

# Home Foreclosure Bible

The Definitive Laymen's Guide to Foreclosure

Alternatives • Solutions • Education



The  
**Home Foreclosure  
Bible**

**The Definitive Laymen's Guide to Foreclosure**

Alternatives ● Solutions ● Education

[www.HomeForeclosureBible.com](http://www.HomeForeclosureBible.com)

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This book is not a substitute for the advice of a knowledgeable real estate attorney or certified public accountant. This book is not intended to teach you everything a real estate attorney or accountant knows about foreclosures. Foreclosure is a very complex and fluid process that is the byproduct of individual state laws and continuously evolving local and national government legislation.

## **ABOUT THE AUTHOR**

Mr. Wayne Robison is an active real estate broker in Minnesota. Since 1990, he has specialized in foreclosures and is currently involved in various aspects of the foreclosure market. Through assisting clients with foreclosures, Robison learned successful techniques, which he has captured in several books he offers as a means to help educate the real estate community regarding the foreclosure arena. As the founding member of Foreclosure University, Robison has developed an educational platform exclusively for real estate professionals addressing this topic.

This book, *Home Foreclosure Bible*: is not a substitute for the advice of a competent attorney or certified public accountant and cannot teach you everything a real estate attorney or accountant knows about foreclosures. Although Robison is a real estate broker specializing in foreclosures, he does not claim to provide legal advice in this book.

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# **INTRODUCTION**

"I've come to believe that all my past failure and frustration were actually laying the foundation for the understandings that have created the new level of living I now enjoy."

**Anthony Robbins**

It has been projected that by the year 2010, six million homeowners will face some stage of foreclosure. The vast majority of those homes in foreclosure have adjustable interest rates, which have begun to or have already reset. Translation: you are not alone.

Vanquished equity positions are putting millions of homeowners that would like to (or have to) sell their homes in a terrible predicament. Most of the solutions set forth in this book assume you do not have equity in your home. With the ongoing nationwide collapse of home values it is highly probable that you are in this position.

As you read this book, one question should be in the forefront of your thoughts:

**“If I am able to save my home using one of the strategies in this book, will I be able to keep it over the long run and at what cost?”**

The answer to this question will come after carefully analyzing your short, medium and long-term income and overall financial picture. Solving the temporary problem by removing yourself from a looming foreclosure, by changing its terms, or through a myriad of other options does not address the potential that you may be in the same position six months, one year, or even five years down the road. You must remember, refinancing your current home loan, restructuring your existing note and/or all the other options outlined in this book may not be in your best interest!

Let’s make one thing clear: if you want to keep your home, this book will tell you how to do it. After reading this book, you may decide not to keep your home, but you will make this choice with both eyes wide open, maximizing your foreclosure outcome and minimizing your losses.

Therefore, our objective is to create a balance of complex legal and procedural models with simplified actionable tasks that you can learn with relative ease. An understanding of the “basics” is the goal as it would be impossible to educate you on all the nuances of foreclosure given the complexity and differences of individual state laws coupled with the various types of loan instruments that facilitate the purchase of real estate.

In the end you will not be able to pass the state bar exam but you will be able to navigate your options with an educated intent.

# **CHAPTER 1: DOS & DON'TS**

"Failure is the foundation of success, and the means by which it is achieved."

Lao Tzu



**Stay in your home** during the process. Moving out may preclude you from utilizing various available options including assistance programs. Additionally, if your lender discovers the home is vacant they may exercise their right to accelerate the foreclosure process and take possession of your home in as few as forty (40) days. No matter the final outcome of your situation, there is not a single reason to leave your home until foreclosure timelines expire or an agreement has been reached.

**Do:**

- Obtain an appraisal or Competitive Market Analysis (CMA) before moving from your property.
- Be leery of anyone who contacts you with a loan they promise will solve all of your troubles and save your home.
- Avoid high-pressure lenders, or those who encourage you to pay up-front fees for any service or loan; borrow more than the value of the home; or take on a loan without considering your ability to make the payments.
- Get all terms and promises in writing.
- Look out for terms that change or are not disclosed at the beginning of the loan process.
- Avoid any refinancing loan with inflated fees, a stiff prepayment penalty, an excessively high interest rate, or a balloon payment due.
- Check for complaints about any company that offers to buy your home; contact your state's consumer protection office or your state's real estate regulator for this information.
- Perform a quick Google search on whatever company you are considering doing business with; you never know what may be found on a company by doing a quick internet search.
- **MAKE CERTAIN THAT YOU FULLY UNDERSTAND ANY NEW TERMS AND/OR CONDITIONS WELL IN ADVANCE OF SIGNING YOUR NAME.**

**Don't:**

- Don't wait to contact your lender. Even if you have not missed a single payment, call them and explain your situation immediately. Lenders have been known to modify loans (reduce/freeze payments) that have never been a day late.
- Don't sign anything unless you completely understand it; if you are unsure, have all documents reviewed by an attorney or a trusted real estate professional.
- Don't deed your property over to anyone; signing your home over to someone else does not relieve you of your mortgage obligation.
- Don't let someone assume the loan without the lender's permission and without their formally releasing you from liability for the mortgage.
- Don't move out of your house because someone promises to make the mortgage payments for you.
- Do not let your insurance lapse. If your insurance lapses or is canceled, the lender may find out and send a notice of default, initiating foreclosure proceedings. Lenders have the right to start foreclosure proceedings if you do

not maintain your insurance. Furthermore, lenders have the right to replace the insurance and bill you for the cost. Note: if the lender replaces your insurance with their policy it may cost you **triple** the cost of your original policy, which will be added to your total loan amount.

- Don't list your home with a Realtor that is not experienced with short sales.
- Don't consider selling your home via a short sale (or any other sale for that matter) without determining its approximate market value. Haste may later cause you financial loss in the form of a 1099, deficiency judgment, or through other associated expenses. If you choose to sell using a short sale, it is best to sell through a qualified Realtor; using the Realtor that promises the quickest results is rarely in your best interest.

## **CHAPTER 2: MORTGAGE 101 BASICS**

"Failure is only the opportunity to begin again more intelligently."

**Henry Ford**

Because lenders cannot take immediate physical possession of your house, they secure the loan(s) with either a Deed of Trust or Mortgage. Most people use the terms "Mortgage" and "Deed of Trust" interchangeably, but they are not the same. While many people are used to thinking in terms of mortgages, several states don't even use the mortgage instrument. Lenders prefer a Deed of Trust because the foreclosure process is faster, less costly and involves very little court supervision.

The options available to you and your strategy moving forward depend on what loan instrument was used to finance your property. There are significant differences between a Mortgage and a Deed of Trust as they relate to foreclosure. These differences include the following:

1. A Mortgage is a two-party transaction.

The lender (mortgagee) places a lien on your property. It accepts the mortgage from you (mortgagor) in exchange for loaning money to purchase your home. If you default, **the lender needs to file a lawsuit to obtain a judgment (requiring judicial approval)**, which makes the process lengthy, expensive and cumbersome. If you default on a mortgage you are liable for any deficiency after the auction.

The mortgage creates a lien on the title to the mortgaged property. Foreclosure of that lien almost always requires a judicial proceeding declaring the debt to be due and in default ordering a sale of the property to pay the debt.

Lenders choose to utilize the more cumbersome mortgage procedure hoping to recoup a higher percentage of losses than if they used a Deed in Lieu. This judicial path also allows lenders to sue you for any deficiencies (more on deficiencies later) incurred due to the foreclosure. FOR LENDERS TO PURSUE A DEFICIENCY JUDGMENT, THEY MUST GO THROUGH A JUDICIAL FORECLOSURE.

2. A Deed of Trust is a three-party transaction.

With a Deed of Trust, your house is sold via a trustee's sale. After a trustee's sale, the homeowner, in most states, has no right to redeem the home (no redemption period), a remedy available with a mortgage. In most states, having a Deed of Trust merely creates a lien on the title and not a title transfer, regardless of its terms. The three parties are the beneficiary, the trustor and the trustee.

- The lender is called the *beneficiary* because it benefits from the transaction by collecting interest.
- The homeowner (you) is the *trustor* because you are "trusted" with the money.
- The final party is the *trustee*, who holds title for the benefit of the beneficiary; the trustee's sole function is to initiate the foreclosure at the direction of the lender.

If you default, the trustee follows procedures agreed to in the Deed of Trust and does not need to involve the court. Your liability exposure is limited only to your home; the lender cannot seize your other assets or wages. (Note: It is important to understand that in some states Deed of Trust holders may pursue judicial foreclosure; however it is a rarely sought remedy because it defeats the primary

function of a Deed of Trust). When the lender forecloses and does not get enough from the auction to pay off the note (creating a deficiency) the lender cannot sue you for the difference. This is known as the anti-deficiency rule. Because the lender chose to take the property back without a lawsuit the borrower is protected by the anti-deficiency rule. Chapter 8 is dedicated to deficiencies.

## **CHAPTER 3: SIX BASIC STEPS TO FORECLOSURE**

“The only real failure in life is one  
not learned from.”

**Anthony J. D'Angelo**

Foreclosure is an incremental process that follows state-specific guidelines based upon individual state laws. Listed below are six basic steps each state follows:

### **Step 1: Notice of Default**

If you are delinquent, lenders in most states file a "Notice of Default." Some states refer to it as the "Sheriff Sale" notice. This notice is recorded at the County Recorder's office. Within a specified number of days of being recorded, the Notice of Default (NOD) is sent by registered or certified mail, and separately by regular mail, to you and to any other person who requested notification. After it is recorded, copies are mailed to any people or entities that are identified as having an interest in your property (i.e., someone who takes a second mortgage on your house would be an example of someone having an interest in your property). If there are liens on your property for postponed real property taxes the state will also be notified.

### **Step 2: Notice of Sale**

After receiving the Notice of Default, if you do not bring your loan current or make other arrangements with the lender, a "Notice of Sale" will be published. The trustee publishes the notice of sale for a prescribed period of time as designated by state statute prior to the auction in a general circulation newspaper.

### **Step 3: Right of Reinstatement Period**

In most states you have the right to reinstate your loan prior to the sale. The time you have to reinstate your loan depends upon your state's law. You will need to pay the lender more than just the missed payments; however, you will need to pay all fees, expenses and late charges as well. It is important to note that the lender will only accept a certified check or bank wire during this process. Once you reinstate the loan you can continue to make payments as if the loan had never been in default. If at some future point you miss another payment, the lender must start the foreclosure process from the beginning.

