

Homeowners and Foreclosure



Who We Are

We advocate with and for Marylanders experiencing poverty to achieve equity and social justice through free civil legal services, community collaboration, and systems change.

Established in 1911, Maryland Legal Aid is a statewide private, nonprofit law firm that provides free, civil legal services to low-income and vulnerable people to address their most fundamental legal problems. From our 12 offices throughout the state and through our community-based clinics, we help our clients preserve and access safe and affordable housing, maintain and regain custody of their children, and be safe from domestic violence. Maryland Legal Aid increases our clients' economic security by defending against consumer debt, including foreclosures and tax sales, removing barriers to employment, and accessing critical income supports such as unemployment, food stamps and other vital public benefits. Through special projects, we represent elder adults, nursing home residents, children in alleged abuse and neglect cases, and migrant farmworkers. In its advocacy, Maryland Legal Aid seeks systemic change through impact litigation, in our advocacy, and by storytelling.

Know your rights

This brochure is intended to provide general information rather than specific legal advice. While every effort is made to keep this information current, the law sometimes changes. If you have particular legal questions or a pending legal matter, you are strongly encouraged to contact an attorney for legal advice. You may be eligible for free service from Maryland Legal Aid or a volunteer attorney program.

For assistance with a foreclosure, call 1(888) 465-2468.

Forbearance and Modification

If you have fallen behind on your mortgage or your mortgage payments are unaffordable, but you want to keep your home, you may be able to get a temporary lower payment called a “forbearance” until your financial situation stabilizes.

You may also apply for a modification of your loan which may lower your monthly payments permanently.

You do not have to pay anyone to negotiate with your lender.

Contact a free HUD-approved counseling agency to help you communicate with your bank and to apply for a forbearance or loan modification.

HOPE Hotline

To get a list of approved, free counseling agencies call the HOPE Hotline at (1-877-462-7555) or go to www.mdhope.org and click on “Counseling”. The agencies listed have been funded to do this work and have expertise in communicating with banks to get loan modifications or other solutions for homeowners.

Depending on your situation, your bank may refuse to modify your loan or refuse to give you a forbearance and proceed to foreclosure.

How the Foreclosure Process Works in Maryland

After a missed mortgage payment

Forty-five days after a missed mortgage payment, a bank can send you a Notice of Intent to Foreclose.

When your mortgage is 120 days overdue, the bank may file a foreclosure action in court. The papers will be served in person or sent by mail and certified mail and left at your house.

If you receive a **Preliminary Loss Mitigation Affidavit**, it means the bank is trying to communicate with you to determine if you are eligible for assistance on your loan. You should contact the bank, either directly or through a housing counselor, to apply for a loan modification or for guidance on selling the house.

If your attempts to reach an agreement are not successful, the lender will file and send you a copy of a **Final Loss Mitigation Affidavit**, which tells the court that the lender is moving forward with foreclosure.

You have 25 days from receipt of the Final Loss Mitigation Affidavit to request a mediation session with your lender.

Foreclosure Mediation

Under Maryland law, homeowners with foreclosure actions filed in court have the right to a mediation session with their lender.

Foreclosure mediation is a homeowner's meeting with a representative of the bank and the bank's attorney with a State of Maryland mediator. Mediation is an attempt to help the parties reach an agreement that will avoid foreclosure either through keeping the home, or releasing it in a short sale or deed in lieu of foreclosure, or a regular sale of the property by the homeowner.

Requesting Mediation

The Final Loss Mitigation Affidavit comes with a request for mediation form and two envelopes. You have 25 days from receipt of the Final Loss Mitigation Affidavit to request mediation.

You need to complete the request form, include a check for \$50, and send them to the court and to the foreclosure attorneys with copies of the request form. If you cannot afford the fee, you can ask for the \$50 to be waived. The waiver form is available on the Maryland Judiciary website at <http://www.courts.state.md.us/courtforms/index.html>.

You will receive in the mail a notice of your mediation date, time and place, and instructions requiring you

to send financial information to the bank's attorneys and to the Office of Administrative Hearings. The bank's attorneys will send you a package of documents, including a record of your communication with the bank.

At the Mediation

You can have more than one person assist you—a lawyer, a housing counselor and/or someone else. The mediation takes place around a table and is intended to be a discussion with the bank. A mediator and a lawyer for the bank will be there. The bank's lawyer will call the bank on the phone and someone will talk with you on speaker phone about your situation. Maryland Legal Aid can represent you at the mediation, if you qualify for our services.

If the mediation results in an agreement, the foreclosure case will be dismissed. If no agreement is reached, you still might be given time to submit documents for the bank to consider you for a modification or short sale.

You may ask the mediator to set another date so you can submit documents and meet with the bank again at mediation to hear the decision on your loan modification application.

If no agreement is reached a foreclosure sale can take place in as little as three weeks.

Foreclosure Sale

The law requires that a notice of foreclosure sale be sent no more than 30 days and no fewer than 10 days before a foreclosure sale. The notice will tell you the date and time of the sale. The sale will take place as an auction outside the courthouse. It will not happen at your house and no sign will be posted on your property.

