FAQs for Homeowners and Housing Counselors:

WHAT ARE MY RIGHTS DURING THE REDEMPTION PERIOD?

What is the redemption period?

After a property is sold at a sheriff's sale (foreclosure sale), there is a redemption period. For most properties it is a six month period; for some properties, where more than two thirds of the loan has been paid or if the property is used for agricultural purposes, it is a year. If the property has been declared abandoned, the redemption period can be substantially shortened to one month.

What happens to the property during the redemption period?

During the redemption period you still have rights to the property. You can continue to live in the property and are not required to make any mortgage payments. You also have the right to sell the property to another person or buy back the property and keep it.

If I want to buy back the property, what is the purchase price?

At the sheriff's sale, the purchaser paid a certain amount of money to purchase the property. Often the purchaser will be your mortgage company although it could also be another third party. The amount necessary for you to buy back, or redeem, your property is the amount the purchaser paid, plus some allowable costs and a daily interest rate based upon your mortgage loan interest rate. You can learn the sale price for your property by obtaining a copy of the sheriff's deed from the Register of Deeds in the county where the property is located.

What if the purchase price at the sheriff's sale is less than the amount of my loan?

It is possible that the sheriff's sale purchaser, even if it was your mortgage company, paid less than the amount due on your loan. If you want to redeem, or buy back, your property you do not have to pay the whole loan amount; you only have to pay the purchase price from the sheriff's sale even if it is substantially less than your loan amount.

Regardless of whether you redeem the property or not, if the purchase price from the sheriff's sale is less than the amount owing on your loan then you may be responsible for the difference, called a deficiency. The amount of the deficiency is set by the sheriff's sale purchase price, not what the purchaser sells it for later. The mortgage company (or another company to whom they sell the debt) can try to collect on this deficiency. If a company attempts to collect the deficiency, you should see legal counsel regarding your rights and obligations.

What if I don't buy back the property and I'm still there at the end of the redemption period?

If you do not buy back the property or sell the property to someone else, then the sheriff's sale purchaser can file a court action to evict you from the property. They may also offer you "cash for keys," which is where they pay you a small amount of cash if you agree to move out of the property by a specific date without a court order and leave the property in an acceptable condition. If you are a tenant, you have additional rights under federal law.

The purchaser should not simply change the locks or evict you without a court order. If this happens you should contact an attorney immediately for assistance.

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FAQS FOR HOMEOWNERS AND HOUSING COUNSELORS:

WHAT DO I NEED TO KNOW ABOUT JUDICIAL FORECLOSURE?

What is the difference between the regular (non judicial or by advertisement) foreclosure process and judicial foreclosure?

The primary difference is that a judicial foreclosure is processed through the court system so there will be judicial oversight of the process. You will have the opportunity to raise any defenses you may have without having to file your own court case.

Why would a mortgage company choose judicial foreclosure?

A mortgage company may choose judicial foreclosure because they do not want to participate in Michigan's new pre-foreclosure negotiation law that requires mortgage companies or their designated agent to meet with homeowners and, in some circumstances, offer a loan modification. In other cases, a mortgage company may have to file a judicial foreclosure because the mortgage documents were not drafted or recorded properly and they need the court to correct the situation to allow the foreclosure to proceed.

How will I know if my mortgage company has filed a judicial foreclosure case?

If your mortgage company files a judicial foreclosure case, you will receive a summons and complaint. It will be delivered to you in person or it can be delivered by certified mail, restricted delivery for which you have to sign. If the process server can not find you or you refuse to sign for the certified mail, then the mortgage company can receive permission from the court to send the papers to you in a different way such as posting them on your door or sending them by regular mail.

What should I do if I receive a Summons and Complaint?

You should consult with an attorney. To find an attorney you may contact the Michigan Foreclosure Prevention Project at miforeclosure.mplp.org. You can also find attorneys who specialize in consumer and mortgage law at www.naca.net or contact the State Bar of Michigan Lawyer Referral Service at 1-800-968-0738. An attorney can review your situation with you to see if you have any defenses or arguments that should be presented to the court. Only an attorney can provide you with individual legal advice.

You must file a written answer within 21 days of when you received the summons and complaint. *No court date or trial will be scheduled if you do not file a written response with the court.* If you do not file a written response the court will enter a default against you and the mortgage company can obtain a judgment for the amount they request in their Summons and Complaint.

Like a non-judicial foreclosure, if you want to file a bankruptcy case you must do so prior to the sale of the property. To learn more about bankruptcy, please see *FAQs for Homeowners and Housing Counselors: What Happens to My Home Mortgage if I File Bankruptcy.*

What happens if a judgment is entered against me?

