

Iowa (IA) Foreclosure Laws

When you develop a definite plan of action with well-timed, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of Iowa.

The Process

Iowa law places strong restraints on foreclosures, particularly on loans for agricultural property. In Iowa, many special notices must be given to borrowers advising them of their rights. Lenders are not always permitted to foreclose at all. For example, a court may declare a moratorium on foreclosures due to an economic emergency. There are basically two ways to foreclose on nonagricultural property in Iowa:

the alternative non-judicial voluntary foreclosure procedure, in which the borrower deeds the property over to the lender and filing a lawsuit and obtaining judicial foreclosure under equity law.

Alternative Non-judicial Voluntary Foreclosure

If both the lender and the borrower agree in writing, then a real estate mortgage can be foreclosed voluntarily as follows:

The borrower conveys title of the property to the lender.

The lender accepts title and waives any rights to sue the borrower for any other claim, such as a deficiency.

The lender gets immediate access to the property. The lender and borrower record a statement, signed by both parties that they have elected voluntary foreclosure. The lender sends by certified mail, notice of the voluntary foreclosure to all junior lien holders, who have 30 days to exercise any rights of redemption they may have. The borrower must sign a statutory voluntary foreclosure form.

The form explains that by signing it the borrower surrenders any statutory right to reclaim the property within one year and the right to continue to occupy the property. However, the form states the borrower cannot be sued for a deficiency if the form is signed. It also advises the borrower to seek legal counsel concerning all the competing rights. The form also provides for its own cancellation within five days.

If a borrower agrees to the voluntary redemption procedure, the lender may not report the borrower to the credit bureau as being delinquent on the

loan, but the lender may state that the voluntary foreclosure procedure was used.

Judicial Foreclosure

Other than the voluntary foreclosure procedure described immediately above, the only way a lender can foreclose a deed of trust or a mortgage on Iowa real estate is by a lawsuit in court, governed by principles of equity law. The lender must choose either to sue on the note or sue to foreclose the mortgage, but not both. When a mortgage or deed of trust is foreclosed, the court will render judgment for the entire amount due, and direct the sale of the mortgaged property, or as much as is necessary. The lender may sue a borrower for a foreclosure with or without redemption, but the latter requires the borrower to sign a waiver.

Foreclosure with Redemption The borrower retains a right to redeem the property after the sale, unless the lender has chosen to sue for foreclosure without redemption.

Foreclosure without Redemption In the event that a lender undertakes foreclosure without redemption, neither the borrower nor junior lien holders have rights to redeem. However, if the borrower bids an amount equal to the amount owed on the loan at the foreclosure sale, then the borrower gets the property regardless of the fact that junior lien holders might bid more at the sale. In foreclosure without redemption, the first page of the lender's petition to foreclose the mortgage must contain a notice, in capital letters of the same size as the rest of the petition warning the borrower that the lender has elected foreclosure without redemption. This means that the sale will occur promptly unless a written demand is filed with the court to delay the sale. If the demand is filed, the sale of a principal residence will be delayed 12 months from the entry of judgment. (Sale is delayed two months on other properties and six months on the residence if the lender's lawsuit waives recovery of a deficiency.) However, if the borrower files such a demand for delay, then the lender can sue the borrower for a deficiency. If no demand for delay is filed, the lender cannot sue for a deficiency. Either way, however, once the sale takes place, the buyer at the foreclosure sale can take possession immediately.

Right to Cure

In Iowa a borrower has a general right to effect cure by making up missed payments prior to foreclosure. The lender must send the borrower a notice of the borrowers rights to cure as a prerequisite to foreclosure.

Before filing a lawsuit or taking any action to foreclose on a borrowers one- or two-family home, any regular lender, such as a bank, S and L or

mortgage company, who believes in good faith that a borrower is in default on a deed of trust or mortgage on a homestead, must give the borrower a notice of the right-to-cure default. Individuals who are lenders do not have to give the notice.

Mailing of Notice of Right to Cure

Regular lenders must give the notice by direct delivery or by mail to the borrowers residence. The notice does not have to be given in nonresidential situations.

