

# Foreclosures



ID 14164300 © Arenacreative | Dreamstime.com

Foreclosure is a legal process for a **mortgagee** (a lender, usually a bank) to sell or take ownership of a property when the **mortgagor** (the borrower and property owner) defaults on the mortgage.

There are many laws in Alberta that apply to foreclosures:

- *Law of Property Act*
- *Land Titles Act*
- *Alberta Rules of Court*
- Contract law (The mortgage is a contract between the property owner and the lender. The terms of the mortgage govern parts of the foreclosure process.)

**EXAMPLE** You get a mortgage from the bank to buy a house. You lose your job and stop making your mortgage payments. You have broken your agreement with the bank (defaulted on your mortgage). The bank is worried it will lose money, so it starts foreclosure proceedings. The bank sells the property or becomes the owner of the property to collect the money it is owed under the mortgage.

## Defaulting on a Mortgage

By signing the mortgage, you (the borrower/property owner) make promises to the lender. Breaking any of these promises means you have committed an act of default.

Each mortgage is different, but common acts of default include:

- failing to pay mortgage payments
- failing to pay property taxes or condominium fees
- failing to insure the property
- allowing significant damage to occur to the property
- becoming bankrupt or insolvent

Once you commit an act of default, the lender can start the foreclosure process.

The lender can start the foreclosure process after just one default, such as one missed payment. Usually lenders will not foreclose right away because it is an expensive process. It is usually in everyone's best interests for you and the lender to come to an agreement, such as a payment plan.

The point of the foreclosure process is to stop the lender from losing money. At what point the lender starts the foreclosure process depends on how many payments you have missed, the value of the property, how much you owe in total and other risk factors.

## Options for Property Owners

You have four choices:

1. You can try to solve the problem with the lender on your own. Usually this negotiation starts after the lender sends you a reminder to pay or a demand letter.
2. You can do nothing. The lender will go through the foreclosure process. You will lose the property and may still owe the lender money.
3. You can sell the property and use the proceeds to repay the amount owing.

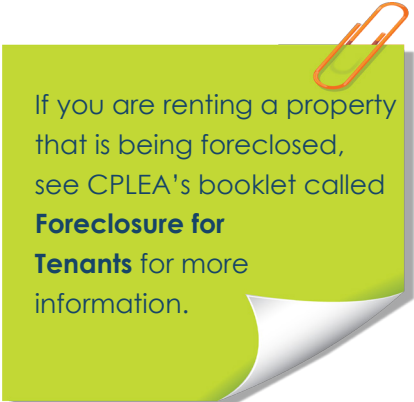
4. You can go to court to:

- co-operate with the lender to try to keep the property. The lender will want you pay amounts outstanding and their solicitor-client costs.
- ask the court for more time before the final foreclosure order. You need a good reason to do so.
- challenge parts of the foreclosure process. For example, the amount outstanding, your personal liability (such as if you have a home equity line of credit) or the listing price (by getting your own appraisal).