### **Step 4: Auction**

On the advertised date and time, the lender puts your house up for sale at auction. After the lender completes the lawsuit and prevails, the court issues a judgment ordering a foreclosure sale of the property. The lender then takes the judgment to the sheriff to place a levy on the property. The sheriff holds a sale of the property to the highest bidder. The foreclosure sale is usually held at the courthouse, although the location can vary depending on the state and county. The bank or lender is usually the only party in attendance. The proceeding is conducted like any other auction, with an auctioneer asking for bids. The lender will place a minimum bid for the value of the debt owed. All the bidders except the foreclosing lender must have cash or a cashier's check for payment. The trustee's deed is executed and given to the highest bidder. Because the lender opens the bidding with the minimum amount acceptable, any other bid will pay the lender off in full. It is very important to note that the lender's minimum bid is not necessarily what is owed.

The lender in first position (the one with the most at stake) is almost always the lender conducting the foreclosure. It is up to that lender to set the opening bid price. If your house sells for more than all the loans, the balance is paid to you. If your house sells for less than the total amount owed, liability for the balance exists. The trustee's deed transfers title to the winning bidder free and clear of all junior liens; however, auction buyers still must consider any potential senior liens and property tax liens which may pre-empt the new buyer/owners interest.

### **Step 5: Right of Redemption**

After the sale/auction is over, you still have an opportunity to get your house back if the house was sold by judicial foreclosure; "Right of Redemption" is permitted in most states. The right of redemption involves paying off the entire amount due with penalties. Once the prescribed redemption period (set forth by your state) has lapsed you must vacate your property, or a lock out will occur. A lock out is a legal eviction in which the sheriff escorts you from the property. To reiterate, with a trustee's sale, you lose your right to make any claim on the property and there is no right of redemption. Further, at a trustee's sale, the homeowner does not have the right to buy the house. *You do not have the right to bid on your house at auction.*

### **Step 6: Eviction**

Failing to leave the property post redemption (if redemption period exists) will require the new owner to initiate a "lock out", declaring you a "hold-over tenant".

The traditional means of handling a holdover tenant is by issuing an unlawful detainer (which is the same procedure used by a landlord to evict a renter). If you have not left the property by the specified date, a lockout will take place in which a sheriff is hired to remove you from the property. The locks will be changed on site by a locksmith.

You can always ask for more time to move out of the home. If you have taken good care of the home, the auction buyer may wish to keep you there until the buyer's plans for the property can be finalized. The new owner may consider this a good deal based on the number of bad things that can happen to vacant properties, such as vandalism, weather damage, and so on. In short, it preserves the new owner's interest in the property by having a trusted occupant in the home.



## **CHAPTER 4: SIX STRATEGIES TO KEEPING YOUR HOME**

Watch your thoughts; they become words. Watch your words; they become actions. Watch your actions; they become habits. Watch your habits; they become character. Watch your character; it becomes your destiny.

**Frank Outlaw**

Learn the six strategies to keeping your home from going into foreclosure, the real focus of this chapter and this book, is strategy number 5, loan modification:

### **Strategy 1: Refinance**

Refinancing requires income, credit and sometimes equity to support a new mortgage or deed of trust. If your current income cannot pay your present mortgage, it may be difficult to convince another lender to offer you a loan with a reasonable interest rate. Based upon the tightening of qualifying criteria for loan applications, refinancing in today's market is becoming less and less of a viable option. It goes without saying that the only reason to refinance is to lower your monthly payment.

There are two general scenarios that will give you the best chance of refinancing:

1. If you are not yet delinquent, but anticipate falling behind on your payments, it may be a good time to try to refinance; hopefully your credit scores are still high. The biggest challenge you will have is getting your home to appraise for the amount you are looking to refinance. This is a big challenge in today's market because of falling property values nationwide. No lender will approve a refinance if the appraisal (value) is not equal to or greater than the loan amount.
2. If you have a decent amount of equity in your home it may be a good time to try to refinance. Even if you have missed payments and your credit score has dropped, refinancing may be an option. Albeit not a very good one, because whatever the loan product, you will likely face higher interest rates. Loan terms usually range from 2% to 10% origination points (each point equals 1% of the financed amount). You can expect 10%+ interest rates over the repayment period and could have a substantial prepayment penalty imposed (a penalty for paying or refinancing your note early).

Nonetheless, there will be lenders that will refinance your loan IF you have equity in your home (minimum of 10%, preferably 20%). But before you get too deep into considering this as an option, you should obtain an accurate determination of value for your home. There is no point in wasting valuable time if you do not have equity. Mortgage companies can easily eat up 60 days in an attempt to determine if you qualify.

You can hire your own independent appraisal to be performed for \$300 to \$500 OR get a few free "Competitive Market Analysis's" from local licensed Realtors. Based upon these valuations, if equity exists, you can start shopping for new financing. If you end up not refinancing there will be other means for utilizing your value estimates down the road.

### **Strategy 2: Pay off your loan**

You can pay your note off up until the redemption expires and some states even provide a small window of opportunity to pay-in-full even after the redemption period expires. If you have access to these types of funds, a discounted pay off may be an option.

For example, your parents or another source of private funding can loan or gift you an amount that is reasonably close to the loan payoff amount; the lender may accept this as payment in full. If these types of funds are at your disposal, always offer the lender less than the full note balance (to start the negotiations).

The lender's decision-making process to accept such terms is similar to selling your home via a short sale to a private seller. It is imperative that the lender is able to substantiate your inability to pay off the loan deficiency. The lender will examine your income and expense statement thoroughly. The consequences relating to deficiencies however are the same as a short sale (explained in detail in Chapter 5).

### **Strategy 3: Reinstatement**

Catching up with your past-due amount and bringing your account current will reinstate your loan. The amount of penalties, late charges and other fees will depend on how far behind you are on your payments. If your home is more than 90 days past due anticipate adding about 1% or more of your mortgage balance as the result of late fees, penalties, attorney fees appraisal fees, amongst other expenses.

For example, if you are six months behind and your mortgage payments (principle and interest) are \$1,000 you will be required to pay \$6,000 plus miscellaneous fees. If your mortgage balance is \$200,000, your late fees, legal fees and other fees will likely total 1% of your mortgage balance, or an additional \$2,000 for a total repayment of \$8,000.

Often your lender will allow you to roll the additional fees into the backend of your loan. Instead of a mortgage balance of \$200,000, your new balance will be \$202,000, using the above scenario. If they agree to such terms, and you can fulfill them, your loan will have been reinstated and your initial loan terms take effect.

### **Strategy 4: Forbearance**

Forbearance agreements are designed to delay foreclosure, as long as the terms are followed. In general, they are good for a short-term fix and generally are not a long-term solution. They can be valuable tools for lenders at the first sign of trouble by providing the borrower additional time to attempt to solve their financial problems

The typical forbearance agreement places the delinquent amount on top of your monthly mortgage payment. As soon as an agreement is reached (may or may not be in writing) payments will need to be commenced per the specified start date. A simple example would be if the total amount past due is \$6,000, you will be allowed to pay an additional \$500 (added to your normal payment) for 12 months. Forbearance plans can go as long as 36 months.

A less common form of forbearance is a temporary hold on foreclosure proceedings with an agreement that allows you to temporarily pay less than the full amount of your mortgage payment (or pay nothing at all). A common reason lenders consider such forbearances is when you can demonstrate a windfall of money is coming via a bonus, tax refund, insurance settlement, or other source; providing you have

enough funds to bring the mortgage current at a specific time in the future. Your lender will require you to submit a written agreement under which your mortgage payments are reduced or suspended for the agreed upon period. At the end of that period, you resume regular payments and bring the loan current through a lump sum payment or additional partial payments over a number of months (unless the loan has also been modified to make this unnecessary).

If you have multiple mortgages, you either have to keep them all current or go through the same process with the additional lenders to prevent them from moving forward on foreclosure proceedings. Be very leery of a forbearance commitment that you feel uncomfortable with. It is easy to agree to a forbearance agreement and often times much more difficult to fulfill one. It is a sad fact that the terms and conditions initially proposed by lenders are often formulated to fail from the beginning. Be cautious!

### **Strategy 5: Loan Modification/Loan Work Out**

Loan modification is a written agreement between you and your mortgage company that permanently (sometimes temporarily) changes one or more of the original terms of your note to make the payments more affordable. IF you can negotiate a substantially reduced payment, or even a fixed interest rate, this could be the option that provides the remedy you seek. The most common loan modifications include:

- Adding missed payments to the existing loan balance
- Making an adjustable-rate mortgage into a fixed-rate mortgage
- Extending the number of years you have to repay
- Temporarily reducing your interest rate

The first thing you are going to have to accept is *nothing* is going to go as fast or smoothly as you would hope. The departments within the lenders that manage loan work outs (and the individuals working in them) are over worked, under staffed and underpaid. It will be to your detriment if you are short, rude, or inconsiderate to your lender contact. Killing them with patience and kindness will give you the highest probability of success.

Lenders (as explained in chapter 2) have two basic layers of employees who speak with delinquent borrowers. The first line of defense is the **collections department**, which consists of employees whose sole job description is "getting your house payments current". The second group consists of the **loss mitigation specialists**. (The loss mitigation department is responsible for all loan workouts and short sales). Other names used in lieu of loss mitigation are: foreclosure prevention, loan resolution, delinquency customer service, and loss mitigation.

Your goal is to contact the collections/loss mitigation department before they contact you. It is usually difficult to speak with a live person in one of these departments; lenders have automated phone systems to minimize incoming communication. Each phone system has a unique interactive response system. You have to think, "What options will allow me to speak with a live person?" Sometimes the obvious, like pressing "0" for operator will connect you to a live receptionist and

other times you will get a recording that informs you of making an invalid selection. *Get creative.* Once you have a representative on the phone, make sure you write down their name and direct phone number for future reference.

During the information-collection phase the lender will likely collect your personal data for the loan modification application; you will likely be dealing with subordinates of the actual loss mitigator. The loss mitigator is the person that will be processing your loan modification application and will be the key point of contact for your lender.

It is imperative to understand that successfully modifying your loan is dependent on approval by your lender. This approval hinges upon your lender understanding the big picture of your financial situation and the circumstances surrounding it; however, it is also critical that your financial picture fit into what your lender will require to approve your loan modification. In a nutshell, you will need to prepare your overall financial picture as if you were wearing the shoes of your lender; by presenting your information in a way that meets your lender's requirements. The lender will *take into consideration* the following conditions:

1. Nature of hardship causing your mortgage problems
2. Ability to pay
3. Amount owed
4. Equity in the property
5. Future financial situation
6. What is in their best interest; to foreclose or pursue a loan workout and/or modify your loan?

