

Saving Your Home: What You Need to Know

The recent foreclosure crisis has impacted millions of Americans. Too often, homeowners have found themselves with a loan that is no longer affordable. Some homeowners were unaware that their mortgage payment would change. Others did not know that their loan contained a balloon note provision. Others may have relied upon the belief that they would be able to refinance their loan into a better rate. Still others did not understand that their new mortgage did not include payments for homeowners insurance and real estate taxes.

If you have found yourself in one of these situations, or believe you will encounter problems making your mortgage payment, you may find this information helpful. This document will provide you with information about options that may be available to you if you need to restructure your loan or are facing foreclosure.

Before reviewing the options that may be available to you, keep in mind the following tips:

- **First things first.** If you are facing difficulties, one of the first things you will want to do is contact your lender and/or servicer. You should be able to locate your servicer on your monthly billing statement. If your mortgage payment is automatically deducted from your bank account, contact your banker and have your banker assist you in determining who your servicer is.
- **Know who you are dealing with.** Your servicer is the company to which you send your mortgage payments. Keep in mind that your servicer is representing the lender or investors who own your mortgage.
- **Get the right help.** Finding the right solution for you and your family can be a complex and daunting experience. You should immediately seek expert help rather than try to deal with your servicer alone. Your local fair housing agency or housing counseling agency should be able to provide you with assistance or direct you to an organization that can assist you.

For a list of fair housing agencies in your area, go to:

<http://www.nationalfairhousing.org/MemberOrganizations/tabid/2574/Default.aspx>

For a list of housing counseling agencies in your area, go to:

http://www.hopenow.com/credit_counselors/credit_counselors.html

Be sure to take this document with you to your fair housing or housing counselor and ask her/him to discuss the various options outlined in this document with you.

- **Act quickly.** It can sometimes take months to finalize a loan restructuring or obtain a loan workout. The longer you delay, the more difficult it will be to obtain a solution. Even if you have already contacted your lender or servicer and you did not get the response or help you needed, don't give up. Find a local agency that can provide you with the assistance you need to save your home.
- **Empower yourself.** Get all of the knowledge and information you can about the options and services available to you. www.QuestionsProtect.org is a great place to find information and resources including a glossary of lending and mortgage terms.
- **Protect your credit.** If you have been victimized by fraud, your lender or servicer should be willing to submit documentation that would positively impact your credit report. But by all means, double check your credit report to make sure that any item you have negotiated with your lender is accurately reflected on your credit report.

Homeownership Preservation Options

Loan Modification: Your lender might be able to change the terms and conditions of your loan to make payments affordable. If you obtain a loan modification, be sure to get it in writing and have the documents reviewed by a legal professional. Also, be sure the new loan agreement is properly recorded. Changing the terms and conditions of the loan can include the following:

- Lowering your interest rate. The lender may agree to permanently decrease your interest rate so that your payments become affordable.
- Reducing the principal. *The principal is the amount of debt you owe on your mortgage, not including any interest.* A principal reduction may be necessary to help you better afford your loan.
 - Your lender may agree to reduce the amount you owe on your loan if the original appraised amount was artificially or fraudulently inflated. The best way to determine if the original appraisal was unduly inflated is to hire an independent, licensed professional appraiser to conduct an appraisal based on the date of the loan origination. If this independent appraisal indicates a much lower market value rate, there might be a chance that the original appraiser was pressured into inflating the value of the home. *You should get assistance from your local fair housing or housing counseling agency before obtaining an independent appraisal. These organizations should be able to assist you in finding an expert in your area who can make a fair valuation of your property.*

- Your lender may agree to reduce the principal on your loan if the fees and closing costs you paid to secure the loan were excessively high and/or if the fees and closing costs you obtained upon closing were different from the fees and closing costs you were originally quoted.
- Your lender may agree to reduce the principal on your loan if you were encouraged to obtain a cash-out refinance that included paying off a no interest, reduced rate, or deferred interest loan.
- Extending the term of your loan. For example, if your loan has a 30 year term and has been amortized over 30 years, the lender may agree to extend the repayment time to 35 or 40 years.

