



LEGAL BRIEF

NEVADA FORECLOSURE LAW AND RELIEF

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PREPARED BY

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The following information is from the Clark County Court Civil Law Self Help Center and can be accessed at: <http://www.clarkcountycourts.us/CivilSHC/miscellaneous/mortgage-foreclosure.html>

WHAT IS A MORTGAGE FORECLOSURE?

To buy a home most people borrow money from a bank or another lender. In exchange for the loan, the lender holds a lien against the property. If the borrower misses payments, then the loan goes into default and the lender can sell the property to pay off the loan. This process is called mortgage foreclosure.

HOW DOES MORTGAGE FORECLOSURE WORK?

Most Nevada lenders use “non-judicial foreclosure” or “sale under a deed of trust” under NRS Chapter 107. Under the terms of the deed of trust which you sign when you get a home loan, a trustee (generally a title company) holds a “power of sale” in the event that you default. Prior to the sale the trustee must first:

- Wait until you are behind in payments
- Deliver a “notice of default and election to sell” to you
- Send you a form where you can elect mediation.
- Record the “notice of default and election to sell”
- Wait at least 3 months after the “notice of default and election to sell” was recorded.
- At the end of the 3 months, give notice of the time and place of sale including a least 3 weeks-notice in newspaper

HOW DOES THE LENDER OR OTHER NEW OWNER TAKE MY HOME FROM ME?

At the foreclosure sale, the lender (or someone else) purchases the property (gaining title). Afterward the lender or other new owner may serve you with a 3 day notice to leave. If you remain after 3 days, the lender may serve you with a summons and complaint asking a court to evict you.

WHAT CAN I DO IF I AM FACING FORECLOSURE?

Don't wait. If the process has progressed too far, it may be too late to stop foreclosure of your home.

1. Call your lender and ask for assistance. Most lenders have programs where they work with homeowners to modify loans. Start early because it may take several weeks to process a request.
2. If you do receive a notice of default, you can request mandatory mediation which will require your lender to sit down with you and discuss modification options.
3. Be patient because lenders are busy during this financial crisis. Most people at the lender are just doing their jobs but will help you if they can.

SHOULD I GET HELP?

Maybe, but first be beware of scammers! The notice of default is a public record, and anyone can access the information. It is best to be very skeptical about offers to help you refinance or modify your loan. Many of them are fraudulent.

Generally, you do not need to pay anyone to seek a loan modification for you. You should be very suspicious if someone knocks on your door telling you that they can save your home. You can try to renegotiate with the lender yourself or contact organizations that do this for free. You may also try to refinance with a different lender.

WHO CAN I TALK TO ABOUT RENEGOTIATING MY MORTGAGE?

It can difficult to determine a person at the lender to negotiate with. Two new laws help. NRS Chapter 107(as amended by AB 149) requires the trustee to include the contact information for a person with authority to negotiate a loan modification in the notice of default. Moreover, NRS Chapter 107 (as amended by AB 140) also requires the trustee to conspicuously post a notice on the property not later than 3 business days after the notice of default is recorded. The notice must include the contact information of the trustee or the person conducting the foreclosure authorized to provide information relating to the property's foreclosure status.

WHERE CAN I TURN FOR HELP IN RENEGOTIATING MY MORTGAGE?

NRS Chapter 107(as amended by AB 149) requires the trustee to include contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development in the notice of default. Approved local housing counseling agencies in Clark County include, for example, Consumer Credit Counseling Service (702-364-0344) which works with homeowners to help renegotiate their mortgages for free.

DO I QUALIFY FOR THE FEDERAL *MAKING HOME MORE AFFORDABLE* PROGRAM?

You may qualify for either refinancing or a loan modification under the federal *Making Home More Affordable* program. For more information see <http://www.makinghomeaffordable.gov>.

DO I QUALIFY FOR FORECLOSURE MEDIATION?