You will be *asked to provide* your lender the following information for consideration of a loan modification:

1. Last two bank statements (sometimes up to four)
2. Most recent tax return
3. Last two pay stubs
4. Hardship Letter: detailed explanation of how you got in this situation; if reasons were lay off, medical, or other circumstances, explain and document the reasons in as much detail as possible
5. Financial Statement: this is not as complicated as it may sound; a simple accounting for all money coming in and going out. Income is wages earned and debits include mortgage payment, credit cards, car payments, daycare, food, clothing, heat, gas, insurance and other expenses.

\*Some lenders will mail you their own package, which will contain pre-written forms and a checklist of what they will require.

Your budget/income statement (profit/loss) will be the most crucial piece of information you provide. In it you will be asked for a detailed list of your monthly expenses. If the numbers are too tight, your application may be rejected; if you have "too much" extra income, they will try to stick you with a payment plan

(terms and rates) you cannot afford. On average, after ALL of your expenses, the lender is looking for you to have \$200-\$500 of extra money.

**\*\*THE GOAL IS TO PROVIDE A NET SURPLUS  
BETWEEN \$200-\$500\*\***

Generally, once you have provided all the information to your lender, your file will be assigned to someone higher up on the food chain, hopefully a *loss mitigation specialist*. A loss mitigator's job is to minimize their employer's loss. Again, this is the person that submits your file for approval or denial. Their job is very similar to that of a loan underwriter.

Do what is necessary to determine which loss mitigator has been assigned your file and if it has not been assigned, strive to persuade someone that it needs to be assigned soon. A very important part of this process is to befriend the loss mitigator. Nothing you will do is more important than this.

During these negotiations **YOU MUST SAVE YOUR HOUSE PAYMENTS**. Within virtually all modification plans will be the requirement of "good faith" money. Translation: your approved modification plan will require you to bring some cash to the table. The amount is usually a percentage of your back payments (35%-75% of arrearages).

If you have a loan with more than one mortgage there are a few basic approaches:

1. Modify your first mortgage (the one with the biggest payment) and make subordinate loan payments (second loan) on time.
2. Modify your first mortgage and negotiate a modification, reinstatement, forbearance or a refinance of your second loan.  
OR
3. Negotiate a *short pay-off* of your second loan and modify your first loan. This strategy's goal is to eliminate your second mortgage, altogether. This is a cutting-edge strategy that would have been unthinkable before the mortgage crisis. However, your pay-off is "big" if you succeed. Furthermore, as lenders get more and more desperate this solution will start sounding better and better to them.

During negotiations of the modification (or before) on your first mortgage, make the second note holder a discounted "settlement in full" offer (this strategy requires access to cash funds). Very simply you will be asking the lender to accept pennies on the dollar to eliminate the second note all together. To initiate the negotiation, one of your notes should be in default and generally you will get better reception if both are.

It is very important to understand the predicament second and third note holders are in when facing foreclosure. In general their situation is two-fold:

- If the lender in first position forecloses, lien holders in inferior position (second and third position) will almost always end up with ZERO. That's right, nothing.

- If the second note holder forecloses (rare) they have to pay off the first note holder, in full. For them to consider buying your home at auction they would need to pay the first note holder in full. This means the market value of your home will have to be well above the total payoff amount of the first note holder, which is why second note holders rarely foreclose.

For starters, make an offer to the second note holder of a 1% cash payment in exchange for them writing off the remaining balance. That is, if your second loan balance is \$100,000, offer them \$1,000 to settle the account. This might sound crazy; however, it is a common offer subordinate lien holders are receiving on a regular basis in short sale transactions. Keep in mind, 1% is your initial offer. Your goal is to settle for the lowest possible amount and then determine if the transaction is financially feasible for you (if you have the cash to do the deal).

Because this is, in essence, a short sale of your second loan, you will likely be asked to provide the same financial information as if you were going through an actual short sale with an outside buyer. You know your offer is being taken seriously if the lender for the second mortgage requests a detail of your financials (as described above). When the second note holder has accepted your short payoff, you will receive a "Lien Release" detailing the transaction settlement amount.

FOR FHA and VA Borrowers only:

Mortgages through the Federal Housing Administration (FHA) and Veterans Administration (VA) may offer different or additional foreclosure alternatives. For example, an FHA borrower may be eligible for a one-time payment from the FHA insurance fund to the lender to bring the mortgage current. The borrower is responsible for repaying the partial claim when you pay off the mortgage or sell the property.

Soldiers and Sailors Civil Relief Act

For Veterans, if you entered the loan originally as a civilian and later became a part of the military, help may exist in the Soldiers and Sailors Civil Relief Act. The most common forms of relief are: 1) reduced interest rate on mortgage payments; 2) reduced interest rate on credit card debt; and/or 3) delay of all civil court actions, such as foreclosure.

## **Strategy 6: Chapter 13 Bankruptcy**

Chapter 13 permits the consumer(s), to:

- Stop foreclosure
- Stop calls from debt collectors
- Pay unsecured debt down without accruing interest (student loans are an exception)
- Protect your other assets
- Reorganize your finances with the additional time
- Refinances your debt and allows you to meet your living expenses before paying off creditors
- Allows you to catch up on your missed house payments

The moment you file a bankruptcy petition with the federal bankruptcy court all debt collection activity is stopped. This automatic stay prevents your lender from moving forward with foreclosure. It is important to know that during the Chapter 13

proceedings your lender will not discuss potential workout arrangements. Because you are making one cumulative fixed monthly payment, you may include entire car note(s) or small mortgage(s) (generally second or third mortgages) into your Chapter 13 plan. If you are in foreclosure and considering a Chapter 13, timing is crucial as it relates to prospective tax consequences. In short, the earlier you file the better. Speak with a bankruptcy attorney for more details on when to file.

Generally, your back house payment total, including penalties, will be added up and you will be required to pay this sum to your lender over a pre-determined length of time. This payment is usually separate from your home loan payment and your Chapter 13 consolidation payment.

Under the typical plan, you make monthly payments to a court appointed bankruptcy trustee for generally three-to-five years. The amount of your monthly payment is determined by several factors, such as the amount of debt you have, your ability to repay and the extent that you have assets. The bankruptcy trustee distributes the money to your creditors.

To find listings of qualified bankruptcy attorneys a good source is the National Association of Bankruptcy Attorneys. Their web address is: <http://www.nacba.com>.

Taken directly from the National Association of Bankruptcy Attorneys' web site: "The NACBA is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 2,500 members located in all 50 states and Puerto Rico."

"NACBA has also played a critical role in many important court cases affecting the rights of consumer bankruptcy debtors by filing briefs in U.S. Courts of Appeal and the Supreme Court, with many of those case decisions influenced by NACBA's participation. In addition, NACBA provides the most comprehensive educational programs in the country for consumer bankruptcy attorneys with its annual convention seminars."



# **CHAPTER 5: FOUR STRATEGIES TO GIVE UP YOUR HOME BUT AVOID FORECLOSURE**

"Dream as if you'll live forever. Live as if you'll die  
today."

James Dean

The overriding factor for not letting your home foreclose is a minimization of loss and liability. Foreclosure will do nothing more than increase the harm done and increase your short, medium and long-term loss, liability and hardship.

### **Strategy 1: Short Sale**

It's very common in today's depressed real estate market for home sellers to receive offers that are less than the amount owed to the lender. A short sale is simply selling your home for less than the sum total of your mortgage balance(s). Of course your lender must agree to a short sale and many more of them are realizing that it is in their best interest to do so.

Here is an example of a short sale scenario:

Suppose you owe \$250,000 on your mortgage. You list your home for sale and the best offer you get is \$230,000. After closing costs and real estate agent commission, your lenders "net" will be approximately \$200,000, which is a short fall of \$50,000.

If the lender chooses to accept this offer, there are a few different ways they can address the shortage.

1. The first possibility is to require you to sign a "promissory note" to pay the deficiency back. This would be required prior to closing your home. It is important to note that if you choose to agree to sign a promissory note (and subsequently fulfill its terms) you are precluded from your lender pursuing a judgment or issuing you a 1099. If you default on the promissory terms, judgment and 1099 options are back on the lender's table.
2. The second is to pursue a judgment against you for the deficient amount, post sale (whether or not they pursue this course is always dependent on extraneous factors, such as state laws, whether or not you have a mortgage or a Deed of Trust, a recourse or non-recourse loan; all described in other chapters). If your lender obtains a judgment, they may also issue a 1099. At any point in time the lender may deem the judgment as uncollectable, which will trigger a 1099. When the judgment is paid in full it can be used as a dollar-for-dollar deduction on your tax returns, offsetting any 1099 amount reported to the IRS.
3. The third is that they may report this deficiency to the Internal Revenue Service in the form of a 1099, as earned income. The deficiency issue as it relates to the IRS is detailed in Chapter 7.

Behind the bank's decision to accept a short sale are scrutinized values such as, repair costs, realtor commissions, and holding costs. Some other factors include:

1. Does the homeowner deserve a short sale? If the property owner makes a substantial amount of "verified" income, there is a problem.
2. Is it in the bank's best interest to take a short sale or repossess the house and sell it through a Real Estate Broker?
3. How many properties does the lender currently have in default?
4. How flexible is the investor backing this loan?

5. Is a third party servicing this loan?
6. What is the demeanor of the bank representative in loss mitigation with whom you are dealing?

To get a short sale approved you will be required to provide the lender information very similar to that required for a loan modification. They will likely issue you what is referred to a "short sale package."

A short sale package is generally comprised of the following:

- Cover Letter
- Sellers Hardship Letter
- Seller's Financial information
- Supporting Financial Information
- Supporting Hardship Information – for example Home Owners Association liens (HOA), medical statements etc.

#### Cover Letter

The cover letter needs to be clear and concise. The information is an overview of your situation: what do you owe on the property, what is its real value, and be sure to mention any needed repairs. A sample letter has been provided on the CD.

#### Seller's Hardship Letter

This letter should be at least a page long. The goal is for you to explain your situation to the bank. You should include items such as job loss, medical issues, divorce, health issues, and other circumstances that have compounded your hardship. If the seller is considering bankruptcy include that information as well. A sample letter has been provided on the CD.

