

FORECLOSURES AND POSSIBLE RESOLUTIONS

A foreclosure action is based upon the allegation by a mortgage lender that the borrower is in default and that the lender is entitled to a court judgment to cause sale of the property to repay the debt. If the allegation of default is proven, the court enters a judgment causing a public auction of the property. If the value of the property is less than the debt and the auction sale is insufficient to repay the debt the mortgage lender may seek an additional legal proceeding to obtain deficiency judgment. A deficiency judgment may result in additional legal collection efforts and prolonged adverse credit consequences.

As a homeowner a foreclosure has serious short and long term consequences; loss of your home, adverse credit reporting, difficulty in leasing or purchasing a new residence, difficulty in future credit purchases and stress within the family. In planning your actions recall the original intent behind the mortgage loan. The lender's primary intent is to make a good loan and be repaid according to the terms that you agreed to pay. You intended to have the benefits of owning a home.

Despite the filing of the foreclosure in court the lender and homeowner may both benefit from negotiating a wide variety of solutions. Descriptions of some of the more common solutions are described below. There are constant changes and new solutions being privately negotiated and new solutions are the subject of ongoing government programs.

UNTIL A JUDICIAL SALE IS CONCLUDED THE HOMEOWNER IS THE LAWFUL OWNER OF THE PROPERTY AND HAS MANY OPTIONS.

1. **MORTGAGE MODIFICATION:** The lender and borrower may negotiate a modification of the existing loan changing any of the loan terms either temporarily or permanently. Possible loan terms that may be modified are reducing interest rates, changing variable interest rates to fixed rates, extending length or term of the loan, waiver of certain costs and fees, modification or forbearance (delay in enforcement) of a portion of the loan balance, allocating the loan payment deficiency over time and combinations of these options.

Lenders have numerous and many different private loan modification programs. New solutions in private negotiated loan modifications are constantly being developed. There are also government based programs such as the Federal Home Affordable Loan Modification Program (HAMP). New government based programs are likely to be developed as the mortgage foreclosure crisis evolves until the widespread issue is solved. See the website; Making Home Affordable. Gov. (See the Resources section of this website)

In any modification program the borrower will be required to apply for the modification very much like a new loan application. An outline of information required can be found in Section V of this outline.

The homeowner should respond to any effort initiated by the lender and should persist in contacting the lender to seek modification information. If a homeowner defendant receives

any package to initiate a modification no modification will occur unless the homeowner takes action. **UNLESS ADVISED BY YOUR ATTORNEY DO NOT DELAY AND DO NOT WAIT UNTIL COURT HEARINGS OR A MEDIATION SESSION TO START THE PROCESS.**

BE AWARE: DUE TO THE OVERWHELMING NUMBER OF MORTGAGE FORECLOSURES A MODIFICATION APPLICATION REQUIRES PATIENCE AND PERSISTENT EFFORT. KEEP COMPLETE COPIES OF EVERYTHING THAT IS SUBMITTED. DOCUMENTS MAY HAVE TO BE RESUBMITTED. ALWAYS PUT YOUR NAME, THE PROPERTY ADDRESS AND LOAN NUMBER ON EVERYTHING THAT YOU SUBMIT.

2. **SHORT SALE:** A short is a sale where the property owner and lender cooperate to sell the mortgaged property for less than the loan balance. Many short sales are for far less than the outstanding loan balance. The remaining loan balance is an issue outstanding to be addressed by the lender and borrower. Unless specifically addressed in an agreement do not assume that debt is fully settled by this transaction.

Short sales can be complicated because of outstanding second mortgages and other liens which must be resolved. Assistance of a realtor experienced this type of transactions is recommended. Assistance of an attorney is recommended in not only the resolution of the short sale and the remaining loan balance but also in resolving other mortgages and liens.

A homeowner may qualify to participate in the Home Affordable Foreclosure Alternatives program of the federal government. A homeowner may qualify if turned down for modification. See Making Home Affordable. Gov. (See the Resources section of this website)

Generally short sales require certain documents and conditions. An outline of information that may be required can be found in Section V.

If a homeowner defendant receives any package to initiate or pursue a short sale and this is the desired course of resolution no short sale will occur unless the homeowner takes action and pursues the sale to conclusion. **UNLESS ADVISED BY YOUR ATTORNEY DO NOT DELAY AND DO NOT WAIT UNTIL COURT HEARINGS OR MEDIATION SESSION TO START THE PROCESS**

DUE TO THE OVERWHELMING NUMBER OF MORTGAGE FORECLOSURES A SHORT SALE REQUIRES PATIENCE AND PERSISTENT EFFORT.

3. **DEED IN LIEU OF FORECLOSURE:** A deed in lieu of foreclosure is a transaction where the homeowner/borrower transfers the property by deed back to the lender voluntarily in return for negotiated resolution of the debt. Assistance of an attorney is advised. Unless specifically addressed in an agreement do not assume that debt is fully settled by this transaction.

4. **CONSENT JUDGMENT:** A consent judgment involves the borrower in a currently pending foreclosure action agreeing to entry of the judgment of foreclosure without further legal defense in exchange for such concerns as negotiated resolution of the debt, terms of temporary possession of the property or other terms of vacating the property. Assistance of an attorney is advised. Unless specifically addressed in an agreement do not assume that debt is fully settled by this transaction.
5. **REVERSE MORTGAGE:** For qualifying seniors a reverse mortgage may resolve the current mortgage when the current mortgage is no longer affordable. Assistance of an attorney or financial planner experienced in these complicated transactions is strongly advised.
6. **OUTSIDE FINANCING OR ASSISTANCE:** As part of a mortgage modification loans, gifts or additional loan guaranties by persons willing to assist the borrower may resolve the issue.
7. **STAY INFORMED:** New programs and forms of assistance are arising constantly. All will require diligent effort on behalf of the homeowner.