



CONSUMER CONCERNS

Information for Advocates
Representing Older Adults

National Consumer Law Center®

Steps that Advocates Can Take to Help Older Homeowners Prevent Foreclosure

Foreclosure or the threat of foreclosure can be devastating for older homeowners. They fall behind on their mortgages for many reasons: sudden decreases in income due to the loss of a spouse; poor financial management brought on by mental impairment which contributes to nonpayment of tax bills, utility bills, service shutoffs, and liens against the property; failure to perform necessary repairs and maintenance which makes the property uninhabitable; and mortgage-related scams which make impossible demands on the homeowner's limited resources. All of these contributing factors can be addressed by skilled advocates—especially if the homeowner seeks assistance early. This issue of Consumer Concerns for Older Adults examines some of the measures that advocates can take to defend older homeowners at risk of foreclosure.

How Foreclosures Work

Foreclosure procedures vary from state to state. The procedures are established primarily by state statutes, by case law, and by local practice. In about half of the states, foreclosures proceed through the courts. First the lender or whoever owns the loan files a lawsuit in a court located near the property. Unless the homeowner files an answer to the lawsuit successfully contesting the foreclosure, a judgment is entered for the interest of the lender. The home is then sold under court supervision.

Other states have “non-judicial” foreclosures. Lenders foreclose by a simpler process which typically includes advertising the home for sale using a legal notice in a newspaper. If homeowners want to contest this type of foreclosure, they must file a lawsuit and ask the court to stop the sale. Sometimes if the homeowner wants the court to stop the foreclosure, the homeowner must file a bond to protect the lender. Unless the homeowner initiates a court proceeding, there is no judicial involvement in this type of foreclosure.

Some states allow both judicial and non-judicial foreclosures. Practicality and local custom usually dictate a lender's choice of one type over the other.

In the last few years, some states have established pre-foreclosure mediation or conference programs. Where they exist, the programs encourage lenders to consider alternatives to foreclosure in a more formal setting. The courts in judicial foreclosure states typically oversee these programs. In non-judicial foreclosure states, a state agency such as a banking regulatory agency or a state housing finance agency runs the program. In both settings, the lender and homeowner may have to comply with rules about appearing for sessions, exchanging documents, and negotiating over alternatives to foreclosure.

The programs vary in terms of whether the homeowner's participation is automatic. In many programs the homeowner must submit a formal request to participate within a set time frame. In most mediation programs, the lender cannot proceed to a foreclosure sale if it did not comply with the rules of the mediation program.

NCLC[®]
NATIONAL
CONSUMER
LAW
CENTER[®]

Advancing Fairness
in the Marketplace for All



Consumer Strategies When Foreclosure Is Threatened

When a homeowner first becomes worried about meeting mortgage payments, advocates can recommend that a series of steps be taken to reduce the risk of foreclosure.

Seek assistance from a lawyer or housing counselor. Because foreclosure is a harsh legal process, homeowners threatened with foreclosure should immediately obtain legal help. Possible sources of legal help are the neighborhood legal services office, a bar association panel of pro bono attorneys, or a program providing legal assistance for the elderly. A competent attorney can determine whether there are legal defenses to a foreclosure. Too often, homeowners either postpone consulting a lawyer until after the time to assert their legal rights has passed or walk away from their homes in frustration, leaving themselves without any equity and vulnerable to further action to collect on the debt. Homeowners can also seek the assistance of an experienced housing counselor. A list of counseling organizations approved by the U.S. Department of Housing and Urban Development (HUD) is available on the agency's website at <http://www.HUD.gov>. For each foreclosure situation, a counselor or lawyer must carefully evaluate the homeowners' objectives and interests. Homeowners should, however, avoid "quick fix" attorneys who may advertise or solicit through the mail from published foreclosure lists. Many times these practitioners will push the homeowner to file a bankruptcy prematurely. A bankruptcy may be necessary at some point. But, as with many things, proper timing may be critical. Other disreputable attorneys may push loan modifications regardless of whether the homeowner qualifies for this option or promote other types of foreclosure rescue scams that leave homeowners in a worse position.

Keep current on the mortgage payments, if possible. The homeowner should not pay credit card debts, doctor bills, or other lower priority debts ahead of mortgage payments. Skipping payments on lower priority debts for several months may result in phone calls, letters, and other collection activity. Skipping one or two mortgage payments may result in the homeowner losing a home.