## The Foreclosure Process

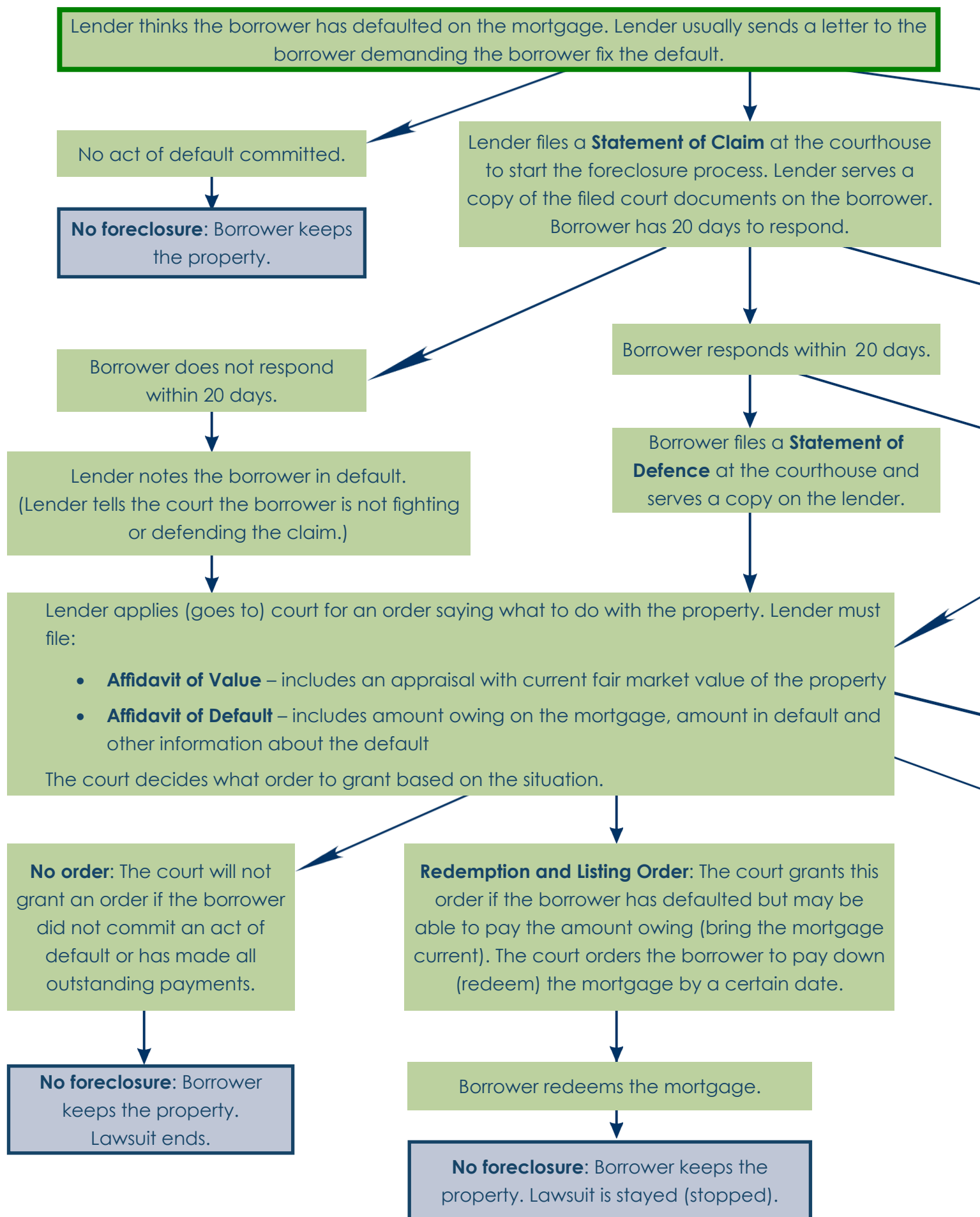
The foreclosure process can take less than three months to a year or more. There are specific steps in the process, but each situation is different. If you and the lender agree on next steps, you may not have to go to court. Other times you will have to go to court.

