

Tips for North Carolina Homeowners: Getting Help When You Are in Default on your Mortgage or Facing Foreclosure

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- It is a good idea to seek legal advice before signing any kind of agreement or modification of your loan. Depending on your needs and the specifics of your situation, you can also seek legal advice on whether you may have any existing legal claims against your lender or servicer. Every situation is different; this brochure only provides general information to help you think about what kind of help you might need.

What caused you to fall behind on your mortgage payments?

- Has your income remained roughly the same, but your mortgage payment jumped up suddenly for reasons that you do not understand? Did your mortgage involve interest-only payments, an adjustable interest rate (also known as an ARM loan), negative amortization, or a balloon payment? If so, and if you did not understand these features of the loan when you got it, you might have been a victim of unfair or predatory lending practices that could give rise to legal claims. **Consider seeking legal advice.**
- Did you experience a temporary loss of income from unemployment or a family or medical emergency that has now been resolved? If your income and expenses have now returned to normal, you might be able to apply for a repayment plan with your servicer (spreading the missed payments over 6 months, for example). **Contact a housing counselor for help.** If the servicer refuses to give you more time to repay the arrearage, you could consider filing a Chapter 13 bankruptcy, which would allow you to spread the arrearage over a three to five year bankruptcy plan while you start make your regular monthly mortgage payments going forward. **Consider seeking legal advice from a bankruptcy attorney.**
- Have you experienced a temporary loss of income that has not yet been resolved? If you are currently unemployed due to the economic downturn and you are actively seeking employment that would allow you to resume your regular payments, you may be able to apply for a temporary forbearance from your servicer (a period of time where you make no payments or greatly reduced payments) or apply for payment assistance in the form of a “bridge” loan from the NC Housing Finance Agency. **Contact a housing counselor for help.**
- Have you experienced a permanent reduction in income that makes your mortgage payment unaffordable--for example, a reduction caused by divorce, death of a spouse, having to take a lower paying job, or becoming disabled? You may be eligible for a loan modification under the government’s Home Affordable Modification Program (HAMP) or some other program. **Contact a housing counselor for help.**

How to ask your servicer for help

- **Gather your important documents.** Whether you need to apply for a forbearance, a repayment plan, or a loan modification, you will need to have certain documents on hand. Usually, these include your last year’s federal income tax return, your last two months’ bank statements (for all bank accounts), your last two months’ pay stubs, and proof of any other

income you receive (e.g., letters regarding Food Stamps or Social Security benefits, court order showing child support payment, lease or housemate agreement reflecting rental income).

- **Go over your budget.** Eliminate or reduce any expenses that you can. If your monthly budget is accurate, it should reflect whether you can afford your current mortgage payment or are coming up with a shortage every month. Keep in mind that if your budget shows that you can contribute little or no monthly income to a mortgage payment, your servicer might think that it is not possible for you to save your home.
- **Get help from a HUD-certified housing counselor.** Communicating with your servicer can be difficult. Housing counselors have good contacts with many servicers, know what options are available depending on the kind of loan you have, and can help you collect your documents and make sure that your budget is accurate. HUD-certified counselors provide help **for free**. You should never have to pay for help avoiding foreclosure: most often it is a scam! Find a certified counselor near you at www.ncforeclosurehelp.org.
- **Ask your housing counselor if you qualify for a payment assistance program.** If your loss of income has been caused by the economic downturn and you had a good payment record prior to the loss of income, you may be eligible for a loan to help catch up the arrearage or cover your ongoing payments while you look for a job. Ask a housing counselor about the Mortgage Payment Program (MPP), or check out www.nchfa.com.
- **Keep good notes of all phone calls with your servicer, and keep copies of everything you send.** Failure to provide information or documentation when requested by your servicer can be a basis for denial of a loan modification or other assistance. Therefore, it is essential to be able to prove that all required information was sent in a timely manner. Send documents by certified mail/return receipt, delivery confirmation, or even better, by fax (and keep a copy of the entire fax and your fax confirmation sheet showing the number of pages sent).
- **Keep track of deadlines.** Usually a servicer will insist on additional information being provided within a certain deadline—often ten days or thirty days. It is important to meet any such deadlines. Also, if you are denied a modification under the HAMP program, you will usually only have thirty days to appeal that denial, so get legal help right away. (For more information, see our brochure on **How to Apply for HAMP**.)