Title to your house does not transfer until the court ratifies, or approves, the sale. The sale cannot be ratified until at least 30 days after the auction.

Before the sale is ratified you have the right to file "exceptions" to the sale and ask the court not to ratify the sale. This is usually only successful if the sale itself did not follow proper procedures.

If a private purchaser bought your house at the auction, someone might contact you soon after the sale and ask you to leave. The purchaser, however, does not have the right to possession until the sale is ratified and the court recognizes the purchaser's right to possess the property.

After ratification, an audit of the sale is conducted, all expenses are claimed and a determination of how proceeds will be distributed is made. You may still owe money even after the sale, you may be entitled to money left over (a surplus) after payment of the principal, interest, costs, fees and any other liens on the property. In order

to claim your right to any surplus, you must file a request with the court.

Leaving the Home

After the ratification, you can be served with a Motion for Order of Possession, in which the purchaser asks the court to recognize that you no longer have the right to be in the house. You have 15 days to answer the motion if you have an argument that the purchaser does not have a legal right to possession of the home.

While there are very few reasons as to why a purchaser would not have a right to possession of the home, if you believe you have a legitimate argument, you should contact an attorney or file a response explaining your arguments and request a hearing.

Fifteen days after you have been served with the Motion for Order of Possession, if no hearing is to be held, the court can grant the order and the sheriff can start the eviction process. Do not wait until this point to leave the house. If you are served with an order of possession, you should have a plan to leave so that you are not evicted.

The buyer might give you some relocation money in return for you emptying the house and sweeping it clean. This is often referred to as "cash for keys."

Bankruptcy

In some circumstances, a house can be protected from foreclosure by filing a Chapter 13 bankruptcy before the home is sold. In a Chapter 13, you propose a plan to the bankruptcy court to pay off your overdue payments over a period of years, or to sell the home.

For a bankruptcy plan to work to save a home from foreclosure, you must have enough income to pay the mortgage and arrears, as well as your other living expenses over a period of three to five years.

If the amount of money you owe on the house is significantly less than the house is worth, you will want to avoid foreclosure and sell the house. You can do this before a foreclosure sale, or file a bankruptcy and propose a sale plan to the court.

A Chapter 7 bankruptcy could be useful to eliminate debt you may still owe to the bank after your home is sold in foreclosure.

Bankruptcies are complicated legal procedures. You should consult an experienced bankruptcy attorney before deciding to file.

Summary of Foreclosure Timeline

- 45 days after a late payment, lender may send a Notice of Intent to Foreclose to borrower.
- 120 days after a late payment, lender may file a foreclosure case in Circuit Court with either a Preliminary Loss Mitigation Affidavit or a Final Loss Mitigation Affidavit.
- Borrower has 25 days to request mediation after receiving the Final Loss Mitigation Affidavit.
- If no mediation is requested, the foreclosure sale can take place 45 days after the case is filed in court.
- Mediation takes place approximately 30–60 days after the request for mediation.
- If no agreement is reached at mediation, a sale can take place approximately 21 days after the mediation.
- 30 days after the auction, the court can ratify the sale and title transfers to the purchaser.
- Immediately after ratification, the purchaser can file a motion for order of possession and serve former homeowner.
- Former homeowner has 15 days to answer and ask for a hearing.
- If no answer is filed, the judge can grant an order and writ of eviction.
- Total time with mediation—from missed payment until possible eviction—270 days.

Maryland Legal Aid Offices

Centralized Intake: 1-888-465-2468
is now serving all jurisdictions:

Offices

Alleghany/Garrett

138 Baltimore Street
Suite 204
Cumberland, MD 21502

Anne Arundel/Howard

2024 West Street
Suite 204
Annapolis, MD 21401
3451 Court House Drive
2nd Floor
Ellicott City, MD 21043

Baltimore City

500 E. Lexington Street
Baltimore, MD 21202

Baltimore County

215 Washington Avenue
Suite 305
Towson, MD 21204

Cecil/Harford

103 S. Hickory Avenue
Bel Air, MD 21014

Lower Eastern Shore Dorchester, Somerset, Wicomico, Worcester

201 E. Main Street
Salisbury, MD 21801

Midwestern Maryland Carroll, Frederick, Washington

22 S. Market Street
Suite 11
Frederick, MD 21701

Montgomery County

600 Jefferson Plaza
Suite 430
Rockville, MD 20852

Prince George's County

8401 Corporate Drive
Suite 200
Landover, MD 20785

Southern Maryland Calvert, Charles, St. Mary's

15045 Burnt Store Road
Hughesville, MD 20637

Upper Eastern Shore Caroline, Kent, Queen Anne's, Talbot

106 N. Washington Street
Suite 101
Easton, MD 21601

TTY Users: Call Maryland Relay, Dial 7-1-1

www.mdlab.org

For more information

www.peoples-law.org

For self-help legal information and
community resources

9.13.2024

