



# Facing Mortgage Foreclosure

From the Office of Minnesota Attorney General Lori Swanson

If you are a home owner and have fallen behind on your mortgage payments, you are not alone. If you are faced with mortgage default or foreclosure, arm yourself with information, ask for help, and take decisive action to protect your interests.

## TAKE ACTION IMMEDIATELY!

The most important step in preventing foreclosure or the loss of your home is timely action. Don't be embarrassed to ask for help. Contact the lender and contact a reputable counselor at the first signs of trouble in paying your mortgage.

## How does Foreclosure Work?

Foreclosure is a process by which a lender that is servicing a mortgage loan repossesses the property and forces the borrower out of the home because he or she has failed to meet the terms of the mortgage loan, or has "defaulted" on his or her payments. The foreclosure process takes place in several stages including default, sheriff's sale, and redemption period.

## Default

A borrower can default on a loan as soon as one month's payment is late. Lenders will send a notice of "default," which puts the borrower on notice that he or she has failed to make payments required in the mortgage agreement and is in jeopardy of losing the home if a payment is not made. Generally, the lender will request that the borrower contact the lender to discuss options and may begin additional collection efforts on the mortgage. Borrowers should take affirmative action to contact the lender at this point to try to work out any short-term or long-term payment problems. Do not ignore correspondence from the lender or its legal representatives. The sooner the borrower contacts the lender to address the problem, the better.

## Sheriff's Sale

In the event that the default is not resolved, the lender may take action to force a sale of the property, known as a "sheriff's sale." The borrower should either receive a notice of sale four weeks before the sheriff's sale, or in some cases, a summons to court, where the lender will request the court to authorize the sheriff's sale. The sheriff for the county where the property is located will conduct a sheriff's sale in a public place. Once the sheriff's sale has occurred, it may be difficult to save the home. Generally, the mortgage can no longer be "cured" or "worked out," but rather a whole new loan must be obtained to cover the amount bid for the property at the sheriff's sale, interest, attorney's fees, and various other fees relating to the foreclosure. Obtaining new financing for a loan that may be larger than the original loan (due to fees) is difficult and may be compounded by damage to the borrower's credit caused by the foreclosure. If at all possible, borrowers are encouraged to take action to resolve the defaulted mortgage *before the sheriff's sale*. After the sheriff's sale, the borrower does have some options for recourse, however, during the "redemption period."

## Redemption Period

After the sheriff's sale, the borrower typically has a "redemption period" of six months, and can remain in the home during this period (in some cases, the redemption period may be extended to twelve months). During the redemption period, the borrower may attempt to refinance the home through a new mortgage. Remember, however, that the borrower may be responsible for fees incurred during the foreclosure process in addition to the amount bid for the property at the sheriff's sale. The total amount the borrower must pay to redeem may be more or less than the amount owed on the mortgage before the sale. Alternately, the borrower may attempt to sell the home in order to take advantage of any equity built up in the home. If the borrower has been unable to refinance or sell the home after the six-month redemption period, he or she must vacate the property.

## Affidavit of Postponement

Minnesota law allows you to delay a sheriff's sale for five months, giving you an opportunity to bring your mortgage current, by filing an Affidavit of Postponement with the county. The trade-off is that the redemption period is reduced to five weeks, instead of six months. You should consult with a mortgage professional before filing for postponement.

## Dual Tracking

This process occurs when a mortgage servicer simultaneously reviews a mortgage for loan modification, but moves forward with a sheriff's sale. Dual tracking is not allowed in Minnesota. If you apply for a modification, short sale, or other assistance, your servicer must review the application and issue a written denial before scheduling a sheriff's sale. You may still apply for relief options after a sheriff's sale has been scheduled. In Minnesota, if a mortgage servicer receives an application before midnight of the seventh business day prior to the sale, the servicer must halt the sheriff's sale and review the application. In some cases, the borrower may have the right to appeal the servicer's decision. If this is the case, the servicer must wait until the end of all applicable appeals before proceeding with foreclosure.

## I'm Behind In Payments—What Can I Do?

Contact the lender as soon as possible. Ask the lender what the options are. Don't ignore the problem or correspondence from the lender, as late charges (and other fees) can pile up, compounding the problem. Be realistic about your financial situation. Since each person's situation is different, there may be a range of solutions. For instance, some borrowers may fall behind temporarily due to a change in work status, health issues, or other short-term economic changes. Other borrowers may have long-term problems in their ability to pay a given mortgage, because they could not afford the loan in the first place, or are a victim of an adjustable rate mortgage, "ARM," that has risen too high. If you are behind in your payments, consider the following tips:

