

## The Process of Foreclosure

Foreclosure is when a mortgage lender sells a borrower's property. The lender does this to collect unpaid debt on a mortgage.

Foreclosure happens when a homeowner defaults on the mortgage. Default is another way of saying you are behind on your payments. About 15 days after you default, the lender will send a notice that you need to catch up on payments. The lender will also add additional fees.

### Do not ignore letters from your lender!

The lender may have options to bring your mortgage payments up to date. Look into your options before your home goes into foreclosure.

Usually by the third missed payment the lender will enter a notice of default. Also, the lender will charge you for costs to prepare the legal papers. So now you have legal fees, late fees, and your late payments to pay.

Next, the mortgage lender will publish a notice of foreclosure, called a Notice of Trustee's Sale. The lender must publish the notice in a local newspaper. They must do this at least 120 days before the Trustee's Sale.

After the lender publishes the notice,

things can move quickly. The whole foreclosure process can take as few as 150 days.

## Types of Foreclosure

Montana uses two foreclosure methods:

- Foreclosure by judicial process, which uses the court system;
- A power of sale, which uses a trustee.

The most common type is the power of sale. This is because it's usually faster and cheaper for the mortgage company.

## Homeowner Rights

Most people think of their home loan as a straight mortgage. Actually, most home loans in Montana are called "trust indentures."

That difference can be either a good or a bad thing for the home-buyer.

**The Good:** With a trust indenture, a mortgage company cannot try to get a "deficiency judgment." So, let's say you sell your house to pay off the mortgage, and the house sells for less than you owe. The mortgage company cannot come after you for the rest of what you owed.

**The Bad:** A trust indenture also favors the lender because the foreclosure happens faster. In Montana you cannot buy back the house after the sale. The

sale is final, even if you find a way to pay off the loan or find a new loan.

If you can get your payments up to date and pay the attorney fees, then the foreclosure must stop. Also, if you declare bankruptcy, an automatic stay is put in place. An automatic stay gives you a temporary delay in the foreclosure. A Chapter 13 bankruptcy might even save your house from foreclosure.

## Ways to Avoid Foreclosure

- Sell the house and get the equity. "Equity" is the money you get from the sale after you subtract the mortgage repayment;
- Loan modification: get a change in the interest rate or length of your payment plan;
- Repayment plan: If you have a temporary financial emergency, lenders will often allow you to pay in installments. This will help you repay any missed payments;
- Short refinance: A lender will sometimes forgive some debt and allow for a refinance.
- Short sale: The lender lets you sell your house for less than what you owe. You give the money from the sale to the lender. The lender then forgives the rest of your debt.

## Foreclosure Prevention Resources

Information about foreclosure law in Montana and the US in plain English:  
[http://www.foreclosure.com/statelaw\\_MT.html](http://www.foreclosure.com/statelaw_MT.html)

Freddie Mac information on mortgages, budgeting, and foreclosures:  
<http://myhome.freddiemac.com/>

Bankrate.com has information on mortgages and homeownership basics. The website also has financial calculators and general advice:  
<http://www.bankrate.com/brm/green/mtg/basics7-5a.asp>

Beware of foreclosure scams! Search for Department of Housing and Urban Development approved foreclosure counselors:  
<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

Are you active duty military personnel or spouse? The Federal Housing Administration has information on protections for you under the Servicemembers Civil Relief Act:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/nsc/qasscra](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/qasscra)  
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## How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at [mtlsa.org](http://mtlsa.org);
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

## What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

## [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org)

Need legal information or forms? Visit [www.MontanaLawHelp.org](http://www.MontanaLawHelp.org).

Can't find what you want? Use LiveHelp. Click on the LiveHelp picture and get help finding the information you need.

## [www.MTLSA.org](http://www.MTLSA.org)

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.

# Montana Legal Services Association

## Money Problems: Foreclosure



*Providing, protecting, and enhancing access to justice.*

Rev. 12/16

