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Foreclosure & Foreclosure Rescue Scams - 2026

When you buy a house or land on time, or borrow money to buy a house or land, the creditor usually takes a security interest in the property you buy. This means that if you don't pay, the creditor can foreclose upon (or take back) that property. (A person or business you owe money to is called a creditor.) However, you have important legal rights that protect you.

When may a creditor foreclose?

In Virginia, a creditor may not start the foreclosure process unless you're more than 10 days late with a payment. If you make all missed payments and any late fees, within 10 days of the due date, a creditor may not start the foreclosure process. If you are more than 10 days late with all or part of a payment, a creditor may start the foreclosure process. If your creditor has agreed to accept your late payments or to change your due date, foreclosure may not be allowed. A change in your due date may happen orally or in writing, or by your creditor repeatedly taking late payments without complaint.

What happens when a creditor "accelerates" a mortgage?

If your mortgage is accelerated, all the money you owe is due all at once, right now. In this case, you no longer have the right to make payments over time. In Virginia, a creditor may not accelerate a mortgage unless you're more than 10 days late with a payment, but most federal If you make all missed payments and any late fees, within 10 days of the due date, a creditor may not accelerate.

May a creditor foreclose if I catch up all my missed payments?

If a creditor has not accelerated your mortgage and you make all missed payments and any late fees, the creditor may not foreclose. Even after you're more than 10 days late with a payment, a creditor can't refuse your payment and foreclose if the creditor hasn't accelerated.

If a creditor has accelerated your mortgage, you can't simply make all missed payments and any late fees. Even if you make all missed payments and any late fees, all the money you owe is due all at once, right now.

How do I avoid foreclosure of my home?

All homeowners are subject to events beyond their control that may make it hard to pay the mortgage. If you fall behind on your mortgage, it is very important that you call and write your lender and clearly explain your situation. You also should ask yourself these questions.

- *Is my crisis temporary or permanent?*
- *Can I make my mortgage payment along with my other monthly expenses?*
- *Can I increase my income or reduce my expenses?*
- *Do I want to keep my home or sell it?*

Keep in mind you can only keep your home if you can afford to pay your mortgage. If you want to keep your home through an alternative to foreclosure, you must show your monthly income meets or exceeds your monthly expenses.

Sit down and prepare a budget. Total your monthly net income and subtract your monthly expenses. Where do you stand? If you have money left over, you are in a good financial position. However, if your monthly expenses total more than your monthly net income, try to reduce unnecessary expenses or increase your income.

What are the alternatives to foreclosure?

Your options depend on how past due you are, the amount you are delinquent or behind, and your loan type (for example, FHA, VA, Conventional). You should contact the Loss Mitigation Department at your mortgage company. Ask for a loan workout package. If you can afford to pay your mortgage, you may be able to keep your house through a loss mitigation option. All loss mitigation options must be selected and approved by your mortgage company.

What are the loss mitigation options?

- Repayment Plan – This involves making up the amount past due over a period of months by making a full payment plus a partial payment until the amount past due is paid.

- Forbearance Plan – This is the reduction or suspension of payments for a period of time followed by a period of time during which the deferred payments are made up, similar to the repayment plan.

- Loan Modification – This changes the original terms of your mortgage through one or more of the following methods: an adjustment of the interest rate, addition of the delinquent interest amount to the current unpaid principle balance, and/or an extension of the term (life) of the mortgage. A loan modification fee will be charged, and a cash contribution toward any loss to the lender may be required.

- Partial Claim – This is when money is advanced or loaned to you by the Federal Housing Administration (FHA) or whoever holds your private mortgage insurance. This money is used to bring your mortgage current.

What if I do not qualify for a loss mitigation option?

If you don't qualify for a loss mitigation option, you may need to give up ownership of your home. You still have a couple ways to avoid foreclosure.

• Pre-foreclosure Sale – This means selling your house before a foreclosure sale at fair market value. In some cases, this may be less than the amount you owe on the house.

• Deed in lieu of foreclosure – This involves returning the property to the lender before a foreclosure sale. This usually is granted only if you can't sell the property

A mortgage default counseling service can help you figure out the best option, whether that involves keeping your home or not keeping you home.

What is a mortgage default counseling service?

A mortgage default counselor will work with you and your lender to try to keep you from losing your home. The counselor will help you analyze the problem and identify your options. If possible, the counselor will help you negotiate a plan with your lender that will result in bringing and keeping your mortgage current.

If that's not possible, the counselor will help you figure out what to do next so that you are in the best position to buy another home when your situation changes. Mortgage default counselors work with lenders throughout the country. If you are willing to do what is necessary to bring your loan current, most lenders will rely on the counselor's recommendation and work with you. In the Richmond area, free mortgage default counseling is offered by:

Housing Opportunities Made Equal (H.O.M.E.)
1601 Rolling Hills Drive, Suite 110
Richmond, Virginia 23229
804-354-0641 (Phone)
help@phonehome.org (e-mail)

What is a foreclosure rescue scam?

