

# A HOMEOWNER'S GUIDE TO FORECLOSURE IN CALIFORNIA

*Published by the California Department of Real Estate  
2010*



# A HOMEOWNER'S GUIDE TO FORECLOSURE IN CALIFORNIA

Prepared by:

The California State University  
Real Estate & Land Use Institute

College of Business Administration  
California State University, Sacramento  
Sacramento, CA 95819-6088

A Homeowner's Guide to Foreclosure in California focuses on homeowners in financial distress who live in their homes. This guide is not directed to speculators or absentee owners (such as owners of vacation homes). Different rules beyond the scope of this guide apply to mortgages on non-owner-occupied residences.

Current as of March 2010

## Acknowledgements

Jaime R. Alwayay, PhD  
Director, CSU-Real Estate & Land Use Institute  
Professor, Sacramento State, College of Business Administration  
Project Director and Subject Matter Expert

Keirsten Casey, MBA  
Sacramento State, College of Continuing Education  
Focus Group Facilitator

Carrie Dennis, BS  
Sacramento State, College of Continuing Education  
Graphic Designer

Louis Gonzalez, JD  
Weintraub, Genshlea, Chediak  
Subject Matter Expert

Susan Gonzalez, MBA  
Sacramento State, College of Continuing Education  
Project Manager

Deborah Hunt, PhD  
Sacramento State, College of Continuing Education  
Researcher

R. Andrew Murray, JD  
Wagner, Kirkman, Blaine, Klomparens & Youmans, LLP  
Real Estate Law Researcher

S. Guy Puccio, MA  
President, Parkway Land, Inc.  
Subject Matter Expert

Allison L. Shaw, MLIS  
Sacramento State, College of Continuing Education  
Technical Editor

Sanjay B. Varshney, PhD  
Dean, Sacramento State, College of Business Administration  
Subject Matter Expert

Bill W. West, JD  
Emeritus Faculty, Sacramento State, College of Business Administration  
Content Writer

## Table of Contents

### A Homeowner's Guide to Foreclosure in California

Introduction .....	6
Definitions of Some Terms Commonly Used.....	8
Facing Foreclosure .....	13
Event 1: Missing a Single Payment.....	13
Event 2: Notice of Default (NOD).....	14
Event 3: End of the Initial Three Month Reinstatement or Cure Period.....	15
Event 4: Delay of Notice of Sale .....	15
Event 5: Notice of Sale.....	16
Event 6: Foreclosure Sale.....	17
Foreclosure Costs Everybody.....	18
What Do Homeowners Lose through Foreclosure?.....	18
What Do Kent and Ellie Stand to Lose through Foreclosure?.....	18
Foreclosures Carry a Significant Financial Impact for Homeowners.....	19
What Do Mortgage Lenders Lose through Foreclosure? .....	20
Possible Alternatives or Options to Foreclosure .....	21
Modify or Restructure the Terms and Payment Schedule of Your Existing Loan.....	22
Refinance: Pay Off Your Loan with a New Loan on Better Terms .....	27
Pursue a "Short Sale" .....	28
Sell Your Home to Access the Available Equity .....	29
Rent Your Home .....	33
Share the Cost with a Boarder .....	34
Offer a "Deed-in-Lieu of Foreclosure" to Your Lender rather than Proceed with a Foreclosure Sale .....	35
When All Else Fails: Moving Forward with Foreclosure .....	36
The Foreclosure Procedure Timeline - A Quick View .....	37
The Foreclosure Procedure - Revisited .....	39
Homeowners: What Not To Do.....	46
Post-Foreclosure Option for the Former Homeowner.....	49
Conclusion .....	50
Consumer Alerts Issued by the California Department of Real Estate.....	50

Fraud Warnings for California Homeowners in Financial Distress .....50  
Fraud Warning Regarding Forensic Loan Audits .....61  
Resources .....67  
    Federal Government Agencies .....67  
    State Government Agencies .....68  
    Nonprofit Agencies .....68  
    Banks and Mortgage Companies .....69  
    Notes .....70

This guide contains useful information for homeowners in financial distress who struggle to pay their monthly mortgage loan payments (principal and interest, property taxes, and homeowner's insurance premiums). Regardless of whether these items are lumped together into one monthly payment or paid separately, the result is the same. Homeowners are obligated to make these payments and many face challenges in doing so.

