

FORECLOSURE GLOSSARY

NOTICE: *This glossary of legal words and phrases related to foreclosure is provided to you by the Clermont County Common Pleas Court to help you better understand your legal problem and obtain quality legal assistance for your situation. THIS GLOSSARY IS NOT INTENDED TO BE A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. THE JUDGES AND COURT STAFF CANNOT GIVE YOU LEGAL ADVICE. YOU SHOULD NEVER RELY ON THESE VERY BASIC DEFINITIONS TO MAKE LEGAL DECISIONS. Please use this glossary to define your legal circumstance and make informed decisions about selecting a qualified attorney to advise and assist you.*

To help you better understand the foreclosure process, these definitions are presented in a logical order, rather than alphabetical order.

—BASIC TERMS—

Note—A formal legal document regarding a loan of money and creating an obligation of all the borrowers who sign the note to repay the debt to the lender. Informally known as an IOU. A note and mortgage are often discussed together even though they are separate but related legal documents.

Mortgage—A form of legal security for a debt on a note where the lender gets a claim against the debtor's home. The claim to the home can only be enforced when there is a failure to meet the obligation to repay the debt, or other violation of the terms of the note.

Foreclosure—A lawsuit where a lender-mortgage holder can collect on an unpaid note and take a debtor- homeowner's house for non-payment of the mortgage debt. Anyone faced with a foreclosure suit should consult with a real estate attorney or an attorney who litigates.

Holder—The person or entity that currently owns a note and mortgage and has the legal right to enforce the terms of those documents.

Assignment—The legal transfer of a note and mortgage from one holder to another. Assignments can occur more than once for a note and mortgage.

Servicer—A corporation that works on behalf of a mortgage holder to collect the monthly mortgage payments and in some circumstances negotiate a workout to a mortgage in default or in foreclosure.

First mortgage—The mortgage that has the highest priority or best claim on the property that it applies to. The first mortgage is usually the largest claim and the earliest mortgage in time created on the home.

Second mortgage (or just “second”)—A mortgage that has the next highest priority on the property after the first mortgage. A second mortgage usually is for a smaller amount than a first mortgage, and would only recover in a foreclosure case if there is enough value in the home to satisfy taxes and the first mortgage balance.

ARM—Adjustable Rate Mortgage, where the interest rate on the note and mortgage can vary on a set schedule or on a formula during the life of the loan.

Fixed rate—A note and mortgage where the interest rate is set and never changes during the life of the loan.

—LEGAL TERMS—

Pleadings—Legal documents filed in court, consisting of complaints or petitions, answers, cross claims, counterclaims, and third party complaints, which inform the court and the parties of the legal claims and defenses that the parties are raising.

Complaint—The legal document (or pleading) filed by a plaintiff with a court to start a case. A complaint states the factual and legal grounds for plaintiff’s claims, states the legal relief that plaintiff seeks from the court, and gives notice to the court and all parties of the nature of the case. A foreclosure case starts with a complaint filed by the lender.

Summons—A legal document issued by a clerk of courts informing a defendant that a complaint has been filed against them and indicating that an answer must be filed within 28 days under Ohio law. A party who fails to respond to a summons and complaint with a legal answer faces a possible default judgment. An individual receiving a summons and complaint should consult immediately with an attorney who handles litigation.

Service—The legal process of formally delivering documents to an individual or entity required to receive them. The clerk of courts serves legal documents such as a summons and complaint on all defendants to start a case. Also, parties to a case are required when filing papers with the clerk to serve copies of those documents on each other after the case starts. In certain circumstances, service can be made by ordinary mail.

Plaintiff—A person, corporation, or other entity that starts a court case by filing a complaint setting out their legal claims for recovery. In a foreclosure case, the lender is the plaintiff.

Defendant—A person, corporation, or other entity subject to the legal claims of another (called the plaintiff) in a lawsuit. In a foreclosure case, each homeowner/borrower is a defendant, along with every other person or entity having a claim or lien on the property.

Answer—A legal document filed with a court in opposition to a complaint. An answer sets out the defendant's legal position on the factual allegations and can set up legal defenses. Failure to file an answer can result in default.

Motion—A formal request to a court, either in writing or orally, for a particular ruling or result.

Default (see also answer)—A situation (like a forfeit in sports) where one party to a case wins because the other party did not appear in court to defend the case. A default usually occurs when a defendant fails to file an answer in court within a certain time after a complaint is filed. A judgment based on a default would end the case and be a binding decision giving the plaintiff certain relief, including foreclosure against the defaulting party. In order to avoid a default, a party served with a complaint should consult with an attorney who litigates.

Default can also mean failure to meet an obligation under a note and mortgage, such as missing monthly payments. A mortgage is said to be in default if the payments are not current.

Motion for default judgment—A motion made to the court by a plaintiff asking that a defendant be found to be in default for not filing an answer, and seeking a

court judgment against that defendant. A default judgment can end a foreclosure case and lead to the eventual sale of defendant's home at public auction.