Apply for income maintenance, tax abatement, and public assistance programs. Benefits provided by government and nonprofit agencies are a key source of assistance for individuals in financial distress. These resources can help older homeowners free their income for mortgage payments. Benefit programs to apply for may include fuel assistance and weatherization assistance, supplemental nutrition assistance program (formerly known as food stamps), and emergency home repair programs. Most municipalities also offer property tax abatements for reasons of age or hardship. For very low-income homeowners, particularly those who are recently widowed, advocates should also determine the homeowner's eligibility for Supplemental Security Income. The process of obtaining these benefits is often slow and difficult. When necessary, shepherd individuals through the bureaucratic maze, ensuring that application procedures are understood and that all documentation is properly assembled and delivered.

Apply for mortgage assistance programs. Some states and local governments have programs to help homeowners in financial distress. Pennsylvania, for example, has a long-standing mortgage assistance program to help homeowners facing foreclosure. The programs provide loans or other forms of assistance to help homeowners catch up on arrears or pay part of the monthly mortgage payment. Check with the state housing finance agency or local housing agency for more information.

Negotiate with the mortgage company or servicer. Homeowners should contact the lender or servicer early to seek assistance. It may be useful to ask the lender to agree to a temporary or permanent change in the mortgage terms, commonly called a "workout." Lenders realize that foreclosure can be a losing proposition and they may be better off keeping the homeowner in the home making whatever payments the household can afford. At other times, a lender or servicer may have signed an agreement or is otherwise required to work with consumers to evaluate alternatives to foreclosure. It is important to contact the lender as soon as the homeowner begins experiencing financial difficulties. Although consumers may attempt to arrange a workout on their own, it is best if they are assisted by an experienced attorney or housing counselor.

Some workouts that lenders may offer include:

- Payment arrangements including “forbearance,” “reinstatement,” or “repayment” agreements. These involve curing (paying off the delinquent amount) by making regular payments as they are due and making partial payments to pay down the arrears. A period of reduced or suspended payments may be involved to allow the homeowner to recover from whatever hardship caused the default.
- A loan modification, which is an agreement between the lender and the homeowner to change the terms of the original loan note resulting in a new monthly payment. With a modification, most of or the entire past due amount will be added back into the loan. Then one or more of the following changes will be made to the loan’s original terms: change the interest rate, mortgage type (for example, from an adjustable to a fixed rate loan), extend the number of years to repay the loan, reduce the principal amount of the loan or defer the repayment of a portion of the principal. Currently, the biggest loan modification initiative is the federal Home Affordable Modification Program (HAMP). Almost all loan servicers participate in HAMP and they are required to evaluate borrowers for modifications under the program’s guidelines.

Refinance the mortgage debt. If the homeowner has equity in the home, refinancing may allow the household to avoid foreclosure. A refinance called a “reverse mortgage” may be useful for older homeowners. The reverse mortgage may reduce or eliminate the need for a senior to make a monthly mortgage payment. Other conditions apply, however, and homeowners should seek counseling prior to considering a reverse mortgage. Advocates should keep in mind that some refinancing schemes are frauds. Even legitimate refinancing options that appear to be an improvement may be far more costly than the existing mortgage. The major disadvantages to refinancing residential debts are the increased finance charges that result from extending the repayment period, the possibility of having to pay points, the additional closing costs, and prepayment penalties on old mortgages. The feasibility of refinancing depends on whether the homeowner can obtain a loan at a reasonable rate, usually from a savings bank, a commercial bank, a credit union, or a legitimate mortgage company. If the homeowner has not yet fallen behind, refinance programs developed through government initiatives, such as the federal Home Affordable Refinance Program, may be a good option.

Consider selling the home before foreclosure. When foreclosure is threatened, a homeowner may wish to contact a local realtor to obtain an appraisal or a broker’s price opinion of the home’s value. Doing so provides the owner with information about the home’s marketability and its likely sale price without necessarily obligating the owner to sell. Most homeowners do not want to give up their homes, but sometimes no other solution exists. Selling the house may be painful, but it is always a better solution than letting a bank sell the house. If they find a buyer, homeowners may sell their home privately before a foreclosure sale takes place. If more is owed on the mortgage than the house can be sold for, it may be possible to get the mortgage company’s consent to sell the home at a price that is less than the amount owed. This process is called a short sale.

Consider filing bankruptcy. Homeowners who are about to lose their homes should carefully consider filing a petition in bankruptcy. This can stop the foreclosure process and allow them time to regroup and try to work out a plan to keep the home. Bankruptcy may also help them cure past defaults and make future payments. However, the bankruptcy option is complicated and it is a good idea to seek professional assistance from an attorney specializing in bankruptcy. Bankruptcy law requires almost all debtors to receive budget and credit counseling within 180 days before the bankruptcy case is filed. Homeowners who are considering bankruptcy should obtain credit counseling from an approved agency well before they need to file the bankruptcy case.