For example:

- Your monthly mortgage payments may have increased because of an upward adjustment in the interest rate. Adjustable Rate Mortgages can and do adjust automatically, as described and disclosed in your original loan documents.
- You may be unable to meet your monthly mortgage loan payments because of unforeseen circumstances such as losing your job, reduction of income, or getting sick.
- You may be going through a “divorce” and your partner wants to walk away from your home and your monthly mortgage loan payments.
- Your monthly mortgage loan payments and income may be unchanged, but the value of your home has decreased to the point where you owe more than the value of your home.

Regardless of your particular situation, if you are unable or unwilling to meet your monthly mortgage loan payments, you face the probability of foreclosure.

When you purchased or refinanced your home, you borrowed money from a lender. The lender is entitled to repayment according to the



financial terms described in your mortgage loan documents. If you miss your mortgage loan payments, your lender can cause your home to be sold to pay off your mortgage loan. This procedure is called foreclosure. While going through foreclosure is an overwhelming experience, the last thing you should do is nothing. This guide was prepared to help you understand the potential alternatives or options to foreclosure so you can actively participate in finding the best possible solution for your mortgage loan situation.

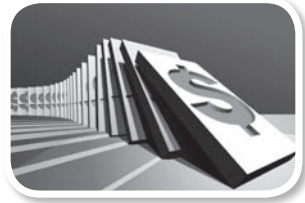


## Definitions of Some Terms Commonly Used

**Adjustable Rate Mortgage (“ARM”):** A loan with an interest rate that changes at defined intervals based on increases or decreases in a specified published index.

**Assignee:** A person who purchased the interests of and replaced the lender identified in the promissory note and deed of trust (the mortgage loan documents) and who becomes the holder of the promissory note. Recording the assignment from the lender to the assignee is required. The recorder of the county where the property described in the deed of trust is located will record the assignment.

**Cash for Keys:** Money received from the lender or its servicing agent to assist you in moving from your home upon request following the foreclosure sale.



**Collateral Action:** An action brought in court by a lender against the homeowner for loss or damage to the home, whether caused or suffered by the homeowner (waste) or damages that may arise from the alleged fraud of the homeowner.

**Credit Bid:** The ability of the lender to direct the trustee to bid at the foreclosure sale up to the total debt owed to the lender without advancing money.

**Deed:** A document (instrument) by which ownership of and title to a home is transferred from one person to another.

**Deed-In-Lieu:** A document (instrument) executed by the borrower conveying title to a lender in lieu of the lender proceeding with foreclosing on the borrower’s property.



*Deed of Trust:* A document (instrument) when recorded that makes the property described in the deed of trust the security for the repayment of the mortgage loan. This document identifies the borrower as the trustor, the lender as the beneficiary, and a third person as the trustee authorized by the borrower and the lender to perform defined activities.

*Equity:* The estimated amount by which the then fair market value of the property exceeds the total amount of mortgage loans and other liens recorded against its title.

*Equity Purchaser:* An investor purchasing owner occupied residential property to rent or resell when the home is subject to an active Notice of Default (NOD).

*Eviction:* A court supervised procedure initiated by the owner to remove from the property persons who are in possession of the property.

*FHA:* Federal Housing Administration

*FNMA:* Federal National Mortgage Association (also known as “Fannie Mae”).

*FHLMC:* Federal Home Loan Mortgage Corporation (also known as “Freddie Mac”).

*Fixed Rate Mortgage (“FRM”):* A mortgage loan with interest fixed at a prescribed rate (for example, 6%) for the duration of the loan.

*Foreclosure Consultant:* A person who for compensation offers to perform services to assist a homeowner of owner-occupied residential property subject to an active NOD to (among others) stop or postpone the foreclosure sale, obtain a delay or forbearance from the lender, assist the owner when reinstating or curing delinquencies, help the homeowner to avoid damage to their credit rating, or assist the homeowner in obtaining any remaining surplus funds or net proceeds



from a foreclosure sale in excess of the amounts owed in accordance with the terms of the mortgage loan.

*Judicial Foreclosure:* A foreclosure sale conducted under the supervision of a court requiring the services of attorneys.

*Lender:* The person that extends credit (loans money) to the borrower and that is identified as the lender in the promissory note and as the beneficiary in the deed of trust (the mortgage loan). For the purposes of this guide, the term lender includes the assignee of the lender.

*Money Judgment:* A court declaring the amount of money owed to the creditor and obligating the debtor to repay that amount (a judgment of the court). The judgment typically includes 10% interest until repayment of the amount occurs. The judgment may also include an award of attorney's fees to the creditor.

