Defeat Foreclosure

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Merle M. Horwitz, Attorney

Save your house, your credit and your rights, protect yourself from foreclosure scams

3rd Edition With 2014 Laws

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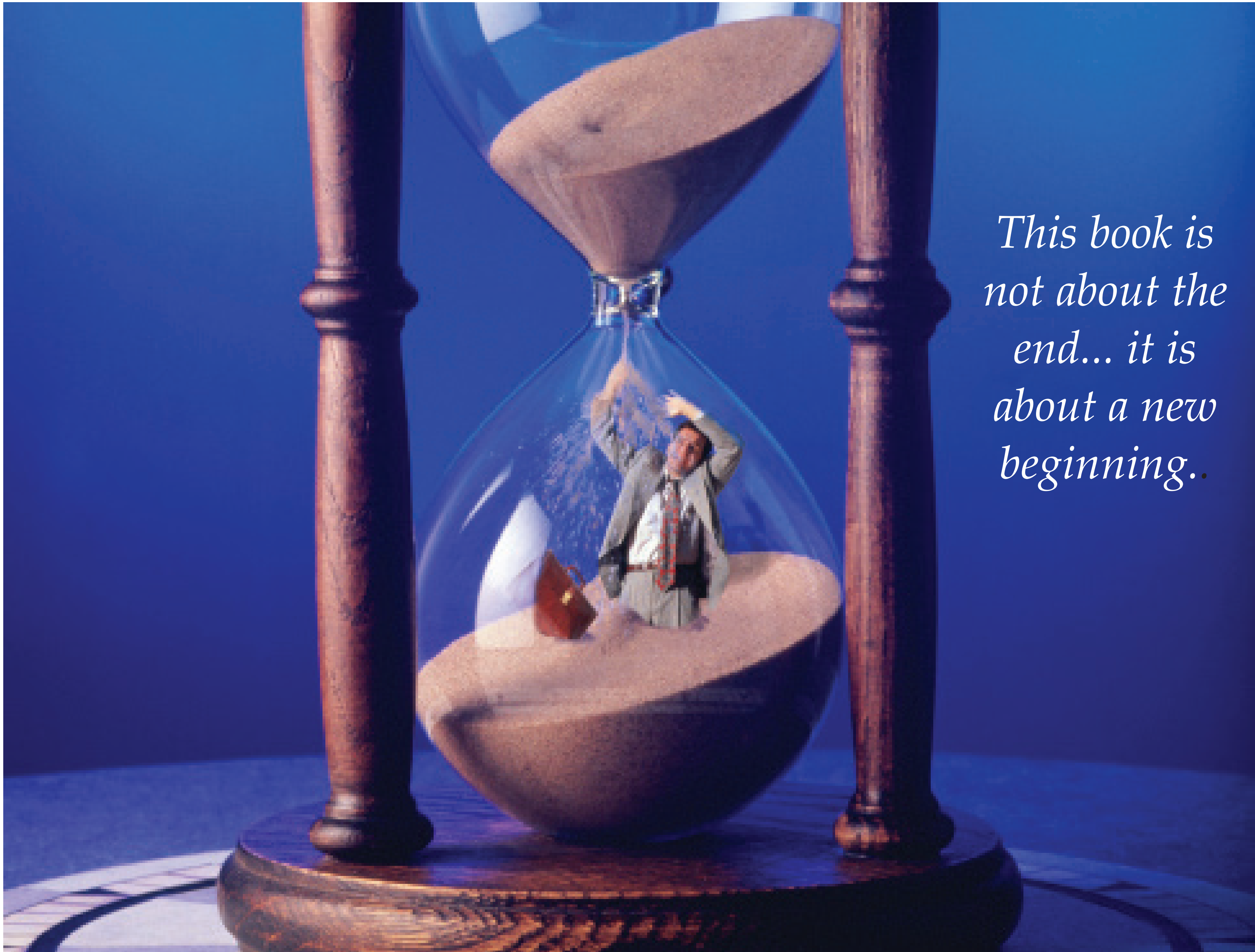
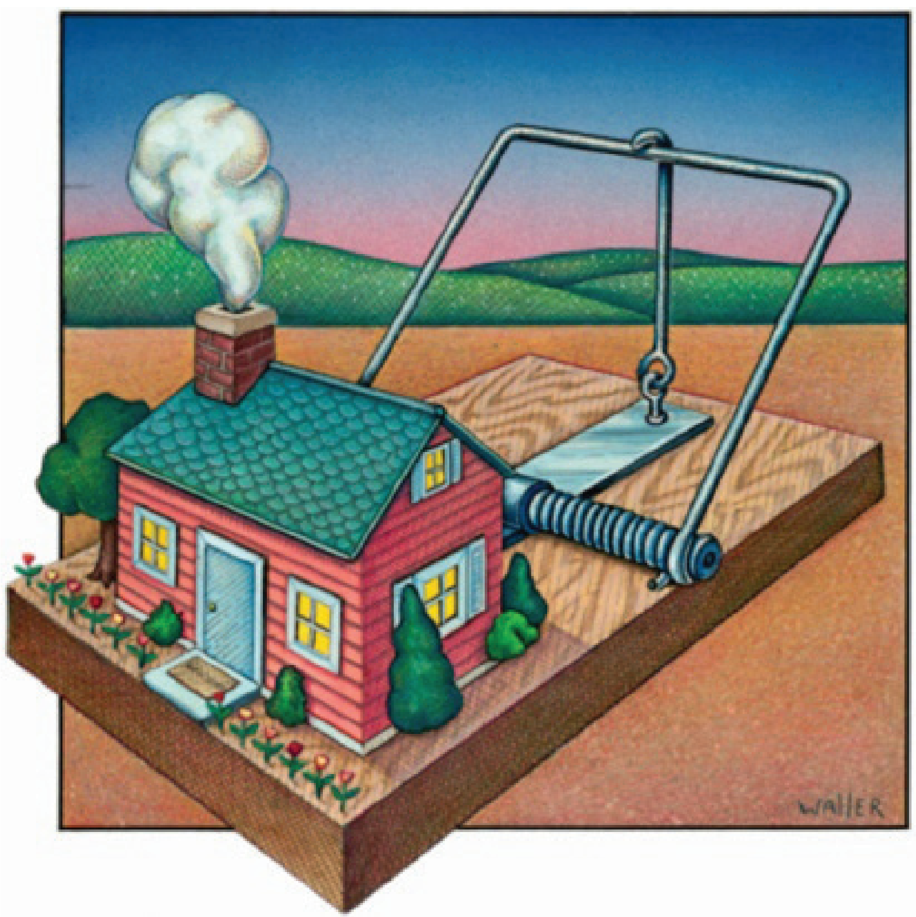

This book is not about the end... it is about a new beginning..

Preface

By William Dorich, Realtor®



Foreclosure is a very scary word. It carries with it a public stigma that includes embarrassment, personal failure and the threat of a lasting negative impact that affects your credit rating, future real estate purchases, even the ability to rent an apartment.

Foreclosures are at a 30-year high brought on by interest-only loans, no or low down payments, adjustable rate mortgages and a sagging real estate market. Greed and over-inflated prices drove lenders to bait borrowers with loans they simply could not afford to repay.

The old saying *"What goes up must come down"* applies to a soaring real estate market that was sometimes unrealistically over-priced. As sellers continued to get their inflated prices and much more, many homes sold with multiple offers that bid the home prices up—usually to an artificially high level. Consequently, we are having a readjustment of prices that may last for the next few years. As an example, it is estimated that 15% of Californians will sell their homes in 2015, up from the 4.5% in 2013. Nationwide the trend is evident.

The good old days when a 25-year-old with a credit score of 650 can buy a $1.5 million dollar home are over. Even with a generous down payment of 20% lenders have tightened the regulations and are not writing loans without 3 years' tax return, 1099 records, six months of pay stubs and job security.

The added costs to the borrower for utilities, gardening, pool maintenance, repairs and furnishings were not even considered in the income/expense ratio for many of these buyers—now they are and when a spouse is employed their records become necessary as well.

"Stated income" was a popular loan qualifying practice in the 1990s and early 2000s in which the borrower did not need to provide the lender with proof of income, commonly used and abused by both borrower and lender. Some in the mortgage industry called these *"Liar Loans."* These loans were at the root of the real estate crash in 2008 that has resulted in millions of upside-down home values across the nation. The practice of stated income loans has all but disappeared but in their wake homeowners find themselves additionally victimized by the downturn in the economy and the lack of jobs.

If you are presently anticipating that your lender will agree to a "loan modification" be aware that the percentage of approved modifications are very low. The vast majority of troubled mortgages lead to short sale and foreclosure. If you are in this situation or headed in that direction, be assured that you are not alone, Default Notifications are on the rise. Thousands of people every day will find themselves in this situation. This book is not a Silver Bullet but was prepared to make homeowners aware of the alternatives. You do not have to be a victim. The goal of these authors is ***Home Owner Advocates*** is to help educate the homeowner and to help them take action to **Stop Foreclosure.**

Example of California Default Properties
On June 1, 2014

Pre-Foreclosures — 24,029
Foreclosures — 7,483
Sheriff Sales — 5,198
Short Sales — 1,547

As of February 2014, American cities with the highest foreclosure rate in non-judicial states like California jumped by 57%... one in every 470 homes received a **foreclosure** filing in January 2014. Lenders are increasingly using the U.S. courts to foreclose on delinquent homeowners. *"Going through the judicial process now protects the lenders,"* said Thomas Laewler, former chief economist at Fannie Mae.

The California Assembly passed Senate Bill SB94 on Lawyers and Loan Modification by a vote of 62-10. It seeks to protect homeowners from loan modification scammers, but the unintended consequence eliminates a distressed homeowner's ability to retain an attorney to help them save their home from foreclosure. It was signed into law by the governor in October of 2014 its effect will further tighten the screws on homeowners in financial difficulty who cannot pay their mortgage or their bills and surely cannot afford legal retainer fees of thousands of dollars a month for a modification process that can take 6 to 8 months to negotiate.

SB94 prevents companies, individuals… and even attorneys… from receiving fees or any other form of compensation until after the contracted services have been rendered. Supporters of the bill say that the state is literally awash with con artists who take advantage of homeowners desperate to save their homes from foreclosure by charging hefty fees up front and then failing to deliver anything of value in return. Many homeowners admit to being scammed once, twice and even a third time, revealing the depth of the problem. While there's no question that there have been some unscrupulous people that have taken advantage of homeowners in distress, the number is unclear.

In 2013 California had over 500,000 foreclosures. With more than 200,000 attorneys involved, only 22 were disbarred. No figure is available for how many were taking advanced modification fees. But what we do know is that lenders and servicers have only modified an average of 9% of qualified mortgages under the Obama plan. It's hard to tell which companies were scamming and which were made to look like scams by the servicers who failed to abide by their agreement with the federal government.

Since it's come to light that mortgage servicers have been sued hundreds of times; that they continue to violate the HAMP provisions; that they foreclose when they're not supposed to; charge up front fees for modifications; require homeowners to sign waivers—who can be sure who the scammers really are? Bank of America, for example, got the worst grade of any bank on President Obama's report card listing, modifying only 4% of the eligible mortgages since the plan began. Taxpayers have given Bank of America over $200 billion and they still claim that they are having a hard time answering the telephones... so who's scamming who?

Loan Modification Phone Tag

As a Realtor for 20 years I have done a number of loan modifications. The process is exhausting, time consuming and daunting as most lenders don't wish to modify their loans as it is more profitable to foreclose.

When Realtors call lenders we are required to obtain a letter from the borrower giving the lender permission to talk with a third party. You never reach the same asset manager on the account and each time you call you reach a different manager who is unfamiliar with the loan and requires you to once again provide the letter, the loan number, the buyer's Social Security number, the property address, the payment date, how many payments are unpaid etc.

Then you become the victim of *modification phone tag*—after disclosing all of the information you are told you have the "wrong" department; you are then transferred to another department and required to once again provide all of the personal information and again you are told you have the wrong department as the legal department handles modification requests and once you reach the legal department they then send you back to the asset manager you first spoke with. This process takes hours on the telephone and is deliberately meant to discourage the homeowner who will eventually give up. Asset managers are notorious for allegedly losing the borrower's tax returns and personal documents. In one loan modification I sent documents four times. The process took five weeks to resolve. Promises that the loan modification is being considered and a decision will be forthcoming in a week are not to be trusted as these excuses are given numerous times over a six month period...but the modification rarely happens.

In February 2014 Southern California home sales were 20.1%. Sales haven't been above average for any particular month in more than seven years. New and resale houses and condos sold in the South land, were down 3.1% from January, and down 12.0% from sales in February 2013, according to San Diego-based Data-Quick. First-time buyers hurt by rising prices and tougher credit standards are disappearing from the market, affecting the pace of the three-year recovery. The decline of these buyers, many of whom are young and non-white, also threatens to widen the wealth gap between owners, who benefit from appreciations said Thomas Lawler, a former Fannie Mae economist.

"Potential first-time buyers were not able to take advantage of affordability and low prices," said Lawler, *"So the wealth effect of the recovery hasn't gone to what could have been new buyers."* First time buyers accounted for 26% of purchases in January, 2014 down from 30 % a year earlier, according to the National Association of Realtors. The January figure is the lowest market share NAR has recorded since it began monthly measurements in October, 2008.

Tim Treebken

Introduction

Rising interest rates, hospitalization, job loss, pregnancy, death of a primary income earner, and divorce all can contribute to a foreclosure. Add to this mix the practice of many mortgage lenders convincing borrowers that they *"could refinance in a few years once they have gained some equity in their property."* Unfortunately these buyers were convinced that the upward spiral of prices would continue indefinitely. Most of these unethical mortgage brokers have now run for cover.

Real estate agents in most states are required to disclose their allegiance to the buyer, seller or both. The National Association of Mortgage Brokers has generated a model form that will provide a checklist so that mortgage brokers will finally have to fully disclose their allegiance in any borrowing transaction and how much the mortgage broker will earn in the transaction. This new approach will create a fiduciary bond between the borrower and the loan officer and if it does not, then the borrower will be forewarned that the broker or loan officer might not have the buyer's best interest in mind.

There are three types of people in foreclosure:

(1.) Joe is the kind of guy who lives through the process thinking that any day his fairy godmother will suddenly appear with a bag full of money. This genetically born "optimist" is usually the root cause of the foreclosure because he has never had a plan for a rainy day. Joe is the kind of guy who is habitually late on his payments and sometimes pays one credit card debt with another credit card.

(2.) Judy on the other hand is the kind of person who locks herself in the bathroom in anticipation that the storm will eventually pass. She does not open the mail or answer the telephone. Judy believes that because there is little or no equity in her home that she has nothing to lose. Since no solution is ever considered, her self-fulfilling prophecy comes true. Judy walks away from her home completely destroying her credit for the next decade.

(3.) John is the kind of guy who is convinced that nothing in life is definite except death and taxes. He also knows that he is probably responsible for some bad decisions and knows that he created the problem. John is a take action kind of guy who looks for solutions to his problems and knows that surrender is not an option. This kind of individual, like a cancer survivor, is not only interested in saving his life, his credit rating, and his home, but enjoys living to tell about it. This book was written for John and those like him who want to fight back—but need solid information to wage this good fight.

Foreclosures are nothing new in real estate and they remind us that **the only constant in real estate is change.** The best option to living within this change is to only buy within one's means and to be aware that a home can easily become a money pit. If you bought your home on an emotional high without any consideration for the future upkeep (repairs, taxes, and insurance), you were fooling yourself from the outset.

Personal savings in the United States averaged 4% in April of 2014. Personal savings in the United States from 1959 to 2014 averaged 6.82%, reaching an all time high of 14.60% in 1975 and a record low of 0.80% in April of 2005. According to a recent *Newsweek* article, *"It appears that families are incurring debt in order to maintain over consumption rather than addressing the simple fact that they are over spending and it is out of control."* It is never a bargain however, **if you are going broke saving money**. The Federal debt is nearing $18 Trillion. This can only lead to eventual inflation or another depression.

Keep in mind that the credit card companies charge horrendous rates and fees. Those 0% interest offers for 12 months are made knowing full well the payment habits of most Americans include habitually missed payments. A payment made even one day late in these zero interest offers gives the card company the right to convert the account up to an exorbitant rate over 20%. Credit card companies are notorious for offering the public teaser rates that automatically adjust after several months to higher rates. The "usury" laws that are supposed to protect Americans from "unreasonably high" interest rates are ignored by elected officials, more concerned about getting re-elected than in there being a roof over their constituents' heads.

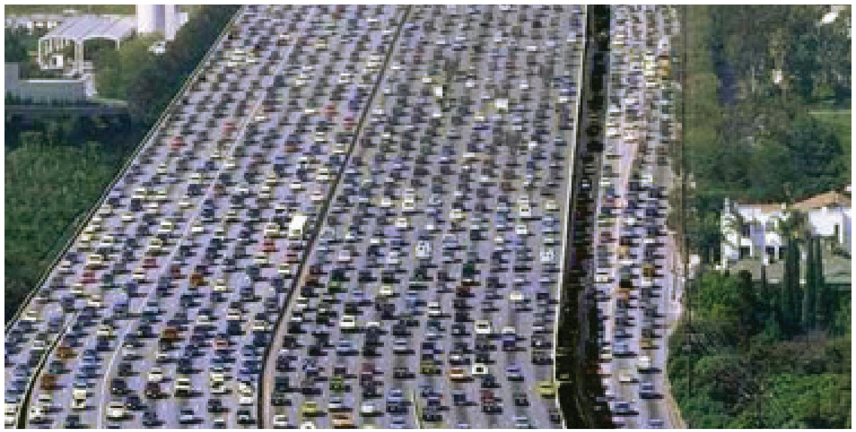
The early 2000 real estate boom was based on home prices doubling in value and sellers using their excess equity to move up to a "bigger and better" home. This **"bigger, better, best"** appetite drove home prices up and destroyed the homeownership dream of middle class Americans as home prices escalated above middle class incomes. The current lack of jobs and an unemployment rate near 7% (in reality actually closer to 12%) has been added to this equation.