NRS Chapter 107(as amended by AB 149) includes a new way of avoiding residential foreclosures. The notice of default must also provide you with the option of “foreclosure mediation”. Any homeowner may select mediation after the lender has sent the Notice of Default if:

- The property is owner-occupied (it is your primary residence; not a second home, vacation home or investment property).
- You complete and return the Election of Mediation Form and fee within 30 days.
- The Notice of Default was sent after July 1, 2009.
- You do not have a current open bankruptcy (exceptions may apply).
- You have not previously surrendered the property.

HOW DOES FORECLOSURE MEDIATION WORK?

A mediator is a neutral third party who helps you and lender try to reach a voluntary negotiated agreement. The lender may not foreclose until mediation has been completed. Mediation is fast (less than 4 hours), inexpensive (\$400, shared equally by the parties), and more flexible than more formal processes. The goal of the program is to make foreclosure a remedy of last resort. You send the form and a check for \$200 to the Program Administrator. You also send a copy of the form to the Trustee. Between 2-4 weeks after you send in your Election you will receive a notice appointing a mediator. The mediator will arrange a time and place for the mediation. The mediator will send you a scheduling notice explaining what documents you must produce and how to exchange them.

Prior to the mediation, you will prepare and exchange a financial statement and other supporting documents. Three parties will be present at the mediation: you, the lender and the mediator. Both parties must negotiate in good faith regarding alternatives to foreclosure. You will tell them what you want and show them what you can afford. If you reach an agreement the mediator will help you outline the terms of the agreement.

If you do not reach an agreement, the mediator will issue a statement to the Program Administrator. If the lender did everything they were required to do, the Program Administrator will issue a Certificate allowing the foreclosure to proceed. If the lender failed to bring all the documents or otherwise participate in good faith, the mediator may make a finding that will deny issuing the Certificate.

Any party can petition the court for judicial review. You may ask the Court to find bad faith participation by the lender and seek sanctions.

WHAT ARE THE STEPS IN THE FORECLOSURE MEDIATION PROCESS?

- Default occurs when you fail to make payments.
- Notice of Default and Election to Sell is mailed to you and recorded.
- Mail Election/Waiver of Mediation form within 10 days after the Notice of Default is recorded.

- Return Election/Waiver of Mediation form within 30 days to both the trustee and to the Administrator(with \$200 fee).
- Trustee sends Election of Mediation form to Administrator within 10 days.
- Trustee notifies the beneficiary of the deed of trust.
- Administrator appoints a mediator and notice mailed to parties within 10 days.
- Mediator contacts parties to schedule the mediation and request documents.
- Mediation Scheduling Notice is sent to each party.
- Exchange of documents occurs at least 7 days prior to the mediation.
- Mediation session is conducted by the mediator.
- Mediator's Statement is filed with the Program Administrator
- Petition for Judicial Review may be filed within 15 days after Mediator's Statement.
- Review by the District Court must be conducted within 60 days after petition is served.

WHAT TO DO WHEN YOUR LENDER WON'T WORK WITH YOU

You've done all your homework, explored workout options, talked to a housing counselor and tried to talk to your lender. But, the lender won't work with you. What do you do now?

For an FHA-Insured Loan

Your lender has to follow FHA servicing guidelines and regulations for FHA-insured loans. If your lender is not cooperative, contact FHA's National Servicing Center toll free at (877) 622-8525. Be prepared to provide the full name(s) of all persons listed on the mortgage loan and the full address of the property including city, state and zip. It is also helpful to have your 13-digit FHA case number from the loan settlement statement.

For a VA-Insured Loan

Visit the VA Foreclosure Alternatives page at http://www.vba.va.gov/ro/cleveland/foreclosure_alternatives.htm . If you need assistance or have additional questions, talk to a Loan Service Representative at 1-800-827-1000.

For Conventional Loans

First talk to a HUD-approved housing counselor at (800) 569-4287. They may be able to help you with your lender. You can also contact HOPE NOW or call the Homeowners Hope Hotline at (888) 995-HOPE to ask for assistance in working with your lender.

Nevada Resources

You may also contact Consumer Credit Counseling Service (702-364-0344) for Nevada specific assistance.

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