#### Seller's Financial Information

The purpose of this form is to educate the bank on what money you have coming in and going out on a daily basis. The bank would also like to know what monthly expenses and assets you have. A generic template has been provided on the CD.

#### Supporting Hardship Info

You want to document further hardship issues that can substantiate your position. This would include items, such as medical bills, accident reports, layoff notice, and the like.

If you choose to sell your home via a short sale it will behoove you greatly to find a qualified Realtor that is experienced in short sales. A qualified Realtor will handle the entire process for you including setting the price, listing your home, procuring the buyer and negotiating with your lender. Retaining such services renders your need to understand all the intricacies of a short sale somewhat moot.

### **Strategy 2: Sale – With Equity**

The only issue here is determining whether or not you actually have equity in your home. As stated in other parts of this book, this determination is not necessarily an easy task in today's fluid real estate environment.

Nonetheless, if you need to sell your home because you cannot afford it, you will likely put it on the market and list it through a real estate company. Based on the feedback you receive from the market (other Realtors and buyer interest) you will adjust your asking price accordingly. Dropping your asking price under what your loan balance is, places you into short sale territory. The bottom line is that the market determines your price and if that price provides you a profit, great!

To reiterate, if you think there is even a chance that you will be in a short equity position, MAKE sure you hire a qualified Realtor.

### **Strategy 3: Deed In Lieu Of Foreclosure**

The deed in lieu of foreclosure is an instrument that conveys all interest in the property from the borrower to the lender (mortgagee) in order to satisfy a loan in default and avoid a foreclosure. You voluntarily transfer your property title to the lender in exchange for cancellation of the remainder of your debt.

Your lender will consider Deed in Lieu under the following conditions:

1. Foreclosure is forthcoming and unavoidable
2. The borrower is unable to sell the property
3. There should be no other liens or attachments to the property
4. The property needs to be left in "broom clean" condition
5. You have exhausted other options including trying to sell
6. You are still living in the home

Deed in Lieu of foreclosure offers numerous benefits to both the borrower and the lender. The primary and most important advantage to the borrower is that it immediately releases them from most of the indebtedness involved with the loan and default. Another advantage to the borrower is that they avoid the proceeding and public notice of a foreclosure.

Though you lose the home, a Deed in Lieu of foreclosure is much less damaging to your credit than a foreclosure. However, you will lose any equity you may have had in the property and you may face an income tax liability on the amount of debt forgiven.

The biggest consideration when contemplating a Deed in Lieu is, "Do other entities have liens on the property?" Giving the property back to the primary lender will not satisfy these liens **unless** you get your primary lender's agreement, in writing, to assume those obligations. If agreed, these other liens are then assigned to your lender and thus become the lenders responsibility.

Other factors to consider with a Deed in Lieu are:

#### Insolvency

If you are insolvent (insolvency is a financial condition in which your liabilities exceed your assets, which will be evident if the financial information you provided the lender indicates such) at the time of the Deed in Lieu, your lender will probably refuse to consider this as an option. In addition, if you filed for bankruptcy  
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protection subsequent to the Deed in Lieu, the lender risks reversal of the Deed in Lieu. In the court's eyes this gives the appearance the lender is receiving preferential status (over your other creditors) and therefore could be considered fraudulent conveyance. See more on insolvency at the end of Chapter 8.

### Cash for Keys

Cash for Keys is a very common tool lenders utilize in which lenders pay you a fixed sum to vacate the property within a specified period of time in exchange for title rights and your keys. The average amount they will offer you in a "Cash for Keys" scenario is 1% of the value of your home. Depending on a variety of circumstances, signing over the deed may be required to execute the Cash for Keys agreement.

The lender's purpose is to expedite their ownership and initiate marketing efforts. The lender may proactively offer this to you as an option, but if they do not, it is your job to interject this as part of the negotiation.

### **Strategy 4: Selling It On An Assumption**

An assumption permits a qualified buyer to take over your existing debt and terms. There are two basic types of assumptions: assumable and non-assumable.

- Assumable generally allows a buyer to purchase without qualifying. These types of assumptions, in today's market, are exceedingly rare.
- Non-assumable loans still allow buyers to assume the loan but the buyer must qualify. There are loans that allow neither.

If you have an assumable loan (look for a "subject to transfer" clause in your loan agreement), it is possible that you could transfer your property to a new buyer who agrees to take over (assume) the existing mortgage.

Beware of scam artists who offer to purchase your home on an assumption. A common crime to be aware of is when these predators commit to such a transaction, then rent out your property, collect rent checks, and yet never make a payment to the lender. Given the fact that the title was never properly transferred or because title could not be legally conveyed (per your original note agreement) you are 100% liable, not the fraudulent buyer. Of course buyers such as this risk criminal prosecution.

## **CHAPTER 6:** **RESIGNING TO FORECLOSURE**

“If you are pained by external things, it is not they that disturb you, but your own judgment of them. And it is in your power to wipe out that judgment now.”

Marcus Aurelius Antoninus

If you have exhausted all your options, foreclosure may be inevitable. Although foreclosure is the least favorable outcome, you must not relinquish your desire to "minimizing the damage" caused from foreclosure.

**The simplest way to minimize that damage starts with obtaining an appraisal or competitive market analysis (done free by Realtors)** prior to your foreclosure being final (ideally when you are still living in the home). The purpose of this "snapshot of value" can be VERY important from a tax and deficiency standpoint. The details about how your appraisal may come into play are covered in chapter 7.

Biggest consequences of foreclosure:

- Long term effect on credit and credit scores
- Still accountable for any and all deficiencies
- Internal Revenue 1099 tax liability
- Loss of Equity

The only thing positive about foreclosure is that you can legally live in the home until the redemption period expires, assuming there is one. That time may allow you to put enough money away to start your rebuilding process.

Foreclosure is effectively the end of a long drawn out nightmare. Hopefully you have learned from the experience and will eliminate the chances of it from ever happening again.

Foreclosure, Deed in Lieu or a Short Sale solution all will require you to relocate. And there are options. The most common of which are:

- 1) Lease
- 2) Lease/Option
- 3) Contract for Deed

Foreclosure and people with poor credit are so commonplace in the market, do not worry about prospective landlords rejecting you due to a low credit score.

In many markets, lease options are becoming popular. A lease option is simply an agreement that starts out as a lease and can later turn into an option to purchase; generally for a pre-determined price. "Fair" lease options will allow you to apply a percentage of your monthly lease payments toward the purchase price of your property.

Contract for Deeds are when the owner of a property allows you to purchase it without getting lender financing. The owner of the property is the party that finances it. Terms and condition are totally negotiable. At the core, when the contract is fulfilled, the owner provides you the deed. Generally parties selling properties for contract for deed understand that prospective buyers will likely have less than perfect credit.

# **CHAPTER 7:**

## **DEFICIENCIES AND TAX LIABILITIES**

“But in this world nothing can be certain except death and taxes”

**Benjamin Franklin**



When a lender ends up with less than what the original balance of the loan was, for any reason, this is a deficiency. Deficiencies are the result of a short sale or foreclosure. Although lenders in some states are precluded from pursuing a deficiency judgment, no state is precluded from reporting your deficiency to the IRS in the form of a 1099.

As of December 20, 2007 for a period of 36 months, lenders can no longer report deficiency balances to the Internal Revenue Service for owner-occupied scenarios. See the details of H.R. 3648 in Chapter 9. **It is important to note that this exclusion does not provide relief to any type of second homes or investment property.**

The Internal Revenue Service and state taxing authorities tax you on the amount of the loan that the lender writes off. This is debt-forgiveness income. Congress is considering changes to this unfair aspect of the tax code because it places a burden on taxpayers who have lost their homes. See chapter 9.

Note that if insolvent (see insolvency worksheet on CD ROM) or in bankruptcy you may exclude canceled mortgage debt under existing laws.

Within the IRS tax code is a term called cancellation of debt considered cancellation (COD), also called discharge of debt. And as far as the IRS is concerned it is all taxable income. The tax on COD is calculated at customary rates, which range from 10% - 35% and depends on you tax bracket.

How much liability you incur is dependent on whether or not the loan is recourse or non-recourse; the type of loan is specifically stated in the original note you signed.

IRS tax code is very clear when it comes to foreclosure and short sales; under this code, a sale is a sale. If the sale produces a gain, it is a taxable gain. If it's a non-recourse loan, it is treated as a capital gain. The IRS views these transactions as if the property owner was the seller, even though the bank was the final decision maker. The net result: you will likely owe taxes on the sale.

In a *recourse loan*, the debtor is personally liable for the debt if the bank chooses to pursue the debtor personally. Typically the instrument used to carry this out is a promissory note, paid by the homeowner, prior to the short sale closing (the lender will make the terms of the short sale contingent on the homeowner signing the promise to pay).

When the lender chooses to not pursue a deficiency judgment, it is a relative certainty that the deficiency amount will become a tax liability [IRS 1099]. This is considered forgiven debt. The deficiency balance will be taxed like ordinary income based on the homeowner's tax bracket. If the former homeowner's deficiency was \$90,000 and they were in a 33% tax bracket, their tax liability would be \$29,970.

In a *non-recourse loan* the note is secured by the loan collateral. If money from the sale of the property does not cover the outstanding debt balance, creating a short sale, the lender has no legal recourse to collect the additional funds from the debtor. In non-recourse loans, the amount of the deficiency (using our \$90,000)

will be taxed at a reduced tax rate of 15% rate; which is considered capital gains. OR \$13,500.

Regardless whether the loan was recourse or non-recourse, a foreclosed homeowner will likely end up owing capital gains taxes without ever receiving one red cent from the sale of their home. Furthermore, the lenders will issue the past homeowner and the IRS a 1099-C to notify all parties of the cancelled debt and in what amount.

The aforementioned liabilities arise from two general scenarios:

1. Short Sale
2. Foreclosure

For illustration purposes we will use an example with arbitrary figures.

#### *Scenario #1, Deficiency from a Short Sale*

A seller needs to sell their home because they cannot afford the payments. They originally purchased it for \$300,000, 24 months ago. Of course it was an "interest only" loan, so the mortgage balance is still \$300,000.

In today's market the home is only worth \$250,000. If a Realtor can list the home, get an offer, and then convince the lender to approve such a short fall, we have a short sale. Of course the lender *does not* "net" \$250k. There are miscellaneous expenses that will need to be deducted from the gross sale, the largest of which is the real estate commission, which will likely be 5% (if it is an FHA transaction, it may be 6%). The estimate of the seller's net after expenses is \$230,000. This transaction would result in a deficiency of \$70,000.

