



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

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Dear Washington Homeowner,

The national foreclosure crisis may feel like it is in the past. However, for many Washington families trying to hold onto their home, it is very much a part of the present.

As Washington State Attorney General, I want to do everything I can to connect those families with help to stay in their homes.

That's why I am pleased to support this Washington Foreclosure Prevention Resource Guide. It is designed to provide practical tools, information and resources to help homeowners dealing with foreclosure issues. This guide was created by the Seattle-King County Asset Building Collaborative Foreclosure Prevention Action Team to provide homeowners statewide with a resource for consistent and uniform information.

If you are having problems paying your mortgage (or believe that you may in the future), or if you are behind on your payments and facing foreclosure, this guide is for you.

This guide provides:

- A comprehensive overview of your options;
- Community resources;
- Information about the foreclosure process in Washington state;
- Information on how to obtain a reputable housing counselor; and
- Tips on how to avoid foreclosure rescue scams.

Most importantly, we hope this guide helps give you the confidence to seek assistance as soon as possible.

In the unfortunate event you are the victim of a foreclosure scam, please call my office at 1-800-551-4636, or file a complaint online or in writing by going to <http://www.atg.wa.gov/FileAComplaint.aspx>.

My hope is that by reading this guide you will not only avoid a scam, but also find help to stay in your home. The sooner you act the more options you have. I wish you the very best in this endeavor.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson".

BOB FERGUSON
Washington State Attorney General





Washington State Department of Financial Institutions
P.O. Box 41200 Olympia, WA 98504-1200
1.877.RING.DFI • www.dfi.wa.gov

Dear Washington State Homeowners,

The Washington State Department of Financial Institutions understands how important it is to have accurate information and access to resources and assistance if you are having difficulties paying your mortgage or at risk of losing your home to foreclosure.

As the state regulatory agency charged with oversight of the mortgage industry, we know there is the potential for fraudulent companies and individuals to prey on Washington homeowners, particularly those in desperate situations trying to avoid losing their homes.

We hope this resource guide will provide the tools and assistance to help protect you, take the necessary steps to keep your home, or minimize the financial and emotional impact if you find yourself in a foreclosure situation. As you use this guide, we urge you to also make sure the people and organizations you work with are licensed professionals working to help you, not take advantage of you. You can verify a license by visiting www.dfi.wa.gov and clicking on “Verify a License” and entering the applicable information. If there is no licensing information available, you can call DFI at 1-877-RING-DFI (746-4334) for assistance.

There are also HUD-approved counseling agencies that can provide information on local, county, state and federal programs available to help you avoid foreclosure. These counselors are also working to help you avoid becoming a victim of fraud. Get connected with a counselor immediately by calling 1-877-894-HOME (4663).

If you feel you have been a victim of discriminatory or fraudulent mortgage, loan modification or foreclosure relief practices, please contact our offices immediately at 1-877-RING-DFI (746-4334) or file a complaint online at <https://dfi.wa.gov/file-complaint>. Our investigative teams are here to assist you. We hope the resources in this guide will help you avoid becoming a victim of fraud and help you remain in your home.

Sincerely,
Charles Clark, Director
Washington State Department of Financial Institutions



Washington State Department of Financial Institutions
“Leading the way in consumer protection and financial services regulation.”

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This Guide Only Addresses Mortgage Foreclosure

If you face home foreclosure by an entity other than your mortgage company—such as by your homeowner’s association or by your county for non-payment of property taxes--this guide is not designed to address your circumstances. For assistance with these types of non-mortgage foreclosures, you may contact Washington Homeownership Resource Center at 1-877-894-HOME (4663) (or visit their website at www.homeownership-wa.org), or you may contact Civil Legal Aid at 1-800-606-4819. Both of these services are free.

What Are the Warning Signs of Foreclosure?

Warning signs of financial distress:

Unexpected life changes can contribute to home foreclosures – especially changes affecting finances, such as:

- Loss of employment or reduction of hours
- Major illness or injury
- Divorce or separation
- Death of a spouse

It is difficult to think about foreclosure during times of crisis when you are focused on an unexpected problem or situation. The best way to protect yourself against foreclosure risks because of unexpected life changes is by developing a plan before problems arise.

If you have a "Plan B" in place, you won't have to organize your finances while you are stressed about finding a job or dealing with a major illness. You will already have a plan – you just need to follow it.



FINANCIAL WARNING SIGNS

There may not be a major life change to signal potential trouble – you simply may be having a difficult time properly managing your finances. Don't be fooled into thinking your credit card problems won't affect your mortgage. It is important to realize that financial difficulties in one area can, and often do, spill over into other areas. These difficulties may potentially result in financial problems that could lead to your home being foreclosed if you do not act quickly. Such difficulties include:

- Mortgage payment changes (changes in interest rate, property taxes, homeowner insurance, and/or other mortgage loan changes, etc.)
- Maxing out credit cards
- Using credit to pay for day-to-day expenses, such as groceries, utilities, etc.
- Being unable to pay your bills on time
- Paying only the minimum amount on credit cards
- Applying for new credit cards after maxing out existing ones
- Having to choose which bills and/or living expenses to pay first

Talk to a housing counselor or attorney immediately if you see these signs. You may be able to get your finances back on track before foreclosure becomes a reality.

- Call the Washington Homeownership Center at 1-877-894-HOME (4663) or visit their website at www.homeownership-wa.org to be connected with a HUD- approved housing counseling agency near you. This service is FREE!
- If you wish to consult with an attorney, you may contact Civil Legal Aid at 1-800-606-4819. **This service is also FREE.**

IMPORTANT TERMINOLOGY

Throughout this workbook, you may see words that you have often heard but are unclear about their definitions. Below are a few definitions that are important to know as you go through this guide. **A more detailed glossary is included in the *Tools for the Homeowner* section.**

HUD-Approved Non-profit Housing Counseling Agency – The U.S. Department of Housing and Urban Development (HUD) sponsors housing counseling agencies to provide free or low-cost advice on buying a home, renting, default, foreclosure avoidance, credit issues, and reverse mortgages. These organizations have extensive experience in counseling low and moderate-income families.

HUD-Approved Non-profit Housing Counseling Agency Counselor – HUD approves housing counseling agencies rather than individual counselors. Housing counselors are required to have at least six months of experience. HUD encourages the agencies to have their counselors obtain education and additional skills for their housing counseling programs.

Originating Lender – The entity that gave you the mortgage loan. Your originating lender may be different than the entity to which you send your mortgage payments. The originating lender will also be referred to as “lender” in this Guide.

Servicer – The entity to which you send your monthly payments. The lender has contracted with the servicer to handle your loan after closing. The servicer is your main contact for any issues you have with your mortgage loan. Sometimes referred to as loan servicer or mortgage servicer. In some cases, the servicer may also be the beneficiary of the loan (see definition below).

Servicing – The administration of the loan by the servicer from the time you obtain your mortgage loan until it is paid off. Administration of a loan includes the collection and application of payments, the payment of insurance and real estate taxes, and the maintenance of payment records and balances. Servicing also includes working with the borrower to resolve delinquencies.

Beneficiary – Washington law defines a beneficiary to be “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.”

Delinquency – Borrower’s failure to make mortgage payments on time.

Default – Borrower’s failure to make the loan payments as agreed in the promissory note or the workout plan.

Foreclosure – The legal process by which a homeowner’s right to a property is terminated when a beneficiary or lienholder takes possession of the property, usually because of the homeowner’s default. Foreclosure can also occur if a homeowner fails to pay property taxes. At a foreclosure auction, the mortgage beneficiary, through a company called a trustee, sells the property that secures a loan on which a borrower has defaulted. Ownership of the property is then transferred to the financial institution or purchaser of the property at the foreclosure auction. The institution then markets and lists the property for sale to recover the balance owed.

Grantor – “Grantor” means a person, or its successors, who executes a deed of trust to encumber the person’s interest in property as security for the performance of all or part of the borrower’s obligations.

Trustee – means the person designated as the trustee in the deed of trust. The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor. See RCW 61.24.010.

Borrower ‘Workout’ – Process where a servicer and a borrower develop a mutually acceptable agreement to resolve a loan default and avoid foreclosure.

Auction – An auction is a public sale in which the foreclosed property is sold to the highest bidder in order for the beneficiary to recover some or all of the outstanding debt.

Successor-in-Interest – Also known as an “SII.” A person who has gained a legal interest in the property from the borrower. Successors-in-interest may gain a legal interest in the property in several ways, including by the borrower’s will or by law after the borrower dies, or because they are awarded the property by the court in a divorce or separation case with the borrower.

Topic 1:

Understanding Mortgage Delinquency

- Are You Falling Behind on your Mortgage Payments?
- Delinquency Cycle of a Mortgage Loan
- Role of the HUD-Approved Housing Counseling Agency
- Release of Authorization Letter
- Finding a Housing Counselor



ARE YOU FALLING BEHIND ON YOUR MORTGAGE PAYMENTS?

Today's economic environment is very stressful. Many Washington residents are dealing with multiple personal challenges, including:

- Loss of employment
- Changes in mortgage payment
- Unpaid bills
- Caring for an elderly parent
- Reduction in income
- Divorce
- Sudden disability
- Medical Debt
- Other life-changing events

These events can affect a borrower's ability to make mortgage payments on time. When this happens, foreclosure may result.

If you are facing mortgage challenges and are at risk of default, it is important to:

- **Understand** the delinquency cycle of a mortgage and when foreclosure can occur
- **Contact** your servicer as soon as possible to discuss your situation
- **Contact** the Washington Homeownership Center at 1-877-894-HOME (4663)
- **Contact** the Foreclosure Prevention Unit, Northwest Justice Project at 1-800-606-4819 (Civil Legal Aid)
- **Seek** the advice of a HUD-approved housing counseling agency or a qualified attorney.

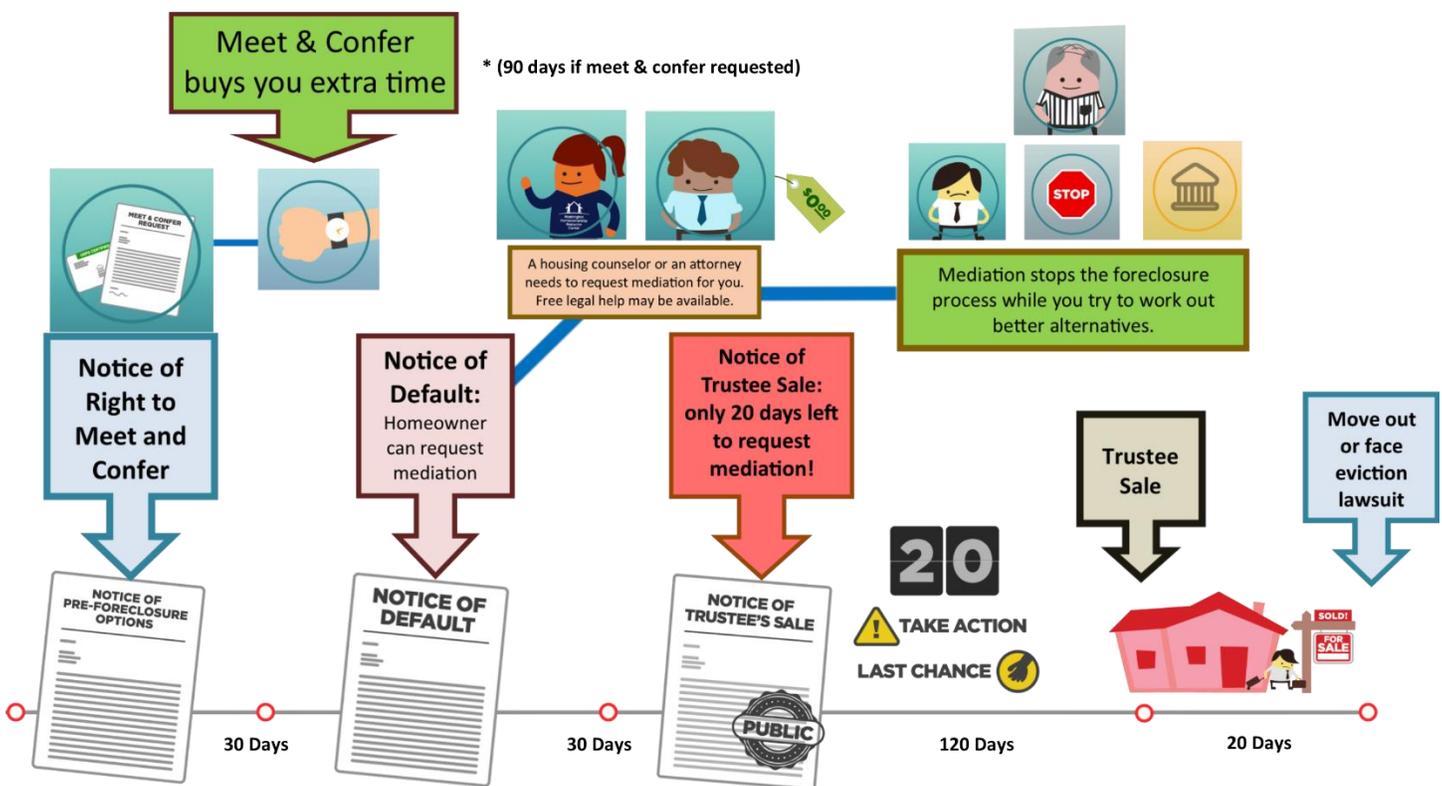
The sooner you begin working with your servicer and/or a housing counselor or attorney, the more likely the servicer will be able to find a way to keep you in your home.

Do not wait until you have missed a payment!

DELINQUENCY CYCLE OF A MORTGAGE LOAN

In Washington, virtually all home loans are secured by deeds of trust. Although a mortgage differs from a deed of trust, deeds of trust are commonly referred to as mortgages. An important difference in Washington between deeds of trust and mortgages is that deeds of trust can be foreclosed without having to start a lawsuit and take the homeowner to court. In other words, deeds of trust can be foreclosed non-judicially. The non-judicial foreclosure process takes at least 180 days (around six months) after the date of the borrower's first missed payment until the day of the foreclosure. Washington has several opt-in provisions that are designed to help homeowners fight foreclosure. If a homeowner chooses to opt-in to these programs, the foreclosure process can go beyond the 180-day minimum. A general foreclosure timeline appears below.

DEED OF TRUST FORECLOSURE TIMELINE (RCW 61.24)



(1) Deed of Trust must be executed and acknowledged. Deeds of Trust are subject to all laws relating to mortgages on real property. *RCW 61.12.010 and .020, 61.24.020, 64.04.010 and .020.*

(2) Default. The borrower is in default the first day after the payment was due. The foreclosure of a deed of trust cannot occur less than 180 days after the date of default. *See RCW 61.24.040(8).*

(3) Notice of Preforeclosure Options (NOPFO). If a payment is missed, a servicer may send a number of letters. The first notice that they are required to send by law is a notice that informs you of your right to a “meet and confer” with the servicer of your loan, which means that you can request an in-person meeting to discuss workout options. *RCW 61.24.031*

- If you do request a meeting, **make sure** to request the meeting **in writing** and send the request via certified mail within 30 days of the date of the NOPFO so that you have proof of making your request. A servicer is **required** to meet with you in person in the county where your home is located if you request the meeting in writing within the 30-day time frame.
- If you do not request a meeting, the servicer must wait *30 days* from the issuance of the NOPFO before it can continue on to the next step of the foreclosure process and send you a notice of default.
- If you request a meeting, the servicer must wait *90 days from the date of the NOPFO* before it can send you a notice of default.
- While the statute requires the beneficiary to meet with the homeowner, most often, the servicer will likely be the one to appear at the “meet and confer.” It is important to send your request for the “meet and confer” to the servicer of your loan.

