

# How to Save Your Home from Foreclosure

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The Great American Dream of homeownership is what many in our country diligently strive for. Homeownership brings many benefits, as well as responsibilities. Entrance into the status of homeowner may come with little or no cash investment for a down-payment. The loan that is obtained by a first time homebuyer is usually a special loan designed to assist those in the entry level, who have not yet accumulated a substantial sum for the down-payment. Banks will always prefer to lend to a borrower that has more to invest. Usually, the desired amount is at least ten or twenty percent of the purchase price in the form of cash. Almost without exception, the banks or mortgage lenders will make special loans with very little or no down-payment to a homebuyer because the loan is usually insured or guaranteed against loss of principal by a governmental or quasi-governmental agency.

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First time homebuyer loans are usually the first loans that go into default in an economic downturn. Financial hardships caused by either loss of job, accident, injury, or relational problems begin to turn the American Dream into a nightmare. Although in a normal economy, there are very few people that actually end up losing their homes, those in the midst of the foreclosure suffer and many do not see themselves successfully out of the problem they get into. The following information is shared in the expectation that it will provide a path for those caught in that difficult situation, and assist in resolving their particular financial problem.

## The Foreclosure Process in California

The California home-buying process usually involves the use of the deed of trust, which by its legal definition involves three parties; the trustor (borrower), the beneficiary (lender), and the trustee (neutral third party receiving the right to foreclose). The deed of trust usually includes a "power of sale" clause that gives the trustee the legal right to enforce collection of the debt. Collection of the debt is ultimately enforced by the right to sell the house when the borrower fails to make their mortgage payments. Defaulting on one's loan causes the start of foreclosure, the process by which the lender takes over the home in order to recover their principal investment. Once the house is either sold at auctioned or "repossessed" by the lender, it is sold and the former owner must vacate at the discretion of the new owner. When there is a power of sale clause in the deed of trust the non-judicial process of foreclosure is used. In non-judicial foreclosure the trustee must meet a few requirements before he or she sells the property. In comparison to a judicial foreclosure, Non-judicial foreclosure is quick because the trustee does not have to obtain a court order to foreclose, nor is court supervision required in order

to sell the house, as is required in the judicial foreclosure process. The judicial process of foreclosure is used when a power of sale clause is not in the deed of trust.

In California, the timeline of non-judicial foreclosure begins when the trustee files a notice of default. This is a letter which is sent to the owner/trustor notifying him or her of their default of the loan. This notifies the owner of the intent of the lender to follow through on their right to collect on the debt. The copy of the notice, which is recorded at the County Recorders Office of the appropriate county, is mailed to the address of notice as per the deed of trust. Recording of the notice of default can vary greatly depending on the beneficiary. It can occur anywhere between a week to many months after one misses their first mortgage payment. The step that follows next is that stage of the foreclosure process in which there is a filing of the Notice of Trustee's Sale. No sooner than ninety (90) days after the trustee records the notice of default, the Trustee must publish a notice of trustee's sale in the local paper and simultaneously file that notice with the county recorder's office. No sooner than twenty days (20) after the notice of trustee sale is filed, the home may be sold at public auction for the amount of the debt plus foreclosure costs. If no one bids at the auction, the lender assumes ownership of the property, and may dispose of that property to recover their cash investment.

### What You Can Do to Avoid or Stop the Foreclosure Process

The first and most important step that one can take in preventing the loss of one's home through the foreclosure process is to "communicate, communicate, communicate"! This first step, along with a few others, is detailed below.

- Negotiate with the lender. The lender will always work with a client of theirs if the client takes the initiative to communicate any financial hardships that may have caused the default. Negotiate with the lender for a payment adjustment in order to make up for the missed payment or payments. It is imperative that you act quickly in order to prevent the sale of your home, because once the foreclosure process begins you only have 120 to 140 days before your house is sold. Contact your lender to explain your situation and work out a way for you to keep your house. You have the most time and the best chance of being able to negotiate a solution before the trustee files the notice of default. If foreclosure has already begun you must contact the lender during the 90 day period before the notice of trustee sale is posted and filed.

One of the most common causes of failure to communicate is that many homeowners facing foreclosure avoid contacting their lenders because they are upset or embarrassed. Many times the homeowner mistakenly believe the lender will not help them because they feel that the lender prefers to foreclose. In reality, the opposite is true. Banks and other lenders are primarily in the business of earning money by collecting interest on loans that they have made. Their net income is derived by having a specific process in place in order to invest and receive the interest payments. They find it cumbersome to go through the foreclosure process, and usually are not well equipped to manage foreclosed properties. Because of this, most lenders are willing to work with homeowners because foreclosure is more costly for them. It forces them to allocate time and resources to an unprofitable activity. Contact your lender immediately! Do not ignore phone calls and letters from your lender. If you do not inform your lender of your situation, it will be assumed that you do not intend to pay and the process will go forward.

It is important to prepare well before you contact your lender. You must gather all documents supporting your income and expenses, as well as all loan account information. When you call ask to speak to someone in the customer service department, be upfront about your circumstances and be prepared to discuss your financial situation in detail. Your lender needs to know clearly your financial situation in order to determine whether they are able to offer a solution. Your lender should be able to then offer you one of the following options:

**Loan modification:** this is when the lender agrees to modify the terms of the loan. As an example, the lender may agree to extend the term of the loan or lower the interest rate of the loan. This option helps you catch up on unpaid payments by making your monthly payments affordable. Loan modification may be appropriate if you have recovered from a financial problem and can afford to make your loan payments if they are adjusted.

