

## **Frequently Asked Questions (FAQs) in South Carolina Master-in-Equity Court**

**WARNING:** You are strongly encouraged to seek the advice of an attorney in any legal matter. If you move forward without an attorney, it may negatively affect your legal rights. If you have questions about your legal rights or the law that affects your case, please talk with an attorney.

**DISCLAIMER:** These FAQs address common issues involving **South Carolina residential mortgage foreclosures actions filed after May 9, 2011**. The general information provided in these FAQs is not legal advice, cannot be cited as legal authority, and cannot replace the advice of an attorney licensed in South Carolina. The information in these FAQs is accurate as of the date of publication. If you decide to bring a lawsuit in a South Carolina court without an attorney, you are responsible for researching the law on your own. Please note that the presiding judge in each case decides what law applies in that case.

### **What is a Master-in-Equity?**

The Master-in-Equity is a judge who has the power to decide certain cases without a jury. A Master-in-Equity typically handles cases involving real estate, such as foreclosures, partitions, and contracts. However, a Master-in-Equity may hear any matter referred to him or her by the Circuit Court. See [S.C. Code Ann. § 14-11-10 et seq.](#) and [Rule 53 of the South Carolina Rules of Civil Procedure](#).

To determine if your county has a Master-in-Equity, please see the [South Carolina Judicial Department's website](#).

### **What is a Special Referee?**

In counties that do not have a Master-in-Equity, the Court may appoint an attorney to serve as a judge for foreclosure cases. This individual is known as a Special Referee. See [S.C. Code Ann. § 14-11-60](#).

## **What is a note?**

When you borrow money from a lender, you sign a note with the lender promising to pay the money back. The note gives the lender the right to collect payment on the loan if you do not repay the loan.

A note is a legal document that typically states the loan amount, the interest rate, the time and method of repayment, and the obligation to repay.

## **What is a mortgage?**

When you borrow money from a lender to purchase a home or land, the lender usually requires that you give it a mortgage on the property.

A mortgage is a security agreement between you and the lender where your home or land serves as collateral for the loan.

## **What is real estate foreclosure?**

A real estate foreclosure is the legal action the lender files with the court asking the court to sell the property to satisfy the debt.

## **Has a foreclosure been filed against me?**

- A foreclosure is a lawsuit that must be filed in the courthouse and you must be properly served. There are a variety of ways that you can be served with legal papers. Some of the common ways to serve legal papers include:
  - (1) Personal delivery by the Sheriff's Department;
  - (2) Personal delivery by a private process server;
  - (3) U.S. mail; and

(4) Publication (announcing the lawsuit in a specific newspaper).

- You may also contact the Clerk of Court's office in the county where the property is located to find out if a foreclosure action has been filed against you by the lender. A list of all of the Clerks of Court and their contact information can be found on the [Judicial Department's website](#).
- If you are not sure if you have been sued in foreclosure, you may also contact your mortgage servicing company directly to find out if your lender has filed a foreclosure action against you.

## **Can I represent myself in a Foreclosure Action?**

Yes, you can represent yourself in court.

**NOTE:** You cannot represent anyone else, even if you hold their Power of Attorney or the appointed Personal Representative.

## **Can I represent my business in a Foreclosure Action?**

No, a business entity such as a corporation, homeowners association, or limited liability company ("LLC") must be represented by an attorney in circuit court or in the appellate courts of South Carolina.

## **If I decide to represent myself in court, will judge make me follow the same rules as an attorney in the courtroom?**

Yes. Under South Carolina law you are held to the same standards of compliance and understanding of court rules and procedures as an attorney. The judge and the judge's staff cannot help you try your case. The Clerk of Court cannot help you, other than to provide scheduling information.

If you decide to represent yourself in court, you must follow the South Carolina Rules of Civil Procedure. A link to the court rules can be found on the [Judicial Department's website](#). In addition, you may want to check your county's court website for additional information.

## **What should I expect on the day of my hearing?**

- Study your hearing notice carefully to determine why you are coming to court. There are many different types of hearings. You may be going to court for a motion hearing or a final merits hearing or trial.
- A motion hearing is normally a time where the judge will hear from the parties who have an interest in the case. The judge usually does not allow testimony during this type of hearing.
- During a final merits hearing or trial, you will be able to testify and call witnesses (if you want).
- On the day of any court hearing or trial, arrive about fifteen (15) minutes early to find the courtroom. You can check with the Clerk of Court's office or ask a bailiff or deputy for directions to the courtroom.
- If you plan to show the court any papers, pictures or other evidence, bring copies for the judge and all parties and attorneys involved in the case.
- When you enter the courtroom, sit in the audience section until your hearing is called.
- More than one case or trial may be scheduled that day. You may have to wait until your hearing is called.
- Once your hearing is called, come to the front and sit at one of the two tables facing the judge.

