

Washington Foreclosure Process and Timelines

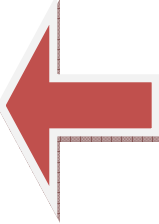
Foreclosure Fairness Act

Effective July 22, 2011, Washington homeowners facing foreclosure will have new protections before their home can be sold at foreclosure sale. These rights include:

- A pre-foreclosure notification by the lender/servicer giving the homeowner 30 days to respond to the lender/servicer before a Notice of Default can be issued;
- If the homeowner responds to this pre-foreclosure notice, the homeowner has an **ADDITIONAL** 60 days to meet in person with the lender/servicer to discuss options to avoid foreclosure such as a loan modification;
- A Notice of Default cannot be issued until this meeting occurs;
- The homeowner has the right to request mediation before the Notice of Trustee Sale is issued;
- Mediation can **ONLY** be requested by a housing counselor or attorney on behalf of a homeowner.

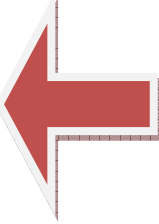
Existing law already provides that the foreclosure sale cannot occur less than 190 days from the **date of delinquency or default**. RCW 61.24.040(8). The date of the loan delinquency or default is **not** the same as the date of the Notice of Default.

The following timeline shows how the foreclosure process would work in Washington using a loan with a payment due date of January 1, 2012. If the payment is not made on January 1st, then the loan could be considered delinquent on or after January 2nd. The foreclosure sale could not happen before Friday, July 13, 2012. However, if the homeowner used these new rights to request a meeting and/or request mediation, the foreclosure could be avoided or delayed. This timeline assumes the homeowner does **NOT** take advantage of any of these new rights.



This Notice of Pre-Foreclosure Options must advise the homeowner to contact a housing counselor or attorney immediately **AND** provide the toll-free phone numbers for housing counselors and civil legal aid.

Early intervention is the most effective because the homeowner has more options for reinstating the loan. Housing counseling agencies can help the homeowner work with the lender to create a repayment plan, loan modification, or forbearance plan.



For foreclosures **before** the effective date of the Foreclosure Fairness Act, homeowners get only a 30-day notice of the right to meet with the lender. There is no additional 60-day period. There is no right to foreclosure mediation. There may be a right to mediation if the foreclosure sale has **NOT** happened before July 22, 2011. See a housing counselor or attorney for details.

<p>Day 1</p>	<p>January 2, 2012*</p>	<p>Loan is Delinquent or in Default – Notice of Pre-Foreclosure Options by Lender/Servicer</p> <p>After the loan is delinquent, the lender/servicer must issue a Notice of Pre-Foreclosure Options to the homeowner. This notice must contain specific information about the availability of housing counselors and legal assistance AND notify the homeowner of the right to request a meeting with the lender/servicer by making a request within 30 days of this Notice of Pre-Foreclosure Options.</p> <p>*Note: This notice will rarely be given this quickly. This date is just used to illustrate how a foreclosure timeline could work.</p>
<p>Day 31</p>	<p>February 1, 2012</p>	<p>Notice of Default</p> <p>For foreclosures based on delinquencies/defaults after July 22, 2011, the trustee/lender/servicer may only issue the Notice of Default 30 days after the Notice of Pre-Foreclosure Options IF the homeowner does nothing. The Notice of Default must be given at least 30 days before the Notice of Trustee's Sale. RCW 61.24.030(8).</p>
<p>Day 61</p>	<p>March 2, 2012</p>	<p>Recording of Notice of Trustee's Sale</p> <p>The Trustee must record, mail, and serve or post the notice of Trustee's Sale at least 90 days before the 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.) The sale must be scheduled for a Friday. RCW 61.24.040(5).</p>



- If the request to meet is made, the homeowner has an additional 60 days to work with the lender/servicer to avoid a foreclosure.
- If no request is made within the 30-day period, the lender/servicer may proceed to the Notice of Default.



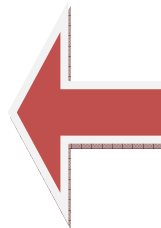
If the homeowner responds to the Notice of Pre-Foreclosure Options, the homeowner will have an additional 60 days to work with the lender/servicer before the Notice of Default can be issued. The homeowner has the right to an in-person meeting with the lender/servicer and to have a housing counselor or attorney present at that meeting.



Mediation: Third-party mediation by an independent mediator is available **ONLY** by the request of a housing counselor or an attorney. Mediation can be requested up to the recording of the Notice of Trustee's Sale.

However, a homeowner with a Notice of Default **before** the effective date of the Act (July 22, 2011) may request mediation at any time, including up until the time of sale.

Day 165	June 16, 2012	<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>
Day 185	July 6, 2012	<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 stop the foreclosure sale. RCW 61.24.090(1). (Within 11 days before the sale date, the beneficiary has the right to demand payment in full.)</p>
Day 186	July 7, 2012	<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>
Day 189	July 8, 2012	<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. RCW 61.24.130(2).</p>
<p>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.</p>		
Day 196	July 13, 2012	<p>Foreclosure Sale Occurs</p> <p>The sale must occur on a Friday. RCW 61.24.040(5).</p>



Bankruptcy: A Chapter 13 bankruptcy may help the homeowner save his or her home from foreclosure if all other options have failed. The borrower should consult with a bankruptcy attorney.

Eviction of Homeowner

Day 216 August 2, 2012

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.

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 RCW 61.24.146, 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. A tenant may only be evicted for waste or nuisance during that time period.

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. A tenant with a lease may be entitled to stay throughout the term of the lease prior to the commencement of 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>

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Important Phone Numbers:

Statewide Foreclosure Hotline for housing counselors: 1-877-894-HOME

U.S. Department of Housing and Urban Development for referral to housing counselors: 1-877-741-3281

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