(4) Notice of Default. A Notice of Default must be given at least 30 days before the Notice of Trustee’s Sale can be recorded or served. *RCW 61.24.030(8).*

- *Many homeowners may receive two different documents titled “Notice of Default.” It is important to distinguish between a Notice of Default sent directly from a servicer of the loan and a Notice of Default sent by a trustee that triggers a homeowner’s right to foreclosure mediation.*

(5) Mediation. *Any time after the homeowner has received the Notice of Default, and no later than 20 days after the Notice of Trustee’s Sale has been recorded,* the homeowner can ask a housing counselor or attorney to request foreclosure **mediation**. Mediation provides a neutral setting where both the homeowner and the beneficiary (or the beneficiary’s authorized agent) are obligated to act in good faith, exchange paperwork, and discuss alternatives to foreclosure. A homeowner cannot independently request mediation and **MUST** be referred to mediation by an attorney or a housing counselor. *RCW 61.24.163(1).* *For more information, see the Mediation section below at p 35.*

- If mediation is not requested, the servicer must wait *30 days* from the trustee’s issuance of the Notice of Default before it can request the trustee to publish the Notice of Trustee’s Sale.
- If mediation is requested, the servicer may not direct the trustee to publish the Notice of Trustee’s Sale until after mediation has taken place.
- Some beneficiaries are exempt from mediation and are listed on Washington Department of Commerce’s exempt beneficiaries’ website.

(6) Recording of the Notice of Trustee’s Sale. At least 120 days before the foreclosure sale, the trustee (not the beneficiary or servicer of the loan) must record, mail, and serve or post the Notice of Trustee’s Sale. *RCW 61.24.040(1).* (This is the first notice related to the foreclosure that is a public record.) The trustee must provide the borrower and the grantor with a Notice of Sale. The grantor must also be provided a Notice of Foreclosure. *RCW 61.24.040.* The trustee doing the foreclosure is often a successor trustee, which means that there should be an “Appointment of Successor Trustee” recorded with the Recorder’s Office prior to the foreclosure process commencing designating the trustee of the deed of trust.

(7) First Publication. The Notice of Trustee’s Sale must be published twice in a legal newspaper in the county in which the property is located. This does not necessarily mean the newspaper that you read, as some legal newspapers are owned by foreclosure companies and have very limited circulation. The first publication must be on or between the 35th and 28th day before the date of the auction. *RCW 61.24.040(3).*

(8) Opportunity to Cure Default. On any day prior to the 11th day before the sale, the borrower may cure the default (i.e. by making up missed payments) and make the trustee and beneficiary cancel the foreclosure auction. *RCW 61.24.090(1).* (Within 11 days before the sale date, the beneficiary has the right to demand

payment of the entire debt in full.)

(9) Second Publication. The second publication of the Notice of Trustee’s Sale must be published on or between the 14th and 7th day before the date of sale. *RCW 61.24.040(3).*

(10) Deadline for Motion to Restrain Sale. RCW 61.24.130(2) provides that no court may grant a restraining order or injunction of the sale unless the person seeking the restraint gives 5 days’ notice of the legal action to the foreclosure trustee. *RCW 61.24.130(2).* Injunctions or restraining orders are orders from a court that restrain someone from beginning or continuing an action threatening or invading the legal right of another. Also, if the homeowner files a bankruptcy petition at any time prior to the sale, the sale is automatically put on hold pursuant to 11 U.S.C. § 362.

(11) Foreclosure Sale also known as Trustee’s Sale. The sale must occur on a Friday. If Friday is a legal holiday, it may occur on the following Monday. *RCW 61.24.040(5).*

(12) Repossession of the Property from Former Owner. The purchaser at the Trustee’s Sale is entitled to take possession of the property on the 20th day after the sale, *RCW 61.24.060*, and may commence an unlawful detainer action (eviction) if the previous owner is still in the home. The previous owner may not be locked out or forced to leave without a court order. *Unless the previous owner has a written agreement in place regarding the date to vacate the property, it is important for the previous owner to vacate prior to the 20th day after the sale. An eviction filing is public record and will stay on someone’s background history and may make renting difficult for the individual in the future.*

(13) Repossession of Property from Tenant. Under Washington State law, *RCW 61.24.143*, requires the new owner of the property to send the tenant a written 60-day notice to the tenants after the foreclosure sale. The 60-day eviction notice notifies the tenant of the date by which he or she must vacate the premises. The new owner may initiate an unlawful detainer action (eviction) if the tenant does not vacate the property at the end of the notice period. *RCW 59.12.* The state law does not have a date that this rule will end. *For more information, see the Tenants’ Rights section (p. 70).*

(14) Continuance of Sale. At any time prior to the foreclosure sale, the sale can be continued by the trustee for up to 120 days after the original sale date. *RCW 61.24.040(6).*



What Happens If . . .

What happens if I do not make my payment on the due date of the loan?

The loan servicer expects to receive your payment by the due date. If the servicer has not received your payment by that date, your loan is delinquent. Most loans have a **Grace Period**, which is the length of time between the due date and the date when late fees begin to accrue. The promissory note contains the due date and any information about a grace period. The servicer may send a Notice of Pre-Foreclosure Options letter after the missed payment.

What happens after that?

The **Collections Department** may start contacting you between the **16th** and the **30th** of the month if the payment is still due.

What is the Collections Department?

The Collections Department is a division of the loan servicer that is responsible for obtaining and applying payments due on mortgage loans. The Collections Department will contact you to collect past due payments.

If the Collections Department has not been able to collect payments or make an acceptable arrangement with you, your account may be referred to the Loss Mitigation Department, also sometimes called the Home Preservation or the Work-Out Department.

CALL YOUR SERVICER IF YOU KNOW YOU'LL BE LATE AND ALWAYS RETURN THEIR CALLS!

(**Tip:** If you believe a debt collector is harassing you, you can submit a complaint with the Consumer Financial Protection Bureau online or by calling (855) 411-CFPB (2372). You can also contact your state's attorney general.)

What is Loss Mitigation?

- This is a division of the loan servicer that will work with you to attempt to create a plan to get you back on track with your mortgage payments.
- You will begin to receive letters from your servicer requesting that you call. **ALWAYS OPEN ANY LETTERS FROM YOUR SERVICER. ALWAYS ANSWER and RETURN THEIR CALLS!** This is the period where you may have other options available to you. If you have concerns about saying the wrong thing to the servicer, contact a housing counselor or attorney immediately.
- The servicer should make several attempts to contact you but may not engage in abusive or harassing behavior.

What happens after I am 60 days late?

If you have not yet received a Notice of Pre-Foreclosure Options letter, the servicer may send this out to you. If you receive the NOPFO, remember that it is important to respond with a written request for a meeting to discuss your work-out options.

If you have submitted an application for a loan modification or other workout option, the loan will have likely been transferred to the Loss Mitigation Department.

If you received a NOPFO Letter and did not respond, the servicer may hire a trustee that may initiate foreclosure proceedings against your property.

NOTE: Servicers may send someone to physically inspect the property to verify that the borrower has not abandoned the property (sometimes between 45-60 days). This is a normal process. Do not be alarmed but keep in mind that the servicer does not have the right to enter your home, intimidate or harass you. Call your local law enforcement if you feel threatened.

What happens once I receive a Notice of Default from a trustee?

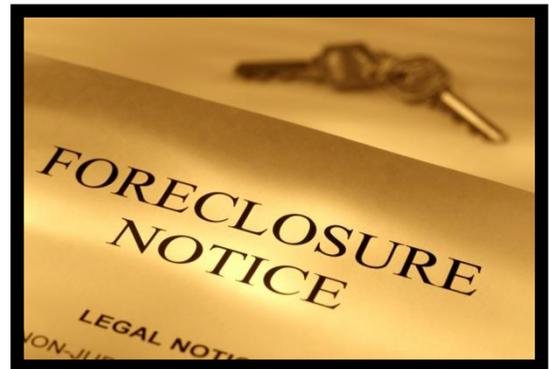
- If the beneficiary of your loan is not exempt from the mediation program, you may be referred to mediation under the Foreclosure Fairness Act, but only an attorney or housing counselor may make the request to the Department of Commerce.
- Act quickly and contact a housing counselor or qualified attorney to discuss your options and get a referral to mediation to discuss whether or not mediation would be a good fit for your situation.
- Begin gathering documents that would be required for mediation in the chance that you are referred to mediation.
- If you have not done so, begin setting aside money in at least the amount of what you would need to pay on a modified loan payment in case you are approved for a loan modification or need to use that money to move.

What happens after the Notice of Trustee's Sale is filed and recorded?

- You will only have 20 more days to be referred to mediation. If you are not referred to mediation prior to the 20th day after the Notice of Trustee's Sale is issued, it may be difficult to get your servicer to agree to mediation voluntarily.
- It is now completely up to you to contact your servicer directly or through a housing counseling agency or a qualified attorney as soon as possible.
- If you miss the mediation deadline or the beneficiary of your loan is exempt for the mediation process, you can still apply for workout options.
- Unless you act quickly, your house will be sold at auction on the date in the notice.

NOTE: The details of the process may vary depending on your mortgage servicer.

The trustee sends a "Notice of Trustee's Sale," setting a sale date no sooner than 120 days after the notice is recorded with the county records office. The trustee must send a copy of this notice by certified mail within 5 days after recording. No further notice is required. However, in addition to mailing the Notice of Trustee's Sale, the trustee must post the Notice of Trustee's Sale on the home (this could be right after the Notice of Trustee's Sale is recorded). The trustee must also publish the Notice of Trustee's Sale in a newspaper at two different times, once no later than 4 weeks before the sale and again no later than a week before the sale.



Do I still owe my mortgage if my house is sold at auction?

After a non-judicial foreclosure, the foreclosing beneficiary cannot pursue the former homeowner for the difference between the loan balance and the value of the property (known as deficiency). In other words, even if the house sells at foreclosure for less than the beneficiary is owed, the balance of the debt is forgiven. However, if there are two deeds of trust on a house, and the first deed of trust is foreclosed, the borrower's liability on the loan secured by the second deed of trust is not extinguished. The beneficiary of the second loan may pursue the borrower for the debt.

If you receive a Notice of Default/Trustee's Sale Letter, contact your servicer immediately to determine whether you qualify for solutions to prevent foreclosure. Additionally, HUD-approved housing counseling agencies or attorneys can assist you with *free* foreclosure prevention counseling. Call the Washington Homeownership Center at 1-877-894-HOME (4663) to be connected with a HUD- approved housing counseling agency near you. This service is FREE. You may also qualify for free legal assistance from the Northwest Justice Project. Call 800-606-4819 to see if you are eligible.



**BEWARE OF COMPANIES THAT CHARGE FEES
TO HELP YOU PREVENT FORECLOSURE.**

**SEVERAL OF THESE COMPANIES' PRACTICES
ARE UNDER INVESTIGATION AS SCAMS—
EVEN IF THEY SAY THEY ARE A LAW FIRM.**

**HUD-approved counseling agencies offer
FREE services.**

ROLE OF THE HOUSING COUNSELOR



If you are facing mortgage delinquency, a HUD-approved housing counseling agency counselor can work with you to find the solution that best fits your situation. He or she will require very specific information from you as the homeowner. The more information you provide the housing counselor, the better he or she can assess your situation, needs, and expectations.

The counselor will help you assess your financial situation, lay out your options, and help you negotiate with your servicer. The counselor is familiar with the various workout arrangements that servicers will consider and will know what course of action makes the most sense for you and your family. In addition, the counselor can call the servicer with you or on your behalf to discuss a workout plan.

You can protect yourself from future credit problems by meeting with a housing counseling agency **before** your mortgage payments fall too far behind!

The Housing Counselor will help you establish a monthly budget plan to ensure you can meet all of your monthly expenses, including your mortgage payments. Your personal financial plan will show how much money you have available to make the mortgage payments. This analysis will help you and the servicer determine whether a reduced or delayed payment schedule will benefit you. In addition, a counselor will have information on services, resources, and programs available in your local area that may provide you with additional financial or legal assistance.

The services of a HUD-approved housing counseling agency are provided at no cost to the homeowner. Do not pay any upfront fees, and if the counselor asks for payment, contact the Washington Homeownership Information Hotline at 1-877-894-HOME to see if he or she is a reputable counselor. (See the *Beware of Scams* section in this workbook for additional information). You can also call the Northwest Justice Project at 800-606-4819 if you have legal issues that might affect your ability to negotiate with your bank such as divorce, probate or bankruptcy.

The housing counselor will need to speak with your servicer to obtain information about your loan such as loan balances, any arrearages, and current payment amounts. Your servicer must receive written permission from you before speaking with the housing counselor about your loan. You will be asked to sign an *Authorization to Release Information* form. Without this authorization, the servicer will not share any information with the housing counseling organization.

Call the Washington Homeownership Center at 1-877-894-HOME (4663) to be connected with a HUD-approved housing counseling agency near you. This service is FREE! To find the nearest housing counseling agency, call the Homeownership Hotline at 877-894-4663 (toll-free) or (206) 542-1243 in Seattle. You may also locate a HUD-Approved Housing Counselor by contacting the Consumer Financial Protection Bureau at www.consumerfinance.gov/find-a-housing-counselor/.

For legal assistance, call the Northwest Justice Project's Foreclosure Prevention Hotline at 800-606-4819.

RELEASE OF AUTHORIZATION LETTER

- Sample -

This letter advises your mortgage servicer that a HUD-approved housing counseling agency, or attorney, will be speaking with the bank on your behalf. The agency's counselor or an attorney will provide their version of this form. This sample is included for information purposes only.

Date _____

Servicer Name _____

Servicer Street Address _____

Servicer City, State, Zip _____

Re: Loan Number _____, Property address _____

Dear Loss Mitigation Manager:

We the undersigned, hereby authorize _____ (HUD-Approved Non-profit Housing Counseling Agency or attorney) to act on our behalf in all manners relating to our mortgage loan in the original amount of \$_____ for the property located at _____ (include the complete street address, city, state and zip code), including the signing of all documents relating to this matter.

Any and all acts carried out by _____ (HUD-Approved Non-profit Housing Counseling Agency) on our behalf shall have the same effect as acts of our own.

This authorization is valid until further written notice.

Sincerely,

Borrower name(s) _____

Borrower phone number(s) _____

Borrower social security number _____

Sign only after you have verified that the housing counselor or attorney is legitimate.

NOTE: To find out if the housing counseling agency is HUD certified you can search on www.HUD.gov

To determine if your attorney is licensed in Washington State, you may check the WSBA Lawyer Directory at:

<https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx>

FINDING A HOUSING COUNSELING AGENCY

To find the nearest housing counseling agency,
call the Homeownership Hotline at 877-894-4663 (toll-free)
or (206) 542-1243 in Seattle.

For legal assistance, call the Northwest Justice Project's Foreclosure
Prevention Hotline at 800-606-4819.

Topic 2:

Understanding Your Financial Situation

Preparing for your Conversation with the Servicer or HUD-Approved Non-profit Agency Housing Counselor or Attorney

- Think about Your Situation
- Writing A Hardship Letter
- What is Your Income
- Where is Your Money Going?
- Creating a Financial Crisis Budget
- What are Your Assets?
- Can You Afford to Keep Your Home?



THINK ABOUT YOUR SITUATION

When you talk to your loan servicer, housing counselor, or attorney be prepared to tell them about your situation. Use this worksheet to summarize your circumstances. Try to be as accurate and detailed as you can.

Have you missed any payments?

If so, how many payments have you missed?

Why have you missed payments?

How have you tried to fix your financial situation?

Do you expect your situation to change soon?

Do you have any other resources to help you?

Once you complete this exercise, you will be ready to write a **Hardship Letter**. Servicers will typically require that you submit a Hardship Letter when requesting assistance.

HOW TO WRITE A HARDSHIP LETTER

A financial hardship results from an involuntary reduction in income or an unavoidable increase in expenses.

Common Involuntary Reductions of Income:

- Mandatory reduced hours or hourly wage
- Underemployment after loss of previous job
- Death of a borrower
- Decline in business earnings if self employed
- Permanent or short term disability
- Serious illness of a household member
- Divorce
- Unemployment

Common Unavoidable Increases in Expenses:

- Major medical expenses
- Disaster
- Urgent property repairs
- Increase in child care expenses
- Mortgage loan and payment changes

A hardship letter is a brief overview of the homeowner's situation. It is ideally only five paragraphs and no more than four pages.