Real estate is currently coasting. With oil prices at $104 per barrel on June 3, 2014 with an estimated one year increase to $120 per barrel, combined with the stock market at 16,850, overall prices in the economy do not appear to be headed south anytime soon. With the current military crisis in Iraq, the uncertainty of ObamaCare and the upcoming presidential election the sluggish job prospects point to signs of stagnation that will lead to further real estate problems—it could also lead to hyper-inflation after the 2016 election. None of this helps homeowners holding out for a major increase in the value of their homes.

Over the past few years, foreclosure activity has skyrocketed in many cities. In 2006, Los Angeles County had an average of 150 foreclosures per day, a figure that tripled in 2010, a number that shocked most people outside of the state of California. By 2013 the tide began to change and in some areas of the city home value actually increased by 10% to 14%. Meanwhile, Washington politicians put a band-aid on the problem and have come up with a number of solutions that have not shown much success.

If you are heading toward foreclosure, keep in mind that the lender does not want your house. They are not in the real estate business. If a lender has too many foreclosures on their books it impacts on the amount of money they can borrow from the Federal Government; so approaching your lender to resolve your financial situation is always a welcomed step. However, according the Los Angeles Neighborhood Housing Services *"Statistics indicate that 50% of the families experiencing foreclosure never ask for help."* Homeowners in Los Angeles concerned about their financial situation can call Operation HOPE Hotline—(888)-388-4673 or log onto [www.operationhope.org.](http://www.operationhope.org)

California ranks 9th in the worst states based on the number of drivers with long commutes, 5th worst in unemployment and 2nd worst paying a higher share of income for housing. The "Golden State" is losing its luster.



The number of homeowners receiving default notices in the third quarter of 2013 has hovered around a level last seen eight years ago, according to DataQuick. Lenders issued 18,120 default notices in the fourth quarter and 20,314 in the third quarter. Meanwhile, the number of foreclosures plunged 43%, to 7,799 from 13,592 a year earlier. If you are looking to buy something—especially your first home, this is not great news because the market is no longer flush with bargains. But if you already have a mortgage, a secure job and good credit you may have other options.

On October 23, 2013 Bank of America was found liable for fraud in the sale of faulty loans by its Countrywide mortgage unit in Calabassas, California, a major victory for the federal government as it continues to pursue cases stemming from the financial crisis. Countrywide, once considered the jewel in the crown of American mortgage lending, made huge profits unloading loans that were rendered worthless during the housing crisis in 2008.

The decision is the first civil fraud verdict against Countrywide, and experts said the decision would probably invite more aggrieved investors to sue and could embolden other investigations aimed at Countrywide or other banks. CEO Angelo Mozilo agreed to pay $67.5 million to avoid going to trial on allegations of fraud and insider trading.

In 2007 a Columbus, Ohio federal grand jury returned a 68-count indictment charging nine people with conspiracy, tax evasion, wire fraud, bank fraud and money laundering for their roles in a mortgage fraud scheme that involved more than 500 properties and more than $25 million in mortgage loans in Ohio.

As you begin reading this book it is advised that you do two things. First, locate a copy of the mortgage contract you signed with your lender. If you are unable to locate a copy, the escrow company you used would have a copy as would your county recorder's office. I have seen loan documents that state on the cover page that the loan has "no prepayment penalty," only to find a prepayment penalty later in the document. Mortgage companies require that you insure the property and in some cases they select an expensive insurance company. Borrowers who can show they were misled by a mortgage broker, or have a loan contract with clear violations of the *Truth in Lending Act* can have a great deal in the borrower's favor. For those who cannot afford an attorney and who qualify for Legal Aid, this option should not be overlooked.

Second, become familiar with a number of real estate terms that will help you more clearly understand the process of foreclosure. While the authors use California as the basis of this book many of the terms and laws apply to numerous states. A link on page 27 of this book provides a national listing so you can verify the legal requirements of foreclosure in your state.

Foreclosure is indeed a frightening word. However, the lingering after-effect on a family is even more devastating. This book will help you understand how you got into this default situation and *will offer ideas and tangible steps on how to get out of the maze*. It will provide you with alternative ways to save your home, your reputation, and repair you credit score—and, just as important, it will show you how to keep yourself from being further victimized by real estate scam artists.

W. Dorich

Useful Terms in the Following Chapters

In this book, the terms: "borrower" and "homeowner" and the terms "property" and "home" are interchangeable. Also "promissory note" and "deed of trust" mean the "mortgage loan."

AN ACCELERATION CLAUSE
A contractual provision which allows the holder to declare the remaining balance due and payable immediately upon the occurrence of a default in the obligation.

ADJUSTABLE-RATE MORTGAGE (ARM)
A mortgage in which the interest changes periodically, according to corresponding fluctuations in one or several indexes. All ARMs are tied to indexes.

ADJUSTMENT DATE
The date the interest rate changes on an adjustable-rate mortgage.

ASSUMABLE MORTGAGE
A mortgage that can be assumed by the buyer when a home is sold. Usually, the borrower must "qualify" in order to assume the loan.

ASSUMPTION
The term applied when a buyer assumes the seller's mortgage.

BALLOON MORTGAGE
A mortgage loan that requires the entire remaining principal balance be paid at a specific point in the future.

BALLOON PAYMENT
The final lump sum payment that is due at the termination of a balloon mortgage.

BANKRUPTCY
By filing in federal bankruptcy court, an individual or individuals can restructure or relieve themselves of debts and liabilities. Bankruptcies are of various types, but the most common for an individual is a "Chapter 7 —A No Asset" bankruptcy that relieves the borrower of most types of debts.

CASH FOR KEYS
Money received from the lender or its servicing agent to assist you in moving from your home upon request following the foreclosure sale.

COLLATERAL ACTION
An action brought in court by a lender against the homeowner for loss or damage to the home, whether caused or suffered by the homeowner (waste) or damages that may arise from the alleged fraud of the homeowner.

CREDIT BID
The ability of the lender to direct the trustee to bid at the foreclosure sale up to the total debt owed to the lender without advancing money.

CONVERTIBLE ARM
An adjustable-rate mortgage that allows the borrower to change the ARM to a fixed-rate mortgage within a specific time.

COST OF FUNDS INDEX (COFI)
One of the indexes that is used to determine interest rate changes for certain adjustable-rate mortgages. It represents the weighted-average cost of savings, borrowings, and advances of the financial institutions such as banks and savings and loans, in the 11th District of the Federal Home Loan Bank.

DEED:
A document that transfers property from one person to another.

DEED-IN-LIEU
Short for "deed in lieu of foreclosure," this conveys title to the lender in lieu of the lender proceeding with a foreclosure on the property.

DEED OF TRUST
Some states, like California, do not record mortgages. Instead, they record a deed of trust which is essentially the same thing.

DEFAULT
Failure to make the mortgage payment within a specified period of time. For first mortgages or first trust deeds, if a payment has still not been made within 30 days of the due date, the loan is considered to be in default.

DEFICIENCY JUDGMENT
A court order authorizing a lender to collect part of an outstanding debt from foreclosure and sale of the borrower's mortgaged property.

DELINQUENCY
Failure to make mortgage payments when mortgage payments are due. For most mortgages, payments are due on the first day of the month. Even though they may not charge a "late fee" for a number of days, the payment is still considered to be late and the loan delinquent.

DUE-ON-SALE PROVISION
A provision in a mortgage that allows the lender to demand repayment in full if the borrower sells the property that serves as security for the mortgage. Many, perhaps most, mortgages have such a provision.

EQUITY
The estimated amount by which the fair market value of a property exceeds the total amount of mortgage loans and other liens recorded against its title.

EQUITY PURCHASER
An investor purchasing owner occupied residential property to rent or resell when the home is subject to an active Notice of Default (NOD).

EVICTION
A court supervised procedure initiated by the owner to remove from the property persons who are in possession of the property.

FHA
Federal Housing Administration

FNMA
Federal National Mortgage Association (also known as "Fannie Mae").

FHLMC
Federal Home Loan Mortgage Corporation (also known as "Freddie Mac").

FORECLOSURE
The legal process in which a borrower (mortgagor) in default under a mortgage is deprived of his or her interest in the mortgaged property. This usually involves a forced sale of the property at public auction with the proceeds of the sale being applied to the mortgage debt.

MORTGAGOR
The borrower in a mortgage agreement.

MORTGAGEE
The lender in a mortgage agreement.

MORTGAGE LOAN MODIFICATION
A process where the terms of a mortgage loan are restructured or "modified" pursuant to an agreement between the lender and the borrower.

NOTICE OF DEFAULT ("NOD")
An NOD prepared by the trustee at the direction of the lender that upon recording with the office of the county recorder begins the initial three month "reinstatement" or "cure" period during which no Notice of Sale may be recorded.

NOTICE OF SALE ("NOS")
Following the expiration of the initial three month "reinstatement" or "cure" period, the trustee at the direction of the lender may prepare the NOS and cause this document to be posted on the property and recorded with the county recorder where the property is located. The NOS when posted and recorded commences a minimum 20-day period before the date of the sale can be scheduled at a specific time in an identified public place within the county or the judicial district in which the sale is to take place.

REAL ESTATE OWNED ("REO")
A property owned by a lender that was acquired through a foreclosure sale.

REDEMPTION PERIOD
The period of time beginning five days before and continuing to the date of the scheduled foreclosure sale or the postponed date of the sale, during which time the borrower is entitled to stop the foreclosure by paying in full all amounts owing in accordance with the terms of the mortgage loan.

REINSTATEMENT / CURE PERIOD
The time that is provided to a borrower to pay the delinquent sums owed to the lender to stop the foreclosure sale (to "cure" the default and to reinstate the mortgage loan). The initial reinstatement or cure period begins with the three months from the recording of the NOD to the recording of the NOS and includes the time following the recording of the NOS to five days

before the date of the scheduled foreclosure sale or the postponed date of the sale. Upon reinstatement or cure, the lender is to record a notice rescinding the NOD.

REFINANCE TRANSACTION
The process of paying off one loan with the proceeds from a new loan using the same property as security.

SHORT SALE:
A sale of a home where its sales price is less than the total amount of the balances due on the mortgage loans and the liens recorded against the title of the home.

SUBORDINATE FINANCING
Any mortgage or lien that has a priority which is lower than that of the first mortgage.

SECOND MORTGAGE
A mortgage that has a lien position subordinate to the first mortgage.

SECONDARY MARKET
The buying and selling of existing mortgages, usually as part of a "pool" of loans. In today's mortgage marketplace most lenders have sold the promissory note that is the underlying obligation and is only servicing the loan for someone else.

SUB-PRIME LOAN
The practice of making loans to borrowers who do not qualify for the best market interest rates because of their deficient credit history or other personal criteria.

TRUSTEE
A person identified or substituted in the place of the person named in the deed of trust. The trustee is the person authorized by the lender and the borrower to proceed with the privately held but publicly conducted foreclosure sale.

QUITCLAIM DEED
A deed that transfers without warranty whatever interest or title a grantor may have at the time the conveyance is made.

UNDERBID
When the amount demanded at the foreclosure sale by the trustee on behalf of the lender or its servicing agent is less than the total debt owed by the homeowner.

UPSIDE DOWN (UNDER WATER)
When the value of the property is less than the amounts owing pursuant to any mortgage loans or liens recorded against the property.

WASTE
An intentional or unintentional act of a borrower of a mortgage loan that results in physical damage or injury to the property described in the deed of trust. A borrower is liable for any "waste" of the property created or suffered during the borrower's ownership.

Claudia Wolf

Chapter 1

Foreclosure Rescue Scams

Homeowner Beware

In every disaster there are those who look for opportunities to take advantage of the vulnerable. Foreclosure brings out scammers looking for naive people.

When you are facing foreclosure and looking for help to avoid losing your home, you need to be careful. There are many corrupt individuals just waiting to pounce upon you and take advantage of your misfortune. They advertise themselves as foreclosure "rescuers" or "experts." Before you realize it, they will acquire your property without a formal or recorded purchase for a fraction of what it would have brought at sale. Without recording any change of ownership they will try to rent your property to another unsuspecting person while you remain legally bound to make the mortgage payments. The mortgage company is unaware that anything is wrong and you are left on the hook to pay the mortgage on a house you no longer possess and upon which you do not receive rentals.

Most homeowners lack adequate knowledge about foreclosure, their legal rights, and alternatives to foreclosure. Beware of scammers who promise rescue from foreclosure.

There are mainly three categories of foreclosure rescue scams: **The Phantom Help—The Bailout—The Bait-and-Switch**.

In Phantom Help: the so-called rescuer will charge fees for light-duty phone calls or paperwork you can easily do yourself. None of these phone calls or paperwork actually result in saving your home. It just gives you a false sense of hope and prevents you from seeking qualified help.

In a Bailout: the rescuer deceives you into signing over title with the belief that you will be able to remain in the house as a renter and eventually buy it back over time. The actual terms are so onerous that the buy-back becomes impossible, you lose possession and the rescuer walks off with the right to sell and possess without the costs of foreclosure.

It is important at this point to stress that you **DO NOT SIGN** anything without consulting an attorney, or Legal Aid. If the deal is so good and so beneficial to you it will be just as good in a few days after you have had sufficient time to read the document and seek legal advice. Any deal that sounds too good to be true, usually is.

In Bait-and-Switch: under the guise of having you sign documents to bring your mortgage current, the rescuers will cause you to surrender your ownership. The documents appear to be temporary loans. They will do this in a deceptive way so that you will not realize that you have been scammed until you are evicted.

How does the scam work? Scammers approach homeowners in many ways including a straightforward phone call, or flyers and brochures being left at the door, and even a knock on the door. Some of the scammers are well organized and advertise in the local newspaper classified section. Some even have their own websites.

When you are faced with foreclosure, you do not have much time to react. This can lead you to make hasty decisions without consulting others. Scammers almost always highlight the lack of time and insist that you make quick decisions. They then pressure you for a quick signature on documents that you have not been given adequate time to read.

The initial contact typically revolves around a simple message and frequently contains a ***"time is of the essence"*** theme, adding a note of urgency to what is already a stressful and possibly desperate situation. Once you fall for the trap and decide to move forward with the rescuer, you will be promised a fresh start at the initial meeting and they may also provide you with testimonials of other homeowners they claim to have rescued. They will then instruct you to cease all contact with your lender and allow them to take over. Any time you cease all contact with your lender, it is dangerous. It cuts off access to your options and you can quickly run out of time to prevent foreclosure. By the time you realize what is happening, it's too late and you have been conned.

Scammers will do everything to cut off a homeowner's access to correct information. They win the homeowner's trust and warn the homeowner to stay away from attorneys and counseling agencies, ironically on the grounds that the attorneys and agencies are *"out to make money from the homeowner's misfortune."*

Once it is too late to save your home, you will have been drained by substantial heavy fees and other charges. If a deed was signed on fraudulent promises, you, the homeowner, will then be evicted by the "rescuer" from the property you once owned.

The government is waking up to these scams and many states, including California, have legislation in place to protect homeowners from such scams. Yet the scams and the con artists continue to proliferate, finding new and more crafty ways to trick the unsuspecting homeowner.

Always be suspicious of anyone who offers you "bargain loans," whether they mail, fax or e-mail an offer to you, call you on the phone, or come to your door. Never fall for promises of "No Credit? Bad Credit? No Problem!" and offers that are only "good for a very short period of time."

A genuine lender will never encourage you to borrow more than what you need, or more than the value of your home. You should be careful of terms that change at the last minute, or offer next day approval or up-front fees. Never sign anything that you do not understand. You have the right to ask the lender questions, and that lender must answer your questions to your satisfaction. You are under no legal obligation to accept any loan offered to you.

Proceed with extreme caution if an individual or company:

- Call themselves a "mortgage consultant," "foreclosure service," or something similar.
- Contact or advertise to people whose homes are listed for foreclosure; including anyone who sends flyers or solicits door-to-door or by phone.
- Collect a fee before providing services.
- Tell you to make your home mortgage payments directly to the individual or company and not your lender.
- Tell you to transfer your property deed or title to the individual or company.

Here are some of the promises that scammers will make:

- We buy houses: instant cash.
- Cash for houses: any situation, any condition.
- We'll get you a new mortgage with low monthly payments.
- We'll help you file bankruptcy to stop this foreclosure.
- We'll save your credit.
- We'll pay your first month-to-month rent, or payments in your new place.
- You will get several thousand dollars in cash back that you can use any way you want.
- If you sign the house over to us, the foreclosure will be recorded against us, not you.
- We'll buy your house "as is."
- It will cost you thousands more if your property is sold at auction.
- We guarantee we'll find you a buyer in seven days.

If you are looking for professional help to avoid foreclosure and save your home, you must contact an attorney or HUD, which also provides a list of qualified counselors.

Visit their website at: *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm* for a counselor in your state.

For California homeowners this is an excellent site: *www.keepyourhomecalifornia.com*

W. Dorich

Chapter 2

What is Foreclosure?

