Foreclosure can move very quickly, but you can exercise your legal rights to slow down the process. Delay gives you time to put in place a long-term solution, such as to refinance your mortgage, sell your home privately, arrange a workout agreement or loan modification, or save up money to get you caught up on your payments. You cannot properly delay foreclosure just because you need more time. The actions you take must be based on some underlying legal claim or defense that is raised in good faith.

Procedural Defenses May Delay the Process. Foreclosures are rarely contested by homeowners, and lenders’ attorneys may be sloppy in their procedures and sometimes do not comply with pre-foreclosure requirements. Lender errors can be to your benefit when you are contesting foreclosure, forcing the lender to start over or at least to comply with procedural requirements.

You are likely to need the help of a lawyer or other professional to determine lender compliance with required procedures. Examples are failure to give you proper notice, failure to give you a fair chance to correct the default, failure to properly advertise the sale, failure to introduce the original documents in the foreclosure proceeding, failure to sue all the proper parties, failure to bring the foreclosure proceeding in the name of the real mortgage owner, or discouraging bids at the foreclosure sale. There may also be procedural requirements that involve considering you for loss mitigation options. Under certain state laws you may be able to defend against a foreclosure if the servicer seriously violated these procedures.

In states where foreclosure actions are brought in court, raise defenses in that action. In states where lenders use the nonjudicial foreclosure process, you have to bring a legal case of your own, asking the court to stop the foreclosure.

Servicer’s Past Acceptance of Late or Partial Payments As Grounds for Foreclosure Delay. Courts may refuse to allow foreclosure if the servicer surprises you by suddenly calling the whole loan due when the servicer has been lenient in the past in accepting late or partial payments. It instead must warn you that late or partial payments are no longer acceptable before it calls the whole loan due and attempts a foreclosure. If the servicer accepts a payment after the foreclosure has started, you can argue that there is no longer a default, and the servicer must restart the foreclosure process. This may involve giving a new notice of acceleration.

Asking the Court for More Time. A judge may give you a delay if foreclosure will cause serious hardship. The hardship should be documented and involve more than just the loss of your home, such as that a family member has a serious illness. The hardship must be temporary as well; if permanent, the judge may feel that now is as good a time as any to allow the foreclosure.

If you have a great deal of equity in your home, a judge may allow you a short period of time to sell the home without foreclosure, allowing you to get the best possible price and recover your home equity. Even if you are unable to make payments during this time, the lender is not hurt because there is enough value in the property to eventually pay the lender’s full claim.

A Chapter 7 Bankruptcy May Create a Temporary Delay. A chapter 7 bankruptcy case cannot address a foreclosure in the long-term but filing the bankruptcy typically delays the foreclosure at least 60 days, as long as you have not recently filed another bankruptcy case. While the bankruptcy is pending, the lender cannot continue foreclosure without permission of the court.

You cannot file a chapter 7 bankruptcy solely to delay foreclosure. You must have some other legitimate purpose for filing bankruptcy. For most homeowners in financial distress, this is hardly a problem because there are lots of other debts outstanding.

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