The letter must include:

- Homeowner name(s), address(s), and phone number(s)
- Loan number(s)

The *first paragraph* should include:

- Details about the loan or property, such as number of months delinquent, property value, or equity

The *second paragraph* should include:

- A matter-of-fact description of the reason for the default—avoid blaming others for what occurred

The *third paragraph* should provide an overview of the homeowner's financial situation, such as:

- Actions the homeowner has taken to reduce expenses and increase income
- Financial counseling or other steps the homeowner has taken to resolve the situation
- The amount of money the homeowner has saved to pay towards the delinquency

The *fourth paragraph* should briefly outline the desire to prevent foreclosure, including:

- Reasons why the homeowner believes he or she will succeed in coming current on the mortgage payments
- A demonstration of the homeowner's commitment to keeping the home

The *last paragraph* should indicate the preferred times and methods for contacting the homeowner (and his or her housing counseling agency, if applicable).

Documents to submit with your loss mitigation application include, but are not limited to:

- Financial statement
- Income and expense verifications
- Documents that support or verify the hardship
- Verification for anticipated changes in income or expenses
- Any other documents requested by the servicer or counselor

Hardship Letter

- Sample -

Date

Servicer's Name

Servicer's Address

Re: Your Loan Number

Dear Loss Mitigation Manager:

My name is/Our names are _____ and I've/we've lived at our home at [Address] for ___ years now. I'm/We're writing to you to explain why I/we have unfortunately fallen behind on our monthly payments and are in need of your help.

(Explain your hardship. Include dates and specific incidents that caused you to fall behind and if the hardship has been overcome and if so, explain how.)

Example: "My income has been reduced (or lost) due to unemployment/ underemployment/ reduced job hours/ reduced pay/ or a decline in self-employed business earnings." Or, "my household financial circumstances have changed: there has been a death in the family/ serious or chronic illness/ permanent or short-term disability/ increases in family responsibility." (provide details)

Example: "My/Our expenses have increased. I/We have sat down to go over my/our financial situation. *Sample explanations include:* "Monthly mortgage payment has increased or will increase, high medical and health-care costs, unexpectedly high utility bills, increase in property taxes, or my cash reserves are insufficient to maintain the payment on my mortgage loan and cover basic living expenses at the same time." (provide details)

I/We have decided to make the following sacrifices in order to ensure that we can pay our mortgage on time. I have met with a housing counselor and have saved \$3,000 to apply toward late payments. (Also explain what steps you have taken to correct your financial position, such as cutting back on spending, cancelling services or activities, and meeting with credit counseling services.)

Thank you again for your time. We truly hope that you will consider working with us. We truly wish to save our home from foreclosure and are anxious to get this settled so that we can move on.

Sincerely,

(Ask everyone in your family to sign the letter.)

Address, City, State, Zip Code

Include your phone number and any alternate phone numbers

WHAT IS YOUR INCOME?

Your servicer and housing counselor or attorney will need to know *all* of your current household income. Before you speak with them, complete the following worksheet. Although this worksheet asks for net income amounts (take-home pay) for budgeting purposes, be sure to have gross income amounts available for the servicer, counselor, or attorney as well. It is important that these amounts be accurate and exact.

MONTHLY HOUSEHOLD INCOME:

| Sources of Income Use Net Income (Take Home Amount) | Exp. Date (if applicable) | Homeowner A | Homeowner B | TOTAL A & B |
|---|---------------------------------|-------------|-------------|----------------|
| Primary Job | | \$ | \$ | \$ |
| Second Job | | | | |
| Social Security/ SSI/SSDI | | | | |
| Child or Spousal Support | | | | |
| Unemployment Compensation | | | | |
| Workers Disability Compensation | | | | |
| Veterans Benefits | | | | |
| Retirement Benefits | | | | |
| Monies from Boarders or Roommates | | | | |
| Childcare assistance | | | | |
| Housing assistance | | | | |
| Rental income from other homes owned | | | | |
| Other | | | | |
| Other | | | | |
| Total for Homeowner | | \$ | \$ | |
| Total Household Income (A + B) | | | | \$ |

Include income for *all* those living in the home. If the amount changes from month to month, look at your year-to-date amount and determine an average.

NOTE: Make sure you let your servicer know if you expect a change in income in the near future.

BUDGET WORKSHEET: WHERE IS YOUR MONEY GOING?

Your loan servicer and/ or housing counselor will need to know **all** of your expenses. Before you speak with them, complete the following worksheet. Make sure to include every expense in your household.

| Monthly Expenses | | | |
|--|----|------------------------------------|----|
| COLUMN 1 | | COLUMN 2 | |
| Shelter* | | Contributions & Gifts | |
| Mortgage Payment | \$ | Church Donations | \$ |
| Homeowner Association Dues | | Miscellaneous Donations | |
| Home Maintenance | | Gifts | |
| Taxes & Insurance (if not included in mortgage payment) | | | |
| Food | | Recreation | |
| Groceries | \$ | Club Dues/Gym Membership | \$ |
| Cleaning Supplies/Paper Products | | Newspapers/Magazines/Books | |
| Food Away From Home-Meals Out | | CDs/Music | |
| Tobacco/Alcohol | | Movies | |
| | | Hobbies | |
| Utilities (Use monthly amounts) | | Sports | |
| Gas/Electric | \$ | Vacations | |
| Phone | | Entertainment | |
| Cell/Mobile Phone | | Lottery Tickets | |
| Water/Garbage/Sewer | | Gambling | |
| Insurance | | Other Expenses | |
| Life/Disability | \$ | Allowances for Children | \$ |
| Auto | | Day Care/Child Care | |
| Health | | Babysitting | |
| | | Postage | |
| | | Cable/Satellite TV | |
| Transportation | | Other services | |
| Gasoline | \$ | Pets | |
| Repairs/Maintenance | | Internet Service | |
| Registration/License | | Monthly Obligations | |
| Bus/Carpool/Ferry | | Alimony/Child Support | \$ |
| Parking/Tolls | | Total Monthly Auto Loan Payments | |
| | | Total Monthly Credit Card Payments | |
| Education | | Other Monthly Obligations | |
| Tuition | \$ | | |
| Books | | | |
| Special Lessons/Classes | | | |
| Sports/Activities | | | |
| Health Care | | Clothing | |
| Medical (do not include if premiums are deducted from paycheck) | \$ | New purchases | \$ |
| Dental Insurance (do not include if premiums are deducted from paycheck) | | Dry Cleaning, Laundry | |
| Prescriptions | | | |
| Personal Care | | | |
| Cosmetics/Hair Salon | \$ | | |
| Nails | | | |
| Other Personal Expenses | | | |
| COLUMN 1 TOTAL: | \$ | COLUMN 2 TOTAL: | \$ |
| COLUMN 1 + COLUMN 2 = TOTAL EXPENSES: | | | \$ |

* If you own more than one home, be sure to include expenses for each home.

CREATING A FINANCIAL CRISIS BUDGET

There are three types of expenses—fixed, variable and discretionary. This classification helps you determine what expenses you may need to reduce or eliminate.

What are your **fixed expenses**? These expenses have set or fixed payments on a weekly, monthly or annual basis. You know what the amount will be. Examples include your car payment or insurance payment.

What are your **variable expenses**? These expenses can change, fluctuate or vary from month-to-month depending on usage or where obtained. Examples include utility bills, childcare costs, gas for automobile and groceries. Review these expenses over several months to determine an accurate amount.

What are your **discretionary expenses**? These items are not essential to your well-being and, if needed, will be the first expenses to be reduced or eliminated. Examples include holiday shopping, eating out, hairdresser and entertainment. Estimate what you spend on these expenses each month.

Experiencing Financial Crisis - Tips on Creating a Crisis Budget

The crisis budget is a temporary budget meant to help you through a financial crisis. You must make DRASTIC changes for at least 90 days to take control of your finances. The crisis budget is designed to help you determine and ultimately reach your financial goals. Keeping in mind that the budget is only temporary should make it easier to give up things like entertainment and personal spending. Be aware that servicers will often request bank statements to see your income and expenses. Large purchases, multiple withdrawals, or withdrawals that exceed \$250 may cause the servicer to take a negative view of your situation. Withdrawals or transactions at casinos, liquor stores, gun shops, and tobacco stores may also cause the servicer to determine that you are not in a position where you are able to save your home from foreclosure. Begin eliminating such purchases immediately so that they do not appear on your bank statements.

Prioritize your monthly expenses and payments. Find ways to increase income and drastically decrease expenses. Ask yourself...

- ❖ What expenses can I eliminate (or reduce) for the next 90 days?
- ❖ What ways can I get more income and cash flow coming into my household?

Cutting expenses and managing a financial crisis is possible, but it takes a lot of commitment. Have a family meeting and work together to figure out how you can make the situation better. Everyone in the household should be allowed to contribute to the success of your plan. Good communication and a positive attitude are the keys to success during crisis!

TAKE ACTION!

1. Complete the budget worksheet
2. Look at the expenses you have recorded on the worksheet and make a note next to each one indicating whether you can reduce or eliminate the expense.



WHAT ARE YOUR ASSETS?

List your household assets. Think about what you are willing to do in order to improve your current financial situation. Can you (or will you) sell some of your assets? What assets should you liquidate? Are you willing to make some changes to your lifestyle? A certified housing counselor can help you determine your options and provide specific recommendations.

Record your assets on the chart below.

| Household Assets | Column 1 | Column 2 | Column 3 |
|-------------------------------------|----------|-------------|----------|
| Description | Value | Amount Owed | Sell? |
| a) Automobile #1 | \$ | \$ | \$ |
| b) Automobile #2 | \$ | \$ | \$ |
| c) Cash on Hand Over \$100 | \$ | \$ | \$ |
| d) Checking Account | \$ | \$ | \$ |
| e) Savings Account | \$ | \$ | \$ |
| f) Anticipated Tax Refunds | \$ | \$ | \$ |
| g) Money Market Funds | \$ | \$ | \$ |
| h) Stocks/Bonds/CDs/Annuities, etc. | \$ | \$ | \$ |
| i) IRA / Keogh Accounts | \$ | \$ | \$ |
| j) 401k/Retirement Accounts | \$ | \$ | \$ |
| k) Computer/TV/Electronics | \$ | \$ | \$ |
| l) Furniture | \$ | \$ | \$ |
| m) Boats / Jet Skis | \$ | \$ | \$ |
| n) RV/ Recreational Homes | \$ | \$ | \$ |
| o) Motorcycles / Snowmobile | \$ | \$ | \$ |
| p) Farm Equipment | \$ | \$ | \$ |
| q) Trailers | \$ | \$ | \$ |
| r) Other Property | \$ | \$ | \$ |
| s) Other | \$ | \$ | \$ |
| Total | | \$ | \$ |

What is your current lifestyle like and what changes are you willing to make?

Eating out: ____

Entertainment: _

Toys/Luxuries: _

Cable TV: _____

Cell phone: _____

Other: _____

CAN YOU AFFORD TO KEEP YOUR HOME?

Based on what you earn, spend, need, and can sell, are you able to keep (afford) your home?

Income and Expenses:

1. Total Monthly Income \$_____ (Total Household Income from *What Is Your Income?* on page 22)
2. Total Monthly Expenses \$_____ (From *Where is Your Money Going?* on page 23)
3. Total left over for increased \$_____ (Line 1 + Line 2 above) mortgage payments or emergencies

Cash Available/Needed:

4. Cash Available \$_____ (Add D, E & F under Column 1 from *What are Your Assets?* on page 25)
5. Assets You Can Sell \$_____ (Column 3 total from *What are Your Assets?* on page 25)
6. Total Cash Available \$_____ (Line 4 + Line 5 above)

Consider the HAMP target payment of 31% of gross monthly income for those who are eligible for that program.



Topic 3: Know Your Mortgage



- Gather Your Loan Documents
- What Kind(s) of Loan(s) Do You Have?

GATHER YOUR LOAN DOCUMENTS

Gather all of your mortgage loan documents. It is important that you fully understand the terms of your mortgage. A housing counselor or licensed attorney can help you navigate through them. These documents may include:

- ❑ **Promissory Note** - This is the legal evidence of indebtedness and formal promise to repay the debt. It sets out your loan amount, payment date, payment amount or how your payment amount will be determined, and maturity date. It also includes the penalties for late payments and describes the steps that the beneficiary and servicer can take if you fail to make your payments on time.
- ❑ **Deed of Trust** - The deed of trust helps to verify and protect the legal interest in a property. The property is deeded by the title holder (trustor) to a trustee (often a title or escrow company) which holds the title in trust for the beneficiary.
- ❑ **Adjustable Rate Mortgage Rider (ARM Rider)** - Adjustable-rate mortgages (ARMs) are loans with interest rate and payment changes. ARMs may start with lower monthly payments than fixed-rate mortgages.

There are two important considerations:

1. Adjustment period – How often the interest rate changes and when the payment amount changes
2. Borrower notification – When you will be notified of the change

The interest rate on an ARM consists of two parts: the index and the margin. The index determines how the interest rate will change and the margin is an amount that is added to the index to determine the new interest rate. There are different types of ARMs: hybrid ARMs, interest-only ARMs, and payment-option ARMs.

Prepayment Penalty Rider - A prepayment penalty allows the beneficiary or servicer to charge the borrower additional interest (typically six months) when a mortgage is repaid during the penalty period, which is usually somewhere in the first three to five years of the mortgage. If a mortgage contains a prepayment penalty, this should be clearly stated in the mortgage disclosures, mortgage note, and/or prepayment penalty rider to the note.

TIL (Truth in Lending Disclosure Statement) or Loan Estimate - This document must be provided at application of the loan and at closing on certain loans. It shows the estimated total costs of borrowing, expected payment amounts over the life of loan, and other significant features of your loan.

HUD 1 Settlement/Closing Estimate – This document contains all the costs to you that are associated with the purchase of your home and the loan. It is provided to you at the loan closing.

Last Two Mortgage Statements- This document contains information regarding the current status of your loan.

WHAT KIND(S) OF LOAN(S) DO YOU HAVE?

| | First Mortgage | 2 nd Mortgage (Home Equity Line/Loan) | Where to find the information |
|---|---|--|----------------------------------|
| Original Mortgage Lender | | | Deed of Trust |
| Original Loan Amount | | | TIL/Loan Estimate; Note |
| Monthly Payment | | | TIL/Loan Estimate; Note |
| Monthly Due Date | | | TIL/Loan Estimate; Note |
| Closing Date of the Loan | | | Deed of Trust; Note |
| Number of Payments | | | TIL/Loan Estimate; Note |
| What is my Loan Type? | | | |
| | <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Conventional <input type="checkbox"/> USDA <input type="checkbox"/> Other | | HUD 1/Closing Estimate |
| Mortgage Insurance | | | HUD 1/Closing Estimate |
| What are my Loan Terms? | | | |
| Fixed Rate | | | TIL/Loan Estimate; Note |
| Adjustable Rate (ARM) | | | ARM Rider; Note |
| Initial Interest Rate | | | ARM Rider; Note |
| Index | | | ARM Rider; Note |
| Margin | | | ARM Rider; Note |
| Adjustment Date | | | ARM Rider; Note |
| How often the loan adjusts | | | ARM Rider; Note |
| Interest Rate Adjustment terms | | | ARM Rider; Note |
| Payment Adjustment terms | | | ARM Rider; Note |
| Interest only payments | | | |
| Other Loan Type | | | |
| Information included on the monthly mortgage statement | | | |
| Outstanding Balance | | | |
| Mortgage Insurance | | | |
| Homeowners Insurance | | | |
| Taxes Escrowed | | | |
| Insurance Escrowed | | | |

***ABBREVIATIONS:**

Note: Promissory Note

TIL: Truth In Lending

HUD 1: Settlement Closing Statement

ARM: Adjustable Rate Mortgage

OPTIONS TO KEEP YOUR HOME

Your available loss-mitigation options depend on the investor, the type of loan you have, and what the beneficiary is able to negotiate.

Refinance – A new mortgage on the loan with no change in ownership. The ability to refinance a loan requires that the borrower not be delinquent on their mortgage payment. To be eligible for a refinance there may need to be equity in the property; however, some programs do allow refinances with little or no equity.

