

# Keeping Your Home

## Consumer Alert!

By Edward Tonini, Director of Education.

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Credit Counseling

### Foreclosure filings rose 75% in 2007.

RealtyTrac U.S. Foreclosure Market Report

If you are one of the many people who are concerned about losing your home, this publication will provide valuable information to help you understand the foreclosure process, options you may have, things to watch out for, and how to find help.

### What is Foreclosure?

Foreclosure is a legal process to end your ownership of a property that was used to secure a loan. In other words, if you don't make your payments on a mortgage or home equity loan, the lender has the right to force the sale of your house to recover what you owe.

### The Foreclosure Process

Because it is a legal process, certain procedures must be followed in order to foreclose on a home. This takes time. It is essential that you inform yourself of the process under your state laws and that you keep track of any deadlines. The specific steps and amount of time will vary by state, however, the following items outline the general order.

**Notice of missed payment.** Typically, you will be charged a late fee if the payment is not received within 15 days of the due date. After you've missed a payment, you might receive a letter requesting payment.

**Notice of Default.** Typically after being 60-90 days late, you'll receive a notice that you are in default. However, you might receive this notice even before you are 30 days late and without any prior communication. You will then have a certain time period in which to "cure" the default and reinstate the



loan, meaning pay all missed payments, late fees and charges. Typically, this period is 90 days, however, it can be much shorter depending on your particular state laws.

**Notice of Acceleration.** This notice means that the entire principle balance is due right away. You might receive this 90 days after you received the notice of default or you may even receive it at the same time as the notice of default.

#### How long?

Some states require that a court order be obtained in order to foreclose (judicial foreclosure) in which case you will receive a summons or other court notice. The notice will explain your rights, including how much time you have to respond. Judicial foreclosure can take a year whereas nonjudicial foreclosure can be carried out in less than two months.

**Notice of Sale.** Finally, you'll receive this notice that sets the date the home will be sold, typically 15 to 30 days in the future.

### Why Does It Happen?

There may be many reasons and circumstances that lead to a foreclosure such as a job loss, serious illness, death in the family,

divorce, accident, or natural disaster. Unscrupulous lending practices are another factor in foreclosures.

### Predatory Lending

This year, about 2.2 million families are in danger of losing their homes to foreclosure due to unfair and deceptive loans. The Center for Responsible Lending reports that many people have been victims of "dangerous lending practices and loose underwriting in the subprime mortgage market." They assert that "Mortgage brokers and loan originators pushed subprime borrowers into loans they could not afford, and steered them away from the sustainable loans for which they qualified." For example, some borrowers were placed into an "exploding ARM" (an adjustable rate mortgage that did not require proper documentation) when they could have received a thirty-year fixed rate loan for less than the initial rate on the ARM. For more information, visit [www.responsiblelending.org](http://www.responsiblelending.org).

If you think you may be a victim of predatory lending, consider speaking with a competent attorney.

### Foreclosure Avoidance

Foreclosure avoidance refers to action you take to save your home. There are many possible actions and combinations of actions that can be taken. Speaking with a HUD-approved nonprofit housing

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counselor is an excellent way of learning about your options. Before speaking with a housing counselor, consider the following actions:

1. Re-examine your budget to cut expenses and increase income.
2. Prioritize your debts and make mortgage payments first after basic necessities (food, water/heat/power, required medicine, property insurance, essential transportation).
3. Make partial payments- if they get rejected put them into a savings account.
4. Verify the amounts you owe and resolve any disputes (use legal assistance if needed).
5. Contact the Mortgage Company to request a "Workout" (a temporary or permanent change to your mortgage terms). It's a sad fact that most people don't even try to contact the lender. If you're anxious about doing this directly, you can obtain the help of a housing counselor. Remember that the lender would also like to avoid foreclosure because it costs them money.

## Types of Workouts

The following are types of workouts that exist. The specific options available to you may be limited by your circumstances and your lender.

- **Delay of foreclosure sale.** A delay is requested when a sale is scheduled less than 30 days away.
- **Repayment Plan.** A default is cured by making the regular monthly mortgage payment plus partial monthly payment on the arrears (past-due amount).
- **Forbearance.** Monthly payments are reduced or suspended for a temporary period. Typically, at the end of this period, you must begin paying the regular monthly mortgage payments plus partial monthly payment on the arrears (past-due amount).
- **Temporary interest rate reduction.** Your financial difficulty must be for a limited period of time and you must present a plan for being able to make full payments by a certain date.
- **Recasting of missed payments.** Your obligation to make those payments is delayed until the end of the loan term.
- **Modification (permanent) of loan terms:**
  - a. Interest rate reduction.
  - b. Extension of the loan payment period. Allows you to repay the principal over a longer term, thereby reducing the

monthly payment.

