

Can't Pay Your Mortgage?

What you can do if you're
facing foreclosure



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Society

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This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. The information in this booklet is up to date as of December 2015.

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About this booklet

Who this booklet is for

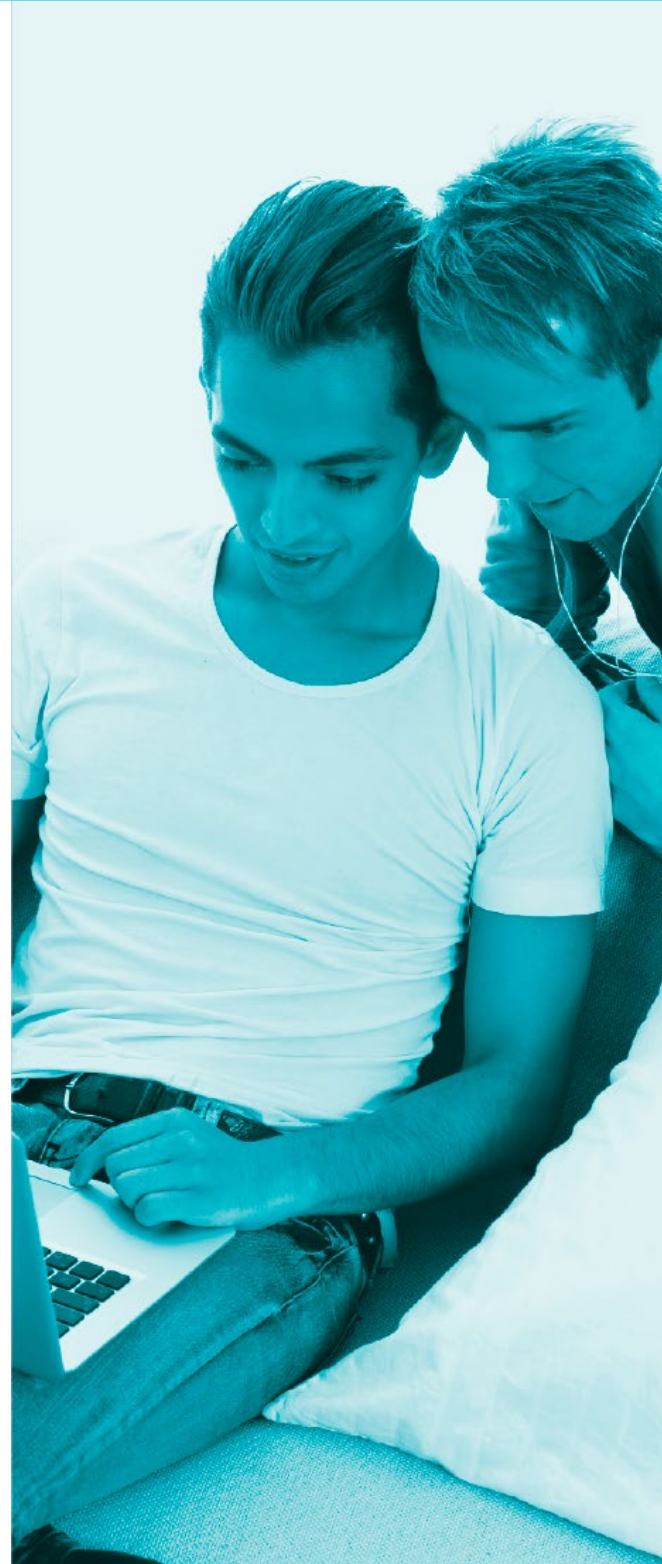
This booklet is only about residential mortgage foreclosures when the borrower lives in the home or rents it out. If your foreclosure involves a farm, a mortgage you took on assignment, or a mortgage on a commercial property, see a lawyer for legal advice.

This booklet is for you if:

- › you're worried about missing a mortgage payment or you're about to miss a payment,
- › you've already missed one or more mortgage payments,
- › you've received a reminder letter or a demand letter from your lender, or
- › you've received a foreclosure petition.

If any of the above applies to you, this booklet explains what you can do when your lender tries to take or sell your property because you haven't paid your mortgage. The legal process is called **foreclosure**.

This booklet also includes some information if you're a tenant in a property that's under foreclosure (see [page 25](#)).

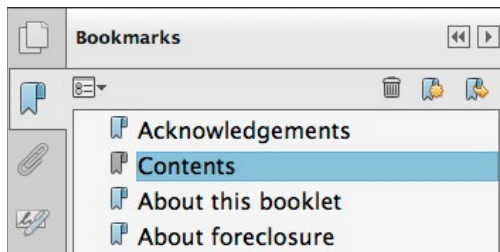


About this booklet

Tips to use this PDF

You can **navigate** (get around) this PDF in several ways.

- › Click the bookmarks on the left side of the screen or the topics listed on the Contents page.



- › Click words and page numbers **highlighted in red** in the main text to go to other pages in the PDF. Clicking a website address, underlined in blue, takes you to online information outside the PDF.
- › In the flow chart on **page 4**, click text or page numbers in the boxes to go to pages with detailed information.

Check the accuracy of the petition ([page 11](#))

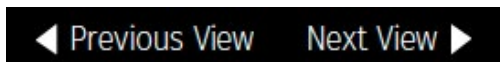
- › Do a keyword search: click Control F (**Ctrl F**) (on a PC) or Command F (**⌘ F**) (on a Mac) and type in a specific word that relates to the information you want. For example, if you want to know how to redeem your mortgage, type **redeem** in the search box and press **Enter**.