Repayment Plan – Plan where the total amount of delinquent payments is distributed over a period of time, usually no more than 12 months. The monthly amount is added to the regular mortgage payment, resulting in a higher payment until the delinquent amount has been repaid. This repayment plan brings the account current within a pre-determined period of time.

Loan Modification – A modification of the loan term with no change in ownership. Past-due interest and escrow are applied to the unpaid principal balance, which is then re-amortized over a new term. Rate adjustments, term extensions, principal forgiveness, and principal forbearance may be considered. Some loan modifications require a trial payment plan for approximately 3 to 4 months before the loan modification will be made permanent. A loan modification results in permanent, contractual changes in one or more mortgage terms. Additional loan fees may be involved based on the type of mortgage and the investor. A loan modification immediately brings the account current.

Forbearance – A temporary reduction or suspension of a borrower's payment. The repayment plan is based upon the customer's financial situation. A forbearance may be an option for borrowers experiencing temporary unemployment or medical issues. Because of the long-term implications, this option is generally only available in severe hardship cases.

Bankruptcy – A legal procedure for dealing with debt problems of individuals and businesses that may or may not allow you to keep your home. Be sure to seek the advice of an attorney if you are considering this option. *See Options to Not Keep Your Home for more information.*

IMPORTANT UPDATE



As of December 30th, 2016, the federal government's Making Home Affordable programs are NO LONGER AVAILABLE as an option for most homeowners.

As of December 30th, 2016, the Home Affordable Modification Program is still available for FHA and VA loans, but otherwise **no new requests for assistance under any Making Home Affordable program will be accepted.**

If you are seeking help with your mortgage, you can find a housing counselor by calling the Washington Homeownership Center at 1-877-894-HOME (4663), visiting the WHRC website at www.homeownership-wa.org.

You can seek a legal aid attorney by calling the Northwest Justice Project Foreclosure Prevention Unit at 1-800-606-4819.

MEDIATION

A Washington law (the Foreclosure Fairness Act, RCW 61.24.163) gives homeowners in foreclosure the right to request mediation.¹ Mediation provides a neutral setting where both the homeowner (the “borrower”) and the “beneficiary”² are obligated to act in good faith, exchange paperwork, and discuss alternatives to foreclosure. If the homeowner timely requests mediation through a housing counselor or an attorney, the beneficiary cannot continue with a foreclosure action until mediation is completed.

What is mediation?

Mediation is the process where homeowners sit down with their beneficiary representative(s) and a trained neutral mediator to discuss alternatives to foreclosure. A mediator does *not* have the authority to order a resolution, as a judge in a court case would, but the mediator may be able to help the beneficiary and the homeowner reach an agreement if possible. Mediation does not guarantee a loan modification or other resolution. The law requires that both the homeowner and the beneficiary participate in mediation in good faith.

What do you mean the homeowner and the beneficiary must participate in good faith?

The law requires that both the homeowner and the beneficiary participate in mediation in good faith. In order for the beneficiary to satisfy this good faith requirement, it must, at a minimum:

- Timely participate in mediation;
- Provide the mediator and the borrower with a set of documents as required by law prior to the mediation session (see RCW 61.24.163 for specific timelines and documents);
- Send a representative to mediation who has the authority to modify the homeowner’s loan (the representative can appear by phone) or agree to another loss mitigation option;
- Pay their portion of the mediation fee(s). The borrower and the beneficiary each pay \$300 to the mediator for preparing, scheduling, and conducting a mediation session. If more sessions are necessary, additional fees will apply;
- Analyze the loan for modification, if applicable; and
- Not require waiver by homeowner of any future claims.

In order for the homeowner to satisfy this good faith requirement you must, at a minimum:

- Timely participate in mediation;
- Provide the beneficiary and the mediator with the necessary documents in a timely manner (see RCW 61.24.163 for specific timelines and documents);

¹ Mediation is not available in all cases. Mediation is only available for owner-occupied residential property consisting of a single-family residence, a residential condominium unit, or a residential cooperative property of up to four units. Mediation may not be available if your beneficiary is a small bank or a credit union or other financial institutions that claimed an exemption from this law (see RCW 61.24.166). The Washington State Department of Commerce keeps an annual list of beneficiaries that are exempt from foreclosure mediation on its website at <http://www.commerce.wa.gov/Programs/housing/Foreclosure/Pages/default.aspx>.

² According to Washington State law at RCW 61.24, the “beneficiary” is the entity required to participate in mediation.

- Pay the portion of the mediation fee(s). The borrower and the beneficiary each pay \$300 to the mediator for preparing, scheduling, and conducting a mediation session. If more sessions are necessary, additional fees will apply; and
- Attend the mediation in person (all borrowers on the promissory note) or authorize someone else (through a power of attorney) to mediate on your behalf.

How much does mediation cost?

The mediator’s fee to prepare, schedule, and conduct a mediation session is \$600.00, which is shared equally by the beneficiary and the homeowner. Therefore, the homeowner will have to pay a \$300.00 mediation fee. If more sessions are necessary, additional fees will apply. If the mediation is rescheduled, additional fees may apply.

Where does mediation fit in the foreclosure process?

A homeowner must request mediation (through a housing counselor or attorney) any time after receiving a Notice of Default but no later than 20 days after the Notice of Trustee’s sale has been recorded. If mediation is not requested prior to that deadline, the homeowner gives up his or her right to mediation. The law also includes a “voluntary mediation” option for cases where borrowers failed to request mediation within the above described timelines. However, the beneficiary is not required by law to mediate, and this option would require the beneficiary’s written agreement to *voluntarily* enter the foreclosure mediation program.

Who will be my mediator?

Once mediation has been requested by an attorney or a housing counselor on the borrower’s behalf, the Department of Commerce will assign a mediator to the case and will notify the homeowner and the beneficiary that mediation has been requested. The Department of Commerce trains, approves, and keeps a list of approved foreclosure mediators in Washington State.

How do I request mediation?

Borrowers cannot self-refer into the mediation program. Mediation can only be requested on the borrower’s behalf by a housing counselor³ or an attorney. Thus, the first step to requesting mediation is to contact a housing counselor or an attorney. Call 1-877-894-HOME (4663) to find a FREE housing counselor, or 1-800-606-4819 to see if you qualify for free legal services through the Northwest Justice Project. Housing counselors and legal aid attorneys are free of charge to Washington homeowners.

I’ve requested mediation, now what?

At least 30 days prior to mediation, the mediator will notify the homeowner and the beneficiary of the time, date, and place of the mediation. The mediation session must be held in the county where the property is located, unless agreed otherwise by the borrower and the beneficiary. Within 23 days of the Notice from the Department of Commerce that mediation has been requested, the homeowner must send the relevant paperwork to the beneficiary and the mediator. Then, within 20 days of receiving the homeowner’s paperwork, the beneficiary must

³ “Housing counselor” means a housing counselor that has been approved by the U.S. Department of Housing and Urban Development or approved by the Washington State Housing Finance Commission (RCW 61.24.005).

send the relevant paperwork to the homeowner and the mediator. The Notice from Department of Commerce lists the required documents for both borrower and beneficiary. Also, the mediator will notify the borrower and the beneficiary about the specific documents they need to provide. A housing counselor or attorney can help you to prepare these documents.

What paperwork should I be sending and receiving?

The Notice from Department of Commerce lists the required documents for both borrower and beneficiary. Also, the mediator will notify the borrower and the beneficiary about the specific documents they need to provide.

Generally, the homeowner should, at a minimum, provide the mediator and the beneficiary with a detailed financial statement that includes:

- proof of income, including your most recent paystubs, public benefit award letter, or a profit and loss statement if you own your own small business;
- documentation of your debts and other obligations;
- last 2 years of tax returns.

Generally, the beneficiary should, at a minimum, provide the mediator and the homeowner with:

- the loan balance;
- an itemized list of fees and charges;
- payment history;
- net present value or other loan modification information.

After submitting the required documents, the beneficiary may notify the borrower of additional documents that are needed to complete a loss mitigation review. It is best to comply with any requests for documentation in a timely manner.

What if mediation does not work?

Mediation does not require beneficiaries and homeowners to enter into a loan modification or any other agreement. Mediation simply provides a neutral setting for the beneficiary and the homeowner to discuss alternatives to foreclosure. Even a “successful” mediation may not result in a modification of your loan or the preservation of your home.

Within 7 business days of the mediation’s conclusion, the mediator will issue a written certification identifying the outcome of the mediation and determining whether the parties (borrower and beneficiary) mediated in good faith. Once the mediator issues that certification, if no agreement was reached between the homeowner and the beneficiary, the beneficiary can proceed with the foreclosure and record the Notice of Trustee’s sale.

If the mediator determines that the beneficiary did not participate in mediation in good faith and certifies it so on his/her certification, the homeowner can file a lawsuit in court to stop the beneficiary from proceeding with the non-judicial foreclosure. If this happens to you, contact an attorney immediately. For referrals to an attorney, call 1-800-606-4819.

WHAT TO SUBMIT AND BRING TO MEDIATION

Documents Required:

- Making Home Affordable Request for Mortgage Assistance (RMA)
- Hardship Letter
- 4506-T Request for Tax Returns
- Documentation of all current and future income, which may include:
 - Recent paystubs
 - Profit/Loss Statement for Self-Employed Borrowers
 - Public Benefit Award Letter
 - Unemployment Award Letter
 - Bank Statements (all pages, even if blank)
- Debts and Obligations
 - List of household expenses (budget)
 - Statements for all debt obligations
- Tax Returns for the past two years

Documents Not Required, but Recommended to Submit Prior to Mediation and Have Available during Mediation:

- Most recent and consecutive two months bank statements
- Utility bill to show proof of occupancy

Additional Items to Have Available during Mediation:

- Additional information documenting your hardship/Hardship Letter
- Calculator
- Net Present Value Test (NPV Test):
 - *See housing counselor or attorney for details.*
- Copy of the Foreclosure Fairness Act (RCW 61.24.163): *available at www.commerce.wa.gov/foreclosures*

MEDIATION TOOLKIT

The vast majority of foreclosures in Washington State occur through a non-judicial process. That means that the foreclosing loan servicer (an entity hired by the beneficiary) need only hire a trustee to serve and record a couple of notices, wait the statutory period and then proceed with the trustee's sale. Unlike states where beneficiaries must file a lawsuit to proceed with foreclosure, Washington offers no court oversight in a non-judicial foreclosure. In order to dispute foreclosure or compel the beneficiary to consider alternatives, the homeowner has to file an affirmative lawsuit, which is beyond the means for most homeowners with limited resources.

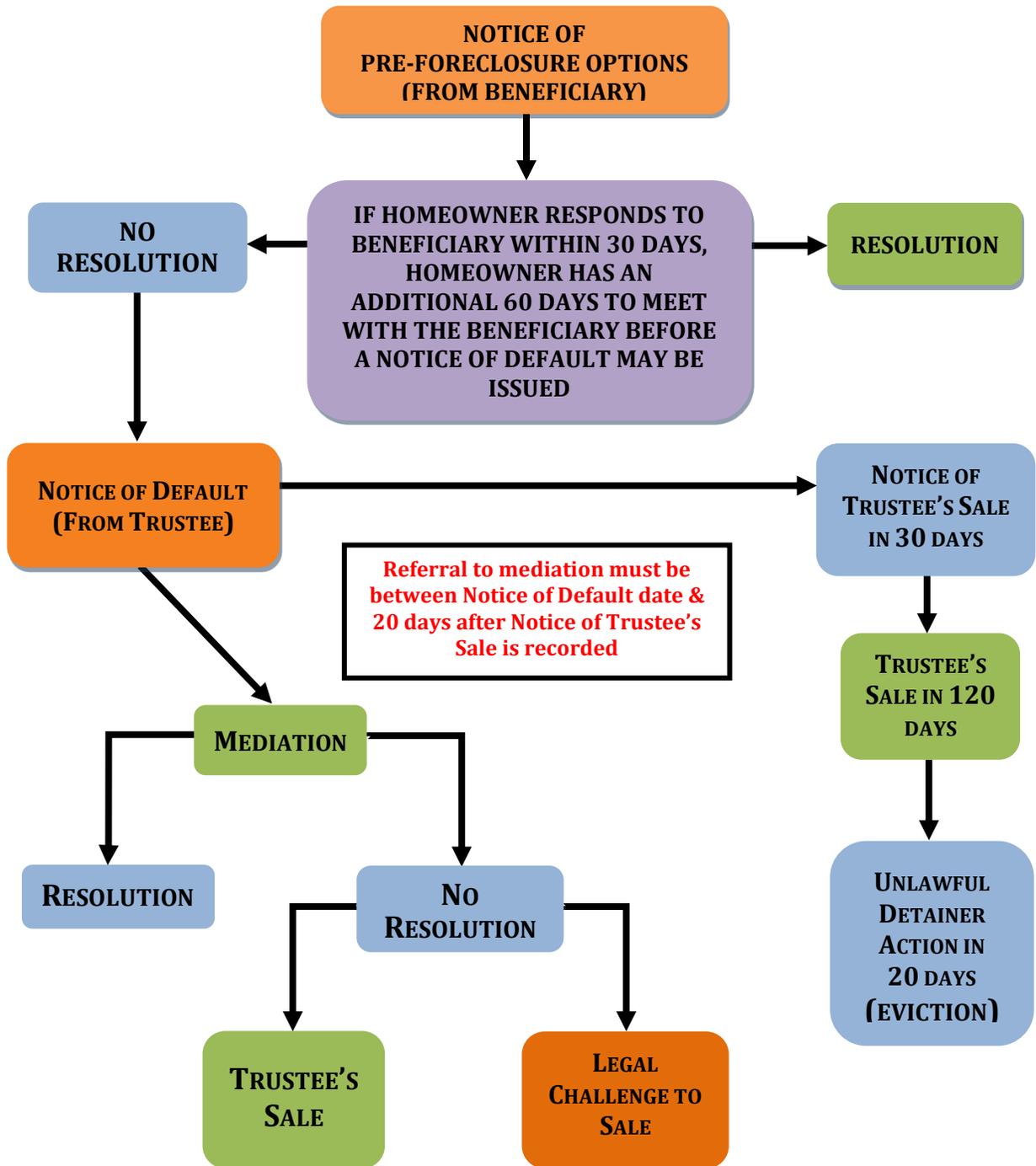
In response to this growing frustration, Washington state passed the Foreclosure Fairness Act (FFA) in 2011, permitting homeowners to request mediation with their beneficiary and try to reach an agreement that avoids foreclosure, if possible, without going to court. Mediation may result in a loan modification agreement if the homeowner has sufficient income, allowing the beneficiary to benefit and the homeowner to stay in the home. If loan modification is not possible, homeowners can discuss during the mediation other loss mitigation alternatives, such as a deed in lieu of foreclosure or a short sale.

Under the FFA, only an attorney licensed to practice in Washington or a housing counselor⁴ can request mediation on behalf of a homeowner, although homeowners can represent themselves at mediation. In addition, homeowners also have a right to request a meeting with their beneficiary soon after default, before mediation is necessary. This is referred to as the "meet & confer." The right to both the meet & confer and mediation are triggered during specific times in the foreclosure process, based on the notices issued by the beneficiary or trustee.

This Toolkit (pgs. 36-50) is intended to help homeowners understand and benefit from the rights provided by the FFA. Where homeowners are not represented by an attorney or a housing counselor, this Toolkit will help homeowners represent themselves. The process is complex, but these tools will help homeowners navigate the system and offer materials to help them advocate for themselves to try to save their homes.

⁴ "Housing counselor" means a housing counselor that has been approved by the U.S. Department of Housing and Urban Development or approved by the Washington State Housing Finance Commission (RCW 61.24.005).

FORECLOSURE TIMELINE



AMENDMENTS TO THE FFA

Definition of Owner-Occupied Residential Real Property

- The definition of owner-occupied residential real property includes up to four units.

Mediation Referrals When the Borrower is Deceased

- A mediation referral is appropriate for a successor in interest when the borrower is deceased.

Mediation Referrals in Cases of Dissolution or Legal Separation

- A mediation referral is appropriate for a person who has been awarded the title to the property in a dissolution or legal separation.

