

# Foreclosure Information

In our state, a mortgage company has two options in foreclosing on real estate: they may either file for "Judicial Foreclosure" by filing a lawsuit, or they may start a "Non-Judicial Foreclosure", which begins by the filing of a Notice of Default with the county recorder. The processes are technical and you have different rights under each method of foreclosure, all of which is beyond the scope of this article. But it is important to know that your property can be sold at auction a little less than 4 months after the foreclosure is started. After auction, you can be forcibly removed from the property through the eviction process.

There are essentially only 5 ways to stop a foreclosure. You can pay the mortgage according to the terms, you can <sup>refinance or</sup> negotiate a workout or loan modification with the mortgage company, you can sell the home (either at a profit or at a short sale —if you owe more than the home is worth), you can file a lawsuit to try to block the foreclosure or you can file a bankruptcy. The bankruptcy option allows you to either try to save the property, buy more time in the property and/or escape potential post-foreclosure liability (see below).

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~~Some people may not be able to save their home despite their best efforts, and some people intentionally want to give up their home because there is no equity in it and they can't afford the payments (known as a strategic default).~~

If <sup>and</sup> ~~Once~~ a property is lost to foreclosure, a mortgage company MAY be able to pursue a claim for a deficiency — assuming that there is one and assuming that they followed the proper foreclosure procedures. Also, wholly, unsecured 2nd mortgages, home equity loans ~~and~~ <sup>and</sup> frequently can sue for the entire balance of the loan! A deficiency is ~~typically~~ <sup>now</sup> measured by subtracting the value of the home from the amount owed to the mortgage companies. Our state has laws restricting a lenders right to collect a deficiency, but there are exceptions to these "anti-deficiency laws" so you should consult with a qualified bankruptcy attorney to see if you are protected after foreclosure. Also, if there is a deficiency after a foreclosure, the mortgage company may send you (and the IRS) a 1099-C tax notice. This is a statement of the amount of debt that was cancelled through the foreclosure process. This cancelled debt must be reflected as income on your tax returns, although there are a number of ways this income may possibly be excluded from your taxable income. If you receive a 1099 as a result of a foreclosure, be sure to address this issue with your tax preparer.

If you are potentially liable for a deficiency after a foreclosure, or if you have debt-cancellation issues on your tax return, you should consider filing bankruptcy to eliminate these liabilities. It is very, very important that you speak with a bankruptcy attorney BEFORE the home is sold at auction, because you typically have more options if you are still in possession of the home at the time of your bankruptcy filing.

Do you need help understanding your rights regarding a foreclosure? Call or fill out our form for a consultation. Let our Attorneys answer your questions.

Trust Sam Benevento with your Bankruptcy filing: Sam's Career as a Bankruptcy Lawyer spans over 20 years.

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If you want to try to save your home, a chapter 13 or chapter 11 reorganization can usually be filed to (1) stop the foreclosure and (2) structure a plan to pay back the mortgage arrears. It may also be possible to use a reorganization to delay a foreclosure while you are attempting to complete a loan modification or short sale.