This is a trick targeted at a homeowner in financial distress and facing foreclosure. One scam is known as "phantom help." This is where a rescuer charges you expensive fees for a few phone calls and paperwork. A second scam is a "bait-and-switch." This is where you, the homeowner, sign papers without realizing you are giving up ownership of your home. A third scam is a "bailout." This is where you, the homeowner, sign papers giving up ownership of your home under a false promise you can rent the home and buy your home back later.

How do I spot a foreclosure rescue scam?

Although there are a lot of good and honest loans, there also are many dishonest lenders.

They look for people with money or credit problems, especially homeowners. They offer a loan that sounds very good, but has hidden fees, bad rates, and other tricks that can cost you everything, including your home. Bad lenders are sneaky and they look for the following things to take advantage of you.

- Anyone with immediate money problems.
- Minorities.
- People with spotty or bad credit.
- People without much experience with loans.
- Non-native English speakers.
- Older or elderly homeowners.
- People with a lot of equity in their homes, who own them free & clear or owe very little on them.
- People with lower incomes.
- Anyone who doesn't think they can get a good loan.

Sometimes it is hard to tell a good loan from a bad one. There are new angles all the time. However, if you hear any of these things, watch out and call for help.

• ***"This is just for you."*** Someone making a loan is <u>not</u> doing you a favor. They are making money. They sound very sweet and convincing, saying you remind them of a family member or other such things. However, sweet talk about a "special deal just for you" means watch out and get help.

• "***You don't need anyone to look at this for you.***" or "***It's a standard contract.***" or "***Don't worry about the fine print.***" If a lender says you don't need anyone to look at the paperwork with you, watch out and get help.

• "***I need an answer now.***" Good loans do <u>not</u> have a "one day only" special deal for any reason. If a lender won't give you time to consider the deal, watch out, walk away and get help.

• "***I can find financing for you.***" If someone comes to your house, recommends repairs, and then says they can help you finance it, watch out and get help.

• "***You can't qualify for anything else.***" or "***No one else will give you a deal like this.***" If no one else will give you the deal, then they shouldn't either – unless they are lying or hiding something. Watch out and get help.

What are some other foreclosure rescue scam tricks?

Bad lenders look for people who are unsure or in trouble. If you feel uneasy at all, or it sounds too good to be true – no matter what they say to you – step back, watch out and get help. Other tricks used by bad lenders include these things.

• Letters in the mail with checks for a lot of cash at very low monthly payments.

• Any unexpected fees at closing. If you paid more than you expected, you still may have time. The law says you have three days to cancel any second mortgage or refinanced loan, for any reason without penalty, and get your money back.

• If anything about your loan was not the same as you originally were quoted.

How does a foreclosure work?

Almost all mortgages in Virginia are secured by a Deed of Trust. A Deed of Trust is a deed of the property from you to a Trustee, who usually is a lawyer. The Trustee has the power to sell your property if you don't keep the promises in the Deed of Trust. This includes your promise to pay the mortgage payments on time, in full, every month.

Is a foreclosure done through court?

No. Under Virginia law, foreclosures are done outside of court, rather than through the court system. The Trustee simply sells your property. This usually happens at a public auction to the highest bidder. Before doing this, the Trustee must follow the rules set forth in your Deed of Trust. The Trustee also must follow the Real Property Foreclosure Act that was in effect when you signed your Deed of Trust.

If you have not kept all your promises in your Deed of Trust, the Trustee may accelerate the mortgage, and sell your home. Usually, mortgages that are federally insured or guaranteed must be at least three months (120 days) behind before the first notice of foreclosure.

Must a creditor give me a notice before foreclosure?

The Trustee must give you a written notice, by certified or registered mail, telling you the time and place of the sale. You must get this at least 60 days before the sale. However, if your property is sold to an innocent third party for value, a sale is valid even if the notice was not sent.

Must a creditor advertise the foreclosure sale?

The Trustee must advertise the foreclosure sale in a newspaper of general circulation before the foreclosure sale. The Trustee must strictly follow the advertising requirements. If the Trustee does not do this, a court may set aside or void a foreclosure sale. The ad must state the location of your property, the location of the foreclosure sale, and the terms of the sale.

Where the Deed of Trust does not say the number of ads, the sale must be advertised for four weeks in a row, or for five days (which may be five days in a row) if your property is located in a First Class City or in a neighboring county. The sale must take place no more than 30 days after the last ad, and no fewer than 8 days after the first ad.

