

Know Your Rights Regarding Foreclosure in Georgia



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What is Foreclosure?

Foreclosure is a legal process that occurs when a lender will seek to take possession of a borrower's home when that borrower is unable to make his or her mortgage payments, property taxes, or homeowners association (HOA) fees. Since home loans are typically secured with the property itself as collateral, that property is subject to being taken away if consistent and timely payments are not made. A lien will also be placed on the title of the property disallowing the sale of the property until the mortgage is paid off. If a borrower gets behind on payments (usually at least 120 days), then the lender can accelerate the mortgage balance, calling the full loan due, to begin the foreclosure process. The lender will first send the borrower a "breach letter" informing the borrower that the loan is in default. The letter warns the borrower that the property will be foreclosed if the default is not cured (paid) within a specific period. The end purpose of the foreclosure is for the lender to get their loan repaid. Once a foreclosure is complete and the lender takes possession of the property, the lender will then sell the property to try to cover the remainder of the mortgage.

Borrowers have three main options when it comes to stopping a foreclosure sale:

1. The borrower can "redeem" the loan by paying off the full amount of the loan before the foreclosure sale happens;
2. The borrower can reinstate the loan in response to a breach letter, or if the loan contract provides the borrower with the right to cure the default; or
3. The borrower can file for bankruptcy.

If you have specific questions about foreclosure regarding your home, it is important to seek the advice of an experienced attorney who can help you make the best decisions regarding your situation.

The Judicial Foreclosure Process Explained

Lenders generally have the option to foreclose on a property through the court system. This process is known as a judicial foreclosure. In a judicial foreclosure, the lender has to file a lawsuit against the borrower asking the court to allow a foreclosure sale of the property in dispute. If the borrower does not respond or defend the lawsuit, then the lender will win by default. If the borrower decides to defend the lawsuit in court, then a decision will be made by the court after a period of litigation. If the lender wins, the court will allow the lender to sell the house at an auction to recoup the money loaned on the house. Judicial foreclosures are not practiced in the state of Georgia because Georgia has a quicker and cheaper process known as non-judicial foreclosure.

The Non-Judicial Foreclosure Process Explained

Georgia is known as a “non-judicial foreclosure” state. In non-judicial foreclosures, lenders can bypass the entire court process of a judicial foreclosure, avoiding the need to file a lawsuit or appear before a judge. Once the borrower defaults on the terms of the loan agreement, the lender will then send a breach letter informing the borrower of the lender’s intent to foreclose on the property. The breach letter must be in writing and must include the name, address, and telephone number of someone who can negotiate and modify the terms of the mortgage the lender intends to foreclose on. The letter must be delivered by either certified mail, registered mail, or overnight delivery, return receipt requested.

An advertisement for the foreclosure sale must be published in the local county newspaper by the lender for a minimum of four consecutive weeks before the sale can take place. A copy of this advertisement will typically be included with the letter notifying the borrower of the default. Before the foreclosure sale, the lender must also file proof of ownership interest in the property with the clerk of the superior court of the county where the property is located. The foreclosure sale itself is an auction that takes place on the steps of the local county courthouse

the first Tuesday of the month. The winner of the auction takes the deed to the property as the new owner.

Important note: Georgia law only requires a minimum notice of 30 days before the date of a proposed foreclosure sale.

How a Bankruptcy Filing Can Stop Foreclosure Actions

If your goal is to stop a foreclosure action, then a bankruptcy filing can accomplish that goal. A foreclosure can be stopped by filing either a Chapter 7 or Chapter 13 bankruptcy. Filing a Chapter 7 bankruptcy can delay foreclosure until the bankruptcy case is finished or until the bankruptcy court grants the lender permission to foreclosure. Filing a Chapter 13 bankruptcy can stop a foreclosure sale altogether and allow you the opportunity to save your home. In a Chapter 13 bankruptcy, you will have a court-approved repayment plan in place where you will restructure your debt and repay your mortgage arrears, so you don't lose your home. A Chapter 13 bankruptcy case takes anywhere from 3-5 years, and foreclosure will be suspended during this entire time as long as you make timely payments according to your repayment plan.

How an Automatic Stay Suspends Foreclosure Activities

An automatic stay goes into effect immediately after filing for Chapter 7 or Chapter 13 bankruptcy, provided you are not a repeat filer. The automatic stay prevents lenders from foreclosing on defaulted loans as well as any other creditors from attempting to collect on their debts. The automatic stays remain in effect until the bankruptcy case is completed, dismissed, or a creditor request the stay to be lifted and the court grants such request. If an automatic stay is in place and the house in dispute was sold by a lender who was not notified of the bankruptcy, then that sale would be voided due to the automatic stay. In some cases, the lender will seek permission from the bankruptcy court to allow foreclosure proceedings to resume. If you have any questions about foreclosure or how filing bankruptcy can affect foreclosure, then give us a call at The Ballard Law Group so we can help you today.

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