Real property (also real estate or property)—The legal ownership interest in land and buildings such as a home. Real property or real estate is treated differently in law from personal property, which is the ownership of movable things such as cars, furniture, or money.

Lien—A legal claim on property, either a home, other real estate or personal property, held by one person against the owner of the property. A lien is usually held as security for payment of a debt. A lien on a home can be created as a result of a contract (such as a note and mortgage), or a court judgment (called a judgment lien). Every party holding a lien on the home is added to a foreclosure case as a defendant.

Tax lien—A legal claim on a home, land, or other property for unpaid taxes, whether local, state, or federal. The County Treasurer or the Internal Revenue Service might have a tax lien on a home in foreclosure.

Motion for summary judgment—A type of motion made to a court to get an early ruling on the case or part of a case based on the absence of a factual dispute and on the existence of clear law on the subject. A motion for summary judgment by a plaintiff, if successful, can lead to a foreclosure or other adverse ruling against a defendant.

Summary judgment—A legal ruling made by a court on a motion by a party which determines that certain facts are undisputed and appropriate law allows for a legal determination of the outcome. Summary judgment is used to speed up or streamline a case by making rulings without trial, and can be used where appropriate to end an entire case with a final decision. Summary judgment can be used in foreclosure cases if the facts of the mortgage and the default are clear, and there are no legal defenses.

Judgment—The final decision of a court in a case, usually ordering that one party gets a legal remedy, including getting a money recovery, against the party who lost the case. A judgment in a foreclosure case could include an order that a party's home subject to a mortgage be sold at public auction to pay the debt.

Order of Sale—The formal judgment of a court at the end of a foreclosure case determining the amount of money owed by a defendant and directing the sheriff to begin the process of selling the foreclosed home at auction.

—**SOLUTIONS TERMS**—

Mediation—A process for settling cases or resolving disputes through a reasonable discussion and negotiation process where the parties are assisted by a neutral, called a mediator. The mediator does not make a decision, but helps the parties through diplomacy and dialogue in a private conference. The Clermont County Common Pleas Court offers mediation at no charge to parties in foreclosure cases. A party seeking foreclosure mediation in Clermont County must also file an answer to the complaint. A party asked to participate in mediation can consult with an attorney and may bring that attorney to the mediation conference.

Workout—A catch-all term for efforts to resolve a mortgage delinquency or foreclosure case with a negotiated or mediated agreement.

Financial packet—A collection of documents and forms that a homeowner needs to complete as part of the process of working out a mortgage problem with their lender. The packet gives the lender information about the homeowner's income, expenses, and other financial circumstances. It is important for a homeowner to complete and return the packet to the lender before a mediation conference or other negotiation efforts, so the lender can make decisions about possible workouts. See HAMP review below.

Arrearage—The total amount of principle and interest that is currently past-due on a mortgage. This amount may also include late fees.

Acceleration—The legal mechanism created in most mortgage notes that allows the lender to declare the entire balance to be due immediately when a default occurs as to some of the monthly payments.

Payoff balance—The total amount that is required to completely pay off a note and mortgage.

Reinstatement amount—The amount needed to bring a past due mortgage current, which may include principle, interest, late fees, court costs, attorneys fees,

and other expenses, while leaving the remaining balance on the mortgage due in the future.

Loss mitigation (also called loss mit)—The process that a bank or other lender goes through to try to reduce their financial loss in a foreclosure case. Loss mitigation efforts can include negotiating or mediating with a homeowner and reaching an agreement on modifying the terms of a note, accepting payments to catch up on an arrearage, forbearance, a short sale, or other arrangements.

Forbearance—The voluntary agreement by a lender to delay collection of a debt from someone who owes them money, frequently used in mortgage foreclosures where a lender will allow a homeowner to pay a past-due amount later in the course of a mortgage. A lender might also use a short-term forbearance for a few months to reduce a homeowner's arrearage in order to qualify for a different workout.

Loan modification (or loan mod)—An agreement between a lender and a homeowner to change the payment terms of a note and mortgage (particularly lowering the interest rate), used to settle a pending foreclosure case.

Trial modification (or trial mod)—A temporary arrangement (usually for three months) where a homeowner pays a different lower amount on their mortgage to their lender as part of an agreed workout. If the homeowner successfully makes the monthly payments for that time period, the trial mod can be converted into a permanent modification of the loan.

Short sale—A type of agreed sale in which a mortgage holder allows the borrower to sell the home for significantly less than the full amount owed and agrees to accept the proceeds of the sale as full satisfaction of the mortgage debt.

Short payoff—A situation where a lender agrees to accept slightly less than the full amount of a mortgage balance upon sale of the property by the homeowner in foreclosure to a third party.

Deed—A formal legal document transferring an interest in land from one party to another. Deeds have specific legal requirements for form and how they must be signed to be legally effective.

