

Ruthless Foreclosure Avoidance Tactics Revealed....

**STOP THE FORECLOSURE.....PERMANENTLY!!
End the letters and calls. End The Harassment and Stress.**

Options and Strategies for Saving Your Home From Foreclosure

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This publication is designed to provide general information to a nationwide audience with the understanding that any and all questions regarding legal advice and other professional services should be directed to a qualified professional who specializes in such services.

Several attorneys, foreclosure authorities and government agencies contributed to the data. While the book details most of the known foreclosure remedies, be advised that it may not be possible to include every detail or option that is best for your particular situation. In such cases, it is the publishers sincerest wish that this material leads you to discover all the information you need to find your best solution (s). Do not use this booklet as a substitute for seeking professional advice. Foreclosure is a serious problem and, since laws and programs frequently change, a competent professional may be of valuable assistance toward finding or implementing the best remedy for each individual's foreclosure case. The publisher disclaims any liability or responsibility for loss or damage caused, or alleged to be caused, directly or indirectly, from utilizing the information in this booklet.

Introduction:

Balancing the Inequity of Information

Foreclosure is all about losing. The homeowners lose their home and the lender loses money. If the homeowners understand the process, they can usually save their home. The problem is that most people don't understand the process, and are at a disadvantage from the beginning in this struggle with their lender. Over the years, the legislature has tried to create a system of foreclosure which is fair to both the lender and the defaulting homeowner. This system attempts to give the homeowner ample time to cure a default, while at the same time, giving the lender a speedy remedy in the event the homeowner cannot cure the default. Unfortunately, the lawmakers' efforts toward fairness do not balance the advantage that well prepared and well-practiced lenders have over the homeowner who is relatively inexperienced in foreclosure proceedings.

At the outset the lender has all the advantages. These include:

1. Their lawyers, who are trained professionals, and who can and will enforce the lender's legal rights against the borrower.
 2. The knowledge, experience, and understanding of how the banking community deals with mortgages in foreclosure.
 3. The financial resources to pursue the foreclosure and enforce their rights.
 4. A sympathetic judicial system which applies a basic truth that the homeowner borrowed the money and did not pay it back.
- The homeowner, on the other hand, has all the disadvantages.

These include:

1. A lack of money and financial resources.
2. Fear, concern, and worry that they are about to lose their home.
3. No law firm or financial consultant to advise and assist them.
4. A total lack of any knowledge, experience or understanding of how the mortgage business functions and how foreclosures are treated by the banking industry.
5. The emotional distress which very often prevents them from acting to protect themselves in this upcoming foreclosure battle.

The sooner Homeowners act the more time they will have. The longer they wait to act, the less time they will have. Feeling powerless and confused, many homeowners in foreclosure spend too much precious time denying their predicament until the last minute when only the most extreme of remedies remain available. An undefended foreclosure can be completed in eight weeks or less. A defended foreclosure can take several years. Homeowners must not delay. It is vital that they respond to any legal notice or document and assemble their defense team and their foreclosure strategies immediately. This booklet was designed for the specific purpose of helping to offset the homeowner's disadvantages.

Incomplete Information from Bankruptcy Attorneys

It seems that the main reasons people end up prematurely declaring bankruptcy as a solution to their foreclosure situation is because:

1. They have a lack of information about their options
2. Often, bankruptcy attorneys are heavily marketing their services to them and so it seems like the only solution. Generally, the area of foreclosure solutions is not well understood. In other words, not many organizations help to educate people on their options. What is found are different professionals who are trying to pitch their own narrow solution. At the top of the list are the bankruptcy attorneys. Over ninety percent of bankruptcy attorneys don't handle alternative work-out programs such as the ones described in this booklet. Therefore, even though the attorneys may come across as knowledgeable and educated, their final advice on how to save a home is to tell people to declare bankruptcy. This should not be a total surprise, as this is what bankruptcy attorneys are paid to do. When considering the bankruptcy alternative, be prepared to:

- Be questioned by creditors
- Deal with attorneys
- Expose your financial lifestyle to the public
- Live through an ordeal that can last for months
- Pay attorneys and court costs

So is bankruptcy really that bad? Bankruptcy can be the right solution for some homeowners who are trying to save their home. However, it is far from the number one choice. In fact, it should be the last resort. In talking to a bankruptcy attorney, one is led to believe that bankruptcy is the best and only choice.

A homeowner's major strategy in saving their home is "buying time". Most of the financial situations that cause foreclosure are temporary. Think of bankruptcy as one option in a toolbox full of tools. Upon losing the keys to a car, would the first tool to use to get into the car be The Jaws Of Life that the fire department uses to cut through metal doors and frames like they were tin cans?

No, that kind of a tool is a last resort. That is what bankruptcy is - a last resort to use AFTER all other avenues have been exhausted. The plan is to..... BUY TIME. Going straight to bankruptcy, all other options that could have bought time, have been bypassed and are no longer available. Having done that, if there are any problems making the Chapter 13 payments, there are very few options left. In addition, it may have been possible to have gotten a work out solution approved instead that solved the situation without bankruptcy. This would also be a much better solution as far as saving credit. Most people don't realize how damaging a bankruptcy is to their credit until it's too late. It is something that can follow a person for a very long time. In some cases people have sought foreclosure prevention and assistance advice too late, and "their back is up against a wall". In those cases, a bankruptcy can be filed to stop a sale. In many instances, this is done only to buy time, and the homeowner doesn't actually follow through with their court appointments and filings and lets the bankruptcy "fall off the calendar" (it never actually goes through). Anyone who ends up actually filing should read the section of this booklet entitled "How to save money when filing Bankruptcy".

Deciding if You Should Be Resolving or Delaying

MOST of the circumstances surrounding foreclosure are TEMPORARY. Some of the most common are:

- illness or injury in the family
- divorce
- loss of job
- business turndown of a self-employed person
- overextended credit

You are in one of two categories:

- 1). If you are financially able to resume making your regular monthly payments, **you need to use foreclosure resolution strategies.**

OR

- 2). If you are not yet financially able to make regular payments, **you need to use foreclosure delay strategies.**

If you are still not back up on your feet, the most effective overall strategy for saving one's home is to **BUY TIME**, as statistically it is only a matter of time before you are back on your feet. You use this time to get yourself in a better financial situation in which you can afford your payments.

Once you've gotten to a point where you can resume making your

regular monthly mortgage payments, you are ready to look at a foreclosure resolution strategy. You need to resolve the past due amount with the current lender through a workout solution that is affordable to you and that the lender will accept. If, however, you are not yet completely able to make the regular monthly payments, then delay strategies should be sought. If you prematurely enter into a resolution agreement requiring payments which can't really be afforded, you will be in a worse position than before. Credibility will be lost and the lender will be less willing to enter into another agreement with you once you are truly able to afford the payments.

Take a look at your situation and decide which category your financial circumstances describe. This will tell you whether you should be looking at Delay Strategies or Resolution Strategies.

Here are the resolution strategies discussed in this booklet:

Forbearance Agreement
Payment Plan
Note Modification
Refinance
Short Pay & Refinance
Assumption
Sale/Leaseback or Deed back
Bankruptcy

Here are the delay strategies discussed in this booklet:

Chapter 13 Filing and the Automatic Stay
Temporary Indulgence
Pay and Accrue
Legal Ammunition

Foreclosure Resolution Strategies

If you have NOT yet read the preceding portion entitled "Deciding if You Should be Resolving or Delaying....PLEASE READ THAT SECTION FIRST!!!

Following are the Foreclosure Resolution Strategies discussed:

Forbearance Agreement

Payment Plan

Note Modification

Refinance

Short Pay & Refinance

Sale/Leaseback or Deed back

Assumption

Bankruptcy

Forbearance Agreement

If you are in a situation where you have suffered a temporary loss of income or financial hardship, you can request a Forbearance Agreement. If you or your spouse have lost your job and this event seems temporary, this agreement may work for a limited period of time, perhaps six months to one year.

In a Forbearance Agreement, the lender may, at their option, reduce your monthly mortgage payment to a manageable amount or even suspend payments for up to a year, until full time employment is gained. Make sure you request and obtain this agreement in writing and have it reviewed by a professional to ensure that the agreement's terms are reasonable and manageable.

Please be aware that even before this Agreement is tendered, the

lender will review your past payment history and current debt in order to determine if you are a good risk for this proposal. In cases of illness or death, this proposal can be a viable solution to prevent a foreclosure action.

Payment Plan

In certain cases where you have fallen behind on your mortgage payments due to unforeseen medical bills, or other similar financial hardships, you can request a payment plan. In order to be considered for this option, you must have the ability to make regular monthly payments now.