Debt Forgiveness: Your lender may be able to forgive debt associated with your loan to improve your ability to repay the debt. Examples of debt forgiveness include:

- Prepayment penalties: A prepayment penalties is a fee that you owe if you pay off your loan early either through refinance or another means. If you have a prepayment penalty that is owed to your lender, you may not have the money to pay the penalty if you sell your home or refinance.
 - You should determine if your loan includes a prepayment penalty. If you have a prepayment penalty, the terms of the penalty should be described in your loan documents. Determine if the prepayment penalty extended beyond the introductory period of your loan. For example, if you have a 2/28 ARM, determine if the prepayment period extends beyond 24 months. If so, you are in a better position to request forgiveness of the penalty.
 - Also, review your loan documents or have a professional counselor review the documents to determine if you paid a prepayment penalty when you secured your loan. If you paid a prepayment penalty to the lender who refinanced your loan, you should definitely ask for a refund of the penalty.
 - If you paid a prepayment penalty to another lender, you might try requesting a refund of the penalty from that lender.
- Late fees: Late fees are applied when the lender has received your payment after the due date or after the grace period. Your mortgage note should explain how late fees are applied. Your lender may apply any payments you send to pay for fees first, and then apply the remainder of the payment to the mortgage payment. If this occurs, you may well receive recurring late fees every month. Late fees can also crop up if the lender has given you force placed insurance (see below) or charged you for some other service of which you were not aware.
- Force Placed Insurance: This is insurance that the lender or servicer buys to protect their investment in case some damage (such as fire, wind or ice storm, etc.) occur to the property on which the loan was made. The payee (beneficiary) on the insurance policy is typically the mortgage holder, not you, the homeowner. These policies

tend to only cover the property, not the contents of the home. It is often more expensive than homeowners insurance you buy for yourself. Force placed insurance is used when the lender or servicer believes that your homeowners insurance policy has expired or lapsed. If you were charged wrongly for force placed insurance, you should be able to get this premium refunded if you can prove that you indeed did have homeowners insurance coverage for the relevant time period. One way to prove that you had homeowners insurance coverage is with a copy of the declarations page of your homeowners insurance policy that shows the time period covered by the policy. You can also use a receipt from your homeowners insurance company that shows your payment and the time period of your coverage.

- **Legal Fees:** If your lender initiates foreclosure proceedings against you, your lender may charge you with fees related to that action. However, you can request that these fees be forgiven especially if the lender has thwarted your efforts to avoid default.

Reinstatement: You may agree to pay the full amount of any arrearage that you owe by a specific date. If you have funds to reinstate, lenders will be more open to negotiating or forgiving debt such as penalties or fees that may have been charged to you. It is imperative, though, if you agree to a reinstatement, that you have the funds into the lender well in advance of the due date.

Repayment Plan: Your lender may agree to special terms to allow you to become current on your mortgage. For example, the lender may agree to allow you to pay your regular mortgage payment plus a little extra each month until you are current.

Assumption: Your mortgage may be assumable, meaning that another party may be able to assume responsibility for or take over your mortgage note. Your name would be taken off the mortgage and the obligation to pay the loan would be transferred to the person who assumes the mortgage. Some mortgages state, however, that they are not assumable and you need to consult your mortgage note and your lender to discuss whether this option is available to you. Additionally, your lender may have specific requirements before agreeing to a loan assumption, so you must check with your lender to determine if the party who will be assuming your mortgage must meet special requirements. For example, your lender may require that anyone assuming the loan must be credit-worthy or must use the house as their primary residence. Be sure to thoroughly review any fees that might be associated with the assumption. Of course, the best option is to complete the assumption without being assessed any fees.

Deferring Past Due Payments: Your lender may be able to apply your past due payments to your balance to bring you current on your loan. This option is most appropriate if you have a verifiable hardship, such as the death of a major wage earner or a serious illness. If

your lender agrees to defer any payments, be sure to request that no fees are associated with this process.

Partial Claim: If you have private mortgage insurance, your lender may be able to help you obtain a reasonable loan from your mortgage insurer to bring you current on the loan. Be careful that you are not assessed undue fees or costs when obtaining this assistance. Typically, your monthly payment will increase a small amount to cover your current monthly mortgage payment plus the loan from your mortgage insurance company. Or, the mortgage insurance company may agree to hold off being paid until your original mortgage has been paid. This way, you would essentially be extending the length of time you would be repaying your mortgage but your monthly payments would not increase.

Forbearance: A forbearance allows you to make either reduced or no payments for a period of time until you can get back on your feet or an issue regarding your loan can be worked out. After the forbearance ends, you may have to make larger monthly payments until you have caught up on all of the payments. Also, the lender may require you to make one large lump sum payment after the forbearance period ends. Be sure you are thoroughly familiar with the terms of your forbearance agreement and that you can meet those terms. Also, be sure your lender is not charging you a fee to implement the forbearance agreement.

