

NOD/Foreclosure Property Guide



1. Don't ignore the problem.

The further behind you become, the harder it will be to reinstate your loan and the more likely that you will lose your house.

2. Contact your lender as soon as you realize that you have a problem.

Lenders do not want your house. They have options to help borrowers through difficult financial times.

3. Open and respond to all mail from your lender.

The first notices you receive will offer good information about foreclosure prevention options that can help you weather financial problems. Later mail may include important notice of pending legal action. Your failure to open the mail will not be an excuse in foreclosure court.

4. Know your mortgage rights.

Find your loan documents and read them so you know what your lender may do if you can't make your payments. Learn about the foreclosure laws and timeframes in your state (as every state is different) by contacting the State Government Housing Office.

5. Understand foreclosure prevention options.

Valuable information about foreclosure prevention (also called loss mitigation) options can be found on the internet. www.fha.gov/foreclosure/index.cfm

6. Contact a HUD-approved housing counselor.

The U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling nationwide. Housing counselors can help you understand the law and your options, organize your finances and represent you in negotiations with your lender if you need this assistance. [Find a HUD-approved housing counselor near you](#) or call (800) 569-4287 or TTY (800) 877-8339.

7. Prioritize your spending.

After healthcare, keeping your house should be your first priority. Review your finances and see where you can cut spending in order to make your mortgage payment. Look for optional expenses-cable TV, memberships, entertainment-that you can eliminate. Delay payments on credit cards and other "unsecured" debt until you have paid your mortgage.

8. Use your assets.

Do you have assets-a second car, jewelry, a whole life insurance policy-that you can sell for cash to help reinstate your loan? Can anyone in your household get an extra job to bring in additional income? Even if these efforts don't significantly increase your available cash or your income, they demonstrate to your lender that you are willing to make sacrifices to keep your home.

9. Avoid foreclosure prevention companies.

You don't need to pay fees for foreclosure prevention help-use that money to pay the mortgage instead. Many for-profit companies will contact you promising to negotiate with your lender. While these may be legitimate businesses, they will charge you a hefty fee (often two or three month's mortgage payment) for information and services your lender or a [HUD approved housing counselor](#) will provide free if you contact them.

FORECLOSURE

Types of Foreclosure

Mortgages and Deeds of Trust

When a home loan is originated, a security instrument is required to tie the note to the collateral, those security instruments will usually be a mortgage or trust deed. So, as part of the documents signed when a home is purchased, there will be a promissory note where the borrower promises to repay the money they have borrowed to purchase the property and the security instrument attaching the note to the collateral and also specifying what constitutes loan default.

Judicial Foreclosures

Judicial foreclosures are normally conducted in states where a mortgage is used as the security instrument. The foreclosure process begins with the lender filing a complaint and a notice of Lis Pendens in the county where the property is located, these will normally be filed with the circuit court. After the complaint and notice are filed, all defendants must be notified of the court action by a process server, or in some cases, by mail. After the service of process is complete, the lender will seek an entry of judgment or summary judgment. The judgment will have the entire amount due the lender and set a sale date for the property. Newspaper publication of the upcoming sale will usually be required once a week for two or three weeks, then the property will be sold at public auction either by a clerk of the court or a sheriff. A certificate of sale will be issued by the court usually between a few days to a few weeks after the sale. The certificate of sale transfers ownership of the property to either the high bidder at the auction, or the lender if the lender was the high bidder. It is important to note that each state has specific procedures and timelines for this process that can be found in your state statutes.

Non-Judicial Foreclosures

Non-judicial foreclosures are normally conducted in states using a deed of trust as the security instrument. The process varies widely by state, with some states requiring nothing more than publication of the Notice of Sale, others will require two or three steps to complete the foreclosure process. In states where a Notice of Default is used, the Trustee will usually record the Notice of Default along with mailing the notice to the homeowner, wait through the statutory period for owner reinstatement, then record, mail to the homeowner and publish in the newspaper a Notice

FORECLOSURE

Step to a Foreclosure

Greatly simplified, the non-judicial foreclosure process consist of these three general steps.