Deed in lieu of foreclosure—A voluntary turnover of title to a home by a homeowner to a mortgage holder through signing a deed, in order to avoid the adverse consequences of a foreclosure suit or a foreclosure sale.

Warranty deed—A legal document transferring ownership of land that contains a legal promise that the party making the transfer has good title to the real estate and will protect the new owner from later challenges to that good title.

Quit claim deed; also quitclaim—To legally transfer all the property rights that a person has in land such as a home, without specifying what those rights are or guaranteeing that those rights exist. A quitclaim deed has different legal language than a warranty deed and offers the recipient less protection from the claims of others. A quit claim deed is sometimes used to clean up questions about title to land as part of the foreclosure process.

Graceful exit—A phrase meaning that a homeowner in foreclosure negotiates a dignified, responsible, and planned departure from ownership of the home through agreement with the lender about timing of the move-out, property condition, financial obligations, etc.

Escrow—The process of setting aside money, documents, or property for a future transfer to another party when a particular event or condition happens. An escrow is used with mortgages where the homeowner pays the lender a fixed amount each month to make sure real estate taxes and insurance are covered.

Settlement—The resolution of a court case by agreement between the parties, usually reached through negotiation or in mediation. A successful settlement leads to a dismissal of the foreclosure case. Settlement is also used in real estate discussions as a word for closing, the process of formally signing documents to transfer ownership of land.

With prejudice—A phrase used in dismissing a case from court meaning that the claim can never be brought back to court again.

Without prejudice—A phrase used in dismissing a case from court meaning that the claim could be brought back to court again in the future.

—GOVERNMENT TERMS—

HAMP—A program created by the federal government to assist homeowners in modifying their mortgages to make the monthly payments affordable and resolve pending foreclosure cases.

HAMP Review—The consideration and decision making process a lender goes through when determining whether or not a homeowner qualifies, based on their financial circumstances, for a loan modification under the federal HAMP guidelines. The HAMP review process usually takes 30 to 45 days to finish once the financial document packet submitted by the homeowner is complete.

HUD—Department of Housing and Urban Development is the federal cabinet department responsible, among other things, for overseeing programs for assisting homeowners with foreclosure problems. HUD sets out regulations and guidelines that affect foreclosure workouts.

HUD Certified Housing Counselor—An individual with training and expertise in mortgages, foreclosures, and workouts who provides advice and assistance to homeowners with mortgage foreclosure problems. While these individuals are certified by HUD as having the proper credentials to advise homeowners, they are not attorneys and cannot represent homeowners in court cases. HUD certified housing counselors work for non-profit organizations and do not charge homeowners for their services.

FHA—The Federal Housing Administration is a federal agency responsible for insuring home mortgage loans. The FHA sets standards and requirements for certain home loans and workout of those loans when a default occurs.

VA—The Veterans Administration is the federal agency responsible for programs to assist military veterans, including insuring certain home loans.

FNMA (officially Federal National Mortgage Association, called Fannie Mae) and FHMC (officially Federal Home Mortgage Corporation, called Freddie Mac)—Two government enterprises created to make the mortgage lending market work more efficiently. Their standards and guidelines affect how mortgage are created and how mortgages in default are worked out.

Sheriff—A law enforcement official responsible for court-related duties (both civil and criminal) in a particular county.

Sheriff's sale—The public auction of property, usually a home or other real estate, to recover money to pay a court judgment. A sheriff's sale, when confirmed, formally transfers ownership of the home to the auction buyer and eliminates any property rights that the prior owner had in the home.

Deficiency judgment—The amount of money still due to a creditor on a defaulted loan after a home is sold at auction or sheriff's sale, where the money raised at the sale does not fully cover the amount owed. Deficiency judgments are frequently the subject of discussion in mortgage foreclosure cases.

Eviction—The legal process for removing a tenant from residential property. Eviction would only occur in a foreclosure case at the end of the court process, after a sheriff's sale.

—ASSISTANCE RESOURCES—

Save The Dream—A program set up by several offices of state government to assist homeowners facing foreclosure in staying in their homes. Save The dream can be reached at 1-888-404-4674 or <http://www.savethedream.ohio.gov/>.

Law Library—A collection of books and other sources of legal information, such as computer access to online legal materials, maintained for the benefit of judges, attorneys, and the public. The Clermont County Law Library is on the second floor of the Clermont County Courthouse, 270 East Main Street, Batavia. The phone number is (513)-732-7109.

Lawyers' Referral Service—A public service of the Clermont County Bar Association which will direct individuals who seek the assistance of an attorney to an attorney with experience in the particular area of law needed. The Clermont County Lawyers' Referral Service can be reached at (513)-732-2050.

Legal Aid—A service that provides attorneys at no charge to individuals and families who meet certain financial standards. In certain cases, Legal Aid attorneys will represent people in foreclosure cases. The Legal Aid Society of Southwest Ohio can be reached at (513) 241-9400 or www.lascinti.org.