Foreclosure is a process that allows a lender (mortgagee) to recover the amount owed on a defaulted loan by selling or taking ownership (repossession) of the property on which the loan was secured. The foreclosure process begins when a borrower/owner/mortgagor defaults on loan payments (usually mortgage payments) and the lender files the necessary documents to begin the foreclosure process. There are two types of foreclosure; Judicial, a process within the court system (law suit); or Non-Judicial, a process outside of the courts. This book covers both.

The term "property" will be used generically in this book as it can mean a single family home, condominium, duplex, triplex, apartment building, and even raw land.

Todd Davidson

If you are reading this book it is probable that your lender has a default notice or you feel you are heading in the direction of foreclosure. Do not react like a deer caught in the headlights. Foreclosure is not a single event, it is a lengthy process that can take three months or more in California and longer in other states. With the help of this book you can REALLY do it yourself. Forget the idea that you need to use the vocabulary of an attorney in dealing with lenders. Most people you will encounter in a foreclosure are not lawyers. This book will be helpful in understanding the foreclosure process and can provide guidance in how to stop it.

It is common today that the mortgage you signed may have been sold and the loan is being serviced by another lender. While you may be receiving your statements or telephone calls make sure you are dealing with the company that now owns your loan. Here are a number of ways you can determine who owns your loan:

- Call the institution you signed contracts with and talk with their customer service.
- Carefully review your monthly statement to see if another name appears in addition to the name of your original lender.
- Call a local title insurance company or ask your Realtor to obtain this information as many title companies will not give you the information directly.
- Your county recorder's office will have copies of your loan and a record if an assignment of your mortgage or deed of trust was recorded and to what company.

It is helpful if you know details like the date you made your last payment. Was the *Notice of Default* recorded? On what date did you receive a notice from the lender and when was the last time the lender called you? Politely refuse to discuss your foreclosure with the collection department or someone who merely calls you to find out when you will send in the past due amounts. These collection department personnel do not have the authority to negotiate. In any negotiations with the lender do not make promises you cannot keep. The lender has gotten your full attention by filing foreclosure proceedings so your credibility is already in question. Agree to only what you know you can afford as you could end up with a higher monthly or balloon payment which could be devastating to you in the near future.

When you obtained your loan you worked with an officer of the lender, so you certainly deserve to resolve your problem with an officer as well. To find out who the officer, branch manager or supervisors are simply call the company and ask the name of the branch manager or the loan mitigation officer. Hang up and call again and ask for that person by name. Once the manager answers request an appointment. If you are not connected, try the call the next day. If you are still unable to speak directly with a manager, write a letter to the lender chronicling these events. Mail a copy of your letter to the president of the mortgage company. Almost always in a short period of time someone with authority will return your call. Once they call, make an appointment to meet in person. If your lender is out of state check to see if they have local representation.

During these face-to-face meetings it is a good idea to ask the officer or supervisor to explain the process of what happens with REO (real estate owned) properties when the lender takes back property. Ask the officer if his company has a large inventory of REO's or do they need more. These kinds of questions are important as they may reveal how eager, or reluctant, your lender is to take your property back in foreclosure. The officer may even admit that the last thing his company needs is another REO on their hands, especially during this period of national foreclosure defaults.

If you are dealing with an officer or supervisor who is pressing for foreclosure, your job is more difficult.

If negotiations are fruitless you may want to mention bankruptcy. Bankruptcy automatically stays (stops) the foreclosure process which will tie up the property for many months. During this period the lender may not receive payments, would incur attorney fees and lose a lot of valuable time. Your lender already knows this. Now he knows you do too, and suddenly the officer may become more flexible in finding a mutual advantageous solution. It is essential that you remain professional, non-threatening or demanding, just matter of fact.

You also need to understand the lender's rights. At the time of giving a loan to you the lender wants to secure their loan so that their interest is protected in the event you are unable to pay back the loan. The lender may ask for real property as security. In the case of a home loan, it is the house itself that becomes the security. This is called mortgaging the property. The house is the collateral for the loan. Having a mortgage means that the lender has acquired a claim over the property. The expression used for this claim is called a 'lien.' The lender can exercise his lien in case the debtor (person who has taken the loan) defaults. Normally this exercising of the lien gives authority to the lender to foreclose on the property.

Once a borrower gets too far behind in his or her payments, the lender can begin foreclosure proceedings. On a relatively new loan this can mean missing 1-2 payments. On a seasoned loan of ten years or more the lender may forestall foreclosure until 3-4 late payments have lapsed. Each lender is different and each set of circumstances dictates the lender's actions.

This can involve a lawsuit in which the lender takes a borrower's property to satisfy a debt due to the borrower's failure to comply with the terms of the mortgage. The lender may actually take the property, or have the property sold to pay off the debt. As a result of the foreclosure, the borrower loses whatever rights he had in the property. The proceeds of the sale are used to pay off the debt.

Once foreclosure proceedings are complete, the borrower's (property owner's/mortgagor's) right of redeeming a mortgaged property ends. Foreclosure is a process in which the property ownership reverts to the lender.

Chapter 3

Process of Foreclosure

Mortgage Forgiveness Debt Relief Act of 2007

The passage of this Act went a long way in aiding financially strapped homeowners in the foreclosure process. Under pre-existing law, the debt forgiven by a lender in a foreclosure or *Short Sale* usually resulted in the borrower receiving a 1099 form for the amount not recovered. This debt forgiveness had to be reported as taxable income to the borrower. With the passage of H.R.3648, the *Mortgage Forgiveness Debt Relief Act* of 2007, a taxpayer is no longer required to pay federal income tax on debt forgiven for a loan secured by a qualified principal residence. The president signed the *Debt Relief Act* on December 20, 2007 which amends the Internal Revenue Code to exclude from gross income amounts attributable to a discharge, prior to January 1, 2010, of indebtedness incurred to acquire a principal residence. It limits to $2 million the excludable amount of such indebtedness.

To read the full text of H.R. 3648 click the link below:
http://www.govtrack.us/congress/bill.xpd?bill=h110-3648&tab=summary

The economic stimulus plan worked out in Washington on February 1, 2008, should provide nearly a year of cheaper loans for buying or refinancing higher-cost homes.

Leaders of the U.S. House of Representatives and the White House agreed that on the size of loans that can be purchased by government-sponsored mortgage buyers Fannie Mae and Freddie Mac. The size of loans insurable by the Federal Housing Administration, is limited to $625,500.

By utilizing FHA, the buyer will not have to adhere to the stringent underwriting guidelines that have made *Conforming* and *Jumbo Loan* programs difficult to qualify for. Higher LTV, (loan to values), lower minimum credit scores, and flexible underwriting will make buying, selling, and financing a home much easier. Here are just some of the features of an FHA loan:

- 97% LTV on Purchases
- Down Payment Assistance of up to 6%
- 95% LTV on cash out refinancing
- No minimum credit scores
- Liberal credit guidelines
- No prepayment penalties
- Single family, condo and town homes
- Seller contributions of up to 6%
- Non-occupying cosigners
- Higher income to debt ratios
- Loans are assumable

The foreclosure process varies from state to state. But generally in the United States, there are two types of foreclosure:

1) Judicial Foreclosure
2) Non-judicial Foreclosure

The scenario goes something like this:

- The borrower has not paid one or more installments on the loan.
- The lender issues a late payment notice to the borrower, which requires payment of the entire default amount, plus late penalties, within a specified number of days.
- The borrower again misses more payments.
- The lender attempts to resolve the issue by trying to contact the borrower by phone and also sending notices in writing.
- The borrower and the lender are unable to find a satisfactory compromise in resolving the delinquent amounts.
- The lender may then issue a demand for payment of the note in full, based on the acceleration clause in the loan documents.

What this means in simple terms is this: suppose you have a mortgage of $200,000, and the payment terms are $1500 per month. If you default even on one installment, the lender becomes entitled to recover the whole of the remaining loan in full immediately.

- No payments are made that are acceptable to the lender.
- The lender sends a Notice of Intent to Foreclose through a sheriff, or marshal or by certified mail.
- The next step for the lender is to begin action in court to foreclose.
- At this stage legal notices are required by law beginning with a public notice to be published in the local newspapers.
- The borrower fails to either make any payments or reach a settlement.
- Notice and waiting periods expire.
- Property is sold at auction.

Judicial Foreclosure

- The lender's claim will be commenced in court and then be heard by the court which will issue orders allowing the lender to foreclose. Though it may vary from state to state, the legal process normally takes three to six months to complete. There are also variations in the process, state to state.

In legal terminology, judicial foreclosure is a legal action resulting in a judgment by a court in favor of foreclosure of a mortgage or deed of trust, which orders that the real property (house or other property) which is secured by the debt, be sold to pay off the debt. The party suing has chosen to seek a judicial foreclosure rather than use the foreclosure provisions of the mortgage or deed of trust. Usually this move is made to get a *Deficiency Judgment* for any amount still owed after a finding that the property is worth less than the book value of the outstanding debt. This is commonly called being "upside down."

In many states a foreclosure on a mortgage or on a deed of trust limits the recovery to the amount of sale proceeds (sales price minus other debts), so a lawsuit for judicial foreclosure may help the lender recover the total money owed if it was secured by the debtor's real property. However, some mortgages or deeds of trust permit *Deficiency Judgments*.

Once again, a judicial foreclosure is when the lender brings a lawsuit against the homeowner. If the homeowner does not respond or prevail in the lawsuit, the mortgage lender wins the case and the home is put up for sale at auction. A court official presides over this auction and sells the seized house to the highest bidder. The mortgage lender also puts in a bid during the auction. This bid can go up to the amount owed on the home loan. If no bidder beats the mortgage lender's bid, the mortgage lender gets the title to the home. However if the bidding goes higher than the lender's bid amount, then the winning bidder is issued a deed to the house.

Before the lender brings the lawsuit, the lender will issue a notice of default to the homeowner who can then stop the foreclosure by paying the default amount owed or by coming to an agreement with the lender.

A foreclosure can also occur without a sale. Strict foreclosure is a type of judicial foreclosure in which the title of the house goes directly back to the mortgage lender without the need to go through an auction. Once the mortgage lender has the title of the house, it can sell the house through a real estate agent. Proceeds from the sale of the house would go toward paying off the default amount of the former homeowner's mortgage loan. However, if the proceeds of the sale are not enough to cover the owed amount, a deficiency judgment is issued against the former homeowner. *Deficiency judgments*, as well as the foreclosure itself, could do severe damage to the homeowner's credit and financial status.

Non-Judicial Foreclosure

- The lender will auction off the house.

As the name would imply, non-judicial foreclosure does not involve a lawsuit. The lender issues to the homeowner a *Notice of Default* and a notice of its intent to sell the homeowner's property. The trustee must record the *Notice of Default* in the recorder's office in the county in which your property is located. The Title Insurance company involved in your original purchase of the property can be helpful in clarifying if the *Notice of Default* was properly filed.

There are occasions in which a trustee fails to record the *Notice of Default*, or mistakenly records it against the wrong property, or in the wrong county. Be on guard of clerical errors as they invalidate the foreclosure. If an error is found, even a misspelled name or transposed address, do not wait until the last week in the foreclosure before advising the trustee of their mistake. Send a letter to the trustee advising him/her of the failure to properly record the *Notice of Default* and demand that the trustee start over. This letter should be sent by Certified Mail with return receipt requested. If you hand-deliver the letter, be sure you have a copy that can be signed as proof of delivery.

If the trustee ignores your request, you have the right to file a lawsuit to stop the sale. This will give you more time to navigate through the foreclosure process. You can demand the foreclosure be stopped until the trustee starts the foreclosure over again from the beginning by issuing a new *Notice of Default*. A word of caution: be sure your lender has your current address. The trustee is only obligated to send a *Notice of Default* to the address listed in the deed of trust, so if you are renting the property or you have moved out of the house you may not receive these legal documents as the lender may only have the last address you provided them.

The *Notice of Default* must be published in a newspaper of general circulation in the county where your property is located. This is a requirement in most states. The notice must be published within days after the recording of the *Notice of Default* and must be published weekly until the sale. As the property owner you have a right to receive an <u>Affidavit of Publication</u> from the trustee and copies of the newspapers in which the notice appeared.

It is your right to request and receive a Beneficiary Statement from your lender after you have received the *Notice of Default*. Request this statement in writing and send a copy to the trustee. The lender is required to respond to this request and it will also give you an opportunity to check the *Notice of Default* for any errors.

As in judicial foreclosure, the homeowner has a chance to stop the sale by paying the default amount owed or by coming to an agreement with the mortgage lender. This agreement may include setting up a repayment plan and being allowed the option of delayed payments for a specified amount of time. The property owner can also stop foreclosure by filing for either Chapter 13 or Chapter 7 bankruptcy. If the homeowner fails to stop the foreclosure, the house is auctioned off in the same manner as a judicial foreclosure.

Non-judicial foreclosures are more beneficial to the lender as the lender does not incur the legal costs of bringing a lawsuit against the homeowner. State law governs whether judicial or non-judicial foreclosure is used. Some states allow both types of foreclosure, but each state usually has one type that is more commonly used. Judicial procedures are followed by states that use mortgages as the security instrument for property loans. Others use deeds of trust as the security instrument. To know more about the foreclosure laws and procedures in your state, visit:

http://www.foreclosurelaw.org.

Right to Reinstate: In most states, including California, you have the right to reinstate your loan prior to the trustee sale. In California you have five business days to exercise the right of reinstatement. You must pay the lender more than just the missed payments. You are also required to pay all fees, expenses and late charges. After you reinstate the loan you continue to make payments as though there was never a default. If at some future point you miss another payment, the lender must start the foreclosure process from the beginning.

One Action Rule: Most states, including California, have what is known as the one-action rule. If you default in your home loan payment, your lender must elect one action. If your lender opts for non-judicial foreclosure, he cannot bring a lawsuit against you to recover any deficiency if the proceeds of the sale are not sufficient to repay the loan balance. If your lender chooses judicial foreclosure and if the proceeds of the sale are not sufficient to repay the loan balance, he can bring a lawsuit for the balance. If the loan is "Non Recourse" no monetary deficiency is permitted.

A lender will opt for judicial foreclosure when there is no power for sale clause in the mortgage or trust deed. If a *Power of Sale* clause is present in the mortgage or trust deed, the lender can elect either judicial or non-judicial foreclosure. *A Power of Sale* clause is the clause in a mortgage or trust deed by which the borrower pre-authorizes the sale of the property to pay off the balance on a loan in the event of default. *The Power of Sale* clause may at times specify the place and terms of sale. In such cases, the specified procedure must be followed.

In the case of a judicial foreclosure many states include a period of time to redeem your property, meaning you would have to repay all back payments, penalties and court costs, but a full credit bid by your lender could cut it down to 3 months. There is no right of redemption in the case of a non-judicial foreclosure in California.

If the *Power of Sale* clause does not specify the place and terms of sale, the following procedure is followed for a non-judicial sale: Your lender will mail you the *Notice of Sale* by certified mail, return receipt requested, and post the notice on your property at least 20 days before the sale. Your lender must also record the notice in the county where the property is located at least 14 days before the sale. The lender must also post the notice in one public place, usually the courthouse in the county where your property is located.

The notice must contain the time and location of the foreclosure sale; the address of the property; trustee's name, address and telephone numbers along with a statement that the property will be sold at an auction. You have five days before the foreclosure sale to cure the default and halt the foreclosure process. If you do not cure the default, your home will be sold.

In Los Angeles County the foreclosure sale will be made between the hours of 9:00 a.m. and 5:00 p.m. on any business day, Monday through Friday, at the place and time specified in the notice.

While it might be humiliating or demeaning to attend the trustee's sale of your own property, you should make an effort to attend. Trustees and auctioneers have on occasion made improper mistakes in conducting the auction that would give you grounds to file an action to set aside, or overturn, the trustee's sale. Be prepared to take notes and even invite a friend to attend with you as a witness of events as they occurred during the auction. If you want to try to set aside a trustee's sale that has already taken place, you will need an attorney. If you can provide evidence that the trustee's sale was conducted illegally, the individuals involved can be fined, imprisoned, or both. The sale would then be set aside and the trustee would be forced to hold a new auction.

There is another important reason for attending. If you have junior lien holders, you might continue to be personally liable to them after the sale, unless there are sufficient proceeds to cover those debts owed to them. In some instances your property could sell for more than you owe to the lien holders. That would mean you would receive the excess amount after everyone has been paid.

Trustee's sales can also be postponed for a number of reasons, such as the lender may agree to a postponement if you are clearly negotiating a cure of the loan, a state court injunction, or restraining order, or because you filed for bankruptcy. Or, the trustee may postpone the sale if it is discovered that a notice was defective, meaning it was not mailed to everyone entitled to receive the notice. If there are no bids at the sale, a trustee can postpone and reschedule the sale.

At the scheduled time, place, and date the trustee must show up to announce that the auction has been postponed and give the reasons why. The trustee must also provide the new auction date. If the trustee does not show up, the Notice of Sale will automatically be canceled and the trustee will be required to issue a new Notice of Sale. This will, of course, give you a few more weeks before the next trustee's sale.

At the trustee's sale, your home will be sold to the highest bidder at a public auction. The trustee has the right to require every bidder to show evidence of ability to pay the full bid in cash, cashier's check or certain bank checks. Each bid is by law an irrevocable offer to purchase. It is unlawful and a criminal offense with a fine of $10,000 or more, to one year in jail, to offer anyone payment not to bid, or to withdraw their bid, or to fix or restrain the bidding process in any manner. All of these would defraud you of your right to a "public auction" of your property at the highest price.

You can postpone a foreclosure sale by announcing the time and location specified for the intended future sale. You can postpone the sale to obtain cash by making a written request for postponement identifying the sources from which you will obtain the funds. Such a postponement will be for one day only and you can only obtain one such postponement.

