



A S S I S T A N C E

Home Mortgage Foreclosures in Maine

Find more easy-to-read legal information at www.ptla.org

Important Note: This is very general information about home mortgage and foreclosure rules in Maine. It is not intended to replace legal advice in your particular case.

Where can I get help?

If you are facing threat of foreclosure of your home, try to get a lawyer.

Here are some possible legal resources:

Volunteer Lawyer's Project
1-800-442-4293

Pine Tree Legal Assistance
(207)-774-8211

Legal Services for the Elderly
1-800-750-5353

If you are not income eligible for these services, you can talk to a lawyer for half an hour through the Maine Lawyer Referral Service (1-800-860-1460). The fee for this service is \$25.

Or get help now – from a free HUD-certified Maine Housing Counselor (list attached).

See our pamphlet **Home Foreclosure: It's always good to have a lawyer, but when is it really critical to get some legal help?**

You should also consider a **bankruptcy lawyer** to see whether bankruptcy is an

appropriate option for you. Filing for bankruptcy will stop the foreclosure at least temporarily. Depending on your financial picture, it may also help you resolve all of your debts and permit you to retain your home. Most bankruptcy attorneys will provide a free initial consult. For more information on bankruptcy see our pamphlet **Bankruptcy: Is it the right choice for you?**

Also review our pamphlet **Can I Save My Home from Foreclosure?** It has more information on steps you can take to save your home both before and after a foreclosure case has begun.

What is foreclosure?

If you own your home, you probably borrowed money to buy it. In return for the money you borrowed, you gave an investor a "mortgage" on your home as security. A mortgage protects the investor by giving it a legal interest in your home as collateral for your loan, just as a car provides collateral for a car loan.

If you fall behind in your house payments, and you cannot negotiate an affordable deal (or "workout") with the mortgage company, it may "foreclose" the mortgage. This allows the company to take your property and use it to pay off your loan. In doing this, the company must follow certain rules. These rules are set out in state law.



In this pamphlet, we will explain the basic rules for home foreclosure in Maine.

If I fall behind on my payments, will I automatically lose my house?

No. First, some mortgage companies are willing to agree to a payment schedule to let you catch up and continue the mortgage. You might be able to negotiate a “workout” to avoid foreclosure. Try to make a repayment arrangement or workout plan as early as you can after falling behind. Be careful not to make an agreement you cannot keep. If you cannot afford a proposed workout, then do not agree to it and ask for a different plan. See our pamphlet

Can I Save My Home from Foreclosure? for more information on steps you can take.

Second, remember that after you fall behind, the mortgage company – in most situations – **must get a court order before** taking your home. This “foreclosure proceeding” is a court process. In almost all situations, the company cannot just take your house without a court order.

Does the mortgage company have to give me a chance to pay up before “accelerating” on the debt and filing a foreclosure case?

Yes. The company must provide a written notice of default and right to cure your mortgage loan default (assuming that the default is for non-payment). The notice must state that you are “in default” and that you have 35 days to cure the default. Being “in default” means that you are behind in your payments or that you have not paid your

taxes or your insurance. The home mortgage company cannot begin a lawsuit to foreclosure the mortgage deed until after that 35 day notice expires.

Late Payments: During this time, you should make your late payments or call your mortgage company and try to work out a payment plan. If your payments are sent back, **save them in a separate savings account** and continue to make payments into that savings account each month. Especially if you are trying to keep your home, it is important to **prioritize this payment** above other payments you have, like credit card debt and old hospital bills.

Save money! If you can afford a mortgage payment but not the amount you owe, save the amount you believe is affordable **and set it aside.** This can make all the difference when you are trying to negotiate an affordable “workout” plan.

What is an acceleration clause?

Most loan agreements have an “acceleration clause.” This means that if you don’t make a payment or don’t keep up on some other part of the mortgage contract, the company is allowed to say that the **entire amount of the loan** is due and must be paid immediately. To avoid the acceleration clause, **call your mortgage company as soon as you realize that you will miss or be late on a payment.** Then you may be able to work out an agreement on your payments. Make sure any agreement you make is **affordable.** Don’t agree to a just any payment plan.



What happens in a foreclosure case?

1. You get a Notice of Default. The company managing the loan must send you the 35 day default notice discussed above. No action can be taken until after the 35 days is gone.

2. You are served with Court papers. The mortgage company must have a copy of a **summons and complaint** served on you, normally by a Deputy Sheriff. The company files the same papers with the court. This begins the court foreclosure process. You have **20 days** to file an **Answer** with the court if you wish to contest the foreclosure. **Contact a lawyer immediately.** If you don't file an answer, you will most likely lose your home. You should also request "mediation." Get more details below.