- › You'll be taken to the first instance of the word "redeem" in the document, which will probably be on the Contents page.
- › Continue pressing **Enter** to work through the document until you find the word in the context you're looking for.

About this booklet

- › Use the Previous View and Next View arrows at the bottom of the page to navigate between pages.

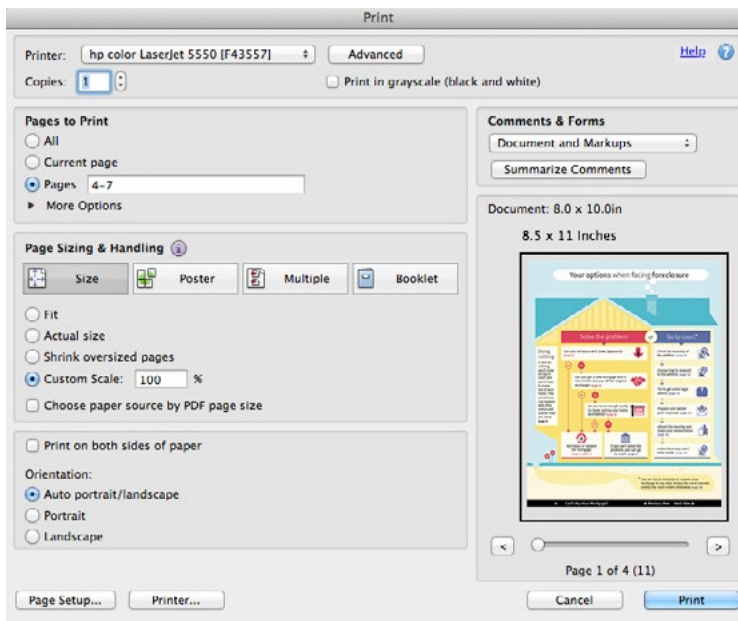


- › On the last page, click the social media icons to connect to Legal Aid BC on Facebook and Twitter.



Printing

If you want to print any of the information in the PDF, use the print properties to specify only the pages you want.



About foreclosure

Your mortgage

To buy a residential property, you usually borrow money from a **lender**. Your lender is usually a bank or credit union, but could be an insurance company, private individual, or loan company. In exchange for the loan, your lender registers a charge, or **mortgage**, against the **title** (ownership) of your home.

You sign a mortgage contract to agree to pay back the loaned money, usually in periodic payments, plus interest. In many mortgage contracts, the borrower also agrees to pay the property taxes, keep the property in good repair, and insure the property against fire and other risks.

Missed payments

When you **default** (don't make a payment) on your mortgage, you don't automatically lose your home. On default, your lender has the right to **accelerate** (speed up) the mortgage contract. This allows them to claim the full balance owed plus interest and other costs, even though the mortgage term hasn't yet expired. Your lender can use the legal process of foreclosure to **repossess** (take back) your home or sell it to pay the mortgage debt.

If you own property jointly with your spouse or someone else, each of you is usually responsible for the whole amount owed. If one of you can't pay, your lender will try to collect all of it from the other person. If you signed a document guaranteeing that mortgage payments will be paid by someone else, you're responsible if that person misses payments.

Reminder letter and demand letter

As soon as you miss a payment, most lenders act quickly. They often send a **reminder letter** first.

If they don't hear from you or don't receive the missed payment after that, their next step is to send you a **demand letter**. In BC, your lender or their lawyer must send you a demand letter before starting foreclosure proceedings.

About foreclosure

The demand letter must say exactly what you owe, and that:

- › you have to pay a certain amount by a certain date to catch up on **arrears** (what you owe) to **reinstate** (restore to good standing) your mortgage, or
- › you have to pay the whole amount you borrowed (not just the arrears) plus daily interest and other expenses to **redeem** (pay off) your mortgage.

The exact requests in the demand letter depend on the wording in your mortgage and what your lender wants to do. If you don't do what the demand letter asks, your lender can start foreclosure proceedings in court by filing a BC Supreme Court form called a **petition**. Your lender will **serve** you with (give you) a copy.

What you can do

You (the **respondent**) can respond to a reminder or demand letter by doing one of the following:

- › Solve the problem (by reinstating or redeeming the mortgage)
- › Go to court (after you receive the petition – to fight the foreclosure, to get more time, or to cooperate)

The flow chart on [page 4](#) shows the steps for each option. The pages following the flow chart describe the steps in more detail.

Talk to a lawyer

If you think your lender misled or deceived you about the loan terms, or took advantage of your situation, talk to a lawyer right away. If you're served with a petition, get legal advice as soon as possible (see [page 29](#)).

About foreclosure

Can my lender sell my home without my consent?

Mortgage contracts usually have a clause that gives your lender the right to take possession and sell your home as soon as you break the contract by missing a payment. This is called the **power of sale**.

In BC, no matter what the mortgage contract says, your lender can't sell your home without either your consent or the court's permission through a court order.

What will happen if I do nothing?

You may want to just ignore the demand letter, but be sure you know what the consequences are first. Doing nothing has serious consequences. You can live in your home without making mortgage payments while the foreclosure proceedings are going on. This could take several months or longer. But it also means that:

- › you don't get any say in the court proceedings, which will go ahead without you;
- › you may get little or no notice if the home is sold, or if you have to move; and
- › you may have to leave your home much earlier than if you had appeared in court.

