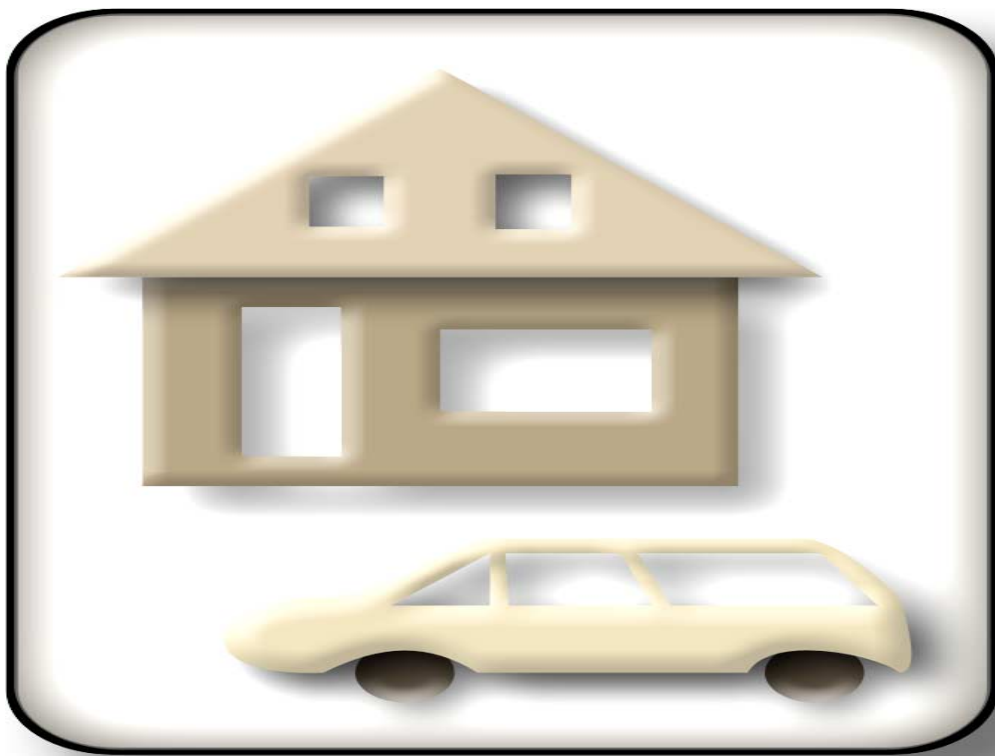


# What happens if you are sued for foreclosure in Illinois©

January 9, 2006



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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

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Look for these symbols to tell you when to:



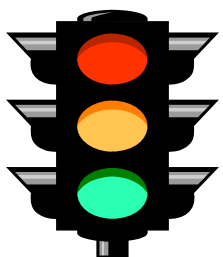
**STOP!**

You need legal representation or advice to continue.



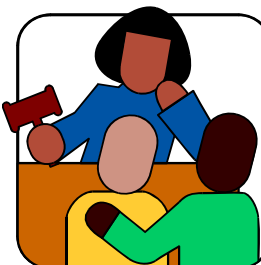
**USE CAUTION!**

This is very important so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

# Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

## 1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## 2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## 3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

### Free sources of legal help

#### Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may visit their website at

[Http://www.lollaf.org](http://www.lollaf.org)

#### Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

#### Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

#### Will County Legal Assistance

Serving Will County

815-727-5123

# Who should not use this packet



This packet discusses what happens if you are sued for foreclosure in Illinois and how you can try to save your home if you are behind on your payments.



**It does not discuss other defenses you may have to stopping the foreclosure or what to do if you are not behind on your payments. If this is the case, you should seek the assistance of an attorney.**

**This packet also does not discuss losing your home by eviction, tax sale, or foreclosures which result from the enforcement of a lien or mortgages offered by the federal government, including the Departments of Housing and Urban Development, Veteran's Administration, or the Farmer's Home Administration.**



**If you are unsure as to whether this packet applies to your situation, you should seek the assistance of an attorney.**



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

## People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

## Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

## How to file a document in a court file

This section answers commonly asked questions about filing documents.

## Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



# Who these people are



## Judge:

The judge is the person who presides over the courtroom. In most cases, including foreclosure cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



## Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



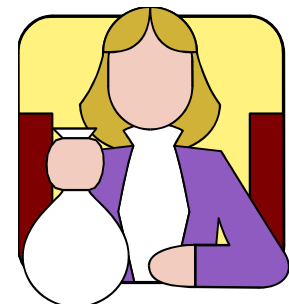
## Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



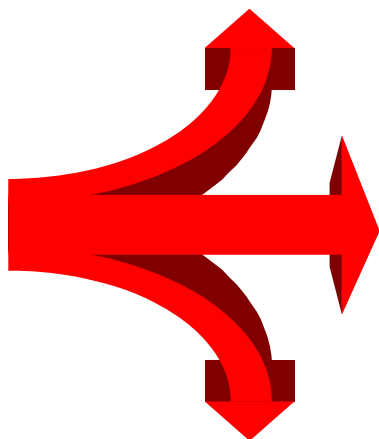
## Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



## Lender:

Your lender is the business or the person who loaned you the money to purchase your home. Lenders are often banks, finance companies, or credit unions but they can also be private individuals. If you purchased a home by contract for deed, the Seller is the lender.



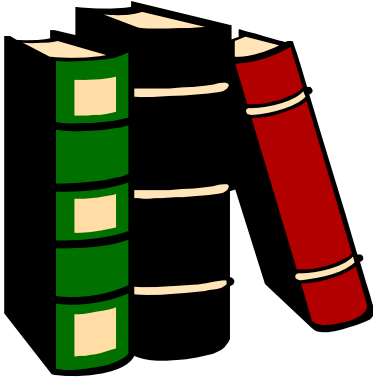
## Mediation

In some cases, you may be able to work out an agreement with your lender as to what should be done about your home finance problem. A mediator is someone who can meet with you and the person with whom you are having a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you and the other parent make a decision. In some counties, mediation is offered in certain types of cases, including foreclosure cases.

## Local or municipal law

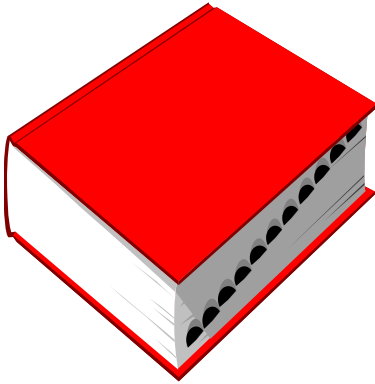
In some cities or municipalities, you may have additional rights not mentioned in this packet. For more information on whether a local ordinance affects your situation, consult an attorney.





## Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of foreclosure. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.



## **answer or response**

The written response to a complaint or a petition that is filed by the defendant (the person being sued) in a lawsuit. In small claims court, you are not required to file an answer as long as you show up to the first scheduled hearing on the plaintiff's complaint.

## **breach or "breaking" an agreement**

To do something that an agreement prohibits you from doing or failing to do something that you had agreed to do.

## **circuit**

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

## **contract for deed**

When a buyer makes periodic payments directly to the Seller for the purchase of real estate. The Seller retains the deed to the property until the purchase price has been paid in full.

## **exemption rights**

In Illinois, certain property (including cash, income, personal property, and a portion of your car and home) cannot be taken from you to pay a debt. This property is called exempt property. If a judgment is entered against you in Illinois, you have the right to claim this property as exempt and not use it to pay a debt against you. For a discussion of your rights as a debtor, see Packet #1 of the Consumer Series.

## **default**

If a person who is sued fails to appear at the first scheduled hearing (or any subsequent hearings) and/or if he/she fails to file an answer to a complaint, petition, motion, etc. filed against him/her, he/she can be held in default. Being held in default means that the other side (the person who filed the complaint, motion, petition) will usually receive whatever relief or money they were asking for.

## **defendant**

A person who is sued.

## **deficiency**

In foreclosure proceedings, the deficiency is the amount (if any) left unpaid by the Buyer after the property is sold and applied to the amount the Buyer owed.

## **hearing (trial)**

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

## **judgment**

A final decision or order of the court.

## **jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

## **lender**

For the purposes of this packet, the lender is the person, bank, or other financial institution which loans money to the Buyer to pay the Seller.

## **mortgage**

When the Seller is paid in full by a lender for a piece of property. The Buyer makes payments to the lender and the lender retains the deed to the property until the purchase price is paid in full.

## **motion**

A written or oral request to the judge after a lawsuit has been started (see petition).

## **notary public**

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

## **petition or complaint**

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

## **plaintiff or petitioner**

The person who starts a lawsuit.

## **pro-se**

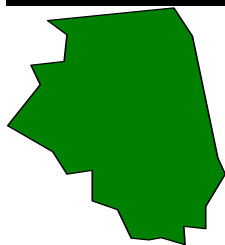
A person who is not represented by an attorney and is involved as a party in a lawsuit.