3. File an Answer and Request Mediation. To avoid an immediate "default judgment," you must file an Answer (or a letter requesting more time to file an Answer) within 20 days of getting the court complaint. If you do not file an Answer, you will lose your case. As part of the foreclosure mediation process, the Court accepts a simplified Answer and Request for Mediation form. The form should have been served with your court papers. You can also find this one-page form attached here.

Mediation is available to "owner-occupants" of the home being foreclosed on. Sometimes, even if you are not currently living in your home, you may be out of the home only temporarily and intend to move back in. In this case, you can add an explanation to the Answer form, explaining

why you want to mediate anyway. It will be up to the court to decide whether or not you will be allowed to go to mediation if you are not an "owner-occupant" of the home at this point in time.

If you do not live in the home and have no plan to live there, mediation is not an option for you. Since the Answer and Request for Mediation form (discussed above) is designed only for homeowners requesting mediation, you should consult with a lawyer to try to get some help with preparing an Answer. If you can't get legal help, we have attached a form Answer that you can use as a model. (This is the longer 3-page Answer and Affirmative Defenses form.)

You "file" your Answer by mailing it to the Court or handing it to the Court Clerk. You must **send a copy to the lawyer for the mortgage company** at the same time.

Usually that lawyer's name and address is in the bottom left corner of the Summons or on the last page of the Complaint. Keep copies of everything for your own file.

Filing Late Answer. If you missed the 20 day deadline but you have not yet been "defaulted" by the court, you can try to get the court to accept a late answer. We have attached a sample **Request to File Late Answer**. You can file this with your Answer. The Court does not have to accept a late answer but may do so if you offer a good reason for being late.

4. Mediation. If you live in the home and have requested mediation, you will have a chance to participate in mediation. You will get a notice from the court telling you when to go to mediation. Mediations are only held



in certain courts. If your case is not in one of those courts, you will get a notice that your case is temporarily being transferred to another court for the mediation process. You do not have to prepare any financial forms ahead of time for your first mediation. If there are still things to discuss after your first mediation, more mediations can be scheduled. You should be given instructions about any documents the bank will need when you attend your first mediation.

Ask for our pamphlet: **Court Mediation – Your Chance to Stop Foreclosure**. There we provide more details about the steps you need to follow to have a successful mediation.

Sometimes mediation will take several sessions. In the end, if you are not able to agree to a workout with the bank during the mediation process, your case will move on to the next steps.

5. Motion for Summary Judgment.

After you file your Answer (and go through Mediation, if you asked for it), the company’s lawyer may file a Motion for Summary Judgment. You will have **21 days** to file an opposition to this Motion. You should try to get legal help with drafting and filing your response. This is complicated and very difficult to do without legal help. So make every effort possible to find legal help right away.

We have attached a sample **Motion to Enlarge Time** (a 2-page form). If you need more time to get legal help (beyond the 21 day deadline), you may be able to avoid a “default” order by filing this motion. But move as quickly as you can. The Court

needs to move cases along so will not always grant more time.

If you are not able to file a good response to the Motion for Summary Judgment, then the court will probably enter a judgment against you.

6. Trial. If the mortgage company does not file a Motion for Summary Judgment – or you raised enough valid questions in your response to their Motion - then the Court will hold a trial. Usually, a “Pre-Trial Conference” is scheduled before the actual trial is scheduled. You will probably get a “Scheduling Order” telling you where and when the conference will be held. At a Pre-Trial Conference, the judge will lead a discussion about the logistics of the upcoming trial. (Keep in mind that the purpose of the conference is to get set up for the trial, not to argue the legal issues.) For example, you might be asked how many witnesses you will be bringing to the trial and how much time you will need to argue your case. The court may want to get clarification on the issues it will be asked to decide at trial, such as:

- how much you owe,
- whether you defaulted, or
- whether the mortgage company, or another party, owes you money for violations of the law, including illegal predatory lending practices.

7. Judgment by the Court. If you fail to:

- answer the complaint,
- raise successful counterclaims or affirmative defenses,
- resolve your case through mediation,



- win on a motion for summary judgment, or
- win your case in the trial phase

then the court will likely enter a judgment of foreclosure. The judgment will state what is owed to the mortgage company.

8. Redemption Period. If a judgment is entered against you, you will still have a right to the property called a "right of redemption." This means that you can keep your home by paying back the full amount of the mortgage loan, plus legal costs and fees (not just the payment arrears). The right of redemption will exist for **90 days** immediately following the entry of the judgment. You have the right to remain in your home during the 90 day redemption period.

