

# Foreclosure Prevention Programs

An Overview

Presented by Fair Housing Law Project

A Project of the Law Foundation of Silicon Valley

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## Mortgage Loan Foreclosure

- When you borrow money to purchase your house, you sign a mortgage and deed of trust, which gives the lender legal claim to your house if you don't follow the terms of your agreement.
- When a house is sold at foreclosure, the lender who holds the primary loan ("first mortgage") gets paid first.

-It is not uncommon for lenders to try and collect on that debt themselves, or to sell it to a collection agency.

- If a lender tries to collect a deficiency judgment and you can't pay it, you should contact a bankruptcy attorney.

# General Overview



## What is Foreclosure?

- Foreclosure is a legal process that allows your lender to take back your house and sell it at public auction if you don't make your mortgage payments on time.
- If your lender forecloses, you lose your house, you lose the money you have invested in your house, and you lose your good credit rating.

*Foreclosure prevention programs can help you avoid foreclosure if you are in trouble with your loan.*

# How Will Foreclosure Affect Me?

## *Deficiency Judgments*

- If the loan(s) on your home at the time of foreclosure were only used for the purchase of the home, then you cannot be liable for any outstanding debt on the home.
- If you refinanced and took out money to pay for other things, then you can be liable for a deficiency judgment.
- If you took out an equity loan or line of credit, you can be liable for a deficiency judgment.

- You will lose your house.
- You will probably lose all of the money you have invested in your house.
- Your credit score will be affected.
- Your wages, assets, and bank accounts may be at risk if the foreclosure sale does not cover the loan in full.



*If you are unable to pay your loan, you should take steps to find out your options as soon as possible.*

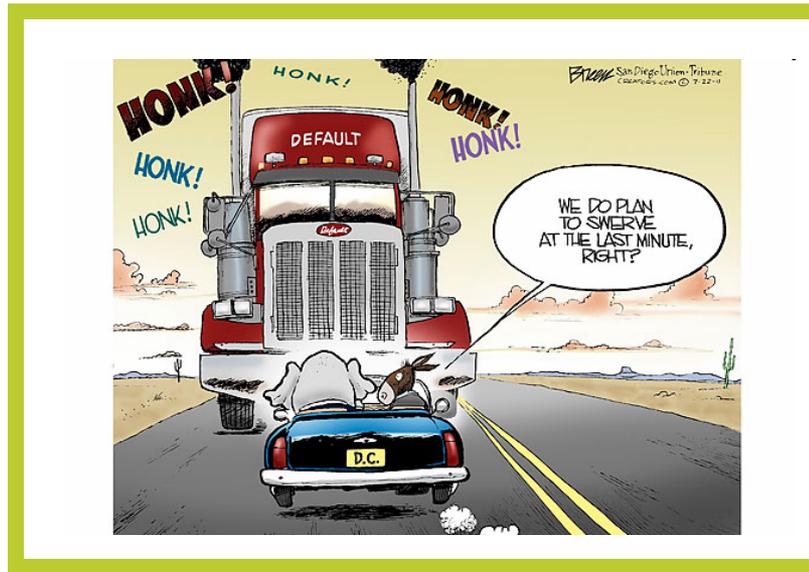
## Non-judicial Foreclosure

- Most foreclosures in California are “non-judicial” foreclosures.
- The foreclosure can take place without a court action or hearing.

## After the NOTS

- A licensed auctioneer sells your house at public auction to pay off the mortgage debt.
- The winning bidder pays for the house and becomes the new owner of the property.
- If you do not move out of the house, the new owner can start eviction proceedings against you.
- You are only entitled to a 3-day notice, although many new owners will negotiate more time.

# What are the steps in foreclosure?



- The lender usually charges you a late fee if your payment is 15 days late.
- If your payment is 30 days late, you are in default on the loan. The lender then sends you a “Notice of Default, giving you 90 days to work out a plan to fix the problem.
- If you have not fixed the problem after 90 days, the lender demands that you pay back the entire loan with late charges and fees.
- If you do not pay the loan in full, the lender sends you a notice of intent to foreclose, called a “Notice of Trustee’s Sale” (NOTS) at least 21 days before the foreclosure sale.