*Mortgage Loan Modification:* A process through which the terms of a mortgage loan are restructured or modified pursuant to an agreement between the lender and the borrower (the mortgagee and mortgagor).

*Non-Judicial Foreclosure:* A non-judicial foreclosure is a privately conducted but publically held sale of the property described in the deed of trust (mortgage loan) by the named trustee (or by a substituted trustee). A judicial foreclosure occurs under court supervision (a state action). A non-judicial foreclosure is a procedure followed by the trustee as described in California law that provides the lender with a remedy for collecting the amounts owed by a defaulting borrower in accordance with the terms of the mortgage loan (including the costs of foreclosure). The term "foreclosure" as used in this guide means a "non-judicial" foreclosure.

*Notice of Default ("NOD"):* A document known as the NOD prepared by the trustee at the direction of the lender that upon recording



with the office of the county recorder begins the initial three month “reinstatement” or “cure” period during which no Notice of Sale may be recorded.

*Notice of Sale (“NOS”):* Following the expiration of the initial three month “reinstatement” or “cure” period, the trustee at the direction of the lender may prepare the NOS and cause this document to be posted on the property and recorded with the county recorder where the property is located. The NOS when posted and recorded commences a minimum 20-day period before the date of the sale can be scheduled at a specific time in an identified public place within the county or the judicial district in which the sale is to take place.

*Promissory Note:* A written agreement obligating the borrower/debtor to repay the amounts loaned by the lender/creditor (the holder of the promissory note). It is also the evidence of the amount of loan (debt) owed by the borrower to the lender.

*Purchase Money Mortgage:* A mortgage loan (loan funds) obtained to purchase the home. The borrower must intend to occupy the home purchased with the mortgage loan funds. A non-purchase money mortgage is a mortgage loan obtained to refinance or to add additional loans to the home and not for the purchase of the home.

*Real Estate Owned (“REO”):* A property owned by a lender acquired through a foreclosure sale.

*Redemption Period:* The period of time beginning five days before and continuing to the date of the scheduled foreclosure sale or the postponed date of the sale, during which time the borrower is entitled to stop the foreclosure by paying in full all amounts owing in accordance with the terms of the mortgage loan.

*Reinstatement or Cure Period:* The time provided to the borrower to pay the delinquent sums owing to the lender to stop the foreclosure



sale (to cure the default and reinstate the mortgage loan). The initial reinstatement or cure period begins with the three months from the recording of the NOD to the recording of the NOS and includes the time following the recording of the NOS to five days before the date of the scheduled foreclosure sale or the postponed date of the sale. Upon reinstatement or cure, the lender is to record a notice rescinding the NOD.

*Servicing Agent:* The lender that retained loan servicing (the right and obligation to continue to collect the mortgage loan payments) following the sale of the mortgage loan to the assignee (the holder of the promissory note). In addition, a licensed agent of the lender (or an agent expressly exempt from licensing) authorized to collect the mortgage loan payments (service the loan). For the purposes of this guide, the phrase lender or its servicing agent includes the lender, the assignee of the lender, and the authorized representative or agent that is servicing the loan.

*Short Sale:* A sale of a home where its sales price is less than the total amount of the balances due on the mortgage loans and the liens recorded against the title of the home.

*Trustee:* A person identified or substituted in the place of the person named in the deed of trust. The trustee is the person authorized by the lender and the borrower to proceed with the privately held but publicly conducted foreclosure sale (in the event of the failure to timely make the mortgage loan payments or to otherwise comply with the terms of the mortgage loan).

*Underbid:* When the amount demanded at the foreclosure sale by the trustee on behalf of the lender or its servicing agent is less than the total debt owed by the homeowner.

*Upside Down:* When the value of the home is less than the amounts owing pursuant to any mortgage loans or liens recorded against the property.

*Waste*: An intentional or unintentional act of a borrower of a mortgage loan that results in physical damage or injury to the property described in the deed of trust. A borrower is liable for any waste of the property created or suffered during the borrower’s ownership.

NOTES: In this guide, the terms “borrower” and “homeowner” and the terms “property” and “home” are interchangeable. In addition, the phrase “promissory note” and “deed of trust” also means the “mortgage loan”.

## Facing Foreclosure

If you face the possibility of foreclosure, you are not alone. Foreclosure is not a personal attack on you or your home. Thousands of financially distressed homeowners face similar circumstances. Although stressful, a troubled real estate market may be helpful to you. The number of current borrower defaults (including foreclosures) is overwhelming to lenders and their servicing agents. As a result, lenders and their servicing agents are typically more willing to help struggling homeowners avoid foreclosure by solving their mortgage loan delinquencies. The federal government and the State of California each have rules and regulations that can be helpful to homeowners in solving mortgage loan issues.