Home Sale: If you are not able to work out an agreeable solution with your lender or if you have determined that, based on your situation, homeownership is not the best option for you, you can attempt to sell your home. It is important, if you choose this option, that you interview several different real estate firms and professionals to determine who can provide you the best service. You also want to get an assessment of what is your home's market value. You should try to get the full amount that you owe when you sell your home. Find out about the true market values in your neighborhood. If you owe more than your house is worth, you may need to negotiate a lower pay-off amount with your lender or negotiate a short sale (see below). Keep in mind that home values are declining in some areas, and some areas have an over-supply of housing for sale. If you live in such an area, you may not be able to sell your house for enough money to pay off your loan and the lender may want you to pay back the difference.

Short Sale: A short sale refers to an agreement from the lender to accept the sales price on a home that may be less than the amount owed on the mortgage. When the lender agrees to the short sale, the lender is typically agreeing to not hold you accountable for the insufficient amount. But you must verify this with your lender. However, some states allow lenders to go to court to seek a deficiency judgment. If you live in such a state, your lender may be able to seek a deficiency judgment against you and this would require you to pay back the amount not covered by the short sale. Therefore, it is important that, if the money you receive from selling your home is not enough to cover what you owe, you receive documentation from the lender that you will not be held liable for the deficiency. Be sure

that your lender agrees to release the lien on the property upon receipt of the agreed upon sale amount. You must also be sure to factor in any amounts you may owe a real estate or legal professional if any are involved in the sale of the property. If the property value has declined or is less than the amount owed on the loan, the lender may be more inclined to accept a discounted amount.

- You must be careful if your lender agrees to accept a discounted amount. The balance of funds that you owe may be deemed as taxable income and you could receive a tax bill from the IRS. Check with your lender to determine if they will send a Form 1099C indicating that you received income as a result of the sale.
 - If you have your debt eliminated in bankruptcy, the balance of funds you owe as a result of the short sale may not be considered as taxable income.
 - If you can prove that you are insolvent, the balance of funds you owe may not be considered as taxable income.
 - If you can demonstrate that the balance of funds you owe includes inappropriate fees, such as prepayment penalties or other erroneous fees, it may not be considered as taxable income.
 - If you can prove that your home's value was artificially inflated or that you owe more than your home is actually worth, the balance of funds may not be considered as taxable income.
 - If you can prove that you were a victim of fraud when you obtained your mortgage, the balance of funds you owe may not be considered as taxable income.
 - You may need to complete Tax Form 982 in order to have the alleged taxable income cleared. A good fair housing, loan counseling or housing counseling agency should be able to assist you in completing the form. You may also need to secure legal assistance in completing the form.

Deed In Lieu of Foreclosure: This occurs when the lender allows you to "give back" your home instead of paying off the mortgage. Some lenders have names for this type of option such as "Cash for Keys." In some cases, the lender may offer the borrower a small amount of cash in exchange for the home to allow the homeowner an opportunity to secure other housing. Lenders have requirements that homeowners must fulfill before agreeing to a deed in lieu of foreclosure so it is important that you contact your lender and understand what any requirements would be. There are other restrictions to a deed in lieu of foreclosure. For example, you may not be able to have any other liens (such as income tax or real estate tax liens) on your home in order for the lender to agree to a deed in lieu of foreclosure. Be sure to check with your recorder's or auditor's office to verify that no liens have been attached to your property.

Disaster Affected Areas: If you live in an area that has been declared a disaster by a unit of government, your lender may make available special options to allow you a chance to become current on your loan. For example, your lender or investor might put a moratorium in place meaning that, for the specified period of time, you would not have to

make a loan payment. If you are in a disaster area and have heard reports about such a moratorium, you should contact your lender to find out the details and let them know you want to take advantage of the program. The moratorium would not affect your credit status or increase your loan payments. However, once the moratorium ends, you will need to work out a way to bring your loan current again. Contact your lender or a qualified counseling agency to determine if your area has been declared a disaster and what additional options might be available to you.

Military Service: If you or your household's major wage earner is in the military, there are additional benefits that may be available to you. You may be qualified for an interest rate reduction. You should determine what rights are available to you under the Service Members Civil Relief Act. This Act does prohibit foreclosure against active duty service personnel. For more information, go to www.army.mil and type "Service Members Civil Relief Act" into the search box on the home page.