



# CONSUMER CONCERNS

Information for Advocates  
Representing Older Adults

National Consumer Law Center®

## Steps That Advocates Can Take To Help Prevent Foreclosure

Foreclosure or the threat of foreclosure can be devastating for seniors. Older homeowners fall behind on their mortgages for many reasons: sudden decreases in income due to the loss of a spouse; poor financial management which contributes to nonpayment of utility bills, service shutoffs and liens against the property; failure to perform necessary repairs and maintenance which makes the property uninhabitable; a second mortgage or scams which make impossible demands on the homeowner's limited resources. All of these contributing factors can be addressed by skilled advocates--if homeowners turn to them in time. This issue of Consumer Concerns for Older Americans examines some of the measures that legal and non-legal advocates for the elderly can take to defend homeowners at risk of foreclosure.

### How Foreclosures Work

Foreclosure procedures vary from state to state. The procedures are established by state statutes, by case law, and by local practice. In about half of the states, foreclosures are court proceedings. First the creditor files a suit in a court located near the property. Unless the homeowner files an answer successfully contesting the foreclosure, a judgment is entered for the creditor. The home is then sold under court supervision.

Other states have "non-judicial" foreclosures. Creditors foreclose by simply 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 creditor. Unless the homeowner initiates a court proceeding, there is no judicial involvement in such a foreclosure.

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

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:

- **Get Legal Advice.** 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 deficiency claims. 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.
- **Keep Current on Home Payments.** The homeowner should not pay credit card debts, doctor bills or other low priority debts ahead of home mortgage payments. Skipping payments on low priority debts for several months may have few bad consequences. Skipping one or two home mortgage payments may subject the homeowner to loss of the home.
- **Apply for Income Maintenance, Tax Abatement and Public Assistance Programs.** Benefits provided by government and non-profit agencies are a key source of assistance for individuals in financial distress. These resources can help older homeowners free their income for home payments. Benefit programs to apply for may include fuel assistance and weatherization assistance, 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.
- **Negotiate with the Mortgage Company or Servicer.** It may be useful to ask the mortgage company to agree to a temporary or permanent change in the mortgage terms, commonly called a "workout." More and more creditors are realizing that foreclosure is a losing proposition for the lender, and that they are better off keeping the consumer in the home making whatever payments the household can afford. It is important to contact the lender early, 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 mortgage counselor. If the loan is guaranteed by a federal or state funded agency, the lender may be required to provide certain assistance and options to the homeowner to try to avoid foreclosure.

Some workouts that lenders may accept include:

- Payment arrangements including “forbearance,” “reinstatement,” or “deferral” agreements. These involve curing a default by making regular payments as they are due and making partial payments on the arrears.
  - Temporary interest rate reduction. Generally this will also require a reasonable plan to increase income to make future payments.
  - Recasting missed payments. This usually involves deferring the missed payments to the end of the loan.
  - Permanent interest rate reduction.
  - Extension of the loan period.
  - Reamortization/capitalization of arrears.
  - Reduction of the principal balance.
- **Refinance the Home Debt.** If the homeowner has equity in the home, refinancing may allow the homeowner to avoid foreclosure. A refinance called a “reverse mortgage” may be especially useful for seniors. Such a reverse mortgage may reduce or eliminate the need for a senior to make a monthly mortgage payment. Advocates should keep in mind, however, that many refinancing schemes are frauds. Even legitimate refinancing options that look like an improvement on closer inspection are 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. Most finance companies and certain mortgage companies do not make residential loans at reasonable rates and terms.
- **Consider Selling the House 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.

**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. Bank-

ruptcy 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 creditor instead of fighting the foreclosure. This is generally 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 creditor to agree not to seek further collection remedies. Some lenders will even agree to pay a small amount of cash for a deed in lieu 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 consumer may have valid claims or defenses against the creditor that would be lost by turning over the deed. If the consumer does offer the creditor a deed in lieu of foreclosure, make sure that there is a written agreement giving them sufficient time to vacate the premises in order to find alternative housing and move in an orderly fashion.

## Additional Resources on Foreclosure Prevention

National Consumer Law Center, Foreclosures (1st ed. 2005)

National Consumer Law Center, Repossessions (6th ed. 2005)

National Consumer Law Center, Stop Predatory Lending: A Guide for Legal Advocates (January 2002)

National Consumer Law Center, Surviving Debt (2006 ed.)

For more information on where to turn with questions on foreclosure defenses, contact NCLC's Boston office at 617/542-8010.

### About NCLC

Since 1969, NCLC has been providing legal advocates with technical and expert assistance, training, and publications that cover all major topics of consumer law. These services are now available to advocates representing older Americans.

In 1992, NCLC received funding from AoA to launch an Eldercare Initiative in Consumer Law, intended to improve access to and the quality of consumer representation for older Americans.

### Making Use of Consumer Law

Consumer law is powerful but complex. In any given transaction, several defenses may exist against creditor or seller claims, but detailed research and calculations are required in order to spot defenses. 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.

NCLC is available to consult with legal advocates for the elderly on a wide range of consumer issues, providing leading and local case law, analyzing contract documents for federal and state law compliance, defining factual and legal issues, identifying experts and legal resources to strengthen cases, and training attorneys in consumer law.



**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](mailto:consumerlaw@nclc.org)**  
**[www.nclc.org](http://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 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. June 2006.

© 2006 National Consumer Law Center®

**NCLC®**  
NATIONAL  
CONSUMER  
LAW  
CENTER®

Advancing Fairness  
in the Marketplace for All