- 1. Find a reputable mortgage counselor.** Contact the Minnesota Housing Finance Agency or U.S. Department of Housing and Urban Development ("HUD") to find an approved counselor. A reputable counselor may be able to help you locate funding assistance or negotiate a solution with your lender.
- 2. Request a loan modification.** The lender may be willing to permanently modify the terms of the loan to make it more affordable for you. For instance, if you have an adjustable rate mortgage and your interest rate has risen too high, ask the lender to modify your loan into a fixed-rate one that you can afford. ARMs may begin with a low introductory "teaser" rate that a borrower is able to afford, but become unmanageable when the "teaser" period ends and the interest rate adjusts higher.
- 3. Refinance with a new loan.** You may be able to find another lender that will give you a loan with better terms (such as a fixed rate) that are more manageable. Before pursuing refinancing, however, review your current loan to determine whether it contains a prepayment penalty.
- 4. Consider reinstatement.** Under a reinstatement, you pay off the past-due amount and any fees in order to bring the mortgage current again. Reinstatement may be a good option if your default was caused by *temporary* financial fluctuations that you are able to fix.
- 5. Ask for a forbearance.** A forbearance may reduce or temporarily suspend your monthly payments until a set date, allowing you to get back on your feet and begin repaying the mortgage.
- 6. Set up a repayment plan with the lender.** Ask the lender to allow you to pay the past-due amount in partial payments along with each of your monthly payments, rather than all at once. This may be more manageable than having to pay back the past-due amount all at once.

7. **Ask the lender to waive fees or penalties.** A lender may be willing to waive fees, penalties, or other charges if it believes in good faith that a resolution can be reached where you can begin making timely monthly payments and repay the past-due principal and interest.
8. **Explore selling the home.** In some cases, selling the house may be the best option. If you have equity built up in the property, this may allow you to benefit financially, and perhaps afford another home.
9. **Inquire about a Deed-in-Lieu-of-Foreclosure.** If you don't have equity in your home and a modification won't make your payments affordable, a Deed-in-Lieu-of-Foreclosure may be an option. In a Deed-in-Lieu, you give the home back to the lender without going through the foreclosure process. Ask your lender for more information. A Deed-in-Lieu may not have the same negative effect on your credit as a foreclosure, but may have tax implications. Consult with a tax professional if you believe that a Deed-in-Lieu may be beneficial to you.

## Beware of Scams

Unfortunately, scam artists often attempt to take advantage of people in vulnerable financial situations such as default or foreclosure. These unscrupulous actors prey on people while pretending to offer them assistance. Do not be fooled by these scams! If you seek assistance from a third party, make sure that it is a reputable counseling agency. In particular, homeowners should be on guard against two forms of scams: 1) equity stripping scams; and 2) foreclosure consulting scams.

## Equity Stripping Scams

This scam works in a variety of ways, but typically starts when someone promises to solve all the homeowner's problems and keep him or her in the home. The scammer may promise loan money that never appears, or have the homeowner sign a lot of complicated papers. The scam artist may convince the homeowner to sign the property over to him or her, claiming that only he or she can get a loan to save the home. In reality, the loan does

not exist, and the homeowners become renters in their own homes, until they are eventually forced out by the inevitable foreclosure. In most cases, the homeowners receive little or nothing for their home equity, which has, in essence, been stolen by the scam artist. Under Minnesota law, homeowners must be paid at least 82 percent of the fair market value of their former homes (minus certain permitted costs or expenses) if they are not able to stay in their homes following a foreclosure and it has been purchased by someone acting for the benefit of the homeowners.

## Mortgage Foreclosure Consulting Scams

Some organizations or individuals may represent themselves as counseling agencies, but are actually only out to make a profit off the misfortune of others. Typically, these entities will ask for up-front fees in exchange for "counseling" services such as financial advice, negotiating payments or other solutions with the lender, or exploring the sale of the property. These are services that borrowers can do themselves, and may be offered for free by reputable organizations. Scam artists that collect up-front fees may not actually provide any of the services promised, or may even disappear overnight. Under Minnesota law, a foreclosure counselor is prohibited from collecting a fee until after it has provided a service—to you. **Don't be scammed by mortgage foreclosure consulting scams!**

## Resources for Help

If you experience financial trouble that may jeopardize your mortgage payments, ask for help. Timely action can make the difference! The following agencies and organizations may be available to provide information, referrals, and assistance to homeowners regarding foreclosure issues:

### United States Dept. of Housing and Urban Development (HUD)

Minnesota Field Office  
920 2nd Avenue South, Suite 1300  
Minneapolis, MN 55402-4012  
(612) 370-3000

[www.hud.gov/foreclosure](http://www.hud.gov/foreclosure)

**Minnesota Housing Finance Agency**

400 North Sibley Street, Suite 300  
St. Paul, MN 55101  
(651) 296-7608 or (800) 657-3769  
[www.mnhousing.gov](http://www.mnhousing.gov)

**Minnesota Home Ownership Center**

1000 Payne Avenue, Suite 200  
St. Paul, MN 55130  
(651) 659-9336 or (866) 462-6466  
[www.hocmn.org](http://www.hocmn.org)