**Repayment plan:** This option allows you to catch up on unpaid payments by adding a portion of the late payments to your regular monthly payments. A repayment plan may be suited for you if you have recently recovered from a short-term financial problem and are now able to resume making your regular monthly payments but need time to catch up on the unpaid payments.

**Reinstatement:** This is when you are able to pay off the entire balance of the unpaid payments by a specific future date. Reinstatement may be appropriate if you know and can prove to your lender that you will soon be receiving a quantity of money that will allow you to bring your loan account current.

**Forbearance:** This is when the lender agrees to temporarily reduce or stop your loan payments with an agreement on another plan to bring the loan account current. This option stops the foreclosure process and is combined with other options, often reinstatement.

If you are uncomfortable with negotiating with your lender by your-self or if you want to better understand of what options you have, contact a reputable foreclosure assistance counseling agency. When selecting an agency to work with, choose one from the U.S. Department of Housing and Urban Development's list of approved housing counseling agencies. Beware of phony "counseling agencies" that approach you with the promise to advise you on your situation, provided that you pay a large fee!

- Borrow money from family or friends. Many people tend to shy away from this as their first option. One would think that this option would be the most common-sense place to start. Many people completely eliminate this as a means to gather the funds necessary to bring the loan current simply because they are embarrassed to ask. They do not want family or friends to know that they have encountered financial difficulties, so they look elsewhere. Family or friends many times are the ones that are most committed to lending a helping hand. If they are able, they are very likely to be very willing to help out. Oftentimes because of embarrassment, they are not approached until it is too late in the foreclosure process, and are unable to obtain funds quickly enough to help out. Obviously, there are situations where the family members or friends are not approached because there are already strained relations, or they want to avoid causing any discomfort to their inner circle of friends or family.

One of the best things that I can recommend to you is that you approach the request for assistance in a very businesslike manner. By that I mean, you should look to secure their interest just as you would expect if you were the one providing the funds to someone else in trouble. The greater degree of security that you can offer them in protecting their funds, the greater probability of successfully obtaining the funds necessary to stop the foreclosure.

- Borrow from institutional lenders. A third option is to borrow from institutional lenders to bring up back payments. This can be done by refinancing, or simply by borrowing against the equity in the home. These lenders will primarily consider equity when determining approval of a loan. Equity is defined as the difference between the fair market value of the home and what is owed on the mortgage. Refinancing is when you take out another loan in order to pay off the existing mortgage. When refinancing to avoid foreclosure, you may be able to obtain a lower interest rate, a longer payment period, and/or a lower monthly payment which would make your mortgage payments more affordable. Usually lenders that become aware that you have fallen behind in the mortgage payments will shy away from lending to you, so if you expect to borrow from an institutional lender, you must act very quickly before your credit reflects any late payments. If the lender is aware that you are in default, they will probably refuse to lend, or offer an loan with much higher interest rate to account for the borrower's inability to meet their financial obligations.

- Borrow from private party lenders. There are individuals that have funds to invest and are looking for a higher return on their investment than can be obtained by depositing their monies with savings institutions. These individuals are expecting a high rate of return on their cash investments, and understand that the loan that they are funding is a high-risk loan. Usually, once the homeowner falls behind in their mortgage payments, it is increasingly difficult to borrow money. These private lenders usually consider the equity in the property when making the loan. Because the borrower is behind in their payments, the lender cannot look upon the borrower's ability to repay in a timely manner as the primary basis for qualification. The lender looks for the security of their investment to the ability to recover it based on the property's market value and what is owed by the borrower on the property. Almost without exception, these loans carry a much higher interest rate than the normal home loans obtainable at banks or other lending institutions. They are, however, many times the only option left to a homeowner in foreclosure

#### File for Bankruptcy

There are two chapters dealing with personal bankruptcy; Chapter 13 and Chapter 7. The main difference between the two chapters is that Chapter 13 helps individual debtors pay off their debt with court supervision and protection while Chapter 7 eliminates, or in legal terms, liquidates, the debtor's debt. Based on this simplistic definition alone bankruptcy may seem like the simplest and best solution to your financial problems. However when considering filing bankruptcy be aware that it is not an action that simply frees you from your debt, it is a complex legal process that has weighty financial consequences. For most debtors it is not the best option and should be considered as a last resort after all other options have been investigated or attempted. Individual financial circumstances are so different that you should seek the counsel of a financial planner or accountant and a bankruptcy attorney in order to discuss your particular financial situation and the implications of a bankruptcy. If you do not have an established relationship with an attorney, I would recommend that you get two or three opinions.

**Sell the Home.** Many times, the best solution for someone that has fallen behind in their payments is to sell the home, and thereby recoup 100% of their equity minus selling costs. Unfortunately, many homeowners get caught up in the emotions of the hardship and overlook the realities of their financial circumstances. Almost as if with blinders on, they stagger about hoping for a magic solution, sometimes waiting until it is too late to come up with a rational plan. If a homeowner can reasonably assess their finances and

determines that they cannot carry the financial load, they might be much better off selling the property and preserving the bulk of their equity until they are again able to become homeowners, if they so wish. They must act quickly so that their credit is not ruined by the failure to make their mortgage payments on time, or by using the bankruptcy process just to forestall the sale of the home. Don't let your equity be eaten up by the high costs inherent in loans made to those in distress. Sell the home and preserve the most important or valuable part, namely the Equity!

Unfortunate circumstances befall many of us as we go through life.

Protect your financial health by being proactive when these problems occur. As long as you act quickly and take steps to preserve your assets, you should be able to avoid going into foreclosure. If you do go into foreclosure, following these guidelines should minimize the pain of the process. Seeking assistance promptly from professionals in taxation, law, and real estate will improve your chances of handling the process well.

For further real estate assistance please visit  
<http://www.nefcortez.com>