The bidding process begins after the opening bid by the lender. The lender is not required to have cashier's checks to bid on his own loan to pay himself. The lender can "credit bid" up to the outstanding balance of the loan. After this opening bid, the trustee then solicits bids from those assembled.

Under California foreclosure laws, and some other states, junior lien holders cannot redeem your home once it is sold in foreclosure proceedings, but they can protect themselves by:

1) advancing funds to bring your loan payments current, then foreclosing for the sums advanced, but must pay off the first.

2) bidding at the foreclosure sale so the price will be sufficient to pay off the mortgage and the junior liens; or

3) acquire your home by bidding at the foreclosure. If your property has been purchased by a junior lien holder at a foreclosure sale and you exercise your right to redeem, permitted by a judicial foreclosure or specific mortgage contractual term, you must reimburse the junior lien holder. Junior liens (like seconds or equity loans) once extinguished by foreclosure sale do not reattach to your property.

If you have not brought your loan to current levels before the expiration of the reinstatement period, the redemption period begins. Depending on particular state laws, the redemption period is generally the last few days before the trustee's sale on the courthouse steps—the redemption period ends the moment bidding starts at the trustee's sale. During the redemption, you do not have the right to reinstate your loan by just bringing it current. You can "redeem" and stop the foreclosure by paying the entire balance, late fees, penalties, attorney fees, and trustee's costs. If you have the money to pay off your loan in full through refinancing, friends or family loans, make an appointment with the trustee immediately. Bring a cashier's check for all monies owed and exchange it for a signed Full Re-conveyance document that you will record to cancel the deed of trust and terminate the foreclosure.

If the sale is finalized the trustee will give the highest bidder a *Trustee's Deed Upon Sale* document, known in some states as a *Trustee's Deed*. This deed is recorded in the county recorder's office and the trustee officially transfers title to your home to the new owner.

The *Trustee's Deed* conveys title free and clear of the foreclosure and all junior liens. In other words, the proceeds from the trustee's sale extinguishes the foreclosing lien after the sale, even if there were not adequate proceeds to satisfy the total claims against the property. Within a week the trustee will distribute the sales proceeds in the following order:

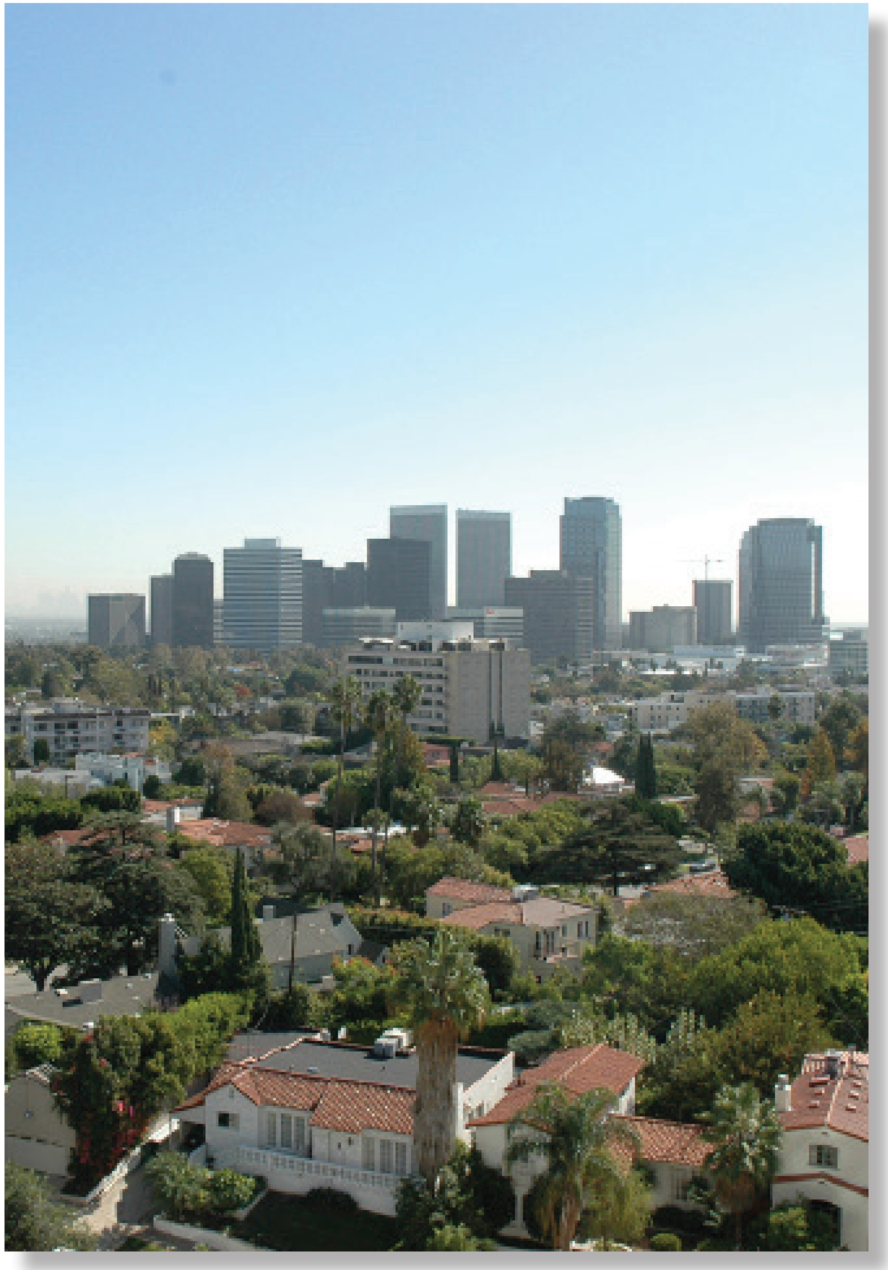
- The lender is paid including costs and expenses to conduct the foreclosure.
- The foreclosing lender receives the proceeds of the balance of their promissory note, plus costs.
- If there are additional proceeds they are distributed to any junior lien holders in order of priority.
- If there are excess proceeds they go to the original homeowner.

- Request a copy of the "Settlement Sheet" from the trustee that describes how the proceeds were distributed.

When the successful buyer at a trustee's sale is given a *Trustee's Deed*, it grants title to your property as of the date you signed the deed of trust…not the date of the Trustee's sale. This is important for legal reasons as only those liens that were recorded before the foreclosing lien holder's deed of trust continue to encumber the property after the auction and sale. Even though the deed of trust is extinguished by the foreclosure, you remain liable for the debt of the junior lien holders who now have unsecured loans, and if you do not pay them they can file a lawsuit, obtain a judgment lien against your other property or income.

There are certain liens that are unaffected by a trustee's sale, regardless of when they were recorded. Property tax liens are senior liens on your property. If these are not paid off at the trustee's sale (which is usually the case) you will remain liable and the lien remains on the property even if you no longer own it. IRS and state tax liens are considered personal. Therefore, they are automatically removed from the property after foreclosure, but you remain personally liable. *Mechanic's Liens* are recorded against the property by electricians, plumbers, contractors and roofers who have not been paid. *Mechanic's Liens* are eliminated by a trustee's sale only if the date on which the work on the property commenced (not the date the lien was recorded) was before the date the foreclosing lender recorded its deed of trust.

After the foreclosure the new buyer takes possession and you are expected to immediately move out. Remember, some lenders and buyers have no intention of moving into the property and may consider leasing it to you. If leasing is of interest to you be sure to obtain the new owner's name, address and telephone number from the trustee. If you refuse to move out of the property voluntarily, the new owner can serve you with a *Notice to Quit,* which gives you three days to leave. If you still refuse to leave the new owner can obtain a court order called an *Unlawful Detainer* to have you evicted. You can however defend an *Unlawful Detainer* by challenging the purchaser's title or the validity of the trustee's sale. This is difficult to win if the foreclosure is completed. Also keep in mind if you have a tenant in the foreclosed property you will not be able to collect further rents after the trustee's sale as the tenant will be required to make their payment directly to the new owner.



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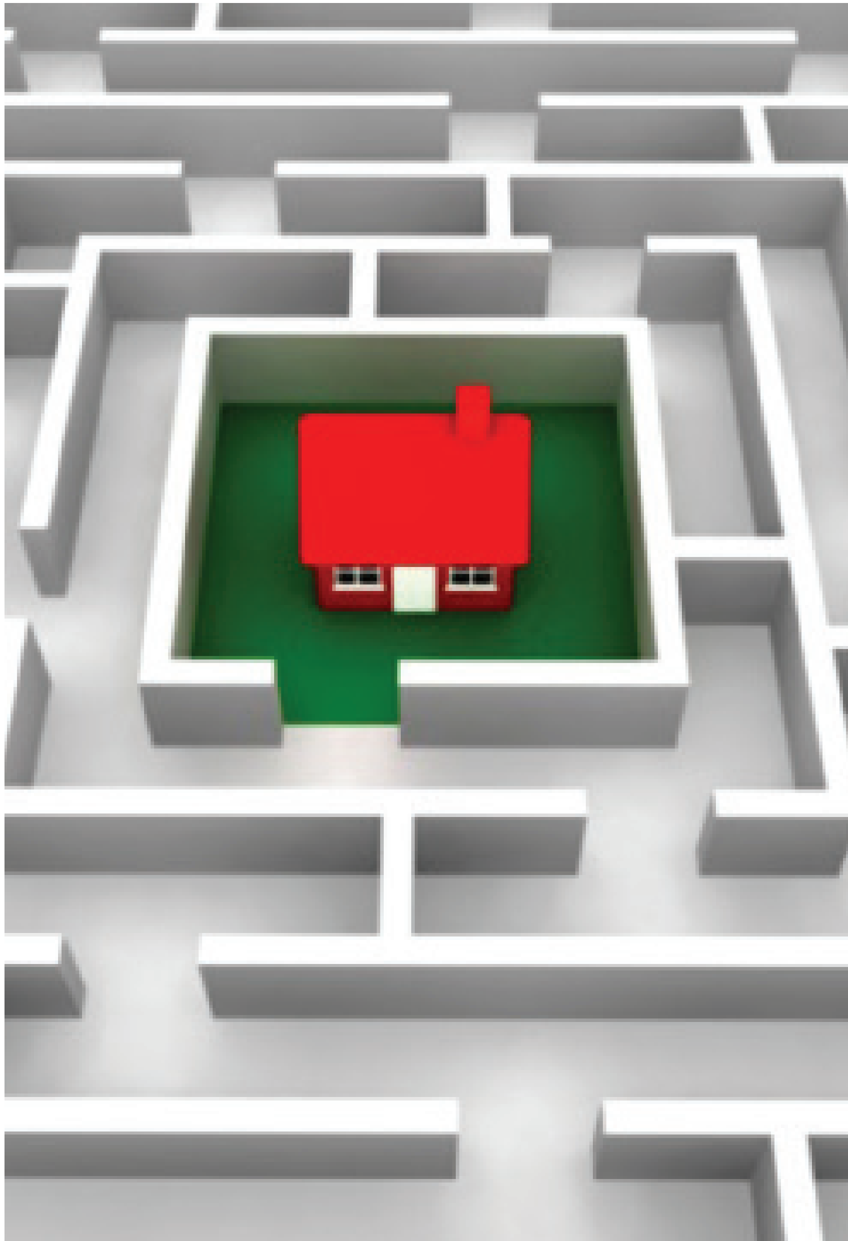

Riko Pictures

Chapter 4

Avoiding Foreclosure

With low or no down payment and an adjustablerate mortgage (ARM) tens of thousands of homes are now threatened with the prospect of foreclosure.

Six of the ten cities with the nation's highest foreclosure rates are in California, which also is among the Top ten states hardest-hit. Other states with the highest foreclosure rates are Nevada (Las Vegas, a Top ten city); Colorado (Greeley and Denver); Connecticut; Florida; Arizona; Illinois; Michigan and Ohio and Georgia. When these ARM Loans reset their interest rates, many homebuyers will not be able to afford the increased monthly payments.

All this could lead you to making emotional, instead of logical decisions. Emotional decisions are, and never have been a good idea when it comes to your home and money. Never focus solely on saving your home without considering your entire financial picture. You must understand all your options and then make the most logical decision.

Education is your most powerful tool. Understand how you go into foreclosure and understand the banking industry terms that are important to prevent foreclosure.

The average home purchase transaction creates nearly two inches of paperwork of which two documents are of significance to a foreclosure—the promissory note and the deed of trust or mortgage.

When you buy a house or other property with a loan, you sign a promissory note that contains your promise to repay the money that you borrowed from the lender. It is an unconditional written promise to pay the lender a sum of money with interest by a certain date. You should take time and make yourself aware of the terms of the note. Check for the following:

- Amount borrowed
- Whom to repay
- Original interest rate
- Original monthly payment
- Interest rate: adjustable or not
- If the rate is adjustable, when will it change?
- Payment schedule?
- Security—Deed of Trust or Mortgage
- Prepayment terms
- Consequences of default

Many states, including California, do not use mortgages at all. In California the Deed of Trust has supplanted the mortgage. Lenders prefer the Deed of Trust because the foreclosure is faster and is non-judicial and involves very little court supervision.

There are big differences between the two types of security interests explained in their basic terms.

Mortgage is a two-party transaction between the lender, known as the mortgagee and the borrower known as the mortgagor. Mortgagee places a lien on your house in favor of the lender. Your lender accepts the mortgage from you, in exchange for loaning money to purchase your home. If you default, the lender must file a lawsuit to obtain a judgment, which makes the process lengthy, expensive and cumbersome.

Deed of Trust is a three party transaction between the lender known as beneficiary, the borrower known as the trustor, and the trustee—a third party who holds the title for the benefit of the lender. The trustee's sole function is to initiate the foreclosure on behalf of the lender. In case of any default by the borrower, the trustee follows procedures agreed to in the Deed of Trust to foreclose. There is no need to file a lawsuit.

However, the lender may elect to file a lawsuit instead of following the *Deed of Trust* procedure because in most states, judicial proceedings often allow the lender to sue for any money owed that is not recovered in the foreclosure sale.

The *Deed of Trust* is more advantageous for the borrower. The Lender cannot sue for a deficiency judgment. If you default on a deed of trust, only your house is at risk if the lender elects not to file an action in court. If you default on a mortgage you are liable for any deficiency after the auction.

You can sometimes prevent foreclosure by making some changes to your household budget. For example, you can increase the deductibles on your homeowner's insurance policy and pay a lower monthly premium and use that money to keep your monthly loan payments current.

Now, if you have missed an installment, do not ignore telephone calls or letters from the lender. An evasive borrower could even intensify the lender's collection efforts. You may be embarrassed, you may be feeling guilty, and you may not know what you will say to the lender, but avoidance will only exacerbate the problem.

Lenders do understand. Generally they have more experience dealing with such situations than you have. Most lenders offer *Loss Mitigation* services to help borrowers avoid foreclosure. The ultimate goal for any loss mitigation department is to mitigate, or minimize, the losses incurred to the borrower and the lender when a borrower is no longer able or willing to maintain their mortgage payments.

Call or write to your lender's *Loss Mitigation Department* without delay. By doing so you have taken the first step toward redemption. Coming forward to explain your situation to them is a good sign to the lender. It adds to your credibility, and the lender is not likely to ignore it. The lender may then ask you to explain your situation. Be prepared to provide them with financial information, such as your monthly income and expenses.

John Shaw

Chapter 5

Facing Foreclosure

Many first time home buyers were able to fulfill their dreams of owning a home due to rock bottom interest rates and low down payment mortgages. But for some, the dream has turned sour. Many first time buyers are now facing foreclosure because they didn't realize the high cost of home ownership—everything from adjustable rate mortgages (ARMs) to hidden taxes, to construction defects.

As a homeowner, you must be informed and act before you get too far behind on your loan payments. Most foreclosures can be avoided if the borrower recognizes the warning signs.

Having your monthly mortgage payment reset to a payment that you cannot afford places you at risk if you get laid off from work; missing one or more mortgage payments, or failing to notify your lender to seek a resolution to your financial crisis all work against you. Unforeseen events happen to people in all communities. People of varied circumstances can suffer from divorce, loss of work, and poor budgeting.

Foreclosure does not happen only to the poor and middle class. The affluent are also affected by foreclosures. Many people bought bigger houses because financing was easy. Or they used their home to live on as an ATM. Many borrowers consumed all of the equity from their old home to buy a new one leaving little to no financial cushion, so any adjustment in the interest rate has an impact. Thus, as interest rates adjusted, the monthly payments increased sharply, and many can not afford to make the monthly payments.

In life, misfortunes can occur at any time. Sometimes situations beyond your control could lead to foreclosure —loss of income or unforeseen medical expenses. Loss of income is one of the main causes of foreclosure. But your lender is not interested in your situation. Their primary concern is to make sure that you meet your loan obligations.

Remember, you are not the only one facing foreclosure. Over the last several years, there has been an avalanche of foreclosure activity. A *Notice of Default* is the first step in foreclosure. Receiving this notice does not mean that you will lose your home.