#### *Scenario #2, Deficiency from Foreclosure*

Seller's home forecloses and bank takes possession. The note balance, plus fees at the time of foreclosure, was \$300,000. At the sheriff sale/public auction the lender chose to open the bidding at \$210,000. They determine the opening bid price based on their opinion of value, at that time. The final sales price at auction is what will determine "fair market value."

The possible outcomes are as follows:

1. If no one else bids, the lender keeps the property. Fair market value is determined to be \$210,000. (It is important to note that "fair market value" is generally determined by the final sale amount at auction; and the lender "may" set the minimum bid amount for any amount they choose). The difference between the note due balance (\$300,000) and fair market value price (\$210,000) is \$90,000. The \$90,000 is now forgiven debt. Your lender may pursue a deficiency judgment and/or issue a 1099.
2. A bidding war takes place and the property sells for \$350,000. Assuming there are no other junior lien holders to be paid, the lender is made whole receiving their \$300,000 and the homeowner receives the remaining \$50,000. Your liability is zero. Of course you have a gain of \$50,000.

## Home Foreclosure Bible

Allowing your home to be sold at auction puts you at high risk of incurring large liability. Whatever the purchase price is at auction, it will be less than if you had sold it through a Realtor as a short sale. That is, selling your home via a short sale will likely minimize your deficiency amount and thus your liability to the IRS. Why? Your home will likely attract a much higher price from buyers while you are still living in the home and maintaining it than it will from bidders at an auction.

## **CHAPTER 8: DISPUTING DEFICIENCY JUDGMENTS AND 1099'S**

"A life spent making mistakes is not only more honorable, but more useful than a life spent doing nothing."

**George Bernard Shaw**

When faced with deficiency liability you will have the opportunity to contest the deficiency judgment and the validity of the 1099-c issued by your lender. This is achieved by providing evidence (appraisal/CMA) at the deficiency hearing (for deficiency judgment) and/or on your tax returns to challenge the amount listed on the 1099-c.

If your lender pursues a deficiency judgment they will, at least temporarily, not issue a 1099. However at any point in time they can deem the judgment uncollectable and issue a 1099. If they issue you a 1099 first, they will not pursue a deficiency judgment.

The strategies below are only prudent if your "documented estimate of value" demonstrates your former home was worth more than it sold for at auction.

### Challenging a Deficiency Judgment

There is a limited amount of time that lien holders can file a deficiency claim. On average it is within 90 days of the foreclosure date. It does require the lien holder or their representative to appear in court. You want to be at that hearing!

The most common forms of evidence to substantiate your dispute of value are an appraisal or competitive market analysis (performed by a Realtor, usually free). The value that the court needs is the value "at the time of foreclosure." Hence it is absolutely imperative to compile your data (appraisal or CMA) at or around the time the foreclosure occurred.

If you can provide evidence to the court your home value was higher than the amount it sold for at auction (the fair market value), you need to represent yourself at that hearing!

If you have supporting documentation that your home value was equal to (or greater than) the total amount due on your unpaid note, the court will not grant the lender any deficiency judgment against you. The court ruling in your favor will be largely dependent on the quality of your appraisal and evidence that it was performed at "arms length" (by an impartial 3<sup>rd</sup> party). This could save you a significant amount of money.

### Disputing the 1099-c

Strategy number one is to dispute the 1099-c with your lender. Inform them that you have an independent appraisal of value that is in conflict with what the property sold for at auction. Forward them a copy of your appraisal and try to work out a reduction or elimination of the 1099-c amount. If the lender will work with you, strategy two below is unnecessary.

Strategy two is achieved by submitting your independent appraisal to the IRS with your tax returns. When filing your return, you provide the IRS your appraisal/CMA of value indicating an amount higher than the amount your former home sold for at auction.

Again, the goal and purpose is to demonstrate to the IRS that the price it sold for at auction WAS NOT "fair market value," that, in fact, it was worth more. The IRS may consider this into determining your actual 1099-c liability.

It is HIGHLY suggested that you use a Certified Public Accountant to do your taxes in the year following your foreclosure and/or short sale. Make sure you bring these strategies to the attention of your CPA before making a commitment to one, as some may not be familiar with them. If you have a CPA that is resistant to assisting you with these aggressive strategies, find another CPA.

Lastly, if a judgment has been rendered at a deficiency hearing, the ruling at the time of judgment stands and carries over for any future 1099 filings. Remember, the lender may choose at anytime to declare a judgment un-collectable and issue a 1099. The outcome of the deficiency hearing generally carries irrevocable liability (unless you appeal, file bankruptcy or choose another course of action).

### *Insolvency as it relates to foreclosure*

Another method to combat your liabilities is to claim insolvency. Most often this is a strategy performed by business but the IRS does allow individuals to claim insolvency. This tactic is best handled by a qualified accountant; it can greatly reduce your obligations.

If your total debts outweigh your total assets, you are insolvent. If you are insolvent you need to explain this to the IRS in one of two ways:

1. Fill out IRS form 982: Reduction of Tax Attributes Due to Discharge of Debt
2. Provide the IRS a detailed letter with your tax return detailing the calculation of your total debts and assets.

If you can substantiate to the IRS you were insolvent at the time of your foreclosure, you will not be liable for the 1099 debt forgiveness provided by your lender.

## **CHAPTER 9: GOVERNMENT FORECLOSURE ASSISTANCE PLANS**

“I am always doing that which I cannot do, in order that I may  
learn how to do it.”

**Pablo Picasso**

## Home Foreclosure Bible

You don't have to go through the foreclosure prevention process alone. A counselor with a HUD-approved housing counseling agency can assess your situation, answer your questions, go over your options, prioritize your debts, and help you prepare for discussions with your lender.

These counseling organizations are approved by the U.S. Department of Housing and Urban Development (HUD) to provide information and counseling in many areas of home buying and homeownership. Counselors may also be aware of regional or local foreclosure rescue funds and aid for temporary hardship. To find a local HUD-approved housing counseling agency, check [HUD's online directory](#) or call 800-569-4287.

Some of the non-profit organizations listed in the HUD database will assist you with the loan modification process; some will only act in an advisory capacity. If you are reluctant to going this alone, start contacting the companies listed in the database.

It is important to understand that even if you find a non-profit organization to navigate this process for you, nobody will work harder to succeed than you will!

In November of 2007 The National Association of Consumer Advocates ([www.naca.net](http://www.naca.net), a non-profit organization) initiated proposals from non-profit organizations to fund local legal programs assisting borrowers in danger of having their homes foreclosed; as time goes on this may become an excellent resource. To learn more visit their web site at:

<http://www.naca.net/News-Events/News.aspx?item=46914>



## **Mortgage Forgiveness Act & FHA SECURE INITIATIVE**

Two separate relief initiatives for homeowners in trouble were signed into law in 2007. The Mortgage Forgiveness Act addresses tax implications as they relate to deficiency. FHA Secures initiative will provide a "freeze" of adjustable interest rates to "qualified" homeowners. Both are detailed below.

The following is the full bill as written by The House Committee on Ways and Means and signed by President Bush on October 20, 2007. This act will have a huge impact on homeowner liability facing foreclosure. Furthermore, the bill may be instrumental in weighing the various options laid fourth in this book.

### **1. H.R. 3648 Mortgage Forgiveness Debt Relief Act of 2007 12.20.07**

**Permanent exclusion from gross income of discharged home mortgage indebtedness.** The bill would amend current law, which requires taxpayers to include discharges of mortgage indebtedness as income and to pay tax on this income. The bill would provide a permanent exclusion for discharges of up to two million dollars of indebtedness (on or after January 1, 2007) which is secured by a principal residence and which is incurred in the acquisition, construction, or substantial improvement of the principal residence. Instead of including this amount as income, the basis of the individual's principal residence would be reduced by the amount excluded from income under this bill. *This proposal is estimated to cost approximately \$1.4 billion over 10 years.*

**Long-term extension of the deduction for mortgage insurance.** The bill extends the deduction for mortgage insurance for seven years (through the end of 2014). Current law limits the deduction for mortgage insurance to payments (including Veterans Administration, Rural Housing Administration, and Federal Housing Administration insurance premiums) made prior to the end of 2007. The bill would provide that payments would qualify for this deduction whenever they are paid so long as the contract is entered into after 2006 and before 2015. *This proposal is estimated to cost \$570 million over the next 10 years.*

**Modification of the qualification tests for cooperative housing corporations.** The bill would modify the requirements for qualifying for the special rules available to cooperative housing corporations. Under current law, a cooperative housing corporation must meet several requirements, including a requirement that 80 percent or more of the cooperative housing corporation is earned from the corporation's tenant-stockholders. The bill would provide two alternatives to this 80 percent rule (i.e., one based on square footage and another based on cooperative expenditures). These two alternatives will make it easier to qualify as a cooperative housing corporation. *This proposal is estimated to cost \$22 million over 10 years.*

**Modification of "exclusion of gain" on sale of a principal residence.** The bill amends the current law exclusion of up to \$250,000 (\$500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. Under current law, the sale of a home will qualify for this exclusion if the home is a

taxpayer's principal residence for at least two of the five years ending on the sale or exchange. This exclusion applies even if the home was initially purchased as a second home. Under the bill, if a taxpayer moves their principal residence to a second home, the taxpayer will only be able to utilize this exclusion to the extent that it relates to the period of time when the home was first used as a principal residence. The bill grandfathers use before 2008. *This proposal is estimated to raise \$2.005 billion over 10 years.*

Summary of qualifying criteria for NR 3648:

- 1) Primary residence only
- 2) Original financed amount only
- 3) Foreclosure or Short Sale occurred between: December 20, 2007 - January 1, 2011. (3 years)
- 4) No 2<sup>nd</sup> homes or investment property

**2. FHA Secure Initiative**

This FHA program was created to help homeowners with adjustable rate mortgages (ARM), in foreclosure. Qualified candidates will be eligible for the program, which will provide a fixed interest rate loan product. It is important to note that the qualifying terms are evolving. The initial terms set forth to qualify for the *FHA Secure program* are itemized below.

