

Hawaii Foreclosure Process

In Hawaii, a lender can foreclose by filing a lawsuit in court (judicial foreclosure) or by completing steps outlined in state law (nonjudicial foreclosure). In the past, banks frequently chose the nonjudicial path. However, the mortgage foreclosure dispute resolution program—a homeowner right—can delay the process significantly, and as a result, more lenders are choosing judicial foreclosure. In this article, you'll learn about both foreclosure types and how to switch from one to another, as well as about additional homeowner rights available to you.

Payment Must Be 120 Days Overdue

Under federal mortgage servicing laws that took effect in 2014, the mortgage servicer (the company that collects the monthly payment) must generally wait until the mortgage payment is more than 120 days late before it can officially start a foreclosure. This 120-day period gives the homeowner time to submit a “loss mitigation” application asking the lender for a foreclosure alternative, such as a loan modification. If the owner does not present a loss mitigation application, the foreclosure can begin under Hawaii law. On the other hand, if the owner submits a complete loss mitigation application, the servicer may not initiate the foreclosure until one of the following things occurs:

- the servicer denies the homeowner's request and the time for any appeal expires
- the servicer offers a loss mitigation option, but the homeowner declines or fails to accept the offer, or
- the owner does not comply with the terms of a loss mitigation agreement.

Understanding the Two Types of Foreclosure

In Hawaii, a foreclosing lender can pick between two foreclosure options: a judicial foreclosure or a nonjudicial foreclosure. Most lenders choose to use the judicial process.

Judicial Foreclosure

With this type of foreclosure, the lender files a lawsuit in court and serves the homeowner with a copy. The owner gets 20 days to respond to the lawsuit. If the owner fails to answer to the suit, he or she will lose the case automatically. Fighting the foreclosure requires the owner to file an answer with the court. After this happens, the case will likely go to trial. If the court decides that the lender should be permitted to foreclose, it will enter a judgment that allows the lender to sell the home and use the proceeds from that sale to pay off the debt. Before this happens, notice of the sale must appear in a newspaper for three weeks.

Nonjudicial Foreclosure

In a nonjudicial foreclosure, the lender must comply with certain procedures detailed in the Hawaii statutes (laws). If the bank follows all of the required steps and you don't convert the foreclosure to a judicial process (discussed below), it can sell the home at a foreclosure sale without going to court.

Homeowners' Foreclosure Rights in Hawaii

Homeowners in foreclosure have rights in Hawaii. The particular rights available to you will depend on the type of foreclosure your lender chooses to use.

Mortgage Foreclosure Dispute Resolution Program

If the bank decides to proceed with a nonjudicial foreclosure, the owner-occupant will get the right to participate in the mortgage foreclosure dispute resolution program. In this program, the owner-occupant will meet with the lender to attempt to work out a way to prevent foreclosure. Banks routinely file judicial foreclosures in Hawaii to avoid this program.

Converting a Nonjudicial Foreclosure to a Judicial Foreclosure

Homeowners of residential real estate who are facing a nonjudicial foreclosure have the option to convert to the judicial process—but there's a catch. You can't convert if you elected to participate in the mortgage foreclosure dispute resolution program. Whether you should do so is beyond the scope of this article. To find out about your options, you should consult with an attorney familiar with the Hawaii foreclosure process.

Reinstating the Loan to Stop the Nonjudicial Foreclosure

Under Hawaii law, you may reinstate your loan (and stop the foreclosure) in a nonjudicial foreclosure by paying all past due payments plus fees and costs up to three business days before the sale. Although Hawaii law does not give the homeowner the right to reinstate in a judicial foreclosure, the terms of the mortgage may allow for it. If you want to do so, check your mortgage documents.

No Right of Redemption in Hawaii

Some states allow a foreclosed homeowner to repurchase or “redeem” the home after the foreclosure. Hawaii law does not provide a right of redemption after either type of foreclosure.

Deficiency Judgments Following Foreclosure

If a home sells for less than the amount due under the mortgage contract, the difference remaining is a deficiency balance. In Hawaii, the lender can get a deficiency judgment for the outstanding amount after a judicial foreclosure, but not after a nonjudicial foreclosure.

A lender can use a deficiency judgment to collect the amount owed. Common collection methods include a bank levy (the bank hands over money from your account) or wage garnishment (when your employer takes money out of your paycheck).

If you find yourself facing a deficiency judgment, you might be able to get rid of it by filing for bankruptcy.

Information deemed reliable but not guaranteed. Please consult your attorney.