For more information see National Foreclosure Report as of April 2013:
http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-april-2013.pdf

Non-Judicial States

State Name	*Total Foreclosures 12 months Ending April/2013*	*Foreclosure Inventory*	*%Change From 2013*
Alabama	6,696	1.4%	-0.1%
Arizona	34,387	1.3%	-1.5%
Arkansas	4.039	2.3%	0.7%
California	79,374	1.2%	-1.2%
Colorado	14,828	0.9%	-0.6%
Georgia	46,775	1.9%	-0.5%
Idaho	4,209	2.0%	-0.5%
Michigan	68,277	1.3%	-0.8%
Minnesota	13,700	1.0%	-0.7%
Missouri	1,681	2.0%	-0.8%
Montana	1,457	0.9%	-0.6%
Nevada	11.664	4.3%	-0.8%
New Hampshire	2,426	1.3%	-0.3%
North Carolina	26,167	1.9%	-0.6%
Oregon	4,855	2.9%	-0.3%
Rhode Island	1,582	3.2%	-0.0%
South Carolina	10,381	3.0%	-0.7%
Tennessee	21,554	1.4%	-0.5%
Texas	52,566	1.2%	-0.4%
Utah	4,105	1.5%	-0.4%
Virginia	12,724	0.9%	-0.6%
Washington	16,671	2.3%	0.5%
West Virginia	557	1.2%	-0.3%
Wyoming	932	0.5%	-0.2%

One in five *Sub-Prime* loans issued in 2005 and 2006 are going into default—over 2.2 million homeowners will lose their home over the next few years. One out of every 92 homes was either in some stage of pre-foreclosure or foreclosed in the last two years.

Using *Sub-Prime* mortgages, homeowners believed they could tap into their equity to continue making payments in the belief that home prices would continue to climb. Lenders improperly approved low or zero down payments and enticed buyers with low teaser interest rates as credit scores and undocumented income became commonplace.

We are now faced with 2014 reality and home prices that did not increase as anticipated, and problems soon began to creep in. Many of these homeowners are now unable to sell their property to escape unaffordable loans or buyers who have lost their jobs.

A *Sub-Prime* is a mortgage made to a borrower with a poor credit score. Lenders offset their risk by charging higher interest rates. One of the hideous crimes by too many lenders has been the use of *stated income* in these credit applications. *Stated income* means the borrower is allowed to declare any income he or she chooses, even though they know it is not true. However, the borrower is required to sign that document which clearly states that the applicant has not made false statements. Aggressive mortgage brokers and lenders all manage to look the other way knowing full well that they've encouraged the borrower to misinform them, yet none of them is being held responsible for the crisis this practice created in our economy.

Some mortgages adjusted as often as every few months, a form of adjustable rate mortgage that gets many *Sub-Prime* borrowers into trouble is the exploding ARM—the rate increases substantially after the first two or three years to much higher levels that exceed 10 percent or more. The initial interest rate on an ARM is set artificially low and below market to keep the beginning payment low and affordable.

If you bought a home for $369,000 with 100% financing in 2004 on mortgage terms that called for an adjustment after the first two years of the note, and then continued adjustments over the next 28 years, your initial monthly payment would have been just $1,334.55. But after two years it jumps to $3,121.00. Many home buyers will be able to make the payment of $1,334.55, but when it jumps to $3121.00, most buyers are likely to be in deep trouble.

You must try to keep current on your payments. Usually the default can be cured by simply paying the amount in arrears. If you skip one or two home mortgage payments you seriously risk losing your home.

Government and non-profit organizations are a key source of assistance for individuals in financial troubles, and they can provide many benefits. If you are likely to face foreclosure due to financial distress, you should contact them. Most municipalities offer property tax abatements for reasons of age or hardship. Low income homeowners, particularly those who are recently widowed, could be eligible for Supplemental Security Income. It can take awhile until these benefits are in place.

Avoid taking out a payday loan, this will only create new debts for you.

Don't just sign your home away and walk out. Negotiate. Whatever your situation, never enter into any deal without consulting an attorney. There are many scam artists out there just waiting to prey on your misfortune hoping to make a quick buck. You cannot be certain you are getting the optimal result if you are not armed with all of the information. Never make an impulsive decision. Your anxiety might drive you to make quick decisions in order to resolve defaults as soon as possible. Before making any decision, weigh the pros and cons.

W. Dorich

Chapter 6

Know Your Legal Rights

Challenging the Foreclosure Process

Jean Hin

Who Owns Your Home?

This is not a trick question and the answer may not be simply "the lender." In October, 2007 a U.S. District Court judge in Cleveland, Ohio tossed out 14 foreclosures on the grounds that the bank suing to repossess the properties, Deutsche Bank National Trust Company, didn't actually own them. Deutsche Bank held debt securities that represented the mortgage loans on the properties, not the mortgages themselves. This ruling was long overdue. Essentially the U.S. District Court judge in Cleveland found that the Deutsche Bank, who believed they owned the rights to the mortgages, could not prove it. Without a legal owner, there was nobody to foreclose on the properties—even if the borrowers had violated the terms of their loans. Before you start preparing to deal with the crisis of your foreclosure, it is well worth consulting an attorney and doing a little investigating to see who actually owns your home. Who knows? Maybe it will turn out to be no one.

If you are facing foreclosure, it is likely that one of several reasons have contributed to your present condition. Merely because you have defaulted does not mean that you have no legal rights, or that you should draw back from participation in the process. Be proactive.

When you are faced with foreclosure, you must get legal advice. Foreclosure is a harsh legal process. If you cannot afford to pay an attorney, there are many pro bono (free) attorneys. Your county bar association has a list of attorneys providing a low-cost or pro bono service. A competent attorney can determine whether there are legal defenses to a foreclosure. If you postpone consulting an attorney until after the time to assert your legal rights has passed, or walk away from your home in frustration, you can end up leaving yourself without any equity and vulnerable to deficiency claims. For each foreclosure situation, an attorney can carefully evaluate the homeowner's objectives and interests.

You can successfully challenge the foreclosure by:

- Suing to Enjoin Foreclosure
- Suing to Set Aside a Foreclosure that Has Already Taken Place
- Filing for Bankruptcy

When you receive the foreclosure notice from the court, you can challenge the foreclosure process. You will need to engage legal advice. An attorney will scrutinize the steps already taken by the lender to initiate the foreclosure process and if there are any loophole, he will be able to challenge them to your benefit in the court. Be advised that it is fraudulent, however, to file a bankruptcy merely to forestall a foreclosure and then to dismiss or not go through with it.

Filing bankruptcy before foreclosure is the shortest and simplest procedure. A bankruptcy filing automatically prevents foreclosure temporarily and sometimes permanently. You get the opportunity to cure a default in your payments by paying the delinquent amount in installments over a reasonable period. You must file before the foreclosure sale takes place, a time that usually is only 20 or so days after the foreclosure process starts with a letter to you or a notice in a newspaper. You must serve a copy of the bankruptcy filing on the lender.

Suing to Enjoin Foreclosure Before it Occurs

In certain states, given reasonable grounds to do so, you can obtain an injunction by filing a complaint in court. You will need an attorney to do this. The process is expensive and is made more arduous by a requirement that you give five days' notice to the lender before seeking to enjoin the foreclosure.

You must show an immediate and irreparable injury, loss or damage, or that the acts or omissions of your lender will tend to render the final judgment ineffectual. You may be required to post a bond in such sum as the court deems proper. A homeowner with only modest amounts of other assets and income may be unable to qualify as indigent and may also be unable to find anyone willing to provide a bond, especially one on short notice.

Suing to Set Aside a Foreclosure that Has Already Taken Place

You can sue and set aside a foreclosure that has already taken place. But you must provide evidence of irregularity, misconduct, fraud, or unfairness on the part of the trustee or the lender that caused or contributed to an inadequate price. The burden of proof is on you. Damages are the only remedy. You cannot prevent a third-party purchaser from keeping your house even if he is aware of your claim against the lender, and even if he believes your claim to be valid.

Foreclosure can also be challenged by a counterclaim when the lender or other new owner of the property seeks possession by an *Unlawful Detainer* action. A counter claim must be filed in writing, and the grounds for doing so are discussed below. You will need the services of an attorney for this.

The lender may assert the defense that a wrongful foreclosure may not be challenged even when the parties are before the court on the issue of possession. The right to possession is necessarily founded on ownership, and ownership depends on the lawfulness of the foreclosure.

Foreclosure statutes generally disallow challenges upon title to the property based on transactions that take place prior to the creation of the deed of trust.

An *Unlawful Detainer* proceedings, is a legal action against a person for holding possession of any property, including after a foreclosure. The new owner may overlook the proof that is necessary to show that the foreclosure was conducted properly. You may and should contest every assertion made by the new owner, even if you do not have a attorney. The new owner has the burden of proof. If the new owner fails to meet that burden, the court could conclude that you are entitled to remain in possession even though you no longer own the property.

You can file for bankruptcy after foreclosure and set aside the foreclosure. Even if you do not succeed in setting aside foreclosure, bankruptcy will discharge all or part of a *Deficiency Judgment* against you in a judicial foreclosure judgment for any amount still due after the foreclosure occurs.

Chapter 7

Timing

The biggest mistake you can make is falling behind on your payments or waiting too long to tell your lender about your financial situation. It's better to be proactive than reactive.

Acting fast is important. It is extremely important to contact your lender as early as possible after you find yourself unable to make your loan payments on time. Most of the major lenders have programs for mortgage modification, forbearance, or other remedies that can help you prevent foreclosure. More than half the people who go into foreclosure never respond to letters from their lenders, nor contact them. Your options become limited the longer time passes by. Once you contact your lender, they can allow payment delays, mortgage modification, and repayment plans, or they may negotiate a lump-sum payment.

Before you take any steps to prevent foreclosure, you must be aware of the time available to you. The process takes place over a period of time and in stages.

At every stage, you can take steps to prevent the foreclosure. Your property is completely yours and you have full control of it until the ownership gets officially transferred by the court system after the sale.

Once the lender files a *Judicial Foreclosure* suit, you will receive a package full of complicated legal language listing you, the borrower and everyone else that possibly could be connected to the property, as defendants; and you will be asked to respond within 30 days. This does not mean that you have to vacate your home in 30 days and will no longer have your roof over your head. You need to contact an attorney for this.

If your mortgage is government guaranteed (i.e., FHA or VA) there are extra government regulations that take extra time for the lender to comply with before they can foreclose.

You must use all the time available to try and stop the foreclosure, and begin responding as soon as possible.

W. Dorich

Chapter 8

Negotiating With the Lender

Every minute counts in preventing foreclosure. Early contact—within the first 15 days of missing a payment—is critical in saving homeowners from the devastation of foreclosure. As mentioned before, more than half of those in foreclosure do not call for help when they fall behind in their mortgage payments. Do not hesitate to contact your lender. There is nothing to fear or to be embarrassed about. They deal with this on a daily basis and realize you are not unique.

Remember, most lenders will go to great lengths not to foreclose. The Federal Reserve limits lending depending on the amount of defaulted loans the lender has. Therefore, the lenders are motivated to get their money back even at a large loss. The sooner you contact your lender when you know you are going to miss a mortgage payment, the greater the chance that together, you will be able to work out a solution.

Remember that the company you receive your monthly statements from may not be the holder of your loan. Rather, they are only servicing the loan. These service providers can put you in touch with the actual lender.

Your lender might be able to design a plan to give you time to catch up on your payments. It is much less expensive for them to counsel and restructure loans than to foreclose.

Explain your situation to the lender. Once the lender understands your position, they may come up with a number of workable solutions. If there are compelling or appropriate reasons, lenders usually offer possible workable solutions for people who have fallen behind on their mortgages including:

- Temporarily reducing or waiving a number of payments, and
- Setting up short-term repayment plans to help you make up the deficit,
- Adding the unpaid balance to the principal of your loan and increasing your payments slightly to cover the extra amount,
- Refinancing the debt by adjusting the interest rate or extending the terms to make it more affordable. These options are discussed in detail in the following chapters.

However, if your situation is really bad, the lender may even agree to make other concessions. For example, they may be willing take less money in settlement of your loan. Once the lender realizes the situation of the borrower has become unmanagable, it might be time for them to retrieve whatever they can from a potentially worse scenario.

Lenders may reduce the interest rate, particularly if the borrower has had a mortgage with them for many years. Keep in mind the interest earned by a lender is in the first ten years of a mortgage—the remaining years is pure profit so they can afford to be a bit flexible.

Some lenders have even been known to reduce the principal. This is rare but Short Sale is becoming important in these situations. (Short Sale will be discussed in more detail in later chapters). It goes without saying the lender will not be happy to do this, but then again, he/she has to reassess the circumstances and then decide.

For example, the lender can permit a qualified buyer to take over your mortgage debt and pay the mortgage payments, even if the mortgage is non-assumable. As a result, you may be able to sell your property and avoid foreclosure. You can make a deal to sell a partial interest in the property to an investor, friend or relative and create a new deed.

Seek assistance of community based organizations. Neighbor Works America, and US Department of Housing and Urban Development can provide you with the details of such organizations in your city. Contact other community based organizations before you contact your lender because they can give you a general idea of the types of programs that your lender offers before you go to them.

Make sure you document all important conversations and information. Maintain a record of all correspondence with the lender, during the foreclosure process. If you end up going to court, these details may be useful to construct a positive outcome.

Negotiate

Once you contact your lender, everything is a negotiation. Of course, your lender will be acting in its own best interest.

The sooner you approach your lender, the better. Even after you receive a default notice, you should contact the lender and open up discussions.

Such negotiations could result in a "workout" solution that could temporarily lower your monthly mortgage payments, although you would still be liable for the loan's full amount.

An important and often successful strategy used by many homeowners in financial distress is to negotiate with the lender for a temporary delay in payments or reduced payments for a temporary period. Your lender will be aware that they are better off having you make whatever payments you can afford rather than foreclosing on your home. Your lender can accommodate you in one of the following ways:

- Letting you skip one payment
- Extend the grace period for making late payments;
- Permit you to skip two to six payments for a year or two; or
- Accepting reduced payments for anywhere from one to eighteen months.

If you approach the lender with your problems, their loss mitigation department will be able to help you out. With a little bit of negotiation skills, you should be able to prevent foreclosure.

Don't jump into a negotiation cold. Before you talk to your lender, decide what you would need to escape losing the property. What exactly do you want out of the negotiation, and at what price are you willing to pay? You must be ready and willing to compromise. Be sure to obtain their promise in writing and the name of the person you dealt with.

Before negotiating with the lender, you need to do some ground work. Collect your thoughts and document the reasons that caused you to fall behind in your payments – loss of employment, medical expenses, divorce, etc. List all your current resources, debts and expenses. You should also have your idea of a repayment plan ready to present. This will have a strong influence on how far the lender will go to help you. Share a written short-term repayment plan that consists of a simplified lifestyle as well as additional sources of income where possible. Confirm any financial assistance already in place from family or friends.

When you negotiate with your lender, you should be able to explain the following:

1) Reasons you are falling behind in your monthly payments—death, auto accident, etc.
2) Your current resources—monthly income, benefits, savings and investments.
3) Your other liabilities, debts and expenses—food, utilities, insurance, other loan payments, credit card payments, etc.
4) Your plans in detail, step by step, of how you plan to overcome the problem—this will have an impact on how the lender will help you.

Your lender may categorize your reasons for default: either hardship beyond your control—birth of a baby with medical problems, loss of second income or hardship caused by choice. Purchase of expensive car, or an airfare charge on your credit card for a trip to the French Riviera, obviously disqualifies you as being in a hardship.

When you have to undertake serious negotiations, it is always advisable, if possible, to hire the services of an attorney. This achieves multiple goals. The attorney can talk to the lender in a detached manner. In addition, an attorney will be able to examine the terms of every offer carefully. Not only does your attorney try to get you the best deal—the attorney is also trying to steer you clear of the many land mines along the way. Remember, you have hired your attorney because of his knowledge of the law, and remember, attorneys cost money.

Again, timing is important. Start with a telephone call to the lender and then follow it up. You should continue to press your lender for a response and not simply sit back waiting for one.

Your lender will determine the duration of your hardship. You must provide your lender with all your financial data. This will be used by them to determine your current financial status and your ability to make payments. All this will determine the alternatives your lender can offer you.

Once the reason for the default has been identified, most lenders will require detailed financial data from the borrower. This may include personal asset statements, current income statements, pay stubs from the employer, credit checks, and other information that will be used to determine the borrower's current financial status. The lender will try to determine if the homeowner has the ability to pay the monthly mortgage payment and keep the account current. They will verify checking and savings accounts to determine if any cash can be applied to the total amount owed.

Most lenders realize that receiving less payments for a longer time may be a better solution than foreclosing on the home. In the long term, you lender can help you out in the following ways:

- Your lender can capitalize delinquent payments on top of the present principal balance and allow you to repay these delinquent payments slowly over the whole term of the loan.
- Give you up to four years to repay, in installments, delinquent amounts, with no interest accruing on these back due amounts;
- Lower the interest rate for a certain number of years or even for the remaining term of the loan, thus reducing monthly payments without lengthening the term of your loan;
- Lengthening the term of your loan but increasing the total interest payments over the term of the loan thus reducing monthly payments;
- Substituting some other more valuable property or asset for your home as collateral for the loan, like a vacation cabin or rental property, thus putting the substitute property at risk of foreclosure, but protecting your home; or
- Some combination of the above forms of loan restructuring, such as allowing back due payments to be paid gradually, lengthening the term of the loan, and lowering interest.

While negotiating, you must maintain your composure and be polite—your other alternative is foreclosure. It is important that you do not lose your credibility while dealing with your lender. Make all promised payments on time. Keep all lines of communication open. Inform them of any change in how and where to contact you.

If your lender is local, you should make the effort to set up a personal meeting. It could go a long way in convincing your lender about your seriousness.

You should be prepared to negotiate and be flexible. Your lender must be convinced that you are honest, organized, diligent and competent to negotiate a workout.

