How to Avoid Foreclosure

Most lenders do not want to foreclose. The process costs them money and they often sell the properties at less than the amount of the mortgage. Plus, lenders have some legal requirements and moral obligations to avoid foreclosure. Still, there are predatory or abusive lenders who intentionally lend money with the goal of pursuing foreclosure and repossessing the home. If you are facing this situation, you need to learn about foreclosure scams. Your goal should be to work cooperatively with your lender to avoid foreclosure but to actively oppose any scams or unethical programs.

Strategies for high equity homeowners

If you have a significant amount of equity in your home, it may be possible to refinance your mortgage. It may be possible to lower your payments by taking out a new thirty year mortgage for just the amount owed in a conventional refinancing. Of course most loans require qualifying so you would need the income and the debt-to-income ratio required for the new loan. If you happen to be over the age of sixty-two with significant equity, you might qualify for a reverse mortgage. Reverse mortgages do not require repayment while the borrower is alive and living in the home. These are not usually considered foreclosure options but could be options for a very few consumers.

Most consumers fearing foreclosure do not have high equity options. They need to focus on other strategies.

Strategies for everyone else

If you have a situation that suggests you might save your home but you need help, it is possible that you might benefit from one of the following solutions by working with your lender:

1. A repayment plan is geared toward consumers who are up to three months behind on their mortgage payment. These plans allow a homeowner to pay extra each month to catch up so that the basic terms of the loan are not changed.

2. A loan modification is a written agreement between the servicer and homeowner that changes one or more of the original loan terms, such as the interest rate, term of the loan or type of mortgage (for example from ARM to fixed rate).

3. Forbearance applies to people who have experienced a major financial setback, such as one-time medical expenses or a temporary loss of income. Borrowers must be able to prove that they have a new job or a new source of income to resume making their regular monthly payments in the future. This might be thought of as a cross between a temporary loan modification and a repayment plan. It seeks to give a borrower time to get the loan back on original terms.

4. A partial claim serves as a second loan for a buyer with a loan guaranteed by the Federal Housing Administration. The mortgage loan is brought up to date by securing up to twelve months of past-due principle, interest, taxes and insurance into a separate, interest-free note. The note is payable when the original mortgage is paid off.

Mortgages through the Federal Housing Administration (FHA) and Veterans Administration (VA) may offer different or additional foreclosure alternatives in addition to the partial claim. Check with these agencies if you have these loans.

The best solution (sometimes called a workout) will depend on your situation. A repayment plan may be a good remedy for someone who has to make up only one missed payment. A loan modification may be necessary for someone facing a long-term reduction in income. You need to work with your lender to determine which is the best solution.

Is there another option?

If you and the lender cannot agree on a solution, you might consider filing Chapter 13 bankruptcy. This temporarily suspends the foreclosure process and can force the lender to accept a repayment plan that is more affordable for you. Bankruptcy isn't always a solution—it will damage your credit and the current bankruptcy laws enacted in 2005 make it tougher to file bankruptcy for some people. But in most states including Arizona, bankruptcy might help save your home. Check with an attorney if bankruptcy might be an option for you.

How to work with your lender

Many people lose their homes because they are too ashamed to act. or they go into denial about the seriousness of the problem. To prevent foreclosure, be decisive and explore all solutions. Contact your lender or loan servicer at the phone number on your statement at the first sign of trouble—even if you have not missed a payment but you think you might have to in the future. Your lender will make notes about your phone call in your account file. Reputable lenders and loan servicers should view your contact as an indication that you are committed to fixing the problem rather than avoiding it. The lender may not be anxious to begin discussing possible solutions to your payment problem if you are current on your payments.

If you have already missed a payment and have not contacted the lender yet, do so immediately. Do not ignore letters or calls from the lender! The longer you wait to act, the fewer options you will have.

In some instances, the loan servicing agency is not the lender. Many mortgages get sold and packaged with other mortgages and sold again until it is difficult to find the actual owner. Some loan servicing agencies are less helpful than mortgage owners. They may not have the ability to negotiate a significant workout plan. Make sure you understand if you are dealing with the lender or a loan serving agent. If a loan servicing agent is unwilling or unable to help you, ask for the name of the owner of your mortgage. It might be possible to go directly to that institution.

If your loan is with a predatory or abusive lender, your phone call might not help. However, it will not speed up a foreclosure since state law dictates the foreclosure timeline. If you suspect you have a predatory loan—and especially if you believe you will miss a payment—contact one of the organizations listed in Avoiding Foreclosure Scams (page 5).

To prepare for your discussion with your lender, record your income and expenses and calculate the equity in your home. To figure your equity, estimate the current market value of your home. minus the outstanding balances of your first mortgage and any second mortgage or home equity loan. Then think about and write down answers to the following questions:

1. What caused the problem? What has happened to cause you to miss your mortgage payment(s)? Can you document your explanation for falling behind (for example, a doctor's letter or a notice of unemployment benefits)? What have you done to address and solve the problem?