What to do if you get a Notice of Foreclosure Hearing

- Servicers are not supposed to start the foreclosure process while a HAMP loan modification application is under review, but this does happen. It is important to **seek legal help immediately** in order to seek additional time or contest the foreclosure hearing.
- North Carolina provides for a hearing in front of a Clerk of Superior Court before the foreclosure sale will be allowed to go forward. The Clerk will hear evidence on six main issues: (1) whether a valid debt exists and the party seeking to foreclose owns the debt, (2) whether the debt is in default, (3) whether the mortgage documents provide for the right to foreclose in this way, (4) whether proper notice of the hearing was given to the borrower, (5) whether the pre-foreclosure notice was provided at least 45 days prior to the notice of hearing, if applicable, and (6) whether the foreclosure is barred under N.C.G.S. § 45-21.12A (special protection for active military personnel). The Clerk will not hear evidence outside of these six issues at the hearing; any other issues must be raised in a separate proceeding.

- If you have already reached an agreement with your servicer regarding a loan modification or a repayment plan, you may be able to show that your loan is no longer in default.
- North Carolina law provides that if the home being foreclosed upon is the owner's principal residence, the Clerk shall postpone the foreclosure hearing if there is good cause to believe that "additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure." N.C.G.S. § 45-21.16C. In other words, if you explain (and show) the Clerk that you are actively applying for a loan modification and the servicer has not yet made a decision on your application, the Clerk may postpone the foreclosure hearing for up to 60 days.
- If the Clerk enters an Order of Sale improperly, you must file an appeal and post a bond **within 10 days** in order to have a new hearing in front of a Superior Court judge. If not, the foreclosure sale will be scheduled soon after the hearing.
- Once the Order of Sale has been entered and the foreclosure sale has been scheduled, you should assume that the sale will go forward unless you get written confirmation from the Trustee handling the sale that it has been postponed. Under most circumstances, filing bankruptcy prior to a scheduled foreclosure sale will stop the sale, but you should consult with a bankruptcy attorney in advance, especially if you have filed bankruptcy in the past.
- After the foreclosure auction, there is a ten-day period when a buyer could out-bid the highest price offered at the auction. The foreclosure sale is finalized at the end of this ten-day upset bid period.

Where to go for help

- The Land Loss Prevention Project provides free legal services to income-eligible landowners and homeowners throughout the state of North Carolina. Contact us toll-free at 1-800-672-5839.
- Find a HUD-certified housing counselor near you and additional information about how to avoid foreclosure: www.ncforeclosurehelp.org
- Legal Aid of North Carolina provides free legal services for income-eligible persons; find the office that serves your county: <http://www.legalaidnc.org/public/Learn/Locations/>.
- NC Lawyer Referral Service can be reached at 919-677-8574 or toll-free 1-800-662-7660, or online at www.ncbar.gov/public/findalawyer.asp.
- To find a private consumer attorney, go to www.naca.net and click on "Find an Attorney."
- Legal Services of Southern Piedmont serves low-income people in Mecklenburg and surrounding counties and Western North Carolina. Contact them at 704-376-1600 or 800-247-1931.
- Pisgah Legal Services primarily helps people in Buncombe, Madison, Transylvania, Henderson, Polk, Rutherford and Yancey Counties. Contact them at 828-253-0406 or toll free 1-800-489-6144.
- The Financial Protection Law Center is located in Wilmington and represents homeowners and victims of predatory lending in a limited number of cases throughout the state. Contact them at 910-442-1010.
- The NC Justice Center is located in Raleigh and represents homeowners and victims of predatory lending in a limited number of cases. Contact them at 919-863-2403.

Information, Not Legal Advice.

This brochure provides general information only. This is not legal advice and cannot replace legal advice. You can get legal advice only from a lawyer who knows the facts of your case.

Deadlines are extremely important in most legal matters. You may lose important legal rights if you do not retain an attorney immediately to advise you.