- The judge will explain how the hearing or trial will be conducted.
- Each party will have a chance to speak and ask questions. Be polite. If the judge interrupts you while you are speaking, don't argue. It is likely that the judge either needs something explained, the matter has already been covered, or the judge determines that your statement is not important to the case.
- The judge will let you know when it is your turn to give evidence or cross examine witnesses. If an objection is made to evidence or testimony, remember that only one person can speak at a time.

**NOTE:** If you have not answered the Complaint, you may not have the right to testify or call witnesses.

- At the end of the hearing or trial, the judge will either:
  - (1) Rule on your case and ask one of the parties to draft a proposed order; or
  - (2) Ask each party to give him or her a written memorandum about the law and facts.
- The judge must decide the case based on the evidence and the law.

## **What do I say in court?**

- When you appear in court, listen carefully to the judge. Ask the judge's permission before you speak.
- You must stand when speaking to the judge, unless you are physically unable or the judge allows you to remain seated.
- When you speak to the judge, start by saying "Your Honor."

- Always speak directly to the judge, and speak loudly and clearly.
- Do not speak while other people are talking in court except when you want to object.
- Do not shake your head or sigh loudly when you don't like what somebody else says. You will have your chance to talk.
- When it's your turn to talk, stay calm and control your emotions as much as possible.
- Talk loudly enough for everyone to hear you. Remember the court reporter is making a written record of what you say, or the court's recording device needs to pick up your voice.
- Do not use slang terms such as "yeah" and "uh huh" because the court reporter and judge may have trouble interpreting what you mean.
- Don't yell, make threatening gestures, or curse.

## **Are there any additional things I need to know before I appear in court?**

- Don't wear a hat or head covering in the courtroom, unless for religious or medical reasons.
- Don't drink, eat, smoke, or chew gum while in the courtroom.
- Don't bring drugs or alcohol into the courthouse. Don't use drugs or alcohol before you come to court (unless medically prescribed).
- Don't bring guns, knives, or any other kind of weapon to court with you. Please note that there are metal detectors at the courthouses and deputies will search your bags when you go through the security check-point.
- Don't bring your cell phone or electronic devices such as blackberries, iPods, and other MP3 players to court. Most counties ban them in Court and will hold them in a room while you

are in court. If you are allowed to bring your cell phone to court, turn it off before you walk into the courtroom. If your phone rings, vibrates, or disturbs the proceedings, court officials may take your device and you may have to pay a fine.

- Arrive on time.
- Whenever possible, arrange for childcare prior to coming to court.
- Encourage all witnesses to arrive early for the hearing.
- Stand up when the judge enters or leaves the room and remain standing until the judge leaves or says you can sit down.
- Because each county is different, make sure you follow any additional rules specific to that court.

## **How can an attorney help me through the foreclosure process?**

If you have been served with a Foreclosure Summons and Complaint or Notice of Foreclosure Intervention, it is very important to talk to a licensed South Carolina attorney. A licensed South Carolina attorney who practices in this area of law should be able to:

- Help you understand the foreclosure process;
- Identify any defenses to foreclosure;
- Assist with loss mitigation (the process banks use to try to minimize their losses) or settlement efforts
- Counsel you about other options; and
- Help you talk with your lender and its attorney.

To find an attorney who can help you with this type of case, you can call the **South Carolina Bar's Lawyer Referral Service (LRS)** at **1-800-868-**

**2284** (toll free) or **South Carolina Legal Services** at **1-888-346-5592** (toll free).

More information about this service is provided at the end of these FAQs.

**NOTE:** If you need legal advice, you must talk with an attorney. The court, court staff, clerk of court, and the lender's attorney cannot give you legal advice.

## **How do I get an attorney if I cannot afford one?**

A foreclosure action is a civil action (not a criminal action) so you do not have a constitutional right to free legal aid. However, if you cannot afford an attorney, you may contact the **South Carolina Legal Aid Telephone Intake Service (LATIS)** at **1-888-346-5592 (toll free)** or **1-803-744-9430 (Columbia area)** to see if you qualify for free legal services.