## **serve or service**

The process where a person is officially notified of a pending lawsuit.

## **statute**

The law that the state legislature or federal government enacted on a particular subject.



The foreclosure process is governed by the Illinois Mortgage Foreclosure Act. The Mortgage Foreclosure Act can be found in Chapter 735, Act 5, Section 1101 of the Illinois Compiled Statutes.

## The 3 Ways Your Interest In Your Home Can Be Terminated

All mortgage and some contract for deed foreclosures in Illinois are governed by The Illinois Mortgage Foreclosure Act. The Act provides for 3 different methods of terminating the Buyer's interest in a piece of property and giving the property back to the Lender:

**By deed:** The deed to the residence is signed over to the Lender and the Buyer's interest is automatically terminated. If the Lender takes the deed, the Lender cannot go after the Buyer for any amount still owing on the contract.

**By consent:** The Buyer agrees to a court order giving the residence back to the Lender and gives up their rights to redemption and reinstatement (described later). The Lender agrees to not go after the Buyer for any amount still owing on the contract.

**By a judge:** The Lender files a lawsuit against the Buyer asking the judge to award them title to the property. To do this, the Lender must serve the Buyer with a Summons and a copy of the complaint. As with any lawsuit, the Lender and the Buyer may agree on a settlement or the case may go to trial before a judge, who will decide if the Lender can foreclose and get the property.

## Why does foreclosure happen?

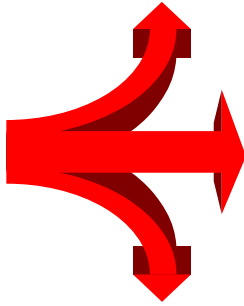
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Foreclosure can happen for a number of reasons. The most common reason is because you have fallen behind on a loan that you took out to purchase your home (a mortgage) or a loan for you which you used your home as collateral (a home equity loan).

A foreclosure can also occur, however, in some contract for deed sales. For instance, a Seller **must** use the mortgage foreclosure procedure in a contract for deed sale **if** the payments on the contract for deed were over a period of more than 5 years **and** the Buyer has paid more than 20% of the purchase price.

## Your 3 options when you have been sued for foreclosure



Buyers who have been sued for foreclosure have 3 options: they can try to save their home by catching up on the missed payments; they can fight the foreclosure in court; or they can just give up and turn over the deed to the property.

### Option 1: Catch up on missed payments

If the Buyer knows he/she is behind/late with his payments, he/she still may be able to save his/her home. The first thing a Buyer should do is to contact the Lender to see if he/she can work out an agreement to catch up on his/her payments. However, if this does not work, he/she does have additional rights provided by law. Under the Illinois Mortgage Foreclosure Act, once the Buyer has been sued for foreclosure, he/she has 2 separate rights, the right of reinstatement and the right of redemption. A Buyer can waive these rights, but only in writing.

**Reinstatement:** 90 days from the date the Buyer is served with the Lender's Complaint, he/she has the right to catch up on his/her missed payments. If he/she does, the Lender's Complaint is dismissed. The Buyer must, however, also pay the additional costs and expenses incurred by the Lender in filing the Complaint. Even if the Court enters a judgment against the Buyer granting possession of the premises to the Lender, as long as the 90 days have not expired, the Buyer can still "reinstate" by catching up on his/her missed payments.

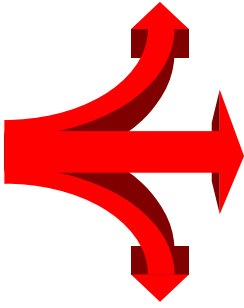
**Redemption:** 210 days after a Buyer has been served or 90 days after the court enters a judgment, whichever is later, the Buyer has the right to pay the total amount due under the agreement (not just the missed payments) plus the additional costs and expenses the Lender incurred by filing the complaint. If this is done, the Buyer can keep their property. The Buyer must give the Lender 15 days notice of his/her intent to "redeem" by filing a certificate of notice with the court and mailing a copy to the Lender or his/her attorney 3 days before the date of "redemption." The Lender must notify the Buyer in writing of what its "additional costs and expenses" were. If the Buyer believes that the "additional costs and expenses" are not reasonable, he/she can object by filing a written statement with the clerk along with the redemption payment. The clerk then holds on to the disputed amount until a hearing can be held.

There are 2 situations, however, in which the redemption period is shortened.

