

Foreclosure and Short Sale Consumer Resource Guide

(Updated 2/4/2009)

Overview

Homeowners and homebuyers in today's real estate market face unique challenges. Of special concern are issues arising out of the possibility of foreclosure on their homes, and possible alternatives. While foreclosure occurrence is relatively low in Maryland compared to the rest of the country, the rate and number of foreclosures in the state has risen substantially.

The Maryland Association of REALTORS® has created this Resource Guide to assist you in meeting the challenges of potential foreclosure. It includes general information about foreclosure and "short sales," as well as articles, publications and useful links.

What is Foreclosure?

At the time of settlement, you signed paper work agreeing that the mortgage company has a right to take ownership of the property through a process called foreclosure if you stop paying your monthly mortgage payments.

When you miss mortgage payments, in some cases for as short a period as 45 days, you are considered in default on your mortgage. Mortgage lenders can move your loan into collections, which can be the start of the foreclosure process.

If you are having trouble keeping up with your mortgage payments, or if you have received a notice from your lender asking you to contact them, don't ignore it. Contact your lender immediately to try to work out your options.

Foreclosure Law

General information about the foreclosure process in Maryland can be found at <http://www.msba.org/departments/commpubl/publications/brochures/foreclosur e.htm>

Foreclosure Timeline (Effective April 4, 2008)

- A "default" occurs, as defined in your loan documents.
- A foreclosure action cannot be filed in court until at least 90 days after you default on your loan. Additionally, under the new law, your lender must send you a notice of their intent to foreclose at least 45 days before they file that foreclosure action in court.
- You must be personally served with court papers when the foreclosure action is filed. If your lender tries to serve you the papers twice in person but is unsuccessful, the lender may serve you the papers by posting them on your property and mailing them by certified mail.

- Your lender must wait 45 days after you are served with the court papers before selling your home at auction. That means that the earliest that a lender could sell the property after a default is 135 days.
- Your lender must publish a notice of sale in a newspaper three times before the sale takes place.
- You have the right, up until one business day before the auction, to pay any overdue payments, late fees and charges to stop the foreclosure sale.

Options in Foreclosure Situations

(From:<http://www.hud.gov/offices/hsg/sfh/econ/econ.cfm#4>)

Call Your Lender! (To get to the right person, you may need to ask for the department that handles loss mitigation or workouts or asset recovery or home preservation.)

1. If Your Problem Is Temporary, discuss:

- **Reinstatement:** The lender agrees to accept the total amount owed to them in a lump sum by a specific date.
- **Forbearance:** The lender allows you to reduce or suspend payments for a short period of time after which another option must be agreed upon to bring your loan current. A *forbearance* option is often combined with a *reinstatement*, for example, when you know you will have enough money to bring the account current at a specific time in the future due to a hiring bonus, investment, insurance settlement, or a tax refund.
- **Repayment Plan:** You may be able to get an agreement to resume making your regular monthly payments, in addition to a portion of the past due payments each month until you are caught up.

2. If it appears that your situation is long-term or will permanently affect your ability to bring your account current, discuss

- **Mortgage Modification:** If you can make the payments on your loan, but you do not have enough money to bring your account current or you cannot afford the total amount of your current payment, your lender may be able to change one or more terms of your original loan to make the payments more affordable. Your loan could be permanently changed in one or more of the following ways: (i) Adding the missed payments to the existing loan balance; (ii) Changing the interest rate, including making an adjustable rate into a fixed rate; (iii) Extending the number of years you have to repay.
- **Claim Advance:** If your mortgage is insured, you may qualify for an interest-free loan from your mortgage guarantor to bring your account current. The repayment of this loan may be delayed for several years.

3. If Keeping Your Home Is NOT an Option, discuss:

- **Sale:** If you can no longer afford your home, the lender will usually agree to give you a specific amount of time to find a purchaser and pay off the **total amount owed**. You will be expected to obtain the services of a real estate professional who can aggressively market the property.
- **Pre-Foreclosure Sale or "Short Sale":** If the property's sales value is not enough to pay the loan in full, the lender must approve that they will accept

less than the full amount owed. This option can also include a period of time to allow your real estate agent to market the property and find a qualified buyer. (Ask if there is monetary help available to pay other lien holders and/or help toward paying a few moving costs.)

