TEN LOOPHOLES

THAT CAN STOP FORCLOSURE FAST

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Introduction

Inside this report, you will find a number of strategies for stopping foreclosure in 48 hours or less, and some additional strategies that take a little bit longer. Take a little time to read through each strategy to see which one best fits your needs.

First, let's talk about what a foreclosure is. A foreclosure occurs when you fall behind on mortgage loan payments. If the situation eventually changes to where you have enough money to bring the mortgage current and make up all of the back payments, fees, and penalties, then you can take action to stop the foreclosure process.

Once the bank accepts the money that is owed to them, to either bring the mortgage current or pay off the loan, the foreclosure is stopped immediately. If the full amount needed to bring the loan current is not available to be paid, then you can do one of two things:

1. You can work out a repayment plan by increasing the monthly amount that you pay every month after paying a lump sum to the bank.

2. You can work out a forbearance plan. A forbearance plan is a formal written agreement between you and the bank that may reduce, suspend, or pause some of your monthly payments.

When you do either of these, the bank will set up a specific program for how the arrears (back payments) will be paid or added to the end of the loan balance and term. Throughout this process, it is very important to stay in contact with your lender and to be honest with them about your situation. Additionally, it's important to always get any agreements or promises in writing. These options, and others, are discussed in more detail in the following pages.

Chapter 1
Bringing the Loan Current a.k.a. Reinstatement

What is the process of bringing a past due loan current? Bringing a loan current, also known as reinstatement, occurs when the loan is brought current by paying the total amount past due. It is always within your right to fully reinstate your loan within 90 to 120 days of being late on your payments or being served with a Notice of Default. If you get to a point where you are again able to make your mortgage payments, or if your income has returned to its former level, you can negotiate with the bank or lender to bring your loan current by paying off any arrears.

Additionally, the servicer may be able to arrange an increase in monthly payment amounts until the loan is brought current. This means that each month you would add an additional amount of money (determined by the bank) to your regular monthly payment until the amount that was overdue has been repaid. If you can show the bank that you are able to resume making payments, and that you can make up the past due balance by either a lump sum or over a short period of time (12 to 24 months), they may agree to a reinstatement.

If, by chance, you cannot afford a lump sum up front to reinstate your mortgage, a repayment plan can be agreed upon to bring the mortgage current over time. The terms are generally a payment of ½ of the arrears as a down payment, and 1½ payments a month until the loan is current. The delinquency may include certain legal fees and costs if the mortgage company has started the foreclosure process. Many loan holders require certified funds for reinstatement.

> *"Both solutions, either paying a lump sum or setting up a repayment plan, would allow you to reinstate your mortgage and keep your home."*

Chapter 2
Work Out a “Forbearance Plan”

If you are unable to make your monthly mortgage payment, the mortgage company may extend forbearance by agreeing to suspend payments. They might also agree to accept partial payments for a limited period of time until a repayment schedule is agreed upon.

Forbearance is a formal, written agreement between you and the bank that reduces or suspends monthly payments for a specified period of time. This means that, for a period of time, you would either pay only a portion of your regular mortgage payment or may not have to make payments at all.

At the end of the agreed-upon period, you would then be required to resume regular monthly payments, as well as pay additional funds to make up for the past due amount. During the time that the payments are either suspended or reduced, you would have the opportunity to resolve the financial hardship you are facing. This agreement leads to reinstatement of the loan. There is no maximum duration, but the maximum arrears due may not exceed 12 months arrears of principal, interest, taxes, and insurance. The bank might consider making this option available to you if you have recently experienced a decrease in your income due to unemployment or illness, among other things.

In addition, lenders may agree to wait before taking legal action against you, effectively allowing you time to work out a repayment plan that is affordable for you.

Chapter 3
Sell To A Cash Buyer

When faced with foreclosure, repayment plans and forbearance aren't the only options available. For instance, if the property is worth more than the amount owed on the mortgage, a quick sale to a cash buyer can help you avoid foreclosure and all the hassle involved with the foreclosure process.