1. A history of on-time mortgage payments before the borrower's teaser rates expired and loans reset; If late payments occurred, they were AFTER your adjustable loan adjusted
2. Interest rates must have or will reset between June 2005 and December 2009;
3. Three percent cash or equity in the home;
4. A sustained history of employment; and
5. Sufficient income to make the mortgage payment.
6. Currently on a NON-FHA ARM
7. You can prove the adjustment date
8. Maximum loan amount of \$417,000

For detailed information on this topic, go directly to the FHA's web site:

<http://www.fha.gov/about/fhasindqa.cfm>

## **Chapter 10:** **USING THE SERVICES OF A PROFESSIONAL**

“Insanity: doing the same thing over and over again and expecting different results.”

**Albert Einstein**

There is a professional associated with virtually every solution outlined in this book. If you do not have the time or desire to pursue the respective options, you may want to hire someone to manage your challenge. There are 5 area's in which you may choose to retain the services of a professional, they are:

- Certified Public Accountant

A qualified tax preparer is instrumental if you have incurred a short sale, loan modification or foreclosure.

- Attorney

Foreclosure attorneys are best suited to seek advice if you are pursuing bankruptcy. Also, if you feel that you have been defrauded by your lender (in it's terms and/or conditions) an attorney may be able to advise you on whether or not you have recourse.

- Realtor

Realtors can assist you in several ways. The simplest is to provide you a no cost current market of your home. They can also assist you in selling your home via a short sale. It is very important to understand that not all Realtors are qualified to assisting homeowners in short sales. Keep in mind that if you choose to sell your home via a short sale, the lender, not you, will be paying the Realtor their commission.

- Loan Redemption Specialist

On the included cd rom is a list of organizations that maybe able to assist you with a loan modification. Generally at no cost. There is also an emerging industry of Loan Redemption Specialist that will work with your lender on your behalf. These companies will charge you a fee; typically between \$1000-\$1500.

- Credit Repair

It is possible to vanquish the bad marks created from paying your mortgage late. Although you maybe able to accomplish this on your own, finding a credible credit repair company is your best option. Such services vary in price between \$500-\$1000.

We have developed a database for each of these respective professions that includes listings of professionals versed in handling all types of foreclosure situations. These are professionals that keep current on local and national foreclosure issues that can have a large impact on the specific approach and challenges you need addressed.

Simply go to:

[members.homeforeclosurebible.com](http://members.homeforeclosurebible.com)

This is a secured area of our web site that members only can access. To access this section you will need to type in the following when asked:

User Name: **member**

Password: **password**

## **CONCLUSION**

Whatever path you choose, choose one. Fighting tooth and nail now will pay off later. Even under the worst possible scenario, foreclosure, you now have the tools to minimize the damage.

There are fundamental do's and don't that, by themselves, will provide you a good starting point in this process.

In the first couple chapters we detail the 6 strategies to keep your home so you will be able to make an informed decision on whether or not they are practical for your particular situation. If not, there are several alternatives to foreclosure that relinquishes your ownership rights but minimizes your loss and liability.

Understanding that there are consequences to almost every strategy is an important first step in minimizing their effect both short and long term. And why we devote so much time in addressing this issue.

The federal government has stepped in and implemented national legislation addressing foreclosure related problems. These initiatives are designed to avoid the tax consequences of foreclosure and offer the opportunity of homeowners in foreclosure the possibility to refinance. Carefully review the chapters pertaining to this topic to find out if you can take advantage of these new bills.

Through all of this keep in mind that there are certain innate factors in our lives that will always exist; mistakes, change and uncertainty.

As we get older and wiser we strive to minimize our mistakes, and avoid uncertainty. The one thing that humans will never conquer is change. The better our ability to embrace change the more peaceful our lives we will become.

Through these tough times do your best to "compartmentalize" your problems as much as possible. Understand that what ever problems you face today are temporary. The manner in which you deal with them now will in large part determine the outcome.

## **STATE BY STATE FORECLOSURE OVERVIEW**

### **Alabama**

- Both judicial and non-judicial foreclosure is available. Foreclosure is usually non-judicial foreclosure.
- The lender can sue for a deficiency.
- The borrower has a right to redeem within one year after the foreclosure.

### **Alaska**

- Both judicial and non-judicial foreclosure is available, but the non-judicial deed of trust sale is preferred.
- Any time before the sale, the borrower may make up the missed payments plus costs and stop the sale.
- Redemption is allowed after a non-judicial foreclosure but not after a judicial foreclosure.
- The lender can collect a deficiency after judicial foreclosure, but not have a non-judicial foreclosure.

### **Arizona**

- Both judicial and non-judicial foreclosure is available, but the non-judicial deed of trust sale is preferred. The trustee cannot conduct a foreclosure sale under the power of sale clause until a lawsuit to foreclose is dismissed.
- Deficiency judgments are allowed on residential property if a single one-family or single two-family dwelling that is on 2.5 acres or less.
- No right of redemption is recognized.

### **Arkansas**

- Both judicial and non-judicial foreclosure is available, but the non-judicial deed of trust sale is preferred.
- Deficiency collection permitted after a judicial foreclosure.
- After a non-judicial foreclosure the lender may sue the borrower for a deficiency within one year. When the property is foreclosed judicially, the borrower has one year from the date of the sale to redeem the property by payment of the amount for which the property was sold plus interest. However, the mortgagor may waive the right of redemption in a mortgage or deed of trust. In a non-judicial foreclosure there is no right of redemption.

### **California**

- Both judicial and non-judicial foreclosure is available, but the non-judicial deed of trust sale is overwhelmingly preferred.
- California has a one-action rule, in which a lender must elect one action to take against the borrower if the borrower defaults. If the lender forecloses the deed of trust out of court, the lender has chosen one action and may not bring a lawsuit to recover a deficiency, which would be a second action.
- Lenders rarely elect judicial foreclosures. Debtors may reinstate up to five days before non-judicial foreclosure sale.
- No deficiency judgment is permitted after a non-judicial foreclosure or for a foreclosure on a purchase money loan. If the foreclosure is judicial, a deficiency judgment is allowed if the foreclosure was not a purchase money loan.

### **Colorado**

- Both judicial and non-judicial foreclosure is available, but the non-judicial deed of trust sale is overwhelmingly preferred.
- Colorado has an impartial, accountable, "public trustee" appointed by the Governor for each county, who handles power of sale foreclosures on request.
- If the loan default is due to nonpayment, then the borrower can give notice of an intention to cure the default at least seven days before the foreclosure sale.
- The lender may sue for a deficiency.
- The borrower has 75 days after the date of sale to redeem.

### **Connecticut**

- Connecticut uses judicial foreclosure, either by "strict foreclosure" or "decree of sale." There is a right of redemption during the strict foreclosure proceeding. Under strict foreclosure the lender can sue the borrower in an independent action for the debt owed. If the property is worth more than the balance owed on the loan, the lender cannot sue for a deficiency. The lender also gets to keep the excess value of the property.
- In proceedings to foreclosure by sale rather than by strict foreclosure, then a deficiency judgment is allowed. If at the court-ordered sale, the property is sold for less than the appraised value, then no other proceedings to collect the debt from the borrower may be undertaken until one-half the difference between the debt and the appraised value is subtracted from what the borrower owes the lender.
- Redemption is determined by the court in strict foreclosure. Redemption by a junior lien holder is subject to any prior liens.

### **Delaware**

- Lenders use a mortgage and foreclose judicially. Non-judicial foreclosures are not used.
- There is no right of redemption but the sale can be contested until it is confirmed by the court.
- The lender can pursue a deficiency by a number of methods, including filing a separate action to collect on the promissory note. The lender can sue on the promissory note and pursue foreclosure simultaneously. The lender can only collect the full balance that it is owed.

### **District of Columbia**

- Lenders use a deed of trust and foreclose with a trustee's sale.
- The foreclosure begins with recording the notice of default.
- It can take up to 47 days to process the documents and the date of publication must be published for 18 days.
- The sale is conducted by a licensed auctioneer, usually at their office.
- There is no right of redemption.

### **Florida**

- Lenders foreclose judicially.
- There is no right of redemption and the lender can pursue a deficiency for up to four years.

### **Georgia**

- Lenders use a security deed and foreclose using a non-judicial foreclosure.
- There is no right of reinstatement.



## Home Foreclosure Bible

- There is no right of redemption.
- The lender can pursue a deficiency if it gets court approval of within 30 days of the sale.

### **Hawaii**

- Lenders prefer to use a mortgage and foreclose judicially although a non-judicial foreclosure is available under a power of sale clause in the mortgage.
- There is no right of redemption.

### **Idaho**

- Lenders use both a judicial and non-judicial foreclosure.
- The lender can sue you in a separate lawsuit for a deficiency, but must do so with 90 days after the sale. You can exercise the right of redemption within six months of the sale if your property was less than 20 acres.
- If is more than 20 acres, the right of redemption is extended to one year.

### **Illinois**

- Lenders can use either a judicial or non-judicial foreclosure.
- Illinois does not allow power of sale non-judicial foreclosures.
- You can reinstate the loan with the first 90 days after being served with the lawsuit.
- The borrower has a redemption period of 90 days after judgment of foreclosure is entered by the court.
- A deficiency judgment is allowed.

### **Indiana**

- Lenders use a mortgage and foreclose with judicial foreclosure.
- The foreclosure begins with filing the complaint.
- It can take up to 260 days to process the documents and the date of publication must be published for 120 days.
- The amount of time before foreclosure varies depending on the age of the mortgage.
- There is no right of redemption.

### **Iowa**

- Lenders use judicial foreclosure.
- The foreclosure begins with a petition to the court.
- It can take up to 160 days to process the documents and the date of publication must be published for 30 days.
- The redemption period is from 20 to 365 days.

### **Kansas**

- Lenders use judicial foreclosure.
- The foreclosure begins with filing the complaint.
- It can take up to 130 days to process the documents and the date of publication must be published for 21 days.
- The redemption period is from 90 to 365 days. The full 365 days is allowed if the borrower has paid one-third or more of the principal.
- A deficiency judgment may be obtained for the difference between the foreclosure sale price and the amount due on the loan. Deficiencies are common. However, the court may refuse to confirm a sale where the price is not

equal to the judgment, which helps prevent abusive deficiency judgments.

- The borrower can redeem any real property sold at foreclosure at any time up to 12 months from the date of sale

### **Kentucky**

- Lenders use judicial foreclosure.
- The lender can repossess the property immediately if the house is abandoned. The right of redemption exists only if the house sells for less than two-third of the appraised value.
- Deficiency judgments are permitted.

