

# yourLAW

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## Home Foreclosures: Know Your Rights

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

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## 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

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## Special Rules for Special Education

As the school year starts, parents and students face a host of challenges: extra-curriculars; new teachers and classmates; and for some families, understanding the rules governing special education for their children with disabilities or special needs. Special education is growing fast, both in the education and legal communities. This issue is quickly becoming one of the most complex aspects of education. Consequently, it is often a source of worry for educators, parents, and students alike. Although working through the legal system can be stressful and costly, as a parent, you shouldn't be afraid to advocate for your child, and when needed, to turn to the legal system to ensure your child gets a useful and appropriate education.

To understand the legal framework behind special education, parents of special needs children should become fully versed in the Individuals with Disabilities Education Act (IDEA). IDEA is the federal law that regulates educational services for disabled students. Under IDEA, a child is eligible for special education services if that child has a recognized disability, *and* because of the disability, needs special education and related services. This means that if your child is disabled, special education services are not automatically available – the disability must impact your child's education.

### Before advocating for your child, become familiar with IDEA terms:

**FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE):** IDEA guarantees that eligible children receive a FAPE. FAPE prepares children for productive, independent lives and gets them ready for further education. A FAPE must be based on research-proven methods of teaching and learning.

**LEAST RESTRICTIVE ENVIRONMENT (LRE):** IDEA requires that disabled students be educated in LREs. An LRE can be in either a public or private institution and can include regular or special education classrooms. LREs require that disabled children be placed in separate classrooms only when no benefit can be derived in the traditional setting. LREs ensure that disabled children are educated amongst nondisabled children as much as possible.

**INDIVIDUALIZED EDUCATION PLAN (IEP):** An IEP is essentially a written plan outlining a special needs child's educational goals and needed services.

Individualized Education Plans (IEPs), combined with due process hearings, make up the cornerstone of IDEA. These two steps provide the structure for your child's education and allow you to voice any concerns. Your child's IEP should include long- and short-term goals, as well as benchmarks and assessment points. You should be present when the IEP is created and should ensure that all interested parties are there as well: special and regular education teachers; professionals such as social workers and psychologists; and, in some cases, your child. The IEP meeting is often a long process and it is important that you feel your child's rights are protected.

Due process hearings tend to garner the most attention; however, if your child's IEP is appropriate and followed, there should be little need for such a hearing. Hearings should only be used as a last resort when all other

routes have failed. Due process hearings give parents the opportunity to challenge a proposed IEP, move, or educational change. Since these hearings are formal legal proceedings, they are becoming ever more sophisticated and costly. Nevertheless, you should not avoid a hearing if you feel one is needed in order to help your child receive necessary services.

A due process hearing is similar to a civil trial, although slightly less formal. At a hearing, evidence and testimony will be presented and there are often opening and closing arguments. These hearings allow you and the school the chance to show why your desired placement or change is best. Hearings are conducted in front of impartial hearing officers, who are usually independent contractors not employed by the local board or state agency. You can hire an attorney or advocate to represent you, or you can represent yourself if you choose. It is important to realize that the school will be represented by attorneys and that there are many legal terms and theories at play. Although legal fees can be costly, depending on the complexity of the issues involved and the emotions you are bound to feel, in some cases hiring an attorney may prove invaluable. Under IDEA, your child will "stay put" during the challenge over a placement or service. This means that for the duration of any mediations or hearings, children remain in their current placements. For some parents, this provides time for evaluation and a sense of safety during this stressful process.

You are central to your child's special education. First and foremost, under IDEA, parental consent is required before an initial evaluation and before an IEP can be put in place. This consent is important because it allows parents time to decide how to respond and opens up the initial dialogue between parents and schools. Even after consent has been given or a placement has been challenged, you can continue to play an important role. It is helpful to educate yourself about your child's rights under IDEA. You should also evaluate the relationship you want to create with school administrators – remember, currently you may disagree with them, but your child will be a part of the school community for years to come. In order to maintain good relations, prioritize your concerns and goals, and try to keep these at the forefront of any discussions or decisions. Lastly, it is important to keep detailed notes and copies of all documents. Every conversation with evaluators or school officials should be recorded, and notes should be maintained at every meeting. Although this may seem like a lot of work, if you ever need to challenge a decision or go to court, you will be happy you have such detailed records.