It is important to have a general understanding of the foreclosure procedure so that you are informed and are able to identify your rights. With this information, you can take a proactive role in finding the best possible solution for your mortgage loan situation.

## The Foreclosure Procedure Includes Six Events

### Event 1: Missing a Single Payment

The foreclosure procedure may begin when you miss a single monthly mortgage loan payment (a delinquency). In some instances, homeowners (who failed to make a monthly mortgage loan payment



or who anticipate the inability to make such payments) have a very hard time contacting their lender or its servicing agent. As of September 2008, a lender or its servicing agent is required to contact the homeowner 30 days in advance of initiating a foreclosure or to demonstrate that a good faith effort occurred to contact the homeowner.

However, this contact requirement only applies to homeowners who obtained their mortgage loan between January 1, 2003 and December 31, 2007. The lender or its servicing agent is not required under California law to contact or exercise due diligence (act in good faith) to contact the homeowner who obtained a mortgage loan before or after this 5-year window. Some mortgage loans insured or purchased by agencies or enterprises of the federal government are also subject to certain advance contact or notice requirements.

The purpose of the advance contact or notice is to provide the homeowner with information regarding the alternatives or options that may be available to avoid foreclosure, including referring the homeowner to independent counseling. An alternative or option may include modifying or restructuring your mortgage loan.

### Event 2: Notice of Default (“NOD”)

If you and your lender or its servicing agent cannot agree on alternative mortgage loan terms to avoid foreclosure (a modification or restructuring), your lender can direct the trustee to record a NOD against your home *provided that you have been contacted 30 days in advance of the recording in the manner described in Event 1*. The recording of the NOD officially begins the foreclosure procedure. You will receive a copy of the NOD by certified postage prepaid mail.

After your lender or its servicing agent directs the trustee to record the NOD, an initial minimum three month period is required to provide you with the opportunity of curing the default and reinstating your mortgage loan. You should use this time to bring current your delinquent



payments (reinstate) or to continue negotiating with your lender or its servicing agent a modification or restructuring of your mortgage loan. It may be possible to arrange with your lender or its servicing agent for a delay in payment (forbearance).

### Event 3: End of the Initial Three Month Reinstatement or Cure Period

When the initial three month reinstatement or cure period ends, your lender or its servicing agent can move forward and direct the trustee to schedule the foreclosure sale of your home. By now, you should consider the possibility of relocating in anticipation your lender or its servicing agent may require you to move from your home after the foreclosure sale occurs and the eviction process is completed. Some lenders may offer you the opportunity to remain in your home following the foreclosure sale on a mutually acceptable basis. For example, the lender or its servicing agent may ask you to stay in the home for the payment of rent.



### Event 4: Delay of Notice of Sale

Pursuant to the California Foreclosure Prevention Act (CFPA) residential loans that were recorded between January 1, 2003 and January 1, 2008 your lender or servicing agent cannot proceed to the Notice of Sale for at least an additional 90 days after the three month reinstatement or cure period if the lender or servicing agent does not have an approved comprehensive loan modification program. To determine if you lender or servicer has an approved comprehensive loan modification program, you can visit the web site of the Department of Real Estate at [www.dre.ca.gov](http://www.dre.ca.gov), or Department of Corporations at [www.corp.ca.gov](http://www.corp.ca.gov), or the Department of Financial Institutions at [www.dfi.ca.gov](http://www.dfi.ca.gov) for a complete listing of lenders and servicers. The additional 90 day foreclosure extension afforded by the CFPA is scheduled to be repealed on January



1, 2011 unless otherwise extended by legislation.

### Event 5: Notice of Sale (“NOS”)

Upon completion of the prior 3 events, your lender or its servicing agent can direct the trustee to prepare a NOS (including scheduling a foreclosure sale). The trustee will record the NOS, post your home with a copy of the NOS, and publish the NOS in an authorized newspaper of general circulation in the jurisdiction where the foreclosure sale is to occur. The NOS will be published multiple times leading up to the date of the scheduled foreclosure sale or the date of the postponed sale of your home.



It is possible the NOD was recorded against your home prior to the effective date of the California law establishing the requirement to delay the recording of the NOD until 30 days after contact is made with you or after satisfying due diligence requirements to make contact with you (demonstrate a good faith effort). In such an event, a statement in the form of a declaration must be included with the NOS that contact with you occurred to explore alternatives or options to avoid foreclosure *prior to recording the NOS*.