- c. **Reamortization/capitalization of arrears.** Past-due amount is added to the principal and then the payment is recalculated.
  - d. **Reduction of principle balance.** If your home's value has lowered (for reasons beyond your control) to less than the loan amount or you have legal claims against your lender, you may be able to have the principle balance lowered.
  - e. **Deferred junior mortgage.** The principle is lowered but a second mortgage is kept in that amount which you would have to pay later if the property value goes back up.
- **Short sale/ Preforeclosure sale.** The lender agrees to let you sell your home through a realtor (in lieu of a foreclosure) even if the proceeds will not cover the amount due on the mortgage.
  - **Deed in Lieu of foreclosure.** If accepted, ownership of the property is transferred to the lender to satisfy the mortgage.
  - **Mortgage assumption.** The mortgage is taken over by a third party.

## Advantages & Disadvantages

The specific advantages and disadvantages of any workout option will depend on the particular workout variation your lender offers (or agrees to) and on your particular circumstances. However, the following general points can be made:

### Advantages

- ✓ Completed Workout plan looks better on your credit report than a foreclosure sale.

### Disadvantages

- ✗ Fees/charges may be charged for workout applications and/or assistance.
- ✗ Many workouts include giving up legal claims you may have against the lender.
- ✗ Many refinancing schemes are frauds. It's not a good idea to pay off unsecured debt with debt secured by a mortgage.
- ✗ Tax consequences: if you are forgiven any debt amounts, it may be taxable income. If the home was your principle residence, you might be able to exclude the amount under the Mortgage Forgiveness Debt Relief Act of 2007 which applies to debt forgiven in 2007, 2008, or 2009. For more information, visit [www.irs.gov](http://www.irs.gov) or speak with a qualified tax advisor.
- ✗ Mortgage delinquency is typically reported by credit bureaus for seven years, as is a foreclosure sale.
- ✗ Foreclosure sale or Bankruptcy is usually fatal to new applications from reputable lenders for at least two years.

## Other Options

A qualified housing counselor can help you become aware of other options.

**Refinancing.** You might be able to qualify for an FHA Secure loan (which is a new initiative allowing the Federal Housing Administration greater flexibility in offering homeowners refinancing). If you have significant equity in the home and you are at least 62 years old, you might consider a reverse mortgage.

**Selling.** You will usually be able to get a better price if you sell the home rather than let it go to foreclosure. If you can sell it for more than you owe, you won't need the lender's permission to sell.

**Bankruptcy.** If no other satisfactory solution can be found, you might consult a competent attorney about Chapter 13 or Chapter 7 bankruptcy. Bankruptcy can delay a foreclosure and may solve it.

### Rescue Frauds and Scams

The Attorney General of North Carolina offers the following tips for avoiding foreclosure rescue scams. Steer clear of companies that:

- Charge an up-front fee. (That's illegal in some states, such as NC).
- Want you to make your mortgage payment to them.
- Discourage you from talking to your mortgage company or an attorney.
- Promise to pay off your mortgage if you sign over the deed to your property.
- Refuse to put their promises in writing.

## Finding Help

For foreclosure intervention assistance, consider the following sources:

- **Nonprofit HUD-approved counseling agency** – such as Alliance Credit Counseling.
- **The Department of Housing and Urban Development (HUD)** – The housing branch of the federal government. HUD maintains a list of approved counseling agencies. 1-800-569-4287 or [www.hud.gov](http://www.hud.gov). For an FHA loan: 1-800-225-5342.
- **Homeownership Preservation Foundation** – A nonprofit organization that provides free foreclosure intervention counseling from HUD-approved counselors. 1-888-995-HOPE (4673) or [www.995hope.org](http://www.995hope.org).
- **Legal Assistance** – Consider consulting a competent attorney. If you are a low-income earner, consider contacting your local legal aid society (Check your local yellow pages for "Legal Aid" or inquire at your local courthouse or visit [www.lsc.gov](http://www.lsc.gov)).

## To Find Out More



- *Guide To Surviving Debt* (National Consumer Law Center. 2006)
- Read the following articles available at our website [www.knowdebt.org/education.php](http://www.knowdebt.org/education.php):
  - *The Spending Plan*
  - *More With Less*