First, the redemption period can end 90 days after the Buyer is served or 60 days after a judgment is entered (whichever is later) if the judge finds that:

a) the value of the property is less than 90% of the full amount still owing on the contract; and

## Your 3 options when you have been sued for foreclosure



b) the Lender gives up all right to collect any money due under the contract and agrees to just take the property back.

Second, the redemption period can end 30 days after the entry of a judgment if the court finds that the property was abandoned by the Buyer.

### Option 2: Fighting The Foreclosure In Court

If the Buyer believes the Lender is not entitled to foreclosure, he/she may contest the lawsuit and tell the Judge why there should be no foreclosure. Please note that to make such a defense, The Buyer usually will have to show that he/she is not in default of the retail installment contract or that a certain procedure required by law or your contract was not followed correctly by the Lender. This packet does not deal with these situations and if you believe that there should not be a foreclosure, you should seek the advice of an attorney.

### Option 3: Giving up

If the Buyer is about to be or has been sued for foreclosure, he/she has no defense to the foreclosure, and he/she does not have the financial ability to exercise his/her rights of redemption or reinstatement (see page 14), then he/she will probably have to "give up", move, and let his/her home be sold.

Giving up, however, doesn't mean that the Buyer should just move and forget about his/her loan or mortgage, thinking that it will go away along with the house. The fact is, it won't. In fact, Buyers who "give up" and move from their homes are surprised when months later, they receive a bill in the mail or are sued by their Lenders to pay what is called a "deficiency".

As explained above, if the Buyer's home is sold in a foreclosure, it is very likely that the sale of the home will not cover the balance left on his mortgage. The reason is because the person buying the home doesn't have to pay all of the unpaid interest and fees the Buyer was charged on his/her loan. Whatever portion is not paid by the sale of the home is called a "deficiency" and the Buyer will be liable for this deficiency unless he/she takes one of the following steps.

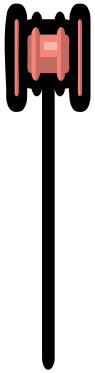
1. Depending on whether the Buyer has been sued or not, he/she should try to work out a "foreclosure by deed or by consent" as explained on page 2 . Most lenders will want to work out agreements like this because it will save them future court costs and attorney's fees. If the Buyer does work out such an agreement, he/she should get it in writing and make sure that the Lender agrees that in exchange for turning over the deed to the property or consenting to the foreclosure, it will release the Buyer from any future liability or amounts owed on the mortgage or loan, including deficiencies

## Your 3 options when you have been sued for foreclosure

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resulting from the sale of the home.

2. Another option the Buyer may have is to find someone else to take over (or assume) the loan payments. This option is called "assumption" and the Buyer usually will only have this option if his/her contract expressly gives it to him/her and if the Lender gives its approval. Even if the Buyer's contract, however, doesn't have this right, he/she should ask his Lender about it. Similar to foreclosure by deed or consent, however, if the Lender agrees to allow someone else to "assume" the Buyer's loan, the Buyer should be sure to get this agreement in writing, and he/she should be sure that the Lender agrees to release him/her from any future liability for the loan.



## **STEP 1: The lawsuit is filed:**

The Buyer is served with a complaint for foreclosure.

## **STEP 2: The Buyer decides what to do:**

He/she will either exercise his/her rights of redemption or reinstatement, fight the foreclosure, or give up. (see page 14 for descriptions of these options.)

## **STEP 3: The court makes a decision:**

If the Buyer wins at his/her hearing, he/she should be able to keep his/her property subject to the conditions set by the court and the process ends.

However, if the Buyer loses at his/her hearing or if he/she doesn't contest the foreclosure, the court will enter a judgment of foreclosure which does three things: 1) it terminates the Buyer's interest in the property; 2) it includes the last dates for the Buyer to exercise his/her rights of redemption and reinstatement (see page 14); and 3) it sets the time and place for the sale of the Buyer's home.

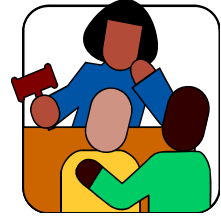
## **STEP 4: The Sale:**

The foreclosure sale consists of bids being taken on the property. The Buyer can bid on the property or he/she can bring someone in to bid on the property. If the winning bid is less than the amount that is owed by the Buyer, there is a "deficiency". The Buyer is legally obligated to make up this "deficiency". (See below for rights that the Buyer has after the sale). The sale cannot take place until the Buyer's time to exercise his/her rights of redemption and reinstatement (see page 3) have expired or have been waived.