The court may order your home to be sold (see [page 22](#)). If the money from the sale doesn't pay all the mortgage debt, your lender will have an **enforceable judgment** (court order) made against you for the **shortfall** (remaining amount). They can try to collect this from you for *up to 10 years*.

It's very important that you talk to your lender about your options.

Your options when facing foreclosure

Solve the problem

or

Go to court*

Doing nothing

If you do nothing, you'll have no say in court and you'll have to move out of your home. This sometimes can happen with little notice and sooner than you think. (page 3)

Can you refinance with lower payments? (page 6)



yes

no

Can you get a new mortgage with a new lender and pay off the original mortgage? (page 6)



yes

no

Do you have enough equity to make selling your home worthwhile? (page 8)



yes

no

Reinstate or redeem the mortgage. (page 5, page 6)



If you can't solve the problem, you can go to court. (page 9)



Check the accuracy of the petition. (page 11)



Choose how to respond to the petition. (page 12)



Try to get some legal advice. (page 15)



Prepare and deliver your response. (page 15)



Attend the hearing and make your presentation. (page 16)



Understand any court order made. (page 20)



*You can try to reinstate or redeem your mortgage at any time during the court process, unless the court orders otherwise. (page 18)

Solve the problem



Reinstate the mortgage

If you missed making some payments but think you can manage them in the future, call your lender right away. Try to work out a way to reinstate your mortgage.

This means you pay all of the outstanding mortgage amounts to bring the mortgage back into good standing. You also have to pay anything it costs your lender to collect from you, including legal fees. You can reinstate a mortgage if the mortgage term hasn't expired and your lender agrees to reinstatement.

Most lenders don't want to own buildings. They'd rather have you keep your home and keep paying them.

Tell your lender how and when you can catch up on your payments. Ask what your options are for making payments so you can keep your home. Your lender may be willing to **refinance** (change the terms of) your mortgage. For example, they may say you can make smaller monthly mortgage payments, but you pay them over a longer period of time.

Be sure to ask what the total cost of reinstating your mortgage will be. When you fall behind, the money you owe adds up quickly because interest builds up on unpaid amounts.

If your lender doesn't agree to reinstate your mortgage and a foreclosure is started, you can try to get a court-ordered reinstatement. You'll need legal help to do this.

Mortgage term

A mortgage can only be reinstated if the mortgage term (usually between six months and five years) hasn't expired. If the renewal date has passed, reinstatement won't be an option unless your lender agrees to new terms.

Solve the problem



Redeem the mortgage

If your mortgage term has ended, you can do one of the following to pay your lender:

- › get a new mortgage from another lender (**refinance**), or
- › sell your home yourself.

You have to pay off the whole amount you borrowed plus daily interest and other costs. But first you should know what those costs might include.

Costs

The total amount you owe consists of:

- › the principal still unpaid on the mortgage;
- › the interest, which builds up daily;
- › your lender's costs of collecting from you;
- › property taxes and utilities;
- › other mortgages, builders' **liens** (legal claim until a debt is paid), and judgments against the property; because second and third mortgage lenders are paid last, they often start foreclosure proceedings to try to control your home's sale and get back some of their money;
- › for condominiums, maintenance fees and special assessments owed; and
- › realtor commissions if you're selling your home.



Refinance

You can pay off your whole mortgage with one lender by getting another mortgage from another lender (refinance). The new mortgage has to be big enough to pay the other mortgage plus any costs that you owe.

You may not find it easy to find a new lender, but shop around. Sometimes mortgage brokers can help you find a new mortgage at a reasonable interest rate. Check their references and prices carefully. Be cautious of any offers of help you didn't request, including those from real estate agents.

Solve the problem

If refinancing is possible, make sure you understand exactly what it'll cost you. You want to know:

- › the monthly payment amount,
- › how many years you'll pay this amount,
- › what the interest rate is,
- › what the costs are, and
- › what you'll own in the end.

If other mortgages and/or judgments are registered against the property, the amount needed for refinancing may be too high for this to be practical.

Before you sign

If you're unsure about the new mortgage, ask for a copy of the contract to discuss the terms with someone else, or get independent legal advice before you sign. If the new lender won't let you do that, or if the new mortgage sounds too good to be true, beware. Don't feel pressured to immediately sign the mortgage documents.

Solve the problem

FOR
SALE

Sell your home

You may want to sell your home right away and pay your lender if:

- › you can't reinstate your mortgage,
- › your home is in good condition and can be sold,
- › your home is worth at least as much as the amount you owe your lender (plus any other mortgage or judgment registered against your title), and
- › you don't want to or can't get a new mortgage.

You reduce the legal costs and interest you have to pay if you sell as soon as possible. This option may be more attractive if you have **equity** in your home. Equity is the money that's left for you to keep after you pay:

- › the mortgage,
- › interest,
- › real estate commission,
- › any other costs, and
- › any other debts, judgments, or liens registered against your home.



Go to court



How the court action starts

If you can't reinstate or redeem your mortgage, your lender can start a court action to foreclose on your mortgage. This usually happens after you've missed three months of payments. But it can happen sooner.

To start the court action, your lender's lawyer files a **petition** in a Supreme Court registry and registers a **certificate of pending litigation** in the land title office. If your home is located where there's a Supreme Court registry, your lender's lawyer must file the petition in the local registry, unless you agree to a different court registry.