Step One - First "notice" is Filed (i.e., Notice of Default or Notice of Sale)

Step Two - Sale Date Set

Step Three - Sale or Auction is Held

Step One: if the lender does not receive loan payments as specified in the deed of trust, it may file a document with the county recorder in which the property is located. The exact document varies by state, but may be a Notice of Default (NOD) or Notice of Sale. The notice must then be mailed to all parties with a recorded interest in the property (or with recorded notice requiring said notice) via certified or registered mail or both. The borrower is given a specified time frame in which to bring the loan current.

- Some real estate agents specialize in assisting borrowers at this stage of the transaction. A sale of the property may be arranged through which the lender will receive the full amount owed on the loan and the foreclosure does not proceed.
- Some lenders will also allow a "short sale" (see the Short Sales section of this booklet), where the lender agrees to accept less than the full amount of the debt. Again, a sale of the property and receipt by the lender of a pre-agreed amount will settle the loan and the foreclosure will not proceed.

Step Two: the lender or trustee sets a date of sale and notifies all the parties, including other lien holders, and state and federal taxing agencies. The sale notice must be posted and published for specified period of time before the sale.

Step Three: The trustee's sale or auction is held at the steps of the county courthouse, or other designated public location in the county where the property is located. Bidders are generally required to submit certified funds (cashier's check or money order) in the full amount that they are willing to bid (exception in the State Arizona where the winning bidder is required to submit a non-refundable deposit in the amount of \$10,00.00 with the remainder of funds due by 5:00 P.M. the next business day). Past due taxes or other senior liens become the responsibility of the

FORECLOSURE TIMELINE for California (non-judicial)

<i>Calendar</i>	<i>Action</i>
Start (Day 1-3)	Notice of Default recorded with county recorder with county recorder.
Within 10 Business days	Trustee mails Notice of Defaults to borrower(s) and anyone with a Special Request for Notice.
Within 1 Month	Mail Notice of Default to all parties with an interest in title.
Within 3 Month	Set sale date.
25 Days Prior to Sale Date	Send Notice of Sale to IRS, if applicable.
20 Days Prior to Sale Date	<p>Publish Notice of Sale.</p> <p>Post Notice of Sale.</p> <p>Mail Notice of Sale.</p> <p>Begin publishing Notice of Sale in an adjudicated newspaper (Must run 3 consecutive weeks)</p>
14 Days Prior to Sale Date	Record the Notice of Sale with county recorder's office.
7 Days Prior to Sale Date	Trustee cannot sell for 7 days after expiration of bankruptcy court order.
5 Business Days Prior to Sale Date	The borrower's right to reinstate expires.
Sale Date	The property is sold to highest bidder or reverts back to lender.

TAXES Foreclosure & Short Sale Guide

In addition to the damage it can do to a borrower's credit rating, foreclosure can also cause major tax consequences. Most people assume that a foreclosure will automatically "cancel" taxes, but this is usually not true. That is why it is important to involve a tax attorney or advisor in all considerations of foreclosure and alternatives to foreclosure.

Loans against personal property, such as a bank loan or seller carry-back loan to purchase an owner-occupied residence, are called "non-recourse" loans. Various state laws protect borrowers from personal liability on a purchase mortgage for the home they occupy. Under these types of "non-recourse" loans, the tax liability is the outstanding amount of the loan, or sales price if higher.

A greatly simplified example: The borrower owes \$100,000 on the home he lives in. Even if it is foreclosed upon or given as deed-in-lieu of foreclosure back to the lender. Or the lender accepts a short sale payoff, the borrower is still taxed as if the property had sold for \$100,00.

If the loan is a "recourse" loan, i.e. the borrower is personally liable if the property is sold for less than the amount owed to the lender, then the borrower has both personal liability and tax consequences. To obtain personal judgment against the borrower, the lender must instigate a judicial foreclosure. The borrower would be relieved of personal liability if the lender proceeds with a Trustee's Sale (or non-judicial foreclosure) on the property.

Again, a foreclosure, deed-in-lieu of foreclosure or short sale all involve a tax obligation which is computed as if the property were sold for its value or, in certain cases, if the debt exceeds the property's value.

Your Real Estate Agent is There to Help

Another possibility is a pre-foreclosure sale or even a short sale of the property, which avoids the foreclosure process. Some lenders also allow a deed-in-lieu of foreclosure in which the borrower signs the house over to the