

Following the 120 day delay required under Federal law prior to proceeding with a foreclosure, you will typically have a minimum of four months, and potentially up to five or six months, to move out of your home (if your lender or its servicing agent declines to negotiate a rental arrangement with you, to modify or restructure your mortgage loan, or to engage with you in a foreclosure prevention alternative or option).

The Foreclosure Procedure – Revisited

Homeowner Activities You Should Accomplish:

- Contact your lender or its servicing agent – the sooner, the better. The sooner you make contact, the stronger your negotiating position. You are in the best negotiating position when you make contact before you miss a single mortgage loan payment.
- Ask to negotiate a plan to avoid foreclosure.
- Work with your lender or its servicing agent to negotiate alternative or optional mortgage loan terms that are acceptable to both parties.
- Pay attention to any contact (mail or telephone calls) from your lender or its servicing agent.
- Review alternatives or options available to you to avoid the foreclosure sale.
- Consider making plans to move out of your home after the foreclosure sale is conducted and the eviction process is concluded (if neither the foreclosure sale can be avoided nor a tenant relationship established).
- Your obligation to move occurs after the completion of the eviction process. The eviction process may be avoided should you be able to establish a tenant relationship with the new owner of your home or, in the absence of a successful third-party bidder, with the lender or its servicing agent.

- As part of the eviction process, the court may require you to pay court costs and attorney fees. You are obligated to move from and vacate your home when the eviction process is completed and you are served with a notice of the eviction.
- While some homeowners have successfully filed bankruptcy and asserted a right to possession of the home even after the non-judicial foreclosure process is completed, they may still be served with a notice of eviction. Many bankruptcy courts do not recognize the homeowner's right of possession after foreclosure. You can be sanctioned or otherwise required to pay costs and attorneys' fees of the new owner of the home (or the lender or its servicing agent) should you still refuse to vacate.
- Remember your lender or its servicing agent may have an incentive to arrive at a modified or restructured mortgage loan payment. Stay proactive in your efforts.

Activities Your Lender or its Servicing Agent Should Accomplish:

- Contact the homeowner a minimum of 30 days before proceeding with the foreclosure remedy to discuss the nature of the mortgage loan situation.
- Be sure the consumer loan is at least 120 days delinquent before recording a NOD.
- Work with the homeowner from the outset to negotiate alternative or optional mortgage loan terms (modification or restructuring of the mortgage loan).
- Notify the homeowner of the right to a meeting with you as the lender or servicing agent (if one did not take place before the NOD was recorded). The homeowner also has the right to a follow-up meeting within two weeks after the first meeting with the lender or its servicing agent to keep the discussions active.



- Give the homeowner specific information about how to contact the U.S. Department of Housing and Urban Development (HUD), which will assist the homeowner in finding a HUD-certified loan/credit counseling service, attorney, or other authorized agent to negotiate on the homeowner’s behalf. In other words, tell the homeowner that the homeowner can receive free professional counseling or assistance through a HUD-authorized counseling service.
- Continue to work with the homeowner to negotiate a plan to avoid foreclosure. The lender or its servicing agent must contact the homeowner and discuss foreclosure prevention alternatives or options before the foreclosure sale can take place (unless a demonstrated good faith effort to contact the homeowner proves to be unsuccessful).
- Direct the trustee to post on the security property and publish the NOS in an authorized newspaper of general circulation in the city, county, or judicial district where the homeowner’s property is located. Send a copy of the NOS by certified postage prepaid U.S. mail.
- The NOS must be completed in English, Spanish, Korean, Chinese, Vietnamese, or Tagalog, depending upon which language the mortgage loan was negotiated at the time of its origination.
- Direct the trustee to “cry” the foreclosure sale, i.e., sell the property at a publicly-held sale, and to perform any activities necessary to properly conduct the foreclosure sale. The bidding procedure required by the lender or its servicing agent must be consistent with applicable law.

