**Foreclosure: step-by-step**

* Foreclosure Warning Signs:

There are certain life events and financial difficulties that can cause homeowners to have trouble making their monthly mortgage payments on time or at all. These life changes or financial difficulties are foreclosure warning signs. Some of these warning signs are foreseeable and others are not, that being said, all cause financial stress and may lead to delinquency and/or the foreclosure process. Unexpected life changes include: loss of employment or changes in income, illness or injury, divorce or separation, and death of a spouse. Financial Difficulties include: changes in your mortgage payment, maxed out credit cards, using credit for daily expenses, late payments, minimum payments to credit cards, opening new lines of credit after maxing out other cards, and choosing which bills or expenses to pay.

* Mortgage Delinquency:

Mortgage delinquency, also known as payment default, is the failure to make mortgage payments on time or in full. This is also considered the pre-foreclosure stage in which your payments may just be little late, you may be dealing with the lender or servicer’s collections department, or when you are more than 60 days behind in your payments you may be dealing with the loss mitigation department.

When your payments to the loan servicer or lender are not received by the statement due date, the payment is considered delinquent. However, you may have a grace period before late fees accrue. Look to your monthly statement or promissory note to see if the servicer or lender has a grace period and how long that grace period is. If you know your payment will be late, it is important to contact the loan servicer or lender.

Late payments beyond the grace period, usually between 2-weeks to 1-month, will result in contact by the loan servicer or lender’s collection department. Collections will attempt to collect payment or make arrangements with you.

The servicer or lender’s loss mitigation department (may also be called: Home Preservation or Work-Out department) will attempt to make contact with you after your mortgage payment has been delinquent for more than 60 days and the Collections department was unsuccessful in making collection arrangements. The Loss Mitigation department can also work with you to make payment arrangements or other work-out options and/or verify that the property has not been abandoned by sending a representative to inspect the property.

* Foreclosure Process: Washington State

Because foreclosure laws and timelines differ by state, we focus the information presented on Washington state’s foreclosure process. The Washington state legislature passed the Foreclosure Fairness Act of 2011 (FFA), which was enacted in order to give homeowners the opportunity to request mediation with their lender to avoid foreclosure, discuss alternatives, and avoid going to court. Washington is a non-judicial foreclosure state, which means that the courts do not oversee the foreclosure process, rather a home may be foreclosed upon after several served and recorded notices. The FFA gave homeowners certain rights during the stages of the foreclosure process. These rights include “meet and confer,” mediation, and the right file a lawsuit to enjoin the foreclosure sale if the servicer or lender violates the FFA.

So, what are the steps or stages of the foreclosure process in Washington? The steps of the foreclosure process are: (1) pre-foreclosure; (2) notice of default; (3) opportunity for mediation; (4) notice of trustee’s sale; (5) and the trustee sale.

* Pre-Foreclosure:

The Pre-Foreclosure process begins once the homeowner has defaulted on a mortgage payment. The servicer or lender is then required to send notice to the homeowner in the form of a Notice of Pre-Foreclosure Options (NOPFO). The NOPFO includes the homeowner’s right to “meet and confer.” Meet and confer means that the homeowner has the right to meet and discuss foreclosure alternatives with the lender or service provider. Once the homeowner receives the NOPFO, the homeowner has 30 days to respond. If the homeowner responds within the 30 days, an additional 60 days is given in order to meet and confer to seek resolution with the servicer or lender. If there is no response to the NOPFO within 30 days, the servicer or lender may send the Notice of Default.

* Notice of Default:

If there is no resolution during “meet and confer” or the homeowner does not respond to the NOPFO within the 30 days, a Notice of Default is sent to the homeowner. The Notice of Default gives the homeowner the option to request Mediation. The homeowner’s request for mediation must be made through a HUD-certified housing counselor or an attorney. The servicer or lender must send the Notice of Default 30 days before the Notice of Trustee’s Sale can be served or recorded.

* Mediation: What is it?

Mediation is a face-to-face discussion between the homeowner, lender, and a neutral 3rd party (mediator) to discuss alternatives to foreclosure. During this process, both parties must act in good faith. Some examples of good faith in terms of mediation include: (1) the lender’s representative has authority to modify the loan; (2) the mediator has been provided with all necessary documentation by the parties; (3) the mediation fee has been paid ($400-shared cost, with each party paying $200); and (4) the homeowner or an authorized representative attends the mediation. The lender may not continue with the foreclosure process until mediation has concluded.

