



# THE FLOYD LAW FIRM PC

**Legal  
Sense**

The Floyd Law Firm PC  
Fall 2007

## Home Foreclosures: Know Your Rights

### Foreclosure Listings



**Foreclosures are big news these days. Between sub-prime mortgages falling apart and the stalling housing market, you could be forgiven for thinking most homeowners are on the verge of foreclosure. Although this is clearly not the case, if you are one of the unfortunate homeowners teetering on the edge of foreclosure, or against whom foreclosure proceedings have already begun, you should be aware of some important rights and responsibilities.**

A foreclosure is a legal action in which a lender takes ownership of the property used to secure a loan because the owner failed to make required payments. Foreclosures can happen quickly. Although traditional foreclosures involve court supervision, not all foreclosures require court orders. Depending on your state and the original terms of your loan agreement, a foreclosure can be completed in 45 days or less. Still, if you are currently going through foreclosure, don't panic. Although this is a very stressful and serious situation, you do have options, and being pro-active is in your best interest. In fact, if the foreclosure is still in its early stages, it is likely that your lender would prefer to work things out with you and not foreclose.

#### **Be Informed**

When you first receive notice of a foreclosure action, there are some important steps to take. First, identify the parties involved. Today, most mortgages are sold and repackaged many times after the loan is first given. In some cases, the company that currently owns the loan won't actually be the one with the authority to renegotiate or modify the loan. This means that the company starting foreclosure proceedings against you isn't actually the party you will work with. Although you may have originally have worked with your local bank, your loan may now be owned by a larger company located in a different state. Knowing the parties should help prevent confusion and move the process along faster. It will also help protect against fraud. Once proceedings start, your name and address are public record, providing valuable information to individuals and corporations looking to prey on the vulnerable. Don't

assume that just because a letter arrives in your mailbox that it is from a reputable, reliable source.

*You should familiarize yourself with relevant state and federal laws and the policies of your specific lender. The Federal Trade Commission's website ([www.ftc.gov](http://www.ftc.gov)—search "Foreclosures") provides valuable information on how to find your state's regulations and on avoiding foreclosure. Because states vary greatly with regard to timing and notice requirements, knowing the specific laws governing your state and lender can save time and headaches.*

#### **Assess Your Options**

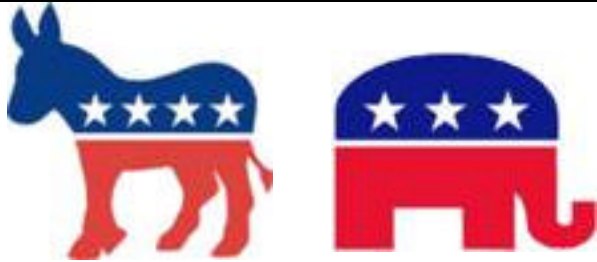
If you are about to miss a payment or if you have received a foreclosure notice, you aren't out of options yet. You should contact the "loss management" department of your lender immediately. Depending on your situation and lender, you may be able to refinance or determine a "work-out" plan. Although you still owe money, this will prevent a foreclosure from appearing on your credit record and could save your home.

#### **Get Help**

**If foreclosure is a realistic possibility for you, don't run from the problem — confront it head on and get help.** Help can come in various forms: credit and debt management advice from credit counselors, legal guidance from your attorneys, and sometimes even government action from state consumer protection agencies (if you think fraud or predatory lending has been involved). As a homeowner you should be aware of your financial rights and responsibilities. There are many steps involved in the home lending process; if you are interested in learning more about your options, be sure to contact your lender or work with your attorney. Although financial struggles create stressful times, do what you can to ensure that your rights, and in some cases your home, are protected.

#### **Sidebar: Refinancing Your Home**

If your interest rate is higher than the current market interest rates, then you may benefit from refinancing your mortgage. Whether refinancing is a good option for you depends on the market, your mortgage, and your circumstances. You will need to have at least 20 percent equity in your home if you wish to avoid paying private mortgage insurance. Talk to your lawyer to work out the pros and cons.



