

KNOW YOUR RIGHTS: CO-OPS AND FORECLOSURE RISK FAQs

Foreclosing on a co-op happens much faster than it does for houses, condos, and other real property because it doesn't require going to court. Below are FAQs about co-ops and the risk of foreclosure.

HOW ARE CO-OPS DIFFERENT FROM OTHER PROPERTY?

- A housing cooperative (“co-op”) unit is not real estate, unlike a condominium or a house. Co-op owners are called shareholders because they do not own real property; rather, **the shareholder owns shares of stock in the co-op corporation** that owns the building, and has a “proprietary lease” for their unit.
- A co-op loan (or mortgage) is secured by the borrower’s ownership interest in the co-op corporation. The bank will file a UCC Financing Statement and will physically take the co-op stock certificate and proprietary lease as collateral.
- If a co-op owner falls behind on their co-op loan, the lender can foreclose very quickly, **and without a court process.**

WHAT ARE THE TWO WAYS A CO-OP SHAREHOLDER CAN BECOME AT RISK OF FORECLOSURE?

- Failure to make monthly payments to their lender.
- Failure to make required co-op maintenance payments (including special assessments) owed to the co-op, which can also foreclose, and which can also lead to foreclosure by the lender.

WHAT HAPPENS IF I DEFAULT ON MY CO-OP LOAN?

- A lender can pursue foreclosure without going to court (known as a non-judicial foreclosure) or seeking board approval when a shareholder falls behind on mortgage payments. **Most foreclosures on co-op loans are non-judicial foreclosures in New York.**
- In a non-judicial foreclosure, the foreclosing lender sends default and termination notices to the borrower, and **in most cases the lender can schedule an auction very quickly.**
- A lender must send a notice ninety (90) days before the sale (“90-Day Notice”). **The notice must inform the borrower of actions the borrower can take to avoid foreclosure and provide a list of not-for-profit housing counselors** in the county where the apartment is located.
- The lender must also serve a notice at least ten (10) days before the actual sale notifying the borrower of the date, time, and location that the sale will take place.



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- If a borrower does not cure the default, the lender notices a public sale of the shares. At the auction, the high bidder gets the shares and is the owner of the co-op unit, but it will then have to bring an eviction case in court to remove the former co-op shareholder from the unit.
- **IF YOU RECEIVE A 90-DAY NOTICE OR A NOTICE OF FORECLOSURE, YOU SHOULD SEEK HELP RIGHT AWAY!**

WHAT HAPPENS IF I FAIL TO PAY MY CO-OP MAINTENANCE CHARGES?

- The co-op can send a formal demand for overdue common charges to the shareholder with a copy to the shareholder's lender, if the shareholder has an outstanding loan. The lender usually will pay the overdue amounts in order to protect their interests in the co-op and seek the payments from the shareholder, or start foreclosure, because the failure to pay maintenance is also a default under the loan.
- If there is no loan, and the unit owner has not agreed on a repayment plan with the co-op, then the co-op can bring a non-payment action in housing court to evict the shareholder.
- Instead of pursuing an eviction case in housing court, the co-op could instead start a foreclosure without using the court, known as a non-judicial foreclosure, by sending a Notice to Cure demanding payment of the past due maintenance amounts.
- If those amounts are not paid, the co-op will then send a Notice to Terminate the proprietary lease for nonpayment and if necessary a Notice of Public Auction Sale. If the arrears are not resolved prior to the sale date, the unit is sold at auction. The successful bidder is responsible for evicting the former shareholder from the premises.
- **IF YOU RECEIVE A NOTICE TO CURE, A NOTICE TO TERMINATE, OR A NOTE OF PUBLIC AUCTION SALE, YOU SHOULD SEEK HELP RIGHT AWAY!**



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