



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

HOME FORECLOSURE AND VEHICLE REPOSSESSION

Q: What is foreclosure? Foreclosure is a legal means that your lender can use to repossess (take over) your home if you are in default on your mortgage payments.

Q: How far behind in mortgage payments can I be before my lender can initiate foreclosure proceedings? When a mortgage payment is more than 30 days late, the mortgage lender has the right to start a foreclosure. As a practical matter, most lenders will not start a foreclosure until the borrower is two to three months overdue in payments.

Q: Are lenders required to give homeowners prior notice before starting foreclosure proceedings? Yes, the lender must notify the borrower of its intent to foreclose. In New Jersey, mortgage lenders are subject to the New Jersey Fair Foreclosure Act, which requires the lender to send a warning letter to the borrower at least 30 days prior to initiating foreclosure. During this pre-foreclosure period, the borrower can prevent the foreclosure by paying off the amount in default. The warning letter must clearly state the availability of financial assistance for curing the default through programs operated by the state or federal government. The lender may satisfy this notice requirement by attaching a list of financial assistance programs to the warning letter.

Q: What happens during the foreclosure process? The foreclosure process takes approximately nine to ten months. After sending the borrower a warning letter, the lender files a *lis pendens* (notice of pending lawsuit) in court. The lender can sue for the amount in default or the entire unpaid principal balance. The borrower has approximately 30-35 days to respond. If the court rules against the borrower, a sale date will be scheduled. In New Jersey, notice of sale must be posted on the property, in the county office, and published in two local newspapers. Notice must be given to the property owner at least ten days prior to the scheduled sale. Foreclosure sales are conducted as public auctions and sold to the highest bidder. The sale is “confirmed” automatically by the passage of ten days if there are no objections filed with the court or by court order if objections to the sale were filed with the court. In New Jersey, the borrower has a right to redeem the property until the sale is confirmed, which is usually ten days after the sale. In Pennsylvania, the borrower has no redemption rights following the sale of the property.

Q: The foreclosure sale price was less than the amount remaining on my loan. Can the lender now sue me for the deficiency? If the property was sold for less than the amount of the loan, the lender has the right to sue you for the deficiency. There may be time limits on when the lender can sue for any deficiency. In New Jersey, the lender must sue for a deficiency judgment within three months of the foreclosure sale.

Q: Is there anything a borrower can do to prevent foreclosure? If foreclosure action has not yet been initiated by the lender, but you suspect that you may not be able to keep up with the mortgage payments, you should contact the lender. Most lenders have a loss control department where you may be able to work out a payment plan to catch up on missed payments. You also may be able to refinance the debt or extend the term of your mortgage term, which will lower your monthly payments. Once the foreclosure process has been started, a borrower can prevent foreclosure by paying off the entire amount in default, foreclosure costs, and interest. If you cannot pay off the entire amount in default, you may consider filing a chapter 13 bankruptcy petition. While bankruptcy should be your last resort, it will allow you to get caught up on the payments over a three to

five year period. Lastly, you may be entitled to deed the property back to the lender in lieu of foreclosure. While you will still lose the house if you deed the property back to the lender, it will not be as damaging to your credit as foreclosure.

Q. What is vehicle repossession? When you finance or lease a car, truck or other vehicle, your lender holds important rights on the vehicle until the last loan payment is paid. These rights are established by the contract terms and state law. In many states, the lender can repossess your car without going to court or warning you in advance as long as they do not “breach the peace.” Your lender may have the legal authority to seize your car as soon as you default on your loan or lease. Be sure to read your contract to find out what constitutes a default under the contract.

Q. What can the lender do with the vehicle once it is repossessed? Your lender may decide to keep the car as compensation for your debt or sell it in either a public or private sale. In some states, your creditor must let you know what will happen to the car. For example, if a creditor chooses to sell the car at public auction, state law may require that you be notified of the date of the sale so you can attend and participate in the bidding. If the vehicle is to be sold privately, you may have a right to know the date it will be sold. In either of these circumstances, you may be entitled to buy back the vehicle by paying the full amount you owe, plus any expenses connected with its repossession, such as storage and preparation for sale. In some states, the law allows you to reinstate your contract by paying the amount you owe, as well as repossession and related expenses such as attorney fees. If you reclaim your car, you must make your payments on time and meet the terms of your reinstated or renegotiated contract to avoid another repossession action.

Q. What if the lender sells the car for less than the amount remaining on the loan? The lender is required to conduct any sale in a commercially reasonable manner. If the sale price is less than the amount of the loan, the lender has the right to sue you for any deficiency judgment if the vehicle is sold for less than the amount of the loan. However, if your creditor breached the peace when seizing the vehicle or failed to sell the car in a commercially reasonable manner, you may have a legal defense against a deficiency judgment.

Q. Is there anything I can do to prevent repossession of my vehicle? As is the case with home foreclosures, it is best to avoid vehicle repossession if at all possible. Contact your lender if you realize you will be late with a payment. Many lenders will work with you to negotiate a delay in payment. If you voluntarily agree to repossession of the vehicle, you may reduce your lender’s expenses, which you would be responsible for paying. Even if you return the car voluntarily, you are responsible for paying any deficiency on your loan contract credit, and your creditor may still enter the late payments and/or repossession on your credit report. If you need help in dealing with your credit or lease contract, consider using a credit counseling service available in every state and on most military installations.

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