

Defending Yourself Against Foreclosure

If you are in jeopardy of losing your home due to an inability to pay mortgage payments, don't lose hope. As a growing number of homeowners in the United States default on their mortgages and run the risk of losing their homes, judges and attorneys are looking at new ways to prevent foreclosure from forcing families out of their homes.

Experts who study the common reactions to foreclosure in American note that most people do not take action soon enough when they are at risk – when they start to realize that monthly payments are more than they can reasonably afford.

With that in mind, consider this information as you try to prevent foreclosure, armed with traditional wisdom and up-to-date legal advice to help you.

1. Contact your lender.

Many resources suggest contacting your mortgage lender as soon as you realize that you will not be able to meet your mortgage requirements. By taking more proactive steps, you will likely give yourself more leverage, since your loan won't yet be in default.

Best Case Scenario: Your lender can work with you to determine a payment schedule, arrange a short sale, or recommend credit counseling that can help you set your finances in order. This way, you can possibly avoid foreclosure and hold on to your home.

Worst Case Scenario: Your original lender won't work with you because it has securitized your loan and sold it to investors. If this occurs, you may experience difficulty tracking down the holder of your mortgage, and you should consider another course of action.

2. File [Chapter 13 bankruptcy](#) and protect your home.

In Chapter 13 bankruptcy, the automatic stay halts all legal action, and that includes foreclosure. By filing for bankruptcy, you can give yourself some needed time to get caught up on past payments, which may help you receive your discharge and get a new financial beginning.

Best Case Scenario: The bankruptcy court cannot modify your mortgage, but it can still offer you some significant help. The court can offer you a venue to air grievances you have with your lender or loan servicer (in cases where you may believe your payments were not processed correctly, etc.). The court can also stretch out balloon payments on your mortgage (so you are not responsible for all of them at one time). Finally, it can reduce the amount of a second mortgage on your home, under specific circumstances.

Worst Case Scenario: You miss one of your scheduled payments as laid out in your repayment plan, which lifts the automatic stay and allows your lender to go ahead with foreclosure proceedings. Or, you could wait too long before taking action and be unable to file for Chapter

13 bankruptcy before foreclosure proceedings start. Either way, you will have to look at other courses of action.

3. Fight your foreclosure in court with assistance from a [bankruptcy attorney](#).

If for some reason you were unable to halt foreclosure proceedings, you can still dispute them in court. A July 2008 issue of the *American Bankruptcy Association Journal* notes that as judges hear an ever-growing number of these cases, they are accepting more and more defense options.

Best Case Scenario: Your attorney discovers technical or other grounds on which a judge is likely to dismiss your case. Foreclosures have historically been dismissed after lenders could not prove they held the note to mortgage loans, because banks failed to follow specific requirements for foreclosure paperwork, because lenders failed to modify loan terms according to court orders, and because lenders violated consumer protection laws, and for other reasons.

Worst Case Scenario: A judge will find that your foreclosure proceedings are valid and can move ahead.

As unemployment and underemployment continue to rise, combined with adjustable-rate mortgages and balloon making mortgages unaffordable, homeowners need to understand their options. For more information about your particular financial situation, you can discuss foreclosure options with a local bankruptcy attorney.