How to Manage the Foreclosure Process¹

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With the aftermath of the subprime mortgage market collapse, many homeowners find themselves missing mortgage payments in this sluggish economy. This may result in their homes being foreclosed by the lender. In essence, foreclosure is a court process where a lender files a lawsuit against the borrower of the mortgage. If the judge rules in favor of the lender, the home will be sold in a public auction.

The basic foreclosure process can begin when your loan payment becomes 16 days past due. At that point, your mortgage lender will try to contact you to work out a repayment schedule to bring your loan current. If your first payment becomes 30 days past due and the next month's payment looks doubtful, collection attempts can begin in earnest. If your payments fall 90 days behind, the lender will likely refer your mortgage to an attorney or other entity, which will initiate foreclosure proceedings.

Example of a foreclosure timeline

Day 1: Mortgage payment is due the first of the month. The borrower misses the payment.

Days 16-30: Late charge assessed on the payment. The mortgage lender attempts to make contact to find out why the payment is late.

Days 45-60: Lender sends "demand" or "breach" letter to the borrower pointing out that terms of the mortgage have been violated; typically the borrower is given 30 days to resolve the situation by paying the past due amount.

Days 90-105: Lender refers loan to foreclosure department and will hire an attorney or firm to initiate foreclosure proceedings. This can result in public disclosure of the foreclosure which could include notification in the local newspaper.

Days 150-415: House is sold at a foreclosure sale or auction; timeframes vary outside of Florida.

Foreclosure is loosely defined as a lawsuit by the lender taken against the borrower. It essentially becomes a court-ordered sale of your house. Florida law currently allows the borrower 10 days from the court ruling to contest it if the process was not adequately followed. However, a low sale price from the auction process is not sufficient reason (or grounds) for contesting the court ruling. Thus, if the

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house sells for less than what is owed, the borrower is still liable for the difference.

What to do when facing foreclosure

Determine what happened

There can be many factors that lead to a foreclosure: job loss, medical bills, divorce, death, poor budgeting, or a change in payment amount as a result of an adjustable rate mortgage or increased tax, millage or insurance rates that have depleted your escrow account. Understanding what happened is critical to either moving forward or trying to improve the situation.

Get organized financially

Assessing your financial position by creating a statement of income and expenses (which details your cash inflows and cash outflows) can be beneficial and will be important when you contact your lender. How much money is coming in? Where does it go? What resources have you accumulated? What obligations do you have?

The addition of a balance sheet (which will detail everything you own and everything you owe) helps to complete the picture of your financial position. Simply getting organized will help you decide whether working with your lender is feasible or whether you should sell immediately or even rent out your house.

There are many sources of assistance in helping to organize your finances: local UF/IFAS County Extension office, HUD or HUD approved counselors, or some credit unions and banks.

Try to communicate with your lender as soon as possible

Don't be afraid to talk to your lender—it is in your best interest to do so prior to their filing foreclosure with the court. You should know that lenders do not want to take your home. According to Freddie Mac®, the average foreclosure costs lenders \$60,000. However, the longer you wait to communicate with your lender, the less likely they will be able to work with you.

If your lender is willing to work with you, you might be presented with any of the following options:

- **Grace Period** This gives you a certain period of time to get caught up on your payments.
- **Payment forgiveness** You are not required to pay any missed payments but are expected to make all future payments on time.
- **Re-negotiation of contract** This can change payment amounts, payment schedule, etc.
- **Mortgage modification** Adds the past due payments to your unpaid loan balance. With this option, the interest rate usually will not increase. However, the time it takes to pay off the loan will be longer and the overall amount paid in interest over the life of the loan will be greater.
- **Partial claim** A partial claim occurs when your lender helps you obtain a one-time payment from the Federal Housing Administration (FHA) Insurance fund that pays for your missed payments. When your lender files a partial claim, HUD (the U.S. Department of Housing and Urban Development) will pay your lender the amount necessary to bring your mortgage current. Thus you are no longer behind on your mortgage payments. However, the payment provided by HUD is an additional loan and is typically an interest-free promissory note which results in a lien being placed on your property until you have repaid the HUD loan. Keep in mind that under this option you will still need to make your regular mortgage payments while also repaying the HUD loan.
- **Special forbearance** The lender may temporarily reduce or suspend your regular monthly mortgage payment, or the past due amount could be reduced by increasing your payments over a period of time.
- **Sell your home on your own.**
- **Pre-foreclosure or short sale** If the lender agrees, this allows you to sell your home for an amount that is less than your mortgage loan. While this is not an ideal situation, it is better than a foreclosure. However, your lender may agree only on the condition that you sign a

promissory note to pay back the difference between their proceeds of the home's short sale and the amount you owed on the original debt. Any amount that your lender forgives, though, will still be considered taxable income by the Internal Revenue Service.

- **Deed-in-lieu of foreclosure** In this case you voluntarily “give back” your house to the lender in exchange for your debt. Keep in mind that under this option, you do lose any claims or rights to your home, and you will need to vacate the property within the time frame as indicated in the terms of the agreement. But typically, under this kind of agreement, your lender has likely waived rights to collecting your outstanding mortgage debt.
- Whatever options your lender offers, it is wise to get it in writing for your legal protection.

Do not abandon your home

Abandoning your home may disqualify you from receiving assistance. Contact a HUD-approved housing counseling agency. HUD maintains a list of approved agencies at <http://www.hud.gov> or you may call HUD at 1-800-569-4287 to find a housing counseling agency near you. These HUD approved agencies are valuable resources and have information on services and programs offered by government, private, and community organizations. A housing counseling agency may also offer you credit counseling services or serve as a mediator between you and your lender. Such services provided by non-profit entities are usually free of charge.

If your home mortgage was FHA-insured, the lender must refer you to a housing counseling agency that has been approved by HUD. You will work with a counselor and the lender to work out a repayment plan to bring your mortgage current or to sell your house.

If your home mortgage is not FHA-insured, FHASecure is a refinancing option that gives homeowners with non-FHA adjustable rate mortgages (ARMs) the ability to refinance into an FHA-insured mortgage. With FHASecure, the lender will not automatically disqualify you from

refinancing because you are delinquent on the mortgage loan in question, and the lender may offer you a second mortgage to make up the difference between the current value of your property and the amount you still owe. FHASecure refinancing can help you lower your monthly mortgage payments and avoid default.

Avoid scams

If you have options proposed to you that appear to be too good to be true, they probably are. People are aware this is a stressful situation for you and may try to take advantage of you. Do not rush into any hasty decisions. More information regarding potential scams are outlined in the “How to Avoid Foreclosure” and “Focus on Credit” sources cited below.

Remember

Communication between family members is very important during this time. Family members, especially those who are the primary wage earners, may feel overwhelmed, frustrated, anxious, sad, and angry. Discussing the situation reasonably and coming up with plan(s) together can help a family protect that which is most valuable (its members) from taking out negative feelings on each other. Working together, your family can make it through this difficulty.

Sources

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