

This flyer explains

Ways to Let Go of Your Property



This flyer can help you if:

- You have a mortgage foreclosure court case for a property you can't afford to keep; and
- You're you trying to decide how to give up your property.

Deciding to give up your property is a difficult choice. But if you can't afford to keep it, you may need to let go of your property.

If you aren't sure whether you can afford to keep your property, talk to a housing counselor or a lawyer. The lawyers at Legal Aid might be able to give you advice, even if they can't represent you.

It's important to take the right steps when you choose to give up your property. Otherwise, you could lose your home through a foreclosure sale, and the mortgage company could still come after your money.

How can I get help to figuring out what to do?

If you want **free** help understanding your options and how to apply for them, you can call:

- The DC Foreclosure Prevention Hotline (for housing counseling and referrals to legal assistance) at **(202) 265-2255**.
- Legal Aid Society of the District of Columbia at **(202) 628-1161**. The lawyers at Legal Aid might be able to give you advice, even if we don't end up representing you.



Questions? Contact Legal Aid at (202) 628-1161 or www.legalaiddc.org/online-intake/.

What happens if I give up my property?

What happens to you, your property, and your foreclosure court case depends on three things: (1) the value of your property, (2) how much money you owe, and (3) what you decide to do.

If:	Then:
You owe less than what your property is worth	You have equity and can sell your property. By selling your home, you will pay the money you owe to the mortgage company and any other liens (“liens” are debts that are attached to your property). You get to keep the rest (after subtracting out any costs of doing the sale). <i>More information is on page 3.</i>
You owe more than what your property is worth	You can ask the mortgage company to agree to a short sale, deed-in-lieu, or consent judgment. These options <i>might</i> help you to protect the rest of your money. <i>More information about these options is on pages 4-5.</i>
You don’t do anything	A court order called a “judgment” will be entered against you, allowing your property to be sold at a foreclosure auction. If your property sells for less than the amount you owe, the mortgage company might try to collect on the balance. <i>More information is on page 3.</i>

How can I figure out if I owe more than my property’s worth?

First, find out how much your property is worth. You can get an *estimate* by googling your address. Websites like Zillow, Redfin, and Trulia offer estimates of what they think your house is worth, but the actual value can vary depending on the condition of the house and the market. You may want to contact a realtor to get a more accurate estimate of your home’s value.

Second, find out how much you owe. You need to find out what debts are attached to your house and the amount for each. Some people only have the mortgage loan attached to the house. Other people have other debts attached to the house (such as a home equity line of credit, water lien, tax lien, condo lien, or judgment). You may need to contact a lawyer or a realtor to help you find out the total amount of debts attached to the property.

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If your property is worth more than what you owe, that's called having **equity** in your property.

Can I sell my property?

You can try to **sell your property** if your property is worth more than the total amount you owe on it (including mortgages and any other debts attached to the property).



If a foreclosure case has already been filed against you, you have to act quickly to finish the sale before the mortgage company completes the foreclosure. You should tell the mortgage company and the judge in your court case if you have equity and are trying to sell the house. The judge might be willing to give you some time to try to sell. It is a good idea to talk to a lawyer about the status of your court case to get an idea of how much time you might have to sell your home.

What should I do if I want to sell my property?

If you want to explore selling your property, contact a realtor you trust. To find a realtor, you may want to start by asking family, friends, or neighbors if they have a realtor who they recommend. You can also search for realtors online. You can learn about specific realtors and read reviews from people who have worked with them. You can also go to a realtor's website to see what houses they currently have listed on the market and what houses they've recently sold.

What if I owe more money than my property is worth?

Owing more than the property is worth is sometimes called being "underwater" or "upside down." If you **owe more than the property is worth**, you still have options for trying to work something out to let go of your property (other than just doing nothing). Some options are:



- Deed in Lieu (page 4)
- Short sale (page 5)
- Consent judgment *in rem* (page 6)

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For each of these options, **you will need your mortgage company's approval.**

If any of your mortgage debt is forgiven as part of these options, you might owe income taxes because forgiven debt is generally treated as income - but exceptions may apply. Talk with a tax professional. Find out where to get help at <https://www.legalaiddc.org/tax-help/>.

Underwater Option 1: Deed in Lieu

What is this option?

A deed in lieu of foreclosure means giving the mortgage company the deed to the property in exchange for the mortgage company not foreclosing on you.



With a deed in lieu:

- You avoid foreclosure.
- You **transfer ownership** of the property **to the mortgage company.**
- In exchange, the mortgage company often agrees to release you from the mortgage (including forgiving any amounts you owe that are more than the value of the property) – but you must make sure the deed in lieu agreement states this clearly.