More information about this service is provided at the end of these FAQs.

## **I was just served with a Foreclosure Summons and Complaint. Now what?**

If you plan to talk with an attorney, it is important to do so as soon as possible. You only have 30 days to answer or respond to the Complaint. If you do not respond in writing to the Foreclosure Summons and Complaint within 30 days, you could lose your ability to tell your side of the story and be held in default.

Default means that the allegations raised by the other side in the Complaint are admitted as true and accurate. See [Rule 12\(a\) of the South Carolina Rules of Civil Procedure](#).

**NOTE:** Calling the lender or the lender's attorney does not answer the complaint.



## **Why are there other Defendants named in my foreclosure lawsuit?**

The lender believes these additional defendants have an interest in the property for a number of legal reasons. For example, the other defendants may have a court judgment against you or co-own the land with you.

## **Do I need to answer the Foreclosure Summons and Complaint in writing if my lender and I are in the process of settlement?**

Yes, you need to respond to the Foreclosure Summons and Complaint in writing in order to protect yourself in court. The fact that you and your lender are trying to work things out does not mean that the foreclosure action has stopped.

You should file your original response or answer with the Clerk of Court's office and mail a copy to the judge, all parties, and all attorneys involved in the case. You should also keep a copy of the answer and bring it with you every time you come to court.

**NOTE:** You only have 30 days to answer or respond to the original Complaint. If you do not respond in writing within 30 days, you could lose your ability to tell your side of the story and be held in default. Default means that the claims raised by the other side in the Complaint are admitted by you. This means you could lose your right to fully defend yourself in court. See [Rule 12\(a\) of the South Carolina Rules of Civil Procedure](#).

## **What is Foreclosure Intervention?**

On May 2, 2011, the South Carolina Supreme Court issued an Administrative Order creating a foreclosure intervention process. Foreclosure intervention is a South Carolina process to ensure that lenders

and eligible homeowners have an opportunity for meaningful discussion about possible settlement options. Settlement options may include a loan modification, short sale, deed in lieu of foreclosure, etc.

To read this Administrative Order, see the Judicial Department's website: [Administrative Order Re: Mortgage Foreclosure Actions, 2011-05-02-01 \(May 2, 2011\)](#).

**NOTE:** If you are an eligible homeowner and your case was filed on or before May 9, 2011, you will be mailed a Notice of Foreclosure Intervention.

If your case was filed after May 10, 2011, the Notice of Foreclosure Intervention will be served with the Summons and Complaint.

## How do I know if my loan qualifies for Foreclosure Intervention?

Your loan may qualify for foreclosure intervention if you:

- 1) Live in your home and is not a vacation home or investment property; and
- 2) Meet the other qualifications listed in the Administrative Order: [Administrative Order Re: Mortgage Foreclosure Actions, 2011-05-02-01 \(May 2, 2011\)](#).

You can ask an attorney for advice about whether your loan qualifies for foreclosure intervention.

**NOTE:** You should still answer the Foreclosure Summons and Complaint in writing even if you think your loan may qualify for foreclosure intervention. If you ignore the court action you may lose your home even if you are talking with your lender.

**NOTE:** Foreclosure Intervention does not guarantee that you will be offered a loan modification or other settlement option.

## How does the foreclosure process work in South Carolina?

The basic residential foreclosure process is as follows:

1. The lender's attorney receives a request from its client to file a foreclosure action.
2. The lender's attorney will do a title search. This is when a county's records are checked to see who owns the property and if there are any liens. This search will help the attorney find all of the parties who need to be included in the case (including property owners, mortgage holders, lien holders, etc.).
3. If the lender's attorney decides to file a foreclosure action for its client, the attorney prepares a Lis Pendens, Summons, and Complaint. See [S.C. Code Ann. § 15-11-10](#).

*Lis pendens* is a Latin word meaning "suit pending." A lis pendens is a document that tells anyone who checks title to the property that a lawsuit has been filed concerning a piece of property. A lis pendens alerts anyone who may want to buy the property, a lender, or the public that the property's title is in question.

4. For cases filed after May 9, 2011, a Notice of Foreclosure Intervention is filed and mailed to the eligible parties.

For cases filed after May 10, 2011, the attorney will also prepare a Notice of Foreclosure Intervention to be served along with the Lis Pendens, Summons, and Complaint. See [Administrative Order Re: Mortgage Foreclosure Actions, 2011-05-02-01, \(May 2, 2011\)](#).

