



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

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. If you have a mortgage through **USDA Rural Development** (formerly FmHA), **Veterans Affairs (VA)**, or other government agency, you probably have additional legal protections which are not covered in this pamphlet.

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 (contact your nearest office in Portland, Lewiston, Augusta, Bangor, Machias or Presque Isle)
www.ptla.org/contact.htm

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.

You should also consider talking to 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 to resolve all of your debts and permit you to keep 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 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

foreclose 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. Request Mediation. Beginning January 1, 2010, the Maine Courts are offering "mediation" in most home foreclosure cases. This could be your last, best chance to save your home – or to have a say over how your case will be resolved. In a mediation meeting, a free, trained neutral mediator will sit down with you and a person from the mortgage company and try to help you come up with a good solution to your problem. All you have to do is ask the Court for "mediation." You can use the attached form – which combines your "Answer" to the complaint with your request for mediation. Or you can use the one-page form that you should have received with the court papers.

4. File an Answer and Discovery Request. 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. If you do file an Answer and you can show the court that there are some factual or legal issues, you can get a hearing to decide whether the loan is in default and how much is due to the investor. You can also raise affirmative defenses and counterclaims against the investor for any violations of state or federal law relating to the loan.

If necessary you can file an Answer without a lawyer. See the sample **Answer and Affirmative Defenses** attached to this pamphlet. Steps for drafting an Answer:

- ✓ Complete the top part of your Answer by copying information about the court and the parties from the Compliant you received.
- ✓ Respond to each numbered claim in the Plaintiff's Complaint by admitting, denying or stating that you do not have enough information to answer the claim.
- ✓ Add any affirmative defenses that you think may apply to your case. Under "Other," describe briefly any illegal predatory lending practices that you think have occurred. See our pamphlet **Don't Borrow Trouble!** to learn more about predatory lending.
- ✓ Date and sign your Answer, and add your contact information.
- ✓ Sign and date again, certifying that you mailed a copy to the Plaintiff's lawyer.

If you choose to file an Answer without a lawyer, we advise you to file a **Discovery Request** along with your Answer. This will ensure that when you are able to find a lawyer, she will have the information she



needs to help you as quickly as possible. We have attached a sample **Notification of Discovery Service**. With this document, you are asking the mortgage company to give you copies of key documents. Without the responses to the Discovery Request, it is almost impossible for you, or your lawyer, to figure out all of the legal defenses you may have. So it is a good idea to request these documents right away. This will also give you or your advocate some time to evaluate and prepare your case, while the investor's attorney is preparing his response to the discovery request.

If you are not comfortable filing an Answer and Discovery Request without a lawyer, in order to avoid an automatic default, you need to **file something with the Court before the 20 day deadline**. At the very least, write a letter to the court explaining that you need more time to get a lawyer and to file your Answer. Include in the letter the names of the parties, and court docket number, if you have it, so that that Court Clerk will know which case file to attach your letter to. We also encourage you to ask for "mediation."

You "file" your Answer and Discovery Request, or letter, 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 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 and Discovery Request. The Court does not have to accept a late answer but may do so if you offer a good reason for being late.

5. Mediation. Again, we advise that you ask for mediation right away after you are served with the initial court papers. This will not only provide you with an informal process for resolving your case but will also give you time to plan your next steps. The mediation must take place before the court will hear and decide the mortgage company's summary judgment motion (see below). But you must ask for mediation in order for it to happen.

If you don't get what you want in the mediation session, your case will move on to the next steps.

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

6. Motion for Summary Judgment. After you file your Answer (and go through Mediation, if you asked for it), the company's lawyer will probably 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**. 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.

7. Trial. If you raise enough valid questions in your response, then the Court will hold a trial. For example, the court may need to hold a trial on the issues of:

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

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

- answer the complaint,
- raise successful counterclaims or affirmative defenses,
- resolve your case through mediation,
- win the motion for summary judgment, or
- prove that you are not in default

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

9. 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 the full amount of the mortgage loan, plus legal costs and fees (not just the payment arrears). The right of redemption will exist for the **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 time. This includes 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. Short sales are 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. If the company agrees to a short sale, then it will take the money from the sale and waive any balance still owed on the loan. There may be tax consequences if you follow this option.

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 one 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 investor any other options see our pamphlet: **Can I Save My Home from Foreclosure?** Also review our **Don't Borrow Trouble!** pamphlet before refinancing your mortgage.

10. 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 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 investor, the investor may be able to hold you responsible for the difference.

11. Report of Sale. After the sale, the investor must file with the court a "Report of Sale," explaining how the money from the sale of the property was received and how the investor 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 investor's lawyer, or all three. When you receive the notice, you can object as 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 July 2010

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, AFFIRMATIVE DEFENSES,
AND REQUEST FOR MEDIATION
(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.

REQUEST FOR MEDIATION

I hereby request mediation. The complaint for foreclosure was filed in this case after January 1, 2010. This case involves a residential loan. I am the owner and I live in the property. I am therefore entitled to mediation.

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)

NOTIFICATION OF DISCOVERY SERVICE

TO: THE CLERK OF COURT:

Address:

This is to notify you that the following discovery papers were served on the Plaintiff's lawyer in the manner and on the date indicated:

First Request for Production of Documents was served by mailing a true and accurate copy of this notice and the below attached request to the plaintiff's lawyer at the address provided on the Summons and Complaint.

STATE OF MAINE

SUPERIOR/DISTRICT COURT (circle one)

Location:

Case No.:

(Name of Investor) Plaintiff
v.
(your name) Defendant

**FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS
(Title to Real Estate Involved)**

Defendant requests, pursuant to Rule 26 of the Maine Rules of Civil Procedure, that Plaintiff produce and permit the Defendant to copy within thirty (30) days, the documents requested herein.

The definition of "document" as used herein means every writing and record of every type and description, including but not limited to, electronic communication (such as "email"), receipts, work orders, contracts, correspondence, memoranda and written notes, reports, invoices, bills, account statements, checks, check registers, books of accounting, computer cards, printouts, tapes, discs and records of all types, minutes of meetings, studies, books, pamphlets, pictures and voice recordings or any other item or record of any type.

1. Please produce a complete copy of the loan file including the inside and outside covers of the file.
2. Please produce a complete copy of the foreclosure file including the inside and outside covers of the file.
3. A complete copy of all documents establishing, reflecting, or indicating ownership of each note and each mortgage such that a chain of ownership can be established for each.
4. A complete copy of the pooling and servicing agreement.
5. A complete copy of all documents evidencing, reflecting, or establishing any and all efforts to engage in foreclosure prevention or workout measures including but not limited to notices, phone logs, correspondence, email records (internal as well external to your operations), memos, and any other document. This request includes any documents reflecting on decisions and the basis of those decisions to grant or deny any assistance or relief.
6. A complete copy of all documents reflecting, evidencing, or establishing in any way the value of the property that is the subject of the mortgage in this case including but not limited to any and all appraisals, broker price opinions, or property inspections.
7. A complete copy of the loan history from the date of inception to the date of this request. This request includes a glossary for all terms and symbols such that the loan history is understandable to any person.
8. A complete copy of any and all contracts or agreements with any person or entity involved in this loan including but not limited to any mortgage broker and/or appraiser.

Date: _____

Name: _____

Address: _____

Phone No.: _____

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.