Investor Restrictions on Modifications

- If a beneficiary claims it cannot implement a loan modification due to limitations in a Pooling and Servicing Agreement or other investor restriction, then the beneficiary must provide the relevant portion of the Pooling and Servicing Agreement, *or other investor restriction*.

Mediator Fees

- The amendment allows Commerce to authorize mediator fees in excess of the \$400 allowed in the statute. Currently, the authorized mediator fee is \$600.



Notice of Default and Notice of Trustee's Sale Must Name the Current Beneficiary, Servicer and Trustee

- The Notice of Default must state the current beneficiary, current servicer, and current trustee of the deed of trust.

Notice of Default Sent to Potential Heirs if the Borrower is Known to be Deceased

- If either the servicer or trustee know that the borrower is deceased, then the following must occur:
 - A copy of the Notice of Default, addressed to heirs or devisees of the borrower, must be sent to the property;
 - The Notice of Default must be sent to any known spouse, child, or parent of the deceased, and to any owner of record;
 - If addresses of the spouse, child or parent are unknown, the trustee must search county records where the property is located to ascertain the addresses, including obituaries, wills, death certificates, or probate cases;
 - If the trustee searches and cannot find the addresses, it must record a declaration stating so with the Notice of Trustee's Sale.

When a Deceased Borrower's Potential Heir Writes to the Trustee

- When a person not on the loan writes to the trustee, names the borrower and property address, and claims the deceased borrower's property rights (i.e., claims to be the borrower's Successor-in-Interest), then the trustee must not record a Notice of Trustee's Sale until the trustee does the following:
 - Acknowledges the notice in writing;
 - Requests documentation of the death of the borrower, like a death certificate, and allows at least 30 days to provide such documentation.
 - Then, if documentation of death is provided, or if the death is independently confirmed, then the trustee must request documentation of the person's ownership interest and allow 60 days to provide that documentation.
 - If proof of ownership interest is provided, then the trustee must deem that person a Successor-in-Interest and must provide the following within 20 days:
 - Loan details, such as balance and interest rate, monthly payment;
 - Basis for the default;
 - Amount necessary to bring the loan current (reinstatement amount);
 - Amount necessary to pay the loan off (payoff amount); and
 - Payment address.

RIGHTS UNDER FFA: THE BASICS

What?

Meet & Confer

- Right to meet with beneficiary to discuss alternatives to foreclosure.

Mediation

- Right to meet with beneficiary in presence of a neutral third party (mediator) who facilitates the negotiation of an agreement if possible.

Consumer Protection Act (CPA) Litigation

- Right to file a lawsuit to enjoin (stop) sale if beneficiary violates FFA (lack of good faith) or fails to offer a modification if homeowner passes Net Present Value test (NPV), according to the mediator's certification. Consult with a licensed attorney to see if you can meet all the elements of a successful claim.

How?

Meet & Confer

- Respond to NOPFO within 30 days of receipt and set up "meet & confer" meeting. Requesting meeting will add 60 days to pre-Notice of Default period.

Mediation

Consult with housing counselor or Washington licensed attorney for referral to mediation. Pay mediation fee (\$300) to mediator and submit timely loan modification application to mediator and beneficiary.

Consumer Protection Act (CPA) Litigation

- File complaint and motion to enjoin with at least 5 days' notice to trustee. Consult with a licensed attorney to see if you meet all the elements of a successful claim. Note right to enjoin outside of FFA, too (RCW 61.24.130).

When?

Meet & Confer

After Loan Default and before service of Notice of Default, homeowner must receive Notice of Pre-Foreclosure Options (NOPFO), which includes the right to "meet & confer" with a beneficiary representative.

Mediation

- After Service of Notice of Default and up to 20 days past recording of Notice of Trustee's sale, homeowner may request mediation.

Consumer Protection Act (CPA) Litigation

- A beneficiary's violation of NOPFO rights may give rise to a Consumer Protection Act lawsuit.



RIGHTS UNDER FFA: MEET & CONFER

Meet and Confer

What?

- After Loan Default and before service of Notice of Default, homeowner must receive Notice of Pre-Foreclosure Options (NOPFO), including the right to “meet & confer.”

When?

- After receiving the NOPFO if you request a meeting within 30 days.

How?

- A beneficiary’s violation of NOPFO rights may give rise to a lawsuit for violation of the Consumer Protection Act.

Mediation

What?

- Right to meet with beneficiary in presence of neutral third party (mediator) who helps parties negotiate an agreement if possible.

When?

- After Service of Notice of Default and up to 20 days past recording of Notice of Trustee’s sale.

How?

- Consult with housing counselor or Washington licensed attorney for referral to mediation. Pay mediation fee and submit required documents to mediator and beneficiary.

Consumer Protection Act (CPA) Violation

What?

- Right to file a lawsuit to enjoin (stop) sale if beneficiary violates FFA (lack of good faith) or fails to offer a modification if homeowner passes Net Present Value test (NPV), according to the mediator’s certification.

When?

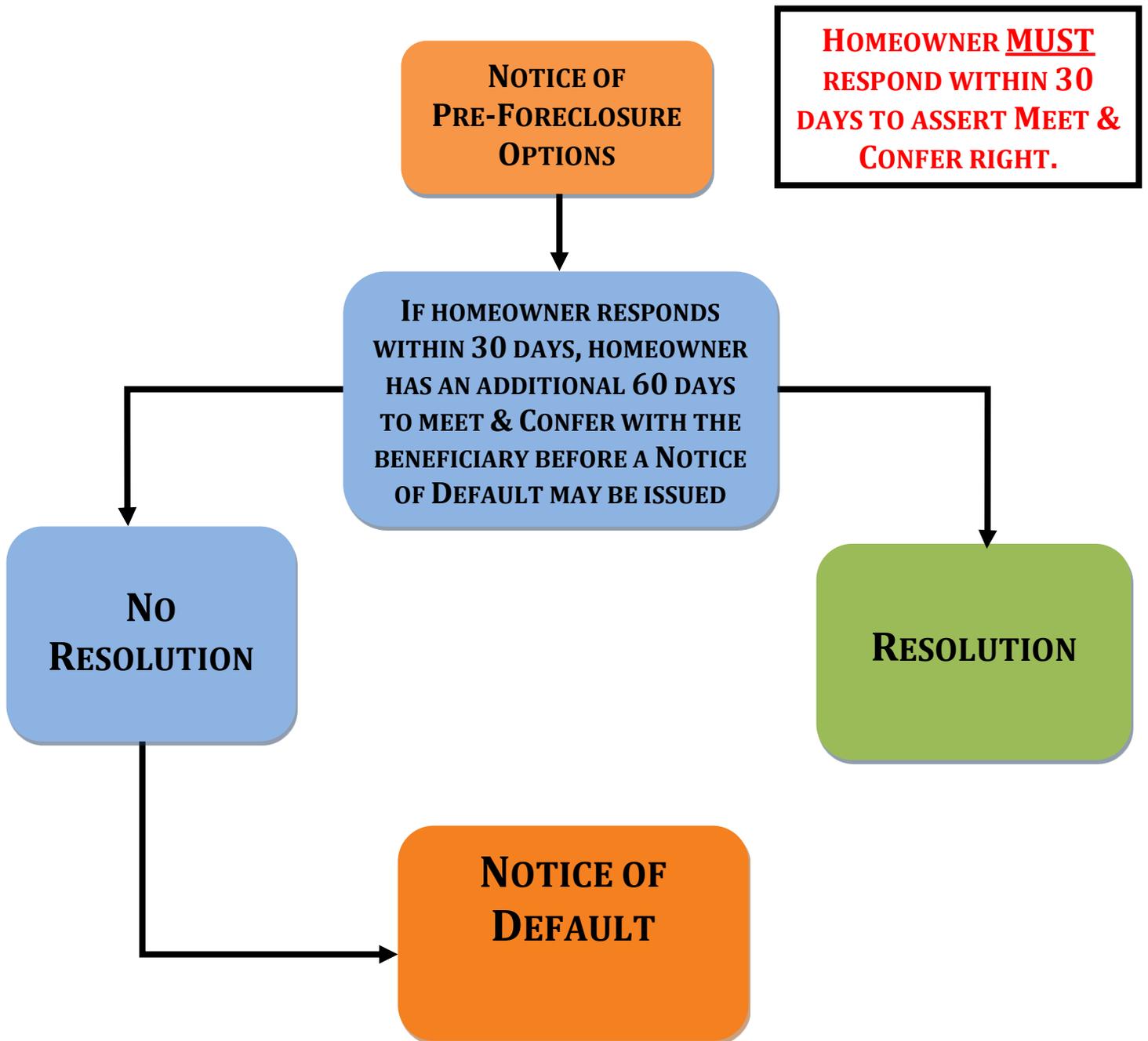
After beneficiary violates NOPFO rights or after not-in-good-faith mediation certification.

How?

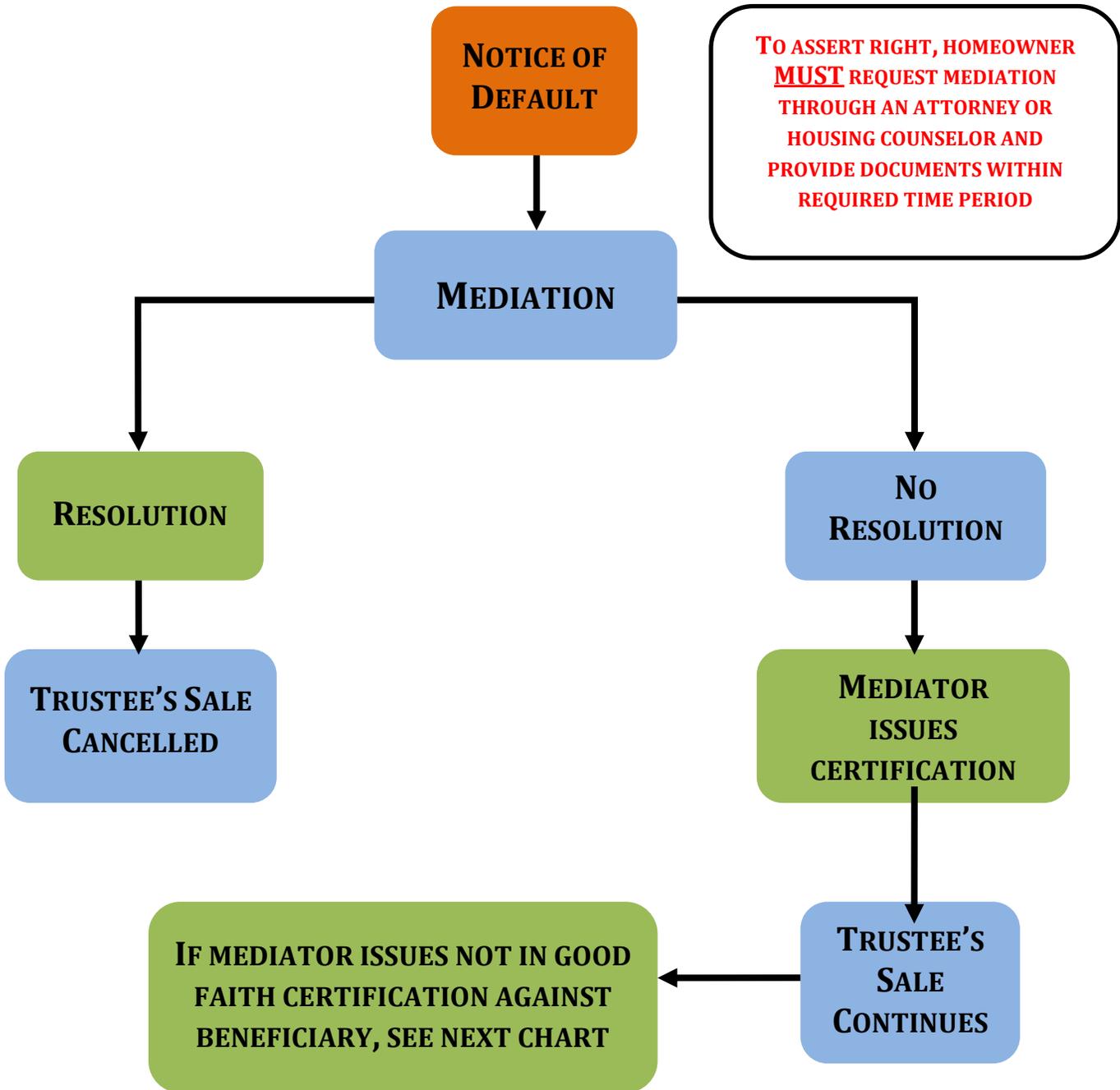
- Consult with a licensed attorney to determine if you can meet all the elements of a successful CPA claim. File complaint in court and motion to enjoin with at least 5 days’ notice to trustee. Note right to enjoin outside of FFA, too (RCW 61.24.130).



NOTICE OF PRE-FORECLOSURE OPTIONS FLOW CHART



MEDIATION FLOW CHART



LITIGATION FLOW CHART

**MEDIATION NOT IN GOOD
FAITH CERTIFICATION
AGAINST BENEFICIARY**



TRUSTEE'S SALE CONTINUES



**HOMEOWNER *MAY* TRY TO
RESTRAIN TRUSTEE'S SALE
BASED ON VIOLATION OF
CONSUMER PROTECTION ACT**

**TO ASSERT RIGHT, HOMEOWNERS
ARE STRONGLY ADVISED TO
CONSULT WITH AN ATTORNEY WHO
IS LICENSED TO PRACTICE IN
WASHINGTON. CHECK THE
STATE BAR WEBSITE**

RIGHTS UNDER FFA: A DECEASED BORROWER'S HEIRS

Heir

What?

- A person (or persons) who gains a legal interest in a property from the borrower.

When?

- After the borrower dies.

How?

- When the heir takes an interest in the property because the borrower granted that interest in their will, or because state law provides that heir with an interest in the property.

Heir's Right to Notice of Default and Notice of Trustee's Sale

What?

- Both a Notice of Default and a Notice of Trustee's Sale must be sent to any known spouse, child, or parent of the deceased borrower. The Notice of Default must also be sent to the property owner of record.

When?

After the trustee learns of the borrower's death, either because the lender told the trustee, or because an heir notified the trustee.

How?

- If the trustee learns of the borrower's death, it must search county records for addresses of heirs, and notify the heirs of the Notice of Default and Notice of Trustee's Sale. The trustee must also send Notice of Default and Notice of Trustee's Sale to the heir if that heir provided their address to the trustee.

Heir's Right to Loan Information

What?

- An heir's right to loan details and lender contact information.

When?

- After the heir notifies the trustee in writing of the borrower's death and then provides documentation of both the borrower's death and the heir's ownership interest.

How?

- In three steps: (1) First, if the heir notifies the mortgage servicer or trustee of the borrower's death, the servicer or trustee must provide acknowledgment in writing; (2) Second, the servicer or trustee must then request documentation of the borrower's death, allowing 30 days for documentation to be provided; (3) Third, if such documentation is provided, then the servicer or trustee must allow 60 days for the heir to provide proof of their ownership interest in the property. If the heir provides the proof on the timeline above, then the servicer and trustee must consider the heir to be a "successor in interest" entitled within 20 days to receive loan details and information about the loan modification process. Loan details include the loan balance, interest rate, the basis for default, reinstatement and payoff amounts, and the payment address.



The Notice of Sale Should Be Delayed if an Heir Contacts the Trustee in Advance

What?

- An heir (a person claiming to be a successor-in-interest) contacts the trustee, naming the borrower and property address.

When?

- Before the trustee records the Notice of Trustee's Sale.

How?

- The trustee shall not record a notice of trustee's sale until the heir has an opportunity to provide documentation (1) of the borrower's death, and (2) of the heir's interest in the property, on the timeline stated above.

Shorter Timeline if an Heir Contacts the Trustee After the Notice of Sale

What?

- An heir (a person claiming to be a successor-in-interest) contacts the trustee naming the borrower and property address.

When?

- After the trustee records the Notice of Trustee's Sale.

How?