IMPORTANT: You can file for **bankruptcy** at any during the redemption period. In fact, you have the ability to file bankruptcy and stop the sale of your home up to the actual date of the sale of the property. However, filing for bankruptcy may or may not help you in the long run. See our pamphlet: **Bankruptcy: Is It the Right Choice for You?**

Negotiate with the company: During the redemption period you can still try to negotiate an affordable repayment plan or loan modification. You also have the **right to sell** the property during the redemption period. If you do this, you will have to pay off the mortgage and any legal fees and interest. But you will be able to keep any money left over.

If you can sell the property but only for less than what is owed, you may still be able to negotiate a "short sale" with the mortgage company's lawyer. **Be careful!** Many companies are jumping into the "short sales" market. Some demand a fee up front and will work to convince you that a short sale is better for everyone. A short sale is not always the best solution. Make sure you consider your goals and all your options before selling your home for less than what is owed. Also, there is no reason to pay a fee up front. Most reputable real estate brokers will help you arrange a short sale for free. They will collect their fee out of the sale price - not from you up front.

If you have tried to sell for some time but have no offers, the mortgage company might consider a Deed in Lieu of foreclosure. This allows you to give the house to the mortgage company.

In either case, the bank might be agreeing to take less money or a house of less value than what you owe. You might still owe the bank money. Often, banks will agree to waive any balance still owed, but you should be aware that there may be tax consequences if you follow these options.

If you are trying to negotiate a short sale or Deed in Lieu of foreclosure, you should ask the bank about "cash for keys" or "relocations costs." Through some programs, there is money available to the homeowner for successful negotiation of one of these liquidation options.



CAUTION: Don't fall for a foreclosure rescue scam. And, again, don't be pressed into a short sale until you have considered all of your options and decided which option best meets your goals. It is often around this time that you may get "foreclosure rescue" offers. People may call you or knock on your door and offer to save your home from foreclosure. Negotiating a workout or **selling** your home at close to fair market value **is almost always a better option** than a foreclosure rescue. A sale may allow you to save the equity in your home. In most cases, promises to save your home from foreclosure will put your home investment into the hands of the "rescuer," and you will end up being evicted from your home anyway, with nothing left. Read more in our pamphlet: **Foreclosure Rescue Scams – Just Say "No!"**

For more information about "workouts" with your mortgage company and other options see our pamphlet: **Can I Save My Home from Foreclosure?** Also review our **Don't Borrow Trouble!** pamphlet before refinancing your mortgage.

9. Public Sale/Eviction. If you do not "redeem" the property within the 90-day redemption period, you will not own the property any more. When the redemption period ends, you can be evicted in a very short time frame (48 hours), and most likely there will be no further court hearings before

this happens. The mortgage company is entitled to possession of the property regardless of how much, or how little, you still owe; the time of the year; or any other reason.

The company will hold a public sale of the property. After receiving the money from the sale, the company will pay off the mortgage loan balance. Any remaining sales proceeds will be paid to other lien holders or to you, as the court will instruct the company. If, however, the sale price is **less than** the amount owed to the mortgage company, the company may be able to hold you responsible for the difference.

10. Report of Sale. After the sale, the mortgage company must file with the court a "Report of Sale," explaining how the money from the sale of the property was received and how the company proposes to spend it. The investor must send a copy of the "Report of Sale" to you, at your last known address. To be sure you get this report, leave a new forwarding address with the post office, the court clerk, the company's lawyer, or all three. When you receive the notice, you can object to how the money from the sale is to be distributed but not to the sale itself.



Notice

Prepared by Pine Tree Legal Assistance

Revised March 2015

Federal and state laws change often. We cannot promise that this information is always up to date and correct. If the date above is not this year, call us to see if there is an update.

We provide this information as a public service. It is not legal advice. By sending you this information, we are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.



STATE OF MAINE
_____, ss.

DISTRICT COURT
LOCATION _____
DOCKET NO. _____

_____,
Plaintiff,

v.

_____,
Defendant.

**ANSWER AND AFFIRMATIVE
DEFENSES
(Title to Real Estate Involved)**

ANSWER

1. I admit that I signed a note and mortgage.
2. I am without knowledge as to whether the Plaintiff is the lawful holder of the Note or the Mortgage. Therefore, I deny the allegation.
3. I am without sufficient knowledge as to whether the amount demanded as amounts due is accurate. Therefore, I deny the allegation.
4. I admit receiving a default notice. I am without knowledge as to whether the default notice is lawful. Therefore, I deny that the default notice is lawful.
or
 I deny receiving a default notice.
5. I admit receiving the Complaint. I am without knowledge as to whether the Plaintiff, as required by 14 M.R.S.A. § 6321 et. seq., has both certified proof of ownership of the Note and provided evidence of the Mortgage, Note and all assignments and endorsements of the Note and Mortgage. Therefore, I deny the allegation.
6. I deny violating the terms of the Mortgage and/or Note.