These required contacts or good faith efforts to make contact put many homeowners in direct communication with their lender or its servicing agent early in or during the foreclosure procedure. Time and energy that was once wasted tracking down your lender or its servicing agent (or the appropriate member of their staffs) can now be invested in negotiating monthly mortgage loan payments that you can afford and that are acceptable to your lender (modifying or restructuring your mortgage loan). You should continue to negotiate with your mortgage lender or its servicing agent up until the scheduled date of the foreclosure sale or the date of the postponed sale. You should not prematurely move out



of your home, particularly when you are continuing to negotiate with your lender or its servicing agent.

## Event 6: Foreclosure Sale

When your home sells at the foreclosure sale, the lender or its servicing agent may elect to accept the sale proceeds as payment in full. This is known as a “full credit” bid. Should your lender or its servicing agent elect to “underbid” (direct the trustee to open the bidding in an amount that represents a specified partial payment of your defaulted mortgage loan), the successful bidder may be able to purchase your home for less than the amount owing to your lender at the time of the foreclosure sale.

Lenders or their servicing agents may elect to “underbid” if they believe a “collateral action” is appropriate. For example, should vandals damage your home and either no insurance coverage is available or the proceeds from the insurance coverage are inadequate to pay for the causality loss, the lender or its servicing agent may pursue a collateral action against you to recover the loss incurred as a result of the damage (waste). Moving from or leaving your home vacant prior to the foreclosure sale may cause a loss in property insurance coverage. Check with your insurance agent before moving out of your home.

Note: It is worth noting that when a lender forecloses based on a default on the loan used to buy your home (purchase money loan), the lender may not obtain a deficiency judgment against you if proceeds from the foreclosure sale are insufficient to cover the amount owed on the loan. In some circumstances, a lender may obtain a deficiency judgment against you on non-purchase money loans secured by your home, such as an equity line of credit. For more information on your rights and the lenders ability to collect money from you when your property sells for less at a public foreclosure sale than what is owed, contact an attorney.



## Foreclosure Costs Everybody

Now that you have a better understanding of the foreclosure procedure, it is time to consider what foreclosure costs you and your lender or its servicing agent may incur. Most of the time homeowners make their monthly mortgage loan payments as scheduled. When times are tough, it may become impossible to make your mortgage loan payments. As a result, the homeowner, the lender, and the community where your home is located, each lose out in a variety of ways.

### What do Homeowners Lose through Foreclosure?

*Example:* Kent and Ellie Myer were barely able to make their monthly mortgage loan payments after it adjusted upwards. They knew they had an ARM but hoped that interest rates would remain low. After Kent suffered an injury at work lowering the family's income, the Myers could not cover their family expenses, including their mortgage loan payments. After missing a payment, they received a telephone call from their lender. Unfortunately, the Myers could not negotiate a modification or restructuring of their mortgage loan. The trustee recorded a NOD against the title to the Myer's home, a month following contact with Kent and Ellie by their lender or its servicing agent.



### What do Kent and Ellie Stand to Lose?

The most visible impact of foreclosure is the loss of the Myer's home and the equity in their home. Following the foreclosure sale, the Myers will likely be required to move out of their home (an eviction) and find a new place to live.

## Foreclosures Carry Significant Financial Impact for Homeowners

### *Loss of Down Payment, Mortgage Loan Payments and Equity*

Through foreclosure, homeowners lose the down payment made at the time of purchasing and the mortgage loan payments they made during the ownership of their home. Homeowners also lose the amount of any appreciation in market value that may have occurred since they purchased their home.

Prior mortgage loan payments, property taxes, insurance premiums, and monies spent on home maintenance are not entirely lost. Some of these payments were deductible on income tax returns, and they represent payments for the occupancy of the home (even though the collective payments are often in excess of the market rent for the same period). When homeowners lose their home, future growth and equity will also be lost when home values once again increase.

### *The Myer's Credit Rating*

The Myer's credit reports will reflect the foreclosure sale. Foreclosures will lower credit scores, damaging the Myer's credit rating. Many lenders will not extend credit to borrowers within 5 years following a foreclosure sale of their home. For example, FHA will generally not insure a new mortgage loan for 5 years following a foreclosure sale reported as part of the borrower's credit record. Therefore, a "foreclosed-on" homeowner may not be able to obtain another mortgage loan for several years.