## **Election Season**

**There is no denying it, the campaign season is in full swing. But with the 2008 election still a year away, it is going to be a long campaign. Nevertheless, you really have only one thing to worry about – voting. Voting is one of the most important civic duties, yet recent voter turnout rates hover around 51%. Voting isn't always as simple as waking up on Election Day and filling out a form – to ensure that your voice is heard, you must carefully follow registration and voting requirements.**

In order to be eligible to vote, you must be 1) 18 years or older on Election Day, 2) a citizen, naturally born or naturalized, and 3) registered. Registering usually requires that you either register in person or mail in your registration. In most states, you can register at your local Department of Motor Vehicles. You should check with your Secretary of State to determine exactly where to register in your state. In addition, downloadable registration forms are likely available from your Secretary of State's website. **You simply fill out the forms and mail them in. Rock The Vote ([www.rockthevote.com](http://www.rockthevote.com)) and Declare Yourself ([www.declareyourself.com](http://www.declareyourself.com)) also provides a registration form that works in most states.**

In some states, such as Minnesota, you can register at your polling place on Election Day so long as you can verify your residence. In others, you must already be on the roll of eligible voters in order to vote on Election Day. This means you must register *before* Election Day. Deadlines for registration vary, but are usually 15-30 days before the election. The moral of the story is—to be sure you can vote in 2008, don't wait, register early.

Federal elections are held on the Tuesday after the first Monday in November. Although this may seem like a random date, it actually has ties to our agrarian, rural, religious beginnings. This date ensured that voting wouldn't interfere with farming or religious obligations and would allow ample travel time.

Today, the importance of Election Day is recognized in some states by its status as a holiday. For example, Delaware and Indiana recognize an Election Day holiday. If you live in a state where Election Day is a holiday, check with your employer to ensure you can have the day off. If instead you live in a state that doesn't recognize the holiday, you should still talk to your employer about policies that may permit you to take time off for voting. Some employers grant their employees a late start or early departure on Election Day.

**On Election Day, you should bring your voter registration card, a government issued ID, and proof of residency. Proof of residency is often simply an official document that lists your address, such as a check or lease.** Although states vary as to the exact identification requirements, bringing all three ensures that you won't hit any snags. Your polling place should be identified on your registration card. Usually it's a school or community center within walking distance of your home. If you have lost your registration card or have yet to receive it, you can find your polling place by searching your Secretary of State's website.



**The right to vote is a constitutionally protected right.** If you believe you are properly registered and eligible to vote, but on Election Day are denied the ability to do so, you should ask to file a "provisional ballot." This will allow you to vote normally on Election Day. Afterwards, your ballot will go through a review process to confirm your eligibility.

***Remember voting is your right. If you have any questions about voting procedures in your state, your eligibility, or if you feel your rights have been violated, work with your attorney to answer your questions and identify the proper course of action.***

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**Legal Update - Fourth Amendment**

As a passenger in a car stopped by police, you probably wouldn't feel free to simply walk away. In June, the United States Supreme Court ruled that you aren't expected to. *Brendlin v. California* asked the Court to decide whether a passenger in a car stopped by police should be considered "seized" within the meaning of the Fourth Amendment, which bans "unreasonable searches and seizures." Under the Court's prior decisions interpreting the Fourth Amendment, if you are seized illegally by government officials, any resulting evidence cannot be used against you at trial. Courts have long recognized that the driver of a stopped car has been "seized" and therefore can challenge the constitutionality of both the stop and the government's use of any resulting evidence. Before *Brendlin*, courts disagreed about whether passengers had this same right.

The Supreme Court held that *Brendlin*, a passenger, could challenge the constitutionality of a traffic stop. In reaching this

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"We think

that in these circumstances any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission. A traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver."

If you think your rights under the Fourth Amendment have been violated, or if you are interested in learning more about your rights as a passenger, talk to your lawyer about your options.

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**Legal Implications of Living Together**

If you are unmarried and live with a significant other, you are by no means alone. Increasing numbers of couples are choosing to live together without being formally married. Generally referred to in the law as "cohabitating," the popularity of this living arrangement has many causes: the desire of many young people to marry later in life, high housing costs, and an increasingly broad social acceptance of such arrangements. Whatever the reason, if you have chosen to cohabit, your decision has important legal implications.