If the Deed of Trust says the ads must be published weekly, the sale must be advertised at least once a week for two weeks. If the Deed of Trust says the ads must be published daily, the sale must be advertised for at least three days (which may be three days in a row).

What happens at a foreclosure sale?

The Trustee must hold the foreclosure sale in a manner to get a fair sales price. A low sale price alone is not enough to set aside a sale. However, where the sales price is very low (usually less than 50% of assessed value) and evidence exists that the Trustee was not trying to get a fair sales price, a court may set aside the sale.

Do I have to move right after the foreclosure sale?

A foreclosure only affects who owns the property. A foreclosure does not affect who has the right to use or occupy the property. Once a foreclosure sale occurs, the former owner becomes a tenant at sufferance. This means that the new owner must give you a three-day notice to vacate. After the three days pass, the new owner must file an unlawful detainer action in court to gain access to the property.

What is an unlawful detainer?

After the three-days pass, the new owner can evict you only by filing a lawsuit (unlawful detainer warrant) in General District Court. A hearing will be held. The new owner has the right to request payment of fair market rental value of the property from the day of the foreclosure until the date that you vacate the dwelling unit, as well as for damages and payment of reasonable attorney's fees and costs.

If the judge rules in your favor, you get to stay. If the judge rules in the new owner's favor and the new owner ask, the Judge can give immediate possession and allow the new owner to get a Writ of Eviction right away. However, you cannot be evicted until your 10 day appeal period has passed. If the new owner does not ask for immediate possession, the Writ cannot be issued until the 10 day appeal period has passed. The Sheriff will provide you the Writ of Eviction, as well as at least 72 hours' notice of the date the actual eviction will occur.

The new owner may not cut off utilities, lock you out of the house, or evict you without going to court. You don't have to move out just because the new owner tells you to leave and takes out an unlawful detainer. The new owner must wait until a court order is issued. These steps usually take more than two months from the date of the foreclosure sale.

Can a bankruptcy stop a foreclosure sale?

Bankruptcy means you ask the court to excuse you from your duty to repay your creditors. A person or business you owe money to is called a creditor. Bankruptcy allows you to discharge (get rid of) most of your debts, but also keep a certain amount of property. Two kinds of bankruptcy apply to individuals and married couples not in business. These are a Chapter 7 (or straight) bankruptcy and a Chapter 13 (debt adjustment) bankruptcy.

Under the bankruptcy law that took effect October 17, 2005, debtors who have the ability to repay some of their debts must enter a repayment plan under a Chapter 13 bankruptcy, rather

than having their debts canceled under a Chapter 7 bankruptcy. All bankruptcies are filed with your local United States Bankruptcy Court.

Once you file for bankruptcy, most – but not all – debt collection must stop. This is called the "automatic stay." Filing for bankruptcy stops repossessions, utility cutoffs, debt collection lawsuits, garnishments, levies, attachments, foreclosures, evictions where a judgment of possession has not been entered, and most other actions to collect debts.

In a Chapter 7 bankruptcy, what happens to a house that I'm buying?

If you're buying a house, you may have to give it back to the creditor. In a Chapter 7, there are a number of ways you can keep your house. If you are current on your payments, you may "reaffirm" the debt by agreeing to keep the debt even though you filed bankruptcy. However, if you are behind in your payments, you may have to file a Chapter 13 to keep property you're buying on credit. A final way to keep property is to "redeem" it. This means you pay the creditor what the property is now worth, not what you still owe on it. (This rarely happens because it requires you to have a large sum of money.)

Even if you can use one of these ways to keep your house in a Chapter 7, you still may lose the house to the Bankruptcy Court if you have more "equity" in it than you can protect under Virginia's debtor exemption laws. (Equity means the fair market value minus the amount you still owe on the house.) Issues like this need to be carefully reviewed by a bankruptcy attorney.

In a Chapter 13 bankruptcy, what happens to a house I'm buying?

In a Chapter 13 bankruptcy, you may not have to give back, redeem, or reaffirm a house you're buying. Instead, you may be able to keep a house you're buying even if you're behind on payments. To keep the house where you live, you must make current payments, and you get three to five years to catch up missed payments.

What is the filing fee for a bankruptcy?

As of December 1, 2020, the filing fees are $338 for a Chapter 7 bankruptcy and $313 for a Chapter 13 bankruptcy. The court may allow you to pay this over several months if you can't pay all at once. However, if you don't pay the filing fee on time as required by the court, your bankruptcy will be dismissed. If you are very poor, the court may allow you to file a bankruptcy for free.

Can I file bankruptcy without an attorney?

You may be able to do this, but it is not recommended. Bankruptcy is difficult. You may lose income, property, or other rights if you don't know the law.

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