### *The Myer's Community*

Moving to a new home often means moving away from friends and neighbors, as well as familiar places (schools, public libraries, parks, grocery stores, coffee shops, banks, etc.). Commuting distances may increase after the move. In addition, a number of foreclosed and vacant



homes in a neighborhood of a community typically diminishes the appearance of the neighborhood, causes property values to decline, and reduces property tax revenues.

### *The Myer's Peace of Mind*

The drastic changes following a foreclosure sale can result in a physical, emotional, and psychological toll on homeowners and their families. Clearly, homeowners have a huge incentive to avoid foreclosure.

### **What do Lenders Stand to Lose through Foreclosure?**

#### *Time Delay and the Costs Incurred by the Lender*

The foreclosure procedure takes several months to complete and during that time the lender:

- May not receive interest income on its investment (the mortgage loan);
- May not receive payments of the principal due in accordance with the terms of the mortgage loan that could be reinvested elsewhere;
- Could be subject to fines for failure to comply with applicable city and county ordinances that impose appearance and condition standards on vacant properties (keeping the yard free of trash and weeds, securing and maintaining the home, etc.);
- Regardless of local ordinances, typically incurs a variety of expenses (insurance, essential repairs, maintenance, property taxes, management fees, etc.);
- May face atypical financial and management problems often associated with owning vacant homes (trespassing, theft,

vandalism, etc.);

- May be subject to the corporate business problem of owning too many REOs, including substantial increases in their capital reserve requirements (as imposed by government regulators) that may limit the ability to make new mortgage loans;
- If placed in the rental market to provide some income from the REO investment, renting of the home will not alter the increased capital reserve requirements; and additional capital is typically necessary to make the home suitable for rental occupancy (cleaned, repaired, managed, etc.);
- If placed on the market for sale, real estate brokers will generally be hired and paid to sell its REOs (typically increasing the loss by the amount of the selling costs); and,
- May lose money when “foreclosed-on” homes sell at exceptionally low prices (often much less than the amounts represented by the homeowner’s unpaid mortgage loan, the costs of foreclosure, and the costs of selling the REOs).

The final sales price will determine the ultimate total loss absorbed by the lender because of the foreclosure and the sale of the REO. Lenders clearly do not want to lose money or be in the business of owning and managing vacant homes and have just as much of an incentive as homeowners to avoid foreclosure.

### Possible Alternatives or Options to Foreclosure

Since homeowners and lenders or their servicing agents have substantial incentives to avoid foreclosure, it is important they each work together to develop alternative solutions.



Homeowners may pursue a number of possible alternatives to foreclosure and should take the initiative to do so. Because not all alternatives or options are appropriate for every homeowner, you need to decide which solution might be best for you in your particular circumstances. Possible alternatives or options include:

- A. Modify or Restructure the Terms and Payment Schedule of Your Existing Mortgage Loan;
- B. Refinance: Pay Off Your Loan with a New Loan on Better Terms;
- C. Sell Your Home and Access the Available Equity;
- D. Pursue a "Short Sale";
- E. Rent Out Your Home;
- F. Share the Cost with a Boarder; or
- G. Offer a "Deed-in-Lieu" of Foreclosure to Your Lender or its Servicing Agent.

There are also federal programs designed to prevent foreclosure. Visit [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov) or call 1-888-995-HOPE (4673) for help with the Making Home Affordable Program and to speak with a HUD-approved housing counselor for free.

### **A. Modify or Restructure the Terms and Payment Schedule of Your Existing Mortgage Loan**

For most homeowners, modifying or restructuring their current mortgage loan is a better alternative to foreclosure. At the homeowner's request, the lender or its servicing agent may agree to modify the original mortgage loan and adjust its terms in many ways.

To effectively modify or restructure your monthly mortgage loan payments that are within your budget, negotiations with your lender or its servicing agent will be necessary. Your negotiating strength includes that the lender will typically lose less money by working with you to modify or restructure your mortgage loan than will be lost by foreclosing on your home.



The steps to modify or restructure your current mortgage loan:

1. *Contact Your Lender or its Servicing Agent.*

Homeowners have had a difficult time contacting their lender or its servicing agent. Mortgage loans are often pooled together and sold assignees that designate servicing agents (some are located out of state) to collect mortgage loan payments. These servicing agents are often not the lenders or the assignees of the lenders, but may represent the only means of contacting a person authorized to act for your lender.

By calling the number of the servicing agent listed on your monthly mortgage loan statement, you should be able to make contact with the person assigned by the servicing agent to negotiate with you on the lender's or the servicing agent's behalf.