Chapter 9

Refinancing

Refinancing refers to applying for a secured loan intended to replace an existing loan secured by the same assets. It is a means of replacing a high-interest mortgage with a mortgage that has a lower interest rate. A cash-out refinancing is one that involves you paying off your loan and borrowing an additional amount. The entire loan amount is secured by a mortgage on your home.

Refinancing is essentially paying off your existing mortgage and taking out a new one. The decision to refinance must depend on the costs of refinancing and the expected proceeds from doing so.

The options of refinance are generally available to those with excellent credit histories, but they have suffered a temporary setback.

Once the foreclosure process has started, it may be difficult for you to refinance the mortgage as it is likely that you have been through several late payments or no payments and this will have a devastating effect on your credit ratings. The new lender may deny you the refinance, or may charge you a higher rate of interest. You should therefore refinance your mortgage before the foreclosure process is initiated by the lender. Time is of the essence in this option.

It is important to note that the refinancing option must be paid for. This cost can take two forms:

1) Any refinancing results in the origination of a new loan, which generates a set of fees; and
2) You may have to pay a prepayment penalty on the existing loan from the proceeds of the new loan.

Refinancing costs need to be carefully considered. In some cases, the cost may outweigh any savings generated through refinancing the loan itself. Typically, you should consider refinancing if you stand to save a substantial amount of money from doing so, or prevent foreclosure.

If your home was financed at one of the high interest rates, refinancing at a lower interest rate and/or with a longer payment period can greatly reduce your monthly payments thus bring them within your reach. Refinancing a low interest first mortgage and high interest second mortgage into a lower interest first mortgage can also reduce payments.

The major disadvantages to refinancing are the increased finance charges that result from extending the repayment period, the possibility of having to pay points, the additional closing costs, and prepayment penalties on the old mortgage. The success of refinancing depends on whether you can obtain a loan at a reasonable rate.

There is a general lack of awareness about refinancing. Many who are approaching foreclosure do not realize that they could qualify for refinance. When it comes to refinancing home loans, there are a few options available in the market today. Some of the common types of refinancing options are:

- ***Adjustable Rate Mortgage***—as the name suggests, the interest rate changes through the term of the loan. Initially the rate is low and fixed for a set time and then it adjusts itself based on the economic index it is linked to. The interest rate could then increase drastically. This type of refinancing should be thought through because you cannot be certain that the interest rate will remain low throughout the term of your loan.
- ***Fixed Rate Mortgage***—the interest rate is fixed for the term of the loan. Your monthly payment will not change.
- ***Balloon Mortgage***—this refinancing option comes with a fixed interest rate for a set period, generally around 7-10 years. When the term is up, you will have to repay the loan in full or obtain a new loan.

- ***Home Equity Loan***—you can tap into your equity using this option. The interest rate will be the same through the term of the loan.

When you are faced with foreclosure, refinancing is not like normal refinancing. When you apply for refinancing under normal circumstances, the lender will look at your credit and payment history. If you are not more than 90 days behind in your payment and your credit score is above 600, your application will be considered by most conventional lenders. However, you will have to approach lenders specializing in foreclosure refinancing. For such lenders, it is all about equity. You will probably qualify with such lenders if you have 35% or more equity in your home and your home is valued at $200,000 or more. In some states you will need much more equity and a much higher value to qualify for a refinance in a foreclosure scenario. A foreclosure refinance is considered a short-term loan, usually with a fixed rate for two or three years. This will give you enough time to get back on a stronger financial footing. In most cases, the foreclosure refinance loan payments are interest only.

If you consider refinancing, you'll need to have income and credit to support a new loan. With refinancing you can keep your property and preserve your credit. Sometimes refinancing with a different lender may not be the best solution—your monthly payments could be higher and the total amount owed can increase.

If your existing loan is an ARM mortgage, you gain by refinancing the loan into a fixed rate mortgage, if you can lower your monthly payments.

Refinancing is more difficult because lenders are tightening their credit standards.

Streamline Refinance

If you refinance using your existing lender, you can cut the costs and save a lot of time. Your lender already has your information.

A streamline refinance differs from a conventional refinance. It is usually financed by the same lender and is less expensive to originate. It is limited to the existing principal balance and requires no appraisal. Credit history is not usually a critical factor. The purpose of the streamline refinance is to rewrite the terms of a loan to reduce the interest rate and/or lengthen the term of the loan. Streamline refinance will vary in cost, and guidelines may vary among different types of mortgages such as VA, FHA and conventional. The benefit is to reduce the mortgage payment or absorb the amount of arrears to bring a loan current.

FHA Refinance

The Federal Housing Administration has come out with the FHA Secure Refinance Program to help homeowners who have fallen behind on their home mortgage and are possibly facing foreclosure.

This program allows delinquent homeowners to refinance their Adjustable Rate Mortgages into a fixed rate FHA loan.

The program is designed for homeowners who need some assistance in order to get out from underneath expensive ARM interest rates. The FHA does not insure interest-only or Pay Option ARMs. The FHA will not come to your rescue if your home has depreciated in value and is now worth less than the current mortgage balance.

The FHA does not lend money; they simply insure your debt with an approved FHA lender. Since the government insures your mortgage, FHA loans offer significantly less risk for lenders, allowing homeowners, even those with poor credit, to qualify for lower mortgage rates.

Even if your credit is damaged, the FHA will accept your application if you are working on improving your finances and can document your current situation. The FHA does not require you to have a minimum credit score. They focus on your overall credit history.

To get help from the FHA under this program, you must meet a certain set of qualifications:

- Your loan must be a non-FHA ARM.
- There must be a history of on-time mortgage payments "prior" to your present ARM loan resetting to the higher rate.

The FHA will allow late payments after the reset date if the late payments are directly related to your higher loan payment. If you are in a mortgage payment plan because of late payments and there is sufficient equity in the home, the late amounts can be rolled into the new loan.

- You should have a minimum of 3% cash or equity in your home and a sustained history of employment with sufficient income to make the new payments.

http://fhagovernmentloans.org/?gclid=CjwKEAjwre6dBRC94d-Gma7g3wcSJAC-NatZeOsIs91Rkx4sdW0ChcOA17br_SV84JFftG5sUwracz-RoCfxHw_wcB

Chapter 10

Short Sale

Short Sale is an alternative way of selling your home. The lender is asked to accept less than what is owed on the mortgage if they are convinced that it is in their best interest to do so.

In Short Sale, you sell your home at market value and turn over the total sales proceeds to the lender who then cancels your mortgage obligation. Lenders can take big losses on Short Sales, but might be the lesser of two evils for the lender (and for you). The lender has to complete many legal formalities before the they can sell your home and see any cash. A Short Sale allows the lender to cut its losses and get out faster. You stand to gain from a short sale too; you avoid foreclosure. Your credit score will not be as damaged as it would be through foreclosure, but it will be bruised from missed mortgage payments and the short sale itself.

Explore the possibility of a Short Sale. It may be possible to arrange one through friends, relatives, or an investor. It is of course important to arrive at a clear understanding of what it entails. While some investors may want to keep the house, others may want you to repurchase the house from them at a later date at a fixed price that insures a return on their investment. You may also enter into an arrangement of *Right of First Refusal* or *First Option*. If the new buyer wants to resell the house at any future date you will be given the first choice of purchasing that property. You may possibly rent from the buyer.

Using the services of a professional, like a CPA or an attorney specializing in Short Sales, can be of valuable assistance to you in such situations.

The requirements for a Short Sale vary from lender to lender. You begin by contacting your lender to locate the person in charge of Short Sales. Once you know who is in charge, you must submit a letter of authorization—lenders will generally not disclose any of your personal information without prior written authorization. In the letter, be sure to include your name, your property address and loan details—loan number, amount, etc. You must also submit to your lender a preliminary net sheet, which is an estimated closing statement showing the sale price you expect to receive, all costs of sale, unpaid loan balance, outstanding payments, late fees, etc.

You have to look at the Short Sale option dispassionately. Ultimately, if you're in financial trouble, look at these two important points:

1) If your mortgage payment is more than 40% of your monthly income, it will be better to get out of it.

2) You do not damage your credit as severely as in a foreclosure.

Be aware that you could be subject to tax liabilities in a Short Sale. The Internal Revenue Service considers debt forgiveness as income. Discuss this issue with a qualified person.

When you are approaching your lender for a Short Sale, the most important document that you will be submitting is the hardship letter. In the hardship letter you must describe the reasons for your present financial difficulties and request, or rather plead with the lender, to accept less than the full payment. Lenders may be sympathetic, especially if the reason for your financial difficulties is loss of employment or unexpected medical expenses. It is advised that you use a realtor familiar with Short Sale. The agents get paid for selling the property even if your lender renegotiates the commission.

Provide your lender with proof of your income and assets. In all areas be honest. Disclose all your bank accounts, bonds, stocks, cash and any asset of tangible value. Your lender needs this information to be assured that you cannot repay the full amount. Copies of your bank account statements should also be provided. You should be able to explain every entry in your statements, especially large withdrawals and all deposits.

If a part of the reason for your inability to make full repayment is the fall in property values, you must substantiate this with a comparative market analysis. Use the services of your real estate agent to get this done. A comparative market analysis will show the prices of similar houses—active on the market, pending sales, and sold in the past six months.

If you have a prospective buyer, you must submit a copy of the offer to your lender. The lender may want to renegotiate the commission and may even refuse to allow payment for certain items like pest protection.

If your Short Sale is approved by the lender, during the negotiations, ask them not to report adverse information to credit reporting agencies. The lender is not legally bound to accept your request. Your relationship with them and your negotiation skills will decide the outcome of this request.

In a Short Sale, a title company is selected to issue an owner's title policy in favor of the new buyer and an ALTA (American Land Title Association) policy in favor of the new lender. There are generally two types of title insurance policies used. CLTA (California Land Title Association) is insuring against loss, including attorney fees (up to the purchase price for as long as the person owns the property) due to all matters of record, fraud and forgery, and it assures that title is being vested in the person shown on the policy.

The ALTA policy covers the same items as the CLTA policy as well as many additional risks such as unrecorded *Mechanic's Liens*, assessments, encumbrances, encroachments, easements, water rights, mining claims, patent reservations, conflicts of boundary lines, shortages in area access to and from the land and other visible matter. The title company actually performs a physical inspection before it issues an ALTA policy.

In some states, title companies provide abstract services instead. Regardless, they get paid. Escrow companies acting as an independent third party in real estate transactions can be paid by the lender or the fee is divided between the lender and the new buyer. You are advised to consult an attorney and a CPA to better understand the legal and tax complications due to the debt forgiveness. If your lender issues you a 1099, you will be subject to taxation on the Short Sale. Your buyer will benefit from having bought the property for less than the market value and his future tax will be lower.

Most experts would suggest that you price the property 10% lower than comparable properties to peak buyer interest and initiate buyer activity. Most lenders have a formula for what percentage under market value they will accept in a Short Sale. Figures vary from 8 % under to almost 20% under. Lenders are most likely to get a real estate broker's opinion on the price, or get the property appraised to see the worth of the property before agreeing to a Short Sale.

If you are selling, disclose to prospective buyers that you are attempting a Short Sale. Some experts prefer to wait until a buyer is ready to make an offer before making this disclosure.

How long it will take for you to complete a Short Sale depends to a great extent on your lender. The response times vary from lender to lender. It can take two weeks or as long as 60 days to receive an approval of a Short Sale. Most purchase contracts will include a provision allowing parties to cancel a Short Sale contract within a set period if the seller has not gotten the deal approved by his lender.

An executed purchase contract on a Short Sale property is a legally binding agreement. Without language in the contract stating that the lender must approve the offer and release all liens on the property, you could end up being liable for failing to execute the contract if the Short Sale is not approved.

If your buyer is willing to close in 30 days and can make a substantial down payment, then your deal will be more attractive to your lender. But if your buyer wants 90% financing, then your lender might not find your deal attractive enough to allow a Short Sale. All buyers should be pre-approved for a mortgage before submitting the offer. Other factors which can influence your lender's decision to Short Sale include the liability risk they assume by owning the property after foreclosures, the money tied up during the holding period for a foreclosure sale, and the additional costs associated with foreclosure such as attorneys' fees.

Short Sale check List—
Documents the Lender Will Require:

- Short Sale Proposal Letter (Prepared by your Realtor or your attorney)
- Signed copy of borrower's authorization for release of information through the Realtor that includes the Social Security number(s) of all vested parties
- Signed borrower Short Sale pay-off application (Realtor will obtain this form from the lender)
- Owner's hardship letter (very important). Document the hardship such as medical bills, layoff notice, accident report, death certificate.
- Owner's financial history, including a statement of assets vs. liabilities (be thorough as discoveries of omissions could disqualify your application for Short Sale) The lender needs an accurate accounting of income and expenses. They also need a clear picture of any assets the borrower has.
- The lender also needs detailed repair estimates from a reputable contractor. Showing what needs to be done to the property (including estimated costs) is helpful and will indicate to the lender the current "as is" price of the property.
- Owner's proof of income (last two years'

income tax returns, plus owner's proof of income pay stubs, copies of unemployment checks, Social Security checks, etc.)

- Owner's last six months bank statements
- Owner's current credit report
- Employment status of all owners
- Medical insurance (medical problems and medical bills if applicable)
- Complete divorce decree (if applicable).
- Purchase agreement that your realtor obtained from new buyer.
- Market comparables for no more than one year, positives and negatives. Include at least three active listings in your area.
- HUD-1 Net Sheet showing the lender what they will receive in the new sales transaction. Be sure to include the following debts on the lender side of the HUD:

1) Real estate commission
2) Past due homeowners dues, if applicable
3) State deed tax
4) Past due property tax
5) Past due utility bills (water and power)
6) Pertinent closing costs
7) Title search costs
8) Real estate administration fees (if applicable)
9) All second and third mortgage settlements

- Rehab or repair cost estimates for your property, with photographs
- Seller signed copy of the Short Sale Purchase Addendum
- Copy of your Realtor's Listing Agreement
- Copy of all previous MLS listing history for this property
- Signed copy of Realtor's Referral Fee Agreement
- Contact information for the title company and escrow services— your Realtor will engage in this transaction.

Chapter 11

HUD Pre-Foreclosure Sales Program

HUD—Housing and Urban Development Department of the U.S. government, offers the HUD Pre-foreclosure Sale Program which may be helpful and will allow you to sell your home and use the sales proceeds to satisfy the mortgage debt, even if the proceeds are less than the amount owed. The sale must be to a third party and must be an arm's length transaction. In other words, you can't sell your home to your brother and create a hidden agreement. HUD can pay you up to $1,000 as compensation and another $1,000 for the discharge of junior liens. HUD allows all reasonable costs of the sale including up to 6% sales commission, local/state transfer tax stamp and other customary closing costs, such as the cost for a title search, appraisal and title insurances. The appraised value of your home must be at least 63% of the outstanding amount—principal and interest only. The net sale proceeds must be at least 82% of your home's "as is" appraised value—sale price less sales commission and consideration paid to seller, amount to discharge any lien (not to exceed $1,000), and customary seller's closing costs.

To be eligible:

1) Your home must be used as your primary residence and owner occupied. This program does not cover investment properties. HUD will make an exception to this rule when it is verifiable that the need to vacate was related to the cause of default and the property was not purchased as a rental investment, or used as a rental for more than 12 months.
2) You must be more than 31 days delinquent at the time of the Pre-foreclosure sale closing.
3) You must provide documentation of a reduction in income or an increase in living expenses, and documentation that verifies your need to vacate the property.
4) Above all, your lender must approve the participation in the program.
5) You must submit an application form HUD 90036 along with the financial information required by your lender.
6) Your lender must obtain a standard FHA appraisal from an appraiser who does not share any interest with you or your agent.
7) The appraisal must contain both "As Is" and "As Repaired" values for the property.
8) Before executing the approval to participate, your lender must obtain a title search to verify that the title is not impaired with un-resolvable title problems or junior liens that cannot be discharged as allowed by HUD.

The date on which the approval to participate is executed by the lender is the start date of the program, with a sales period of 90 days. The approval to participate must include the date by which a signed contract for sale must be obtained aa well as the minimum acceptable net sales price. You must agree to cooperate in good faith with your lender to sell the property. You must perform all normal property maintenance and repairs until closing of the pre-foreclosure sale. You must list your home with a licensed real estate agent, unrelated to you. The listing agreement must include a specific cancellation clause in the event the terms of the sale are not acceptable to HUD.

After 90 days, without a scheduled closing, the lender must discuss the likelihood of a sale with the real estate broker and make a determination to either end the pre-foreclosure sale period or extend it for an additional 30 days if a sale is likely.

The closing of the sale must occur within six months from the date your lender notified you in writing of approval to participate in the Pre-foreclosure Sale Program. Contact HUD at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/faqpfs

Chapter 12

Loan Modifications

A *Loan Modification* is a permanent change in one or more of the terms of a mortgagor's loan. It allows the loan to be reinstated, and results in a payment the homeowner can now afford. The lender and you must reach an agreement to modify the loan. However, as this concept becomes widely known, lenders actually resist a modification. On average lenders modify one in ten of their mortgage portfolio. Serious consideration should be used in waiting for a modification decision. Many lenders have committed, then at the last minute decided to foreclose.

Common Loan Modifications Include:

1) Adding missed payments to the existing loan balance
2) Making an adjustable-rate mortgage into a fixed-rate mortgage
3) Extending the number of years you have to repay.

A loan modification will allow you to change the terms of your loan to any other product the lender offers. The lender does not require a new title policy, a new appraisal, or new credit documents. The loan modification is simple, fast, easy, and saves the borrower a significant amount of money compared with a traditional mortgage refinancing. Since a new loan was not created like a refinance, you gain the comfort of knowing that your loan still has the same maturity date or longer as modified.

