to stall the foreclosure proceeding, but it works in a lot of instances. Forbearance allows you to either pay partial payments or no mortgage payments for a specified time agreed upon by you and the lender.[You must, however, eventually pay the full amount forbore. You may agree to 1 lump sum payment to catch up on your mortgage or make extra payments in addition to your monthly mortgage payments.

4

Consider hiring a housing counselor.

A housing counselor will work on your behalf to get your finances back on track and find a compromise between you and the lender so that foreclosure can be avoided. A good quality counselor will usually be a good investment, especially if they help you hold onto your house.

- Be wary of those housing counselors who "guarantee" a stall or stop in the foreclosure process. These counselors often charge exorbitant sums (think thousands of dollars) and sometimes only stall the proceedings, leaving you no better off than you were to begin with. Visit the Department of Housing and Urban Development's website to see a full list of approved housing counselors.

5

File a written answer if you don't have a deed of trust.

If you do decide to fight the foreclosure, file a written answer to the foreclosure complaint. Filing an answer and attending the hearing stops the lender or county from obtaining a default judgment against you.

- Research the defenses to foreclosure — these are the reasons why the mortgage lender or county shouldn't win, such as selecting the defense to foreclosure that fits your circumstances, writing an answer, including your defense to the foreclosure, and submitting the written answer to the county court where the lender or municipality filed the foreclosure complaint.

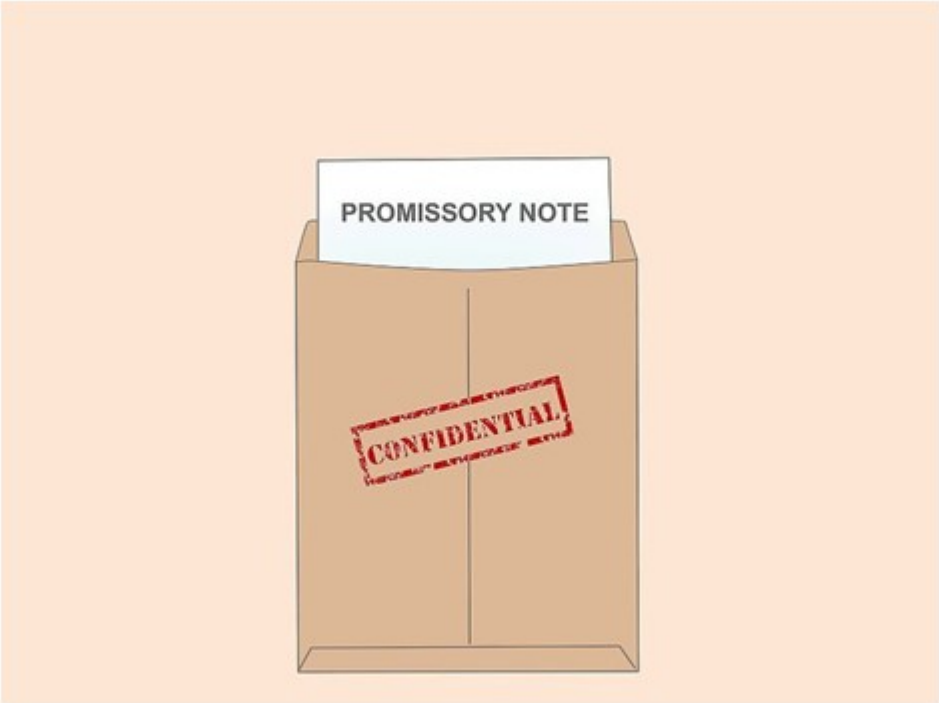
6

Pay the default balance if you do have a deed of trust.

Keep in mind that you will not be able to file a written answer if there is a deed of trust, which you can determine by checking if you signed the mortgage for a loan or for a deed of trust. If you do have a deed of trust, the lender can foreclose on the property outside of the courtroom and is only required to give notice.

- Each state has different rules regarding the notice, but it is generally a certified letter in addition to a posting on the door that notifies you of the foreclosure. If you pay the default before the foreclosure, you can stop it.

Part 2: Fighting the Foreclosure



1

Make the lender "produce the note."

