

## FORECLOSURE IN NORTH CAROLINA

If you borrowed money to buy your house, you probably signed a Note and a Deed of Trust. The Note is the contract that says that you borrowed a certain amount of money at a certain interest rate, names the lender, and obligates you to repay the loan. The Deed of Trust says that if you don't make your mortgage payments or if you break other terms of the loan, the lender may ask the Trustee to ask the court to foreclose on the house and sell it so that the Lender can recover its money.

Most foreclosures in N.C. are "non-judicial" foreclosures, which means that they are heard in front of the county clerk, not a judge. This information sheet discusses non-judicial foreclosures. If you are served with a judicial foreclosure Complaint and Summons, you should contact an attorney for assistance, because different deadlines may apply than those described here. The foreclosure process starts when the Trustee files a Notice of Foreclosure Hearing, which names the date and time the Clerk will hold a hearing to decide whether to foreclose on the house. To order a foreclosure, the Clerk must find that:

1. there is a valid debt;
2. the party seeking the foreclosure has paperwork proving it is either the original lender or legally received the note;
3. the debtor defaulted on the loan by falling behind on payments or otherwise violating the terms of the loan (e.g. transferring ownership of the property without permission, not paying property taxes, or failing to keep hazard insurance);
4. the Deed of Trust includes a "right to foreclose" and a "power of sale"; and
5. the Trustee gave proper notice of the hearing to all parties (especially if the borrower is in active military service).

It is important that you attend every hearing and ask the Clerk for a continuance for more time to try to resolve the foreclosure. Otherwise, if the Clerk finds no reason to delay making a decision or to deny the Trustees request for a foreclosure, the Clerk will sign an order allowing your house to be sold. If you are working out a modification with the lender, you should still attend the hearing and tell the Clerk what you are doing to save the home. If you are on active military service when foreclosure is filed, have a friend or relative attend the hearing to tell the Clerk and request a continuance.

If the Clerk signs a sale order, you have ten days to file an appeal with Special Proceedings for a hearing before a Superior Court Judge. If you appeal, you may be required to post a bond to stop the sale from being finalized. The Superior Court Judge can only decide whether the lender has proved the five elements of foreclosure.

If the Clerk decides to sign a sale order, you can ask that the date be scheduled as far out as possible.

When the sale is held and a bid is made on the house, other interested buyers have 10 days to make higher “upset bids” to try to buy it. Each time a new bid is made, a new ten-day upset bid period starts.

During a ten-day upset bid period, you can stop the sale by paying the balance on the home. Filing bankruptcy during this time will also stop the sale, at least temporarily.

If the sale is finalized, the Trustee will prepare a Deed for the new owners, who are then entitled to take possession of the house.

You may want to ask the new owners if they are interested in a “cash-for-keys” arrangement in which you would agree to move by a certain date and leave the house in good condition and they would pay some amount towards your moving expenses.

If the new owners decide to evict you, they must first serve you with a written notice to vacate the property within ten days. After the tenth day, they can apply to the Clerk of Court for a Writ of Possession to be executed by the Sheriff’s Department. The Sheriff’s Department should post a notice at the house with the date and time the eviction is scheduled for, usually within five days after the owners filed for the Writ.

You should remove all your possessions before the Deputy Sheriff arrives to secure the house. If you leave items behind, you must arrange with the owners to recover them within seven days; otherwise the owners can throw them away.

After the sale is finalized, the Trustee will prepare a Final Report and Account of Foreclosure, which explains how much the house sold for and how the money was applied. You may be entitled to any surplus money after the loan and other expenses are paid.

If you find that you are unable to avoid losing your home to a foreclosure sale, you should apply for and try to get rental housing before the sale since your credit will be damaged by the sale, limiting your housing options.

This is general information only and may not apply to your specific case and is not a substitute for speaking with an attorney about your case.