

How Long Do I Have In My Home?

Scenarios For Home Owners Facing Foreclosure

Potential clients have lots of questions. “How long do I have in my home?” tends to be the most frequently asked. As is true with many legal questions, the answer is, “It depends.” Litigation can be a lengthy process. While some cases are similar, no two cases are the same. Many factors can affect how long resolving a foreclosure can take. This article will give some sample scenarios and timelines.

Some clients come to us before they are served with a summons. They are likely behind on their mortgage payments and may have received a demand letter from the lender’s attorneys. People at this stage are in the best possible position. Once a home owner is served with a foreclosure summons, Illinois state law gives him twenty-eight days to respond to the complaint. The first hearing date is usually thirty to forty days after the case is filed. In this situation, a borrower can remain in his home up to eighteen months before the lender acquires possession of the property. It all depends on the litigation strategy and the goals of the home owner.

If walking away from the property with dignity is the primary goal, this timeline can grow considerably shorter. Depending on the lender and its willingness to negotiate, a consent foreclosure can be processed in a matter of months. This means that an eighteen month timeline may contract down to three to six months. The ability to dictate your departure date is one of the big advantages to acting early.

If keeping the property is the primary goal, eighteen months can grow to three to five years, depending on the strategy. For example, if a loan modification is not possible due to a home owner’s income being too high, filing a Chapter 13 bankruptcy plan may take three to five years to complete. At the end of the plan, the back payments are paid off and the mortgage is current. If a loan modification is possible, a successful litigation strategy may help speed the process along. It may also buy the necessary time to compile the required documentation for the application process.

When a home owner acts at the beginning of a foreclosure case, the litigation timeline can be very long. For example, suppose that a home owner named Dave is served with a summons with a hearing date of January 2. Dave begins shopping around for an attorney but fails to find one before the first hearing date. Dave attends the hearing and asks for more time to find an attorney. Normally, the judge will grant between 21 and 28 days to do this. The case will be set for a status date shortly after that period of time expires. On the 27th day, Dave hires an attorney. The attorney appears at the next hearing, which is set for February 7. At the February 7 hearing, Dave’s attorney asks the judge for time to file an appearance and to answer or otherwise

plead in response to the bank's complaint. The judge grants the attorney's request. The case is set for a status hearing on March 14.

Dave's attorney finds a defect in the lender's complaint and files a motion to dismiss before his 28 day deadline to file lapses. At the March 14 hearing, the attorneys agree to file responsive briefs setting forth their arguments regarding Dave's motion to dismiss. Both sides take 28 days to draft and file their responsive briefs. The motion is set for a hearing on May 16. At the May 16 hearing date, Dave's motion is granted. Because Dave's motion points out a defect that can be repaired, the lender is granted 28 days to amend its complaint. The case is set for a status hearing on June 20. At the June 20 status hearing, Dave's attorney is granted 28 days to respond to the lender's amended complaint.

At this point, the case is almost six months past the first hearing date and Dave has yet to file an answer to the lender's complaint. Although every case is different, this is a rather typical scenario. This is a great example of why acting early is the best plan. Home owners who act early have the power of courtroom procedure on their side. Most people do not defend their foreclosures. Actively fighting against a foreclosure slows down the process and extends the amount of time a home owner has in his home. In the previous example, Dave could have up to another year in his home before having to move out.

When a foreclosure case is past judgment, it can be very difficult to defend. If a default judgment has been entered within the last 30 days, judgments are normally vacated simply by filing a motion to vacate. If the judgment is more than 30 days old, it will be more difficult to vacate. This is because a home owner must demonstrate a valid defense to the foreclosure and a valid reason why he never presented that defense. Most reasons that an average person would consider to be "valid" do not meet the requirement. For instance, hiring a bad attorney is not a valid reason. Applying for a loan modification and assuming the lawsuit could be ignored is not a valid reason. Aside from improper service of process, there are very few situations that satisfy this requirement.

As a general guideline, if a home owner waits until after a judgment is entered, he has considerably less time in his home than if he had acted when the case was filed. Once a lender has obtained a judgment of foreclosure and sale, the sale can take place as early as 30 days post-judgment. In order to proceed to sale, a notice of the sale must be published in a local newspaper for three consecutive weeks. The notice cannot begin to run more than 45 days before the sale date. If a judgment is entered on July 1, the sale will generally take place no earlier than the second week of August. After the sale, a confirmation hearing is held. Once the sale is confirmed, an order of possession can take effect in as few as 30 days from the date of confirmation. In some situations, a home owner can request more time and receive a 60 to 90 day stay on the order of possession. If a home owner waits until after a judgment is entered, he may only have 90 days left in the home.

When considering how to handle a potential or current foreclosure lawsuit, it is important to think about your primary goal. Some people don't want to keep their homes. Some people want to keep their homes, even if that means remaining in an underwater property. Every case is different, and every client's goals are personal choices. Regardless of the goals, understanding how a litigation strategy can change the timeframe for achieving those goals is important. Even more important is the understanding that acting early is better than acting late. Those who act early can almost dictate their move out date. Those who act late generally act too late.