5. The Defendants have 30 days under the South Carolina Rules of Civil Procedure to serve and file a response to the Complaint and the Notice of Foreclosure Intervention. See [Rule 12 of the South Carolina Rules of Procedure](#).
6. If you file a response, you will have an opportunity to present your position at a hearing. If you fail to respond in writing as required by law, the Plaintiff's attorney may request a final merits hearing or trial.
7. Plaintiff's attorney or the court sends a notice of the final merits hearing or trial to all Defendants.
8. At the final hearing, the judge will hear from all parties who are present. If the lender proves its case, then the judge will:
  - Establish the debt owed;
  - Address any other allegations in the pleadings; and
  - Set a date for the property to be sold in an effort to satisfy the debt. For more information about the sale process, please review [S.C. Code Ann. § 15-39-610 et seq.](#)

## **What is the Home Affordable Modification Program (also known as HMP or HAMP), and why is it important to the South Carolina foreclosure process?**

The Home Affordable Modification Program (HMP) is a federal law that makes certain lenders, servicers, and investors give eligible borrowers a chance to modify their loan.

Every loan is not eligible for HMP. To determine if your loan is eligible, please review the following website carefully:

## [Home Affordable Modification Program.](#)

You may also speak with an attorney to see if your loan qualifies for HMP modification.

The South Carolina Supreme Court requires lenders to determine if the loan is subject to HMP before filing the lawsuit. To read the South Carolina Supreme Court's Order, see the Judicial Department's website:

[Administrative Order Re: Mortgage Foreclosure and the Home Affordable Modification Program \(HMP\), 2009-05-22-01 \(May 22, 2009\).](#)

## **What are some things I can do to prevent foreclosure?**

- Hire a licensed South Carolina attorney if you can.
- Stay in contact with your lender and their attorney. It is important to note that lenders and their attorney can only discuss the loan account with the authorized person. This includes the person who signed the note, their personal representative, or someone with written authorization.
- If you are interested in trying to settle your case, talk with an attorney, or contact your lender's attorney to learn about settlement options.
- Remember to be patient. Do not give up. It may take a long time to get all the paperwork right and make it through this process.

**NOTE:** The foreclosure action will not stop while you are discussing settlement choices with your lender, unless you are taking part in the foreclosure intervention process established by the court.

## **How long can I stay in my home if a foreclosure action has been filed against me and I cannot afford the payments?**

If you are the owner of the property and a foreclosure action has been filed against you, you own your home and may stay there until it is sold at a foreclosure sale and the Master-in-Equity issues a deed to the successful buyer.

**NOTE:** If you decide to leave your home either during or after the foreclosure action, you should tell the lender's attorney and the court. You may give them your new address so the Court can contact you in case the property sells for more than the debt and you are owed money.

## **I am a tenant with a lease living in the property subject to a foreclosure action, what are my rights?**

As a tenant you may have rights under federal law that could allow you to stay in your home for a period of time.

You may ask the Master-in-Equity or Special Referee for an explanation of these rights at the hearing or trial.

See ["Protecting Tenants at Foreclosure Act of 2009"](#) for more information.

## **Should I contact the lender's attorney?**

It is always a good idea for you, your attorney, or an authorized party to stay in contact with the lender's attorney. This is the best way to try to reach a settlement. Keep in mind that the lender's attorney cannot give any legal advice or let you know what the next step in your case will be.

You need to hire an attorney to receive legal advice. If you cannot afford an attorney, you may be eligible for free legal aid.

**NOTE:** You should send a copy of any papers you file with the Clerk of Court to all parties and all attorneys in the case.

## **Should I attend the hearing or trial?**

Yes, you should go to the hearing. This is the time when you can tell your side of the story and ask questions. If you do not go to the hearing, you will not have the chance to tell your side of the story to the court.

## **Do I need to move out on the day of my foreclosure hearing?**

No. The foreclosure hearing or trial is when the judge will hear the facts of the case.

The judge may find you owe the debt and set a sale date at the foreclosure hearing or trial. See [Rule 71 of the South Carolina Rules of Civil Procedure](#). The sale date is when the property will be auctioned off at a public sale to the highest bidder. Your home will be advertised in your local paper for three weeks as required by law. The sale will be at a public auction as ordered by the court. Check with the clerk of court to see when it is done in your county.