Basically, a payment plan can be drafted to run anywhere between six and eighteen months and is comprised of the regular monthly payment plus the back payments divided by the length of the term. For example, if the current monthly mortgage payment is \$1,000.00 per month and there are four back payments totaling \$4,000.00, on a twelve month payment plan, you will be paying your regular monthly mortgage payment of \$1,000.00, plus an additional \$333.00 per month over the next 12 months to satisfy the \$4,000.00 in back payments. Again, the lender will most likely investigate your current debt and income situation and your past payment history on the mortgage. Your ability to meet the increased mortgage payment over the term of the agreement will be evaluated. If approved, this payment plan will be signed by all the borrowers as well as the lender. You must make your payments on time in order to avoid a breach of the agreement, which would put you right back into foreclosure.

Note Modification

Most workouts are usually secondary agreements that temporarily suspend the foreclosure terms of the original, primary loan agreement. However, a note modification, also called a recast or re-amortized loan permanently modifies the terms of the original, promissory note. Items commonly modified are:

- a. Interest rates.
- b. Principle amounts.
- c. Transfers of liability to another borrower upon resale.

Some lender/servicers may have little or no practical experience with note modifications, while others may have departments already set up to do them. If a note modification is granted, be prepared to pay a loan fee based on a percentage of your loan balance and/or the current loan fee rates.

A. Interest Rate Modifications: You may want to change the interest rate on your note if the current market interest rates are lower than the rates you are paying. The rule of thumb with interest rates is, if the current market rates are lower by 2 percent or more than the rate on your present mortgage, and if a reduced interest rate would decrease your exposure to foreclosure, then pursuing a note modification may be worth your effort. Simply, the note modification exchanges your older, higher mortgage rate for the newer, lower rate without the many costs or paper work hassles of reapplying for a brand new loan. The note modification actually becomes a viable alternative to refinancing.

B. Principal Amount Modifications: You may want to increase the principal amount of your note, after a period of delinquent,

reduced or suspended payments, to include the total amount of all the missed payments. For example, if you are behind six payments of \$1,000 on a note of \$100,000, then you owe \$6,000 in delinquent payments. If, in a note modification, you add the delinquent \$6,000 to the principle amount of \$100,000, then you will have a modified amount of \$106,000. The benefits of this type of modification are: first, it provides a method by which the lender is repaid the delinquent amounts, and second, the borrower can start over without the pressure of back payments and foreclosure. The monthly payment for the modified note will be slightly higher than the old payment, but not nearly as high as it would be if the arrears were being paid back on a six to twelve month payment plan or a forbearance agreement. A principle amount not modification is one of the most desirable workouts available.

C. Transfers of liability to another borrower upon sale: This is used when a buyer of your property wants to assume the loan as the responsible party, relieving the seller of all liability. In this agreement, the buyer, seller and lender agree to the buyer's assumption and release the seller of any further liability on the loan. Being able to obtain this kind of agreement can make it much easier to find a buyer because you can advertise and deliver favorable financing, making it very easy for the buyer to get into the house. In addition, because of the advantageous financing terms, you are usually able to command a higher sale price.

Refinance

This is another one of the more heavily marketed solutions. The main barrier that most people run into with refinancing is not having enough equity to obtain a "sub prime" or "bruised credit" loan. This is the type of loan that you will most likely need to refinance into due to your foreclosure situation. Another problem is that mortgage companies have a history of reporting to their borrowers that "everything is fine", when in fact nothing is usually set in stone until the final loan papers are drawn up. It is generally not recommended to leave your entire fate in the hands of a mortgage company. It is too easy for them to back out in the final hour, leaving you in a very dangerous situation.

In many cases where enough equity exists, refinancing can be a simple solution. This can be done through a new mortgage company, or through a negotiation with the current lender in which they refinance the current mortgage to include the past due amount (the arrears). With this form of financing, new loan documents are drafted. Be aware that if there are any other mortgages on the property, second mortgage, home equity loans, etc., these junior lien-holders must agree to remain in their present lien-holder position by entering into a subordination agreement with the primary lender. If there are no other mortgages, the process is much simpler. The homeowner will benefit from this type of refinancing in that the lender will wrap the past due payments into the new loan. The biggest barrier that is faced in exercising this option is a lack of equity. A straight refinance usually works only if you have substantial equity in your homes. To figure out if you have enough equity, you need to know approximately how much your house will appraise for. This appraisal figure is the one that matters as it will be what is used, not what you *feel* your house is worth, or what it is worth to you.

The second piece of information you'll need to know is how much you owe in total on your house, including your back payments. Divide the value by the total amount owed and you'll get a percentage. That percentage is called your Loan To Value

percentage. If this percentage is currently at 60% or less, getting a refinance is practically assured. If it is at 65%, you have a good chance. If it is at 70%, you have very little chance. At 75% or higher, you have no chance of a straight refinance, however you may be able to use the Short Pay & Refinance strategy below.

Short Pay & Refinance

This combination of two strategies can be attempted with great success if you don't have enough equity to complete a straight refinance, but have *some* equity, (such as a current Loan to Value percentage of 75%).

A short pay is when the lender agrees to accept less than the full principle plus arrears as payment in full in exchange for being paid off right away. The most the lender will usually discount is ten to fifteen percent of the full amount owed. The prudent lender will cut their losses, saving money from being spent on additional foreclosure costs and legal fees versus taking the property back and then having to market and sell the property.

This strategy of combining a short pay and a refinance is usually performed through a third party professional or a lender who lends in foreclosure cases and who is also experienced in negotiating short pays. Once a bona-fide underwriting loan approval has been obtained for the highest Loan to Value percentage possible, and the appraisal has been reviewed, you know how much money you have to work with. The figures are worked backwards, first including the loan closing costs (which need to be reasonable and not excessive), and whatever is left is offered to the lender as a payoff.

Example: Let's say that with arrears, late fees, and your principal balance, that John owes his lender 71,000. The highest loan approval that John can get qualified for is 70% LTV. His house is valued at 100,000. At 70% LTV, this means that John has a total of

\$70,000 to work with. The closing costs involved with his loan are going to be \$4,500. This leaves \$65,500.

Even though he owes \$71,000 total to his current lender, a short pay is negotiated and they agree to take the \$65,500 to save themselves from the costs involved with going through with the foreclosure and risking further losses. By accepting the \$65,500, they cut their losses and get their money sooner. They avoid the risk of John declaring bankruptcy, filing lawsuits, and using other techniques to continue to delay the sale. The lender factors in something that they call the "time-value of money". The experience and expertise of the professionals that you use will have much to do with the success or failure of the technique. Make sure that the people you use specifically have experience successfully negotiating short pays.

Sale/Leaseback or Deed back

These strategies involve having someone purchase the property from you and then either lease it back to you or give it back (deed it back) to you. If you can find a family member or someone that you are very close to who has good credit, the Sale/Deed back is the most simple and advantageous to you. This is how it works. You agree to sell the house to them. If you have some equity in the house, financing can be arranged with the net effect of having this friend or family member purchase the house with no money down. They then simply deed the property back to you. The paperwork to deed the property back to you is very simple and can be obtained at an office supply store.

The biggest barrier to this technique is finding someone. You must have their trust because their credit will now be on the line. Even though you will own the house once they deed it back to you, their name and social security number will be on the new note. Most who employ this technique make the payments on time for a year

and then refinance it so that their friend or family member's credit is no longer at risk. Because a year has lapsed since the time the homeowner originally had a notice of default filed, it would then be possible for the homeowner to obtain a refinance loan. It would be a "sub-prime" loan, but they have saved their house. If no such friend or family member is available, then you may get involved in an investor sale/leaseback. In this scenario, you would find an investor (or have a third party find you an investor) who would purchase your house and lease it back to you with an option to re-purchase it. Essentially, the investor would receive profit either through the rent that is being charged or through "equity sharing". This type of scenario can work, but, you must enter into such negotiations with extreme caution. While there are investors who are fair and honest, there are many more who are unscrupulous. Watch out for investors who have clauses in their paperwork in which you lose your right to exercise your option to re-purchase the property if you are one month late on your rent. Also, some investors require you to exercise your option within twelve months or lose it. Some insist that you must come up with a substantial amount of money (hoping you won't be able to) in order to exercise your option. Before going through with any such agreement, have an impartial foreclosure professional review the paperwork to ensure that the agreement is fair and that you understand any and all provisions.

Assumption

An assumption of a loan can be defined as one where a buyer is willing and able to purchase a property by taking over the mortgage payments with usually the same terms, interest rate and

conditions as they were originally written. There are a couple of strategies that can be employed in connection with an assumption. One is to have a friend or family member assume the loan and you remain in the house. This is very similar to the sale/deed back strategy but it is easier in that your friend or family member doesn't need to go through a standard closing and the time involved with getting qualified for a standard mortgage. Another strategy involves moving out of the house temporarily until you can afford the house once again. You would find more affordable housing during the one year term of the contract. If you rent the house out on a lease to own plan, you are typically able to command a much higher move in cost. Instead of the basic first and last, you might be able to obtain enough money up front to bring the loan current. The monthly payment charged should cover the mortgage payment each month. You would give the person leasing the house one year with which to exercise their option to buy. If it is not exercised within that time, you move back in. In the lease to buy contract, you would negotiate a very favorable price for the house so that if the option was exercised, that you would receive the necessary profit to purchase a comparable house. If the option to buy is exercised, the lender will pay off your loan and cancel the lien on your property and re-file a new mortgage with the county clerk's office in the name of the new borrower as mortgagor, and the lender, as mortgagee. This means you have sold your house and any money obligation to the lender has been satisfied.