**Lutheran Social Services Financial Counseling**

424 West Superior Street, Suite 600  
Duluth, MN 55802  
(218) 529-2227 or (888) 577-2227  
[www.lssmn.org/debt](http://www.lssmn.org/debt)

(Ramsey, Rice, Goodhue, LeSueur, Nicollet, Sibley, Brown, Blue Earth, Waseca, Steele, Dodge, Wabasha, Winona, Houston, Fillmore, Mower, Freeborn, Faribault, Martin, Watonwan, McLeod, Meeker, Kandiyohi, Renville, Chippewa, Swift, Big Stone, Lac Qui Parle, Yellow Medicine, Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, Jackson, Becker, Mahnomen, Hubbard, Crow Wing, Todd, Morrison, Mille Lacs, Pine, Kanabec, Chisago, Benton, Isanti, Sherburne, Stearns, Koochiching, Itasca, Aitken, Carlton, Duluth)

**Community Action Partnership of Suburban Hennepin**

8800 Highway 7, Suite 401  
St. Louis Park, MN 55426  
(952) 933-9639  
[www.capsh.org](http://www.capsh.org)

**Twin Cities Habitat For Humanity**

1954 University Avenue West  
St. Paul, MN 55104  
(651) 207-1700  
[www.tchabitat.org](http://www.tchabitat.org)

**City of St. Paul**

**Mortgage Foreclosure Prevention Program**

25 West Fourth Street, Suite 1100  
City Hall Annex  
St. Paul, MN 55102  
(651) 266-6626  
[www.stpaul.gov/cityliving](http://www.stpaul.gov/cityliving)

**Anoka County**

**Community Action Program**

1201 89th Avenue, NE, Suite 345  
Blaine, MN 55434  
(763) 783-4747  
[www.accap.org](http://www.accap.org)

**Dakota County**

**Community Development Agency**

1228 Town Center Drive  
Eagan, MN 55123  
(651) 675-4400  
[www.dakotacda.org](http://www.dakotacda.org)

**Carver County CDA (formerly HRA)**

705 North Walnut Street  
Chaska, MN 55318  
(952) 448-7715  
[www.carvercda.org](http://www.carvercda.org)  
(Carver and Scott)

**Wright County**

**Community Action**

130 West Division Street,  
P.O. Box 787  
Maple Lake, MN 55358  
(320) 963-6500  
[www.wccaweb.com](http://www.wccaweb.com)

**Bi-County**

**Community Action Program**

6603 Bemidji Avenue North  
Bemidji, MN 56601  
(800) 332-7161 or (218) 751-4631  
[www.bicap.org](http://www.bicap.org)  
(Cass and Beltrami)

**Tri-Valley Opportunity Council**

P.O. Box 607  
102 North Broadway  
Crookston, MN 56716  
(218) 281-5832 or (800) 584-7020  
[www.tvoc.org](http://www.tvoc.org)  
(West Marshall, Norman and West Polk)

**Arrowhead Economic Opportunity Agency**

702 Third Avenue South  
Virginia, MN 55792  
(800) 662-5711 or (218) 749-2912  
[www.aeoa.org](http://www.aeoa.org)  
(St. Louis, Lake, Cook)

**Inter-County Community Council**

P.O. Box 189  
207 Main Street  
Oklee, MN 56742  
(888) 778-4008 or (218) 796-5144  
[www.intercountycc.org](http://www.intercountycc.org)  
(Pennington, Red Lake, Clearwater, Polk)

**Rochester Community Housing Partnership**

903 West Center Street, Suite 204  
Rochester, MN 55902  
(507) 282-7529  
[www.rochp.org](http://www.rochp.org)

**Washington County CDA (formerly HRA)**

7645 Currell Boulevard  
Woodbury, MN 55125  
(651) 458-0936  
[www.wchra.com](http://www.wchra.com)

**West Central  
Community Action Program**  
411 Industrial Park Boulevard  
Elbow Lake, MN 56531  
(800) 492-4805 or (218) 685-4486  
[www.wcmca.org](http://www.wcmca.org)  
(Pope, Stevens, Traverse, Grant, Douglas)

**Mahube-Otwa Community Action Partnership**  
128 West Cavour Avenue  
Fergus Falls, MN 56537  
(218) 739-3011  
[www.mahube.org](http://www.mahube.org)  
(Otter Tail, Wadena, Becker, Hubbard, and Mahnomen)

**Northwest Community Action**  
312 North Main Street  
Badger MN, 56714  
(218) 528-3258 or (800) 568-5329  
[www.northwestcap.org/](http://www.northwestcap.org/)  
(Kittson, Marshall)

**Office of the Attorney General  
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445 Minnesota Street, Suite 1400  
St. Paul, MN 55101  
(651) 296-3353 or (800) 657-3787  
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[www.ag.state.mn.us](http://www.ag.state.mn.us)