2. How long will the problem last? Is this problem temporary, or long-term or permanent? What changes (good or bad) do you see in the next ninety days? Over the next twelve months? Are there other financial issues that might get in the way of getting back on track with your mortgage?

3. What solution would you like? Do you want to keep the home? What type of payment arrangement would be feasible for you? Can you make partial payments? When can you full payments?

4. What is your strategy? How are you going to make your solution work? Will you reduce other costs to make your mortgage payment? Will you find another source of income?

Throughout the foreclosure prevention process:

• Keep a folder in which you keep notes on all communications with the lender, including type and time of contact, name of representative, and outcome.

• Follow up any oral requests you make with a letter to the lender stating your understanding of all exchanges. Send it to the lender using certified mail so that you can make sure it got there. If you ask for a "Return Receipt" you will receive proof of delivery. Keep a copy of your letter.

• Make only promises you are sure you can keep and inform your lender of any changes in your circumstances.

• Meet all deadlines given by the lender.

• Stay in your home during the process, since you may not qualify for certain types of assistance if you move out. (If you rent out your home, this will change it from a primary residence to an investment property and will most likely disqualify you for any additional workout assistance from the lender.)

Avoiding foreclosure but surrendering the house

Not every situation can be resolved through your lender's loss mitigation programs. If you decide you will not be able to keep your home, or if you don't want to keep it, and you don't have sufficient equity to sell it and pay off your mortgage(s) in full, consider the following options:

1. Assumption of the loan. If you have an assumable loan (look for a "subject to transfer" clause in your loan agreement), it is conceivable that you could transfer your property to a new buyer who agrees to take over (assume) the existing mortgage. Assumable loans are very rare. so this will be an option for only a small fraction of homeowners.

2. Lender-approved sale. Your lender might hold off on foreclosure proceedings for an agreed upon time to give you a chance to put your home on the market. Or it might postpone the foreclosure sale if you have a pending sale contract.

3. Short sale. This is also called a pre-foreclosure sale on FHA loans. The lender may allow you sell the home before it forecloses on the property, agreeing to write off any shortfall between the sale price and the mortgage balance. This enables you to avoid a damaging foreclosure on your credit report. You may have tax consequences on these transactions, although current law is forgiving.

4. Deed in lieu of foreclosure. This is the voluntarily transfer of your property title to the lender (with the lender's permission) in exchange for cancellation of the remainder of your debt. Though you lose the home. a deed in lieu of foreclosure is less damaging to your credit than a foreclosure. However, you will lose any equity you may have had in the property and you may face tax consequences, although again the current law is forgiving.

Some states allow lenders to pursue a deficiency judgment, which means that the borrower is personally responsible to repay any remaining balance on the mortgage after a foreclosure sale. Arizona does not allow deficiency judgments.

If you can predict you'll have serious, irresolvable payment problems in the foreseeable future that could lead to foreclosure, consider selling your home before you go into default. It can take months to sell a home and it is never good to be forced to sell a home quickly.

Selling a home can work if you have enough equity in the home to entirely pay off all loan balances and all expenses associated with selling such as real estate agent fees from the proceeds of the sale. Still, a sale for a large enough amount might allow you to satisfy your mortgage obligation, avoid lender-imposed late and legal fees, avoid any damage to your credit rating and protect what equity you have in the property. Many people have emotional attachments to homes, but it is always better to sell a home than to have it taken away.

Avoiding foreclosure scams

Once the lender files a notice of default, your mortgage troubles become public record. Scammers, predatory lenders and other con artists keep their eyes open so they can prey on homeowners in trouble.

Here are just a few of the scams and schemes to look out for:

- **Predatory refinance loans.** Unscrupulous lenders often come to the "rescue" with an offer of a loan that will supposedly get you out of financial difficulty and help you keep your home. In reality, many of these loans include terms and fees that are almost guaranteed to get you deeper in debt. When that happens, the lender is often ready to quickly foreclose on your home.

- **Flipping**. Some lenders rake in hefty fees by convincing homeowners to refinance over and over again, even when it is not in their best interest.

- **Foreclosure prevention scams**. These "specialists" and phony counselors, who say they'll keep you out of foreclosure for a fee, are scammers trying to get your money with no intention of providing the promised services. At the very least, they typically charge high fees for something you could do yourself or with the help of a free or low-cost housing counseling agency.

- **Equity skimmers**. These are buyers who contact you and offer to pay off your mortgage and/or sell the home if you will deed the property to them. They may even offer to have you rent the home from them. This gives them your home but leaves you with the mortgage. They will collect rent from you until the foreclosure is completed or sell the home and keep the equity.

If you think that you are being targeted by a predatory lender or other scam artist, contact:

NeighborWorks at www.995hope.org or by phone at 888-995-HOPE.