Once a judgment is entered against you, the court will then order that your home may be sold by the sheriff and any proceeds from the sale will be applied to the amount of the judgment. If the court enters a money judgment finding that you are personally responsible for the debt, and the proceeds from the sale of your house do not pay the entire amount of the judgment, then the mortgage company can try to take other enforcement action against you such as garnishing your wages, garnishing your bank account, garnishing your state income tax return, or seizing or selling other property such as a vehicle (also this is fairly rare).

How long will the process take?

There must be at least six months between the filing of a complaint and the court's order that the property may be sold, and the court process may take longer depending upon the complexity of the case, the court's schedule, and whether you file a response or if the case proceeds by default. Once a judgment is entered, it will take a minimum of six weeks to schedule, advertise and conduct the Sheriff's (foreclosure) Sale. After the Sheriff's Sale the court will confirm the sale and you will have a six month redemption period.

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FAQs FOR HOMEOWNERS AND HOUSING COUNSELORS:

WHAT HAPPENS TO MY HOME MORTGAGE IF I FILE BANKRUPTCY?

My home is in foreclosure and I'd like to file bankruptcy to stop the foreclosure. Will bankruptcy help me?

There are two types of bankruptcies that individuals file, Chapter 7 or Chapter 13. If you file a bankruptcy *prior* to the Sheriff's Sale (foreclosure sale), it will stop the foreclosure sale until the bankruptcy case closes or the mortgage company receives permission from the court to proceed with the sale. If you file after the Sheriff's Sale, the bankruptcy court can not set aside the sale.

In a Chapter 7 bankruptcy, if you meet the eligibility requirements, you may be able to discharge many of your debts such as credit cards and medical bills. If you want to keep your house you must continue to make your mortgage payments. A Chapter 7 is most helpful if you have other debts or garnishments that, if eliminated, would free up your income so you can make your mortgage payments.

In a Chapter 13 bankruptcy you would set up a payment plan that would allow you to pay your mortgage (your regular monthly payment plus a portion of any past due balance) as well as a percentage of your other debts. How much you have to pay depends on your income and assets. You have to have enough money to pay the payment plan so you must have current income that will be sufficient to make your payments. However, the bankruptcy court does not have the authority to modify your mortgage for your primary residence so if you need a loan modification to lower your mortgage payments a Chapter 13 may not be the best tool for your needs. However, the bankruptcy court may be able to modify a second mortgage or home equity line of credit.

If you are considering bankruptcy you should schedule a consultation with an experienced bankruptcy attorney. You can contact the National Association of Consumer Bankruptcy Attorneys to find an attorney in your area, http://www.nacba.org/attorneyfinder/.

I filed bankruptcy and I have received a Motion to Lift Stay from my mortgage company. What does this mean?

When you file bankruptcy your creditors may not usually proceed with collection activity such as a foreclosure until the bankruptcy case closes. If your mortgage company wants to proceed with foreclosure before then, your mortgage company must ask for permission from the bankruptcy judge to proceed with foreclosure.

If you get this motion you should discuss the matter with your bankruptcy attorney to determine how to respond.

I filed a Chapter 13 bankruptcy but then the case was dismissed before I finished my payment plan. What will happen now?

Because you did not finish your payment plan your loans and debts will be reinstated. If you were behind on your mortgage before your bankruptcy it is likely that the mortgage company will start trying to collect those past due payments and put your mortgage account into foreclosure status. You need to contact your mortgage company to make payment arrangements as soon as possible.

I filed a Chapter 7 bankruptcy and my debts were discharged. I said that I wanted to keep my house but no one ever gave me the paperwork to reaffirm my mortgage. Do I still have to make my mortgage payments?

Absent a reaffirmation agreement, the personal liability on your mortgage loan was discharged. This means that if your mortgage company forecloses on the house but does not receive enough money to pay off the mortgage, the mortgage company is not supposed to try to collect the difference, called the deficiency, from you. However, if you want to keep your house you must continue to make your mortgage payments.

Reaffirming a loan is a formal process that has to be approved by the court prior to the completion of your bankruptcy case. A mortgage loan can not be reaffirmed, and your personal liability reinstated, simply by continuing to make your mortgage payments or signing a loan modification or other repayment plan with your mortgage company.

Reaffirmation agreements are relatively rare now for mortgages. Mortgage loans usually "ride through" the bankruptcy, meaning that they are not formally reaffirmed but the mortgage company continues to accept payments and does not foreclose as long as you are making the payments. Some loan modification programs, such as the Home Affordable Modification Program, are set up to allow a loan modification after a mortgage loan is discharged but some mortgage companies or programs may not be able to offer a full range of options after a bankruptcy discharge.

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