- The trustee must request written documentation of ownership within 5 days. If the heir provides documentation (1) of the borrower's death and (2) of the heir's interest in the property, then the trustee must provide loan details and information about the loan modification process. But this could come after the sale. Only if the heir provides the documentation at least 45 days before the sale, then the trustee must provide the loan details and information about the modification process at least 20 days before the trustee's sale.

MEDIATION TIMELINE

- Within **10 days** of receiving the mediation referral from a housing counselor or attorney, if borrower is eligible for mediation, Department of Commerce assigns a mediator and notifies the parties.
- A \$300 fee (per party) must be paid to the mediator within **30 days** of receipt of Department of Commerce's Notice or per the mediator's instruction.
- Within **23 days** of the Department of Commerce's Notice, the homeowner transmits documents required for mediation to mediator and beneficiary.
- Within **20 days** of the beneficiary's receipt of the homeowner's documents, the beneficiary transmits its documents to mediator and homeowner.
- The mediation is scheduled no later than **70 days** after Department of Commerce's Notice, unless otherwise agreed by the parties.
- **30 days** before the mediation session, the mediator will set a time, date, and place for the mediation session. The session must be held in the county where the property is located unless agreed otherwise by the borrower and beneficiary.
- The mediation is **up to 3 hours**, unless otherwise agreed.
- Parties have the option of agreeing to additional sessions. If one party will not agree to an additional session, a mediator may use his or her discretion to compel the parties to attend an additional session. Mediators will likely charge fees for additional sessions.
- Within **7 business days** of the completion of mediation, the mediator must issue a written certification, which includes the outcome of the mediation and a determination of both parties' good faith participation.



MEDIATION OVERVIEW

Mediation

- A neutral mediator helps the homeowner and the beneficiary reach an agreement, when possible
- The goal is to explore alternatives to foreclosure
- The mediator cannot force the parties to reach agreement or require the beneficiary to offer a loan modification. The mediator also cannot force the parties to honor the agreement.
- The mediator issues a Certification, including the outcome of the mediation and the determination of “Good Faith” or “Not in Good Faith” participation

Both Parties Have a Duty of Good Faith

- Participate timely
- Provide required documentation in a timely manner
- Pay the mediation fee
- Designate a representative with adequate authority to reach a resolution with the homeowner in mediation
- Not require waiver by homeowner of any future claims

Homeowner Must Provide:

- Current and future income
- Record of debts and obligations
- Asset information
- List of household expenses
- Tax returns for the past two years
- Hardship information
- Any other relevant information

Beneficiary Must Provide:

- Note and Deed of Trust
- Proof of ownership of Note
- Balance of the loan
- Itemized list of missed payments and fees
- Payment history
- Explanation of any denial for a loan modification, forbearance, or other alternative to foreclosure
- Appraisal (not more than 90 days old by date of mediation session)
- Pooling and Servicing Agreement or other investor restrictions (if applicable)

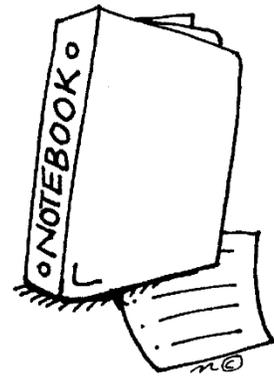
FORECLOSURE MEDIATION CHECKLIST FOR HOMEOWNERS

- A. Referral to mediation by housing counselor or attorney
- B. Send documents to mediator and beneficiary
 - ✓ 23 days after notice of referral from Department of Commerce
- C. Send \$300 mediation fee to mediator
 - ✓ 30 days after receiving notice of referral from Department of Commerce or per mediator's instructions
- D. Beneficiary sends documents to mediator and homeowner
 - ✓ 20 days after receiving homeowner's documents
- E. Prepare Homeowner Mediation Notebook (see next page)
 - ✓ Prior to mediation
- F. Day of Mediation Session
 - ✓ 70 days after the Notice from Department of Commerce
 - ✓ Borrower and beneficiary representative required to attend in person.
 - ✓ Department of Commerce requires all borrowers who signed promissory note to attend session or provide written power of attorney if one borrower is not attending (exceptions can apply for successors-in-interest). Arrive early.
 - ✓ Dress appropriately
 - ✓ Inform the mediator and beneficiary ahead of time if someone will be attending the mediation with you.

MEDIATION NOTEBOOK

Suggested Table of Contents

1. Mediation Brief/Proposal
2. Net Present Value Analysis
3. Mediation Referral Documents (referral, Notice from Department of Commerce, mediator's scheduling notice and instructions, etc.)
4. Modification Application
5. Hardship Letter
6. Income Records
7. Profit and Loss Statement (if applicable)
8. Bank Statements (past two months – not an online print out and include all pages even if some pages are blank)
9. Request for Tax Returns (4506-T Form)
10. Signed Income Tax Returns (past two years)
11. Documentation of Debts and Obligations
12. Monthly household expense sheet
13. Utility Bill
14. Notice of Default
15. Notice of Trustee's Sale (if applicable)



OPTIONS TO NOT KEEP YOUR HOME: HOW TO EXIT GRACEFULLY



The following summarizes the different ways to mitigate the consequences of defaulting on your home loan. Even if you do not plan to keep your home, it is important to study your options carefully, work with your servicer, and seek advice from an attorney or housing counselor. Your choice will likely be based on consideration of the following issues:

- 1. Your responsibility for the deficiency.** If your home is worth less than what you owe on your home loan(s), then there will likely be what is called a “deficiency” (i.e., the difference between the balance of the loan and the amount obtained at a foreclosure sale or short sale). Some of the options below may leave you responsible for the deficiency so that even though you no longer own and live in the home, you will still be responsible for repaying a portion of the home loan. Other options may relieve you of the responsibility to pay the deficiency.
- 2. The effect on your credit score.** Being 30 or more days late on a mortgage payment will be a significant hit to your credit score. Your credit score will take another big hit if you are ultimately unable to pay back all of your loan and lose the home through a foreclosure, deed-in-lieu of foreclosure, or short sale. The company that developed FICO scores, Fair Isaac, has said that generally speaking each of these options (i.e., foreclosure, deed-in-lieu, or short sale) has roughly the same effect on your credit score. Filing bankruptcy will have the most severe impact on your credit score, though it may still be the best option for some people given other considerations.
- 3. Your liability for income taxes.** The Internal Revenue Service (IRS) may treat cancelled or forgiven debt as income on which you can be taxed. Please review the previous section of this publication (page 31) entitled “IRS Debt Cancellation and the Mortgage Forgiveness Debt Relief Act.”

You should determine which of the following options makes the most sense for you.

Sell the property – This is the best option if you cannot afford the mortgage payment and if the house is worth more than the amount owed. Other considerations include the condition of the home and how much time you have. By selling your home before you fall behind on your payments, you will avoid damage to your credit score, and you may be able to get more money out of your home than you would with the other options described below.

Foreclosure – Allowing the home to go to foreclosure is sometimes the best option. Historically, nearly all foreclosures were carried out through the courts (known as “judicial foreclosures”). Where the proceeds from a foreclosure sale were insufficient to cover the balance of the home loan, borrowers would be liable for the deficiency. In Washington judicial foreclosures have become less common. Most foreclosures now take place through a “non-judicial” process that does not involve the courts. If your servicer is conducting a non-judicial foreclosure, after the foreclosure you will no longer be responsible for the deficiency. However, if you have a second mortgage on your home, only the first mortgage, which foreclosed, will be discharged and you will remain responsible for any deficiency on the subordinate or junior loans.

While the home is going through the non-judicial foreclosure process (which takes at least 180 days from the date of the default), borrowers who will inevitably lose their homes may want to save all the money they can so that it can be used when it is time to leave the home. Other options, such as a short sale and deed-in-lieu may result in a borrower needing to leave the home sooner, with less time to save.

Short Sale – If the market value is less than the total amount owed, a short sale allows the borrower to sell the home and use the proceeds to pay the mortgage even though the sale proceeds may be less than the total amount due on the first mortgage. The servicer and mortgage insurer must agree to this option. Unless the short sale documents explicitly state that the short sale will discharge the borrower’s liability for the loan, the short sale will result in a deficiency, in which case it is unlikely that the short sale would be beneficial for the borrower. It is critical that the short sale documents include a written statement that the borrower is discharged from the obligation to repay the loan. There may also be tax consequences with the IRS if a short sale includes forgiven debt. Borrowers should speak to a tax professional to determine if there will be tax liabilities from a short sale. Borrowers that have second mortgages may want to consider a short sale because servicers may agree to discharge liability on both mortgages (but with a foreclosure, only one loan will be discharged where there is a deficiency). Under RCW 61.24.026, if a homeowner submits to the servicer a signed purchase and sale agreement and a request for a short sale before the notice of default, the homeowner has a right to a response from the servicer within 120 days.

Deed-In-Lieu of Foreclosure – With a deed-in-lieu of foreclosure, the servicer allows the borrower to transfer ownership of the property (the deed) to the servicer if the home cannot be sold at market value. This option usually requires that the property be listed for sale for a specified period of time, generally 90 days. The borrower may remain liable for some portion of the debt unless explicitly stated in the documents effectuating the transfer. Like a short-sale, a deed-in-lieu may help borrowers with more than one mortgage on their home avoid a deficiency. There may also be tax consequences with the IRS if a deed-in-lieu includes forgiven debt. Borrowers should speak to a tax professional to determine if there will be tax liabilities from a deed-in-lieu.

Assumption – If a borrower finds another borrower willing and qualified to take the mortgage on the home, he or she may assume the mortgage if it is allowed under the loan terms. The new borrower must meet the beneficiary’s criteria. Many times, a beneficiary will not allow an assumption to take place if the loan is in default, and only in limited circumstances are assumptions and modifications allowed to happen at the same time.

Bankruptcy – Consumers have the option of filing a Chapter 7, Chapter 13 or Chapter 11 (for small business owners) Bankruptcy if they need more time to pay a mortgage delinquency or need to restructure or eliminate their debt so that they have funds available to pay secured debts. In some circumstances, filing bankruptcy may help you to keep your home, but it may also help mitigate the consequences of foreclosure if losing the home is inevitable. A properly timed bankruptcy can allow you to avoid liability for deficiencies and taxes. Additionally, bankruptcy provides two important benefits:

1. **Automatic Stay:** As soon as the bankruptcy petition is filed, an automatic stay is immediately put in place by the Bankruptcy Court. This means that no lawsuits, foreclosures, garnishments, or any other collection activity may proceed against the debtor without the court’s permission.
2. **Time to Review Alleged Claims:** Creditors sometimes claim debts that the debtor disputes. The court may review the claim and correct any erroneous charges.

TYPES OF BANKRUPTCY

Chapter 7: Complete Liquidation - Allows the debtor to discharge most unsecured non-priority debts while retaining exempt property such as a homestead. It can be used to reduce monthly payments thereby increasing available income to pay monthly mortgage amounts. It usually takes 3 - 5 months after filing for the discharge to be completed.

Chapter 13: Reorganization - Available to debtors with a certain income level. It allows a debtor to keep a property and create a schedule of payments to cure the delinquent amounts owed on a mortgage over a period of 3-5 years. It also provides a mechanism to strip a 2nd mortgage when there is no equity attached to the mortgage and “cram down” secured debt on non-residential property.

Chapter 11: Reorganization – A Chapter 11 bankruptcy is for businesses and yields similar results to a Chapter 13 bankruptcy. It is often utilized by business debtors who have too much debt to file a Chapter 13 bankruptcy. An attorney well versed in bankruptcy law should be consulted regarding a Chapter 11 bankruptcy.

Consult an attorney about your options. Information is also available at:

- **Bankruptcy Court website:** See links for “Filing Without an Attorney” and “Bankruptcy Basics.” at <https://www.uscourts.gov/services-forms/bankruptcy> .
- **Legal Information:** www.washingtonlawhelp.org
- **NJP CLEAR:** 1-888-201-1014 (legal advice/referral for **low-income** residents outside King County)
- **United Way 211:** dial 2-1-1 (legal referrals for **low-income** King County residents)
- **National Consumer Law Center:** www.nclc.org
- **Northwest Consumer Law Center:** 206-805-1722 (legal referrals for low income Washington residents)

How to find a lawyer licensed to practice law in Washington:

Washington State Bar Association: 1-800-945-8722 or www.wsba.org/ (lawyer directory)

Clark County

Southwest Washington Lawyer Referral Service
(360) 695-0599

Kitsap County

Kitsap County Lawyer Referral Service
(360) 373-2426

Pierce County

Tacoma-Pierce County Bar Lawyer Referral
(253) 383-3432

Spokane County

Spokane County Bar’s Online Lawyer Referral
Service www.spokanebar.org/

King County

King County Lawyer Referral Service
(206) 267-7010

Lewis County

Lewis County Lawyer Referral Program
(360) 748-0430

Snohomish County

Snohomish County Bar Referral Service
(425) 388-3018

The **King County Bar Association** sponsors two specialty legal clinics focused on bankruptcy and consumer debt related issues: the downtown Debt Clinic in Belltown and the South Seattle Debt Clinic in South Seattle. *To make an appointment for either clinic, call (206) 267-7070 from 9 a.m. to noon, Tuesday - Thursday. In order to increase the likelihood of being able to reserve a spot at either clinic, KCBA advises to call as close to 9:00 a.m. on Tuesday as possible.*

Topic 5:

Beware of Scams – Don't be a Victim

- Warning Signs
- How Scams Work
- Common Foreclosure Scams
- How to Protect Yourself From Scams



Don't be a Victim!

The possibility of losing your home to foreclosure can be terrifying. The reality that scam artists are preying on the vulnerability of desperate homeowners is equally frightening. Many so-called foreclosure “rescue” companies claim they can help you save your home. Unfortunately, foreclosure fraudsters can take your money, ruin your credit, and wipe out any equity you may have in your home.

Your mortgage servicer – or any HUD-approved housing counseling agency – can help you find real options to avoid foreclosure at no cost. If someone offers to negotiate with your servicer or offers to arrange to stop or delay foreclosure for a fee, carefully check his or her credentials, reputation, and experience.

Loan modification companies are similar to foreclosure “rescue” firms. Many aggressively target struggling borrowers. The Washington State Department of Financial Institutions requires the licensing of loan modification companies. Additionally, individuals providing loan modification services must be licensed as loan originators.

Loan modification offers can look legitimate. Some even replicate government agency websites use forged letterheads resembling those used by your servicer or use forms that resemble the governmental modification programs. Anyone guaranteeing results or charging upfront fees to “save your home” should be suspect. Call your servicer directly, using the phone number on your mortgage statement, and seek free counseling help from a HUD-certified financial counselor. The Washington State Department of Financial Institutions keeps a database of all licensed loan modification companies. Verify the license of anyone before working with them!



WARNING SIGNS

If you are looking for foreclosure prevention help, beware of any business that:

- contacts you without you having contacted them first
- requires you to pay a fee before providing you with any services

- accepts payment only by cashier's check or wire transfer
- tells you to make your mortgage payments directly to the business, rather than to your servicer
- guarantees to stop the foreclosure process – no matter what your circumstances
- tells you to file a bankruptcy petition without all the required forms
- instructs you not to contact your servicer, lawyer, or credit or housing counselor
- encourages you to sell your home to it and then lease it so you can buy it back over time
- tells you to transfer your property deed or title to the business
- offers to buy your house for cash at a fixed price that is not set by the housing market at time of sale
- offers to fill out paperwork for you
- tells you that it can do a "forensic loan audit" that may allow you to keep your house without paying for it
- pressures you to sign paperwork that you haven't had a chance to read thoroughly or that you don't understand
- tells you to ignore any foreclosure or eviction notices you have received
- is based out of state, especially in California or Florida

HOW SCAMS WORK

In today's economy, foreclosure "rescue" firms and loan modification companies are abundant. Their goal is to make a quick profit. They will use half-truths and outright lies to sell services that promise relief and then fail to deliver.

Potential victims are easy to find. Foreclosure "rescue" companies use a variety of tactics to find homeowners in distress. These include searching foreclosure notices in the newspaper and on the Internet, as well as accessing public files at local government offices. They may also place television ads and posters on telephone poles and bus stops. They may also send out personalized letters to the homeowners and post signs in their neighborhoods.

