

Legal Services Corporation of Delaware, Inc.

A non-profit law firm and community education organization assisting low-income families in Delaware.

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Foreclosure Court Notices ^[1]

Writ of Scire Facias

In Delaware, a lawsuit is required to foreclose on your mortgage except for certain types of mortgages issued by the government. The foreclosure process takes an average of 5 to 6 months from filing the lawsuit until the confirmation of the foreclosure sale.

Don't be surprised if none of the papers in a foreclosure lawsuit actually use the word "foreclosure." Instead, the lawsuit papers will probably use the Latin words "scire facias sur mortgage" or "sci fa sur mortgage." If the foreclosure is in Superior Court, the Sheriff will serve you with a "writ of scire facias" (sci. fa.) at your residence.

The sci. fa. has many papers including a Summons, Complaint, a certified copy of the mortgage, an Affidavit of Demand, a Fair Debt Collection Practices Act disclosure statement and a "Notice to Lien Holders and Tenants of Filing of Action."

Within 10 days of filing the foreclosure lawsuit, the lender must send by certified mail a copy of the complaint and a "Notice to Lien Holders and Tenants of Filing of Action" to you and anyone with an interest in your property, such as your tenants and other lenders. The lender will also post this notice on the main door of your house.

You must answer the complaint within 20 days after you are served with the complaint. For this reason, it is important to see an attorney as soon as possible, because, if you fail to answer within 20 days, or your answer does not meet other legal requirements, default judgment will be entered against you. Unless the default judgment is vacated or reopened, you will automatically lose your home.

In Delaware, there will usually be a notation on the complaint that plaintiff demands that defendant answer the allegations of the complaint by affidavit pursuant to 10 del. C. § 3901. This means that your answer to the complaint must include an affidavit of defense. Your affidavit of defense must give detailed and specific answers to all the allegations in the affidavit of demand, otherwise, the court may grant the lender's request for a default judgment and you would automatically lose the foreclosure lawsuit.

Possible defenses to a foreclosure lawsuit are satisfaction or payment of the mortgage, or defenses that seek to avoid the mortgage, such as, assignment, discharge, duress, forfeiture, fraud, illegality, ratification, unjust enrichment and waiver.

After you answer the complaint and affidavits, then the court will send you a Case Scheduling Order. It is important for you, or your attorney, to appear at the court on the dates scheduled and meet other deadlines listed on the Case Scheduling Order. The foreclosure lawsuit gives you a chance to appear before the court and present any defenses explaining why your house should not be taken and sold to satisfy the debt. If you fail to appear, default judgment will be entered against you and you will automatically lose your home.

Notice of Sale

If you lose the foreclosure action or a default judgment is entered, the sheriff will issue notice of sale and sell your house at a public sale. Notice of sale must be delivered to you at least 10 days before the day of the sale. When you receive notice of sale you should contact an attorney before the sale date to discuss whether bankruptcy would be helpful for you. Advertisements will also be posted in local newspapers for 2 weeks before the sale. The sheriff will sell your house at a public sale usually located at the county courthouse.

Confirmation of Sale

To complete the process on judgment of foreclosure, there is a confirmation hearing scheduled about 30 days after the Sheriff's Sale. If there are no objections to the confirmation of the sale, then the sheriff delivers a deed to the new owner who bought your house at the Sheriff's Sale.

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