

## **What is Foreclosure?**

Foreclosure is the legal process that gives mortgage lenders the right to take possession of a property secured by a deed of trust, in order to recover the amount owed to them. Typically, this process begins when the borrower on the mortgage note defaults on the loan payments and the lender files a **NOD (notice of default)**. This notice of default is a notice to a borrower that he/she is delinquent in payments and that if delinquency is not paid within a certain period of time, foreclosure proceedings may be commenced. The NOD marks the beginning of the **pre-foreclosure** process. Pre-foreclosure is the time frame that begins with the NOD and ends with the sale of the property. Every state has different laws governing how long this time frame should be. In Texas this period can be as short as 30 days. This pre-foreclosure process can take on two forms: judicial vs. non judicial foreclosures.

### **Judicial Foreclosures**

Judicial foreclosures are those that are processed through the courts. A complaint is filed, which is called the notice of Lis Pendens, which is Latin for, "suit pending." This complaint addresses two things:

1. What the debt is.
2. Why the default should allow the lender to foreclose.

The homeowner will receive notice of this complaint and will have the option to "show cause," as to why the property should not be taken. If the borrower elects not to show up to court or loses the hearing, a sale date will be set and the property will be auctioned. If the property does not sell at the auction, the house will be listed by a real estate broker and put on the market.

### **Non-Judicial Foreclosures**

Non-judicial foreclosure is a process outside of the courts; however they must follow state statutes regarding foreclosure proceedings. In this case when the loan default occurs, the homeowner will be mailed a default letter, and a Notice of Default will be filed at approximately the same time. If the borrower does not cure the default, a Notice of Sale will be mailed to the homeowner, and posted in public places, recorded at the county recorder's office, and published in legal publications. The sale of the property will be auctioned and if the property does not sell, it will be put on the market by a listing real estate broker.

### **Stopping or ending the foreclosure process**

There are several ways that the foreclosure process can end:

1. Cure the default which will require you to bring the balance current (plus fees)

2. Work with your lender to resolve the default through the lenders loss mitigation department. The lender may recommend a loan modification or refinance.
3. Obtain the services of a licensed real estate agent to prepare a short sale.
4. A third party buys the property at the public auction.
5. The lender takes a "deed in lieu of Foreclosure" and re-sells it on the open market

### **Related Resources**

[Wikipedia - Foreclosure page](#)

[Legal Dictionary - Definition of notice of default](#)