Recasting is when the lender simply places any payment in arrears at the end of the loan. With recasting, you can continue with the regular monthly payments until the principal balance is paid in full. To qualify for this option, your hardship would have to be over and your net income higher than it was before the default.

FHA Insurance

FHA—One Payment. With assistance from your lender you may be able to obtain a one-time payment from the Federal Housing Agency (FHA) Insurance fund to bring your mortgage current. You may qualify if your loan is at least 4 months delinquent but no more than 12 months delinquent and you are able to begin making full mortgage payments.

If you qualify, the U.S. Department of Housing and Urban Development will pay your lender the amount necessary to bring your mortgage current. You must execute a Promissory Note, which is interest-free and is due when you pay off the first mortgage, or when you sell the property. A lien will be placed on your property until the Promissory Note is paid in full. Contact FHA or HUD regarding this program.

Chapter 13

HUD Loan Modification

The HUD Loan Modification options provide for a permanent change in one or more of the terms of your loan, which allows a loan to be reinstated and results in a payment you can afford.

A HUD loan modification can result in:

- A permanent change in the interest rate.
- Capitalization of delinquent principal, interest, or escrow items.
- Possible extension of loan term.
- Maximum interest rate adjustment to current market rate.
- All or a portion of the PIEI arrearage (Principal, Interest, and Escrow Items) can be included in the mortgage balance.

Foreclosure costs, late fees and other administrative expenses may not be capitalized, meaning these costs cannot become part of the mortgage balance.

Your lender can collect from you the legal and administrative fees resulting from the canceled foreclosure action to the extent not reimbursed by HUD, either through a lump sum payment, or through a repayment plan separate from, and subordinate to the modification agreement. You will not be charged any administrative fees for completing the Loan Modification documents. The modified principal balance of the loan may exceed 100% loan-to-value ratio.

The loan modifications must result in a fixed rate loan and must fully reinstate the loan. If you commit any subsequent defaults, it will be treated as a new default.

To be eligible:

- A minimum of 12 months must have elapsed since the loan origination date.
- You must be 62 days delinquent—three full payments due and unpaid or more.
- The default must be due to a verifiable loss of income or increase in living expenses.
- The Loan Modification mortgage must remain in first lien position.
- You must continue to occupy the property as primary residence and,
- You must have stabilized surplus income sufficient to support the loan modification.
- You must not have any other FHA-insured mortgage.

Chapter 14

Leaseback

A twist on a Short Sale is something called a *Leaseback*. If you are working with an investor, what he or she can do is buy your house at a favorable price then lease it back to you allowing a few years to repair your credit, then you buy it back at a prearranged price. Sometimes family members are willing to purchase the house and sell it back.

There are some lenders and real estate investors who offer Leaseback programs. This should be used only after all other refinancing options have been exhausted. In a Leaseback one party sells a property to a buyer and the buyer immediately leases the property back to the seller.

Leaseback gives you the time needed to rebuild your mortgage and credit history. Your credit will be good enough after 18-24 months to refinance the home in your own name. The price has to be at least equal to the mortgage balance.

With an investor Leaseback you can put an immediate stop to any foreclosure, sheriff sale, or any aspect of the foreclosure process. If you are able to make your monthly rent under the new payment plan, this is a very safe and successful method of saving your home from foreclosure. You must check the transaction with an attorney and an accountant.

Be on guard, as Leaseback arrangements are used by foreclosure scammers to orchestrate their deception. They will present the Leaseback in such a way that it will appear to you that the deal will stop your foreclosure and let you rent your house until you get your finances in order. In your anxiety to save your home they will have you sign papers that will make it difficult, if not impossible, for you to get your home back. In some cases, the scam artist proposes to hold a deed "in escrow." This means nothing other than the scammer puts the deed in a file cabinet at his office. The minute you are late on rent or miss a payment, they record the deed and evict you. Now they owns the house and you have no legal repercussions.

The main disadvantage of a Leaseback is that you will be selling your home at a lesser price and re-purchasing it at a later date at a higher price. However, if you are faced with foreclosure, this is a viable option. If you consider using a Leaseback company be extra careful in verifying their reputation.

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Chapter 15

Deed in Lieu of Foreclosure

A *Deed In Lieu* of foreclosure is a common way to relinquish your rights in the property to your lender in exchange for being released from the mortgage payments.

A deed in lieu of foreclosure is a deed instrument in which a mortgagor/borrower conveys all interest in the house back to the lender to satisfy a loan that is in default to avoid foreclosure proceedings. It is a process in which the borrower, failing to satisfy the loan obligation, hands over the property to the lender.

Basically you give the house to the lender. It vests in the lender the title, subject to all other existing liens and encumbrances. The lender is not required to accept the deed.

If the lender does accept the deed it immediately releases you from most or all of the personal indebtedness associated with the defaulted loan. You also avoid the negative publicity and notoriety often involved in foreclosure proceedings and you may receive more generous terms than you would in a formal foreclosure.

By accepting a deed in lieu of foreclosure, the lender can reduce the time and cost of a repossession, and the deed has some advantages if you subsequently file for bankruptcy.

Both the lender and you must enter into the transaction voluntarily and in good faith. The settlement agreement must have total consideration that is at least equal to the fair market value of the property being conveyed. Generally, the lender will proceed with a deed in lieu of foreclosure if the current fair market value of the property exceeds the outstanding indebtedness of the borrower. However, who is to stop you from creating a deed to the lender, recording it and walking away? Will the lender sue?

The lender will often require the borrower to sign a statement that you are making the offer to negotiate voluntarily. This requirement is to protect the lender from a possible subsequent claim that they acted in bad faith, or pressured you into the deed. Neither the lender nor you are obliged to proceed with the deed in lieu of foreclosure until a final agreement is reached. A deed in lieu of foreclosure is a settlement out of court and takes place outside the judicial system.

There are a number of requirements in order to accomplish a deed in lieu, and each lender will have their own set of guidelines. Generally speaking, the following requirements are usually imposed by a lender that is willing to accept the deed in lieu:

1) You have a valid and documented reason for default, which is beyond your control;
2) You have demonstrated that you have and can make prudent financial decisions since the default;
3) You have been cooperative and provided all necessary documentation to the lender;
4) You must permit the lender to have reasonable access to inspect the inside of the property;
5) You must be willing to make a financial contribution, if this is at all possible;
6) If the lender has escrowed monies for the payment of future taxes and insurance, you must be willing to forego reimbursement of these escrowed funds.

The lender, in exchange for a deed in lieu of foreclosure, may agree to grant you limited possessory rights in the property, including the right to lease or manage the property, or an option to repurchase at a later date. Your lender will most often pursue a deed in lieu of foreclosure when you lack any assets to make pursuing a deficiency judgment worthwhile.

Generally, the agreement for deed in lieu is executed through an escrow company which receives your note marked as “paid” from your lender. The escrow company then records the deed used for transferring legal ownership of your property and sends you the note. You are thus released from the liability of the mortgage payments. You are freed from having a foreclosure on your credit history.

You should consider getting something extra in exchange for giving the deed to the lender. You may ask for cash payments—payment for attorneys' fees and other costs associated with the foreclosure; and release of third-party liabilities.

Your lender can save time and money, which otherwise would have been spent in completing the foreclosure. The benefit to the lender is not having to spend thousands of dollars and two years or more to complete the foreclosure.

If your lender accepts a deed in lieu of foreclosure and you get released from the loan, you may have to pay deed tax. If your lender cancels your debt, the tax is calculated on the basis of the unpaid loan amount along with any accrued interest which is forgiven. The amount of the forgiven debt could be taxable income. Speak to an accountant.

There are various reasons why your lender may not agree to accept a deed in lieu of foreclosure. If it appears that you have the resources available to cover any deficiency that may result, or that you are allowing the property to go into foreclosure as a matter of convenience rather than necessity, your lender will refuse to forego the ability to collect the deficiency. A deed in lieu of foreclosure generally cannot be used when there are junior liens on the property, such as a second mortgage or home equity loan, because such mortgages would remain as liens on the property after the transfer.

The main disadvantage to your lender is that the property still has all junior liens attached, whereas in a regular foreclosure, all junior liens are eliminated. Your lender will also lose any rights under FHA and VA guarantees and will not receive any payment from any mortgage insurance that you may have had.

Often it may be tempting for you to turn over your deed to your lender instead of fighting the foreclosure. This is generally a good idea only if you will receive something from your lender in return for saving them the trouble of foreclosing. In a deed in lieu of foreclosure, you lose all valid claims or defenses you may have against your lender. If you offer them a deed in lieu of foreclosure, make sure that there is a written agreement giving you sufficient time to vacate your home in order to find alternative housing and move in an orderly fashion.

Chapter 16

Forbearance

Forbearance is when a lender agrees to let you delay your payments to them for a short period of time. Forbearance is often combined with other programs that bring your monthly mortgage payments current after a negotiated period of time. The lender has not forgiven the debt but just allows you to pay what you owe at a later date. They just gives you some more time.

The lender may be willing to give you special forbearance that will suspend mortgage payments until the home is sold. By forbearance, the lender will delay the enforcement of their rights under the mortgage.

If you stay in the property the lender may require you to sign a forbearance agreement that states you will pay the amount owed at a later date. Once the forbearance period comes to an end, you are once again obliged to make full payments on your home loan.

The lender will reduce or suspend mortgage payments for a period of time; anywhere from 3-12 months. After the period agreed upon ends, you must start paying the monthly mortgage payment as well as an additional amount that will eventually cover the payments that were not made during the forbearance period. You will be responsible for the money you did not pay during the forbearance mortgage period.

Forbearance does not mean your lender has forgiven your debt, it means they are allowing you to pay what you owe at a later date. It is an option if you are experiencing temporary financial difficulty. In the simplest of terms, Forbearance enables you to temporarily stop making your payments. The payments and interest will continue to accumulate and are added to the remaining balance of the loan.

While mortgage forbearance may only serve as a temporary fix, it does buy you some time to overcome your negative financial state and is a far better option than losing the home you worked so hard to purchase.

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Chapter 17

HUD Special Forbearance

Housing and Urban Development (HUD) offers the HUD Special Forbearance Initiative which permits lenders of Federal Housing Administration (FHA) insured mortgages to assist creditworthy borrowers who are behind in making mortgage payments because they are temporarily unemployed.

To be eligible, your mortgage must be an FHA insured mortgage and you must:

1) Have a good payment record and a stable employment history prior to this default.
2) Have a verifiable loss of income, or increase in living expenses.
3) Be actively seeking employment, but have not received a commitment of re-employment at the time the lender is reviewing the borrower's financial information.
4) Be an owner-occupant, committed to occupying the property as a primary residence during the term of the special forbearance agreement.

5) Not have repeatedly broken past informal or formal Forbearance plans without good cause.

Under this initiative, a lender may enter into a written special forbearance agreement with a borrower whose FHA insured mortgage is not more than 12 months overdue, and whose loan is not in foreclosure at the time the agreement is executed.

If you qualify under the initiative, monthly mortgage payments can be postponed for a minimum of four months. While there is no limit on the maximum number of months, at no time may the agreement allow the delinquency to exceed the equivalent of 12 monthly principal, interest, taxes and insurance installments. The lender will verify your employment status monthly and renegotiate the terms of the special Forbearance plan when your employment status changes.

Chapter 18

VA Refunding

To qualify for this option, your loan must be a VA loan. VA will buy back the loan from the lender as a last resort, modify the terms of the loan either temporarily or permanently to allow you to stay in the home. This is not a benefit provided by law for veterans. It is an option which VA may use in the process of foreclosing a loan and paying the claim under contract with the lender. VA will consider every case before foreclosure as to whether refunding is in the best interest of the veteran and the government. These laws were enacted in the interest of the government, not of defaulting borrowers.

The VA guarantees the housing loans made to veterans by private lenders. If a VA guaranteed loan has been in default for 60 days, the lender must notify the VA. When the lender intends to foreclose such a loan, it must provide the VA with 30 day's notice. Upon receipt of this notice the VA may, at it's option, pay the lender the unpaid balance of the loan plus accrued interest, and receive an assignment of the loan and security. This is referred to as Refunding.

If you are a veteran and have had problems making the payments on your home due to circumstances beyond your control, you can apply. If your lender is not willing to wait before taking action to foreclose the loan, you can apply for VA Refunding. When VA refunds a loan, the loan is purchased from the private lender. Most lenders will prefer to work out the problems, if possible, rather than selling the loan to VA and thereby giving up the right to future income generated from your loan.

The VA may refund the loan if the lender is not willing to extend further forbearance, or modify the terms of the loan, but the veteran has the ability, or will have the ability in the near future, to make payments. The VA may re-amortize the loan to eliminate a delinquency and reduce the interest rate.

http://www.vamortgagecenter.com/f/vahomeloans.html?src=adw&adg=gholn&gclid=CjwKEAjwre6dBRC94d-Gma7g3wcS-JACNatZe4rkJ8v9ftgpHGl1Oip7-siZVepJfni3WDn1-U083KBoCA-7zw_wcB&gclsrc=aw.ds

Chapter 19

Other Options

Second Mortgage

A second mortgage is not always the best solution. It can help you reinstate the first mortgage. However, most homeowners become overextended with a second mortgage. They use the available money to consolidate other debts, and then reuse or open other lines of credit, thus ending up right back in debt.

Loans to Get You Current

This option should only be used if you experienced a temporary financial setback that has since been cured and you are going to be able to keep the property. You can approach family and friends for a loan to get current. It's much cheaper than hard money loans. You must ensure that you are able to pay them back.

Hard Money Loans

Hard Money lenders are private individuals with surplus money available for investment. It is called "hard money" because it has stricter terms and a clearly defined repayment schedule.

Although a hard money loan is not the optimal solution, it is sometimes the only solution. Generally, the new loan amounts will be enough to bring existing loans current, pay the financing costs and put some money in your pocket. Loans can be amortized over 30 years to keep the payments lower and the balance due in two to five years.

The terms of hard money loans vary from lender to lender and depend upon the experience level of the investor. Generally, loans for 50% to 70% of the after repair value of the property is lent at an interest rate of 12% to 18% over a period ranging from six months to five years. Usually an upfront finance fee is also charged by hard money lenders.

Hard money lenders could be just about anyone—even your neighbor. Accountants, attorneys and real estate agents are a good source for locating hard money lenders.

Hard money is easier and faster to obtain than conventional loans. In most cases, the amount you can obtain from a hard money lender is more than what you can obtain from a conventional loan source.

Hard money loans are completed more quickly than traditional loans. Compared to traditional loans, hard money loans will generally involve a higher interest rate (prevailing range of prime rate plus 4-8% for typical scenarios), higher fees and shorter-term financing (one to three years).

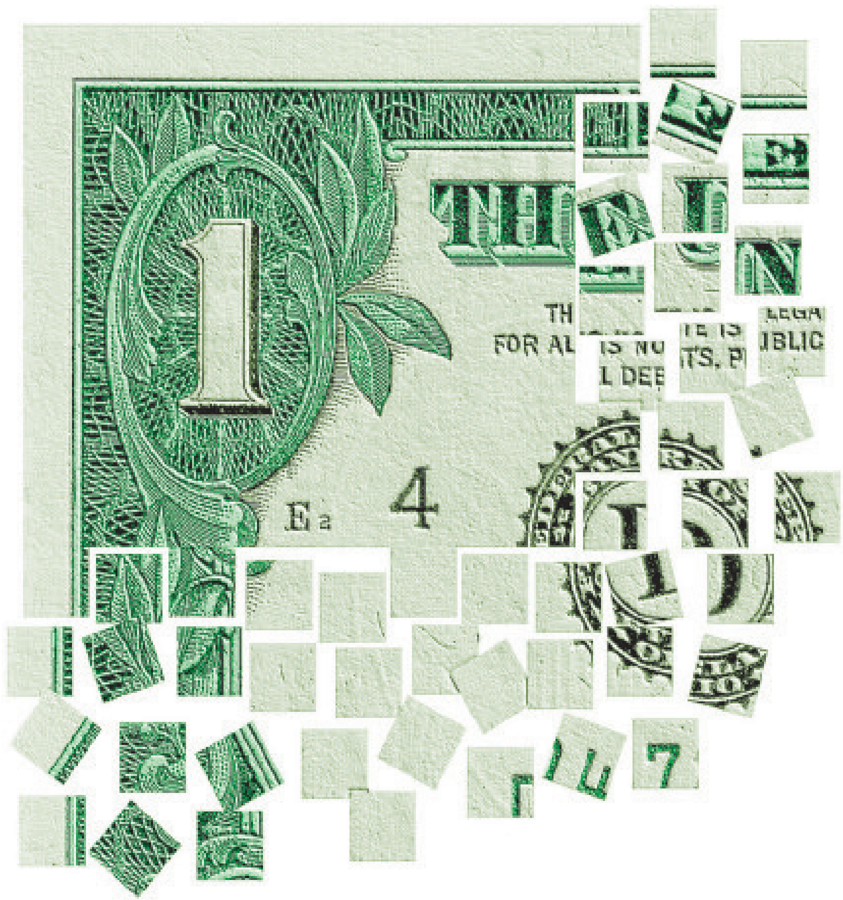
Most hard money lenders place less emphasis on your credit. Instead, they are concerned primarily with the value of the property. They just want to ensure that in the event of default by you, they can repossess a property from which they can recover their original investments, if not more.

The most compelling reasons for using hard money for real estate investments are less time involved, and less qualifications and formalities to close your transactions.