Deed in Lieu of Foreclosure. Homeowners often will be tempted to turn over their deed to the lender instead of fighting the foreclosure. In general, this is a good idea only if the borrower will receive something from the creditor in return for saving it the trouble of foreclosing. For example, if the home's value exceeds the amount of the indebtedness, the homeowner may want to ask the lender to agree not to pursue further collection actions. Some lenders will even agree to pay a small amount of cash for a deed in lieu of foreclosure in order to help the homeowner move. However, by turning over the deed to the mortgage holder, the consumer may forfeit any right to equity in the home. Similarly, the homeowner may have valid claims or defenses against the creditor that would be lost by turning over the deed. If the homeowner does offer the lender a deed in lieu of foreclosure, make sure that there is a written agreement giving the household sufficient time to vacate the home in order to find alternative housing and move in an orderly fashion.

Making Use of Consumer Law

Consumer law is powerful but complex. In any given transaction, several legal defenses may exist against creditor or seller claims, but detailed research and calculations are required in order to mount a defense. With financially burdened clients, it is important to recognize that the emotional stress caused by indebtedness can impair decision-making or lead to other difficulties beyond the debt crisis. This recognition can help head off other legal problems that could quickly develop.

The National Consumer Law Center (NCLC) is available to consult with legal advocates for the elderly on a wide range of consumer issues, and provides training to attorneys in consumer law. For more information, contact NCLC's Boston office at 617-542-8010 or email consumerlaw@nclc.org.

Additional Resources on Foreclosure Prevention

National Consumer Law Center, *Foreclosure Prevention Counseling* (3rd ed. 2013)

National Consumer Law Center, *Foreclosures* (4th ed. 2012)

National Consumer Law Center, *Guide to Surviving Debt* (2013 ed.)

<http://shop.consumerlaw.org/>

NCLC Publications for Elder Advocates

Available at <http://www.nclc.org/for-consumers/brochures-for-older-consumers.html>

Topics include:

- Dreams Foreclosed: Saving Older Americans from Foreclosure Rescue Scams
- Home Improvement Scams Alert
- Spending Down the House: A Quick Guide on Reverse Mortgages for Elder Advocates

Helpful Websites

Government

U.S. Department of Housing and Urban Development (HUD): www.hud.gov.

This site includes a list of HUD-approved housing counseling organizations.

U.S.D.A. Rural Housing Service (RHS): www.rurdev.usda.gov/rhs.

This site includes information on the RHS direct and guaranteed loan programs.

U.S. Department of Veteran's Affairs (VA): www.homeloans.va.gov/index.htm.

This site includes information on the VA guaranteed loan program.

Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov.

The CFPB regulates the markets for consumer financial products and services, including those related to mortgages and accepts complaints regarding lender or servicer misconduct.

National Association of Attorneys General (NAAG): <http://www.naag.org>.

State attorneys general often accept complaints regarding lender or servicer misconduct.

Foreclosure Prevention Initiatives & Legal Settlements

Making Home Affordable Program: <http://www.makinghomeaffordable.gov/pages/default.aspx>

This is the general website for the Making Home Affordable loan modification Program.

National Mortgage Settlement: <http://www.nationalmortgagesettlement.com/>

This is the official website for the National Mortgage Settlement, an agreement between 49 states attorneys general, the federal government and five servicers.

Private attorneys & Legal Aid Organizations

Legal Services Corporation: <http://www.lsc.gov/find-legal-aid>

Find a local legal aid organization on the LSC's website.

National Association of Consumer Advocates: www.naca.net

Provides a list of private consumer attorneys by state and practice area.

National Association of Consumer Bankruptcy Attorneys (NACBA): www.nacba.org

Contains general information about consumer bankruptcy issues as well as referrals to bankruptcy attorneys nationwide.



NATIONAL CONSUMER LAW CENTER®
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245

Phone: 617-542-8010
Fax: 617-542-8028
E-mail: consumerlaw@nclc.org
www.nclc.org

* NCLC is a consultant for lawyers and others on consumer issues affecting low- and moderate – income Americans. This brochure was supported, in part, by a grant from the Open Society Institute and from the Administration on Aging, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Points of views or opinions do not, therefore, necessarily represent official Administration on Aging policy. **May 2014**

© 2014 National Consumer Law Center®

NCLC®
NATIONAL
CONSUMER
LAW
CENTER®

Advancing Fairness
in the Marketplace for All