If this isn't the case, they must still file at a registry within the local judicial district. This is called the **local venue rule**. This rule prevents, for example, Vancouver-based lawyers from starting foreclosure actions in Vancouver when the property is in Kelowna or Prince George, without your consent.

The petition

The petition contains a list of what your lender wants the court to do, including:

- › Confirm that the mortgage and the debt exist.
- › Confirm the amount you owe, including principal plus daily interest, legal costs, and other costs.
- › Set the length of time you have to redeem your mortgage.
- › Grant a personal judgment for the mortgage debt (and in some cases unsecured debt that you may owe) against you and any guarantors.
- › If there's a dispute over how much you owe, refer the file to a **registrar** (court official) for an **accounting** (calculation backed up with evidence).
- › In some circumstances, give your lender control of your property's sale.
- › In some cases, request an Order Absolute (see [page 20](#)) instead of a redemption period (see [page 10](#)) and Order for Conduct of Sale (see [page 20](#)). If the court grants the Order Absolute, your lender takes title to your home and everyone living there must immediately move out.

Go to court

Attached to the petition is at least one **affidavit**. The affidavit is a written statement from your lender, swearing that the list of facts in the petition is correct. The affidavit may include a copy of your mortgage, the title search, tax bills, and related documents.

Generally, the petition and affidavit must be personally **served on** you (given to you in person) by a **process server**. If the process server has trouble finding you, the court rules may allow the petition to be served on you by **alternative service**.

This means the court may direct that the petition and affidavit can be served on an adult at your home (such as your spouse), posted on the door of your home, printed in the notices section of a local newspaper, and/or emailed or mailed to you. Your lender can add the cost of service to what you already owe.

The petition and affidavit are also served on tenants or adult occupants of your home and anybody else who has a **registered charge** against your home for money you owe them. These charges would be paid out of the sale proceeds of your home. Examples of other registered charges are judgments and builders' liens.

Redemption period

The **redemption period** is the length of time you're allowed to pay off your mortgage. During this time, you must try to redeem your mortgage by paying the full amount you owe, plus interest, and legal costs before your lender either sells your home or gets title to it.

The court usually sets this period at six months, though it could be shorter. A shorter period is likely when the amount owed to your lender is roughly equal to or more than the value of the property.

The court may also set a short redemption period if:

- › your lender can show you're damaging the property, or
- › you've abandoned the home and it's empty.

Go to court

After you receive the petition

When you receive the petition, read all of it. There may be an explanation at the end of it. The more you know about what's in the petition, the better your response will be to the foreclosure action.



1. Check the accuracy of the petition

Your next steps will depend on your situation and what your lender asks for in the petition. Study the petition and your mortgage documents carefully so you can decide how to respond.

Check the math and details of your mortgage to make sure your lender has the terms, interest rate, and total amount right. Make sure you've been properly credited for all your payments. If you find errors, you can show them to the judge when you go to court.

Penalties or fines

In BC, your lender can't charge a penalty or fine for late payment.

Your lender can't increase the amount you owe, or increase the interest rate because you've **defaulted** (not paid).

When you've defaulted and your lender demands immediate payment of your entire mortgage balance, your lender can't charge you a **prepayment penalty** (charged if you pay off your mortgage before it matures).

Go to court



2. Choose how to respond to the petition

The following are some of the most common demands that lenders make, your possible responses to them, and the kinds of evidence you might need to prove any of these arguments.

The petition may ask for an **Order for Conduct of Sale** to sell your home right away for any of these reasons:

- › The property has been abandoned or is being damaged.
- › The present value of the property is less than the mortgage debt.
- › You're unlikely to reinstate or redeem your mortgage.

If you disagree with the petition, you need to show:

- › You're taking good care of the property and you're living there.
- › There's a chance you'll have the money to keep your home.
- › Your property has equity.
- › You've listed your property with a real estate agent to prove that you're trying to get the money to pay your lender.
- › You're working with a mortgage broker to refinance your mortgage.



Go to court

You can present the following as evidence to support your argument:

- › A letter from your employer to show you now have enough income to make payments
- › A commitment letter from a new lender who has agreed to refinance your home
- › A real estate listing agreement to show that you've listed the property and are trying to sell it
- › An appraisal report prepared by a certified appraiser

The petition may ask for a **redemption period shorter than six months** for any of these reasons:

- › Your financial future is poor and/or you've **assigned into** (declared) bankruptcy.
- › The **net sale proceeds** (money received from your home's sale after you've paid taxes, real estate commission, and other costs) would be less than the mortgage debt.
- › Repairs won't increase the value of your home.
- › You're not maintaining your home.
- › You're not paying taxes, strata fees, or levies for repairs.
- › Your lender wants to get the owed money quickly.

To keep the six-month redemption period, you need to show:

- › It's possible that you or your family can reinstate your mortgage or arrange for refinancing.
- › The building is being repaired and will be worth more when the work is done.
- › The home is in good shape.
- › The present value of the property is higher than your lender estimated and the longer period would allow time to get the highest possible price.

Go to court

You can present the following as evidence to support your argument:

- › A letter from a real estate agent to help convince the judge that prices aren't likely to go down; or better, get a formal appraisal of the property
- › Information about why you should be allowed to stay longer in your home (showing that you're taking care of it)

The petition may ask for **access to the property** because your lender wants to make repairs and secure the property to keep its real estate value (the petition says you're not looking after the property or have abandoned it).