## **STEP 5: The confirmation of the sale**

After the sale, the Court receives a report of the sale. The report is to determine whether the sale procedures, including notice, followed the law and to make sure that the terms of the sale were not unconscionable or fraud. (this means that a fair price for the home was accepted and no one has tried to cheat the Buyer) If the report is OK, the Court "confirms" the sale with a court order. The court order may also include a "deficiency" judgment against the Buyer if the sale proceeds did not cover what the Buyer owed. If this happens to the Buyer, he/she should know that there

are certain assets and income that cannot be taken from him/her to pay the deficiency. These assets and income are called "exempt" assets and income and your right to keep these assets and income is called your "exemption rights". For a discussion on your rights as a debtor, consult Packet #1 of the Consumer series.



Under the Illinois Mortgage Foreclosure Act, the Buyer may remain in possession of his/her home up to 30 days after confirmation of the sale unless:

- 1) the Lender objects and shows good cause why the Buyer should be evicted sooner; **and**
- 2) the mortgage or loan the Buyer signed allows him/her to to be evicted sooner; **and**
- 3) the Court is satisfied that it is likely that the Lender will win if a hearing were held.

If the Buyer remains in the home up to 30 days after confirmation of the sale, he must pay the new owner the reasonable rental value of the property or the interest due under the mortgage/loan whichever is **less** unless he/she can show good cause as to why he/she should not have to pay one of these amounts.

After 30 days after confirmation of the sale, the Buyer can be removed from the property without any further court order or notice. This means the Buyer and his/her property can be set out by the Sheriff on the sidewalk or street.

## **STEP 6: The title is transferred to the new owner**

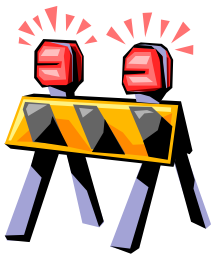
After confirmation of the sale and payment of the purchase price, the title is transferred to the new owner.



## STEP 1: FILL OUT THE ENTRY OF APPEARANCE OR ANSWER FORM:

In the supplement to this packet are forms that you can use to respond to a foreclosure complaint. To complete these forms, follow the instructions in the Forms Guide.

The first form you (as a Buyer) will need to complete is either the Entry of Appearance or the Answer. If you simply want to be notified of future hearings but don't want to let the court know what your position is in advance, then fill out the Entry of Appearance. If you want to respond to the foreclosure complaint, then fill out the Answer. Please note that failure to file an Answer can result in you having agreed to everything that is in the Lender's complaint, which can result in a judgment of foreclosure being entered by the Judge without a hearing. This does not affect the right of redemption and reinstatement.



**CAUTION:** If you file an Entry of Appearance or Answer, you are agreeing that the Court has jurisdiction over your case and you are waiving any right to contest the Court's jurisdiction later. If you think that the Court may not have jurisdiction over you, seek the advice of an attorney before you file anything.

If you complete the Answer or Entry of Appearance form, you should fill out the Certificate of Mailing form and mail a copy of the Answer or the Entry of Appearance to the other side. If the other side is represented by an attorney (which is likely) send it to their attorney at the address on the foreclosure complaint.



## STEP 2: FIGURE OUT WHERE TO FILE:

You should file your Answer or Entry of Appearance and the Certificate of Mailing in the county where the foreclosure complaint was filed.



## STEP 3: GO TO THE CIRCUIT CLERK'S OFFICE AND FILE YOUR ANSWER OR ENTRY OF APPEARANCE

You will have to pay a fee to file your case with the Circuit Clerk's Office. If you are a person

son of low income, however, you can apply for a fee waiver. A copy of a form called an Application To Defend As A Poor Person is in the supplement to this packet. You should give this form to the Circuit Clerk and ask that it be presented to a judge for his/her approval. Wait to see if it is approved and if it is, you can then file your Certificate of Mailing and your Answer or Entry of Appearance and avoid any filing fees.

After your fee waiver is approved or denied or if you decide not to apply for a fee waiver, take your Certificate of Mailing and your Answer or Entry of Appearance (and 2 copies of each) to the Circuit Clerk's office at the courthouse in your county and file them. Ask the Clerk to file stamp your copies. You should keep 1 copy for yourself and send the other to the Lender.



## STEP 4: GO TO YOUR HEARING

**If the lender or seller or their attorney shows up**, they will get to talk first. Be patient and let them tell their side of the story first. Don't interrupt them if something they say is wrong or incorrect, simply wait until they are finished and it is your turn to talk to the judge.