Bankruptcy

Generally speaking, of the various chapters of Bankruptcy available, the option that provides the most protection to a homeowner who has substantial arrears and is trying to save his/her house is Chapter 13. Discussing the many details of the

differences between Chapter 7 and Chapter 13 is beyond the scope of this publication. As the information in this booklet is not offered as nor should be substituted for legal advice, a consultation with a professional would be in order.

Chapter 13 allows financially overextended debtors with regular incomes to repay a reduced portion of their past-due debts over a prolonged time period. The mortgage back payments (also called arrears) can usually be paid back in even payments spread out over eighteen months. Filing bankruptcy will immediately stop your foreclosure. If a creditor, such as a mortgage lender, is forcing a sale of property which you would like to keep, or if you seek relief from debts that far exceed your income or assets, bankruptcy can be a valuable tool to stop the sale long enough to bring order to your finances. Bankruptcy is a severe form of financial reorganization since it involves government intervention into your financial affairs as well as publicly blemishes your credit report for several years.

In order to file for bankruptcy, a filing fee must be paid, plus any attorney costs, and an assortment of forms and schedules must be filed with the clerk of the Federal Bankruptcy Court.

Both extreme care and honesty must be exercised while filling out these forms and schedules. Mistakes can result in a dismissal of the petition as well as non-discharge of certain debts.

To find out more about these forms and all the details of bankruptcy, you should consult with a professional. As a cost effective measure, many foreclosure consultants highly recommend using paralegals for assistance in filling out bankruptcy documents. While many do-it-yourself bankruptcy books are available, filing bankruptcy without professional help can lead to errors which might jeopardize your case.

Foreclosure Delay Strategies

If you have NOT yet read the preceding portion entitled "Deciding if You Should Resolve or Delay"PLEASE READ THAT SECTION FIRST!!!

Following are the foreclosure Delay Strategies Discussed:

Chapter 13 Automatic Stay,
Temporary Indulgence,
Pay and Accrue,
Legal Ammunition

Chapter 13 Automatic Stay

While neither the author or publisher endorse filing bankruptcy only to halt a foreclosure, the following information is reported as provided by foreclosure consultant Samuel Lindgren. When any bankruptcy petition is filed, section 362 of the Bankruptcy Code stops almost all creditor actions. This is called an automatic stay, and it halts a mortgage foreclosure dead in its tracks, even on the last day before the foreclosure sale. With the automatic stay, no further creditor action against a debtor is allowed, including the progress of an existing foreclosure or the filing of new and additional foreclosures, until the bankruptcy petition is either denied or discharged, or until the stay is lifted. Creditors who ignore the stay may be held in contempt of court, fined and even ordered to pay damages to the debtor. The house remains protected by the automatic stay for the duration of the debt-adjustment plan as long as the monthly payments of the “plan” are made in addition to the regular monthly mortgage payments. If a debtor fails to maintain his Chapter 13 debt-adjustment payment plan,

then the automatic stay may be lifted and the case dismissed or even converted to Chapter 7, both of which jeopardize the home or other protected property. A Chapter 13 that is filed, but not followed through on by the homeowner ends up being dismissed. Sometimes this is referred to as "falling off calendar". Even after a Chapter 13 has been dismissed, it can be re-filed repeatedly, each time enacting the automatic stay. The exception is if the petition is dismissed "with prejudice". The petition is dismissed "with prejudice" if the judge decides that the filing is frivolous and that the homeowner is not to re-file. However, it has been reported that even after having a petition dismissed "with prejudice" that some homeowners have still gone back and re-filed, getting their automatic stay again. Many homeowners have delayed their foreclosure proceedings for months in the midst of filing and re-filing their Chapter 13 petition.

“WARNING” recent changes in the Bankruptcy laws, which took effect in the latter part of 2005, will greatly affect your ability to delay the foreclosure proceedings without proving “good cause” (as determined by the courts). **You must seek the advice of an attorney that specializes in Bankruptcy and foreclosure proceedings.**

Temporary Indulgence

As a temporary measure, the lender/servicer may allow the borrower a limited period of no payments in situations where a permanent solution is pending but not yet finalized. This often is granted to allow additional time to affect a sale of the property by the current owner. It can also sometimes be used when a workout is in the process of being negotiated and the negotiation is almost complete, but the sale date is immediately pending. In the case of a

pending workout, approval will depend on the lender and the state of the workout negotiations. The request is most likely to be approved if you have fully complied with all requests for information and documentation from the lender, and the delay in the approval is due to the lender. In the case of needing more time to properly sell your property at market value, there are two ways to request the temporary indulgence depending upon how far you've gotten in selling your house:

1. Let the lender/servicer know that you have the property on the market, have generated interest, but have not yet sold the house.
2. Let the lender/servicer know that you are selling the house and HAVE a purchase Contract (a buyer). If you have a buyer (a purchase contract), getting a temporary indulgence is quite easy. The lender will usually grant up to 30 days for you to complete the sale. If you only have a listing agreement, but no buyer, the lender MAY grant you the temporary indulgence, however, there is more of a chance that you will have the request denied, or be given less time if granted. This will depend on your lender, and it will also depend on the research your lender may do.

If you don't yet have a buyer, many lenders will do a quick analysis by checking the Multiple Listing Service (M.L.S.) sales statistics for your area. They will look to see how quickly the average house on the market is selling. If you are in an area where the average house stays on the market for six to eight months before selling, it will be unlikely that they will grant you a temporary indulgence with only a listing contract and proof that you are in the MLS. The lender will be more likely to grant the request if houses in your area are selling quickly. If you have a buyer, the lender will normally require a copy of the purchase contract. If you only have the house listed, the lender will

normally require proof that your house is currently listed in the Multiple Listing Service and a copy of your listing agreement. Most times, you can simply fax over the required documents, along with a typed letter formally stating your request for the additional time, explaining that you are in the process of selling your home. Many lenders can have such a request approved in 24 to 48 hours.

Pay and Accrue

Under a pay and accrue plan, you pay whatever you can afford and the unpaid balance becomes an accruing debt that must be repaid at a later agreed upon date whether next year, ten years from now or when the house is sold. This program is ideal for two income households where one income is suddenly, temporarily lost. This is not as commonly granted as some of the other strategies, and is not a permanent solution, but if granted, can provide the temporary relief needed in extreme cases. The circumstances most likely to be approved are cases where a healthy income existed, and though it is temporarily gone, it is documented that it is very likely to come back soon.

In addition, your home must have a great deal of equity for your lender to approve a pay and accrue request. Your lender will want a full appraisal confirming the value of your property, along with documentation showing when and how the income will return.

Legal Ammunition

Whether you have a case in which you emerge victorious or not, if you can initiate a legitimate lawsuit it will create a delay that may give you the needed time to improve your financial situation to the

point that a resolution strategy may be implemented. However, the relationship with your lender may be significantly strained after initiating a lawsuit. The following are some legal avenues that may be applicable:

Finding errors in the foreclosure process

Regulation Z - APR Calculations

Adjustable Rate Loan errors

Framing a lawsuit

Default Judgments

Getting a trial

Preliminary Injunctions & Temporary Restraining Orders

Credit is not money

Finding errors in the foreclosure process.

The lender often makes mistakes somewhere in foreclosure process or within the documents, ranging from a misspelled name to neglecting to publish, post, or mail required documents or notices. By finding these errors and pointing them out to the lender, the homeowner can force a delay or stop the foreclosure. If you think that it is possible that there were errors in your process, you should gather all documents and notices related to the default and foreclosure and have a foreclosure professional who is familiar with your state's statutes review them.

Regulation Z - APR Calculations:

Regulation Z is the Federal Truth in Lending Law. It demands absolute compliance and provides penalties for lenders who make

errors, including loss of part or all of the interest due, fines up to three times the amount loaned, and possible rescission of the transaction. Calculating the APR (Annual Percentage Rate) accurately can be very difficult for the lender. Even when the calculations are made by an experienced member of the lender's team, often there are mistakes. Even a tiny error in the documents may be sufficient grounds for halting a foreclosure. If you choose to try to delay or stop foreclosure by suing your lender for not complying with the Truth in Lending Law, your first step is to locate your Regulation Z documents. If you can't find them, contact your lender and ask for copies. Next, you should consult a real estate expert - especially one who deals in foreclosure matters, and have him/her review your documents carefully, looking for APR errors or other Regulation Z errors. If you suspect there may be something wrong with the documents, Regulation Z is a good delaying tactic to slow down a foreclosure. Because of the liability involved, some lenders will delay or abandon the foreclosure when faced with a Regulation Z lawsuit.