Contents of Notice of Right to Cure

The notice must state

the name, address and phone number of the creditor to whom payment is to be made,

a brief description of the obligation secured by the mortgage or deed of trust,

that the borrower has the right to cure the default,

the nature of the alleged default, and the total payment, in an itemized form, of deferral charges (late fees), the amount due and any other action needed to cure the default and

the exact date by which the amount must be paid or an action must be performed.

Failure to Cure by Proper Times

If the borrower fails to perform in the proper manner by the proper date, then the notice must also state that the lender can initiate foreclosure. Once notice is given. the following timetable applies:

30 Days

The borrower must be given no less than 30 days to cure the default by tendering (sending) either

a sum equal to all the missed payments due at the time of the tender, or

the amount stated in the notice of the right to cure, whichever is less, or by tendering any other performance necessary to cure a default as described in the notice of right to cure.

Such Extra Time as the Lender Gives

A lender may give more than 30 days without waiving or losing the right to commence foreclosure due to an uncured default.

365 Days

A borrower has a right to cure the default by bringing in the payments, unless the creditor has given the borrower a notice of the right to cure once before within the past 365 days. Curing the default restores a borrowers rights under a mortgage or a deed.

Special Protection Farm Foreclosure

Due to the bad luck Iowas farmers have sometimes experienced, the state legislature has passed many special laws regulating farm foreclosures. Iowas legal protections against foreclosure of farmers are truly exceptional compared to any other state. The procedures to foreclose on agricultural property in Iowa are even more extensive. The lender must attempt mediation on land used as an individuals farm, family farm, or a qualified farm corporation through the Farm Mediation Service. A notice and initial meeting must be held within 42 days of a request by the farmer. The farmer also has a first right of refusal when agricultural property is sold at execution. There are special deed in lieu procedures for agricultural properties. In the special deed in lieu arrangement, the lender takes title, but the farmer can lease the land back from the lender, and repurchase the land within five years. The farmer may separately redeem the house and up to 40 acres from the rest of the land even after a foreclosure. Iowas farmers should beat a path to a lawyers office before giving up any effort to fight foreclosure. Iowas procedures to protect against foreclosure are extensive enough that if a farmer has the will to hold on, there may often be a legal way to do so.

Regular Foreclosure

After fulfilling the vast number of prerequisites required under Iowa law, as previously described, a lender may obtain a judgment against the borrower for the full amount of the balance due on the loan. The real estate may then be sold under a general execution sale. Remember, the lender may not sue both for foreclosure and to collect on the note. So if the lender sues on the note, then, if and only if the sum found to be due is sufficient, the real estate can be sold to pay off the judgment. The sales are proper sheriffs sales. Once the property is sold, it may eliminate the loan balance or reduce it. If some part of the loan balance is left unpaid, the lender can still try to collect that part. Note that Iowa banned deficiencies on agricultural

foreclosures until July 1, 1991. Also, the judgment is only good for two years and may not

Moratorium

If a borrower goes into default and is sued by the lender, the borrower may file an answer admitting a default in whole or in part, and then ask for a moratorium if the default was due to such circumstances as a crop failure due to drought, flood, heat, hail, storm or other climatic condition, or due to infestation of pests. Under such circumstances, the court can extend the foreclosure date for up to one full year. The court must appoint a receiver to take care of the property in the meantime, and the original borrower is to be given preference over other choices as receiver. The receiver may apply rents and income in a statutorily defined order.

The governor of Iowa may declare a state of economic emergency, applicable to various types of property, such as agricultural property, or to be applied to all types of property. The declaration makes such property eligible for a moratorium continuance, which may last as long as one year. However, a lender can apply to the court and show good faith efforts to restructure the debt, and show the financial difficulties the lender is faced with if foreclosure is not granted. The lender may also show that the borrower has not paid interest on the loan. Upon weighing all these competing considerations, a court may terminate the moratorium which would allow the foreclosure to go forward. Only one continuance can be granted per mortgage instrument under the governors moratorium provisions.