Is this option right for me?

A deed in lieu might be a good choice if:

- You want to avoid a judgment in the foreclosure court case; *and*
- You don't mind going through the application process for the mortgage company to approve you.

*Your mortgage company usually **won't** approve a deed in lieu if you have more than one mortgage or any other liens (such as condo liens) on the property.*

How can I apply for a deed in lieu?

Contact your mortgage company (or their lawyer if there's a foreclosure case against you). Ask them what you need to do to apply for a deed in lieu. **You can also ask for the mortgage company to pay you some relocation money if you agree to move out by a certain date.**

A mortgage company might not approve a deed in lieu if you owe a lot more than the property is worth, the home is in bad condition, or there are other liens on the property.

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Underwater Option 2: Short Sale

What is this option?

In a short sale:

- You avoid foreclosure.
- You hire a realtor to sell your property for **less than** the amount you owe.
- The mortgage company *might* forgive the rest of the money you owe. Before you agree to a short sale, ask the mortgage company to agree in writing to forgive the rest of the money you owe. If it won't, then a short sale may not be worthwhile, and you may want to consider a deed in lieu or consent judgment *in rem* instead.



Is option right for me?

A short sale might be a good choice if:

- You want to avoid a judgment in the foreclosure court case; *and*
- You have time to complete the application with the mortgage company; *and*
- You are able to find a realtor who you trust; *and*
- You can get the mortgage company to agree to forgive the rest of the money you owe.

This option can take lots of time, effort, and resources.

How can I do a short sale?

You may want to start by talking with a realtor, as several steps are involved – including completing an application with the mortgage company, listing the property for sale and getting a buyer, and getting the mortgage company's approval for the sales price and the buyer.

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Underwater Option 3: Consent Judgment in rem

What is this option?

In a consent judgment *in rem*:

- You agree to a judgment of foreclosure in the court case. This means you agree to have your property sold at a foreclosure auction.
- The mortgage company agrees it is only seeking a judgment of foreclosure against the property – not a money judgment against you personally for any remaining loan balance.



Is this option right for me?

A consent judgment *in rem* might be a good choice if:

- You want to be done with the property and the court case quickly; and
- You don't mind having a judgment against you for the property in the foreclosure court case. *A judgment can lower your credit score (but most people have already suffered harm to their credit by falling behind on the mortgage and facing foreclosure, no matter what option for releasing the property you choose).*

How do I ask for a consent judgment *in rem*?

First, talk with a lawyer to make sure you understand this option. If you decide to ask for a consent judgment *in rem*, you would work this out with the lawyer for the mortgage company. **You can also ask for the mortgage company to pay you relocation money if you agree to move out by a certain date.** The lawyer for the mortgage company will usually write up an agreement to be filed with the court. You should review it very carefully before signing.

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Avoid: Consent Judgment

What is a consent judgment?

With a consent judgment:

- You agree to foreclosure **and** a possible money judgment against you.
- You agree to a **judgment** against both **you personally** and the **property**.
- Unlike the first 3 options, the mortgage company can come after you for any money you still owe after the sale of the property.

Why should this be avoided?

This usually should be avoided because **there's no benefit to you**. In fact, **you could be worse off** if you do this than if you did nothing at all in the foreclosure court case.

The harm of a consent judgment is reduced **only** if all of your sources of income are protected from debt collectors (like SSI, Social Security, TANF, child support, pension, or 401K). If these are your only sources of income, debt collectors generally can't take your money. However, if you expect your financial circumstances to change (for example, if you are receiving public assistance now but may have employment in the future), your future employment income could be at risk of collection if the mortgage company has a judgment.

What happens to me, the property, and the court case if I don't do anything?

If you don't do anything, you will automatically lose the foreclosure court case. The judge will enter a court order against you, called a "judgment." Your home will eventually be sold to the highest bidder at a **foreclosure auction**.



Doing nothing **isn't a good option** for most people because you have no control over how much money your property will be sold for. Often, properties are sold at auction for far less than they're worth.

After a foreclosure auction, you might **still owe money to the mortgage company**. This can happen if the mortgage company sells your property for less than what you owe on your mortgage (including attorneys' fees and other costs).

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The information in this flyer was updated on September 16, 2021. This information isn't legal advice. For legal help, please contact a lawyer. The lawyers at Legal Aid might be able to give you advice, even if we don't end up representing you.

This information is from:



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