Adjustable Rate Loan Errors:

If you have an adjustable rate loan, statistics show that there is a high chance that your lender or servicer has made errors when calculating the interest rate adjustments. In one study, Consumer Loan Advocates, a loan auditing firm, found a 47% error rate in adjustable rate loans they audited. If you have an adjustable rate loan, it could be worthwhile for you to pay a loan auditing company to audit your loan. They would track down the most minute error(s) and if errors were found, this would provide legal substance for you to use in your delay efforts.

Framing a lawsuit:

When lender errors or fraud are found and the lender refuses to correct it, then the borrower may be forced to consider a lawsuit against the lender. A homeowner in foreclosure may want to sue not only to recover damages caused by the error, but also to stall or stop the lender's foreclosure action. It is difficult to cover in the limited space of this booklet all the kinds of cases that could be built for you. The substance of your particular legal action would depend greatly on your particular situation. That is why it is so important to scrutinize your paperwork and the actions of your lender. Sometimes, lawsuits are costly and thus impractical. Many attorneys you talk to will turn the case down or discourage you from filing, and certainly won't be willing to take the case on a contingency basis. Your biggest challenge will be finding the right attorney to properly frame the lawsuit. You may be able to find the right attorney via networking with foreclosure counselors. A borrower wants a lawsuit that will survive a Motion to Dismiss hearing or Demurrer and finally reach a jury trial.

If you can get this, or if you can get a default judgment, you can request a preliminary injunction or a temporary restraining order which will stop the sale. Just the threat of a lawsuit may prompt a lender to attempt to negotiate a settlement out of court. Lawsuits can be filed on several levels. The most basic is breach of contract under state law. If the borrower's legal counsel can show that the lender's breach of contract was part of a larger pattern or practice, the borrower can sue for fraud or fraudulent concealment..... opening the way to even stiffer monetary damages. Finally, the borrower can sue for violations of the federal truth-in-lending statute. Even though loans may seem complex, they are really just basic contract law. Some lenders may scoff at the reasoning behind

your claim(s) of errors and say such claims are a twist of the intent of the original loan agreement. But when you are four payments delinquent, doesn't the lender claim that the intent of the note for non-payment calls for foreclosure? So, too, if the lender makes a material breach of the loan agreement, then shouldn't the lender be subject to legal action by you?

Default Judgments:

If a defendant does not answer your complaint or does not file a Motion to Dismiss within the time allowed in the Summons, you can then instruct the clerk of the court to enter a Default Judgment for you. This will be enough to get you a preliminary injunction or a temporary restraining order.

Getting a Trial:

One of the most important action goals you can achieve is getting a trial. Most lawyers and many lenders are not knowledgeable in the highly detailed areas of banking that your lawsuit will involve. Most important is a well-pleaded complaint. You will probably want help in drafting such a complaint. If you want to win your case, it is of vital importance to obtain a "constitutional lawyer" who will know how to get the lender's attorney to answer the complaint. Getting him to answer the complaint virtually guarantees that a case will go to trial. Your next objective is to get a trial by jury. No one likes to see his fellow man put out of his home and you may enlist the sympathy of the jury immediately if you are being foreclosed upon for reasons not your fault and beyond your control.

Preliminary Injunctions and Temporary Restraining Orders:

If you file suit before the sale, then you may attempt to delay or stop the sale with a preliminary Injunction (PI) or Temporary Restraining Order (TRO) until the court can determine the underlying issues.

1. The right to foreclosure is contested because,
 - a. No actual default exists under the loan agreement.
 - b. The lien against the property is invalid, or
 - c. Fraud existed in the original transaction.

In other words, since your default is not always looked at by the courts as a break of contract, the courts may be persuaded to issue PI or TRO to prohibit the sale until they can resolve the above issues.

2. The sale procedure is defective, such as the Notice of default, the Notice of Sale, or Lis Pendens not being filed correctly or the proper waiting periods not being followed. In other words, a PI or TRO may be granted when the statutory regulations which regulate

foreclosure sales are not properly followed. In such a situation, the remedy will probably be to have the procedure corrected before allowing the sale process to proceed. Nevertheless, the PI or TRO may delay the sale long enough to give you some added advantage, such as time to cure the default by using one or more of the other options mentioned in this booklet. Even if you lose a lawsuit to prohibit the sale, the court might allow some period of time after its decision for you to reinstate the defaulted loan, if you request it.

Credit is Not Money:

The author and the publisher recommend against the “credit is not money” legal approach. It is only included here because it is a foreclosure defense recommended by an attorney. It is recommended that if you are considering this type of legal action, you consult an attorney who is knowledgeable in this area of the law and who can further clarify this legal approach. For homeowners who are very seriously considering a legal lawsuit as an option, it is recommended that you obtain a copy of attorney Lawrence Adams Malone's book: [How to Avoid Foreclosure on Your Home, Farm or Business.](#)

In his book, Malone explains that when a corporation executes a contract beyond the scope of its powers, the courts consider the contract void or “ultra vires”. Malone’s book gives very detailed instructions on how to proceed with this kind of lawsuit. A borrower exploring this type of legal action should get a copy of Malone’s book. Malone’s book is lawsuit-strong and is billed as having “courtroom karate with model lawsuits for the layman and his attorney.” Although Malone’s book is currently out of print, a great number are in circulation in many of the city and county library systems. Despite the fact that Malone’s book was last published in 1986, Mr. Malone has recently proclaimed that the principles behind the model lawsuits detailed in his book reflect current legal proceedings. Malone’s book was written to cater to the entire United States.

Using a Third Party to Delay and Resolve How Third Parties Can Help

The options discussed in this booklet can only be exercised with communication, negotiation and cooperation from your lender. In many circumstances, this can prove to be a challenge. Some of the difficulties you may face are discussed below:

Keep in mind that when you call about your delinquent mortgage and are transferred to someone whose job title is "counselor" or "customer care specialist", they are actually a collector. They have one job, and that is to get you to pay up. These collectors are not trained to help save people's houses. They have a GREAT NUMBER of foreclosures. When you add up all of the lenders' loans that are not being paid, it adds up to a large sum of money that the mortgage company is losing every month. They are constantly trying to recover as much of that money as possible.

Their collectors are paid and get bonuses on their ability to collect money. Collectors that do not produce are let go. It's that simple.

The tactics that are used usually involve demanding full payment of the arrears and not accepting anything less than that. Most lenders have a policy of sending back any payments sent in which are less than the full arrears. Even cashier's checks are returned. The lender is hoping that the impending foreclosure will force you to somehow come up with the arrears. If you don't come up with the money, they simply complete the foreclosure and get their money via the sale. Getting the mortgage company to communicate with you about an alternative to full payment of the arrears is probably one of the biggest obstacles you will face. In a recent study, over 80% of all homeowners surveyed said that their mortgage company demanded to be paid the arrears in full as the only option. No other arrangement was satisfactory and homeowners were informed that if they couldn't come up with the full arrears, then the foreclosure would go through with no

leniency. There are some lenders who are even less communicative. These lenders will make you leave messages and then return the calls in a very poor fashion - waiting days to respond or sometimes not returning the call at all.

A third part can help to implement foreclosure assistance strategies. Once a lender knows that you are dealing with an experienced foreclosure professional that knows all of the ropes, they show respect. They know that the foreclosure counselor knows all of the options. Also, the foreclosure expert speaks their language, knows all of their terminology and often can break through to the decision makers at the mortgage company. Mortgage companies hear the same old stories over and over of why you're late - they are callused. They just automatically assume that the person is a deadbeat without taking the time and consideration to really look at the story. They deal with many people, and quite honestly, many of them end up with an overall negative attitude.

If your lender is demanding the arrears be paid in full, or if communications with them are strained, you may want to obtain the services of a third party to help you exercise delay or resolution strategies to work out the situation and avoid foreclosure.

What you should expect from a third party:

- ◆ To be familiar with all major workout solutions
- ◆ To not be a "front" for a bankruptcy attorney or mortgage company.

You want the third party to be familiar with these companies and even have connections to them, but you don't want a third party that leans toward one of these as a standard solution. You want an impartial third party that won't "steer" your case towards an option

that ends up benefiting them. You want a third party that will simply do what's best for you.

How to Save Money If Filing Bankruptcy

The average bankruptcy attorney will charge you between \$800 and \$1,500 to handle your bankruptcy. He/she will prefer to have this paid up front, but will probably be willing to take 25-50% up front and the rest in two or three payments. The attorney will listen to your situation and then tell you to fill out some initial paperwork to document what you owe and what you own. After that, an assistant or paralegal will take over, 99% of the time. Most people want to save the money of hiring an attorney and have seen "do-it-yourself kits", but when it comes down to it, most people are frightened to fill out and file the papers themselves. The "legal world" is different than the one most people are used to. The terminology can be overwhelming and most people are fearful of filling out the paperwork incorrectly. Although filing for bankruptcy using only self-help books is an option, even the best legal books can be confusing and leave the reader less than 100% sure that he/she has properly filled out all the forms.