When you sign a mortgage document, there's a promissory note that lenders are supposed to keep that details all the specifics of the loan agreement. During the housing boom, unscrupulous lenders underwrote so many loan documents and filed them away or sold them off, content simply to know they had made money. Now, many of the documents cannot be found, partly because they were sent off when the mortgage was securitized. The short story is this: if the lender cannot find the note, foreclosure can effectively be postponed, if not stopped completely.

- Keep in mind that the note should be available to download in your online account.
- Making the lender "produce the note" can be effective, especially if the lender used less-than-savory means of getting you to agree to the loan, but it's not a long term strategy for success. You can buy a lot of time if the lender can't produce the note, but in most cases you won't be able to stop foreclosure once the note is found.

2

Consider selling the house before the house is auctioned off.

If you can manage to sell the house before the foreclosure of your home actually clears, you can keep whatever equity you still have invested in the home. It may be hard to sell your home on such a quick turnaround, but it's definitely possible, especially with the market heating up. Read here for more tips on how to sell your home quickly.

3

Question the chain of title.

When a property is about to be foreclosed on, a database attempts to make sure that the ownership of the mortgage — from the time you signed the papers up to the present moment — is clear and unambiguous. This way, the courts can recognize the legality of the foreclosure. Because so many mortgages were bundled into complex securities and traded on the marketplace, the chain of title is often *not* clear and ambiguous. If you can successfully question the database that keeps track of the chain of title, you may be able to keep your home.

- The database that keeps a record of the chain of title is called the Mortgage Electronic Registration System, or MERS. It was established specifically in order to track the chain of title, a tall task given the rate at which many mortgages were being securitized and then traded. But some courts are skeptical of MERS' legitimacy. One popular foreclosure defense rests on forcing the lender to *independently* verify the chain of title without using MERS.
- In order to save your home from foreclosure using the chain of title defense, you're probably going to need a lawyer. This may be a bit more expensive than some of the other options, but it's a defense that's quickly gaining traction.

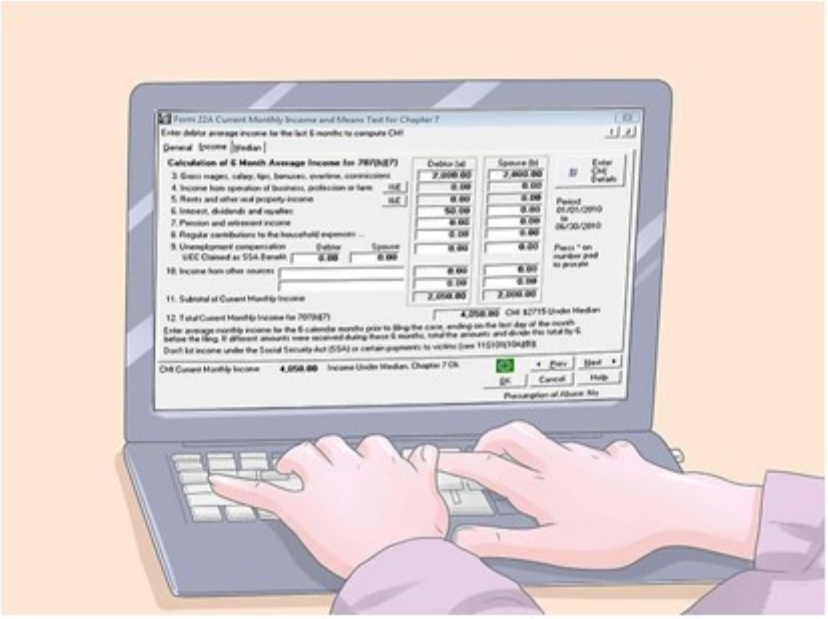
4

Negotiate a deed in lieu of foreclosure.

If you have few other options, you can always ask the lender's loss mitigation department if they're willing to accept a deed in lieu of foreclosure. This is a document where you legally agree to transfer ownership of the deed over to the lender in exchange for the ability to walk away owing nothing to the lender. If you don't think you'll be able to hold onto your house, this option can be especially attractive if you owe a significant amount on monthly payments in arrears.

- You may be able to negotiate a cash deal to cover some of your moving expenses. The lender usually provides several thousand dollars for this, so make sure to ask for it if you are returning the deed.

