

INTRODUCTION

Has your home (or property) been damaged as a result of Hurricane Katrina? Are you having trouble making your mortgage payments? Has your lender sent you a notice that it is going to foreclosure on your property? Are you worried that you're going to lose your home?

You might have protections in Mississippi. Under Mississippi law, you might be able to postpone foreclosure of your home or property for two years from the date of the emergency or disaster declaration; that date is August 27, 2007 for Hurricane Katrina.

WHAT KEY TERMS DO I NEED TO KNOW?

Mortgagor and Mortgagee

You are the Mortgagor as the borrower and owner of the property. The **Mortgagee** is the holder of the mortgage and lender of money. Examples are a bank, a person, a lending organization or a secondary market lender such as Fannie Mae, Ginnie Mae, Freddie Mac, etc.

Mortgage

The mortgage is the legal document between the Mortgagor and Mortgagee. But **every mortgage is different**, so **read it carefully**.

Foreclosures

A "foreclosure" is the legal process started by the Mortgagee to repossess your home or property, because the loan is in "default." A default occurs when you fail to make required payments on time.

Injunctions and Restraining Orders

A Preliminary Injunction ("PI") or Temporary Restraining Order ("TRO") is a "temporary" court order commanding someone to do or not do something. It is issued to prevent injury or damage and lasts only until a **full hearing** can be held.

WHAT RELIEF IS AVAILABLE TO ME TO STOP A FORECLOSURE?

Mississippi allows for a moratorium period on mortgage foreclosure and execution sales during emergencies and disasters such as Hurricane Katrina. The moratorium period is two years from the date of the disaster declaration, which was on August 27, 2005. Thus, if your situation complies with the statutory requirements, the **Mortgagee will not be able to foreclose the mortgage until August 27, 2007 at the earliest.**

Even if the moratorium period is granted, **you may be required to pay all or a reasonable portion of the taxes, insurance and interest** associated with the property and a reasonable sum for upkeep of the property during this moratorium period.

Additionally, **the mortgage debt is not erased.** At the end of the moratorium period, you may have to pay all overdue amounts to forestall another foreclosure effort by the Mortgagee.

WHAT DO I HAVE TO PROVE TO OBTAIN RELIEF?

You must follow numerous steps to obtain relief under the Mississippi statute (Miss. Code Ann.. § 89-1-301 to § 89-1-329):

- The Mortgagee must determine to foreclose the mortgage on your home or property. The Mortgagee will normally send you a "notice" of foreclosure and advertise the proposed foreclosure sale. This should give you time to assess your options.
- You must prove that your home or property was "directly damaged" by Hurricane Katrina (and not some other reason).
- You must prove that you are unable to pay the arrearages due on your debt (or pay off the entire amount).
- **You must prove that you made diligent efforts to secure refinancing of your debt.** Refinancing is when you obtain another loan to pay off your present lender. You probably must show that you exhausted all federal and lending agencies. One way to prove this is to attach letters or actual loan applications.
- **You must prove that your property's value was reduced by 15%.** There are many ways to prove this:
 - If very obvious, possibly pictures and your testimony.
 - A licensed appraiser who could charge a few \$100 per hour
 - A licensed general contractor might give you an estimate of repair costs and may charge less than \$100 per hour.
 - A real estate agent or the city's tax appraisal. You could use the purchase price as a base point if you purchased recently.

**** Once you receive notice but before the actual date of the foreclosure sale, you (or your lawyer) must file for a Temporary Restraining Order ("TRO") or Preliminary Injunction ("PI") in court.** If you do not have a lawyer, **you can stop the foreclosure by filing a Petition For Injunction** in your County Chancery Court with an Affidavit attesting to the eligibility criteria shown above. This is a website link for a **model Petition and Affidavit**, <http://www.ago.state.ms.us/pressreleases/morgageinstructions.pdf>, which you can find at the website of Attorney General Jim Hood.

