

FORECLOSURE IN NEW JERSEY: WHEN YOU DO GET BEHIND ON YOUR HOME BY AVRAM E FRISH ESQ

In these troubled times many people in New Jersey and around the country are behind on their mortgage payments. You may be one of them. Luckily, New Jersey law provides some options for people in foreclosure, and allows you considerable time before the bank can take your home.

Prior to defaulting on your payments, you should be proactive with your lender, as they may be able to help you avoid default. Often, however, they will refuse to work with you unless you have defaulted, and here is what you can expect. The banks are certainly hard to deal with, but you can approach them and try to break through their red tape.

One pitfall people fall into and that you must avoid, by all means, is hiring a company "specializing" in loan modification. These "companies" often claim special relationships with the banks and charge extremely high fees. Their "business" is illegal in New Jersey and anyone claiming a special ability to get you a loan modification should be avoided.

Be very careful if anyone advises you to default on your loan prior to negotiating with the bank. The banks might be more likely to modify a loan if you are in default, but that will destroy your credit and start the clock toward the foreclosure lawsuit. Default only if you cannot afford to make your payments. Otherwise-- that is, if you can eke them out-- you are best off trying to be proactive with the bank and asking them for help.

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The period from the time when you first default on your loan until the date of sale of your home by the sheriff has grown especially long of late, as the courts are extremely backlogged. This which works to your advantage as a troubled homeowner.

Let me try to offer a general explanation of the foreclosure process and your rights and options. However, please understand that it is vital with regard to your specific situation to consult an attorney to help you defend yourself against the bank.

New Jersey is a judicial foreclosure state, which means that banks must go to court to foreclose on your house. Until the bank gets a judgment in their favor from the court, you continue to own your house and cannot be thrown out.

Most importantly, New Jersey law has certain basic requirements before any residence may be foreclosed. This includes a notice called a "Notice of Intention to Foreclose" that must give you at least a 30 day warning before the bank may commence foreclosure proceedings. The warning must include the exact amount necessary for you to make your loan current, and you have an absolute right when you receive it to repay arrears and reinstate the mortgage. This right exists until your house is sold at a sheriff sale.

The foreclosure process is actually a lawsuit, and you have every right to defend yourself and make the bank prove its case. Unlike most litigation, however, you must be careful to challenge the bank's assertions, or the clerk can enter judgment against you without referring it to a judge. Consult an attorney who should be able to help you figure out what defenses you may have, either under state law or Federal law, both of which have numerous protections for borrowers, especially if the bank failed to

properly disclose the terms of the loan or if the lender engaged in predatory practices.

You might not know if the bank did something wrong when they made the loan, but you will have the right to ask the bank for documentation during the litigation, a process that is known as discovery, and can use this process to find out information about the loan, the bank's practices and anything else that might be relevant. Even if you do not think you have any defenses, this process will slow down the pace of litigation and get you more time in your home.

Eventually, the bank will move for judgment and if you cannot establish a defense, they will get a judgment ordered by the judge. If the judge rules against you, the case is then returned to the centralized foreclosure office and your house will be processed for sale. This takes a long time due to the backlog of cases. At this point, the bank will need to establish the appropriate monetary amount for the judgment and only then will the clerk enter final judgment.

Once the clerk enters final judgment, the bank can have a writ of execution issued to the county sheriff to sell the property at a public sale. This is the last step before ownership is transferred, but does take several months at least. At the sale, the bank will announce an upset price and most often the property will receive no bids and the bank will own the property for \$100.

During the course of litigation, you have the opportunity to negotiate a settlement with the bank, which is usually known as a loan modification. This means a reduction in payments, most often achieved by a reduction in the interest rate and extension of the time to pay rather than a reduction in the principle. New Jersey has a court ordered mediation program that any homeowner may take advantage of by filing a form with the clerk of the court; even if you as the homeowner have failed to appear in court to defend against the foreclosure. Other options you have are to call a HUD certified housing counselor for free

help with your bank or just call the bank and deal with it directly.

Finally, one must consider options that will have you leave the home that you can no longer afford. Short sales (selling your home for less than the outstanding mortgage amount) require a lengthy and difficult process with the bank, but they may allow you out of the property with a relatively small hit to your credit, no residual liability to the bank and an end to your liability for repairs and taxes. You will also have the option of walking away from the property and allowing the bank to foreclose without fighting, but this



can leave you with liability for the difference between the amount the house is worth and the mortgage.

Whatever route you choose, it is important to consult with an attorney, as all of these options have consequences and are difficult to navigate on your own.