

Michigan's Foreclosure Law

Lorray S.C. Brown



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Michigan's New Foreclosure Law

- I. Current Foreclosure Process
- II. New Foreclosure Law
- III. Requirements for Mortgage Holder or Servicer
- IV. Requirements for Borrowers
- V. Role of Housing Counselors
- VI. Compliance Issues



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Current Foreclosure Process

Two methods of foreclosing on a mortgage:

- By Going to Court

OR

- By Scheduling a Sheriff Sale (by advertisement in the local newspaper)



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Foreclosure by Advertisement

- Non-judicial foreclosure process
- Mortgage must contain “Power of Sale” Clause that permits foreclosure by advertisement
- Notice is by publication in a newspaper



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New Foreclosure Law

- Began July 5, 2009
- Applies to the Foreclosure by Advertisement
- Intent – to bring all parties to the table
- Requires a mandatory 90-day pre-foreclosure process to avoid foreclosure.



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Applicability:

Applies to:

- principal residence
- exempt from taxes under the general property tax act



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Requirements for Mortgage Holder or Servicer

- Cannot begin to foreclose by advertisement before participating in a 90-day pre-foreclosure workout process

- Send written notice to borrower



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Written Notice to Inform the Borrower that:

- I. Loan is in default and the amount due

- II. The names, addresses, and telephone numbers of the mortgage holder, servicer or any of their agents



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Contents of Written Notice:

- III. Identify the designated agent who has the authority to make agreements to modify the loan or other loss mitigation alternatives.
- IV. Provide a list of housing counselors approved by HUD or MSHDA.
- V. Notice that within 14 days after the written notice is mailed, the borrower can ask to meet with the designated agent to negotiate a loan modification



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- VI. Notice that if the borrower requests the meeting, foreclosure proceedings will not begin until 90 days after the date the notice is mailed to the borrower.

- VII. Notice that if the borrower and the designated agent agree to modify the loan, and the borrower complies with the terms of the loan, the mortgage will not be foreclosed.

- VIII. The borrower has a right to contact an attorney.

- IX. Telephone numbers of the state bar of Michigan's lawyer referral service and a local legal office.



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How will the borrower receive this notice?



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- Regular first class mail
- Certified Mail
- Published in the Newspaper



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Requirements for Borrowers

Within 14 days after the written notice is

Mailed borrower must:

- contact housing counselor

- contact designated agent



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Role of Housing Counselors

Within 10 days after contact with borrower, housing counselor must contact designated agent in writing notify designated agent of borrower's request.



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So what does this all mean?

My advice:

Within 14 days after the written notice is
Mailed borrower must:

- contact housing counselor
- and
- contact designated agent



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And when must housing counselor contact designated agent?

My advice: Within the 14 days.



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Designated agent must be contacted by someone (borrower or housing counselor) but must be within the 14 days.



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The housing counselor must contact the designated agent to schedule a meeting.

When? Within the 14 days? Within the 10 days after being contacted by borrower?



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Two questions:

1) Who is the Designated Agent?

2) How is this meeting scheduled?



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I. Designated Agents – Who are they?

So far: Trott & Trott

Orlans

Potestivo

Schneiderman & Sherman



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Scheduling the meetings?

Section 3205b(3) also says that housing counselors must schedule meeting between borrower and designated agent.



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Meeting Place?

“The meeting and any later meetings shall be held at a time and place that is convenient to all parties, or the county where the property is situated.”
(Section 3205b(3))



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How are the scheduling of meetings being implemented?

Who is scheduling these meetings?

Are these meetings conducted in person or on the phone? Where?



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What can housing counselors do about the scheduling of meetings?

- Remind the designated agent about what they law says.
- Work to get agreements as to meeting time and place.



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What happens if the lender does not comply with the new law?

- ◆ Lender must foreclose by going to court
- ◆ Contact your local legal aid office



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What happens if the borrower and the lender cannot agree on a loss mitigation alternative (such as a loan modification)?



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Loan Modification Program

Targets a debt-to-income ratio of 38%

Debt includes:

mortgage principal and interest

property taxes

insurance

homeowner's fees



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To reach the 38% target, the loan modification program may include 1 or more of the following features:

- Reduction of interest rate (subject to a floor of 3%), for a fixed term of at least 5 years.
- Extension of the loan term up to 40 years from the date of the loan modification.
- Deferral of some portion of the unpaid principal balance up to 20%.
- Reduction or elimination of late fees.



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Other Loan Modification Programs Used:
If the mortgage loan is sold to a governmental entity (Ginnie Mae) or government-sponsored enterprise (Fannie Mae, Freddie Mac), then use the modification guidelines used by those entities.



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- I. If the borrower is eligible for a loan modification – but no agreement, lender must foreclose by going to court

- II. If borrower is eligible for a loan modification, lender acted in good faith and borrower doesn't execute the agreement – lender can foreclose by advertisement.



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Make sure borrower gets:

-- Copy of calculations

-- Copy of loan modification guidelines
(request this before meeting)



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Compliance Issues

- 1) Scheduling of the meetings
 - in-person meetings vs phone meetings
- 2) What happens after the 14-day period
 - lender must hear from someone before the 14-day period expire
- 3) Designated agents – person with authority
- 4) What happens after 90 days?



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What to do if there is non-compliance?

- 1) Document all contacts with designated agent
- 2) Contact local legal aid office



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Resources

- Michigan Foreclosure Prevention Project
<http://miforeclosure.mplp.org/>
- Michigan Foreclosure Task Force
<http://www.cedam.info/foreclosure.htm>
- Michigan State Housing Development Authority (MSHDA) – Save the Dream – finding a housing counselor in your area
http://www.mshda.info/counseling_search/



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