



## HOW TO AVOID YOUR HOMES' FORECLOSURE

Know your rights

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Residential foreclosures in Puerto Rico have been rising every year since 2008. In 2008, 2,357 family dwellings were foreclosed, while in 2013, the figure reached 4,207 units. At present, 18,288 units are in process of foreclosure while 14,240 mortgage loans 90 days in arrears inch closer to the foreclosure process.

Residential mortgages pose a serious social problem for our island and a threat to the main source of savings of its residents.

A residence is not only a vital necessity for our families, it represents a life-long sacrifice and the principal form of savings for Puerto Rico's households. Home refinancing has made possible education for dependents as well as a source of repayment for accumulated debts. By far, a home represents the principal financial asset of Puerto Rico families.

There are situations when it is impossible to fulfill the commitments made at a time when the financial realities and employment circumstances were different. Before all hope is lost, even in adversity, there are opportunities to be exhausted before resigning ourselves to losing our most valuable financial asset.

There are two main avenues to save a home from foreclosure; first, the loss mitigation options that the mortgagee or its servicer may offer to modify the terms of your mortgage and, if that option is not effective, the compulsory mediation offered by Act 184 of 2010.

### **A. LOSS MITIGATION**

Effective January 14, 2014, the Consumer Financial Protection Bureau (CFPB) issued new rules designed to provide consistent and meaningful protections for borrowers, while giving the industry the necessary flexibility.

These rules are intended to provide greater transparency and disclosure to servicers' collection processes and eventual foreclosure proceedings, avoiding surprises and misunderstandings that are usually stressful and a source of uncertainty about how to act under those circumstances.

Mortgage borrowers are qualified for a mortgage loan on a credit history, income, and financial commitments at a given time that support a monthly payment for the payment of residential mortgage assumed at that particular time. Since a mortgage is a long term commitment, borrower's circumstances may change after a mortgage loan is formalized, which could cause the borrower to default on the terms and conditions of the mortgage originally agreed to.



The new rules issued by the CFPB require mortgage loan servicers to:

- By 36 days after a borrower misses a payment or can't pay the full monthly payment of the mortgage commitment, the servicer must make a good faith effort to establish contact by telephone or at an in-person meeting with the customer. Servicers must reach out to borrowers every time they miss payments. It is the servicer's duty to tell his client about available loan modification or workout options.
- Before a borrower becomes 45 days delinquent, the servicer must send a written notice to the borrower or borrower's agent encouraging the borrower to contact the servicer, providing the phone number for the personnel assigned to the borrower, and giving the borrower examples of loss mitigation options the servicer offers. The borrower must also receive information about how to find a housing counselor. The letter must contain, among other things, information on the possible risks the borrower faces including expenses associated with the delinquency; information on whether the servicer has initiated the foreclosure process; the phone number and website where the borrower can find a Housing and Urban Development (HUD) approved housing counseling agency; and information about any loss mitigation programs the borrower has already agreed to.
- A mortgage servicer **MAY NOT MAKE A FIRST NOTICE OR FILING FOR FORECLOSURE UNTIL THE BORROWER IS MORE THAN 120 DAYS DELINQUENT**. This period of 120 days under these rules is designed to allow debtors to study their options under loss mitigation and file the appropriate forms to the chosen option. In addition, after the application is filed for a particular mitigation option with delivery of all relevant documents necessary for the assessment of such a request, **MORTGAGE SERVICER MAY NOT BEGIN THE FORECLOSURE PROCESS WHILE THE DEBTOR IS BEING EVALUATED FOR A LOSS MITIGATION PLAN**. A loss mitigation plan might not prevent foreclosure if the borrower does not comply with the modified terms under the plan.
- The servicer must inform the borrower under what circumstances the servicer may make a referral for foreclosure. This information helps homeowners file applications for foreclosure avoidance assistance in time to preserve their rights under the new rules.
- The servicers are required to evaluate borrowers for all foreclosure avoidance options that the borrower may qualify for, assuming a borrower submits a complete timely application. Servicers, lenders, and investors are not required to offer any specific loss mitigation options. If a borrower is denied a loan



modification option, they must give specific reasons for the denial. If the denial is attributable to investor requirements, the servicer needs to explain borrower what the investor's requirement is.

- Borrowers have the most protection if a complete application for mortgage assistance is submitted within 120 days of the first missed payment because servicer is not allowed to start a foreclosure process during those 120 days. After this term, the debtor may submit a mitigation request if it is within 45 days before a scheduled foreclosure sale. If the documentation filed is not complete, the servicer is required to notify borrower what information is missing. If the servicer receives a request for mitigation less than 45 days before a scheduled foreclosure sale, the borrower is not entitled to receive a written confirmation that his request has been received.
- If the servicer receives a request for mitigation of the debtor 90 days or more before the scheduled foreclosure sale, the servicer must give borrower at least 14 days to accept or reject the offer of the mitigation option. Also, if the complete application is submitted to the administrator 90 days or more before the scheduled foreclosure sale and the same is denied, the borrower has the right to appeal such decision within 14 days from the date the mitigation option was rejected.

## **B. MEDIATION: ACT184 OF AUGUST 17, 2012**

Once a foreclosure action is filed, the borrower is still entitled to a mediation process under the provisions of Act 184.

- Act 184 covers only foreclosure of a residential property that is the debtor's principal residence, as a result of "a consumer loan or for personal or family purposes "secured by mortgage" on your residence or main residence" (Art. 2 (d) definition of mortgagor).
- It is a requirement of Act 184 that the defendant files a timely reply to the complaint: The Court shall schedule a mediation hearing:
  - If the defendant is not in default, or
  - If the defendant's allegations have not been eliminated by the court. (Art. 3)
- The court shall order a mediation hearing under penalty of contempt "within 60 days after filing the responsive allegation by the defendant and before the pre-trial conference" (Art.3)



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- The compulsory mediation meeting will be held with the mediator selected by the parties. The mediation will take place in any room or courtroom or in such other place that the parties, in agreement with the mediator, with the exception of the office of the mortgagee, his lawyers, legal representatives, or advisors.
- At the mediation session, "all available alternatives in the market to prevent the foreclosure of a residential property of the debtor" shall be assessed (Art 3).
- Mediation is a jurisdictional requirement and no court can enter a final judgment if such mediation has not taken place. (Art. 3)