## **Can I attend the foreclosure sale?**

A foreclosure sale is a public auction and anyone (including you) may go and bid on any property for sale. If you plan to bid on a property at a foreclosure auction, you should make sure you understand the bidding requirements. Those requirements are listed in the Judgment Order and also in the Notice of Sale.

## **When are foreclosure sales held?**

It is best to check with the Clerk of Court in the county where the property is located and review the Judgment Order and Notice of Sale.

**NOTE:** Many county website have Master-in-Equity links that list foreclosure sales. Check the county website for more details.

## **If the Court sells my house at a foreclosure sale, could I still owe the lender money?**

Maybe. After a foreclosure sale if the debt is not paid in full, the lender may get a deficiency judgment against the person or persons who signed the note.

A deficiency judgment is the difference between what the property sold for at the foreclosure sale and what you owe. For example, if you owe the bank \$100,000 and the house sells for \$50,000, the deficiency judgment is equal to \$50,000. See [S.C. Code Ann. § 15-39-610 et seq.](#) and [S.C. Code Ann. § 29-3-660.](#)

## **What if my home sells for less than I owe?**

If you owe more on your mortgage than your home sells for at a foreclosure sale, the lender may ask for deficiency judgment against you, unless it specifically waived that right in writing prior to the sale. A deficiency judgment is also known as a personal judgment.

A deficiency judgment is the difference between what the property sold for at the foreclosure sale and what you owe. For example, if you owe the bank \$100,000 and the house sells for \$50,000, the deficiency judgment is equal to \$50,000. See [S.C. Code Ann. § 15-39-610 et seq.](#) and [S.C. Code Ann. § 29-3-660.](#)

**NOTE:** If you decide to leave your home either during or after the foreclosure action, you should tell the lender's attorney and the court. You may give them your new address so the Court can contact you in case the property sells for more than the debt and you are owed money.



## **The judge told me at the hearing that a deficiency has been demanded. What does this mean?**

This means that a personal judgment may be entered against you for the difference in what the property sells for and what you actually owe the lender. See [S.C. Code Ann. § 15-39-610 et seq.](#) and [S.C. Code Ann. § 29-3-660](#). The lender may try and get the additional money from you.

## **The judge told me at the hearing that the lender is waiving its right to a deficiency judgment against me. What does this mean?**

This means that the lender has given up its right to collect a money judgment against you if the property sells for less than what you owe the lender at the foreclosure sale

## **Can I challenge a deficiency judgment?**

Yes, you may challenge the deficiency judgment. See [S.C. Code Ann. § 29-3-680 et seq.](#)

## **What if my home sells for more than I owe?**

The extra money is called surplus funds. The Court may set a hearing to decide who is entitled to the money. See [Rule 71\(c\), South Carolina Rules of Civil Procedure](#).

## **Do I have the right to contact the judge or his staff to discuss my case?**

No. The judge and his staff cannot talk with you about your case without the other side being there. The only time the parties will be able to communicate with the judge is through their written papers, or at a status conference, hearing, or trial.

## **Resources**

- If you do not understand the information in these FAQs, you may want to contact an attorney.
- To find an attorney who practices law in this area, please contact the South Carolina Bar's Lawyer Referral Service (LRS) at 1-800-868-2284 (toll free). LRS offers a referral by location and type of law. The lawyers who sign up with LRS are in good standing with the South Carolina Bar and must maintain malpractice insurance coverage. The lawyers also agree to a 30-minute consultation for no more than \$50. After the 30-minute consultation, the fees will be the lawyers' normal fees. Once you receive a referral, you will be expected to contact the lawyer by telephone to make an appointment.
- If you cannot afford an attorney, you may contact the South Carolina Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592 (toll free) or 803-744-9430 (Columbia area). Eligibility for assistance will depend on your income and assets and the type of problem you have. The income limit to be eligible for Legal Services is 125% of the federal poverty level, which changes every year in April. There is also an asset limit (example of assets include money in bank accounts, property, etc.). Additionally, the problem you have must be within the list of problems with which Legal Services can help.
- For information regarding the federal poverty guidelines, check the U.S. Department of Health and Human Services' website: [Federal Poverty Guidelines](#)
- The [South Carolina Department of Consumer Affairs](#) may also have additional information to help you.