If you do not want to hire an expensive attorney or do not want to risk during the paperwork yourself, there is a low-cost solution. In the 1994 Bankruptcy Reform Act, the U.S. Congress authorized non-lawyer bankruptcy petition preparers to assist debtors with the paperwork and routine process of filing bankruptcy. This is exactly what paralegal services do. In large part, Americans who need the protection and relief that filing bankruptcy can offer are those least able to afford the high prices of an attorney. For consumers without complicated circumstances, the preparation and filing of bankruptcy documents can be done without the assistance of an attorney. Paralegal services help consumers who want to help

themselves. Many professionals in the foreclosure industry advise avoiding a bankruptcy attorney and instead, advocate using a bankruptcy petition preparers.

Unlike expensive bankruptcy attorneys, bankruptcy petition preparers can provide the assistance you need by preparing all of the necessary paperwork for about \$300 - \$450 dollars.

What to Watch Out For.....

The day that legal notices start being filed, your foreclosure becomes public record, and the vultures start marketing. Do vultures wear devils' horns on their head and carry signs that say "I'm going to rob you blind"? No. They've all have worked out "angles" and "propositions" that sound plausible. They will go out of their way to appear as helpful and unbiased as possible. The following are typical foreclosure "solutions" they may suggest:

Marketing Fronts For Bankruptcy Attorneys

The most common thing to look out for are those posing as foreclosure specialists who are actually nothing more than fronts for bankruptcy attorneys. They convince you to declare bankruptcy.

Investor "Sharks"

The second most common thing to look out for are investors who are looking to come in and buy your property for peanuts. Their basic goal is to purchase the house from you for exactly what you owe on it before it goes to auction. They will hope that you feel exasperated, "boxed in", and see no way out of the situation. They will hope that you are so stressed out by the whole thing that you just "want out". They will gladly "help you" by having you sign over ALL of your equity to them.

Sale/Leaseback Schemes

Be careful when considering any proposition which involves signing over your house to an investor and then leasing or renting it back with an option to repurchase it.

While some of these scenarios can work out positively, many of them are structured unfairly. See the section in this booklet that describes Sale/Leaseback scenarios and then get a professional's help when evaluating the paperwork.

Foreclosure Consultants Who Are Really Just Middlemen

There are those who will tell you that they can solve your foreclosure problem and will charge you just for referring you to others. There are several such "home-savers" who promise to perform negotiations, but end up just referring clients to mortgage brokers and bankruptcy attorneys, who also must be paid. These types of companies are difficult to spot. Ask for references.

Carefully review and ensure that you understand any accompanying guarantee, and call the Better Business Bureau to ascertain the reputation of the companies.

Equity Skimming

You must try to protect yourself from this form of scam usually

perpetrated by an unscrupulous investor who is trying to steal your property right out from under you. An equity skimmer is a con who promises to bail you out of your foreclosure. He entices you to sign a quitclaim deed by promising you that he will bring the delinquent mortgage current. He additionally explains that you will pay him a reduced monthly "rent" payment.

The equity skimmer continues to collect the "rents" from you for his own personal gain without actually performing any foreclosure resolution services at all, and simply allow the lender to foreclose on the property. The homeowner is quite surprised when they find out that their house has been sold at auction. This is further complicated by the fact that you are still obligated to the lender when the sale of the property produces a shortfall.

State laws vary on how this issue is treated, but generally, the lender can obtain a deficiency judgment for the difference between what they collected at the auction and the total amount owed including arrears, attorney fees, court and auction costs. This deficiency judgment is levied against you, not the equity skimmer. Boston Harbor is a company that gained much attention doing this in 1997 and 1998. They have since been shut down, but other individuals and companies perpetrating the same scheme exist.

Foreclosure Exit Resolutions

These are alternatives to foreclosure that involve you not keeping the house. Yours may be a situation where you've decided that your financial hardship is not temporary, or there are other factors involved. You may feel that you would like to leave the house and close this chapter of your life.

The exit strategies discussed in this section provide financial, credit, and liability advantages over simply letting your house be sold at the foreclosure auction. The exit strategies discussed are:

Deed in Lieu of Foreclosure
Short Sale
Cash for Keys
Selling your house in 5 days

Deed in Lieu of Foreclosure

A Deed in Lieu of Foreclosure, commonly known as a deed in lieu, allows you to offer your property's title (deed) to your lender in order to prevent a foreclosure on a defaulted loan.

First of all, there must be equity in the property to assure the lender of recouping most of the mortgage balance by taking title and selling the property. To determine the value and amount of equity in your property, the lender will utilize the services of a certified property appraiser. The downside to a deed in lieu is the existence, if any, of any junior lien-holders or judgment holder who must be paid in full before the bank considers the proposition. A good real estate attorney could assist you with this form of settlement if you are unable to sell the property yourself.

Short Sale

A short sale could help you if you've decided you would like to sell your house, but your loan balance exceeds the fair market value (appraised value) of your home. If you choose to sell your home by using this option, you must present the lender with a bona fide third party contract of sale offer making certain that the buyers are pre-qualified for the necessary mortgage amount and can close within the next thirty to sixty days. You must approach the lender with the understanding that you are so totally financially destitute

with little or no income, and unable to make a cash payment on the loan to offset the loss between the sales price and the balance on your loan. You must further convince the lender that you cannot reinstate the delinquent mortgage payments and that you are trying everything possible to avoid foreclosure. You must also convince them that you have no personal assets that can be sold. The short sale technique is a useful tool when executed properly with an end result of the lender freeing you from the loss they will incur at the sale (the remaining balance). This is known as a settlement of the debt. The prudent lender knows that their organization will save money in the form of foreclosure costs and legal fees by accepting the short sale versus taking the property back.

Cash for Keys

This little known technique is a real problem solver for homeowners who have little or no equity in their home. Their equity will not provide enough cash from their sale to help pay for marketing, fix up cost, or the cost of a broker's commission. It also may leave the homeowner responsible for deficiencies at the time their home is sold at an auction.

Essentially, an investor comes in and purchases the right to a quit claim deed (transfer of ownership of your property), for \$1,500 to \$3,000. - contingent upon the investor's ability to strike an agreement with the current lender. The investor then negotiates with the current lender to purchase your note at a discount. Details on exactly how the program works are as follows:

- A.) The homeowner wants to move out in exchange for cash for their deed. The Homeowner enters into an assignable contract in which \$1,500 - \$3,000 is received if their mortgage note can be successfully purchased from their current lender at a discount.

- B.) What will be required is an appraisal and a title search to determine both the value and the extent of any additional liens that might exist. The homeowner is responsible for the cost of the appraisal and the title search. These costs can be returned to the homeowner at closing.
- C.) An inspection of the house would need to be done to estimate the costs of needed improvements to make the home saleable.
- D.) The homeowner enters into a purchase contract - an agreement to sell their deed for a specific sum of money (\$1,500 - \$3,000) conditioned on the ability of the investor to purchase their mortgage note from their lender at a discount. This discount would take into consideration renovation costs, finance and carrying costs and the cost of marketing the property to a new buyer or tenant.
- E.) Once the Property is under contract, the homeowner gives written authorization to negotiate the purchase of their mortgage from their current lender.
- F.) An offer is made to the homeowner's lender to purchase the mortgage at 70 to 80% of the appraised market value of the house.
- G.) If the offer is accepted, the homeowner is repaid the up-front costs plus the \$1,500 - \$3,000 at closing. This is put into an escrow account and actually disbursed when the house is vacated.

Selling your house in 5 days

Auction Sales – The Five Day Sale

Thousands of Americans have benefited by a little known technique which incorporates auctioning their home to the highest bidder. This method can sell their home in less than a week. They will maximize their price and sell quickly which is the perfect strategy for a homeowner in foreclosure. The key is to price the home below the market price by at least \$25,000 to \$50,000 in the ad, and to get twenty-five phone calls within five days.

Using this method, it is always better to price the home lower than higher. What eventually will happen is that bidders will drive up the price of the home to the high end of the market. The key point is that the homeowner should not panic because of the low starting price. Prior to running ads and starting the auction process certain key points should be covered.

1. Determine the approximate market value of the house. Using comps, appraisal, and Personal research will provide the base price.
2. Don't work with brokers. The market will determine the price, and it will not require any negotiation.
3. Have the home inspected professionally. Make corrections and fix only those items that will make a difference in the price of the home.
4. Prepare the following materials prior to starting the auction sale:
 - A. Written description of the property, the house, and color
 - B. Info on area, schools, shopping, parkways, parks, etc.
 - C. Copy of independent inspection report.

