**What Happens in a Foreclosure When Divorcing?**

If you are in the process of [getting divorced in Highland Park](http://www.divorcelawyerschicago.org/divorce/) or Deerfield and are also facing the prospect of foreclosure, what do you need to know? It is extremely difficult to go through a divorce, especially given that the dissolution of a marriage can put serious financial strain on both parties. In most situations, the parties go from living on two incomes in a single household to two incomes for two separate households. To be sure, the economic impact of a divorce can be challenging. It is often more frustrating when you are dealing with additional debt matters, especially the prospect of losing a home to foreclosure.

There are numerous options for dealing with foreclosure during divorce. We will help you to understand some of the different options that may be available to you.

**1. Bring Your Lender into Your Divorce**

Has your lender already initiated foreclosure proceedings? Then this may be the best option for you. What do we mean when we say you can bring the lender into your divorce proceedings? In short, you can sue to add the lender as a third party in the divorce. If you do this, the court handling your divorce will also have jurisdiction over that additional property—the house—and the judge may be able to issue a temporary restraining order to prevent the foreclosure action from moving forward. Since the mortgage is a marital debt, it will need to be assessed and distributed along with other marital property under the Illinois Marriage and Dissolution of Marriage Act ([750 ILCS 5/](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2086&ChapterID=59)).

If the lender has *not* begun foreclosure proceedings but you have concerns about continuing to make mortgage payments, one of the subsequent options may be best suited to your situation.

**Seek a Loan Modification or Refinance the House**

Does one of the parties in the divorce want to stay in the property that is at risk of foreclosure? Depending on the separate property and financial assets of each party, it may be possible to refinance the home or to obtain a loan modification. Refinancing the house—and getting a better interest rate with lower monthly payments—would require that at least one of the parties has strong enough credit to refinance the loan on the property. When you refinance, you essentially pay off the old loan and get a new one with better terms.

If refinancing is not a possibility, then the party who wants to stay in the house may be able to obtain a loan modification. A loan modification can also reduce the interest rate, but in general it will alter the terms of the mortgage to make monthly payments more affordable. If, however, a loan modification is not an option and you cannot refinance, you may need to try to sell the property.

**Selling the House and Short Sale Options**

If the house has some value, it may be best for the parties to sell the property so that the debt is not considered as marital property. If the house has no equity, or worse, if it is underwater, then selling the property might only result in bigger burdens for the divorcing parties. One option could be a short sale. In a short sale situation, the home is usually underwater, which means the homeowners owe more on the loan than the house is worth. In these cases, the lender may agree to accept the sale price of the home (even if it is less than what the debtors owe) and agree to forgive the remaining debt.

If neither a general sale or short sale are possibilities, the parties may have to consider a deed in lieu of foreclosure. In effect, the homeowners sign over the house to the lender “in lieu of” a foreclosure. In other words, the homeowners hand over the deed so that a foreclosure does not happen. Sometimes lenders want to recover the amount the homeowners owe, but a lawyer can negotiate a “deed in lieu” that benefits you.

**Contact a Chicago Divorce Lawyer**

If you have further questions, you should speak with a divorce lawyer in Chicago as soon as possible.As a dedicated family law attorney, I am prepared to assist you throughout each step of your case. Don’t hesitate to reach out to me directly for more information and to learn how I can help.