If you disagree with the petition, you need to show you've been maintaining the property.

You can present proof of maintenance, such as repair bills and photographs, as evidence to support your argument:

The petition may ask for **legal costs** for the court action at a level higher than normally allowed (get legal advice about what the amount is).

If you disagree with the petition, you need to show these costs have been unreasonably claimed.

The court will deal with this under special rules for foreclosure costs.

Personal judgment

The petition will usually ask for a **personal judgment** for the amount owing against you, any other joint debtors, and any guarantors involved in the mortgage transaction (see [page 9](#)). If this is the case, ask for an **adjournment** (postponement) of the application for a judgment. A judgment against you will lower your credit rating and you won't be able to refinance. If your lender is asking for a six-month redemption period, you're more likely to get the adjournment.

Go to court



3. Try to get some legal advice

A lawyer can help you prepare the necessary court documents, gather your supporting documents, and present your evidence in court. Even if you can't afford to pay a lawyer for the whole court process, you may be able to get some legal advice to help you prepare for court.

For example, you could call the Lawyer Referral Service to get the name of a lawyer to meet with for 30 minutes for \$25 (plus taxes). See [page 29](#) for more information about this service and other legal help.

Your lender's lawyer can't give you legal advice. They might be willing to answer your questions and listen to your concerns about terms in the foreclosure petition at or before the court hearing.



4. Prepare and deliver your response

You must prepare and deliver a document called a **response** (Form 67). If you don't do this, your lender can go ahead and set a court hearing date without notifying you.

In your response, you must state which parts of the petition you **oppose** (don't agree with) and which parts you don't oppose. Your response must also list all supporting affidavits and other documents you're presenting in court at the petition hearing.

A response must also contain an estimate of how long the hearing will take. Court time estimates are difficult to predict, even for lawyers. Most lawyers expect the average foreclosure hearing to take only a few minutes. If you have any arguments to make, the hearing may take 10 to 15 minutes. If you believe the hearing will take longer, it's important to get legal advice.

You also need to prepare your affidavit and deliver it with your response to your lender's lawyer. The affidavit is a **sworn** (signed under oath) statement that sets out the facts of your case. See [page 27](#) for examples of what to include in your affidavit.

Go to court

Attach copies of the documents you'll be using as evidence. For example, that might include an appraisal or letters from a potential new lender, employer, or a real estate agent to support your statements in the affidavit. (Always keep originals of documents so you can show them to the judge at the hearing.)

You can have the affidavit sworn by a lawyer, notary public, justice of the peace, or anyone else who has a commission to take oaths.

Within 21 days after the date the petition was served on you, you must file the response document (along with supporting affidavits) at the Supreme Court registry where the petition was filed. And you must deliver copies to your lender and any other named respondents.

If you live in the United States, you have *35 days* to file a response and deliver the documents.

If you live outside of Canada or the United States, you have *49 days* to file a response and deliver the documents.

About forms

See [page 26](#) for information about where to get blank response and affidavit forms and instructions on how to fill them out.



5. Attend the hearing and make your presentation

You must attend the hearing if you want to speak to the judge. If you don't show up at scheduled court hearings, the legal action goes on without you. Court orders can be made, including an order giving your lender permission to have control over the sale of your property.

If you need more time, go to the first hearing and ask the judge for more time to prepare your case. It may help to phone your lender's lawyer before the hearing to say you need more time.

Although having a lawyer is helpful, you can represent yourself at the court hearing. Judges are more receptive if you're well-organized, reasonable, and polite.

Go to court

If you can, go to the courthouse a few days before your hearing to watch other foreclosure proceedings. You'll feel more at ease if you see how things are done at a hearing.

For your case, arrive at the courthouse at least 15 minutes before the hearing starts. Tell the court clerk which case you're attending and that you're acting on your own.

Your lender's presentation

- › Your lender's lawyer speaks first and tells the judge what your lender is asking for — the items listed in the petition — and why.
- › The lawyer reviews your lender's evidence with the judge, who may ask questions. You can make notes on any points the lawyer makes that you want to reply to.
- › Often, your lender's lawyer will give the judge a Statement of Relief (a list of orders the lawyer is asking for). It's a good idea to ask for a copy of the Statement of Relief if you don't already have one.
- › When your lender's lawyer is finished, the judge will tell you it's your turn.

Your presentation

- › Before the hearing, prepare an outline of what you need to tell the judge and what affidavits, letters, or other papers you want to show as evidence.
- › If you didn't file an affidavit, review your lender's petition and affidavits before the hearing, make a list of the points you want to tell the judge, and organize your supporting evidence in the same order.
- › Make enough copies of the papers you're using to support your position to give to the judge and other parties at the hearing.
- › You can make notes of what you want to say, but it's best to speak directly to the judge. The judge will ask you questions about your situation and the information you've provided.

Go to court

Can I stop the foreclosure action?

