

Foreclosure Procedure

In Wisconsin, all mortgage and land contract foreclosures must go through the court system, although requirements and procedures can differ for a land contract foreclosure. Property tax foreclosures follow a different process, and may differ by county. The purpose of all foreclosures is to terminate the homeowner's title and allow the creditor to sell or take possession of the property. Here's a general overview of the mortgage foreclosure procedure in Wisconsin:

Missed Payments/Default

After you miss mortgage payments, your lender or their attorneys should send you a "Notice of right to cure" or "Notice of Acceleration" letter informing you that unless you pay the past-due amount by a particular date they may start a foreclosure lawsuit. According to federal law, a lender should not file a foreclosure case on your house until you are more than 120 days past the due date for your mortgage payments.

Summons and Complaint

After the "cure" deadline has passed, the lender can file a foreclosure summons and complaint with the circuit court in the county where your house is located. The complaint contains information about the lender, the default (usually missed loan payments but may also be delinquent property taxes or insurance or other contract issue) and whether the lender is claiming a "deficiency"- additional money you will owe if the house doesn't sell for enough to pay off the entire loan. The note and mortgage and any transfers or modifications should also be attached or filed with the complaint.

Service of Process

The lender must give you a copy of the foreclosure summons and complaint, telling you of the lawsuit and giving you a chance to respond. You, or a household member at least 14 years old, should be personally handed the documents by a county sheriff or private process server. If they aren't able to find you they must publish a summons in the local newspaper.

Response Period

You usually have 20 days from when you were personally "served" to respond to the foreclosure complaint (40 days from first publication if it was served by publication), but you should check the summons for the exact time allowed.

WARNING: If you do not respond in writing to the complaint within the time limit, the lender can request a "default judgment" and the judge will be able to order a foreclosure judgment against you without any further notice and before you have had a chance to dispute that you owe the money or claim that you have some defenses.

You file your response (called an 'answer') with the court to disagree with statements in the complaint and claim any defenses or counterclaims against the lender. You may also request a referral to mediation (many counties attach this form to the foreclosure complaint) to stop the case while you and the lender discuss options to save your home.

NOTE: You must send a copy of your response to the lender or lender's lawyer.

Before a judgment is entered, you may have the right to pay all amounts past due

plus attorney's fees and costs, and the court case may then be dismissed. Your lender may be willing to work out a loan modification with you or a payment plan so keep trying to contact your lender or your lender's lawyer to negotiate a deal. In some situations you can receive additional time to sell the house if you list it for sale before the judgment.

Foreclosure Hearing

If you filed a response, the court may schedule a hearing to review the case. If there is a hearing, you and the lender can present evidence and arguments for and against the foreclosure.

Your lender may file a motion for summary judgment claiming that you have not raised a legal defense or any dispute about the facts affecting their right to foreclose. If the motion is granted, the judge will issue a judgment for foreclosure.

If you are trying to keep your home you should have contacted the lender about "loss mitigation" to get a deferment (delay) or modify your loan to bring it current, and the court may put the case on hold while you try to work it out. Loss mitigation can include options such as forbearance (temporary pause on payments), a payment plan, deferral, loan modification, reinstatement, a short sale, or a deed in lieu of foreclosure. You can also look to resolve it in other ways, such as refinancing, selling your home, or filing a bankruptcy (usually a Chapter 13 Bankruptcy). If you have a government-backed loan, such as FHA, Fannie, Freddie, USDA or VA, there may also be additional specific foreclosure guidance/home redemption options.

Judgment of Foreclosure

If you didn't file a response to the lender's complaint or the court sides with the lender after a hearing, it will enter a foreclosure judgment. The judgment states the amount of the debt including the bank's attorneys' fees and costs, and sets the "redemption" time the lender must wait before holding the sale.

Redemption Period

Starting with the date a judgment is granted, there is a “redemption” period before the house is sold by auction in a sheriff's sale. During that time you still own the house and you can stop the foreclosure by paying the full amount you owe (including court costs and interest). You can also try to sell the home during this time. If the lender agrees, you may sell the property for less than the amount you owe to the lender (a ‘short sale’). Ask a tax professional about the tax consequences of a short sale.

The length of the redemption period depends on several factors, including when the mortgage was signed, whether the property is owner-occupied, and whether the lender agrees to waive its right to a deficiency judgment.