The scam artists use simple and straightforward messages, like:

"Stop Foreclosure Now!"

"We guarantee to stop your foreclosure."

"Your file has been approved for a loan modification."

"Keep your Home. We know your home is scheduled to be sold. No Problem!"

"We have special relationships within many banks that can speed up case approvals."

"We Can Save Your Home. Guaranteed. Free Consultation."

"We stop foreclosures every day. Our team of professionals can stop yours this week!"

These companies often encourage homeowners to stop working with their servicer and housing counseling agency. They tell homeowners they will take care of everything.

If you suspect a scam, contact the Washington Attorney General's Office, the Washington Department of Financial Institutions, Northwest Justice Project, or a housing counselor (see *Tools for the Homeowner* section for the contact information).

COMMON FORECLOSURE SCAMS

Phony Counseling or Phantom Help -- The “rescuer” tells the borrower that he or she can negotiate a deal with the servicer to save the house if the borrower pays a fee first. Once the fee is paid, the rescuer takes off with the money and provides no assistance.

Phony Loan Modification – The “rescuer” tells the borrower that the rescuer has been successful in negotiating a modification of the loan with the servicer and that the borrower should make the new loan payments to the rescuer instead of the servicer. The rescuer then pockets the supposed loan payments it receives. The servicer proceeds to foreclose because a loan modification has not been negotiated and it is not being paid.

Lease or Buy-Back – Homeowners are deceived into signing over the deed to their home to a scam artist, who tells them they will be able to remain in the house as a renter and eventually buy it back. Usually, the terms of this scheme are so demanding that the buy-back becomes impossible, the homeowner gets evicted, and the “rescuer” walks off with most or all of the equity.

Refinance Fraud – Homeowners believe they are signing documents for a new loan to make the mortgage current but are actually signing over title to their home. They are left owing money on a mortgage on a home they no longer own.

Bankruptcy Foreclosure – There are several scam attempts designed to abuse the bankruptcy laws. The bankruptcy process can be complicated and expensive, and the results can have a negative effect on your credit for years to come. Some “rescuers” promise to negotiate with the servicer or get a refinance on your behalf for an upfront fee. Instead, the scam artist takes the fee and files a bankruptcy case in your name—sometimes without your knowledge.

Equity Stripping – A buyer purchases the home for the amount of the late payments and flips the home for a quick profit.

Forensic Loan Audit – The scammer persuades the borrower that, for a fee, it will conduct an “audit” of loan documents. The scammer tells the borrower that the audit may show the servicer made an error in the paperwork, which supposedly will allow the borrower to keep the home without having to pay for it. These reports generally do not produce information that supports the promises made by the scammer.

New foreclosure scams are constantly being developed. Always call a HUD-approved housing counseling agency or your servicer if you are asked to pay a fee for foreclosure prevention services or if you suspect an offer is too good to be true.

How To Protect Yourself From Scams

- **DON'T** give money to people who promise to work with your servicer to modify your loan. Instead, contact the Washington Homeownership Center at 1-877-894-HOME (4663) for a referral to a housing counseling agency and receive free help.
- **DON'T** make your mortgage payments to anyone other than your servicer, even if he or she promises to pass the payment on.

- **DON'T** transfer or sign over the deed to your home as part of a foreclosure avoidance transaction. A deed should be signed over only if you intend to sell the home for a fair price.
- **DON'T** sign any documents without reading and understanding them first, or any documents containing blank spaces. Many homeowners think they are signing documents for a new loan to pay off their mortgage and they discover they have actually transferred ownership to the “rescuer.”
- **DO** call your servicer and request mortgage assistance as soon as possible. You must notify the servicer that you are seeking alternatives to foreclosure so it can start the loss mitigation process.
- **DO** consult an attorney or financial advisor before signing any “rescue documents.”
- **DO** take time to think about what’s being proposed and consider whether there are warning signs.
- **DO** contact a HUD-approved housing counseling agency that may be able to help you for no charge.
- **If it sounds too good to be true, it probably is. Trust your instincts and seek help. Reporting suspicious schemes helps prevent others from becoming victims.**

IF YOU SUSPECT A SCAM, CONTACT:

Washington Attorney General’s Office

Consumer Protection: 1-800-551-4636

Out-of-State: 1-206-464-6684

www.atg.wa.gov

Washington Department of Financial Institutions

1-877-RING-DFI (877-746-4334)

www.dfi.wa.gov

Northwest Justice Project

1-888-201-1014

Washington Home Ownership Center

1-877-894-HOME (4663)

Federal Trade Commission

1-877-FTC-HELP (1-877-382-4357)

www.ftc.gov

Better Business Bureau

206-431-2222 or 253-830-2924

<http://alaskaoregonwesternwashington.bbb.org/consumers/>

More information on the latest rescue scams and ways to protect yourself can be found at:

The Washington Attorney General’s office: www.atg.wa.gov

The Washington Department of Financial Institutions: www.dfi.wa.gov and www.homeownership.wa.gov

Topic 6:

Rebuilding After Foreclosure

Rebuilding After Foreclosure

STEPS TO REBUILDING AFTER A FORECLOSURE

(Source: Adapted from NeighborWorks and Freddie Mac)

Understanding exactly how your foreclosure issue was resolved and developing a budget and savings plan is critical to recovering after a foreclosure or a loss mitigation process. Your options may be constrained due to limited income or savings, debt issues, and credit history. The process of rebuilding has several steps and will take time.

Step 1: Retain Documentation of How the Foreclosure was Resolved

A foreclosure may be resolved in one of a few methods: foreclosure; loan modification; deed in lieu of foreclosure; short sale.

Retain all documentation about how your foreclosure was resolved.

Check your credit report to see how the foreclosure is being reported. You may obtain a free credit report at www.annualcreditreport.com. If you find errors in your credit report, you have the right to correct the information. Check out the Federal Trade Commission website for more information: <http://www.consumer.ftc.gov/articles/0155-free-credit-reports>.

Review county recorded documents to see what, if any, documents were filed about your foreclosure. Not every county has documents available online, so you may need to contact your county recorder's office directly.

Step 2: Create a Crisis Spending Plan

The second step is to create a crisis spending plan to help meet your immediate financial obligations. The crisis spending plan should prioritize basic needs. Basic needs include payments and bills for items necessary for survival, such as food, medical, housing, and utilities. To reduce your spending on basic needs, apply for social service programs that can provide food, clothing, emergency housing vouchers, and emergency utility vouchers to assist you during this transition process. *(See Community Resources on page 67 for contact information)*

Other items like car loans, child support, and income tax debts may be prioritized and included in the crisis spending plan.

Other expenses are a lower priority. Information is available at <http://www.washingtonlawhelp.org/resource/prioritizing-debt-which-bills-do-i-pay-first?ref=M1p66>.

If you have excessive consumer debt, talk to an attorney about your options.

Step 3: Set Financial Goals

Ask yourself what are your top five challenges and top five assets (financial or behavioral)? Envision your life next year, as well as three and five years ahead. This helps with goal setting and allows you to plan beyond your immediate situation. Decide whether to focus attention on improving credit, saving money, reducing debt, or increasing income. Assistance is available from non-profit agencies and community organizations.

Step 4: Estimate Next Year's Income and Expenses

Review the past year's income and consider possible changes in the coming year. Next, review debts and expenses. Consider how expenses will change, especially if you have a new housing situation. Also, determine whether your new housing situation impacts any other expenses like transportation or day care. If necessary, fine tune expenses and create a livable spending plan.

Step 5: Analyze Current Financial Situation & Spending Habits

- Review and consider the total balance owing on each debt and the amount of payments due each month. List the changes you must make, or want to make, in the coming year. This becomes your Action Plan.
- Review monthly expenses and discuss each item with family members. Rank your expenses from most important to least important. Then list the changes you believe you must make and others you would like to make. These are part of your Action Plan as well.
- The final step is Action Planning. Review any savings and investment goals and list ways they could be increased. Every little bit helps. For example, start saving change, saving \$10 each week in a safe place at home, or direct depositing \$40 each month.
- If you net any cash from the sale of your home, use these funds to support your rebuilding plan.

Step 6: Create a Rebuilding Plan

Once the crisis-spending plan has been implemented, tackle the negatives on your credit history and begin establishing good credit. The new spending plan should support payment of all monthly bills on time and allow you to start paying off past-due balances. Use the steps above to create a written plan that is clear and attainable.

Step 7: Changing Habits

Now address your spending habits and money management decisions. Ask for advice and guidance, and research available resources for a workable, systematic approach to managing your finances. Financial freedom becomes more attainable with each spending decision based on your new savings goals. As past due balances are paid in full and bills are paid on time, credit scores will increase. Pay off debt rather than regularly transferring debt to other cards. Apply for new credit only when absolutely necessary. You may ultimately have to remove non-necessities from your budget, which means you will have to decide between "wants" and "needs" in your budget.

Common stumbling points for many families are managing monthly bill-paying habits, keeping spending records, and conducting periodic reviews. The following suggestions can easily be implemented into your new finance management plan:

1. Choose a specific area in your home to be the "office" area.
2. For each pay period, record how the money was spent in a notebook.

3. Create a bill payment and recordkeeping system that is convenient and easy to use. (Where bills will be put when they arrive, how you will keep track of online bill pay, where you will store and record bills due and paid, etc.)
4. Each time bills are paid; enter the amounts and dates into your notebook. Keep labeled receipts and cancelled checks to help remember to enter other expenses.
5. Practice planning purchases. If you need to replace your vehicle or make some other major purchase, begin making “practice” payments to your savings account in that amount about 3-4 months before you buy. This builds up your savings and prepares you for the impact of the additional payment. Near the end of every month, compare your written spending plan from Step 1 with the actual expense record in your notebook.
6. Don’t expect the plan and actual expenses to be exactly the same. Don’t be discouraged if it doesn’t go according to plan each month. Just identify the differences and consider how you will handle extra expenses in the month to come.
7. Revise the spending plan as necessary.
8. If overspending and excessive use of credit is an issue, think of a “tag” or “reminder” that might cause you to stop and think before you spend money on things that are not in your plan.
9. Keep your savings goals in a visual place. Write them down on a card to keep behind your debit card. Draw a picture and post it in several visible places in your home. Keep talking about goals with your family so you can hold each other accountable when spending starts to get out of hand.



Step 7: Managing the Plan

A good plan is only as good as its implementation and maintenance. Realistically, you may not be able to correct all your credit and spending issues at once. One step at a time is progress. An achievable plan will be easier to maintain and therefore lead to more success.

The action plan should be broken into monthly goals. Review the rebuilding plan each month to assess progress and make any necessary changes. It might be helpful for you to meet with a trusted advisor or counselor once a month for the first several months and less frequently or as needed after that.

Finally, during rebuilding, it is CRITICAL to avoid the spending and lending traps of “predatory financial services.” High-cost predatory financial services take advantage of financially distressed families. Find out more information about Payday loans at <http://www.washingtonlawhelp.org/resource/payday-loans-what-to-do-if-you-get-caught-in?ref=u0xw7> and <http://www.consumer.ftc.gov/articles/0097-payday-loans>.

By committing to a healthy financial rebuilding plan, you will be empowered to avoid alternative, costly services like **back-to-back loans and online payday loans**. Establishing a good working relationship with a bank or credit union will help you avoid the high cost of **check cashing outlets**. Begin to develop modest savings to get through emergencies while avoiding **overdraft loans, tax refund anticipation loans, and rent-to-own merchandise**. *To find a free or low-cost bank or credit union, go to www.financialemPOWERmentnetwork.org.*

Topic 7:

Tools for the Homeowner

- How to Find and Contact Your Originating Lender or Current Servicer
- Servicer Telephone Numbers
- Filing a Complaint
- Stress Relief
- Glossary of Mortgage Terms
- Community Resources



HOW TO FIND & CONTACT YOUR ORIGINATING LENDER OR CURRENT SERVICER

(1) Don't know who's your originating lender or current servicer?

Check your monthly mortgage billing statement.

Check your payment coupon book.

(2) Don't know how to reach your originating lender or current servicer?

Search on the Internet.

If you are having trouble finding a housing counseling agency, see *Finding a HUD-Approved Housing Counseling Agency* on page 17 for resource and contact information.

Use the Loan Servicer List on the following page.

(3) Does Fannie Mae or Freddie Mac Own Your Loan?

Find out at:

Fannie Mae - 1-800-7FANNIE (8am to 8pm EST) <https://knowyouroptions.com/loanlookup>

Freddie Mac - 1-800-FREDDIE (8am to 8pm EST) www.freddiemac.com/mymortgage

LOAN SERVICER TELEPHONE NUMBERS

Check your mortgage statement for contact information and have your account number ready.

FILING A COMPLAINT



You can file a complaint if you believe a bank or financial institution has been unfair or misleading, discriminated against you in lending, or violated a law or regulation.

To File a Complaint:

Federal Deposit Insurance Corporation, Consumer Response Center:

Hours of Operation: 8:00 a.m. to 8:00 p.m. Eastern Time M - F

Toll Free Number: 1-877-275-3342 (1-877-ASK-FDIC)

Mailing Address: Federal Deposit Insurance Corporation

Consumer Response Center

1100 Walnut St., Box #11

Kansas City, MO 64106

<https://www.fdic.gov/consumers/assistance/filecomplaint.html>

FDIC's Electronic Customer Assistance Form:

<https://ask.fdic.gov/FDICCustomerAssistanceForm>

For National Banks (i.e., Bank of America, Wells Fargo, US Bank, Chase, etc.):

Office of the Comptroller of the Currency

<http://www.helpwithmybank.gov/complaints/index-file-a-bank-complaint.html>

Federal Reserve Consumer Help: <https://www.federalreserveconsumerhelp.gov>

For Federal Credit Unions:

National Credit Union Administration (NCUA)

<https://www.mycreditunion.gov/consumer-assistance-center/complaint-process>

Federal Trade Commission, Division of Financial Practices: <http://www.ftc.gov/bcp/bcpfp.shtm>

Office of the Washington Attorney General: <http://www.atg.wa.gov/FileAComplaint.aspx>

The Washington State Department of Financial Institutions: <http://dfi.wa.gov/consumers/complaint.htm>

Consumer Financial Protection Bureau: <https://www.consumerfinance.gov/complaint/>; Hotline: 1-855-411-CFPB (2372)

STRESS RELIEF

Tips for restoring balance to your life when you are experiencing financial stress:

Suggestion # 1: Communication

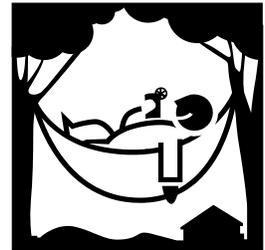
- Communication – Talk to your friends, spouse, or someone you trust.
- It may help to include another person in your thinking or planning if it affects him or her.
- Keep a journal.

Suggestion # 2: Write

- Write things down; seeing information in written form can give you a fresh perspective.
- Make a list of positives in your life such as your family, health, etc.

Suggestion # 3: Organization

- Get organized and stay organized.
- Invest in files, folders, or large envelopes and label them.
- Once you have established a protocol for yourself, continue to follow it.



Suggestion # 4: Time

- Take time for yourself.
- It does not need to be expensive or time consuming.
- It can be as simple as relaxing with a good book.
- People with many other people dependent on them rarely have time alone. It is important for your mental health to relax, clear your mind, and recharge.

Suggestion # 5: Exercise

- Research has proven that exercise is a great tonic for stress.
- Reserve at least 10 minutes every day or every other day to walk, run, stretch, bike, or dance.

Suggestion # 6: You

- Take care of yourself by limiting alcohol intake.
- Take part in things you enjoy that are within your budget.
- Keep your doctors' appointments and take any medications as prescribed.
- Get extra rest if possible.

Suggestion # 9: Recognize your feelings of shame

- Shame can be a very powerful, negative force – do not let it get the best of you.
- Recognize it but do not allow it to overcome you.
- Being in foreclosure does not mean you are alone. Help is available.