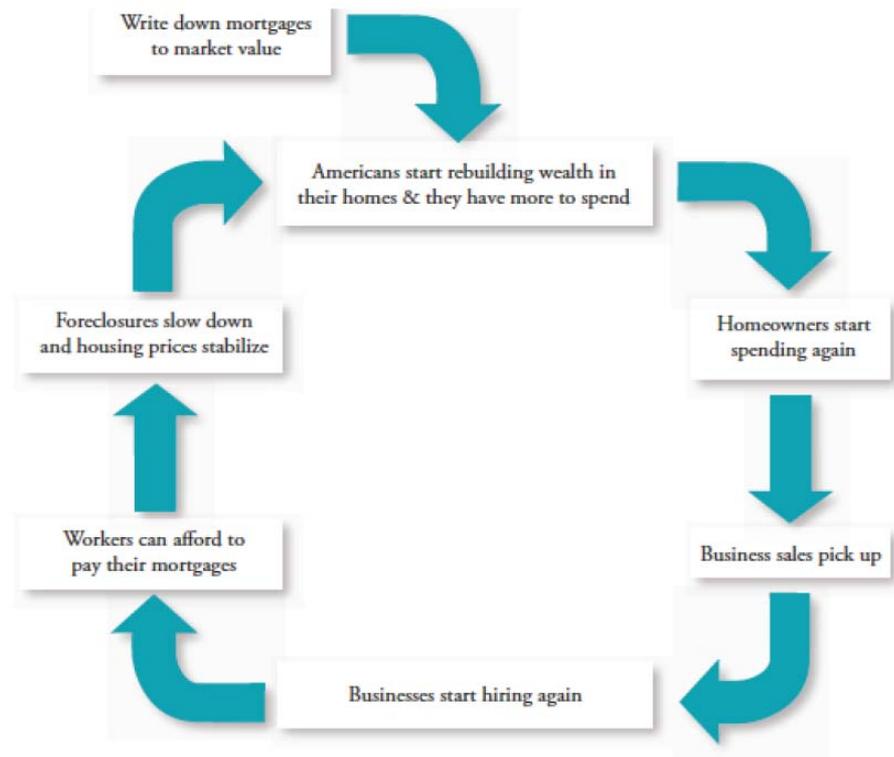
*If you fall behind in your payments, don't ignore notices and mail that arrive.*

# Foreclosure Prevention

Get help if you are in trouble with your home loan, or if you think you will be in the future. Foreclosure prevention programs may make it possible to keep your home.

## Types of Foreclosure Prevention

- Foreclosure counseling programs
  - Mortgage loan modification
  - Mortgage refinancing programs
    - Other options



# Foreclosure Counseling

## HUD APPROVED COUNSELORS

- There are FREE government approved counselors who will help you work out your loan.
- These counselors will help you understand your financial situation and work to find the best solutions.
- They will negotiate with your bank to get a lower interest rate, forgive part of the loan, or give you more time to repay.



## Benefits

- Modification Workout Services
- Refinancing Services
- Legal Assistance Referrals
- Financial Counseling
- Outreach
- Consumer Education

*If you are facing foreclosure, your lender will record the notices with the County. Scam artists may contact you and try to take advantage of you. CALL AN APPROVED AGENCY TO CHECK ANY OFFER!*

# Making Home Affordable

- The Making Home Affordable Program offers help to homeowners at risk of foreclosure.
- The program includes home refinancing, loan modifications, and foreclosure alternatives.

*For more information go to  
[makinghomeaffordable.com](http://makinghomeaffordable.com)*

*or call at*

**888-995-HOPE**

**Hearing impaired:  
877-304-9709 TTY**



*If you are unable to pay your loan, you should take steps to find out your options as soon as possible.*



# HARP Eligibility

Is your loan eligible?

Fannie Mae: 1-800-7-FANNIE

Freddie Mac: 1-800-FREDDIE



## Requirements

- Home is primary residence.
- Loan is owned by Fannie or Freddie.
- You are current on your loan.
- The amount you owe on your first mortgage is no more than 125% of the current value of your home.
- You must have steady income and be able to afford the new mortgage payments.

# HARP BENEFITS

With Home Affordable Refinancing, you can refinance to a 30-year or 15-year fixed rate loan at current market interest rates.

- Save over the life of your loan
- No additional mortgage insurance
- Points and fees can be rolled into refinance



# Applying for HARP

1. Contact your lender/servicer.
2. For Fannie Mae, shop around.
3. Be prepared to provide information about monthly household income, second mortgages or equity loans, credit car debt, other debts (car loans, student loans), and a copy of your most recent tax return.



*If you do not qualify for HARP, you may be able to get a refinance on the private market.*

*For more information go to  
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# Home Affordable Modification Program (HAMP)

## *Government Incentives*

- The government pays mortgage providers a fee for each loan they modify.
- The government gives financial incentives to mortgage providers & to borrowers when payments are made on time.

## *HAMP is Free*

- HAMP is free to homeowners.
- The government and the mortgage providers share the cost.



- HAMP is a foreclosure prevention program to help homeowners who cannot afford their monthly mortgage payments.
- Under the program, mortgage providers modify loans by lowering the interest rate or taking other steps to make them affordable.
- Homeowners pay no more than 31% of their monthly household income for their modified loan payments.

*HAMP is scheduled to end on December 31, 2012.*

# HAMP Eligibility



- You do not have to be behind in your mortgage payments to qualify!