D. The rules and regulations regarding the bidding procedure—

the instructions should be easy to understand. Running the actual sale:

5. Prepare the classified ad.
6. Ad should run Wednesday to Sunday in a periodical that is most used by sellers of homes in the area.
7. Take phone calls, prepare telephone log of prospective buyers', names, addresses, and telephone numbers.
8. Conduct open house for inspection on Saturday and Sunday from 10:00am to 5:00pm.
9. Provide prospects with information which includes property description, detailed amenities, location etc., photos of home and bidding instruction.
10. Each prospect should be met at the house and given a tour. Sunday evening at 8:00pm start calling all the prospective bidders. Bids should be in minimum increments of \$500. The bidding is an open bid, and it is conducted on a round robin basis. If the winning bid reneges, drop down to the next highest bidder.

This highly effective method has been successfully used by people and families throughout the United States. The complete book, which details the step-by-step formula is called: **How to Sell Your Home in 5 Days** – Second Edition by Bill Effros.

Other Resources

The following are additional resources and organizations that may

be able to assist you.

Social Services

FHA/HUD Mortgage Assignment

HUD Counseling Organizations

Department of Veterans Affairs

Private Mortgage Insurance

Additional Reading

Social Services

In most states, limited mortgage payment assistance is available through the Department of Social Services. In cases of unemployment hardships, this is an outlet you can use if you fall behind on your payments and wish to apply for temporary assistance. Just call your County Social Security Services and make an appointment to meet with a counselor to discuss how you can apply and qualify for mortgage payment assistance. If you are approved, the county will send mortgage payment checks directly to the lender for a specified period of time until you are able to find employment.

FHA/HUD Mortgage Assignment

IF you have an FHA loan, and meet the following criteria, you may qualify to have your mortgage assigned to HUD:

- a. If the loan on your house is insured by the Federal Housing Authority (FHA), a division of the U.S. Department of Housing and Urban Development (HUD).

- b. If circumstances beyond your control (such as: illness, death, separation, divorce, strike, emergency home repairs, unemployment or under-employment, etc.) have caused you to miss three or more monthly mortgage payments, and
- c. If there is a reasonable prospect that you will be able to resume full mortgage payments in three years or less. The Federal Housing Administration (FHA) is the division of HUD which insures mortgage loans for both new and existing homes and for home improvements and repairs. FHA does not lend money, nor does it build homes.

As an insurance company, FHA insures the lender against loss if you, as the borrower, fail to make monthly mortgage payments. But, like any insurance company, it would like to keep claims low. If your mortgage is insured by the FHA, you are fortunate. The lender who holds an FHA insured mortgage must meet special requirements in handling the loan. In addition, HUD has special workout procedures to assist FHA insured homeowners if they are temporarily having difficulties making their mortgage payments. The payments may be temporarily reduced or suspended in accordance with your ability to pay them. You make all past due and future payments to HUD under a workout program which you and HUD put together.

There must be a reasonable prospect that the mortgage will be paid in full by the end of the original term, although the term may be extended, as necessary, by up to ten years. The advantage is that as a government agency, HUD is not profit motivated and has greater flexibility than a private lender devising workout programs.

However, it too can and will foreclose if you refuse to meet your obligations under their agreement. Acceptance of a mortgage assignment by HUD requires both quick and careful preparation. A HUD approved counseling agency can be very helpful in this

process.

HUD Counseling Organizations

Generally speaking, HUD is a division of the federal government which is involved with housing issues and can provide referrals to other counseling agencies free of charge.

Most of the HUD approved housing counseling agencies receive some money from HUD as well as from community organizations in order to provide these services.

These organizations are generally non-profit and are great sources for counseling and help. You can get referrals to the nearest approved housing counseling agency by calling HUD at 1-888-466-3487.

Department of Veteran Affairs

The Department of Veterans' Affairs (DVA) Pre-foreclosure Avoidance Program is a special type of assistance for Veterans. Initially, DVA gets involved in the real estate loan business in one of two ways:

1. Guaranteeing for veterans a portion of their home loan (currently up to \$36,000).
2. Creating loans for buyers of resold DVA foreclosure properties.

The DVA is committed to doing everything in its power to help borrowers in foreclosure keep their houses. The Department of Veterans' Affairs' Loan Servicing Guide states that distressed

borrowers should not suffer from an inflexible, standardized system. Likewise, collection routines should not allow chronic delinquents to pay at will. In other words, the DVA foreclosure avoidance program is designed to do everything possible to help defaulting borrowers keep their houses, but if they discover an uncooperative borrower, then the DVA will rule that it is in the best interest of the DVA to foreclose immediately. You can reach the Department Of Veteran Affairs by calling: 1-800-827-1000. A benefits counselor can assist you with their foreclosure avoidance program.

Private Mortgage Insurance

If you were required to buy mortgage insurance when the loan was first obtained, then the insurance company may be able to offer very limited assistance in the case of a loan delinquency or default. For example, in order to prevent a foreclosure and the expense of a claim, the mortgage insurance company may help the borrower to negotiate a workout with the lender/servicer. Also, in a case where the borrower suffers a temporary income loss, the mortgage insurer may also pay part or all of the delinquent loan payments. Even though you must pay for the mortgage insurance in order to qualify for the loan in the first place, it is the lender who gets the benefit of the insurance. But, if the mortgage insurance company can avoid a claim due to a foreclosure by assisting certain borrowers in negotiating a workout, or by paying a few delinquent payments, then it makes good business sense for them to do so. In any event, the delinquent borrower must show strong signs of being able to quickly recover from the financial set-back. If you have mortgage insurance as well as the potential to resume normal payments after a short period of time, then contact the mortgage insurer and ask them to pay a few of the delinquent payments to help you recover financially. You will have the best chance of convincing the insurer to pay your delinquent payments if you can prove to them that it will cost them less money to help you than it

will to pay off a claim to the lender. To aid in preparing your calculations, ask the insurer what amount is insured AND what percentage of that amount the insurance is for. Then, using whatever figures they give you, do the calculations to determine if the insurer would have to pay more by the paying the claim or by paying a few of your delinquent payments. In addition to asking for help on the payments, ask the insurer for help in negotiating a workout, especially a note modification. The mortgage insurer has certain clout which may influence the lender to grant you a workout. Choose the resolution strategy that best suits your needs.

Additional Reading

How to Avoid Foreclosure on Your Home, Farm or Business by Lawrence Adams Malone, LL.B., Ph.D.

How to Sell Your Home in 5 Days - Second Edition by Bill Effros

Save your home! - How to protect your home and property from foreclosure - by Steven L. Porter

Appendix A - TIME LAPSES BETWEEN REFERRAL TO FORECLOSURE ATTORNEY AND AUCTION SALE DATE

The following table represents the aforementioned average time frames in the respective state to complete an uncontested foreclosure.

State Months State Months

Alabama 3 Montana 6

Alaska 4 Nebraska 4

Arizona 3 Nevada 4

Arkansas 3 New Hampshire 3

California 4 New Jersey 10

Colorado 5 New Mexico 5

Connecticut 6 New York 10

Delaware 7 North Carolina 4

District of Columbia 4 North Dakota 4

Florida 7 Ohio 8
Georgia 3 Oklahoma 7
Guam 11 Oregon 5
Hawaii 7 Pennsylvania 9
Idaho 9 Rhode Island 3
Illinois 10 South Carolina 6
Indiana 9 South Dakota 4
Iowa 7 Tennessee 3
Kansas 4 Texas 2
Kentucky 7 Utah 5
Louisiana 6 Vermont 10
Maine 10 Virginia 4
Maryland 5 Washington 5
Massachusetts 5 West Virginia 4
Michigan 3 Wisconsin 10
Minnesota 4 Wyoming 3
Mississippi 4 Puerto Rico 12
Missouri 3 Virgin Islands 10

Appendix B - Foreclosure Procedure by State

State Predominate Redemption Possession Security, Foreclosure Period During Device Method Redemption

Alabama Mortgage Power of Sale 1 year Buyer
Alaska Trust Deed Power of Sale None --
Arizona Trust Deed Power of Sale None --
Arkansas Mortgage Power of Sale 1 year Buyer
California Trust Deed Power of Sale None --
Colorado Trust Deed Power of Sale 75 days Mortgagor
Connecticut Mortgage Strict Foreclosure None --
Delaware Mortgage Judicial None --
Washington DC Trust Deed Power of Sale None --
Florida Mortgage Judicial 10 days --