Cash buyers are usually real estate investors who will buy your house in its "as is" condition. You can sometimes negotiate a move-out date with this type of buyer, giving you time to find a new home. Fortunately, the foreclosure is halted as soon as the sale is completed and the title is transferred, which means your credit score will not be as negatively affected. However, this is typically only an option if you have equity available in the property.

For homeowners who have a deadline, selling a house for cash can provide the reliability and certainty that you require, which, in turn, minimizes the stress and worry involved with the selling process. Selling a property using a real estate agent can take an uncertain amount of time, and while selling a property at auction almost always results in a sale, the price you get is almost always much less than the market value. By selling your house to a cash buyer, you get the certainty of knowing when the sale will be, and the certainty of knowing exactly how much money you will receive.

Chapter 4
Selling Through A Short Sale

A short sale is when a bank or mortgage lender agrees to discount a loan balance due to an economic or financial hardship on the part of the borrower. This negotiation is all done through communication with the servicer or lender's loss mitigation department. In the process, you will sell your property for less than the outstanding balance of the loan, and turn over the proceeds of the sale to the lender in full satisfaction of your debt.

The lender has the right to approve or disapprove of a proposed sale. There are a lot of circumstances that will influence whether or not banks will discount a loan balance. These circumstances are usually related to the current real estate market climate and your specific financial situation.

A short sale is typically sought after in order to prevent a home foreclosure. Often, a bank will choose to allow a short sale if they believe that it will result in a smaller financial loss than foreclosing on the property. For the homeowner, the advantages include not having a foreclosure on their credit history, and partial control of the monetary deficiency. Additionally, a short sale is typically faster and less expensive than a foreclosure. After all, a short sale is nothing more than negotiating with lien holders about a payoff for less than what they are owed. In simple terms, it is a sale of a debt, generally on a piece of real estate.

There are certain conditions that must be satisfied in order to qualify for a short sale that include:

1. The property must be owner-occupied
2. The mortgage may need to be 31 days delinquent or more at the time of the pre-foreclosure sale closing
3. The mortgagor must provide documentation of a reduction in income or an increase in living expenses
4. Documentation that verifies that the mortgagors need to vacate the property

Chapter 5
File for Bankruptcy

The Bankruptcy Reform Act of 2005 changed the entire bankruptcy landscape as we used to know it. Today, most bankruptcy attorneys need at least 3 weeks before any major event, such as a foreclosure auction date, in order to adequately prepare a Chapter 7 bankruptcy petition, and file with the Court.

Homeowners who have waited too long to deal with foreclosure often find out what bankruptcy lawyers can do to help them. While the law still permits individuals to file their own bankruptcy petition on a pro-se basis (representing themselves), unrepresented individuals should NEVER file Chapter 7 bankruptcy without the assistance of a competent attorney.

It is important to remember that bankruptcy is a temporary solution and should always be a last resort option. Most homeowners have the possibility of filing two different types of Bankruptcy -- a Chapter 13 Bankruptcy, which is merely a reorganization of the debts, and a Chapter 7, which is a discharge of the debts.

Bankruptcies usually only prolong the situation. In rare instances, a homeowner may be able to successfully use a Chapter 13 Bankruptcy as a way of restructuring all of their other debts where they can then free up enough cash in order to make their payments, such as their house payment. Unfortunately, less than 10% of all people who file a Chapter 13 Bankruptcy ever successfully make it through to the end of the Bankruptcy.

Furthermore, filing a Bankruptcy is the only adverse event that lasts longer on an individual's credit report than a foreclosure action. In order to file for Bankruptcy, a homeowner is going to have to hire a lawyer in addition to having to attend various debt counseling classes all prior to being able to file Bankruptcy.

In instances where a homeowner knows that they will be unable to make their mortgage payments due to their financial situation, they would be wise to wait to file a Chapter 7 Bankruptcy until after the foreclosure process has come to a final conclusion.