Special education is an important tool for many families as it provides their children with access to education and productive futures. If your child has been assessed as needing special education services or if you feel as though your child is not receiving the services necessary for his or her education, work with school administrators and your attorney to determine the appropriate course of action. ✕

## By The Numbers

- **3 years** is how long the IRS has to initiate an audit.
- **6 years** is how long the IRS has to pursue underreported income.
- **Forever** is how long the IRS can pursue claims of fraud.

### A rule for keeping your documents: 3 – 7 – forever

Here are some general guidelines for how long you should keep your documents. Be sure to shred any sensitive documents, especially those with account numbers, Social Security, and/or date of birth information.

#### Keep 3 years

- household bills
- credit card statements
- receipts for minor purchases

#### Keep 7 years

- canceled checks
- check registers
- bank statements
- pay stubs (If you worked at the same employer all year, your-end stub should have all your information.)
- tax returns and supporting documentation

#### Keep forever or until assets are sold

- receipts for home improvements
- receipts for major purchases
- annual investment statements
- gift tax returns
- inheritance papers
- insurance policies
- mutual fund statements
- a copy of your will
- health care proxy forms

## Announcement

**JECK, HARRIS & JONES, LLP** is pleased to announce that it recently entered into a strategic affiliation with the law firm of **BRODY WILKINSON PC** in Southport, Connecticut to serve the needs of our clients who have Connecticut real property or business interests. While this relationship will facilitate the cooperation between our two firms, both will remain independent. With our new affiliation, we are able to offer clients who divide their time between Florida and Connecticut the services of experienced Connecticut counsel. Our firm has a long, solid relationship with the attorneys at **BRODY WILKINSON PC**, and we have the highest regard for their abilities.

## Firm's Office Moving

We are pleased to announce that in December 2007 the firm is relocating! The firm's new offices will be on the sixth floor of the Juno Ocean Key office building located just south of the Bluffs Square Shopping Center on U.S. Highway One. The building is immediately west of the intersection of U.S. Highway One and Juno Ocean Walk Drive. The firm has been in our present offices for more than twenty years and weathered several hurricanes during that time. Nonetheless, everyone at the firm is looking forward to moving to new offices, built in accordance with current building and hurricane codes. Our telephone and fax numbers will remain unchanged. On your next visit to the firm's offices, we look forward to giving you a tour!

## Philippe Jeck

Philippe Jeck has been invited to be on the Leadership Team for Palm Healthcare Foundation, Inc., a large nonprofit foundation serving the health care needs of Palm Beach County. The Leadership team is charged with raising the funds necessary to construct the Palm Healthcare Pavilion on the St. Mary's Hospital campus to serve children with special needs and those who require diabetic medical care.

In June, Philippe Jeck was the moderator for a panel discussion before the Master Brokers Forum. The Forum is an invitation only organization of the 200 top producing professionally accomplished residential real estate brokers in Palm Beach County. The panel, which consisted of Gary Nikolits, the Palm Beach County Property Appraiser, Lee Gorodetsky, owner of L & S Insurance Services, Inc. and Robert Hamilton, a real estate analyst with Metrostudy, discussed the new real property tax law, the property insurance crisis, and hurricanes and their affect on the real estate market.

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.”

## 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. **x**

## 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 result, the Court applied its test for identifying Fourth Amendment seizures – *would a reasonable person in the same position feel free to*

*leave?* In ruling that passengers in stopped cars are likely going to think that they can't leave, the Court noted: “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. **x**

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.



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 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. ✕

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. ✕