At any stage before the court approves the sale of your home, or grants your lender an Order Absolute (see [page 20](#)), you can stop a foreclosure by either reinstating or redeeming your mortgage.

a. Reinstate your mortgage

If you can come up with at least your missed payments, you may be able to have your mortgage reinstated. This means that you pay the arrears and then start your payments again. To reinstate, you have to pay any unpaid taxes, and you may have to pay a legal fee to cover the foreclosure action started against you. Your lender doesn't have to allow reinstatement unless you get a court order.

b. Redeem your mortgage

If you can pay your lender in full what you owe on the mortgage, tell them right away. For example, you might arrange to sell the property yourself if your lender doesn't have an Order for Conduct of Sale. Or you've arranged a new mortgage to pay off the old one. You have to provide one or more of the following as proof that you can pay off the mortgage:

- › A letter from a new lender saying the money is available to you
- › A letter from your banker saying the money is in a trust account
- › A letter from your lawyer saying the money is in the lawyer's trust account

If you have the money and your lender doesn't accept your offer to reinstate or redeem your mortgage, it may be possible to go to court and ask to stop the foreclosure. You need to give the court **proof** (written evidence) that you have the money.

Go to court

If you co-operate with your lender to sell your home

Under some circumstances, it may be in your best financial interest to agree to sell your home early in the foreclosure process to minimize cost. This may be wise if:

- › your home is in good shape;
- › there's a good real estate market for your home at a reasonable price;
- › you have enough equity in your home to cover your debts, including any property tax or (condominium) strata arrears and the real estate commission from the net sale proceeds; and
- › you can't or don't want to get refinancing.

You could agree to a court order that allows your lender to manage the sale and simply gives you notice when it's time for you to move out of the home.

To do this, you would file a response and then co-operate with your lender and your lender's lawyer. You can negotiate to stay in your home while it's being sold. Remember that interest will keep adding up while you stay.

Even when you agree to the sale and an offer is accepted, your lender needs a court order to clear other charges from the title to your home and transfer the title.

If you've abandoned your home

If you've abandoned your home, the court may order that your lender can send in a property manager or do whatever is necessary to make the home secure. These costs may be added to the mortgage balance.

Go to court



6. Understand any court order made

When the judge has heard from everyone, the judge decides what must be done next. These decisions are listed in an **Order Nisi**. This is the main order in the foreclosure proceedings.

If the conditions set by the judge haven't been met by the end of a certain time, your lender can apply to court for orders to follow to complete the foreclosure process. For example, the order could say that if you don't pay off the mortgage by the end of the redemption period (six months or shorter), your lender has the right to go back to court to ask for an **Order Absolute** (also known as a **Final Order of Foreclosure**). This would give your lender formal title to your property.

The Order Nisi always includes:

- › the length of the redemption period (usually six months), and
- › a personal judgment against you for the amount you owe under the mortgage, including daily interest, legal, and other costs (see [page 14](#) about postponing the application for a judgment).

Depending on circumstances, orders may be made at or after the Order Nisi that grant:

- › an **Order for Conduct of Sale**, giving your lender the right to be in control of the sale;
- › an order setting out how any **tenants** (renters) are to pay their rent during the foreclosure; and
- › terms for the real estate listing agreement.

Read the court order carefully. If you disagree with anything in it, try to get some legal advice on how to proceed. Your lender's lawyer will usually send you a copy of the order. It's a good idea to ask for it if you don't have a copy.

You have the right to try to sell your home during the redemption period unless the judge has made an Order for Conduct of Sale. If you can't sell your home, your lender's lawyer will probably apply to the court to get conduct of the sale.

Even so, your right to redeem or reinstate your mortgage continues after an Order for Conduct of Sale, and until the court grants an order approving your lender's sale of your home.

Go to court

If you don't reinstate or redeem your mortgage and your lender doesn't get initial control of the sale, there'll be a second hearing.

If the court orders that your lender be given conduct of sale at the original hearing, you'll receive a copy of an affidavit that states the appraised value of your home.

When a sale order is requested, your lender's lawyer asks the judge to include certain terms in the order for the real estate listing agreement, such as the rate of commission.

The judge also sets the times when you have to let a real estate agent show your home. If you don't give the real estate agent access to your home, you could be **cited for contempt** (charged with disobeying a court order).

If your home isn't in saleable condition, the court may give your lender an order allowing its agents to have the property fixed up. These costs are deducted from the proceeds of the sale.

After the initial court hearing where an Order for Conduct of Sale is made, there must be a second hearing. If you've filed a response to the petition, you'll receive a **Notice of Application**, along with one or more affidavits. The notice tells you when the second hearing will be held.



Go to court

At the second hearing, if your lender has received an offer on the property, the terms of the sale are confirmed and an order called an **Order Approving Sale** is made.

You may want to **dispute** (disagree with) the application for the Order Approving Sale; for example, if you think the proposed selling price for your home is too low. To do this:

- › You must then file a response document again and one or more supporting affidavits.
- › You must file and deliver those documents to the petitioner *within five business days* of your receiving the Notice of Application.

Early transfer of title

In some cases, you may want to transfer the title to your home to your lender right away. After your lender has title, given by the court in an Order Absolute, your mortgage contract no longer exists. You don't have to pay any **shortfall** (remaining amount). This means you don't owe your lender any more money (see [page 23](#)). An early transfer of title may be wise if:

- › you have no equity in your home,
- › your home is in good shape, and
- › property values are likely to rise, so your lender may find it worthwhile to take title to your home.

Your lender is normally entitled to apply for an Order Absolute after the redemption period has ended. Your lender could ask for an immediate Order Absolute at the Order Nisi stage if you haven't any equity and your lender doesn't intend to try to collect the shortfall from you.

Most lenders won't ask for an Order Absolute and won't agree to the suggestion to do that. They want to keep the right to collect the shortfall from you after they eventually sell your home. This is their legal choice — they can't be forced to take this option.