Georgia Mortgage Power of Sale None --
Hawaii Trust Deed Power of Sale None --
Idaho Trust Deed Power of Sale None --
Illinois Mortgage Judicial 1 year Mortgagor
Indiana Mortgage Judicial 3 months Mortgagor
Iowa Mortgage Judicial 6 months Mortgagor
Kansas Mortgage Judicial 1 year Mortgagor
Kentucky Mortgage Judicial None --
Louisiana Mortgage Judicial None --
Maine Mortgage Entry/Possession 1 year Mortgagor
Maryland Trust Deed Power of Sale None --
Massachusetts Mortgage Power of Sale None --
Michigan Mortgage Power of Sale 6 months Mortgagor
Minnesota Mortgage Power of Sale 6 months Mortgagor
Mississippi Trust Deed Power of Sale None --
Missouri Trust Deed Power of Sale 1 year Mortgagor
Montana Mortgage Judicial None --
Nebraska Mortgage Judicial None --
Nevada Mortgage Power of Sale None --
New Hampshire Mortgage Power of Sale None --
New Jersey Mortgage Judicial 10 days --
New Mexico Mortgage Judicial 1 month Buyer
New York Mortgage Judicial None --
North Carolina Trust Deed Power of Sale None --
North Dakota Mortgage Judicial 1 year Mortgagor
Ohio Mortgage Judicial None --
Oklahoma Mortgage Judicial None --
Oregon Trust Deed Power of Sale None --
Pennsylvania Mortgage Judicial None --
Rhode Island Mortgage Power of Sale None --
South Carolina Mortgage Judicial None --
South Dakota Mortgage Power of Sale 1 year Mortgagor
Tennessee Trust Deed Power of Sale None --
Texas Trust Deed Power of Sale None --
Utah Mortgage Judicial 6 months Mortgagor

Vermont Mortgage Strict Foreclosure 6 months Mortgagor
Virginia Trust Deed Power of Sale None --
Washington Mortgage Judicial 1 year Buyer
West Virginia Trust Deed Power of Sale None --
Wisconsin Mortgage Power of Sale None --
Wyoming Mortgage Power of Sale 6 months Mortgagor

Appendix C - Foreclosure Procedure By State Law Citations

Alabama- Code of Alabama, Vol. 5, Title 6, Sections 6-5-240 et seq.; Vol. 19 Title 35 Sections 35-10-1 et seq.
Alaska- Alaska Statues, Vol. 2 Title 9, sections 09.45.170 et seq.; title 34, sections 34.20.070 et seq.
Arizona - Revised Statues Annotated, Vol 4A, Title 12, Sections 12-1281 et seq.; vol. 11, title 44, sections 33-721 et seq.
Arkansas - Arkansas Statues Annotated, Vol. 5, Sections 51-1105 et seq.; Vol 7B, Sections 84-1201
California- California Civil Cod Sections 2920 et seq.; 2924 et seq.; 1695 et seq.
Colorado- Colorado Revised Statues 1973, Vol. 16, Title 38, Sections 38-37-101 et seq.; 38-39-101 et seq.
Connecticut - Connecticut General Statues Annotated, Vol. 22A Section 49-14, 49-17 et seq.
Delaware - Delaware Code Annotated, Vol. 6 Sections 10-4716, 10-4961 et seq.; 10-5061 et seq.
Florida - Florida Statues Annotated, Vol 2, Section 45.031 Vol. 20, Section 702.01
Georgia - Georgia Code Annotated, Book 20, Section 67-115 et seq.; 67-201, 67-401, 67-701, 67-1503 et seq.
Hawaii - Hawaii Revised Statute, Vol. 7A, Sections 677-1 et seq.
Idaho - Idaho Code, Vol. 2 Section 5-226 et seq. 6-101, 11-301 et seq., 11-401
Illinois - Illinois Code of Civil Procedure, Sections 12-122 et seq., 15-101 et seq.
Indiana - Burns' Indiana Statutes Annotated, Sections 32-8-16-1, 32-8-17-1, 34-1-39-4 et seq., 34-2-29-3

Iowa - Iowa Code Annotated, Vol. 50, Sections 628.2 et seq., 654.1

Kansas - Kansas Statutes Annotated, Vol. 4, Sections 58-2253 et seq., 58-2314, et seq.; Vol 4A, Sections 60-2410 et seq.

Kentucky - Baldwin's Kentucky Revised Statutes, Vol. 7 Sections 426.200 et seq.

Louisiana - Louisiana Revised Statutes, Vol 6 Article 2343, Vol. 10, Article 2568 Code of Civil Procedure; Vol 7 4106, 4341 et seq.; Vol. 8 4942 et seq.

Maine - Maine Revised Statutes Annotated, Vol. 7, Section 14-2151, 14-2202 et seq., 14-2251 et seq., Vol. 8 Sections 14-6201 et seq.

Maryland - Annotated Code of Maryland, Vol 9C, Rule W70 et seq., BR6

Massachusetts - Annotated Laws of Massachusetts, Chapter 244, Section 244-1 et seq., 244-17A, 244-35

Michigan - Michigan Statutes Annotated, Vol. 22, Sections 27A.3140, 27A.3201 et seq.

Minnesota - Minnesota Statutes Annotated, Vol 37, Section 580.02 et seq., 581.10 582.14 et seq.

Mississippi

Mississippi - Code 1972 Annotated, Vol. 5, Section 15-1-19 et seq.; Vol. 19. Section 89-1-53 et seq.

Missouri - Vernon's Annotated Missouri Statutes, Vol. 23, Sections 443.290 et seq.

Iowa - Iowa Code Annotated, Vol. 50, Sections 628.2 et seq., 654.1

Kansas - Kansas Statutes Annotated, Vol. 4, Sections 58-2253 et seq., 58-2314, et seq.; Vol 4A, Sections 60-2410 et seq.

Kentucky - Baldwin's Kentucky Revised Statutes, Vol. 7 Sections 426.200 et seq.

Louisiana - Louisiana Revised Statutes, Vol 6 Article 2343, Vol. 10, Article 2568 Code of Civil Procedure; Vol 7 4106, 4341 et seq.; Vol. 8 4942 et seq.

Maine - Maine Revised Statutes Annotated, Vol. 7, Section 14-2151, 14-2202 et seq., 14-2251 et seq., Vol. 8 Sections 14-6201 et seq.

Maryland - Annotated Code of Maryland, Vol 9C, Rule W70 et seq., BR6

Massachusetts - Annotated Laws of Massachusetts, Chapter 244, Section 244-1 et seq., 244-17A, 244-35

Michigan - Michigan Statues Annotated, Vol. 22, Sections 27A.3140, 27A.3201 et seq.

Minnesota - Minnesota Statues Annotated, Vol 37, Section 580.02 et seq., 581.10 582.14 et seq.

Mississippi - Mississippi Code 1972 Annotated, Vol. 5, Sections 15-1-19 et seq.; Vol. 19. Section 89-1-53 et seq.

Missouri - Vernon's Annotated Missouri Statutes, Vol. 23, Sections 443.290 et seq.

Montana - Montana Code Annotated 1981, Vol. 3, Sections 25-13-801 et seq.

Nebraska - Revised Statues of Nebraska, Vol. 2, Sections 25-1530, 25-2137 et seq.

Nevada - Nevada revised Statues, Vol. 2, Sections 21.130 et seq.; Vol. 3, section 40.430; Vol. 5, Sections 106.025, 107.080 et seq.

New Hampshire - New Hampshire Revised Statues Annotated, Vol. 4A, Sections 479.19 et seq.; Vol. 5, Section 529.26

New Mexico - New Mexico Statues 1978 Annotated, Vol. 6, Sections 39-5-1, 39-5-19 et seq., Vol. 7, Sections 48-3-14, 48-7-7

New York - Mckinney's Consolidation Laws of New York Annotated, Book 491/2, Sections 1352, 1401 et seq.

North Carolina - General Statues of North Carolina, Vol. 1, Sections 1-47; Vol. 2A, Sections 45-21/1 et seq.

North Dakota - North Dakota Century Code Annotated, Vol 5A, Sections 28-24-01 et seq.; Vol 6, Section 32-19-1, 32-19-18; vol. 7, Sections 35-22-01 et seq.

Ohio - Page's Ohio Revised Annotated, Title 23, Section 2323

Oklahoma - Oklahoma Statutes Annotated, Section 12-686, 12-764, 46-31 et seq., 46-301

Oregon - Oregon Revised Statutes, Vol. 1, Sections 86-010, 86-710 et seq., 88-040 et seq.

Pennsylvania - Purdon's Pennsylvania Statutes Annotated, Title 72,

Sections 403 et seq., 59710

Rhode Island - General Laws of Rhode Island, Vol. 6, Sections 34-23-1 et seq., 34-26-1, 34-27-1 et seq.

South Carolina - Code of Laws of South Carolina 1976, Vol. 7, Sections 15-39-640 et seq., Vol. 10, Section 29-3-10, 29-3-630 et seq.

South Dakota - South Dakota Codified Laws 1967, Vol. 6, Section 15-19-23; Vol. 7, Sections 21-52-2 et seq.

Tennessee - Tennessee Code Annotated, Vol. 4, Sections 16-16-111, 21-1-803, 35-501 et seq., 66-9-101.