- **Assumption:** A qualified buyer may be allowed to assume your mortgage, even if your original loan documents state that it is non-assumable.
- **Deed-in-lieu:** The lender agrees to allow you to voluntarily "give back" your property and forgive the debt. Although this option sounds like the easiest way out for you, generally, you must attempt to sell the home for its fair market value for at least 90 days before the lender will consider this option. Also, this option may not be available if you have other liens such as judgments of other creditors, second mortgages, and IRS or State Tax liens.

More About Short Sales

A short sale is an "arrangement" between the current owner of a home and the current mortgage lender holding the mortgage to accept an offer for less than the total amount owed to pay off the home loan (including other transaction-related expenses such as closing costs, property taxes, transfer tax, and/or commission fees).

The lender determines if the seller is eligible to sell the home at less than the outstanding debt due to a hardship and then the lender accepts that shortfall as their loss. Simply owing more than the home is worth is not considered a hardship. Hardships include divorce, unexpected hospitalization and medical expenses, job loss, death of a family member or similar catastrophic situation. Additionally, a budget must show that the seller's expenses exceed their income/assets, they are behind on their payments and there is no way to repay the lender.

The buyer of a property in a short sale should be aware of several key issues. The contract is usually contingent upon the agreement of the seller's mortgage lender to accept the net proceeds of the sale as full payment for the underlying debt. This is often a long process, which can delay an anticipated settlement date, and buyers and agents should be prepared for this possibility. Ideally, the lender pre-approved the short sale prior to advertising on a Multiple Listing Service, but the fact that the property is a short sale should be disclosed in the comments section of the listing. The sales contract should also include a third party addendum, outlining that the contract is contingent upon the agreement of the seller's mortgagee to accept the net proceeds of the sale as full payment of the underlying outstanding debt.

As always, if you are considering a short sale, or any real estate transaction, whether you are a seller or a buyer, it is important to seek competent legal and financial professional advice. Be sure you deal with a real estate professional with experience on short sale transactions.

Foreclosure Help for Homeowners in Maryland

- **The NeighborWorks® Center for Foreclosure Solutions** was created to preserve homeownership in the face of rising foreclosure rates. In

conjunction with the Homeownership Preservation Foundation, national nonprofit, mortgage and insurance partners, the Center has built a network among certified foreclosure counselors around the nation. It conducts public outreach campaigns to reach struggling homeowners with information about how to keep their homes. Anyone in Maryland who calls 1-888-995-HOPE will be then connected to the staff at St. Ambrose Housing Outreach Center which coordinates counselors for the NeighborWorks® locally. For more information go to: www.nw.org

- **The Baltimore Homeownership Preservation Coalition**, created by public and private funders, lenders and nonprofit practitioners, develops and implements key programs and policies to reduce the incidence of foreclosure and high cost lending in Baltimore. Trained professional housing counselors give consumers sound advice, contact their lender and connect consumers with local housing counselors at various Baltimore Homeownership Preservation Coalition member sites. The service is free, confidential and available 24 hours a day, seven days a week. Call 1-888-995-HOPE or visit www.995HOPE.org. Homeowners who live in Baltimore may dial 311 to be connected automatically to qualified housing counselors who can advise them about foreclosure issues or go to: www.preservehomeownership.org.
- **The Coalition for Homeownership Preservation in Prince George's County** was formed by public and private sector leaders in 2007 to address the high number of foreclosures occurring in the County. The goal of the Coalition is to strengthen homeowner assets and neighborhood stability in the Prince George's County area by helping troubled borrowers and by increasing homeownership success with homeowner counseling and loss mitigation workshops. Contact Lloyd Baskins at 301-883-HOME.
- **HOPE NOW** is an alliance between counselors, mortgage companies, investors, and other mortgage market participants who want to reach and help distressed homeowners directly (<http://www.hopenow.com/>). The participating mortgage servicers are listed at http://www.hopenow.com/mortgage_directory.html.
- **Consumer Credit Counseling Service of MD & DE, Inc.**, an accredited nonprofit community service organization, has been serving the community since 1966. CCCS is dedicated to helping individuals and families resolve financial problems by promoting the wise use of credit through confidential budget counseling, debt management repayment program, and community education. For more information, call 1-800-642-2227 or go to: www.cccs-inc.org.
- **The Maryland Department of Housing and Community Development (DHCD)** offers the HOPE initiative (Home Owners Preserving Equity) featuring two refinance programs to Marylanders who are caught in adjustable rate mortgages, combination or interest-only loans, as well as the Bridge to Hope program intended to help homeowners with FREE housing counseling and up to \$15,000 to catch up on late mortgage