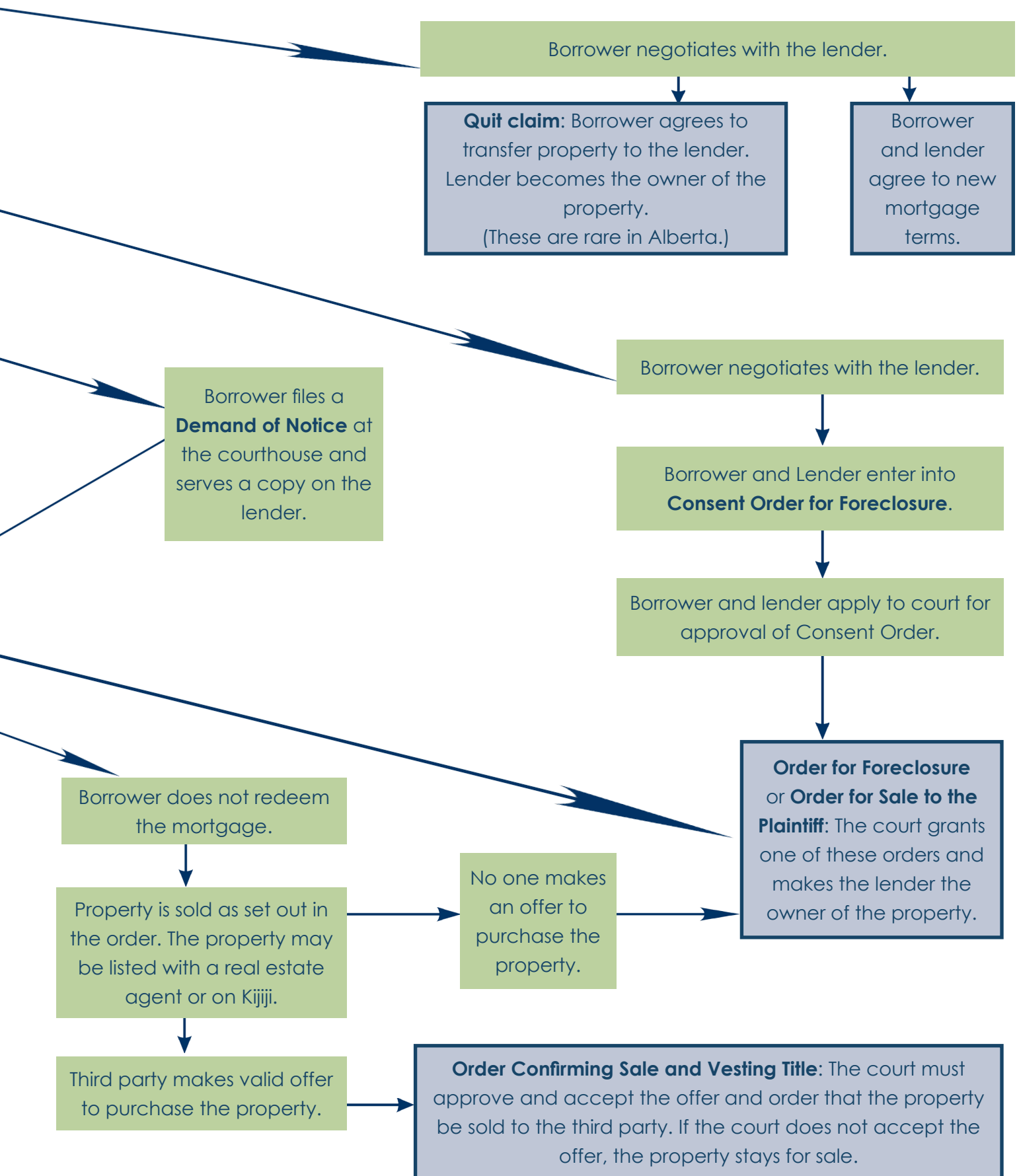
Keep reading for an overview of the process.



If you are renting a property that is being foreclosed, see CPLEA's booklet called **Foreclosure for Tenants** for more information.

**In court, the lender is the plaintiff and the borrower is the defendant.**





A **Demand of Notice** is a document where the borrower admits liability but keeps the right to dispute the amount the lender is seeking.

A **Consent Order for Foreclosure** is a court order agreed to by the lender and the borrower, rather than the court making a decision. Coming to an agreement can shorten the foreclosure process. The court must approve a Consent Order.

### **“When will I have to move out?”**

If the court grants an order transferring the property to the lender or a third party, you usually have 30 days to vacate the property. This applies to tenants too. If you do not move, the new owner can hire a civil enforcement agency to force you to leave the property.