AFFIRMATIVE DEFENSES

7. I repeat, reallege and incorporate by reference paragraphs 1 through 6.

FIRST AFFIRMATIVE DEFENSE

8. Plaintiff's complaint fails to state a claim upon which relief can be granted by this Court because Plaintiff failed to comply with the notice and right to cure provision in 14 M.R.S.A. § 6111.

SECOND AFFIRMATIVE DEFENSE

9. Plaintiff's complaint is subject to the defense of estoppel.

THIRD AFFIRMATIVE DEFENSE

10. Plaintiff's complaint is subject to the defense of duress.

FOURTH AFFIRMATIVE DEFENSE

11. Plaintiff's complaint is subject to the defense of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

12. Plaintiff's complaint is subject to the defense of illegality.

SIXTH AFFIRMATIVE DEFENSE

13. Plaintiff's complaint is subject to the defense of accord and satisfaction.

SEVENTH AFFIRMATIVE DEFENSE

14. Plaintiff does not have standing to bring this complaint.

Other:

WHEREFORE, Defendant prays that the Complaint be dismissed, for their costs, and for such further relief as the nature of the case may require.

Date: _____

(Signature)

(Print Name)

(Address)

(Phone Number)

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a copy of this Answer and Affirmative Defenses by mailing a copy to the Plaintiff's lawyer.

Date: _____

(Signature)

STATE OF MAINE

DISTRICT COURT

_____, ss.

Location: _____

Plaintiff: _____

v.

Defendant: _____

**REQUEST TO FILE LATE ANSWER
(Title to Real Estate Involved)**

I hereby request additional time to file my answer and that the Court accept the attached Answer for filing in this case. I didn't file the answer within 20 days because: (Illness/ family emergency) (Inability to find a lawyer) (I didn't understand I had to file within 20 days)

_____. I believe these reasons constitute good cause for allowing me to file a late answer in this case. In addition I believe I have a meritorious defense as set forth in the attached answer. Also, Plaintiff will not be substantially prejudiced by the reopening of this case as no default or default judgment has been entered. In addition, the court should be guided by the principle that there is a strong preference for deciding cases on the merits. *See Thomas v. Thompson*, 653 A.2d 417, 419 (Me. 1995); *Millet v. Dumais*, 365 A.2d 1038, 1040 (Me. 1976), quoting Field McKusick & Wroth, Maine Civil Practice § 55.4 at 21-22 ("substantial rights should not be determined by default if that procedure can reasonably be avoided and no substantial prejudice has resulted").

For the above reasons the court should set aside any default entered in this case and allow me to file the attached Answer.

Signature

Date

Print Name

Address

Phone Number

IMPORTANT NOTICE

Matters in opposition to this motion pursuant to Rule 7(c) of the Maine Civil Rules of Procedure must be filed not later than 21 days after the filing of the motion unless another time is provided for by the Rules or set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion which may be granted without further notice or hearing.

I sent a copy of this letter and attached Answer and Discovery Request to the Plaintiff's Attorney at the following address:

IMPORTANT NOTICE

Matters in opposition to this motion pursuant to Rule 7(c) of the Maine Civil Rules of Procedure must be filed not later than 21 days after the filing of the motion unless another time is provided for by the Rules or set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion which may be granted without further notice or hearing.

Certificate of Service

I hereby certify that I have delivered a copy of this Motion to Enlarge by mailing a copy to Attorney_____.

Dated, this ____ day of_____, 20__.

Defendant

ORDER

Defendant's _____ Motion to Enlarge is granted. Defendant shall have an additional time of 60 days to file a response to Plaintiff's Motion for Summary Judgment, said days to commence as of the date of this Order.

Date

Judge, Maine District Court

How to file and serve court documents

When you file a paper or “pleading” with the court, there are always two steps. **You must:**

1. file all court documents with the court **and**
 2. mail copies to the Plaintiff’s lawyer
-

1. **Filing with the Court.** If you don’t know the court’s address, call the court to find out. Then mail your papers to that address, or deliver them to the court clerk in person.
2. **Serving the Plaintiff’s lawyer.** You must also mail a copy to the lawyer for the company suing you in foreclosure. The lawyer’s name is in the lower left hand corner of the “Summons” or on the last page of the “Complaint.”

NOTE: Save two more copies – one for your own files and one for your legal advocate or housing counselor.