* Mediation: Documentation

Prior to mediation, documentation must be exchanged between the parties and the mediator. The mediator will specify exactly what documentation is required, but both there are typically required documents. For the homeowner, those documents include: most recent paystubs, debts and other obligations, and 2 years of tax returns. The lender will typically provide: the Note and Deed of Trust, proof of Note ownership, loan balance, list of fees and charges, payment history, and present home value and other loan modification information.

* Mediation: Timeline

A homeowner may request mediation from the time the Notice of Default is received, and up to 20 days after the Notice of Trustee Sale was recorded. If mediation is requested, (remember only a HUD-certified housing counselor or attorney may make the request on behalf of the homeowner) the Department of Commerce (DOC) will then notify the parties within 10 days of the request. The parties must pay the mediation fee within 30 days of the DOC notice. The homeowner must send the requested documentation to the lender and mediator within 23 days of the DOC notice. The lender’s documentation must then be sent to the homeowner and mediator within 20 days of receipt of the homeowner’s documentation. The DOC selects the mediator and mediation must be within 70 days of selection. The mediator sets the date and time 30 days prior to mediation. The actual mediation typically lasts 1-3 hours.

* Post-Mediation:

Mediation may or may not result in a loan modification. Following mediation, the mediator will issue a certificate of results and good faith within 7 days (assuming there is good faith). If an agreement between lender and homeowner is not reached, the lender may proceed with the foreclosure process. The Notice of Trustee Sale may then be recorded upon issuance of the mediator’s certificate or 17 days post-mediation. If an agreement is reached, the homeowner has a resolution and avoids foreclosure.

Per se Consumer Protections Act violation

If the lender does not act in good faith during mediation, the mediator issues a not-in-good-faith certificate. The homeowner may then sue to enjoin (stop) the Trustee Sale.

* Notice of Trustee’s Sale:

The Notice of Trustee’s Sale is a notice that specifies that the loan is in default and that foreclosure proceedings are in process. If mediation is not requested or was unsuccessful, the Notice of Trustee’s Sale may then be recorded, served, and published. The Notice of Trustee’s Sale must be recorded in the county where the property is located by the trustee at least 120 days prior to the sale. The trustee must also provide notice of the sale by service or posting at least 90 days prior to the sale. In addition, notice of the sale must be published twice. The first publication must be 28-35 days prior to sale and the 2nd publication should be done 7-14 days prior to sale.

* Trustee’s Sale:

A Trustee Sale is the auction of the property due to foreclosure. A Trustee Sale must occur on a Friday or if Friday is a legal holiday, the sale will occur on the following Monday.

* What’s the best option for you?

There is no one solution that suits every homeowner, so it is best to first figure out the goal. Do you want to stay in your home or leave it?

If the goal is to stay in the home, there are several avenues to pursue. Try communicating with your servicer or lender to discuss your situation and any options available to you, preferably before you miss your first payment. In addition, mortgage assistance and advice is readily available and free through <http://www.makinghomeaffordable.gov> and <http://www.homeownership.wa.gov>.

Another alternative includes filing for bankruptcy. Bankruptcy offers two benefits to the homeowner experiencing financial difficulty: (1) bankruptcy court places an automatic stay on lawsuits, foreclosure, garnishment, and other collection activity; and (2) the court can review disputed claims. Filing Chapter 7 allows for the discharge of most unsecured debts and retain exempt property. Filing Chapter 13 allows the debtor to keep their property and remedy mortgage delinquency through scheduled payments.

Similarly, if the goal is to leave the home there are several options to consider as well. First, selling the home may be an option if there is equity, meaning your home is worth more than you owe. Next, work-outs should be considered, such as a short sale or deed-in-lieu of foreclosure. A work-out is a mutual agreement between the homeowner and lender to resolve default and avoid a foreclosure. A short sale is an option when the value of the home is less than the amount owed. In these cases, the homeowner may be able to sell the home and discharge the remaining obligation to pay the balance on the loan. It is important to note that the lender must agree to both the short sale and to discharge the homeowner’s liability. A deed-in-lieu of foreclosure occurs when the lender allows the homeowner to transfer ownership back to the lender. The home must be listed for at least 90 days. In addition, the homeowner may still have some liability on the debt owed, unless there is an agreement to discharge the obligation. And yet another option, is assumption. An assumption happens when a qualified borrower takes over or assumes the homeowner’s current mortgage. The homeowner’s loan terms must permit assumption and the lender must approve the individual that wishes to assume the loan in order for this to be a viable option.

