

Over 7 out of 10
homeowners go into
foreclosure without
VISIBLE
intervention.
(You are the exception)



Foreclosure is a Process

- *Default*

- Must miss a payment, default on payment is the only way a property can enter the foreclosure process.
- Can also be a missed payment to local taxing authority, a condo association or homeowners association.

- *Legal Notice*

- The lender or foreclosing party must notify the owner that they are entering into the foreclosure process.
- Personal service of a document or if the owner cannot be located through publication in a legal journal.



- Florida = Notice of Lis Pendens (or notice of a lawsuit)
- California = Notice of Default or NOD.

Foreclosure is a Process

- *Bank Sale or Auction Date*
 - Homeowner informed of bank sale or auction date
 - Foreclosing entity will gain control of the property.
- *Redemption Period*
 - Not all states have a redemption period
 - Period of time in which the homeowner may present payment and regain possession of his property.



Reasons to Avoid Foreclosure

- ✓ You will always have to disclose on any mortgage application and many job applications
 - Only credit item that even once it is off report still affects your rates
- ✓ Credit scores will be lowered by 300+ points
 - most devastating credit issue you can have in relation to future credit availability
- ✓ You will be ineligible for a government insured loan for 5 to 7 years (only 2 years in a short sale).



Reasons to Avoid Foreclosure

- ✓ You may end up with Deficiency Judgment
- ✓ Many employers run credit checks
 - foreclosure is one of the top items that will put a potential new hire in jeopardy
- ✓ Many current employers run credit checks and a foreclosure can put a current position in jeopardy.
- ✓ Security clearances, government positions
 - Military and law enforcement and more



Reasons to Avoid Foreclosure

- ✓ Your tax liability in a foreclosure may be much higher than in a properly negotiated short sale since in most cases cancelled debt will be higher.
- ✓ As your CDPE agent I will explore every option with you and work towards a resolution.
- ✓ While it may not seem like it now, there will come a time when you look back on this situation and will want to know you did everything you could.



Reinstatement

- If reason for distress was temporary and resolved
- Can be done up to day of bank sale
- You must be able to pay all the payments and late fees due and your mortgage will remain the same



Reinstatement Example

- Homeowner misses 4 payments on a \$1,500 a month loan and the foreclosure process has been initiated.

Reinstatement Amount:

4 Month's Payments @ \$1,500/month	\$6,000
Late Fees	\$300
Legal Fees	\$1,200
Processing Fee	\$250
Total Reinstatement	\$7,750



Your Options

Forbearance or Re-Payment Plan

- If reason for distress was temporary and resolved
- Requires lender approval
- You may be allowed to make your back payments over time
- Normally does not fully reinstate mortgage until plan is completed



Your Options

Forbearance Example

- 4 payments missed @ \$1,500 a month loan and the foreclosure initiated

Reinstatement Amount:

4 Month's Payments @ \$1,500/month	\$6,000
Late Fees	\$300
Legal Fees	\$1,200
Processing Fee	\$250
Total Reinstatement	\$7,750

Bank Allows payments to be broken up over the next 12 months:

Total Reinstatement	\$7,750
Reinstatement Payment 12 months	\$646
Current Payment	\$1,500
Monthly Repayment	\$646
12 Month's Payments Each	\$2,146



OPTIONS FOR HOMEOWNER IN FORECLOSURE

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(!) Insider Tip

Forbearance Plan (there is a catch)

Typically your mortgage is not fully reinstated through a forbearance plan until all the payments are made in full. If a homeowner misses just one payment they can end up in the same stage of the foreclosure process they were in previously.



Sell the Property

- If seller has equity, can sell and cure foreclosure
- Many sellers believe they have less time than they actually do



Rent the Property

- Can your property rent for the mortgage amount or more?
- In many cases rent does not cover full expense of property ownership
- Also need to factor in insurance and taxes.



Refinance

- If you have sufficient equity and strong enough credit score
- Typically a short term solution since your payments almost always go up



Mortgage Modification

- Requires lender cooperation
- Modifies loan and often reduces payment
- One lender even has department referred to as “Mod Squad”
- You will have to qualify with financial information most of the time like a full doc loan



Short-Refi

- Relatively new solution
- Requires lender cooperation
- Modifies loan and reduces principal balance and often interest rate as well
- Will most likely result in a lower payment
- Will have to qualify using full documentation



Deed-In-Lieu of Foreclosure

- “Friendly” Foreclosure
- Signs deed over to bank rather than go through foreclosure process
- May still be reported as a foreclosure
- Typically only works with one mortgage



Bankruptcy

- Will stall a foreclosure and if payments are lowered to where property can be afforded may save property
- Very difficult to sell property once in the process, requires trustee cooperation
- Will only stall a foreclosure – will not eliminate mortgage



Your Options

Servicemembers Civil Relief Act (SCRA)

- Provides temporary relief to military personnel
- Must show mortgage was entered into prior to beginning active duty
- Must still be owned by military member
- Must show that service materially affects ability to pay



OPTIONS FOR HOMEOWNER IN FORECLOSURE

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Short Sale

- A short sale can be negotiated if the homeowner has:
 - Financial Hardship
 - Monthly Shortfall on Financial Worksheet (or pending shortfall)
 - Does not have significant assets to assist in paying down the mortgage.



Definition

- A homeowner is 'short' when:

When a borrower owes an amount on his property that when combined with closing costs and commission is higher than current market value.

- A short sale occurs when:

A negotiation is entered into with the homeowner's mortgage company or companies to accept less than the full balance of the loan at closing. A buyer closes on the property and the property is 'sold short'.



What a Short Sale is Not

- If you do not have a financial hardship then you will most likely not qualify for a short sale.
- A short sale is only for those who meet all requirements



Two Major Consequences

- Cancellation of Debt Tax Liability
 - “Phantom Tax”
 - Mortgage Forgiveness Debt Relief Act of 2007
 - Special IRS Section
- Deficiency Judgment
 - Lender Collection Rights
- Other Issues



Mortgage Forgiveness Debt Relief Act of 2007

- Originally HR3648
- Prior to passage any debt forgiven was “cancelled” and was required to be claimed as 1099 income
- Signed into law on December 20th 2007



MFDRA Details, Phantom Tax

- January 1st 2007 to January 1st 2010
 - Eliminates Phantom Tax
 - Debt must have been debt incurred to acquire a principal residence.
 - Cancelled debt up to \$2,000,000 is eligible.
 - Sets forth rules for determining the allowable amount of the exclusion for taxpayers with non-qualifying indebtedness and taxpayers who are insolvent.
 - *Debt from a second (non acquisition) mortgage or HELOC is not eligible (unless used to improve basis of property).*
 - *Debt from a cash out refi is not eligible (unless used to improve basis of property)*
 - *Cancelled debt from investment properties and second homes is not eligible.*



Deficiency Judgment

- In 100% of Foreclosures the homeowner is exposed to a Deficiency Judgment
- In some Short Sales lender waives right to Deficiency
- In almost all cases a short sale will result in lower possible deficiency judgment