- You may have to agree to HUD counseling to become approved.

**You may be eligible for HAMP if:**

1. You live in your home as a primary residence.
2. You owe no more than \$729,750 on your first mortgage for a single-family home.
3. Your monthly payment on your first mortgage is more than 31% of your household's gross income.
4. Your loan is unaffordable because of financial hardship.
5. You got your current loan before January 1, 2009.

*HAMP is only available with providers who participate in the program.*

# HAMP Benefits

## *Trial Period*

- Your lender will give you a 3-month trial period to see if you make your payments on time.
- After the trial period, your loan *should* become permanently modified.

## *Below Market Rate*

- If you have a below market rate home, your interest rate can go up 1% per year for five years, but can never go higher than your original interest rate.

## *Incentives*

- For each payment you make on time, you earn a Pay-for-Performance Success Payment from the government.



- You will get a modified loan with affordable monthly payments.
- The lender can lower your rate to as low as 2%.
- If lowering the rate is not sufficient, the lender may also extend the life of your loan to 40 years, defer part of your debt without interest, or forgive part of your debt.

*If you have a second lien on your property, you may be eligible for the 2<sup>nd</sup> lien modification program (2MP).*

# Applying for HAMP

1. Call your servicer.
2. Collect documentation.
3. Follow-up.



Proof of household income and assets



Second mortgage/equity loan documents



Information about all debts



Most recent tax return



Explanation of financial hardship

*If you don't qualify for a HAMP, you should ask your servicer about other options.  
You can also call the HOPE hotline at 1-888-995-HOPE to speak to a foreclosure prevention counselor.*

## *Short Sales*

- You sell your house for less than you owe and your lender agrees to accept the sale amount as payment in full.

## *Deed in Lieu*

- You voluntarily hand over the deed to your house rather than going through a foreclosure, and the lender agrees to cancel your loan in exchange for the deed.

## *HAFA ELIGIBILITY*

- For HAFA, you must meet the eligibility requirements for HAMP.

# Home Affordable Foreclosure Alternatives (HAFA)



**HAFA helps people who've been denied HAMP because:**

- They don't qualify for a HAMP trial period
- They did not complete a HAMP trial period
- They fell behind in their HAMP payments
- They requested a short sale or deed in lieu

*HAFA offers incentives to homeowners, mortgage servicers, and investors to opt for short sales or deeds in lieu.*

# HAFA Requirements for Servicers



- You get \$3,000 in relocation costs.

- Your servicer and the investors receive incentives too.

**If you qualify for HAFA, your loan servicer will:**

1. Clearly state the terms under which a short sale or deed in lieu will be accepted;
2. Streamline the short sale or deed in lieu process;
3. Release you from future liability for your mortgage debt if you complete a short sale or deed in lieu.

*HAFA is only available for providers who participate in the program.*

# Avoid Loan Modification Scams!

## *How they find you*

- Ads
- Flyers
- Seminars
- Websites
- Direct Contact

## *It's Public Record*

- You can't hide once you go into default. Your bank has to file it's notices, making your default public record.



- There are many businesses and attorneys who make promises that they will get you a loan modification.
- Boasting records of 99% success, they back up their promises with money back guarantees.
- Often, they will tell you that they will look at your underlying loan or refinance.
- They claim that by using the threat of litigation they will get you a better loan modification.

***IT IS ILLEGAL IN CALIFORNIA TO CHARGE FEES BEFORE PROVIDING SERVICES FOR A LOAN MODIFICATION!***

**MORTGAGE BAILOUT NOTIFICATION  
2009 NOTICE OF ELIGIBILITY UNDER TARP**

REZNS FINANCIAL SYSTEMS, INC.  
RE: CITIMORTGAGE  
ORIGINAL LOAN AMOUNT: 200-249K  
CUSTOMER ID #: 6888916

Dear [REDACTED]

This is to notify you that your mortgage at [REDACTED] may now be eligible for special modification under guidelines created by CITIMORTGAGE in conjunction with the Troubled Asset Relief Program Bailout Fund of the United States Federal Government.

This new program may enable you to modify your original loan amount without the traditional restrictions of credit history, income requirements or employment status. Our program may allow you to modify your mortgage note with the following options:

1. Reduce the principle amount of your mortgage note to the current market value of your home.
2. Lower your interest rate to as low as 3% fixed rate, 30 year term.
3. Modify your ARM or Option Arm into a low fixed rate.
4. Reduce adjustable interest rate/reduce CAPs of adjustable interest rate.
5. Arrange delinquent payments to be added to the end of the loan, or added to an extended term.
6. Eliminate or reduce delinquent amounts.
7. Discounted pay-off of forbearance amounts.

**Contact our Loan Modification Department  
(800) 881-0615**

Please have your Customer ID available when you call.