> *"It is important to remember that bankruptcy is a temporary solution and should always be a last resort option."*

Chapter 6
Repayment Plan

The 2005 reform legislation has made Chapter 13 the most common type of bankruptcy. Essentially, Chapter 13 is a Court-supervised and Court-monitored repayment plan where the debtor provides the Court with a listing of all of their debts and a budget for their monthly needs. Any extra money left over each month is applied to pay the arrears owed on the debts. One of the benefits of a Chapter 13 repayment program is that a lot of the expensive late fees, interest rates, and other charges can no longer apply to these sorts of debts.

The usual repayment program usually lasts between 48 and 60 months. The typical Chapter 13 plan sends the debtor's wages to the Court appointed trustee who pays all of the creditors, according to a plan presented by the debtor and agreed to by the creditors.

After the bankruptcy reform act of 2005, Chapter 13 repayment plans now also include partial repayments in what used to be a complete discharge. Chapter 13 bankruptcies can be filed again within a shorter period of time after the last plan either failed or terminated. To prevent abuse, if the Court, due to the debtor's noncompliance, dismisses a Chapter 13 plan, the debtor cannot file a new Chapter 13 for at least one year.

Several new rules also exist about automatic stays and refiling. They include:

1. Automatic stay is terminated 30 days after petition in cases filed by an individual under Chapters 7, 11, or 13 if the case is pending within 1 year preceding was dismissed other than that refiled under dismissal under 7078; may be continued if Court finds refiling in good faith.

2. No automatic stay is in effect in cases filed by an individual under Chapters 7, 11, or 13 if two or more cases pending in 1 year preceding were dismissed other than that refiled under dismissal under 70; Court may impose stay is established later if filing in good faith.

3. Stay automatically terminates 60 days after sec. 362(d) motion filed in cases filed by an individual under 7, 11, or 13 unless there is a final decision or extension reached.

Many times, people will not include their house payment in the Chapter 13 plan. This is frequently the result of individual preferences of the attorneys that they hire to represent them, as well as the characteristics of the trustees appointed by the probate Court to administer Chapter 13 plans. Even if a house is not included in any Chapter 13 bankruptcy, the bankruptcy does protect the house by filing a stay on the foreclosure action, meaning the stay remains in effect as long as the homeowner gets, and remains, current on their house payments.

Unfortunately, the vast majority of Chapter 13 repayment plans falters and eventually fails. Plans can falter even when the debtor gets a "grace period" from the Court for additional time to try and catch up for missed payments to the trustee.

Chapter 7
Discharge Debts

Chapter 7 bankruptcies provide for the total discharge and liquidation of debts. Because of this powerful debt relief tool, individuals are only able to file a Chapter 7 bankruptcy once every eight years. In a Chapter 7 bankruptcy, people may list their home and mortgage as one of the debts that they are seeking to discharge. If an individual chooses not to include their house in a Chapter 7 bankruptcy, then they are still intending to keep the house, and must stay current on the payments on the house while the other debts are being discharged.

Many people think that if they can discharge their other debts, then they will have enough available cash to get caught up on their house payments and stay current. More often than not, they are wrong. Even if the house is not included in a Chapter 7 bankruptcy, the stay granted by the filing of the bankruptcy will apply to the mortgage and the foreclosure action. If the homeowner can then bring the mortgage current, then the foreclosure action is halted.

However, most of the time the homeowner is unable to bring or keep the mortgage current and the bank then files a motion for relief of stay. Chapter 7 can be a valuable tool. A homeowner who realizes that they are going to lose their house may be best served by waiting until after the foreclosure action is completed or until after the short sale is done, before using the Chapter 7 bankruptcy to wipe out any deficiency judgment that may remain.

Chapter 8
Save the Dream and Many Other Programs for Homeowners

Since 2008, there have been numerous government programs, both at the federal level and at various state levels, designed to help homeowners who are behind on their house payments. What is written about those programs this week often becomes outdated and incorrect by next month.

The important thing to do when behind on your payments is to look for any letters you received from your lender or servicer with the name of any housing agencies to contact. The next thing would be to look for any Save the Dream programs that might be available in your community. However, working with these programs can be very confusing. Many times, multiple people are asking for documents, some of which are redundant and some of which are different. You will be told confusing, and often contradictory, information because of the number of different programs out there. That is because many programs have been tried, changed, discontinued, and restarted.

