

Maine (ME) 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 Maine.

Judicial Foreclosure Available:yes

Non-judicial Foreclosure Available:no

Maine offers several methods of foreclosure. Most residential mortgage foreclosures are done by filing a lawsuit in the District or Superior Court. On the other hand, a foreclosure against a corporation may be done by a power of sale procedure. Otherwise, Maine still maintains the common-law strict foreclosure doctrine in which the lender owns the property and the borrower loses any rights to the property by breaking a condition in the mortgage, such as failing to make the loan payment. Although Maine is a strict foreclosure state, it nevertheless permits a lawsuit to be filed along the form of a bill in equity, which would ask the court to cut off any further rights the borrower had to the property. This would be done only in special cases. Generally, foreclosures in Maine are by strict foreclosure, which, for convenience, can be divided into those circumstances in which the lender seeks possession as part of the foreclosure, and those situations where the lender does not seek possession as part of the foreclosure.

Strict Foreclosure with Possession

In Maine, the lender may want to take over the borrower's old property. After regaining title by legal means, the lender could sell the property at a later date, without giving the borrower the benefit of any excess the lender gets out of the sale over and above what the borrower owed on the old loan. Alternatively, the lender could simply keep the property and rent it out. In sum, strict foreclosure allows the lender to become the owner, pure and simple. To become the owner through strict foreclosure, however, the lender must follow some specialized procedures. In particular, the lender must obtain possession of the property and hold it throughout the redemption period, which is one year on pre-1975 mortgages and three months on post-1975 mortgages.

In Maine, there are three methods for the lender to regain possession as part of the strict foreclosure process:

1. A lender can obtain a writ of possession (which authorizes the sheriff to throw the borrower out) from a court by filing a lawsuit that asks for the writ as part of a conditional judgment.

2. The lender can enter the property and take possession if the borrower consented to it in writing.
3. The lender may enter the premises peacefully, openly and without opposition, in the presence of two witnesses.

Strict Foreclosure Without Possession

In Maine, a lender can foreclose the borrower's rights to the property without regaining possession at the time of foreclosure by arranging to sell the borrower's property. Initially, the lender files a lawsuit and wins a judgment that the borrower owes the money; then the lender must wait until the end of the redemption period, as described previously. At the end of the redemption period, the lender will sell the property by a special procedure.

The procedure is to publish public notice of the impending foreclosure for three successive weeks in a newspaper of general circulation in the county where the land is located. The notice should state that the lender is claiming the property due to a breach of the mortgage conditions (such as nonpayment of the loan) and give a description of the property, the date of the mortgage and the nature of the breach. A copy of the printed notice and the name and date of the newspaper in which it was last published must be recorded within 30 days of the last publication of the notice. Alternatively, an attested (sworn) copy of the printed notice may be served on the borrower by the sheriff, and a copy of the notice and the sheriff's return (indicating that it was served) may be recorded within 30 days after service.

The foreclosure sale must take place no less than 30 days and no more than 45 days after the initial publication of notice. The property must be sold at public sale to the highest bidder, which may be the lender or anyone else. At the end of the sale, the sales costs are deducted and the lender must disburse the remaining money in accordance with the foreclosure judgment. Junior lien holders should already have been joined when the foreclosure suit was first filed, so they may get some part of the proceeds. Any surplus proceeds from the sale must be paid to the borrower. The borrower may contest the accounting within 30 days after the sale, but the high bidder at the foreclosure sale will still retain title.

Deficiency

Any deficiency based on the foreclosure sale is limited to the difference between the fair market value of the property at the time of the foreclosure, as established by an appraisal, and the amount of money the court found the lender was still owed on the loan, as set forth in the court's final judgment.

Redemption

Maine offers the borrower a fairly powerful right of redemption, which is the right to get the property back after foreclosure by coming up with the loan money. There are two redemption time periods:

1. Pro-October 1, 1975, mortgages: one year
2. Post-October 1, 1975, mortgages: three months

The time period begins once the lender wins a judgment in the foreclosure lawsuit. The borrower may redeem the property by paying off the loan. The Maine statutes cannot shorten the one-year time period on pre-1975 mortgages because to do so would violate the Maine State Constitution by impairing the existing provisions of a contract.

Waiver

Maine has a waiver procedure that can be deadly to the lender and helpful to the borrower. If the lender accepts money or anything of value on the mortgage debt after the foreclosure has begun and before the redemption time period has expired, then the lender waives the foreclosure procedure. However, the lender may receive income from the property after properly taking possession without triggering a waiver.