The National Anti-Predatory Lending Rescue Fund atwww.fairlending.com.

The Federal Trade Commission at www.ftc.gov.

Your state's consumer protection office at www.azag.gov.

To find attorneys who represent consumers, visit the National Association of Consumer Advocates at www.naca.net.

DOS and don'ts for homeowners facing foreclosure

Don't:

- Sign anything that you do not fully understand. If you are unsure, have all documents reviewed by an attorney or a trusted real estate professional.

- Deed your property over to anyone. Signing your home over to someone else does not relieve you of your mortgage obligation.

- Let someone assume the loan without the lender's permission and without being formally released from liability for the mortgage.

- Move out of your house because someone promises to make the mortgage payments for you.

Do:

- Be suspicious of anyone who contacts you with a loan or service they promise will solve your money troubles and save your home.

- Avoid high-pressure lenders, or those who encourage you to pay an upfront fee for any service or loan, borrow more than the value of the home, or take on a loan without considering your ability to make the payments.

- Get all terms and promises in writing.

• Be on the lookout for terms that change or are not disclosed at the beginning of the loan process.

• Avoid any refinancing loan with exorbitant fees, a stiff prepayment penalty, an excessively high interest rate, or a balloon payment due. (If you're not sure whether the loan you're being offered includes any of these abusive terms, have someone you trust review them for you.)

• Check for complaints about any company that offers to buy your home. Contact your state's consumer protection office and/or your state's real estate regulatory agency.

Know your mortgage loans

You can greatly reduce your risk of defaulting on your mortgage payments and facing foreclosure by choosing the right loan.

The 30-year fixed rate home loan that used to account for most home financing has given way to an array of "exotic" interest-only loans and other non-traditional adjustable rate mortgages. These loans can be risky and come with complex terms and payment calculations that many borrowers don't fully understand.

If you are already in a mortgage with non-traditional or complicated terms, be sure you understand exactly how your interest rate, monthly payment, and loan principal balance could change over time. If you don't plan for these adjustments, you could find yourself facing the possibility of foreclosure if you can no longer make the payments.

If foreclosure is inevitable

If you have tried every option, or simply waited too long to try any options, you may be on the verge of a foreclosure with no real alternative. Assuming your foreclosure was handled legally and professionally, you expect to receive, or have received a notice to vacate the home by a specific date. Plan to leave the property in reasonable condition and to take all your possessions with you.

Your primary concern at this point should be housing. You need to find a place to live and you are not likely to be able to purchase a home in any conventional way. You may also find that leasing agents are checking your credit report and denying your application due to the foreclosure. Expect to spend some time exploring your options and selecting a home that is appropriate.

If foreclosure is inevitable, you should stop making payments to your lender. It is unlikely to benefit you and you will need cash for a security deposit and first month's rental on your new home. You also need to be realistic about your budget and the amount of rent you can afford. As harmful as a foreclosure can be to your credit rating, an eviction from a rental for non-payment can be even more harmful when it comes to finding another rental.

FAQ's

What is delinquency?
Delinquency just means being late with a payment. If your loan agreement states that your payment is due on the 1st day of the month and you have a 10 day grace period, your loan is delinquent on the 11th day of the month if payment has not been received.

What is foreclosure?
When a lender is no longer willing to wait for a payment, they can, by state law end your mortgage relationship and claim the property by following described procedures. This is the act of foreclosing.

What is forbearance?
Forbearance is the act of delaying penalties and legal processes to permit a lender to catch up. Lenders do this to avoid foreclosure.

What is a loan modification?
A lender may agree to change the terms of a loan agreement such as the interest rate, term or type of mortgage to make repayment easier.

What is a partial claim?
Federal Housing Administration (FHA) guaranteed loans can sometimes be saved by an "extra loan" that pays up to twelve months of past-due payments. This loan becomes due when the original mortgage is paid off.

What is loss mitigation?
Lenders often describe their efforts and programs to avoid foreclosure as loss mitigation. Some have loss mitigation departments to work with consumers.

What is a lender-approved sale?
Lenders sometime delay foreclosure to give a consumer a chance to sell a home.

What is a short sale?
A short sale or pre-foreclosure sale is another lender agreed upon opportunity. The lender would agree to accept less than the amount owed on the mortgage and write off the shortfall.

What is deed in lieu of foreclosure?
Lenders will sometime accept the deed of a home in exchange for cancellation of the remainder of the mortgage. A deed in lieu of foreclosure is less damaging to credit ratings than a foreclosure.

What is a notice of default?
Prior to actual foreclosure, a lender will file a public document with the county indicating that the mortgage has been delinquent too long and that the consumer is in default.

What is eviction?
When a tenant no longer has the right to remain in a home because rent has not been paid, or a mortgage has been foreclosed, or because some rule or law has been violated, the local authorities can force them to move.