

Washington Foreclosure Process and Timelines

New Protections for Washington Homeowners

Effective July 26, 2009, Washington homeowners facing foreclosure will have additional opportunities to save their homes. These new rights include:

- Initial contact by telephone and by letter from the lender or the lender's agent to the borrower;
- Assessment of the borrower's financial ability to pay the debt and modify the loan;
- Right of the borrower to request a subsequent meeting with the lender or agent to discuss loan modification and other options to avoid foreclosure;
- Right of the borrower to have a representative at this subsequent meeting.

In a foreclosure based on a loan default that occurs after July 26, 2009, the lender may not issue a **Notice of Default** until 30 days after this initial contact or 30 days after the lender has satisfied the "due diligence" requirements of this new law.

Existing law already provides that the foreclosure sale cannot occur less than 190 days from the **date of default**. RCW 61.24.040(8). The sale must occur on a Friday. RCW 61.24.040(5).

The following timeline shows how the foreclosure process would work in Washington using a loan with a payment due on January 1, 2010. If the payment is not made on January 1st, then the loan is in default on January 2nd. Accordingly, the first day that a foreclosure sale could occur is Friday, July 16, 2010.

Day 1 January 2, 2010 **Loan in Default**

Notice of Default

Day 31 February 1, 2010

For foreclosures based on defaults occurring after July 26, 2009, the lender may not issue the **Notice of Default** until 30 days after the initial contact is made as explained in the box above. The notice of default must be given at least 30 days before the Notice of Trustee's Sale. RCW 61.24.030(8).



Refinancing: Before a payment is missed, borrowers may refinance their home to reduce their mortgage payments, if they are unable to meet the terms of their loan. Refinancing is also an option after default.



Early Delinquency Counseling: Early intervention is the most effective because the borrower has more options for reinstating the loan. HUD-certified housing counseling agencies can help the borrower work with the lender to create a repayment plan, loan modification, or forbearance plan.



Counseling after Default: Even after default, HUD-certified housing counseling agencies can help borrowers reinstate their loan by working with the borrower and lender.

<p>Recording of Notice of Trustee's Sale</p> <p>At least 90 days before the sale, the Trustee must record, mail, and serve or post the notice of Trustee's Sale. RCW 61.24.040(1). Often the trustee doing the foreclosure will be a successor trustee; accordingly, before the Notice of Trustee's Sale is recorded, the Resignation and Appointment of Successor Trustee should be recorded. (This is the first public notice, and it brings out the scam artists.)</p> <p>Day 61 March 3, 2010</p>
<p>First Publication by Trustee</p> <p>The notice of Trustee's Sale must be published twice. The first publication must be between the 35th and the 28th days before the date of sale. RCW 61.24.040(3).</p> <p>Day 165 June 15, 2010</p>
<p>Opportunity for Homeowner to Cure Default</p> <p>At any day prior to the eleventh day before the sale, the borrower may cure the default by paying what is owed and cause a discontinuance of the sale. RCW 61.24.090(1). (Within 11 days before the sale date, the beneficiary has the right to demand payment in full.)</p> <p>Day 185 July 5, 2010</p>
<p>Second Publication by Trustee</p> <p>The second publication must be between the 14th and the 7th days before the date of sale. RCW 61.24.040 (3).</p> <p>Day 186 July 6, 2010</p>
<p>Deadline for Homeowner to File Motion to Restrain Sale</p> <p>No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days' notice.</p> <p>Day 189 July 9, 2010</p>



Loan Reinstatement: The easiest method of avoiding foreclosure is to pay all overdue mortgage payments, as well as fees, and bring the loan back into good standing. This is not usually financially feasible without an emergency loan or other source of additional income. New programs and new laws are constantly coming into affect as a result of the foreclosure crisis. Contact a HUD-certified housing counseling agency for more information.

RCW 61.24.130(2)

The sale can be continued by the Trustee for up to 120 days. RCW 61.24.040(6). Also, the sale is stayed if the borrower files for bankruptcy. 11 U.S.C. 362.

Day 196 July 16, 2010

Foreclosure Sale Occurs

Eviction of Homeowner

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale. RCW 61.24.060. The former homeowner may actually have more than 20 days if the purchaser is forced to file an eviction action.

Day 216 August 5, 2010

If the home is occupied by a bona fide residential tenant, new state and federal laws allow that tenant to occupy the property beyond the 20-day period allowed for owner-occupants.

Eviction of Rental Tenant Under State Law

Under a new Washington State law, SB 5810, bona fide residential tenants of homes sold in foreclosure after July 26, 2009, are entitled to at least 60 days notice prior to the initiation of eviction proceedings.

Eviction of Rental Tenant Under Federal Law

Under a new federal law, the Protecting Tenants at Foreclosure Act of 2009, S. 896, Pub. L. No. 111-22, §§ 701-704, bona fide residential tenants of homes sold at foreclosure after May 20, 2009, are entitled to at least 90 days notice prior to the initiation of eviction proceedings, and a tenant with a lease may be entitled to stay out the term of that lease prior to eviction proceedings.

For more information about tenant rights after foreclosure, see the publication *A New Federal Law Requires 90 Days Notice Prior to Eviction of any Tenant Living in a Foreclosed Property* on the Washington LawHelp website at <http://www.washingtonlawhelp.org/>



Bankruptcy: A Chapter 13 bankruptcy may help the borrower save his or her home from foreclosure if all other options have failed. The borrower will need to consult a bankruptcy attorney. Legal advice is always recommended prior to filing.

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