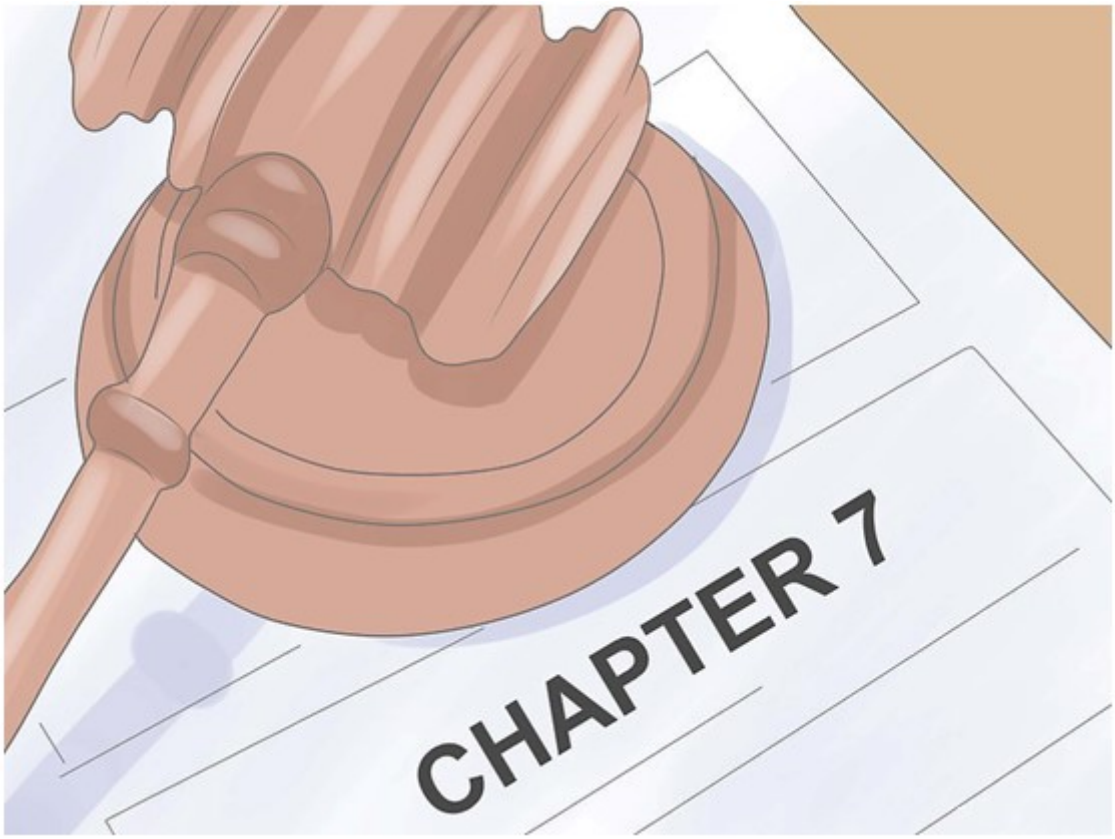
Part 3: Stopping Foreclosure by Declaring Bankruptcy



1 Understand personal bankruptcy.

Bankruptcy is the process of eliminating some or all of your debts in exchange for either regular payments or a seizing of your property. Although it may not seem like an enviable option, it's the smartest way out of an underwater mortgage for many homeowners. When you file for bankruptcy, the foreclosure proceedings can be stopped with an automatic stay.

- In order to qualify for bankruptcy, you have to complete a means test, pre-bankruptcy credit counseling, as well as acquire the correct paperwork such as tax documents.



2

Decide between filing chapter 7 and chapter 13 bankruptcy.

There are essentially 2 different kinds of bankruptcy declarations, each with their own unique rules and specifications. As they relate to stopping a foreclosure, they are briefly described below:

- In chapter 7 bankruptcy, you ask to have most, if not all, of your debts discharged by the courts. In exchange for this discharge, the courts can take any property not exempt from collection, sell it, and distribute the proceeds to your creditors. With chapter 7, you won't be able to keep your house, but you will be able to stall the foreclosure for at least a couple of months.
- For chapter 7 bankruptcy, you will be able to keep your home if it is the only property you own and if you currently reside there. Though the debt will be discharged, you must continue to make payments on the home in order to keep it. If you do not make the payments, the lender can foreclose on the property. In some states, you will be able to discharge the debt and move out without any recourse, but in other states the lender may be able to come after you for the debt.
- In chapter 13 bankruptcy, you agree to a plan to pay back all or most of your debts over a certain period of time. The time you have to repay the debt, as well as the repayment plan itself, depends on how much you earn, as well as the types of debt you currently own. With chapter 13, you should be able to keep your home, especially if you think you'll be able to make payments in the future. The repayment plan usually lasts three to five years.

