

How Does Foreclosure Work in N.C?

During the foreclosure process, state laws determine the rights and responsibilities of homeowners and lenders. To understand North Carolina's law, there are some key terms to know:

Power of Sale clause - Before making a loan, the lender requires the borrower to agree that if he/she defaults on the loan, the lender may sell the property to pay off the balance of the loan. The lender or their representative, typically referred to as the trustee, may sell the property.

Non-Judicial foreclosure - The non-judicial process of foreclosure is used when a "power of sale" clause exists in a mortgage or deed of trust.

Judicial foreclosure - A judicial foreclosure is used when the mortgage or deed of trust does not contain a "power of sale" clause. The lender must file a lawsuit with the court.

Right of Redemption - The borrower can redeem the property at any time before the expiration of the upset bid period. In order to redeem, the borrower must pay the lender in full plus all expenses incurred in connection with the foreclosure unless waived by the lender.

Deficiency Judgment - A court order to pay the balance owed on a loan if the proceeds from the foreclosure sale are insufficient to pay off the loan.

North Carolina Foreclosure Law

In NC, lenders may foreclose on deeds of trusts or mortgages in default using either a judicial or non-judicial foreclosure process. Foreclosure through judicial action is rarely used because of the time and expense involved. The vast majority of foreclosures in NC are conducted under the contractual power of sale provision in the deed of trust.

Power of Sale Foreclosure Guidelines

If the deed of trust or mortgage contains a power of sale clause and specifies the time, place and terms of sale, then the specified procedure must be followed. However, in NC, a preliminary hearing must be held before a power of sale foreclosure can take place.

After the preliminary notices of at least 10 days have been issued, the clerk of the court will conduct a hearing to determine whether or not a foreclosure sale may take place. If the clerk issues a notice of sale, the foreclosure may proceed as follows:

1. A notice of sale must be: 1) mailed first class mail to the borrower at least twenty (20) days before the sale; 2) published in a newspaper of general circulation in the county where the property is located once a week for two (2) successive weeks, with the last ad being published not less than ten (10) days before the sale; and 3) posted on the courthouse door for twenty (20) days prior to the foreclosure sale.

The notice must name the borrowers, the lenders, provide a description of the property and state the date, time and place of sale.

2. The sale must be conducted at the courthouse in the county where the property is located between the hours of 10:00 am and 4:00 pm. The property will be sold to the highest bidder. Upset bids may be filed with the court clerk for a period of ten (10) days after the foreclosure sale.

3. The sale may be postponed by announcing the need to postpone at the time and place the regular sale would have taken place. A notice of the postponement, stating the new date and time the foreclosure sale will be held, must be posted on the courthouse door.

Lenders may pursue a deficiency judgment. Borrowers retain the right to redemption.

NOTE:

Emergency legislation signed into law by Gov. Easley on Aug, 17, 2008 created the State Home Foreclosure Prevention Project.

A homeowner facing foreclosure on a **subprime loan made in 2005, 2006 or 2007** should receive 1) a letter from their mortgage servicer 45 days prior to foreclosure with information on resources available to assist the homeowner in avoiding foreclosure and 2) a letter from the Commissioner of Banks outlining available resources and a toll free number for free assistance. This assistance will involve counseling and connection to other resources that may be able to assist the homeowner.
<http://www.ncforeclosurehelp.org/StateForeclosurePreventionProject.aspx>

**ALLEGHANY, ASHE, AVERY, BUNCOMBE,
CHEROKEE, CLAY, GRAHAM, HAYWOOD, HEN-
DERSON, JACKSON, MACON, MCDOWELL,
MITCHELL, POLK, RUTHERFORD, SWAIN,
TRANSYLVANIA, WATAUGA, WILKES & YANCEY
COUNTIES**

**TROUBLE KEEPING UP WITH
YOUR MORTGAGE PAYMENTS?**

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RECEIVED NOTICE FROM LENDER?

