

FAQs FOR HOMEOWNERS AND HOUSING COUNSELORS:

WHAT DO I NEED TO KNOW ABOUT JUDICIAL FORECLOSURE?

What is the difference between the regular (non judicial or by advertisement) foreclosure process and judicial foreclosure?

The primary difference is that a judicial foreclosure is processed through the court system so there will be judicial oversight of the process. You will have the opportunity to raise any defenses you may have without having to file your own court case.

Why would a mortgage company choose judicial foreclosure?

A mortgage company may choose judicial foreclosure because they do not want to participate in Michigan's new pre-foreclosure negotiation law that requires mortgage companies or their designated agent to meet with homeowners and, in some circumstances, offer a loan modification. In other cases, a mortgage company may have to file a judicial foreclosure because the mortgage documents were not drafted or recorded properly and they need the court to correct the situation to allow the foreclosure to proceed.

How will I know if my mortgage company has filed a judicial foreclosure case?

If your mortgage company files a judicial foreclosure case, you will receive a summons and complaint. It will be delivered to you in person or it can be delivered by certified mail, restricted delivery for which you have to sign. If the process server can not find you or you refuse to sign for the certified mail, then the mortgage company can receive permission from the court to send the papers to you in a different way such as posting them on your door or sending them by regular mail.

What should I do if I receive a Summons and Complaint?

You should consult with an attorney. To find an attorney you may contact the Michigan Foreclosure Prevention Project at miforeclosure.mplp.org. You can also find attorneys who specialize in consumer and mortgage law at www.naca.net or contact the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738. An attorney can review your situation with you to see if you have any defenses or arguments that should be presented to the court. Only an attorney can provide you with individual legal advice.

You must file a written answer within 21 days of when you received the summons and complaint. *No court date or trial will be scheduled if you do not file a written response with the court.* If you do not file a written response the court will enter a default against you and the mortgage company can obtain a judgment for the amount they request in their Summons and Complaint.

Like a non-judicial foreclosure, if you want to file a bankruptcy case you must do so prior to the sale of the property. To learn more about bankruptcy, please see *FAQs for Homeowners and Housing Counselors: What Happens to My Home Mortgage if I File Bankruptcy.*

What happens if a judgment is entered against me?

Once a judgment is entered against you, the court will then order that your home may be sold by the sheriff and any proceeds from the sale will be applied to the amount of the judgment. If the court enters a money judgment finding that you are personally responsible for the debt, and the proceeds from the sale of your house do not pay the entire amount of the judgment, then the mortgage company can try to take other enforcement action against you such as garnishing your wages, garnishing your bank account, garnishing your state income tax return, or seizing or selling other property such as a vehicle (also this is fairly rare).

How long will the process take?

There must be at least six months between the filing of a complaint and the court's order that the property may be sold, and the court process may take longer depending upon the complexity of the case, the court's schedule, and whether you file a response or if the case proceeds by default. Once a judgment is entered, it will take a minimum of six weeks to schedule, advertise and conduct the Sheriff's (foreclosure) Sale. After the Sheriff's Sale the court will confirm the sale and you will have a six month redemption period.

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