Even though you may be very close to your partner, if you aren't married, legally you aren't family. **There are many rights associated with marriage that aren't extended to cohabitations. These include property settlements if the relationship ends, the opportunity to file joint tax returns, the right to receive certain government benefits owed to your partner (Social Security for example), and an automatic right to health and life insurance policies.** Some of these rights can be acquired through affirmative actions, such as making your partner the beneficiary of your insurance policy. However, it is important to remember that legally you are otherwise strangers.

If you currently cohabit or are considering it, you and your partner should talk about a cohabitation agreement. These are similar to prenuptial agreements in that they outline what will happen if the relationship ends, including the division of property, how debts will be split, and any support obligations. Cohabitation agreements should also summarize what will happen to the couple's property upon the death of one partner and create a health care proxy or medical directive. Either clause allows you or your partner to make medical decisions on behalf of the other should it become needed.

*Since family law does not regulate cohabitation agreements like it does marriage and prenuptial agreements, there is some flexibility in drafting. You should be able to tailor the agreement according to your own circumstances. Cohabitation agreements are enforced through general contract law, and as such, you and your partner should work with an attorney to draft an agreement that is both legally valid and a fair reflection of your desires.*

If you and your partner plan to live together for an extended period of time, be aware that some state statutes allow for "common law marriages." Common law marriage allows a heterosexual couple to be considered married in the eyes of the law without the formal steps. Only a minority of states recognize common law marriage today. If your state is one of these, you should speak with your attorney, especially if you are not interested in establishing common law status. Because common law marriage can be implied from your conduct, if you don't want to be considered married, your attorney should draft an agreement explicitly stating that you and your partner are living together as unmarried cohabitants. If, on the other hand, you are interested in establishing a common law marriage, there are steps you will likely need to take: you must affirmatively agree to common law marriage, hold yourself out as married, and live together for an extended period of time (length varies between states). A valid common law marriage will create the same rights and obligations as an official marriage, without requiring the formal steps.

**Cohabitation is becoming a common step in the modern dating process, and in some cases, an alternative to marriage. However, planning for your cohabitation doesn't end after the boxes are all unpacked. Being aware of the law, and working with your partner and, when appropriate, your attorney, will ensure that both you and your partner are protected and don't hit any legal road bumps.**



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#### Word About Our Firm

The Floyd Law Firm PC is a general practice law firm established in 1973. We have five attorneys who can handle almost every type of legal work which you, your family or your business may require. We take great pride in our team of lawyers, legal assistants, legal secretaries, and staff members. Each attorney, legal assistant and legal secretary is an expert in one or more fields. This expertise allows us to provide superior legal services in a number of fields of law such as Personal Injury Claims, Community Association, General Trial Work, Golf Industry, Estate Planning, Estate Administration, Social Security Disability, Elder Law, Real Estate Transactions, Family Law, Worker's Compensation, Wills and Trusts and Criminal Law. We hope you will meet our well-qualified team and allow them to work together for your benefit.

**Website:**

**[www.floydlaw.com](http://www.floydlaw.com)**

## NEWS FROM THE FLOYD LAW FIRM

The following have celebrated anniversaries with The Floyd Law Firm: **Congratulations to All!**

**Holly L. Holloway** celebrated a 2-year anniversary on 10/25/07.

**Cassandra C. Stout** celebrated a 2-year anniversary on 10/24/07.

**Judy L. White** celebrated a 23-year anniversary on 11/19/07.

**Linda L. Cardinali** joined the firm part time on 10/10/07 and works in the area of litigation.

**R. Jeffrey Sawyer** recently completed and passed the Title Insurance Agent exam.

**Dalton Floyd** was recently quoted in *Golf, Inc.* magazine in article about the "new wave of litigation involving golf courses."

*Holiday Schedule: Closed Thanksgiving 11/22 and Friday 11/23.*

*Closed Christmas 3PM Friday 12/21/07—Reopen Thursday 12/27/07*