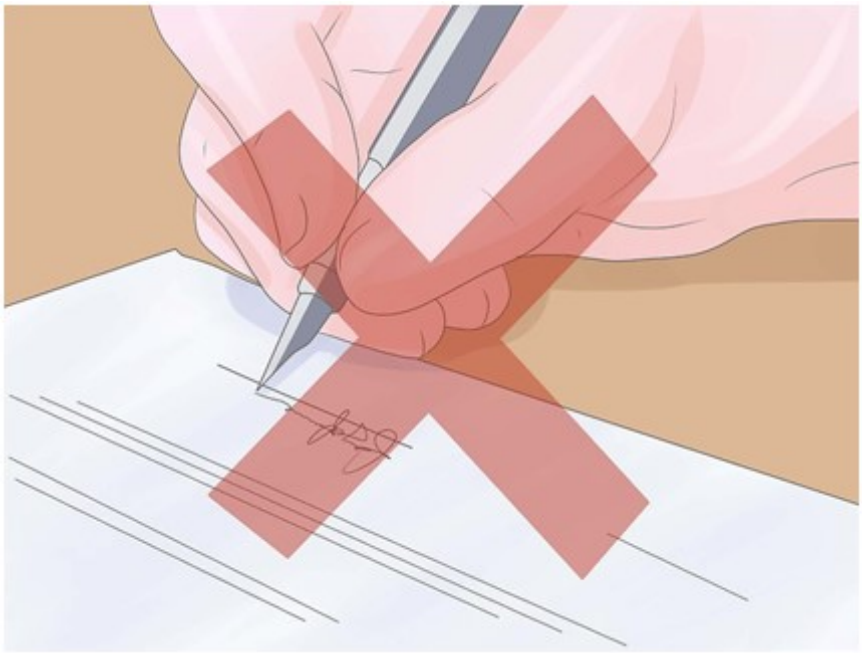
3

File your bankruptcy petition with your local U.S. Bankruptcy Court.

Meet with a lawyer and declare your bankruptcy. Start making payments. After a while, attend a meeting of the creditors. This is a meeting between you and a bankruptcy trustee. However, your creditors may also attend. This meeting will give you a better sense of where foreclosure proceedings are at.

- Bankruptcy attorneys usually collect their fees before a bankruptcy begins because they don't want you to go bankrupt as a result of their fees. The fees could cost $1500 to $3000 or more depending on how complicated your situation is. Find an attorney who charges a flat fee and who has experience with bankruptcies.

Part 4: Knowing What Not to Do in Foreclosure



1

Do not sign the title of the property over to another company.

Some companies lure desperate families into a trap by promising to get the mortgage current and then re-sign the mortgage back over to you. Yet this rarely happens. More often than not, the company pulls equity out of the home, lets foreclosure proceedings continue, and dumps the home like a bag of wet peanuts. Worst of all, there's nothing you can do because the title of the property is no longer in your name.

2

Do not seek counseling from a non-HUD approved organization.

Seeking counseling is an important tool for many homeowners fighting to keep control of their home. Yet many sharks take advantage of people by demanding steep up-front fees and interest rate hikes after the dust has settled. Be sure to vet any counseling service you use on HUD's list of approved housing counselors.

3

Do not avoid court documents or requests.

Although out of sight, out of mind may be a decent coping strategy for some of life's problems, it's generally not a good way to hang on to a house. Promptly honor any requests that come from either the court or lender, as failure to do so may result in hefty fees and even legal trouble

If you need assistance with determining your best options to avoid foreclosure, do not hesitate to call.

During the housing crash of 2008-2012, we successfully assisted many homeowners in avoiding foreclosure.

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