### **Louisiana**

- Lenders foreclose with judicial foreclosure. However, Louisiana is the only state that follows the Napoleonic Code.
- Their two types of foreclosure are "ordinary" and "executory." The executory foreclosure is quicker, but requires the borrower to confess judgment.
- There is no right redemption.

### **Maine**

- Lenders use judicial foreclosure. The foreclosure begins with filing the complaint.
- The redemption period is 90 days.
- If the lender accepts money or anything of value on the mortgage debt after the foreclosure has begun and before the redemption time period has expired, then the lender waives the foreclosure procedure.
- The borrower can remain in the house during that period and try to pay off the mortgage.
- Deficiency judgments are allowed.

### **Maryland**

- Lenders use judicial foreclosure.
- The foreclosure begins with the petition in equity filing an order to docket.
- It can take up to 46 days to process the documents and the date of publication must be published for 30 days.
- The lender does not need to inform the borrower of the foreclosure until the date of sale is established by the court.
- A deficiency judgment may be obtained within approximately 3 years.
- The redemption period is decided by the court.

### **Massachusetts**

- Lenders foreclose with non-judicial (trustee sale) foreclosure.
- The foreclosure begins with filing the complaint.
- The borrower is entitled to any surplus if the property sells for more than the loan amount.
- If the foreclosure sale proceeds are not enough to pay off the lender, then the borrower is liable for any deficiency.
- There is no right of redemption after a sale, but there are procedures for using the redemptive right prior to publication of the first notice of sale.

### **Michigan**

- Lenders can use either a mortgage or deed of trust.
- Lenders primarily use mortgage and foreclose by trustee sale. In Michigan this is

called "foreclosure by advertisement.

- The borrower may redeem by paying the lender the sum for which the property was sold at foreclosure, plus interest at the same rate as the mortgage.
- The lender can collect a deficiency if the lender uses a judicial foreclosure. It can also collect a deficiency under a non-judicial foreclosure but the lender's rights are limited.

### **Minnesota**

- Lenders can use either a mortgage or deed of trust. Lenders primarily use a mortgage deed and foreclose by trustee sale.
- The redemption period is from 180 to 365 days. The redemption varies depending on the type of property and the wording of the mortgage.

### **Mississippi**

Lenders can use either a mortgage or deed of trust. Lenders primarily use deed of trust and foreclose by trustee sale.

The foreclosure begins with publication.

It can take up to 90 days to process the documents and the date of publication must be published for 30 days.

There is no right of redemption. The surplus from the sale, if any, goes to secondary lenders.

### **Missouri**

- Lenders use either a mortgage or deed of trust.
- Lenders primarily use deed of trust and foreclose by trustee sale. The foreclosure begins with publication. It can take up to 60 days to process the documents and the date of publication must be published for 10 days.
- The redemption period is 365 days. Redemption is only allowed if the primary lender is the successful bidder. The rights of redemption are severely restricted in Missouri.

### **Montana**

- Lenders can use either a mortgage or deed of trust.
- Lenders primarily use trust indenture and foreclose by trustee sale.
- The foreclosure begins with recording the notice of sale.
- It can take up to 150 days to process the documents and the date of publication must be published for 50 days.
- There is no right of redemption.

### **Nebraska**

- Foreclosures in Nebraska take place judicially.
- The foreclosure begins with filing the petition and publication of the notice of default.
- It can take up to 142 days to process the documents.
- The borrower can reinstate the loan.
- There is no right of redemption.
- A deficiency is only possible as a continuation of a foreclosure suit, but not while the foreclosure action is pending or remains incomplete.

### **Nevada**

- Both a judicial and non-judicial foreclosure is available.

## Home Foreclosure Bible

- The foreclosure begins with filing the petition and recording of the notice of default.
- It can take up to 116 days to process the documents and the date of publication must be published for 80 days.
- If the foreclosure fails to generate sufficient proceeds to pay off what remained due on the loan, then the lender may sue for a deficiency within three months after the foreclosure sale.
- A deed of trust sale gives the foreclosure purchaser clear title free of any right of redemption for the old borrower.
- There is a one year redemption on judicial sales.

### **New Hampshire**

- Lenders use mortgages and foreclose either judicially or non-judicially.
- Mortgages with power of sale clauses are more prevalent.
- With these non-judicial foreclosures there is no right of redemption.

### **New Jersey**

- Lenders foreclose with judicial foreclosure.
- The lender can file a complaint to collect unpaid payments rather than accelerate the note.
- Deficiency judgments are allowed.
- The redemption period is 10 days.

### **New Mexico**

- Lenders foreclose with judicial foreclosure.
- The redemption period is from 30 to 270 days.
- The winning bid at auction must be at least eighty percent of the fair market value of the property.
- A lender may obtain a deficiency judgment.

### **New York**

- Lenders use judicial foreclosure.
- The foreclosure begins with filing complaint.
- It can take up to 445 days to process the documents.
- A court ruling is required and that can take from seven to nine months.
- The sale is set for four months later.
- If the mortgage contains an express promise to pay the lender can seek a deficiency judgment. This must be done within 90 days after the foreclosure sale. There is no right of redemption.

### **North Carolina**

- Lenders can use either a mortgage or deed of trust.
- Lenders primarily use deed of trust and foreclose by trustee sale.
- There is no right of redemption and the lender may not sue for a deficiency if the mortgage was used to purchase the real estate.

### **North Dakota**

- Lenders use a mortgage and foreclose with judicial foreclosure. The foreclosure begins with filing complaint. It can take up to 150 days to process the documents. The redemption period is one year. A deficiency judgment is allowed if the original complaint declares that the lender is seeking one.

### **Ohio**

- Lenders must use judicial foreclosure.
- The sale price at auction must be at least two-thirds of the appraised price.
- There is no right of redemption after the sale is confirmed.
- Prior to sale confirmation the borrower can redeem by paying the amount of the loan and costs.

### **Oklahoma**

- Lenders use either a mortgage or deed of trust.
- Lenders primarily use a mortgage and foreclose by judicial sale.
- After the foreclosure sale is confirmed by the court there is no redemption.
- The lender can sue for a deficiency within 90 days after the sale.

### **Oregon**

- Lenders use either a mortgage or deed of trust.
- Lenders primarily use a deed of trust and foreclose by trustee sale.
- A deficiency judgment is not allowed after a non-judicial foreclosure (foreclosure by advertisement).
- Redemption is allowed within 180 days of a judicial foreclosure.

### **Pennsylvania**

- Lenders primarily use mortgages and foreclose judicially.
- Pennsylvania homeowners can apply for a Homeowner's Emergency Mortgage Assistance Loan.
- Applying for the loan adds 60 days to the foreclosure process.
- There is no right of redemption after sale.
- The lender can sue for deficiency within six months after the foreclosure.

### **Puerto Rico**

- Lenders typically use a mortgage and foreclose judicially.

### **Rhode Island**

- Lenders primarily use non-judicial foreclosure.
- Deficiency judgments are allowed, but the borrower has up to 3 years to redeem.

### **South Carolina**

- Lenders use mortgages use judicial foreclosure.
- The foreclosure begins with filing of lis pendens in court.
- The borrower must be personally served within 20 days and has 30 days to respond.
- No right of redemption is permitted in South Carolina.
- A deficiency is allowed if the appraised value of the property is less than the amount owed on the loan, after subtracting the sale proceeds.

### **South Dakota**

- Lenders can use either a mortgage or deed of trust.
- Lenders primarily use a mortgage and foreclose by judicial sale.
- The foreclosure begins with filing complaint. It can take up to 150 days to process the documents and the date of publication must be published for 23

days.

- The redemption period is 180 days to redeem unless the property is vacant, in which case the redemption period is 60 days.

### **Tennessee**

Lenders use a deed of trust and foreclose by trustee sale.

Most trust deeds do not provide for the right to redeem.

If there is not a right of redemption, the borrower gets a full two years to redeem the property.

The lender can seek a deficiency judgment.

### **Texas**

- Lenders use either a mortgage or deed of trust.
- Lenders primarily use deed of trust and foreclose by trustee sale.
- There is no right of redemption, however the borrower has 20 days to reinstate.
- Deficiency judgments are allowed.

### **Utah**

- Lenders use either a mortgage or deed of trust.
- Lenders primarily use deed of trust and use judicial foreclosure.
- Borrowers can exercise their right of redemption after the sale and this can be extended by the court.
- Utah allows deficiency judgments.

### **Vermont**

- Lenders can use either a mortgage or deed of trust.
- Lenders primarily use a mortgage and foreclose by judicial sale.
- Non-judicial foreclosures are becoming more common with residential loans.
- The redemption period is generally 90 days, but can vary.
- The lender can sue for deficiency.

### **Virginia**

- Lenders use either a mortgage or deed of trust.
- Lenders prefer to use a deed of trust and foreclose by trustee sale.
- If the sale results in a deficiency the court must confirm upon proof that the fair market value of the property is credited to the mortgage.
- The borrower has 30 days notice to reinstate.
- There is no right of redemption with a non-judicial foreclosure.
- The lender can pursue a deficiency.

### **Washington**

- Lenders can use either judicial or non-judicial foreclosure.
- There is no right of redemption for a trustee's sale. For court foreclosure, there is a one year right of redemption.
- If the lender uses a non-judicial foreclosure no deficiency judgment is allowed.
- A deficiency is permitted for a judicial foreclosure.

### **West Virginia**

- Lenders use either a mortgage or deed of trust, although mortgage is uncommon.
- Lenders prefer to use a deed of trust and foreclose by trustee sale.

## Home Foreclosure Bible

- There is no right of redemption after a deed of trust sale.
- Ten days notice is given to reinstate.
- There is no right to reinstate if the notice of default is served three or more times.
- Deficiency judgments are permitted.

### **Wisconsin**

- Lenders use either a mortgage or deed of trust.
- Lenders often use a mortgage with a power of sale and foreclose by non-judicially.
- The right of redemption is available until the sale is confirmed by the court.
- A deficiency judgment is allowed.

### **Wyoming**

- Lenders use either a mortgage or deed of trust.
- Lenders use a deed of trust and foreclose by trustee sale (called a foreclosure by advertisement).
- To redeem the borrower must pay ten percent interest and any property taxes owed. A lender can sue for deficiency.

#### **Foreclosure law sources:**

**[foreclosureu.com](http://foreclosureu.com) | [realtytrac.com](http://realtytrac.com) | [foreclosure.com](http://foreclosure.com)**

## **GLOSSARY OF TERMS**

**Abstract**: A succinct summary; (e.g. an abstract of judgment, an abstract of title, an abstract plant).

**Abstract of Judgment**: Summary of a court judgment creating a lien against a property when filed with the county recorder.