Go to court

When your home is sold

The Order Approving Sale will set a date by when you and all occupants have to move out of your home. This will usually be the possession date stated in the sale contract that will be part of your lender's affidavit. Courts usually give around *30 days* after the date the Order Approving Sale takes effect to move out. But it can be sooner.

When a home is sold under an Order Approving Sale, the sale proceeds are used to pay:

- › taxes,
- › utilities,
- › outstanding strata fees or charges,
- › the real estate commission,
- › the mortgage debt, and
- › other amounts owed to your lender.

The sale proceeds are also used to pay other debts registered against your house, including other mortgages, judgments, and items such as builders' liens still owing. The sale of your home doesn't end all of your creditors' claims and may not cover all the debts owing. You may still owe a large amount of money to your lender and to other creditors with mortgages or judgments registered against the property.

If the sale proceeds don't cover all that's owed of the mortgage debt, your lender will have a judgment made against you for the shortfall. Your lender can try to collect this from you for *up to 10 years*. After that, your lender can renew the judgment. If the mortgage was insured, the insurer can enforce the judgment.

If it isn't financially possible for you to pay back the amount, get the advice of a bankruptcy trustee or not-for-profit credit counselling service.

If there's any amount left after all the debts registered against the property have been paid, you're entitled to receive it.

Go to court

If you own a condominium

Special rules apply to mortgage payments for condominiums. To keep the mortgage in good standing or to reinstate or redeem it, you have to pay any outstanding strata fees and special **levies**. Those are assessed amounts you pay for common expenses and specific purposes (for example, for leaky condo repairs). You can't sell your condominium without paying these charges. Title to your property can't be transferred without a **Certificate of Full Payment** from the strata corporation.

If you're not willing or can't pay your outstanding strata fees or a special levy owing, your strata corporation can take you to BC Supreme Court. The strata corporation will file a **Certificate of Lien** against the title to your property. The lien takes priority, even over mortgages registered on the title.

The strata corporation can bring legal action against you even if there are disagreements about who's responsible for leaks, water damage, or other problems with your unit. You can't wait for the outcome of legal action against the builder (or others) before paying your share. This action by the strata corporation is *separate* from any foreclosure a lender may bring against you for not making your condominium mortgage payments.



Go to court

If you're a tenant

If you're a tenant in a property that's under foreclosure, you're directly affected, especially if you're living in a house. If you're named as a respondent in the petition and served with the petition, the notice periods set out in the Residential Tenancy Act don't apply.

For example, if the court grants an Order Approving Sale, you have to move out of your home by the stated possession date, unless the buyer agrees to allow you to continue renting the home. You also have to move if the courts make an Order Absolute.

Unfortunately, you can do very little to change the foreclosure proceeding. You don't have any say in the redemption period or the terms of a sale under an Order Approving Sale. You'll be served with the petition and affidavits.

If you start renting after the foreclosure has started, the lender doesn't have to name you as a respondent in the petition, or serve you with the foreclosure documents. But the lender probably will. Even if the lender doesn't name you and serve you with documents, the foreclosure orders still apply to you.

If you're served with the petition and affidavits, read them carefully to figure out the length of the redemption period and whether to prepare and file a response. By filing a response, you'll receive copies of documents filed in court and know what's happening in the foreclosure proceedings. You have to prepare, file in court, and deliver your response and any affidavits to all parties *within 21 days* of the date you were served with the petition.

You still have to pay your rent to your landlord under your tenancy agreement. However, a lender may also ask the court to make a **Receivership Order** or **Assignment of Rents Order**. This is a special order directed to you. This order will say that you have to pay your rent to the receiver, or other agent appointed by the court, rather than to the landlord.

If you're involved in a foreclosure, you have to obey the terms in an Order for Conduct of Sale. For example, if the order says a real estate agent can show the property between 9 a.m. and 7 p.m., with reasonable notice, you have to let them show it when they give you notice.

See [page 28](#) about where to get more information for tenants.

More information

About the court forms

A blank response form (Form 67) and affidavit (Form 109) are available as PDFs on the Ministry of Justice website. You can fill out the forms online, or print them and fill them out on paper. The website gives instructions to fill out forms.

ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm

1. Under **Using the Forms**, in the first sentence click [user guide](#).
2. In the list of forms on the same page (Supreme Court Civil Rules – Forms), click [Affidavit \(Form 109\)](#) and [Response to petition \(Form 67\)](#) to open the blank forms.

Defending a Proceeding Started by Petition and *A Guide to Preparing Your Affidavit*, two guidebooks on the Courts of British Columbia website, give samples of a response form and affidavits.

courts.gov.bc.ca

1. On the left side, click [Self-Represented Litigants – Supreme Court](#).
2. Under **If you want to learn about court procedures and documents**, click [guidebooks](#); under **Getting Started**, click [Defending a Proceeding Started by Petition](#) (includes a sample blank response form and instructions to fill it out).
3. Under **Pre-Trial**, click [A Guide to Preparing Your Affidavit](#) (includes a sample blank affidavit, instructions to fill it out, and a sample completed affidavit).

