



Foreclosure

What is Foreclosure?

Foreclosure is a process a **Lender** uses to force the sale of a property to recover the outstanding balance of a loan or interest in land from a **Borrower**. The process and form of foreclosure in Yukon is different from other jurisdictions, so beware of this when searching for information on the internet.

Facing foreclosure? A lender may work with you to keep you in your house, for example by negotiating a reduced payment plan for a period of time or allowing the borrower to sell the property without starting foreclosure proceedings, which avoids a judgement against you.

STEPS IN FORECLOSURE

- 1) **Lender is not being paid.** The Borrower will receive a letter from the Lender's lawyer (usually from outside the Yukon) demanding payment.
- 2) **Petition is filed by the lender** in **Court**, with an Affidavit and other documents supporting the claim.
- 3) **Borrower is served with the Petition.**
Check the supporting documents to ensure that the outstanding amount owing is correct.
 - Renters may also be named in proceedings, so if there is a tenant, they will likely also be served.
 - The Borrower and/or tenant may remain living in the home during the proceedings, unless the Court otherwise orders.
- 4) **If the Borrower wants to respond** to the Petition, they must file an [Appearance \(Form 9\)](#) within 7 days of being served.
If a lawyer is acting for the borrower, the lawyer will file the Appearance. **If you do not file an Appearance, you may not get notice of any further steps!**
- 5) **A Response must be filed within 21 days.** A [Response \(Form 11\)](#) and supporting [Affidavit \(Form 59\)](#) can ask for:
A Redemption Period: this gives the Borrower time to redeem the mortgage to avoid foreclosure, for example by selling the property. Generally, the Court will only grant an extended redemption period (maximum 6 months) if the property's appraised value is greater than the amount owing on the mortgage. For example, if the property is appraised at \$250,000 and the entire amount owing on the mortgage plus any costs associated with the proceedings is \$200,000, a redemption period may be granted. If there is disagreement with the appraisal done by the bank, the Borrower arranges to have the property appraised by a professional and the report must be included in the Affidavit supporting the Response; or

Reinstatement of the Mortgage: If the Borrower can pay the arrears and costs, they may avoid foreclosure. The [Judicature Act](#) allows a reinstatement once during the life of the mortgage. To find out the cost of reinstatement, contact the lawyer who is representing the Lender in the proceedings.

Definitions of terms used in this guide:

Borrower: the person who borrowed the money. Includes all of the people who were listed on the mortgage.

Court: Supreme Court of Yukon.

Lender: usually a bank, they lent the money to purchase the property. Could also be a lien holder.

Order Nisi: an order that has a condition

Order for Conduct for Sale: allows listing and sale of the property

Order Absolute: transfers ownership

6) **Notice of Hearing.** If the borrower responds, they will receive a Notice of Hearing after the response period. The Hearing will be for the lender to get an **Order Nisi** that:

- sets a redemption period;
- declares the amount outstanding;
- declares that the mortgage is still good;
- orders conduct for sale (i.e. how the sale will proceed); and
- issues judgement against the Borrower.

An **Order for Conduct for Sale** may be done in a separate step after the Order Nisi is granted, but it is practice for some lawyers to include it in the same hearing.

You can attend the hearing. If you do not or are unable, you should make sure that you have responded so that you receive a copy of any Order that is made.

7) **Redemption Period.** If the Borrower has an extended redemption period, they can pay out the mortgage within that time, usually by selling the property and applying the proceeds to the balance. Once the redemption period ends, if the Borrower doesn't to redeem the mortgage, the lender will hire realtors to list and sell the property.

8) **Offers** made on the property are subject to approval by the court.

9) **Order for Sale.** The lender will go back to the court for an Order for Sale.

- The lender has to show that they made an honest effort to get the best value for your property.
- The Borrower can appear at the hearing to complain about the price (i.e. that it is below market value). Evidence to support the claim can be filed with the Court ahead of time, but the Borrower may also appear at the hearing to present that evidence.
- Other interested buyers can also appear at the hearing and present a better offer.
- The judge will approve an offer and set the closing date to make the Order for Sale.

10) **Proceeds paid.** Once the sale is complete, the sale proceeds are paid out in order of priority:

- a) property taxes,
- b) condo fees,
- c) realtor fees,
- d) lawyer's fees,
- e) lender, liens (judgements, lines of credit, or other interests secured by the property); then
- f) borrower.

If the property sells for *less than* the amount owing (a "shortfall"), the Lender has a judgment against the Borrower for the remaining amount. If the mortgage was insured (for example, through CMHC), the Lender can often collect from the insurer, however they may pursue the Borrower for the shortfall amount. If the property sells for *more than* the amount owing and costs, the Borrower will receive the proceeds.

Another option that is rarely the case is for the Lender to seek an Order Absolute, which allows the Lender to take possession immediately. This is only granted in extreme cases.

With assistance from:

Graham Lang – Lamarche Lang

Mark Wallace – Austring, Fendrick & Fairman

Supreme Court of Yukon – Rules and Forms:

<http://www.yukoncourts.ca/courts/supreme/ykrulesforms.html>

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