

CAN A BANKRUPTCY STOP A FORECLOSURE SALE?

You should contact a lawyer to see if bankruptcy will protect your property from foreclosure. Bankruptcy allows you to discharge (get rid of) most of your debts, but also keep a certain amount of property. The law is complex. A lawyer will let you know how much of your property will be protected.

**CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.
101 WEST BROAD STREET, SUITE 101
P.O. BOX 12206
RICHMOND, VA 23241**

FORECLOSURES

This pamphlet contains general information about your rights. Consult a lawyer if you have specific questions.

**CENTRAL VIRGINIA LEGAL AID
SOCIETY, INC.
101 WEST BROAD STREET,
SUITE 101
P.O. Box 12206
RICHMOND, VIRGINIA 23241
1-804-648-1012
1-800-868 1012
WWW.CVLAS.ORG
WWW.VALEGALAID.ORG**

CVLAS is a non-profit organization providing free legal advice, and representation to low income or elderly people in Central Virginia. Contact us Monday - Thursday 9-12 to see if you qualify for services.

This project financially assisted
by the Virginia Law Foundation.



© May 2004 by
Central Virginia Legal Aid Society.



When you buy a house or borrow money to buy a house, the creditor (A person or business you owe money to is a creditor) usually takes a security interest in the property you buy. This means that if you don't pay, the creditor can foreclose upon (or take back) that property. However, you have important legal rights that protect you.

HOW CAN I AVOID FORECLOSURE?

You can avoid foreclosures by making all your payments on time. If you miss a payment, you can still make the payment within 10 days to avoid foreclosure. In Virginia, after 10 days, the creditor can either accelerate your loan or foreclose on your property.

If they accelerate, then you owe the entire amount of the loan at once. You have lost your right to pay over time. To avoid foreclosure after acceleration, you must pay all the money you owe right now.

If they foreclose without accelerating your loan, you can pay all the missed payments and late fees to avoid foreclosure. Also, your foreclosure may be prevented if your creditor has agreed to accept your late payments or to change your due date. A change in your due date may happen orally or in writing, or by your creditor repeatedly taking late payments without complaint.

HOW DOES A FORECLOSURE WORK?

Almost all mortgages in Virginia are secured by a Deed of Trust. The deed includes your promise to pay the mortgage payments on time, in full, every month. The deed also includes the rights of the creditor to foreclose on your property if you don't meet that promise. The deed describes the specific steps that must be taken for the property to be fore-

closed upon.

You should read the deed carefully, but in most cases:

1. The creditor will decide to sell your property.
2. The creditor will get a Trustee to handle the sale of your property.
3. The Trustee gives you notice of the sale.
4. The trustee will advertise the sale of your property in a newspaper of general circulation.
5. The trustee sells your property. This is usually as an auction at the courthouse.
6. The new owner of the property gets an unlawful detainer from the Court.
7. You will have to leave the property.

WHAT SHOULD THE NOTICE SAY?

You must get a written notice, by certified or registered mail, telling you the time and place of the sale. You must get this at least 14 days before the sale. However, a foreclosure sale is valid even if the notice is not sent, if your property is sold to an innocent third party for value.

HOW SHOULD THE FORECLOSURE SALE BE ADVERTISED?

The foreclosure sale must be advertised in a newspaper of general circulation before the sale takes place. There are strict advertising requirements. The ad must state the location of your property, the location of the foreclosure sale, and the terms of the sale. If this is not done, a court may set aside or void a foreclosure sale.

Where the Deed of Trust does not say the number of ads, the sale must normally be advertised for four weeks in a row, or for five days (which may be five days in a row).

The sale must take place no more than 30

days after the last ad, and no fewer than 8 days after the first ad.

WHAT HAPPENS AT A FORECLOSURE SALE?

The foreclosure sale must happen in a manner to get a fair sales price. A low sales price alone is not enough to set aside a sale. However, where the sales price is very low (usually less than 50% of assessed value) and evidence exists that the Trustee was not trying to get a fair sales price, a court may set aside the sale.

HOW LONG AFTER THE SALE CAN I WAIT BEFORE MOVING?

A foreclosure only affects who owns the property. A foreclosure does not affect who has the right to use or occupy the property. If the new owner wants possession of the property, the new owner must file an unlawful detainer action in court.

WHAT IS AN UNLAWFUL DETAINER?

The new owner may evict you only by filing a lawsuit (unlawful detainer warrant). A hearing will be held. If you show up for the hearing and the judge rules in the new owner's favor, the judge must give you at least 10 more days in which to move. If you have not moved by the end of the 10 days, the new owner can get the Sheriff to move you and your belongings out of the house. If you do not show up for the hearing in court, the new owner can ask the sheriff to force you out of the house right away.

The new owner may not cut off utilities, lock you out of the house, or evict you without going to court.