



# Foreclosure Fact Sheet

## Introduction

Foreclosure is a legal process that allows a bank to sell property to pay off a borrower's past due mortgage.

## Avoiding Foreclosure

If you are having trouble paying your mortgage, get help quickly. Your mortgage servicer, a United States Department of Housing and Urban Development (HUD)-approved housing counselor, and a qualified attorney may all be able to offer solutions to help you save your home. However, it is critical to ask for help quickly, since the chances of saving your home drop as you fall further behind.

## Falling Behind on Your Mortgage

Within the first 36 days after missing a payment, you will get a call from your servicer. You should explain the situation to the servicer and request help. If you do not catch up within 45 days of missing a payment, you will receive a "Notice of Delinquency." This notice will state the date you fell behind, tell how much you owe, and contain a loss mitigation application. You should fill out the application and send it in. A HUD-approved housing counselor can help you through this process (see below). 120 days after your missed payment, the bank can begin the formal foreclosure process. There are two types of foreclosure in Arkansas: judicial and non-judicial. The process for each is briefly discussed below.

## Judicial Foreclosure

Judicial foreclosure occurs when the bank files a lawsuit against the borrower to get the court's permission to sell the house. You will know a judicial foreclosure has started when you are served with a summons and a complaint. If you are served with a foreclosure lawsuit, contact an attorney. You only have 30 days to file an appropriate answer with the circuit court clerk. If you do not file an answer within 30 days, a default judgment may be entered against you and your home will be sold.

## Non-Judicial Foreclosure

Non-judicial foreclosure is a process that allows a bank to sell a borrower's home without going to court. The process begins when the bank records a "Notice of Default and Intention to Sell." This notice, which must be sent to the borrower by certified and regular mail within 30 days of it being recorded, must include (among other things) the date, time, and place of the sale; a legal description of the property; and the name, address, and phone number of the party bringing the foreclosure, and the

following statement: "You may lose your property if you do not take immediate action." The sale date cannot be less than 60 days from the date the notice was recorded with the clerk. If you get this notice, contact an attorney immediately.

Unless you or your attorney makes some arrangement with the bank, your home will be sold on the sale date. You will lose all rights to the property. If the home is sold for less than the amount you owed on the loan, the bank may sue you for a "deficiency judgment" to cover the difference. This lawsuit must be brought within 12 months of the sale.

## Mitigating Loss

Loss mitigation is a general term for a workout agreement between a borrower and their mortgage servicer to arrange repayment of the debt. Your servicer is required to consider you for loss mitigation. This is where a HUD-approved housing counselor can be very valuable, helping you submit a strong application for loss mitigation. You may obtain a housing counselor by calling 888-995-HOPE. Loss mitigation can take several forms, including the following.

### Temporary Loss Mitigation

This changing your loan payment terms on a temporary basis. It is not a permanent modification of the existing loan, but it can include forbearance, which is a temporary suspension of your obligation to pay.

### Permanent Loan Modification

This involves changing the terms of your loan. Common modifications include lowering the interest rate and changing the number of years to repay the loan (thereby lowering your monthly payment).

### Forbearance

Forbearance is temporary suspension of your obligation to pay.

### Short Sale

This is an agreement from your lender allowing you to sell your house for less than you owe on your loan. The lender then accepts that money as a payoff for your loan. This can be a lengthy process and must be approved by your lender.

### Deed-in-Lieu of Foreclosure

This option allows you to avoid foreclosure by deeding your home to the bank. In exchange, the bank forgives the balance of your loan. It does not allow you to stay in the home, but it is generally less damaging to your credit than foreclosure. As stated above, the bank must consider (but not necessarily approve) you for loss mitigation. The bank must also inform you of your eligibility for any loss mitigation program within 30 days of receiving your completed application.



If you have a special mortgage, such as a Federal Housing Administration (FHA), HUD, Resources for Human Development (RHD), or United States Department of Veterans Affairs (VA) loan, there are additional protections and requirements. Contact an attorney or a HUD-approved housing counselor for more information.

## Bankruptcy

Bankruptcy might save your home. When a bankruptcy is filed, the court will issue an “automatic stay.” This temporarily prevents the bank from selling your home. What happens next depends on what type of bankruptcy you have filed and your other assets and debts. A decision to file bankruptcy should be made after carefully considering your total financial situation. If you think you need a bankruptcy, contact a bankruptcy attorney to discuss your options.

## If Your House Has Been Sold

Legally, you no longer have a right to live in the house. Once the sale is complete, the bank can bring an eviction lawsuit to allow law enforcement to remove you from your home. The bank may offer a “cash for keys” option, where it agrees to pay you a little money to vacate prior to the eviction lawsuit. You should ask your bank about this option. In rare cases, the bank may agree to rent you the home. It is unlikely, but you should ask about this option if you have no place to go.

## Contacting a HUD-Approved Counselor

You may obtain a housing counselor by calling 888-995-4673 or visiting the Department of Housing and Urban Development at [hud.gov](http://hud.gov) for a list of HUD-approved housing counseling agencies in Arkansas.

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*This fact sheet is a collaboration of the Center for Arkansas Legal Services and Legal Aid of Arkansas, Inc. These nonprofit organizations provide free legal assistance to eligible Arkansans who meet income, asset, and other guidelines. Legal assistance may also include advice and counsel, brief services, or full representation depending on the situation. For more information about civil legal aid in Arkansas, please visit [arlegalservices.org](http://arlegalservices.org). For information specific to Legal Aid of Arkansas, Inc., visit [arlegalaid.org](http://arlegalaid.org). Apply for services online or by calling 1-800-9-LAW-AID (1-800-952-9243).*

*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.*

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