If you obtained your mortgage loan between January 1, 2003 and December 31, 2007, your lender or its servicing agent is required to contact you in person or by telephone (or show that a good faith effort has been made to do so). This contact is to occur at least 30 days before your lender or its servicing agent directs the trustee to record a NOD. However, you do not need to wait. You should contact your lender or its servicing agent even before you miss a single monthly mortgage loan payment.

Should the NOD have been recorded against your home prior to the date when California law became effective requiring you to be contacted, your lender or its servicing agent is obligated to contact you to explore alternatives or options to avoid foreclosure (or must list the good faith efforts made to contact you) prior to recording the Notice of Sale (NOS). A statement in the form of a declaration is to be included with the NOS that either contact was made with you or listing the good faith efforts to make contact with you.

If you obtained your mortgage loan before or after the 5-year window,



your lender or its servicing agent is not required to contact you. You will need to take the initiative to begin negotiations with your lender or its servicing agent. The earlier you contact your lender or its servicing agent, the stronger your negotiating position will likely be.

Whether you contact the lender or its servicing agent, or they contact you, the purpose of this initial contact is to set up a telephone discussion or meeting where both parties can assess your financial condition with the goal of finding a monthly mortgage loan payment that you can afford and your lender or its servicing agent can accept.

When you contact your lender or its servicing agent, make sure to have the following information available:

- Your name
- Address
- Telephone number
- Email address, if available
- Name and address of the servicing agent where you mail your monthly mortgage payment
- The mortgage loan number
- Your current income and a list of monthly expenses
- Reason for the delinquencies
- Whether you are in bankruptcy proceedings (If you are, you will need to know your case number and attorney to inform the lender or its servicing agent of these facts and with whom their future communication should occur)
- Whether the property is currently owner occupied

## *2. Prepare Your Proposed Solution*

To negotiate a modified or restructured mortgage loan arrangement, you will need to provide your lender or its servicing agent with enough financial information to verify the monthly mortgage loan payment you can reasonably afford. Your proposed solution needs to include



a financial statement reflecting all sources of household income and your overall economic situation. Based on your income, your lender or its servicing agent will apply general guidelines that will assist them to determine what you can afford.

Make sure to include documentation (a paycheck stub or bank statements showing electronic deposits) to verify your income. Remember to remove all personal financial information (social security and bank account numbers, etc.).

### *3. Your Lender or its Servicing Agent will want to Support their Decision to Modify*

Most lenders and servicing agents understand that if you cannot make your monthly mortgage loan payments, you likely will not pay it. This gives your lender or its servicing agent an incentive to work with you to find a monthly mortgage loan payment that makes sense for both you and the lender. At the same time, the lender and its servicing agents want to avoid situations where homeowners take advantage of them. Finally, in some instances a loan modification is not possible. For example, a lender is not likely to agree to a loan modification if your income is not sufficient to support the modified terms. It is unfortunate, but in some cases foreclosure may be the only option.

### *4. Understand What Your Lender or its Servicing Agent Can Reasonably Offer*

Lenders and their servicing agents generally have the knowledge and skill to create different mortgage loan solutions. Homeowners should ask questions and get understandable answers regarding the proposed modified or restructured mortgage loan terms. Counseling services are also a resource of mortgage loan information available to homeowners.

Lenders and their servicing agents can modify mortgage loan payments



in several different ways. For example, your lender or its servicing agent may be able to:

- Extend the term (length in years) of your mortgage loan. This can slightly lower the monthly mortgage loan payment.
- Reduce the interest rate of your mortgage loan or convert the adjustable rate into a fixed rate.
- Reduce the principal amount of your mortgage loan.
- Change your monthly mortgage loan payment, lowering it now and increasing it later when your economic status expects to improve.
- Adjust your mortgage loan to a lower principal amount at a reasonable interest rate with lower monthly mortgage loan payments.
- Modify or restructure the mortgage in any combination of the above to achieve the desired mortgage loan payments and mortgage loan terms.

A prepared homeowner might persuade a lender or its servicing agent to adjust the mortgage loan payments. The costs of foreclosure in a depressed market could produce a greater loss to the lender than modifying or restructuring the mortgage loan.

In the past, when a lender modified or restructured a mortgage loan by canceling or forgiving part of the principal, the reduction in principal owed was considered taxable income for the benefiting homeowner. In 2008, Congress adopted a law that excludes this implied income from a homeowner's taxable income. Although this law expires in 2012, until then a lender or its servicing agent can modify or restructure your mortgage loan without creating taxable income. See IRS Publication 525 and IRS Form 982 for more information.