Form <b>T-09-A</b>	Customer ID 8888916	<b>MORTGAGE BAILOUT NOTIFICATION</b>		SOLE US373
Phone/Modification Department <b>(800) 881-0615</b>	State <b>CA</b>	Property Type <b>Residential</b>		
STATUS OF REVIEW LOAN MODIFICATION DEPARTMENT	Application/Notice Received Date <b>12/10/2009</b>	REZNS FINANCIAL SYSTEMS, INC.	Notice Type <b>PRE-APPROVAL FOR LOAN REVIEW</b>	
Company/Institution <b>CITIMORTGAGE</b>	First Received <b>11/10/2009</b>	Eligible Status <b>Under Review</b>		
Name, Property Address, State, ZIP Code  [REDACTED] [REDACTED] 1234		Modification Pre-Approval Original Loan AMOUNT <b>200,249K</b> Type of Loan <b>Home Loan</b> Interest Rate <b>6.0% 4%</b>		
T-09-A - MORTGAGE BAILOUT NOTIFICATION - 2009				

This office is through ReZNS Financial Systems, Inc. and is not affiliated with any government agency. All applications subject to current underwriting guidelines. Your information was obtained through public record and not necessarily through your lender.

# Signs to Watch For

- *Forensic Analysis*
- They're going to sue the bank.
- They tell you to default.
- They tell you to pay them instead of the bank.
- They promise to buy the house and allow you to buy it back.
- An attorney will negotiate
- 100% money back guarantee

# When to seek legal help with a modification

- If you paid an upfront fee, contact your district attorney.
- If you have been in a trial modification for more than three months and your bank has not made your modification permanent, contact our office at 408-280-2470.
- If you have been in a trial modification or a permanent modification and your bank forecloses anyway, call our offices at 408-280-2470.

*Try working with a HUD counselor first!*

# Other Options



**If I can't keep my home, can I still avoid foreclosure?**

- Pre-foreclosure sale, including short sale
- Deed in Lieu
- Bankruptcy

*Each of these options has disadvantages, but may be better than foreclosure. You should discuss your situation with a foreclosure counselor and lawyer before deciding what to do.*

# Short Sale Issues

## *Beware!*

- A short sale lowers your credit score, often as much as a foreclosure.
- However, you can be approved for another home loan sooner with a short sale.
- You must sell your home within a specified period of time.
- The sales price must be approved by the lender.
- If you have a second mortgage or equity loan, those lenders must also agree to the short sale.



- Make sure your lender agrees in writing to accept the sale amount as payment in full for your debt.
- Make sure that sales commissions, closing costs, and any other costs related to the sale are paid from the sales proceeds.
- Understand all terms of your agreement before you sign!
- Check with a tax lawyer for tax consequences.

*You may be eligible for \$3000 from the Home Affordable Foreclosure Alternatives program to help pay for relocation costs.*

# Deed in Lieu Issues

- The lender agrees to cancel your loan in exchange for the deed to your house.

1. Make sure your lender agrees in writing to cancel your entire debt and waive the right to a deficiency judgment.
2. Understand what you're signing.
3. Make sure you have time to move.
4. Find out about the tax consequences.
5. You may be eligible for the \$3,000 from HAFA.

*Remember that if you have a second lien or an equity loan, these lenders must agree to the deed in lieu as well.*

# Bankruptcy



## Chapter 7 Bankruptcy

- Total liquidation bankruptcy.
- You may keep exempt assets up to a specified value.
- Non-exempt assets are sold to pay off creditors.
- Your debts are erased and you get a “fresh start”

## Chapter 13 Bankruptcy

- Allows you to repay debt over a period of time.
- You are allowed to keep your property as long as you follow the plan.
- Does not erase debts.
- Only for people with regular income and limited debt.
- Doesn't change the payment schedule of future mortgage payments. Must make all payments on time.

## *The Automatic Stay*

- A bankruptcy will cause an automatic stay, meaning that all creditors have to stop debt collection.
- This means that it will postpone a foreclosure for several months, giving you time to deal with your financial problems.
- A bankruptcy doesn't mean your house is necessarily safe. Consult an attorney to find out your options.

*People often think that bankruptcy will save their home, and file at the last minute.*

*This should be a carefully considered decision: bankruptcy is not for everyone.*

# Tax Penalties

## To qualify for tax exclusion under the Mortgage Forgiveness Debt Act:

### *Mortgage Forgiveness Debt Relief Act*

- Passed in 2007
- Allows tax payers to exclude certain forgiven or canceled mortgage debts from taxable income.
- Only lasts until end of 2012.

- The loan must have been used to buy, build, or substantially improve your principal residence, or to refinance a loan used for those purposes.
- The loan must have been secured by the residence.
- The debt must have been forgiven in calendar years 2007 through 2012.
- You must report the amount of forgiven debt on IRS form 982 and file that form with your federal income tax return.