### **“Who decides the value of the property?”**

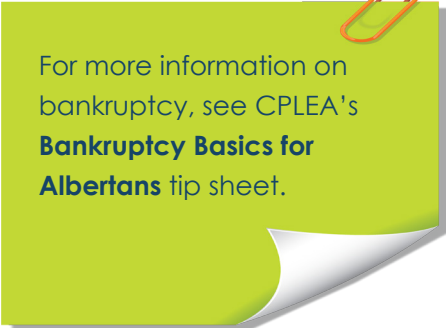
The lender will get an appraisal done. Usually it is a drive-by appraisal – based only on looking at the outside of the house. However, an appraisal that considers the inside of the house usually gives a higher value, unless there are major issues inside. You can agree to let the appraiser into the house. You can also get your own appraisal, which you will have to pay for. The court will usually consider the lender’s appraisal and your appraisal when approving a listing price. This can mean a higher listing price and a smaller deficiency judgment.

### **“Is foreclosure the same as bankruptcy?”**

No. Foreclosure deals with a mortgage. When a borrower defaults on the mortgage, the lender forecloses on the property to recoup their money.

Bankruptcy happens when someone cannot meet all of their financial obligations. This includes credit card debts, personal loans, unpaid utility bills, etc. Bankruptcy is a legal process which frees a person or company from the obligation to pay some or all of their debts, allowing them to have a fresh start. The debtor transfers their assets to a trustee. The trustee uses the assets to pay the bankrupt’s creditors (people the debtor owes money to).

Sometimes a foreclosure and bankruptcy happen at the same time.



For more information on bankruptcy, see CPLEA's **Bankruptcy Basics for Albertans** tip sheet.



### **“Can I appeal an Order for Foreclosure?”**

You can only appeal a court order for limited reasons. You cannot appeal a court order simply because you do not like it. If you want to appeal an order, contact a lawyer immediately for advice. There are short timelines for filing an appeal. Remember that you may also have to pay the lender's legal fees. Talking to a lawyer may save you time and money if an appeal is not reasonable.

### **“What are solicitor client costs? Why do I have to pay them for the lender?”**

Solicitor client costs mean the lawyer's fees plus any money the lender had to spend on things like filing fees and appraisals. Usually the mortgage says the borrower must pay the lender's solicitor client costs and all disbursements if the lender hires a lawyer because the borrower defaults. Remember, the mortgage is a written contract, and you agreed to what it says when you borrowed the money. The result is that you have to pay fees for two lawyers: your own (if you hire one) and the lender's. Review your mortgage documents for more information.

If you think the lawyer's fees are unreasonable, you can ask an assessment officer at the courthouse to review the bill. The assessment officer can lower the fees if they are not reasonable.

### **“Once the property has been foreclosed, do I owe the lender more money?”**

Sometimes. In Alberta, there are different mortgages each with different rules. If the mortgage is uninsured a lender can only collect the money owed to them by forcing the sale of the property. If the property sells for less than what the lender is owed, the lender loses money.

Insured mortgages are different. Lenders grant insured mortgages when the borrower does not have a big enough down payment. The lender requires the borrower to pay for mortgage insurance, for the benefit of the lender. The lender can ask the court for a deficiency judgment during the foreclosure proceedings. The deficiency is the money still owed to the lender after the sale of the property. If a lender obtains a deficiency judgment against you, they can use legal methods to collect, such as seizing other assets you own or garnisheeing your wages or bank account.

## GET MORE HELP

### Help with Debt Alberta

Answer questions to find resources for your situation.

<https://www.cplea.ca/help-with-debt-alberta/>

### Consumer Debt Negotiation Clinic

Get free legal advice about your options and help negotiating with your creditors.

<https://law.ucalgary.ca/clinics/public-interest-law/ongoing-projects/consumer-debt-negotiation-project/info-clients>

You can download, print off or order copies of CPLEA resources from [www.cplea.ca/publications](http://www.cplea.ca/publications)

You should not rely on this publication for legal advice.