FHA Loans. Lenders cannot begin legal foreclosure proceedings on an FHA-insured loan if your only default is an inability to pay an escrow shortage in a lump sum. They also cannot foreclose for missed payments until at least three monthly payments are overdue. After the President declares a disaster affecting your home, the lender may not start or continue a foreclosure on your home for 90 days.

You also may be able to delay a foreclosure if the servicer has failed to comply with servicer requirements for an FHA-insured mortgage loan. Key requirements are that the servicer must:

- Consider whether you qualify for FHA loss mitigation options before initiating a foreclosure.
- Give you notice of your default by the end of the second month of your delinquency, explaining what you must do to get reinstated.
- Make reasonable efforts to arrange face-to-face or telephone interviews with you before three full monthly installments are overdue.

If you have an FHA mortgage and are threatened with foreclosure, and you do not have an attorney, you should at least contact a HUD-approved counselor. To find a HUD-approved counselor, call 800-569-4287 (TDD 800-877-8339) or check www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm [1]. Sometimes a counselor can convince a lender to give you a second chance. Alternatively you can call HUD for help at 877-622-8525. Stay on the line until a HUD field officer picks up.

VA Mortgages. If you have a VA mortgage, the lender cannot foreclose unless you fail to make three full monthly payments. The lender must give the VA thirty days’ warning of its intent to foreclose and must make all reasonable efforts at forbearance before actually foreclosing on the property. The lender must consider temporary suspension of payments, extension of the loan, and acceptance of partial payments. If the lender still intends to foreclose, you can stop the foreclosure by paying all overdue payments, all late charges, and any of the lender’s foreclosure expenses to date.

The lender’s failure to meet its obligations in this area can be a defense to foreclosure. For example, send a letter to the lender asking it to consider foreclosure avoidance strategies. The lender’s failure to respond appropriately is evidence of its failure to meet its responsibilities. Another option is to contact the regional VA office serving your state, explain the reasons for your default, and ask about the best plan for getting your mortgage payments back on track.

RHS Mortgages. For private loans guaranteed by the Rural Housing Service (RHS), the lender must follow RHS guidelines when they foreclose. For example, you can assert a defense to foreclosure that the lender failed to consider RHS loss mitigation options before foreclosing.

Other loans come directly from the RHS. Before it forecloses, RHS must notify you about loss mitigation options, consider you for them if you ask, and implement the options you qualify for. RHS’s failure to perform any of these obligations can be raised as a defense to foreclosure. You can also appeal the RHS’s loss mitigation decisions with the Department of Agriculture (RHS’s parent agency), and a foreclosure should not proceed until an appeal has been resolved.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
Source URL: https://library.nclc.org/sd/1807

Links