When it is your turn, you should tell the judge how much you are behind on your payments and why and whether you intend to exercise your rights of reinstatement or redemption. If you are not going to exercise these rights, tell the court that you are willing to waive them in exchange for the lender/seller agreeing not to hold you liable for any future deficiency judgments that may occur when/if they sell the home. If you need time to move from the home, you should ask for this as well.

You should present any documentation that you have to support your claim to the judge at this time. If you need witnesses to testify about certain facts, you should bring those as well. The judge will then make a decision.

**If the lender or seller or their attorney does not show up**, then you should request that the Court dismiss the foreclosure complaint. If the Court does not do this, but rather reschedules the hearing, make sure you write down when the new hearing date is.

Finally, whenever you lose in court, you have the right to request the court to reconsider its decision and you have the right to appeal the decision to a higher court. You must request a reconsideration or file an appeal within 30 days of the court's order or you will lose these rights. You will likely, however, have to seek the assistance of an attorney to exercise these rights.





**Q: What is a court file?**

**A:** The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

**Q: When do you need to file a document in a court file?**

**A:** Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

**Q: What does it mean to file a document in a court file?**

**A:** Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

**Q: Does filing a document make it legal?**

**A:** No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

**Q: Why is filing so important?**

**A:** Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



## 4 Commonly held beliefs about foreclosure which are not true:

**I sent in a partial payment to the lender and they sent it back to me. This means that I don't have to send it in again or that I can use the money on something else. It also means that they can't sue me.**

While you can use the money on something else, that is not a good idea for several reasons. First, just because a lender returned a partial payment does not deny them the option of foreclosure. Second, do not confuse the fact that a payment was returned to you as a sign that your lender doesn't care if you sent in partial or late payments. Often, the reason a payment is sent back is because the lender is concerned that if they accept a partial payment it will be used as evidence they agreed it was OK for you to continue to send partial payments. You should save the partial payment until you can afford to send in a full payment. Third, the more money you pay or save to pay on your home now will lower the amount you may have to come up with later to exercise your right of redemption or reinstatement.

**If I send in a partial or late payment and they accept it, I can't be sued.**

Wrong. In almost all mortgage or loan contracts, acceptance of a partial or late payment does not deny the lender the option of foreclosure. You should also not confuse the fact that a late or partial payment was accepted as a sign that your lender doesn't care that you did not send full payment on time. In addition, late or partial payments will often result in you being charged a late payment fee which will increase the total amount you owe the Lender.

**I got a notice from the lender stating that I owe the full amount that I borrowed. That's not right, I'm only 3 months behind, so that is all I owe.**

Probably not. Most mortgages and loans and even some contract for deeds include an "acceleration" provision. This allows the Lender to declare the entire loan amount due if you have missed a certain number of payments or are a certain number of days late. So, if your lender is saying you owe the full amount, check to see if your contract has been accelerated.

**I'm not worried about falling behind on my mortgage/loan because I'll just file for bankruptcy and that will stop the foreclosure.**

Not necessarily. In most cases you cannot discharge a home mortgage or loan completely in a Chapter 7 bankruptcy and still keep your home. Filing for a Chapter 13 bankruptcy can delay a foreclosure, but if you don't or can't afford to work out a payment plan to continue to pay your monthly payment plus the past amount due plus interest, you are likely to lose your home.



## Get everything in writing.

While it is not required, you should try to get all verbal agreements with your lender in writing in the event that you have to prove the terms of the agreement. For example, if your lender agrees to allow you to pay less than your regular monthly payment for a period of time, you should get this in writing.

## Look at your income and expenses realistically

Before you decide whether to employ one of the options in this packet, you should realistically look at your monthly expenses and your income and figure out what you can afford to pay on a regular basis.

## Take whatever you need to prove your claim to your hearing

Remember that you can only testify as to facts or events of which you have direct personal knowledge. If you need a witness, document, picture, etc. to prove something, make sure that you bring it with you on the date of your hearing. Do not assume that the judge will give you a continuance to get this information or that the judge will require the other party to give this information to you.



Similarly, keep in mind that documents like letters, estimates, and written statements may not be considered by a judge if the person who wrote the letter/estimate/or statement doesn't appear in court on the date of your hearing. If you need this evidence to prove your claim, you should either bring these people with you or subpoena them to appear in court.

## Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, appearing in court may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if representing yourself in court proves to be too difficult a task for you, talk to an attorney.