**Abstract of Title**: The condensed history of a title to a particular parcel of real estate, consisting of a summary of the original grant and all subsequent conveyances and encumbrances affecting the property and a certification by the abstractor that the history is complete and accurate.

**Abstract Plant**: A collection of information and documents relating to the title of a particular property; also known as a "title plant."

**Acceleration Clause**: The clause in a mortgage or deed of trust that can be enforced to make the entire debt due immediately if the borrower defaults on an installment payment or other covenant.

**Acceptance**: The written approval made by the seller from a buyer's offer.

**Accrued**: On a closing statement, items of expense that are incurred but not yet payable, such as interest on a mortgage loan or taxes on real property.

**Addendum**: Any addition or change to a contract.

**Adjustable Rate Mortgage (ARM)**: A loan with an interest rate that fluctuates based on a specified financial index, such as Treasury securities.

**Agent**: A licensed representative of the state to conduct real estate transactions.

**Agreement of Sale**: Also known as an agreement to convey. A signed, written contract entered into between the seller (vendor) and buyer (vendee) for sale of real property (land) under certain specific terms and conditions.

**All-Inclusive Deed of Trust**: A form of deed of trust that, in addition to any other amounts actually financed includes the amounts of any prior deeds of trust; sometimes referred to as a wrap-around or over-riding trust deed.

**Appraisal**: A valuation or an estimation of value of property by disinterested persons of suitable qualifications; the process of ascertaining a value of an asset or liability that involves expert opinion rather than explicit market transactions.

**Appraise**: To fix or set a price or value upon.

**Arrears**: Generally, being overdue in an installment payment.

**Assumable Mortgage**: A mortgage that can be taken over (assumed) by the buyer when a home is sold. If interest rates have risen, an assumable mortgage at a low rate may prove a selling point for the property.

**Bankruptcy**: An action filed in a federal bankruptcy court that allows a creditor to reorganize or discharge credit obligations due to insolvency. A property owner may halt foreclosure action by filing bankruptcy. Bankruptcies remain on a credit record for seven years and can severely limit a person's ability to borrow.

**Chapter 13 Bankruptcy** - "Debtor Workout" This is the almost-automatic choice of most trustors seeking to use a bankruptcy filing to delay the in-avoidable trustee's



sale as long as they can. The purpose of this proceeding is to give a "wage earner" time for rehabilitation . . . a temporary respite free from the collection efforts of creditors.

Bid: An offer by an intending purchaser to pay a designated price for property which is about to be sold at auction.

Blanket Deed of Trust: A deed of trust secured by more than one lot or parcel of land.

Borrower: To whom a thing or money is lent at his request.

Broker: A agent authorized by the state to deal in real estate.

Brokerage: The bringing together of two or more parties interested in making a real estate transaction.

Capital Gain: A profit earned from the sale of an asset.

Closing Costs: Expenses supplementary to the sale of real estate, which includes loan, title and appraisal fees.

Closing Date: The date agreed upon which the buyer takes over the property.

Collection: Obtain payment or liquidation of a debt or claim, either by personal solicitation or legal proceedings.

Comparables: Similar properties used as yardsticks to determine the market value of a certain property.

Complaint: The original or initial pleading by which an action is commenced; a written statement of the essential facts constituting the offense charged.

Contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

Conveyance: A written instrument that transfers title to or an interest in land from one party to another (i.e. a deed, an assignment, a bill of sale, etc.)

Counteroffer: A response given to an offer.

Credit report: A document from a credit bureau setting forth a credit rating and pertinent financial data concerning a person or a company and used by banks, merchants, suppliers and the like in evaluating a credit risk.

Creditor: One to whom money is owed.

Debt: A sum of money due by a certain and express agreement; a specified sum of money owing to one person from another, including not only obligation of debtor to pay but the right of the creditor to receive and enforce payment.

Debt Ratio: To compare the total monthly payments of all of the borrower's debts (including the mortgage) with the gross monthly income of the borrower. It evaluates the borrower's ability to pay mortgage. Also called Debt-to-Income ratio.

Debtor: An entity that owes a debt; one who owes a debt.

Deed: A written instrument that, when executed and delivered, conveys title to or an interest in real estate.

Deed in Lieu of Foreclosure: A process whereby the owner, with the approval of the lender, deeds the property to the lender to avoid foreclosure. Lenders are generally reluctant to accept a "deed in lieu" unless the title is free and clear of any other

encumbrances junior to theirs and the owners execute an estoppels affidavit acknowledging that they are acting volitionally, with informed consent.

Deed of Trust (Trust Deed): A three party security instrument conveying the legal title to real property as security for the repayment of a loan. The owner is called the "trustor". The neutral third party to whom the bare legal title is conveyed (and who is called on to liquidate the property if need be) is the "trustee". The lender is the "beneficiary". When the loan is paid off the trustee is directed by the beneficiary to issue a deed of reconveyance to the trustor, which extinguishes the trust deed lien.

Default: The failure to make payments in full, on time or at all or to live up to any other obligations placed on the borrower by the loan agreement.

Deficiency judgment: A judgment entered in a lawsuit when a property is sold for less than the amount of the loan.

Delinquency: A condition when the payment is being late but not yet in default.

Demand Letter: Also known as a Breach Letter or Notice of Intent to Foreclose. Notice to the borrower that he/she is in "breach" of the terms of the Note and advising of the right to "cure" the default.

Department of Housing and Urban Development (HUD): A federal department that focuses on programs regarding housing and renewal of city communities.

Department of Veterans Affairs (VA): An independent federal agency which oversees programs for military veterans, including loan and mortgage programs. This agency allows most veterans to purchase a house without a down payment.

Equity: The surplus of value which may remain after existing liens are deducted from the property.

Equity Right of Redemption: The right to avoid foreclosure action by paying off the debts, interest, and fees that have accumulated on the property.

Eviction: The act of depriving a person of the possession of land or rental property that he has held or leased.

Fair Market Value: The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

FHA: Stands for Federal Housing Administration. It's a branch of H.U.D. It's basic function is to direct housing in a way that Congress mandates by issuing mortgage insurance to institutional lenders on the loans they make. With such loan insurance, lenders are willing to lend with smaller down payments and at lower rates of interest.

FHA Loans: A loan program offering low-rate mortgages to buyers who are willing to make a down payment as small as 3 percent.

First Mortgage: A mortgage that is in first position and has priority as a lien over all other mortgages.

Foreclosure: A legal procedure whereby property used as security for a debt is sold to satisfy the debt in the event of default in payment of the mortgage note or default of other terms in the mortgage document. The foreclosure procedure brings the rights of all parties to a conclusion and passes the title in the mortgaged property to either the holder of the mortgage or a third party who may purchase

the realty at the foreclosure sale, free of all encumbrances affecting the property subsequent to the mortgage.

Home Equity Line of Credit: A loan that is secured by the owners property which can be repaid and borrowed again at the owners convenience.

Instrument: A legal written document.

Judgment: The final decision of the court resolving the dispute and determining the rights and obligations of the parties.

Judicial Foreclosure: A foreclosure process which is executed via a court action.

Junior Lien: A lien that is subordinate or junior to a senior lien.

Lease: An agreement involving payment of rent for possession of real estate for a specific period of time.

Lease Option: A lease that contains the right to purchase a property for a specific price during a given time frame.

Lender: He from whom a thing or money is borrowed.

Lien: A claim or charge on a property for payment of some debt, obligation or duty.

Loss Mitigation Department: A department which helps homeowners avoid foreclosure; the lender tries to help a borrower who has been unable to make loan payments and is in danger of defaulting on his or her loan.

Mortgage: An interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt.

Mortgagee: The entity, usually a bank or financial institution, who lends money to a borrower.

Mortgagor: The person who borrows the money from a lender to purchase a property.

Notice of Default (NOD): A notice that is sent out by the lender when a mortgage payment is late in an attempt to cure or make the loan current.

Notice of Sale: The notice of an impending foreclosure sale required by the state. It recites the legal description of the property being foreclosed upon and gives the time, date and place of the pending sale.

Offer to Purchase: A contract expressing of a person's willingness to purchase a certain property on terms expressed in the offer.

Owner Financing (Seller Financing): A creative method in real estate where the seller of a property agrees to finance all or some of the property. In a sense, the owner acts like a bank.

Power of Sale: A clause commonly inserted in mortgages and deeds of trust that are in default, giving the mortgagee (or trustee) the right and power to advertise and sell the mortgaged property at public auction to satisfy the debt.

Recorder: A public official that is responsible for keeping all the records of real estate transactions.

Redemption Period: The time allotted to the mortgagor to reclaim his/her property after it has been sold at an auction. Not all states have a redemption period. Sales Contract A contract to which the buyer and seller agree to terms of sale.

Second Mortgage: A second loan placed upon a property in addition to an existing first loan.

Seller Financing: A creative method in real estate where the seller of a property agrees to finance all or some of the property. In a sense, the owner acts like a bank.

Sellers Market: When the market conditions are such that the sellers have the advantage and multiple offers are made.

Sheriff's Sale: The sale of a property to satisfy a debt or judgment.

Short Sale: The sale of a property under or at market value that's lower than the loan balance.

Tax Lien: A lien on real estate in favor of a state or local government that may be foreclosed on for the non-payment of taxes.

Tenant: A person in possession of real property with the owner's permission.

Title: Evidence of ownership of land.

Trust Deed: A three party security instrument conveying the legal title to real property as security for the repayment of a loan. The owner is called the "trustor". The neutral third party to whom the bare legal title is conveyed (and who is called on to liquidate the property if need be) is the "trustee". The lender is the "beneficiary". When the loan is paid off the trustee is directed by the beneficiary to issue a deed of reconveyance to the trustor, which extinguishes the trust deed lien.

Trustee: A legally empowered person who holds or controls a piece of property for another person.

Trustee's Deed: A deed given to the successful high bidder after a foreclosure auction.

Trustee's Sale: An auction where a trustee may sell a property that has defaulted in effort to pay the outstanding debt that is owed.

VA Loans: A program that allows the purchase of a house without a down payment to most veterans.

Vacate: To make vacant or empty.

Without Recourse: Giving the lender no right to seek payment or seize assets in the event of nonpayment from anyone other than the party specified in the debt contract.