# Understanding the Foreclosure Process

## If You Have Missed Monthly Payments You Can Still Save Your Home!

When a homeowner misses a monthly payment the first step in the foreclosure process by the lender is filing a **"Notice Of Default"**. Lenders can legally file this notice as soon as you are in breach of your contract, which could be as soon as 30 days after you miss a payment. As a matter of practice lenders will rarely file a Notice of Default unless the homeowner is at least 60 days late.

**If you are behind in your payments most lenders have a "work out" or "loss mitigation" department that can offer you several payment options.** If you are unable to make the payments due to a variable rate loan "resetting" at a higher interest rate, many lenders are now agreeing to lower the interest rate and monthly payments, as well as adding the unpaid portion back onto the loan. Recently some holders of second trust deeds have even agreed to forgive a portion of the loan entirely and reduce the monthly payment if the borrower agrees to begin making payments again. If you want to keep your home many lenders will work with you to modify the terms of your note if you have had a hardship. A qualifying hardship could be a divorce, change of job, loss of job, sudden medical bills or a death in the family. **Do not avoid taking the lenders calls! They may have a solution for you.**

If you are unable to come to an agreement with the lender their next step is to file a **Notice of Default**. After the Notice of Default has been filed **the borrower has 90 days to bring the loan current by paying all payments and late charges currently due.** This is the time that most homeowners should consider putting the property on the market for sale. Even if you do not have any equity you can sell your home. Some lenders **allow up to $1,000 to be paid to the seller** even if the net proceeds from the sale are less than is owed to the lender.

After 90 days if the payments have not been made a Trustee's Sale can be scheduled for a date no sooner than 20 days after notice of the sale is was first posted. The lender is then required to publish the notice of sale in a local newspaper weekly for three weeks prior to the scheduled sale date. **The homeowner has until 5 days prior to the scheduled sale date to reinstate the loan. The homeowner can also ask for 1 automatic 24 hour extension of the sale.**


### Trustees Sale

On the day of the sale a public auction is held, usually on the court house steps in the County where the property is located. At this auction the lender normally sets a minimum bid, based upon the total amount owed, including all costs incurred by the lender.

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**Trustee Sale Continued…..** To find out what the minimum bid is and to be certain the sale has not been cancelled or postponed you must call the trustee the day of the sale. The phone number for the trustee and the sale number are included in the publication in the local newspaper. If you wish to bid on a property at a "trustee sale" you must have certified funds, usually cashiers checks, and meet with the "caller of the sale" prior to the auction starting. You must prove to the auctioneer that you have the funds to reach the maximum you intend to bid. ( He does not reveal to other bidders how high you can go and you are not obligated to bid all the funds you have ).

The bidding begins at the amount set by the lender. Each qualified bidder must beat the previous bid. Sometimes this may be by, only a penny if a bidder thinks the prior bidder is at his limit or if there is only one bidder present. When the auction is over and the highest bidder has been determined, the auctioneer collects the funds and gets vesting information for title from the winning bidder.

## Every owner facing foreclosure has the following options:

- ☐ **Reinstatement.** The owner cures the default by coming up with his own cash or taking out a short-term loan. Keep in mind that the owner has to pay more than the total of his missed payments. The amount owed also includes attorney fees and other fees charged by the lender (filing fees, etc.).
- ☐ **Forbearance.** The lender agrees to take a lower monthly payment for a short period of time. The owner must agree to make payments again as originally agreed in the note and make up the missed payments in the future.
- ☐ **Loan Modification.** The lender agrees to modify the note, including a new interest rate and or terms, sometimes forgiving a portion of the debt.
- ☐ **Sell the property.** The owner can sell the property any time before the foreclosure sale. Including negotiating a "Short Pay".
- ☐ **Refinance.** The owner can refinance the property with a new loan that pays off the loan in default. This can be difficult if the owner is behind in payments.
- ☐ **Deed in lieu.** The owner can deed the property directly to the lender (essentially giving them the property). Then the lender does not have to go through the foreclosure process.
- ☐ **File bankruptcy.** This will stop the foreclosure in its tracks, but only until the lender obtains a release from the court. If the owner can't make up the back payments as part of a reorganization plan, bankruptcy just delays the inevitable. Once the stay is lifted, the foreclosure process will continue.
- ☐ **Let it go and hope** to get something when it sells. The owner lets the foreclosure proceed. He receives anything above the opening bid after all the junior liens are paid off. In most cases, that's nothing.
- ☐ **Walk away.** The owner allows the lender to proceed with the foreclosure. This may be an economically valid alternative if he has little or no equity. But the damage to his credit rating can last for 10 years or more.

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## Short Sale

Selling a home for market value and having the lender take less than is owed is called a "Short Pay" or "Short Sale". Although each lender handles them a little different the process is very similar with all lenders. In a short sale the borrower markets the property and obtains an offer at current market value. The lender agrees to take the net proceeds after deducting the normal costs of sale, including real estate commissions, even if it is less than is owed on the property.

### Typical Rules to Qualify for a Short Sale

The borrower must be at least 30 days late making their scheduled payments.

The borrower must demonstrate a hardship. Hardships include, divorce, change of job, change of income, change of family size, job transfer, recent medical bills.

The property must be sold for current market value. The lender will get an appraisal and have local Brokers provide a price opinion.

**The property can't be sold to an immediate family member** or controlled business interest. It must be an "arms length" transaction.

The borrower must maintain the property until the close of escrow.

**A short sale can have tax implications**. The lender may give you a 1099 for the difference between what was owed and what the lender received. For example, if you owe $210,000 and the net proceeds from the sale are $170,000 you may have to report $40,000 in income on your state and federal tax returns. IRS tax code says that if the borrower is insolvent at the time of sale that they do not have to report the income. In the hundreds of short sales our office has been involved with the lender has never sent a 1099.

**The Mortgage and Debt Relief Act of 2007, signed in December of 2007, generally allows the short sale of your principal residence without tax consequences as long as the total value is under $2 million dollars.**

*The Mortgage Forgiveness Debt Relief Act of 2007*
http://www.irs.gov/newsroom/article/0,,id=174034,00.html

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