If you are going to work with one of these programs, it is very important for you to keep accurate notes and records of when you contact each housing counselor, what they ask for, and what you talk about. Do not be misled into thinking that working with a housing counselor is going to solve all of your problems. Often, the bank will be doing one thing, and the housing counselor will be telling you something different. It is very important to keep track of who you are working with and what they say they can do at what time. It may take several months to figure out which program will work best for your particular situation.

Chapter 9
Deed-in-Lieu of Foreclosure

The Deed-in-Lieu of Foreclosure allows a mortgagor in default, who does not qualify for any other HUD Loss Mitigation options, to voluntarily sign the house back over to the lender. A homeowner is sometimes better off signing a Deed-in-Lieu rather than letting the lender start or finish the foreclosure proceedings. That is because, with the signing of a Deed-in-Lieu, the borrower is voluntarily giving the home back to the bank. Although the loan default would be entered on your credit record, it may not do the damage that a full foreclosure would.

Foreclosures typically stay on your credit for at least 7 years. By going the Deed-in-Lieu route, you can also avoid the time and stress involved in fighting a foreclosure battle that the lender will probably win. In addition, with a Deed-in-Lieu of foreclosure, the lender or mortgage servicer can pay, not to exceed $2,000 compensation, to you, the homeowner. However, the $2,000 compensation is not paid to you until you have vacated the property. Furthermore, any compensation must be applied to any junior lien(s) placed on the mortgaged property. The loan servicer may determine that a “current” mortgagor is eligible for the Deed-in-Lieu of foreclosure option.

Under no circumstances should you be encouraged to default on your mortgage for the purpose of qualifying for this option. A Deed-in-Lieu must be completed or foreclosure initiated within six (6) months of the date of default, unless you qualified for an extension of time by first trying a different loss mitigation option or an extension of time was approved by HUD prior to the expiration of the time requirement. If the Deed-in-Lieu follows a failed special forbearance agreement, or the pre-foreclosure sale program, then the Deed-in-Lieu must be completed or foreclosure initiated within 90 days of the failure.

A Deed-in-Lieu can only be done when you have one mortgage on the property. If you have a first and second mortgage, you cannot pursue a Deed-in-Lieu. Also, there will be income tax consequences as a result of the Deed-in-Lieu of Foreclosure.

Chapter 10
Loan Modification

The Loan Modification includes changing the original terms of the mortgage through several methods. This option provides for either 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. If your mortgage is an adjustable loan, the lender might freeze the interest rate before it increases, or they can change the interest rate to a more manageable rate for you. A lender might also extend the amortization period. This is called a loan modification.

Loan modifications are rare and can consist of any of these things:

- Permanent change in the interest rate
- Capitalization of delinquent principal, interest, or escrow items
- Possible extension of loan term

The use of any of the three items above will result in the re-amortization of the loan. Maximum interest rate adjustment to current market rate plus 150 basis points, at the lender's discretion. Note: interest rates may be reduced below market rate.

All, or a portion, of the PITI arrears (Principal, Interest, and Escrow Items) may be added to the mortgage balance. Foreclosure costs, late fees, and other administrative expenses may not be added.

The lender may collect the legal and administrative fees (resulting from the canceled foreclosure action), from you 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. No administrative fees for completing the Loan Modification documents can be passed on to you.

It is important to know that the modified principal balance may exceed the principal balance at origination and the modified principal balance may exceed 100% loan-to-value. When this happens, the following conditions will apply:

- *All Loan Modifications must result in a fixed rate loan.*
- *The Loan Modification must fully reinstate the loan.*
- *Subsequent defaults are to be treated as a new default.*

Wrap Up

Here is a quick recap of the options you have to stop a foreclosure:

- Reinstatement
- Forbearance
- Sell to a Cash Buyer
- Sell Through a Short Sale
- File for Bankruptcy
- Repayment Plan
- Discharge Debts
- Save the Dream or other homeowner programs
- Deed-In-Lieu of Foreclosure
- Loan Modification

After reading this, we hope you have a better idea of which option is best for your specific situation.