payments. Call 877-462-7555 or go to:
<http://www.dhcd.state.md.us/Hope/Index.aspx>.

- **The U.S. Department of Housing and Urban Development (HUD)** has created "Tips for Avoiding Foreclosure," which provides an index of broad information on foreclosure assistance at <http://www.hud.gov/foreclosure/index.cfm> and a more detailed guide, "Help for Homeowners Facing Loss of Their Home" at <http://www.hud.gov/offices/hsg/sfh/econ/econ.cfm>.
- **"Keep Your Home. Know Your Loan."** is HUD's campaign to support approved home mortgage counseling for families at risk of losing their homes. The hotline is 877-HUD-1515 or use HUD Housing Counseling Program's toll free number (800-569-4287) or go to www.hud.gov.
- Fannie Mae also has information on the new Streamlined Modification program and useful tips for working with your lender. Go to http://www.fanniemae.com/aboutfm/borrower_resource.jhtml
- Freddie Mac has created a useful guide, "How to Avoid Foreclosure" Go to http://www.freddie.com/corporate/buyown/english/avoiding_foreclosure/

Be Alert for Foreclosure "Rescue" Offers!

Distressed homeowners are prime targets for advertisements that promise help and rescue from their financial woes. Homeowners who already are in default may make their situation even worse, sometimes signing over the deeds to their home as part of a foreclosure "rescue."

A typical story involves a homeowner who behind on their mortgage and is contacted by an individual or company that offers to "refinance" the house or buy it to rent back to the family, promising (verbally) that it can be repurchased at a later date. Unfortunately, in either instance, the desperate homeowner basically signs away the deed in a stack of paperwork without realizing it.

Not all programs that help homeowners keep their homes are scams; there are some legitimate services. To avoid the scams, consumers should follow certain steps.

1. **DO contact your lender and try to refinance the loan or work out a payment plan.**
 - DON'T ignore warning letters from your bank or lender. The problem will not go away, and will only get worse if you ignore it.
2. **Get expert FREE housing counseling, legal and tax advice from trusted sources by calling Maryland HOPE Hotline at 1-877-462-7555 for referrals.**
 - DON'T pay anyone up front who promises to negotiate with your lender.

- Check the current license status, credentials, reputation and experience of any person or company that you may use, including people who claim to be real estate salespersons, financial counselors, mortgage lenders and brokers, title companies, and attorneys.
 - Be careful of resources that utilize the word HOPE in their name or advertising. Look for only these trusted sources: www.mdhope.org (877-462-7555), www.hopenow.com and www.preservehomeownership.org (888-995-HOPE); Housing Options and Planning Enterprises, Inc. (www.hopeinonline.com)
3. **Do not sign any documents under pressure or duress. Take the time to read and understand the contents of any paper that you are asked to sign!**
- DON'T sign any documents without consulting with an attorney or counseling agency.
 - DON'T sign any agreement with blank lines or spaces. Information could be added later that you did not agree to.
 - Do not make a verbal agreement. Get all promises in writing and get full copies.
4. **DON'T make a deal with someone who solicits you uninvited by mail, internet, telephone, flyers or in person.**
- If an offer sounds too good to be true - it probably is! Ask questions!
 - Never give your social security number or discuss personal financial information with strangers.
5. **DON'T sign over your deed to a third-party or agree to any deal that supposedly allows you to rent the property and buy it back later.**
- Do not pay your mortgage to someone other than your lender without the lender's prior written approval.