Finally, the homeowner should consider whether foreclosure is the best option because a foreclosure discharges the debt obligation on the loan. However, the foreclosure would apply only to the primary mortgage and would not relieve any debt owed on a second mortgage.

* Protections & Consequences:

In Washington state, as previously discussed, the Foreclosure Fairness Act provides borrowers at risk of foreclosure with more notice, time, and options.

In addition, the Consumer Financial Protection Bureau (CFPB) is a federal agency, which was directed to implement reform through the Dodd-Frank Wall Street Reform and Consumer Protection Act for the mortgage servicing industry and provide consumers with more protections and options. Some of the more recent reforms include: prohibiting dual-tracking, notice of foreclosure alternatives, policy changes regarding access to servicing personnel, a fair review process, and a restriction on foreclosure until alternatives are considered. Dual-tracking is the practice of working with the borrower and simultaneously moving forward with the foreclosure process, which is now prohibited. Servicers/lenders are now required to give delinquent borrowers notice of their loss mitigation options (alternatives to foreclosure). Servicers have also had to change their policies and procedures in order to provide homeowners easy and ongoing access to servicer personnel. In addition, servicers and lenders must be fair during the review process, they may not push a homeowners toward options that are better for the lender or servicer, and they may not foreclose on homeowners who have applied for loan modification at least 37 days before foreclosure until all alternatives have been considered.

Ordinarily, when a lender cancels or forgives a debt, the amount that is forgiven would be counted as taxable income on your tax return. Thanks to the Mortgage Forgiveness Debt Relief Act, debt cancelled by foreclosure, short sale, deed-in-lieu, or modification can be excluded as income (up to $2 million dollars). The Act applied to cancelled debt from 2007-2012, but was extended by Congress through 2013.

Finally, credit scores will be negatively impacted by delinquent payments, short sale, deed-in-lieu, and foreclosure.

* Common Mistakes v. Best Practices:

Communication & Correspondence

The thought of losing your home can be overwhelming, but ignoring contact by the servicer or lender does not make the problem go away. It is best to keep the lines of communication open by opening and reading any correspondence and answering or returning calls from your servicer/lender. In addition, you should keep all all of the notices and correspondence (including the envelope) that you receive from your servicer/lender. Servicers/lenders are required to provide you with timely notice and the option to meet & confer. By keeping the documentation, you will be able to know your options and to also prove that the servicer/lender did or did not meet their obligations.

Seeking Assistance

Not seeking out assistance is a common mistake, but working with HUD-approved housing counselor can help you find the best solution for your financial situation. Housing counselors can even help you before you become delinquent by providing you with information, options, negotiate with your servicer/lender, and assist with a budget plan. It is important to note that the services of a HUD-approved housing counselor are free.

Scams

Scam housing counseling companies will attempt to take advantage of homeowners who are anxious and vulnerable due to the possibility of foreclosure. It is important to be aware of the warning signs that you may be dealing with a scam business. Some of the signs of a scam housing counseling business include: counselors requiring a fee, claims of a special relationship with servicers and lenders, guarantees to resolve foreclosure issues, discouraging communication with servicers and lenders, high pressure tactics, and being told to direct mortgage payments to the housing counseling business. If you suspect a scam, the best practice is to report it! Contact the Washington Attorney General’s office, the Federal Trade Commission, or Better Business Bureau.

* + www.atg.wa.gov - 1-800-551-4636
  + www.ftc.gov – 1-877-FTC-HELP
  + http://alaskaoregonwesternwashington.bbb.org/consumers/ - 206-431-2222
* Resources:

[www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)

* + 1-888-995-HOPE (4673)

Washington Homeownership Center

[www.homeownership.wa.gov](http://www.homeownership.wa.gov)

* + 1.877.894.HOME (4663)