Texas - Vernon's Civil Statutes of the State of Texas Annotated, Vol. 12, Title 56, Articles 3810, 3819 et seq.; 1982 Texas Rules of Court, Rule #309

Utah - Utah Code Annotated 1953 (1977), Vol 9A, Sections 78-37-1, 78-40-8; Vol 9B, Rules of Civil Procedure 69(e) 1-3, 69(f) 1-5

Vermont - Vermont Statutes Annotated, Title 12, Sections 12-4529 et seq., Rules of Civil and Appellate Procedure 80.1 (e) (h)

Virginia - Code of Virginia, Vol, 8, Sections 55-59 et seq.

Washington - Revised Code of Washington Annotated, Title 6, Sections 6.24.010 et seq.; Title 61, Section 61.12.060

West Virginia - West Virginia Code, Vol. 11, Sections 38-1-1A et seq., Vol. 16, Sections 59-3-1 et seq.

Wisconsin - West's Wisconsin Statutes Annotated, Section 815.31, 846.51 et seq.

Wyoming - Wyoming Statutes Annotated, Vol. 2, Sections 1-18-101 et seq.; Vol. 7, Sections 34-4-102 et seq.

Appendix D - The Basics of Your Personal Mortgage Information Worksheet

A helpful step in resolving your situation is to have one place to write down all of the basic information pertaining to your situation. A section has been provided in the very back of this booklet for you to do this. It is titled: Personal Mortgage Information Worksheet In this space, you can write down the basics that you already may know, such as your mortgage company, your loan number, etc. In addition, that are some pieces of information you can research and then make note of. The first piece of information that would be good for you to know is what the average length of time is in your state for a foreclosure to be completed. This varies from state to state and depends upon the aggressiveness of the lender, however, you can get an idea of the average by looking at the table in Appendix A.

Two specific pieces of information you'll want to research next have to do with what kind of security instrument you have and what kind of foreclosure procedure your state uses.

Your security instrument will either be a mortgage or a trust deed. Which you have will have to do with what state you are in. You can locate which is predominately used in your state by looking at Appendix B.

If you have a mortgage, it takes longer to get through the entire foreclosure process than it does if you have a Trust Deed.

Also in Appendix B, note what is listed next to your state in the Predominate Foreclosure Method. If it says judicial, then you are in a judicial state. If it says anything other than judicial, then it is a non-judicial state. If you are in a judicial state, the process will take longer than in a non-judicial state. This is because the judicial process of foreclosure proceeds through various stages to get to the sale.

Personal Mortgage Information Worksheet

Name of Lender _____

Address of Lender _____

Telephone # of Lender (_____) _____

Mortgage Loan # _____

Amount of Loan _____

Interest Rate _____

Default Department

Telephone # (_____) _____

Any Collector/Counselor's
name you've dealt with _____

Number of Months Behind _____

Total Arrears _____

Do you have a mortgage

Or a trust deed? _____

Does your State Use

A Judicial or non-Judicial

Process _____

Glossary Of Terms

Adjustable Rate Mortgage.

A mortgage that has a rate change frequency determined by the prime rate, treasury rate, or other money exchange rate during different term intervals of the loan.

Appraisal.

A report compiled by a certified appraiser that includes the probably market value of your home, including similar sales of properties within your community during the last 6-12 months.

Asset Search.

A search requested by a lender through an investigative agency to uncover any hidden assets of the borrower not previously revealed.

Assumption.

A transaction involving a buyer and seller (borrower), whereby the buyer purchases the property and assumes the payments of the borrower.

Automatic Stay.

A legal term that prohibits any creditor from pursuing further debt collection from the party in bankruptcy until further notice.

Bankruptcy.

Insolvency.

A proceeding in federal bankruptcy court allowing the borrower to eliminate some or all of his/her debts in accordance with the bankruptcy laws. In most cases, the debtor's liabilities exceed his/her assets.

Bankruptcy Court.

A court of law that hears consumer and corporate pleadings involving cases where the borrowers are seeking relief and a "fresh start" from excessive debts.

Capitalize.

To incorporate the existing delinquent payments, taxes, insurance costs, etc. from the existing mortgage loan into a new loan with lower payments.

Chapter 7 Bankruptcy.

A court petition that involves the total liquidation of the borrower's unsecured debts.

Chapter 11 Bankruptcy.

Payment Plan – A court petition that allows the borrower to reorganize his debts and pay his creditors a stipulated amount so that the business can continue.

Chapter 13 Bankruptcy.

Payment Plan – A court petition that allows the borrower to enter into a payment plan with the court, usually 3 to 5 years on the arrears of the loan(s) as well as continue with all future payments due the lender.

Creditor.

Any individual, partnership or corporation that has advanced money to a borrower in return for payments over a certain period of time.

Debtor-in-Possession.

Pertains to a Chapter 11 Bankruptcy filing where the borrower makes direct payments to the creditors instead of a court appointed trustee.

Deed in Lieu.

A voluntary conveyance of the homeowner's property over to the lender to satisfy the delinquent debt and avoid foreclosure.

Deficiency Judgment.

A legal means whereby a creditor pursues money damages through the courts from a borrower who lost his or her property through a foreclosure and did not satisfy the full obligation of the loan.

Depreciation.

A federal tax deduction taken by a consumer in conjunction with the life span of a house, automobile, or business equipment.

Discharged.

An order entered by the Bankruptcy Court discharging an individual debtor from claims and liabilities of creditors.

Dismissed.

A borrower's bankruptcy petition is dismissed when the court declares it null and void.

FHA Mortgage.

A mortgage granted to a borrower that is insured through the Federal Housing Administration.

Fair Market Value.

The value of a property as determined by a certified appraiser utilizing comparable sales of similar properties within the last 6 months.

Fixed Rate Mortgage.

A mortgage document that states the rate will stay the same over the life of the loan.

Federal Funds Rate.

The interest rate charged to borrowing banks by the Federal Reserve System.

Forbearance Agreement.

An agreement between the borrower and the lender whereby the

latter party agrees to reduce or postpone payments in a hardship case.

Foreclosure.

The legal right a mortgage lender or other third party lien-holder uses to gain ownership of a property when the borrower defaults on their payments.

Judgment.

A court approved order allowing a creditor to record a money claim against the debtor's property.

Judgment Holder.

With respect to a judgment, the part to whom money is owed to.

Junior Lien-holder.

A lien-holder who holds a mortgage recorded with the county clerk's office subsequent to the first mortgage.

Lien-holder.

A creditor or other third party who holds a mortgage or judgment against a borrower.

Liquidate.

The process by which an asset (car, home, boat, etc.) can be sold and converted to cash to pay off a debt.

Modification.

A form of refinancing a delinquent mortgage by changing one or more terms of the mortgage to help the borrower and avoid a foreclosure.

Maxed Out.

Running up one's credit cards to the maximum limit causing an insolvency leading to a potential bankruptcy.

Mortgagor.

A borrower (debtor) who pledges his property as collateral in return for a loan.

Mortgagee.

The creditor who holds the mortgage on the borrower's property as security for a mortgage loan.

Payment plan.

A written and signed agreement between the creditor and the borrower, whereby the creditor allows the borrower to spread his delinquent mortgage payments over a period of time, usually 6 months or more.

Pre-Petition Payment.

In a bankruptcy proceeding, payments which were in default prior to the bankruptcy filing date. These payments are distributed over a period of time (i.e., 48 months) in installments to the creditors.

Post-Petition Payment.

All future payments which will be due to creditors after the filing of the bankruptcy petition.

Prime Rate.

The rate charged by creditors to its best borrowers as advertised in the Wall Street Journal.

Promissory Note.

A legal document containing the specifics of the money obligation, such as amount advanced, interest rate and term signed by the borrowers and promising payment to the creditor.

Pro-Se.

A borrower (debtor) who voluntarily files his/her own bankruptcy petition with the court without the service of an attorney.

Quitclaim Deed.

A transfer of title to a property by the seller without any obligation or warranty.

Refinance.

A new mortgage loan on the existing property. The creditor draws up new loan documents, lowers the monthly payments at a reduced interest rate, and records a new mortgage with the county clerk's office.

Repossession.

Same as Foreclosure.

Shortfall/Short Payoff.

A remaining balance due a creditor after a third party sale is sufficient enough to pay off the entire debt obligation.

Short Sale.

A sale of property that results in a short payoff that is accepted by the creditor without further obligation by the borrower.

Solvency.

Having the necessary income and assets to cover monthly expenses. The opposite of being overextended on debt obligations.

Teaser Rate.

A low, short term rate offered by a creditor on loans and credit cards. After the expiration date, the cost rises to the agreed upon rate by creditor and borrower.

Trustee.

A court appointed officer empowered to manage and distribute the assets, if any, of a debtor in a bankruptcy proceeding.

Unsecured Debt.

A money obligation that is not secured by any form of collateral.

VA Mortgage.

A mortgage that is insured by the Veteran's Administration. Should the property be foreclosed, the VA will pay off the lender.

Wage Garnishment.

A court order authorizing the creditor to seize a portion of the borrower's monthly income through his/her employer.