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**LEARN HOW TO AVOID
FORECLOSURE AND
KEEP YOUR HOME**

QUICK TIPS

***Don't ignore letters from your lender**

***Contact your lender immediately, the number is on your notice.**

***Contact an accredited housing counselor:**

--Consumer Credit Counseling Carolina Foothills 828 286-7062

--Consumer Credit Counseling Forsyth County 336-896-1191

--Northwestern Regional Housing Authority 828 264-6683

--OnTrack Financial Education & Counseling 828 255-5166

IF YOU CANNOT MAKE YOUR MORTGAGE PAYMENT

1. Don't ignore the problem.

The further behind you become, the harder it will be to reinstate your loan, and the more likely that you will lose your house.

2. Contact your lender as soon as you know you have a problem.



Lenders do not want your house. They have options to help homeowners through difficult financial times.

3. Open and respond to all mail from your lender.

The first notices you receive will offer information about options to prevent foreclosure. Later mail may include important notices of pending legal action. Your failure to open the mail will not delay foreclosure and could cause you to miss opportunities to save your home.

4. Understand foreclosure prevention options.

Ask your mortgage lender if your loan can be restructured or if you can work out a repayment plan. Valuable information about foreclosure prevention options can also be found at www.hud.gov.

5. Contact a housing counselor.

Certified, non-profit housing counselors can help you understand your options, organize your finances and represent you in negotiations with your lender. Beware of credit counseling agencies that offer counseling for a large upfront fee or donation.

- Consumer Credit Couns. Carolina Foothills 828-286-7062
- Consumer Credit Counseling Forsyth Cty 336-896-1191
- Northwestern Regional Housing Authority 828-264-6683
- OnTrack Financial Education, Counseling 828-255-5166

6. Prioritize your spending. Use your assets.

After health care, keeping your house should be your first priority. Review your finances to identify optional expenses - cable TV, memberships, entertainment - that you can eliminate.



Do you have assets - a second car, jewelry, a whole life insurance policy with cash value - that you can sell for cash to help make your mortgage payments? Can anyone in your household get a second job to bring in additional income? Even if these efforts don't significantly increase your available cash or your income, they demonstrate to your lender that you are willing to make sacrifices to keep your home.

7. If you have received notice of foreclosure, seek legal help immediately.

Legal services may be available through the Foreclosure Defense Project. Eligibility is limited to households earning 200% of the federal poverty level. In some areas, funds are also available to serve seniors, regardless of income. The Foreclosure Defense Project includes these agencies: Legal Aid of NC, Land Loss Prevention Project, Pisgah Legal Services, Legal Services of Southern Piedmont, Financial Protection Law Center and NC Justice Center.

- Foreclosure Defense Project 866-219-5262
- NC Lawyer Referral Service 800- 662-7660



8. Know your mortgage rights.

Read your loan documents so you know what your lender may do if you can't make your payments. Learn about foreclosure laws and timeframes in North Carolina by reading below or visiting the NC Foreclosure Help site at <http://www.ncforeclosurehelp.org/>

9. Avoid foreclosure prevention companies.

Many for-profit companies will contact you promising to negotiate with your lender. They charge a hefty fee (often several months of mortgage payments) for information and services your lender or a housing counselor will provide free. It's illegal to charge an up-front fee for foreclosure assistance services in NC.

10. Don't lose your house to recovery scams!

- Watch out for people or companies that promise to pay off your mortgage if you sign over the deed to your property. They typically rent your home to you, but all too often they don't make mortgage payments and the bank forecloses. Remember, signing over your deed does not mean you're no longer responsible for paying your mortgage.
- Beware of so-called foreclosure rescue companies that contact you after the foreclosure has been filed in court and promise to help you in exchange for an up-front fee. It's illegal to charge an up-front fee for foreclosure assistance services in NC.
- Steer clear of foreclosure assistance experts who want you to make your mortgage payment to them, or who discourage you from talking to your mortgage company or an attorney.
- Other scam tip offs: the scammer refuses to put promises in writing, pressures you to sign paperwork you haven't read thoroughly, or offers to fill out the paperwork for you.
- Report foreclosure scams to the Attorney General's office:

1-877-5-NO-SCAM (1-877-566-7226)