

Foreclosure Alternatives

If a loan modification is not an option, you may be able to negotiate a “deed in lieu of foreclosure” or “short sale,” which may allow you to avoid foreclosure by surrendering your deed to your mortgagee or negotiating a sale of your home to a third-party for less than is currently owed on your mortgage.

Filing for bankruptcy protection is an option of last resort that may allow you to stay in your home, but will seriously impact your credit for 10 years.

Foreclosure alternatives available to you will depend on your financial condition.

Consult a qualified housing counselor or an attorney about the foreclosure alternatives that may be available to you.

Protections for Active Duty Servicemembers

The Servicemembers’ Civil Relief Act and other federal laws provide certain protections to active duty servicemembers against foreclosure and other specified obligations. Make sure you understand how these laws may apply to you, and inform your mortgagee if you are an active duty servicemember.

ACT QUICKLY TO EXPLORE FORECLOSURE ALTERNATIVES. THE LONGER YOU WAIT, THE FEWER OPTIONS YOU MAY HAVE TO SAVE YOUR HOME.

WATCH OUT FOR “FORECLOSURE RESCUE” SCAMS!

Beware of Fraud!

Unfortunately, there are people who try to scam homeowners who are in, or at risk of, foreclosure. These scams can take various forms. Some common scams include offering to buy your house with a promise to resell it to you in the future, offering an incredible sounding loan modification or refinancing, or just trying to steal your personal information. Remember that foreclosure proceedings are public and scammers may use information from the public record to try to pass themselves off as your mortgagee or someone else who is entitled to your personal information.

Protect yourself – be wary of anyone who posts a flyer or advertisement, calls you out of the blue, sends you unsolicited mail, knocks on your door with offers to help “rescue” you from foreclosure or default, or asks for your personal information.

Before you sign any agreement related to your mortgage, or the ownership or sale of your house, speak to an attorney or certified housing counselor.



Department of
Financial Services



Frequently Asked Questions About...

This guide is provided for informational purposes only and does not constitute legal advice. Consult an attorney before you make a decision.

CONTACT DFS

For mortgage-related assistance, call DFS at (800) 342-3736 or visit www.dfs.ny.gov

FORECLOSURE

What is Foreclosure?

Foreclosure is the legal process by which a mortgage holder (the “mortgagee”) attempts to seize and force the sale of a home pledged as collateral for a mortgage loan. New York is a judicial foreclosure state, which means that foreclosure cases must be filed in, and overseen by, a New York court.

When Am I at Risk of Foreclosure?

You are at risk of foreclosure if you are having, or think you will have, trouble making your monthly mortgage payments. Typically, within 45 to 60 days of missing a mortgage payment, the mortgagee will send a letter stating that the terms of the mortgage have been violated and demand that you pay the past-due amount within 30 days. If the required payment is not made, your mortgagee may file a foreclosure case in your local court. By law, banks and most other lenders are required to provide you with 90 days’ written notice before commencing a foreclosure case.

What Happens if a Foreclosure Case is Filed?

If a foreclosure case is filed, you will be served with a “summons and complaint” that alleges why your mortgagee believes it is entitled to foreclose on your home. The complaint will demand that you file an answer to these allegations within a specified amount of time.

After a foreclosure case is filed, you and your mortgagee will be ordered to participate in a court-supervised settlement conference to discuss potential alternatives to foreclosure.

FORECLOSURE

If you and your mortgagee are not able to reach an agreement during the settlement conference process, the court will need to decide whether to grant the foreclosure.

A court may grant the foreclosure and order the seizure and sale of your home if it finds that the evidence supports your mortgagee’s case or if you do not contest the foreclosure. If this happens, the sale will typically be scheduled within four months of the court order. Foreclosure sales in New York are by public auction, with the home being sold to the highest bidder. The proceeds of the sale are used to pay down your mortgage debt and the costs of the foreclosure sale. Any remaining money must be paid to you.

What Should I Do?

Get informed, and quickly. Whether you are having trouble making your mortgage payments, have already fallen behind or are in default or foreclosure, it is important that you understand your finances, the options available to you and the consequences of pursuing each of these options.

A certified housing counselor or, if you can afford one, an attorney can advise you based on your specific situation and the options that may be available to you.

Lists of non-profit housing counselors and free legal services, as well as additional information about your rights and obligations in a foreclosure proceeding, are available on our website at www.dfs.ny.gov.

What Can a Housing Counselor Do for Me?

Housing counselors can help you understand your financial situation and the foreclosure alternatives that may be available to you. They may also help you find free legal services, help you negotiate with your mortgagee or help you avoid being taken advantage of by people who prey on homeowners facing financial hardship.

Should I Contact the Mortgagee?

There are things you may be able to do to save your home or avoid foreclosure, but most will require you to work with your mortgagee.

Foreclosure cases can be unpredictable and costly for the mortgagee, and your mortgagee may be willing to explore other solutions to avoid a foreclosure filing. For example, your mortgagee may be willing to modify the terms of your loan on either a temporary or permanent basis so that you can afford your monthly payments and remain in your home.

You should contact your mortgagee as soon as possible if you want to explore any foreclosure alternatives. The longer you wait, the fewer options you may have to save your home.

When you contact your mortgagee, you will likely be asked to provide information about your finances to help identify what foreclosure alternatives may be right for you. Make sure you are speaking to an authorized representative before giving out any information.