A right to a deficiency judgment is the right to sue you for the difference between the sale price of the house and the amount you owe on the loan.

EXAMPLE: Let's say you still owe \$170,000 on the mortgage loan and the house sells at the sheriff's auction for \$120,000. The \$120,000 will be applied to the loan, but there is still \$50,000 remaining debt ($170,000 - 120,000 = 50,000$). If the lender doesn't waive their right to a deficiency judgment, it would have the right to sue you for the remaining \$50,000 left on the loan.

For residential mortgages signed before April 27, 2016, the redemption period is usually 6 months if the lender is waiving its right to deficiency judgment or 12 months if not.

For mortgages signed on or after April 27, 2016, the redemption period is usually 3 months if the lender is waiving its right to a deficiency judgment or 6 months if not. However, if the house was listed with a real estate broker before the foreclosure judgment was entered and you are attempting to sell the house in good faith, you can request that the court extend the redemption period to 5 months (instead of 3) or 8 months (instead of 6).

Note: In most Wisconsin home mortgage foreclosures the lender waives any deficiency claim for money in order to get the shorter redemption period and hold the sheriff's sale as soon as they can.

The lender's complaint will tell you which specific redemption period applies to your situation.

Notice of Sheriff's Sale

After obtaining the foreclosure judgment, the lender must publicly advertise the sale in the newspaper or website of the county where the property is located each week for three consecutive weeks before the sale date. See:

<https://www.wisconsinpublicnotice.org>. Most county sheriffs have a list of upcoming sales on their websites. You often will not personally receive a notice of the sale.

Sheriff's Sale

Sheriff's sales are held at the courthouse, another public location or online; as stated in the Notice of Sheriff's Sale. If the sale price ends up being more than the mortgage debt and any unpaid taxes, other mortgages or judgments, you may get the "surplus." You should file a written request for surplus funds with the court and send a copy to the lender's attorney and other listed parties. If the property sells for less than what you owe, there is a "deficiency," but that is often 'waived' by the lender and you don't have to pay it (see Redemption Period above). If you took a second mortgage out on the house, that may not be paid off by the sale and that lender might still go after you for the debt.

Confirmation of Sale

A court hearing is scheduled, usually a few weeks after the sale, to confirm (approve) the sale. You should receive at least five days notice of the hearing if you filed a response to the foreclosure complaint or appeared in court.

Under Wisconsin law, the court shouldn't presume that the home sold for its fair value at the foreclosure sale, and should not confirm the sale or enter a deficiency judgment until it's satisfied that the property's fair value has been credited on the mortgage debt. So, if the foreclosure sale price is less than the property's fair market value, you may be able to argue that it was not a commercially reasonable sale and ask the court to not confirm the sale. In practice, however, the court normally confirms the sale if the proper procedure was followed even if the house would sell for more in a private sale, as long as it was done in a commercially reasonable manner.

Only when the sheriff's sale is confirmed by the court does the sheriff's deed get recorded to transfer title to the buyer, so you no longer own the house. Thus it may still be possible to stop the process by certain steps including certain loss mitigation efforts, and other efforts such as redeeming or filing bankruptcy (usually a Chapter 13 reorganization case) up to the date of confirmation.

Eviction/Restitution

If the sale is approved, the court usually will order your removal from the property by the sheriff if you do not voluntarily move. The house buyer can seek a "Writ of Assistance," which is similar to an eviction order, to remove you and your belongings from the property. It may be possible to ask the court to delay issuing a writ to allow you more time to move out, or negotiate a move-out date with the new owner.

Overall Timeframe

Starting from the time the legal action is started, it may take 6 to 18 months for the foreclosure action to end, depending on the redemption period and court and attorney calendars. You can live in the home during the foreclosure process, but you

should try to arrange a moving date with the lender that's around the confirmation of sale hearing date.

Conclusion

It's important to note that foreclosure laws and procedures can change, and this overview provides a general outline of the process in Wisconsin. If you're facing foreclosure, it's advisable to seek legal assistance to understand your rights and options. Beware of foreclosure rescue companies that may promise a loan modification and charge thousands of dollars in upfront fees; there are no guarantees of a successful modification and a HUD counselor can submit the paperwork for little or no cost.

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