



Please Note

This packet does not contain legal advice.

This guide contains legal information, not legal advice. Legal *information* is background information about your rights. Legal *advice* is advice from a lawyer about what to do in your own specific situation. Legal Aid is not your lawyer in your foreclosure matter.

Ways to Let Go of Your Property

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This guide can help you if:

- You are facing a mortgage foreclosure court case for a property you can't afford to keep; and
- You're 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 so that you can let go of your property on your own terms. 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 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 DC at **(202) 628-1161**. The lawyers at Legal Aid might be able to give you advice, even if we can't represent you.

What are my options for giving 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, including if you decide to participate in the foreclosure case.

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 owed on your mortgage and any other liens (i.e., debts that are tied to your property, such as a condo lien). You get to keep the rest (after subtracting out any costs of doing the sale).
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.

If you don't take action, 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 the balance from you.

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 may be different depending on the condition of the house and the market. You can also contact a realtor to get a more accurate estimate of your home's value. If you contact a realtor, you should ask if they will charge you a fee for an estimate, and how much that may cost.

Second, find out how much you owe. You need to find out what debts are attached to your house and how much each is. 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 another 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. You should contact each of the companies you owe money to and ask for a current payoff statement.

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

Can I sell my property?

You can try to **sell your property** if your property is worth more than the total amount of debt tied to the property, as discussed above.

If a foreclosure case has already been filed against you, you should act quickly to sell the property 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 may be willing to give you some time to try to sell. It is a good idea to talk to a lawyer about 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 are considering 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, where you can 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 for sale and what houses they've recently sold. You can also meet with realtors to figure out if you want to trust them with selling your home. If you want to go forward with a sale, you should work with the realtor you choose to get your home on the market to sell.

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

If you owe more than the property is worth, the property is sometimes said to be "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).

Generally speaking, even if the property is underwater, it still makes sense to figure out how you want to let go of the home to avoid foreclosure. Being involved gives you more control over the process, including when you may need to leave your home.

There are a few options for letting go of your home if it is underwater:

1. Deed in Lieu
2. Short sale
3. Consent judgment *in rem*

You can find more details about each option on the following pages.

For each, **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. You should talk with a tax professional if you are considering one of these options.

Legal Aid does not give people tax advice, but you can find out where to get help at legalaiddc.org/legal-info/free-tax-return-prep.

Underwater Option 1: Deed in Lieu

What is this option?

A “deed in lieu of foreclosure” is an agreement that you make with the mortgage company where you give it the deed to your property in exchange for it not foreclosing on you.

You should read the “deed in lieu” agreement carefully and make sure you understand what it says before you sign it. You should look for an agreement to release you from any remaining liability on the mortgage debt.

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. This typically means that the mortgage company would forgive the money you owe them for the mortgage, including any amounts 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.

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 this 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, getting a buyer, and getting the mortgage company's approval for the sales price and the buyer.

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.
- But, importantly, because the judgment is “*in rem*”, 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.
 - This means that you are protected from owing any additional money to the mortgage company after the foreclosure sale.

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. *The judgment won't appear on your credit report, but landlords can still search for a judgment, and so a judgment may make it harder for you to find rental housing. A judgment also could show up on some employment-related background checks.*

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 to make sure you understand what you are agreeing to.

Avoid: “Consent Judgment” (not *in rem*)

What is a consent judgment?

With a standard consent judgment (not one “*in rem*” like discussed above):

- 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. This is because you agree that the mortgage company can come after you for the money you owe on the mortgage.

You may not be as harmed by a consent judgment if your income is “protected” by the law. This happens in only certain situations, for example, if your only income comes from SSI, Social Security, TANF, child support, pension, or a 401K. If these are your only sources of income, debt collectors generally can’t take your money, but you should talk with a lawyer to be sure.

However, if you expect your financial circumstances to change (for example, if you are receiving public assistance now but may go back to work in the future), a consent judgment should usually be avoided because you could risk the mortgage company trying to collect your employment income from you in the future.

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

If you don’t do anything about your home, 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).