Hard money lenders also can provide you with the funds you need to quickly close on a hot exciting real estate investment. Resorting to hard money lenders is usually not about the "cost" of money but the "availability" and the "timing." If you are in foreclosure and must consider hard money financing, think about it as you would credit card debt—easy to obtain but at outrageous interest rates.

Chapter 20

Bankruptcy



If all other options with the lender have been exhausted, then the only option left may be to file for bankruptcy. Bankruptcy is a legal procedure for dealing with the debt problems of individuals and businesses, and discharges financial obligations. This procedure is covered under Title 11 of the United States Code (the Bankruptcy Code). The vast majority of cases are filed under the two main chapters of the Bankruptcy Code, which are Chapter 7 and Chapter 13.

If you are about to lose your home in foreclosure, you should seriously consider filing a Bankruptcy petition. This can stop the foreclosure process and allow you time to regroup and try to work out a plan to keep the home. Bankruptcy may also help past defaults and can assist in releasing some of the pressure in making future payments.

When a debt is discharged in bankruptcy, it is no longer enforceable against the debtor personally. The debtor is no longer required to pay the debt, or the portion of the debt that has been discharged, nor can the debtor be subject to collection activity on the debt, including being sued on the debt. A bankruptcy discharge serves to erase the debt and gives the debtor a fresh start financially.

Chapter 7 is a common form of bankruptcy case that most debtors have been filing. A filing under Chapter 7 is called liquidation. It is a proceeding in which the debtor is allowed to keep exempt property, whereas a trustee appointed by the court collects non-exempt assets, sells them and pays off the creditors through the sale proceeds. Many states exempt a person's home up to as much as $150,000 of equity. California permits up to $125,000 in equity.

Chapter 7 Bankruptcy dissolves most debt and absolves you of the responsibility to pay it. It will temporarily delay foreclosure for as much as 2-3 months while the U.S. Bankruptcy Court works out the details.

A Chapter 13 Bankruptcy proceeding allows an individual to pay down his debt, either the entire amount or portions of it, and it can include a payment plan under the supervision of the court. Debtors filing this chapter can keep their assets with them while they follow the plan, or after they have paid off the required portion of debt. It involves the rehabilitation of the debtor to allow him or her to use future earnings to pay off creditors.

Chapter 13 Bankruptcy will reorganize your debt and create a payment plan. If you make payments according to the plan, and include your mortgage debt in the Bankruptcy, you should be able to permanently stop foreclosure. If you want to use Chapter 13 bankruptcy to permanently stay out of foreclosure, you must ensure that you do not make your Chapter 13 payment even one day late.

Under the plan, any disposable income left after making the required payments goes toward repaying your unsecured debts, such as credit cards or medical bills. These debts need not be repaid in full or at all, in some cases. You just have to show that you are putting any remaining income toward their repayment.

Your earnings and your debt determine the length of your repayment plan. If your average monthly income over the six months prior to the date you filed for bankruptcy is lower than the median income for your state, you will have to propose a five year plan. If your income is higher than the median, you may propose a three year plan.

If you repay all of your debts in full, even if you have not yet reached the three or five year mark, your plan will end no matter how much you earn.

If for some reason you are unable to finish a Chapter 13 repayment plan, the bankruptcy trustee may modify your plan. The trustee may:

1) give you a grace period, if the problem looks temporary
2) reduce your total monthly payments, or
3) extend the repayment period.

The bankruptcy court can also give you a hardship discharge. If the bankruptcy court does not let you modify your plan or give you a hardship discharge, you have other options. You can convert to a Chapter 7 bankruptcy, unless you received a Chapter 7 bankruptcy discharge within the last eight years, or a Chapter 13 bankruptcy discharge within the last six years. Or, you can ask the bankruptcy court to dismiss your Chapter 13 Bankruptcy case. You would still owe your debts.

W. Dorich

However, any payments you made during your plan would be deducted from those debts. However, your creditors will be able to add on interest they did not charge while your Chapter 13 case was pending.

All remaining debts that are eligible for discharge will be wiped out once you complete your repayment plan. Before you can receive a discharge, you must show the court that you are current on your child support and/or alimony obligations, and that you have completed a budget counseling course with an agency approved by the United States Trustee. This requirement is separate from the mandatory credit counseling you must undergo before filing for bankruptcy.

Chapter 13 offers a number of advantages compared to Chapter 7. A filing under this chapter offers an opportunity to stop foreclosure proceedings and may cure delinquent mortgage payments over time. You must, however, make all mortgage payments that come due during the Chapter 13 plan on time. You can reschedule secured debts other than a mortgage for your primary residence and extend them over the life of your Chapter 13 plan. Doing this may lower the payments.

Chapter 13 also has a special provision that protects third parties who are liable with you on consumer debts. This provision may protect your co-signers. Chapter 13 acts like a consolidation loan under which you make the plan payments to a Chapter 13 trustee who then distributes payments to creditors. You will have no direct contact with creditors while under Chapter 13 protection.

Choice of these plans is never easy. In fact, it is not easy to decide whether foreclosure is worse than bankruptcy! It is always advisable to consult an attorney with your specific problems. Bankruptcy laws have also changed in recent years and it has been made more difficult to utilize these options.

Bankruptcy is a legal process. To begin the bankruptcy process, you file legal papers, called a petition, with the bankruptcy court and list all your debts and property on the petition.

In case you intend to file bankruptcy, you can approach the court and file the list of all outstanding debts and assets. But you can only sell off those assets which are non-exempt; that is, which can be used for the repayment of debts. However, under the new law, it is not that easy to qualify for bankruptcy. The new law requires a debtor having a salary above the median income level to undergo credit counseling at least 180 days prior to filing for bankruptcy.

The credit counseling services check out whether debtors can pay at least 60% or more of their debts so that they don't have to file bankruptcy. Moreover, those opting for bankruptcy will have to go through a Means Test which can determine the type of bankruptcy that he or she should file. When you qualify through the Means Test, the court appoints a bankruptcy trustee to supervise the payment of your debts. Usually payments toward secured debts like mortgages are given priority over unsecured debts during a bankruptcy case. Otherwise the lender may take away the property acting as collateral for the secured debt.
Bankruptcy makes it possible to:

- Give you a fresh financial start by "discharging"(that is, wiping out or erasing) certain debts. This means you are not legally required to pay those debts.
- Stop most wage executions from your pay. (A wage attachment is when a creditor gets a court order allowing money to be taken from your pay to repay the debt.)
- Stop creditors and debt collectors from harassing you.
- Let you keep any future wages, money you receive, or property you buy. This means that creditors whose debts were discharged cannot come after you for the old debts.
- You are allowed to keep enough property for you to make a fresh start after bankruptcy. You can keep most of your household furnishings (furniture, dishes, etc.), some jewelry, your clothing, and the tools you use for work.
- Keep up to $150,000 in equity in your house if you have homesteaded and it is strictly personal property.

- Keep your car if the equity is minimal, and/or is used in your work.

Keep in mind that bankruptcy does not take care of all debts. Some debts must still be paid. Details of those debts which cannot be discharged are given in 11 U.S.C. sec. 523. It is rather a long list, but the following debts will not be discharged:

- Taxes;
- Spousal and child support;
- Debts arising out of fraud or willful misconduct, and/or malicious misconduct by the debtor;
- Liability for injury or death from driving while intoxicated; non-dischargeable debts from a prior bankruptcy;
- Student loans;
- Criminal fines and penalties and forfeitures.

Secured debts may be discharged. In most instances the creditor will take the necessary legal steps to recover the property unless you can reach an agreement for repaying the debt.

Bankruptcy will be listed on your credit history for ten years. You can be granted credit after filing a bankruptcy, but the decision to give you credit is up to the individual lender, and is usually only available at a much higher rate of interest than usual.

Another important thing to remember is that co-signers are as responsible as the debtor for the payment of loans. If the debtor discharges his debt through bankruptcy, the creditor has the legal right to demand that your co-signers pay the bill. But there are some variations. If, for example, you file Chapter 7 Bankruptcy, the creditor can proceed against your co-signers, according to the terms of the debt agreement. However, if you file a Chapter 13 debt adjustment, a co-signer is protected if the following conditions are met:

- The debt must be a consumer debt (TV. purchase, furniture, household goods).
- Also, the debt may not be incurred in the ordinary course of business (purchase of paper and ink in a printing business).
- And the co-signer cannot benefit from the proceeds of the debt
- As long as the debtor is making the required payments under the Chapter 13 plan, the creditor cannot act to collect from the co-signer. The purpose of this provision of Chapter 13 is to allow a debtor to repay the debt without the creditor approaching the co-signer for repayment.

If you file a Chapter 7 Bankruptcy, your creditors have the right to immediately demand payment from your cosigners. If, on the other hand, you file a bankruptcy petition and a proposed payment plan under Chapter 13, your creditors cannot collect from your co-signers

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unless it becomes clear that the Chapter 13 plan will not pay the entire amount owed.

If you execute a Chapter 13 Bankruptcy now, it could be seven years before your credit is clear.

When you are in foreclosure, Chapter 7 bankruptcy will stall the foreclosure for about 45 days, and then the foreclosure will continue on and you will lose your home. Your credit is destroyed and you can't file again for another seven years. Chapter 7 Bankruptcies should normally be a strategy of last resort when all other debt negotiation strategies don't work. Chapter 13 Bankruptcy is extremely difficult to manage and has all of the same negative credit effects as a Chapter 7 Bankruptcy.

Through bankruptcy, most of the debtor's debts are eliminated, thereby providing an honest but anguished debtor a fresh start.

The first of these common elements is the automatic stay. Filing for bankruptcy puts into effect an *Order for Relief*—known informally as the *Automatic Stay.* The automatic stay immediately stops most creditors from trying to collect what you owe them. So, at least temporarily, creditors cannot legally grab your wages, empty your bank account, go after your car, house, or other property, or cut off your utility service or welfare benefits. It is therefore important to give your creditors notice of your filing.

The second of these common elements is the bankruptcy discharge. Under Section 341 of the Bankruptcy Code, a meeting of creditors must be held in most cases. This meeting usually occurs 20 to 40 days after a petition is filed. The debtor must attend this meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and property.

Either a U.S. Trustee, bankruptcy administrator, or a designee presides at the meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. To preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors.

By filing for bankruptcy, you are technically placing the property you own and the debts you owe in the hands of the bankruptcy court. You can't sell or give away any of the property you own when you file, or pay off your pre-filing debts, without the court's consent. However, with a few exceptions, you can do what you wish with property you acquire and income you earn after you file for bankruptcy.

Part of the debtor's property may be subject to liens and mortgages in favor of specific creditors. In addition, under Chapter 7, the individual debtor is permitted to retain certain exempt property. The debtor's remaining assets are liquidated by a trustee. You should realize that the filing of a petition under Chapter 7 may result in the loss of property.

If you're facing an emergency, like a foreclosure or repossession in the next few days, you can file just the two-page petition, but you must file the rest of the forms within 15 days.

The debtor must be an individual Chapter 7 case. However, a discharge is available to individual debtors only, not to partnerships or corporations. Moreover, a bankruptcy discharge does not extinguish a lien on property. In other words, a creditor will retain its rights to property securing a debtor's obligation.

Exempt Property

One of the schedules that will be filed by the individual debtor is a schedule of exempt property. Customarily these are:

1) your home
2) personal effects
3) auto
4) small savings account
5) federal savings plans up to certain amounts (i.e., IRA).

Federal bankruptcy law provides that an individual debtor can protect some property from the claims of creditors for two reasons:

1) it is exempt under federal bankruptcy law, or
2) it is exempt under the laws of the debtor's home state.

Many states have taken advantage of a provision in the bankruptcy law that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or exemptions available under state law. Generally, whether certain property is exempt and may be kept by the debtor is often a question of state law.

If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee also will attend this meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests.

Upon the filing of the Chapter 7 petition, an impartial case trustee is appointed by the U.S. trustee to administer the case and liquidate the debtor's nonexempt assets. If, as is often the case, all of the debtor's assets are exempt or subject to valid liens, there will be no distribution to unsecured creditors. Typically, most Chapter 7 cases involving individual debtors are no-asset cases. If the case appears to be an asset case at the outset, however, unsecured creditors who have claims against the debtor must file their claims with the clerk of the court within 90 days of the first date set for the meeting of creditors.

There could be cases where the courts refuse to discharge the debts. The grounds for denying an individual debtor a discharge in a Chapter 7 case are very narrow. They are:

1) the debtor failed to keep or produce adequate books or financial records;
2) the debtor failed to satisfactorily explain any loss of assets;
3) the debtor committed a bankruptcy crime such as perjury;
4) the debtor failed to obey a lawful order of the bankruptcy court; or
5) the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate.

In certain jurisdictions, secured creditors may retain some rights to seize their collateral, even after a discharge is granted. Depending on individual circumstances, a debtor wishing to keep possession of the collateral, such as an automobile, may find it advantageous to reaffirm the debt. A Reaffirmation is an agreement between the debtor and the creditor that the debtor will pay all or a portion of the money owed, even though the debtor has filed bankruptcy. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other property.

Legal counsel should be consulted to ensure that the debtor's rights are protected and that any reaffirmation is in the debtor's best interest.

A typical Chapter 7 case is opened and closed within three to six months, and the person filing emerges debt-free except for a mortgage, car payments, and certain types of debts that survive bankruptcy, such as student loans, recent taxes, and back child support.

Once you receive your bankruptcy discharge, you no longer legally owe your creditors for any discharged debts. You can resume your economic life without court supervision, except you must tell the court if you receive or become eligible to receive an inheritance, insurance proceeds, or proceeds from a divorce settlement within 180 days of the date you originally filed your papers.

Bankruptcy - Conclusion

Chapter 12 Bankruptcy is another bankruptcy plan. It is almost identical to Chapter 13 Bankruptcy. The main difference is that to be eligible for Chapter 12 Bankruptcy, at least 80% of your debts must arise from the operation of a family farm. Chapter 12 has higher debt ceilings to accommodate the large debts that may come with operating a farm, and it offers the debtor more power to eliminate certain types of liens. Only a few hundred people file for Chapter 12 each year, while hundreds of thousands file for Chapter 13.

WHAT IS WORSE
A FORECLOSURE OR A BANKRUPTCY?

There is no definitive easy answer. Both have a negative impact in your credit for several years.

Surprisingly, a foreclosure appearing on your credit report may be worse than a Chapter 13 filing. If you successfully complete your plan, you might be in the position to refinance your home or sell and purchase a new home.

The main drawback with bankruptcy during the foreclosure process is that it only prolongs what you already know is coming. If you have huge amounts of debt, Chapter 7 and Chapter 13 Bankruptcies can be a helpful tool but often they just put you further behind.

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Chapter 21

Foreclosure Tax Liabilities And Credit Damage

Your credit rating will be affected if you go through foreclosure, give your lender a deed in lieu of foreclosure, or if you participate in a Short Sale. A foreclosure or deed in lieu of foreclosure can result in a loss of up to 200 points on your FICO score. So if your FICO score was 700, it could go down to 500. A Short Sale will result in a loss of between 80 to 100 points. This means a Short Sale with a previous FICO of 680 will see it fall between 600 to 580. Current FICO scores range between 300 to 850.

If you have gone through foreclosure or given your lender a deed in lieu of foreclosure, you will most likely end up waiting for months before any lender will offer you an interest rate that would make any sense.

If Deficiency Judgment is permitted, then it is the sole discretion of the lender to decide whether to pursue a Deficiency Judgment in those instances. You must consult an attorney to determine if Deficiency Judgment is permitted in your case.

If you have to choose between foreclosure and Short Sale, salvaging your credit is the main advantage to doing a Short Sale. However we recommend a company called **Dignified Home Loans Fresh Start Progam** in which you can buy a new home just one day after a Short Sale, Deed-in-Lieu or Foreclosure.
www.dignifiedhomeloans.com

Foreclosure exposes you to three potential areas of liability—credit liability, deficiency liability, and tax liability.

Remember, a foreclosure could subject you to tax liability. You should consult an attorney or accountant. Never overlook this aspect of foreclosure. The tax rules are complex and subject to interpretation.

Even if your home is not sold in foreclosure, but you give your lender a deed in lieu of foreclosure, you could still be subject to tax liability. This is because the deed in lieu of foreclosure results in debt forgiveness. There could be ways for you to minimize or eliminate such tax liability by careful planning with the help of a qualified tax professional.

There are many things you can do to reverse your bad credit score. To start, you must ensure that all your bills are paid on time. If your goal is to buy a new home, use this period to save money for a down payment. If you can provide a down payment, you can improve your mortgage terms. If you can save for the first three years, you can improve your situation. Mortgage lenders will often review only the last three years of your credit history. If you have made your credit card payments regularly without any default, it will go a long way in establishing a dependable credit history. You must show your new lender that you have a dependable credit history since foreclosure.

Take the effect of foreclosure on your credit very seriously. Take every step possible within your power to prevent it from happening. And as stated earlier in the book, contact your lender immediately as soon as you know that you may be late on a mortgage payment.

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About the Authors

William Dorich has lived and worked in Westwood, California for more than 40 years. In his early career he was regional sales manager for two major west coast companies during which time he became a licensed Realtor® in 1984 (California DRE License #00804536) and since that time has enjoyed selling real estate in the Beverly Hills, West Los Angeles, Sherman Oaks and Glendale areas. His wife Anita joined Dorich Realtors, in 2004. Their long-standing residence and business ownership in the community has made them extremely knowledgeable about varying local regulations, resources, improvements and activities throughout Los Angeles. William is the author of 9 books on a variety of subjects including politics, music and history. His newest books are, ***The Nursing Home Crisis*** and ***Sleep Seekers.***

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