Suggestion # 10: Professional Help

- Seek professional help if you feel the need.
- Check with your company's Human Resource Department for a list of services or resources.
- Many employers provide employees with free or low costs access to professional counselors (possibly up to 10 sessions).

REACH OUT FOR HELP IF YOU ARE FEELING DOWN

Suicide Prevention Hotline

Crisis counselors are waiting for your call: 1-800-SUICIDE (1-800-784-2433) Toll-Free/ 24 hours/ 7 days a week or <http://www.suicide.org/hotlines/washington-suicide-hotlines.html>.

Why should I call the Lifeline? With Help Comes Hope.

From immediate suicidal crisis to information about mental health, crisis centers are equipped to take a wide range of calls. Some of the reasons to call 1-800-273-TALK are listed below.

- Call to speak with someone who cares
- Call if you feel you might be in danger of hurting yourself
- Call to find referrals to mental health services in your area
- Call to speak to a crisis worker about someone you're concerned about

The **National Suicide Prevention Lifeline** is a 24-hour, toll-free suicide prevention service available to anyone in suicidal crisis. If you need help, please dial 1-800-273-TALK (8255). You will be routed to the closest possible crisis center in your area. With more than 130 crisis centers across the country, the service's mission is to provide immediate assistance to anyone seeking mental health services. Call for yourself or for someone you care about. Your call is free and confidential.



Topic 8:

Managing the Paperwork



MANAGING THE PAPERWORK

- Paperwork Check List
- Communication Log

PAPERWORK CHECK LIST

The following documents are usually necessary before you begin to work with a mortgage servicer or a housing counseling agency:

Financial Information

- Hardship Letter – see Hardship Section
- Income Worksheet
- Expense Worksheet
- Asset Worksheet
- Consecutive pay stubs for the last 30 days for each member of the household
- Award letter for Social Security/Unemployment/Pension Income
- Federal Tax Returns for at least two years
- Bank Statements (most current two months) for all accounts/assets
- Statements/bills for all household expenses

Loan Documents

- Promissory Note
- Mortgage
- Riders to the Note and Mortgage
- Truth in Lending (TIL) Form
- HUD 1 Settlement/Closing Statement
- Home Equity Loan/Line of Credit

Other

- A Release of Authorization letter
- ALL correspondence, letters (opened and unopened envelopes) from banks, your servicer, courts or anyone regarding your home or the foreclosure
- Any Trustee's sale information from your mortgage company or its attorney
- Evidence of outstanding judgments and tax liens

“STAY ON TOP OF IT” COMMUNICATION LOG

It is important to keep track of all your conversations with your servicer and housing counselor. It is also very important to keep track of all the people working with you in addition to their phone numbers, important dates, and action steps. Below is a sample of the kinds of entries to make in your log. Attached to the log should be all of your documents including letters, loans, and notices.

- To whom did I speak? When?
- What was discussed?
- What is their phone number?
- Their address?
- When will they call back?
- When am I supposed to call back?
- What actions am I supposed to take and by when?
- What notice did I receive and from whom?

Sample Notes for “Stay On Top of It” Log

- Example -

| Date | Name Ph. Number | Notes about our conversation Call Back (CB), Left Message (LM) |
|------------|--------------------|---|
| 01/10/20xx | 1-888-243-6666 | Spoke with Katie @ Wilshire who requested a Hardship Letter from me. Fax to her @ 1-888-222-0000, then she will CB. If I don't hear from her by 1/15/20xx, I will call her. |
| 1/11/20xx | | Sent Hardship Letter by Fax to Katie. |
| 1/15/20xx | 1-888-243-6666 | LM with Katie to verify she received fax/hardship letter. |
| 1/19/20xx | | Katie called. Received letter. Now reviewing our file with her manager to decide next step. She will CB next week. Mark calendar to call Katie on 1/26/20xx if she has not called me. |
| 1/27/20xx | 1-888-243-6666 | LM for Katie who has not called as promised. Asked her to call back. |
| 1/28/20xx | 1-888-456-7777 | Marlon from National called to say their company took over our loan and that he will be my new contact. He has our hardship letter and will discuss with his manager next steps and promised to call back on Monday, Feb. 1 st . |

Glossary of Mortgage Terms

Accelerate – An option given to servicers through an “acceleration” clause in the mortgage or deed of trust requiring the borrower to pay the entire balance of the loan in full if his or her loan is in default.

Amortization – The gradual repayment of a mortgage loan with equal periodic payments of both principal and interest calculated to retire the loan at the end of a fixed period of time.

Annual Percentage Rate – The cost of your loan expressed as a yearly rate. Mortgages include interest, points, origination fees, and any mortgage insurance required by the lender.

Appraisal – An estimate of the value of a property.

Appreciation – The difference between the increased value of the property and the original value when the property was purchased.

Beneficiary – Washington law defines a beneficiary to be “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.”

Debt-to-Income Ratio (DTI) – Expressed as a percentage, the “DTI” is calculated by dividing the total house payment plus all other debt that appears on a credit report by the gross monthly income.

Deed-in-Lieu of Foreclosure – A foreclosure alternative where the servicer allows the borrower to transfer ownership of the property (the deed) to the servicer if the home cannot be sold at market value. Second mortgage lienholders must be willing to waive their claims.

Deed of Trust (DOT) – The recorded document that shows the homeowner/borrower owes a

principal balance to the originating lender for their home. The 3 parties included on this security instrument are the borrower, the originating lender and trustee.

Default – A mortgage or deed of trust is said to be in default when the borrower fails to make the payments as agreed in the original promissory note.

Deferred Payments – Payments that the servicer authorizes to be postponed in a loan workout.

Deficiency Judgment – A judgment against the borrower for the remaining balance on the loan after a foreclosure sale.

Delinquency – Borrower’s failure to make mortgage payments on time.

Equity – The net value of an asset, calculated by determining the difference between the present value of the property and the mortgage amount owed on that property.

Escrow Account – A segregated trust account in which escrow funds are held. This account is held by a servicer for payments of taxes, insurance, or other periodic debts against real property. Part of the borrower's monthly payment goes into this account so funds will be available to pay the taxes, insurance, and other impounded matters when due to avoid the need for the borrower to pay a big lump sum payment.

Fair Market Value – The price a property would sell for on the open market. (If you were to sell your home today, how much would it sell for?)

Forbearance – An agreement to suspend or reduce normal monthly payments for a fixed period of time. At the end of the forbearance period, the borrower must cure the delinquency

through a lump sum payment or a long-term repayment plan.

Foreclosure – The legal process by which a homeowner’s right to a property is terminated when a beneficiary or lienholder takes possession of the property, usually because of the owner’s default. Foreclosure can also occur if a homeowner fails to pay property taxes. At a foreclosure auction, the servicer, through a company called a trustee, sells the property that secures a loan on which a borrower has defaulted. Ownership of the property is then transferred to the beneficiary or purchaser of the property at the foreclosure auction. The servicer then markets and lists the property for sale to recover the balance owed to the beneficiary. In Washington, home foreclosures are usually non-judicial; however, on some occasions, they are conducted as “judicial foreclosures” through the court system.

Foreclosure Auction or Sale – A public event at which the foreclosed property is sold to the highest bidder in order for the beneficiary to recover some or all of the outstanding debt.

Free & Clear – Ownership of property free of all indebtedness. Zero balance owing on any loans or liens against the property.

Grace Period – The length of time between the due date and the date when late fees are assessed.

Good Faith Estimate – A written estimate of costs and fees associated with a mortgage loan.

Housing Ratio – The expected total monthly house payment divided by the gross monthly income and expressed as a percentage. The maximum percent of gross monthly income that can be used for a monthly mortgage payment.

Interest Rate – The percentage of a sum of money charged for its use.

Investor – The entity that owns the loan. Originating lenders often sell loans to investors

after closing. Consequently, your investor may be a different entity than your servicer, the beneficiary, or the originating lender. The servicer and the beneficiary (unless it is one and the same) must follow the investor’s guidelines for servicing the loan.

Judicial Foreclosure – A foreclosure that is processed by a court action. In Washington, home foreclosures are typically non-judicial deed of trust foreclosures. Judicial foreclosures are started through court paperwork called summons and complaint. Judicial foreclosures often have a redemption period after the foreclosure sale in which the homeowner can remain between 0-12 months’ rent free, depending on the type of relief sought by the beneficiary.

Lis Pendens – A recorded notice of pending lawsuit.

Loan Modification – A written agreement that permanently changes one or more of the original terms of the loan, such as the interest rate, payment amount, maturity date, or the amount of the unpaid principal balance. Typically, the arrearage (the amount of the delinquent debt plus fees) is added to the remaining balance of the loan and then the loan is re-amortized. Interest rate may be reduced, or a portion of the remaining balance forgiven in order to make the loan affordable for the homeowners. Servicers may also consider converting mortgages from adjustable to fixed rate loans that will remain affordable for the homeowner.

Loan Servicer (or Servicer) – The entity to whom you send your monthly mortgage payments. The originating lender has contracted with the servicer to handle your loan after closing. The servicer is your contact for any issues you have with your mortgage loan. It also includes the receipt of payments, customer service, escrow administration, investor accounting, collections, and foreclosures. The servicer’s function is sometimes referred to “loan administration.” The loan servicer is often a different entity than the one from which the borrower obtained their

loan. In some cases, the servicer may also be the beneficiary of the loan.

Loan-to-Value Ratio – The comparison of the amount of the loan to the value or selling price of real property expressed as a percentage. For example, if a home with a \$100,000 value has an \$80,000 mortgage on it, the loan to value is 80%.

Loss Mitigation – The department within the loan servicer’s company that operates to minimize the company’s losses on non-performing loans. This department works with homeowners to discuss workout plans and other solutions to defaults.

Mortgage Insurance – Insurance protecting a lender against loss from a borrower’s default.

Negative Amortization – This occurs when there is a gradual increase in the mortgage loan balance because the monthly payment is not enough to cover the monthly principal and interest payments. The shortfall each month is added to the balance from the month before and the total amount owed to the beneficiary increases as a result. Adjustable rate mortgages with payment caps and negative amortization are re-amortized at some point so that the remaining loan balance can be fully paid off during the term of the loan. This could result in a substantial increase in the borrower’s monthly payment.

Non-Judicial Foreclosure – The process of foreclosure which can be used when the home loan is secured by a deed of trust (which is almost always the case for home loans made in Washington). When the non-judicial foreclosure process is used against residential property, the liability secured by the deed of trust in foreclosure is extinguished even if the house sells at the foreclosure sale for less than the amount of the debt. However, if there is another obligation secured by a junior deed of trust, the non-judicial foreclosure of the senior deed of trust extinguishes the junior deed of trust but it does not extinguish the unsecured liability on the obligation that was secured by the junior deed of trust. The timeframe from the service or posting of the Notice of Trustee’s Sale to the date of the January 2020 | Page 71

foreclosure sale is at least 90 days, and in most circumstances for residential real property, at least 120 days.

Notice of Trustee’s Sale – A notice giving specific information about the loan in default and the foreclosure proceedings about to take place. In Washington, at least 90 days (and in most circumstances for residential real property, at least 120 days) before the foreclosure sale, the Notice of Trustee’s Sale must be recorded in the county where the property is located, mailed, and served or posted.

Originating Lender – The initial entity that gave you the mortgage loan. It may not be the same entity to whom you send your monthly mortgage payments.

Partial Claim or Partial Release – If your mortgage is insured by FHA, you may qualify for a low interest or interest-free loan to bring your loan current through the FHA. This loan would be repaid at a later date, usually when you pay off your first mortgage or sell your home.

Pre-Foreclosure Sale or Short Sale – If you can no longer afford your home, this option involves selling your house for less than the secured debt to prevent foreclosure. If you owe more on the home than its current value, your servicer may agree to accept less than what is owed on the mortgage. There may be income tax consequences with a short sale, so please talk to a qualified tax preparer and/or an attorney for more information before agreeing to a short sale.

Pre-Payment Penalty – Is a fee charged by a servicer when a borrower pays off a mortgage loan in full or in part prior to the maturity date. Fees are generally only applicable within the first few years of the loan and will typically be assessed on prepayments of 20% of the loan balance or more.

Postponement – The trustee may continue the sale date to a later time, or another place, by giving notice of the new date, time and place by

announcing it at the time and place the sale was previously scheduled to occur. The new date cannot exceed 120 days from the original sale date. No other notice is required.

Public Notice – Once a week for four consecutive weeks the notice must appear in a newspaper in the county where the property is located. This does not necessarily mean the newspaper that you read, as some newspapers are owned by foreclosure companies. The last notice must be published not less than 10 days prior to the sale date. A notice is to be posted at least 20 days before the date of sale in some conspicuous place on the property. Notice shall also be posted at least 20 days before the date of sale at the county superior court.

Refinance – Qualifying for a new mortgage to pay off an existing mortgage using the same property as collateral.

Reinstatement – When the borrower pays the full amount in arrears on the loan (past due monthly payments plus any fees) in a lump sum by a specific date.

Repayment Plan – An arrangement by which a borrower agrees to make additional payments to reduce the past due amounts while still making the regularly scheduled payments.

Request for Notice – A recorded document requiring a trustee to send a copy of a Notice of Default or Notice of Sale concerning a specific deed of trust in foreclosure to the person who filed/recorded the document.

Second loan – If there are more than two secured home loans, the loan secured by a deed of trust or mortgage that is junior only to the senior deed of trust or mortgage, is frequently referred to as the “second.” The non-judicial foreclosure on the “first” deed of trust extinguishes the “second” deed of trust but does not extinguish the unsecured liability on the obligation secured by the “second” deed of trust.

Servicing – The administration of the loan by the servicer from the time you obtain your mortgage loan until it is paid off.

Short Refinance – The refinancing of a mortgage by a servicer for a borrower currently in default on his or her payments. This is done to avoid foreclosure. Typically, the new loan amount is less than the existing outstanding loan amount and the difference is typically forgiven by the servicer. This is one of several alternatives that might be more cost effective for the servicer instead of foreclosing on the property.

Trustee or Successor Trustee – A neutral party who advertises the foreclosure property for sale and conducts the auction to sell the property to the highest bidder. The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor. See RCW 61.24.010.

Trustee’s Sale – An auction of real property conducted by a trustee. (See Foreclosure Auction.)

Work-Out – Process where a servicer and a borrower develop a mutually acceptable agreement to resolve a loan default and avoid foreclosure. Also sometimes called “restructure.”

APPENDIX

EXAMPLES OF LOAN MODIFICATION DOCUMENTS

- https://www.fanniemae.com/content/guide_form/710.pdf
- <http://www.freddiemac.com/singlefamily/service/docs/form710.pdf>
- <http://www.irs.gov/pub/irs-pdf/f4506t.pdf>

DFI GUIDE TO HOME LOANS FORMS

- <https://dfi.wa.gov/financial-education/information/guide-home-loans>

I AM A TENANT LIVING IN A FORECLOSED PROPERTY. WHAT ARE MY RIGHTS?

If you rent your home, and your home was sold at a foreclosure sale, state law provides you with certain rights. Please visit www.washingtonlawhelp.org and find the publication titled “I am a Tenant Living in a Foreclosed Property. What are My Rights?” The publication is available at the following address:

- <https://www.washingtonlawhelp.org/resource/i-am-a-tenant-living-in-a-foreclosed-property?ref=Aywdl#iD4C32173-FA85-4F0F-B27E-CCD48F248E70>

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Disclaimer

Unless otherwise specifically stated, the information contained herein is made available to the public by the Financial Empowerment Network Foreclosure Prevention Team for use as an example of the kinds of documents and advice one may receive in the process of negotiating with a mortgage company, HUD-approved non-profit housing counseling agency or any other party involved in the delinquency or foreclosure of one's home. The intent of the workbook is to assist individuals in resolving or preventing their foreclosure crisis. Neither the Network Foreclosure Prevention Team nor any other agency or entities involved in the development of this workbook, assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, product or process disclosed in these examples. Due diligence has been made to cite all sources used in the making of this workbook.

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This Resource Guide is not intended to provide you with legal advice. Please contact the Washington State Bar Association at 1-800-945-9722 for lawyer referral resources.