If you are granted a TRO or PI, the Judge will forbid the Mortgagee from foreclosing on your property for **only a few weeks** until a **full hearing**. At the **full hearing**, the Judge will determine whether you should receive **the entire postponement until August 27, 2007**. At the full hearing, you must prove the same things as mentioned above.

WHO DO I HAVE TO NOTIFY?

You should give notice to **any lien holders or anyone else having a legal claim on your property**, including second-mortgages, tax liens, mechanics liens, etc. A title search or the city or county's tax records might help you find who you need to notice.

WHAT HAPPENS DURING THE MORATORIUM?

The Statute is not a "free ride." The Judge might require you to **pay all or a portion of the income or rental value of the property**. The Judge will determine how much, if any, you must pay by taking evidence of the value of your property.

The Court will make determinations for these payments on a case-by-case basis. That means that you can argue to the Court for a payment plan that best suits your needs (financial or otherwise).

*** If you do not pay these carrying charges or commit waste on the property, you might forfeit your right to postponement of the mortgage foreclosure.**

WHAT HAPPENS AFTER THE MORATORIUM?

At the end of the moratorium, **your debt does not go away**. The Statute is only a two-year moratorium from the date of the disaster or emergency declaration, which is August 27, 2007.

The Statute does not relieve you of obligations to pay the mortgage loan or reduce it. If you do not pay after the end of the moratorium

period, your property still could be foreclosed on. However, you might be able to refinance the debt during or at the end of the moratorium period.

So, it is important to have a plan on how you are going to make payments when the moratorium is over. In some cases, you will have insurance proceeds, or possibly, a CDBG grant or SBA loan. In other instances, you may need to consider Chapter 13 bankruptcy or work out an agreement with your lender.

WHAT IF MY LENDER IS A FEDERAL AGENCY?

The Foreclosure Statute does NOT apply to mortgages held by the United States or any agency of the United States. The problem is that it is very unclear what is and what is not a federal agency. As of this writing, it is still unclear whether "secondary market lenders" such as the Federal National Mortgage Association (FNMA or Fannie Mae), the Government National Mortgage Association (GNMA or Ginnie Mae) or the Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac) are considered an agency of the United States. If the Court finds that these "secondary market lenders" are federal agencies, you will not be able to postpone mortgage foreclosure under this statute.

ARE THERE OTHER WAYS TO POSTPONE FORECLOSURE?

You have the right to represent yourself in Court. If possible, however, you should obtain a lawyer, because the Moratorium Act is complicated. And if you have other causes of action against your lender; for instance, a claim under the federal Truth-In-Lending-Act, RESPA or the Fair Debt Collection Act, it may be lost if you do not assert it with Petition for Injunction. If you cannot afford a lawyer, call Mississippi Center for Legal Service at 1-800-959-6752.

Disclaimer: The law often changes and each case is different. This pamphlet is meant to give you general information and not specific legal advice. While every effort has been made to be accurate as of the time of writing, no warranties, express or implied, are made regarding the foregoing information. This pamphlet is provided free of charge and no attorney/client relationship is created.

©2006

Miss. Center for Legal Service, Corp.
North Miss. Rural Legal Services, Corp.

<http://www.mslegalservice.org/>

North Mississippi Rural Legal Services



<http://www.nmrls.com/>

MISSISSIPPI CENTER FOR JUSTICE

<http://www.mscenterforjustice.org/>

Special thanks to lawfirm of Mintz Levin, Boston MA

MINTZ LEVIN

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC

If you cannot afford a lawyer, please call:

1-800-959-6752 (MS Center for Legal Service)

Or

1-800-498-1804 (No. MS Rural Legal Services)

Mississippi Center for Justice is a member of
the Steps Alliance.

www.stepsouthms.org



Distribution made possible
by a grant from the AARP Foundation.

HOW TO STOP FORECLOSURE OF YOUR HOME OR PROPERTY

AN INFORMATION GUIDE