More information

Preparing your affidavit

1. Copy the information at the top of the petition into the top of the affidavit.
2. Set out your case in numbered paragraphs in the rest of your affidavit. Include the following kinds of information:
 - › Who you are
 - › How old you are
 - › Who lives in the home and how long you've lived there
 - › The price you paid for your home and amount of your down payment
 - › Where you work or, if you're unemployed, how long you've been unemployed and why
 - › Why you haven't been able to make your mortgage payments
 - › If you have health problems, what they are
 - › What your financial circumstances are (for example, if you have any assets, RRSPs, pensions, or are supporting anyone, including children)
 - › If your financial problems are temporary, when you think they may improve and how
 - › What you're doing to pay off your mortgage
 - › Your best information about the value of the home
3. Have the affidavit sworn by a lawyer, a notary public, or a justice of the peace at the courthouse. There may be a small fee for this. You must sign the affidavit in front of this person. The person who signs the affidavit must print/type/stamp their name above or below their signature, or the court registry may not accept the affidavit.
4. Make copies for everyone listed in the petition, plus one for the court registry.
5. Follow the instructions in this booklet about when you have to deliver your affidavit to your lender and other respondents and file the original (see [page 16](#)).

More information

About foreclosure

Dial-A-Law

cbabc.org/For-the-Public/Dial-A-Law
[Topics in English](#) — [Housing](#)

604-687-4680 (Greater Vancouver)
1-800-565-5297 (call no charge)

The Canadian Bar Association, BC Branch, provides this service. Its library of scripts gives information about the law in BC. For example, script #415 (Foreclosure — also available in simplified Chinese and Punjabi) explains about foreclosure. Call the above numbers at any time to listen to the script.

Tenants' Resource and Advisory Centre (TRAC)

tenants.bc.ca
[Foreclosure](#)

604-255-0546 (Greater Vancouver)
1-800-665-1185 (call no charge)

Information for tenants facing foreclosure.

Community Legal Assistance Society (CLAS)

clasbc.net

604-685-3425 (Greater Vancouver)
1-888-685-6222 (call no charge)

Information for tenants and homeowners with low incomes facing foreclosure.



More information

About legal help

Access Pro Bono Society of British Columbia

accessprobono.ca

604-878-7400 (Greater Vancouver)

1-877-762-6664 (call no charge)

Free legal help from volunteer lawyers.

Civil Chambers Pro Bono Duty Counsel Project

accessprobono.ca/chambers

604-603-5797

If you live in Greater Vancouver, you may qualify for free legal help from a volunteer lawyer who's participating in the Civil Chambers Pro Bono Duty Counsel Project.

Justice Access Centres: Nanaimo, Vancouver, Victoria

www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/legal-help/jac

Service BC: **1-800-663-7867** (call no charge)

Free legal help.

Lawyer Referral Service

cbabc.org/For-the-Public/Lawyer-Referral-Service

604-687-3221 (Greater Vancouver)

1-800-663-1919 (call no charge)

If you don't have a lawyer, call the above numbers to get the name of one. Ask for a lawyer who specializes in foreclosures. You can have a half-hour appointment for \$25 (plus taxes) to find out if you have a case and the fee to hire the lawyer. You can also ask what they charge for some help to prepare or review your documents, without going to court. The Lawyer Referral Service isn't available in all areas of BC.

More information

About the law

Consumer Law and Credit/Debt Law

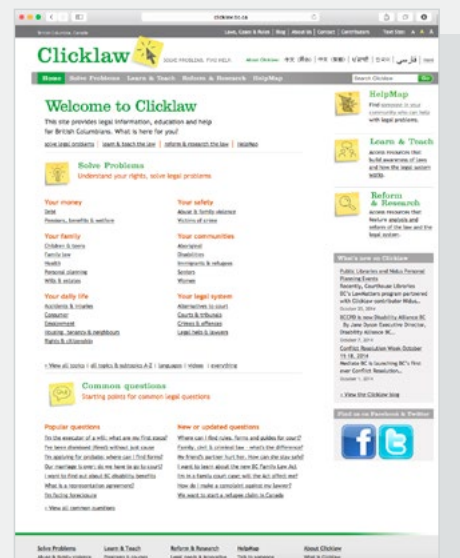
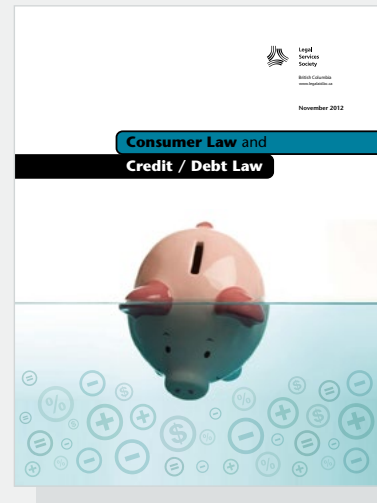
lss.bc.ca/publications/pub.php?pub=17

This manual is for legal information counsellors, paralegals, and lawyers with clients who have consumer or debt problems. It covers 46 topics, including bankruptcy, creditors, debtors, fraud, harassment, leases, mortgages and foreclosures, prepayment rights, recovery of goods, and torts of assault and trespass. It also includes consumer and debtor statutes, case citations, and resources. *Consumer Law and Credit/Debt Law* is up to date as of November 2012 and available online only.

Clicklaw

clicklaw.bc.ca

This website has links to legal information, education, and help for British Columbians. Here, you can find out about your rights and options to solve legal problems, find toll-free numbers for law-related help, and learn about family law and the legal system.



How to get free Legal Aid BC publications

Read: legalaid.bc.ca/publications

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(under Quick Links, click BC Public
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