In addition, the State of California has conformed its tax code with the federal law, as such, debt forgiveness may not result in a taxable event on the state level. You should contact the California Franchise Tax Board



([www.ftb.ca.gov](http://www.ftb.ca.gov)) or your tax planner for more information.

## B. Refinance: Pay Off Your Loan with a New Loan on Better Terms

Depending on current market interest rates, operative lending practices, and your credit rating, you may be able to obtain an entirely new mortgage loan on your home with which to pay off your existing mortgage loan that is delinquent and in danger of default. To refinance your home, a minimum equity is generally required; and you should accomplish this objective before an NOD is recorded.

In 2008, the federal government enacted new laws that make it easier for homeowners to refinance their existing mortgage loans with a new FHA insured loan or a loan that meets the requirements of FNMA or FHLMC. These programs offer government insurance or other forms of government support to lenders who cooperate with homeowners in financial distress.

Through these programs, your lender or its servicing agent refinances your loan based on the current market value of your home. Therefore, your new mortgage loan and monthly loan payments will likely be reduced. In exchange, your lender may receive FHA insurance for your new mortgage loan at its new amount. Some of these programs include the requirement to pay to the government a portion of any future increase in value of your home to assist in accomplishing the objective of either reducing or recouping losses the government may incur to help homeowners save their homes.

Your new more affordable mortgage loan (whether government insured or purchased) will pay off in full your existing troubled mortgage loan. In a time of decreasing home values, this can be an excellent benefit for homeowners. Your lender loses money on the original mortgage loan, but the loss is often less than the lender would suffer by continuing through the foreclosure process.



## *Refinance Quick Tips*

To explore the possibilities of refinancing, you can use the services of a licensed real estate broker acting as a mortgage broker (who is an authorized FHA loan correspondent) familiar with current lending practices, especially FHA insured loans or loans that meet the standards for sale to and purchase by FNMA and FHLMC. Begin by contacting a mortgage broker who is an approved FHA loan correspondent authorized to deliver loans to lenders that are approved seller/servicers for either FNMA or FHLMC. Or, you may contact the lender directly.

### **C. Pursue a “Short Sale”**

Through a “short sale”, the homeowner typically hires a real estate broker to find a buyer to purchase the home for its current market value, even if that value is less than the homeowner’s unpaid mortgage loan balance. The homeowner asks the lender to accept the sale amount as full payment of the mortgage loan because that is the current market value of the home and more than the lender would likely receive if the home was sold in foreclosure.



By accepting a “short sale”, the lender or its servicing agent saves all of the costs of foreclosure and avoids the risk of receiving a lower offer through the foreclosure sale or seeing the property decrease in market value prior to the foreclosure sale.

#### *“Short sale” - Quick Tips*

- Because it takes time for a real estate broker to find an appropriate buyer, you should proceed to negotiate the terms of a “short sale” with your lender or its servicing agent before the lender records the NOD. However, some lenders or their

servicing agents will decline to negotiate a “short sale” until a qualified buyer makes a specific offer. After recording the NOD, your lender or its servicing agent may pursue foreclosure regardless of your desire to find a buyer and complete a “short sale”.

- The sale price of your home should take into account money for a commission to your broker as well as title, escrow, other fees, and selling expenses. You should look for a licensed real estate broker with “short sale” experience. If reported by the lender or its servicing agent, participation in a “short sale” is noted in your credit files, but it likely will be less damaging to your credit standing than a foreclosure. It is worth noting that a “short sale” does not automatically bar the lender’s ability to pursue you for the difference in the amount owed and the sales price. Before agreeing to a “short sale”, you should get in writing whether the lender intends to forgive the debt, which may lead to a taxable event (see discussion on “Understand What Your Lender or its Servicing Agent Can Reasonably Offer”) or if the lender intends to retain its rights to pursue civil action to collect the deficiency.

#### D. Sell Your Home to Access the Available Equity

This option involves selling your present home. However, unlike the “short sale,” this alternative is only feasible for homeowners who still have equity in their home. Home equity purchasers have subjected homeowners whose residences are in foreclosure (subject to an active NOD) to fraud, deception, and unfair dealing. Home equity purchasers are persons who acquire homes in foreclosure as an investment and not for occupying. Purchase and sales transactions between an equity purchaser and a homeowner, whose home is subject to an active NOD, are subject to specific provisions of California law. Requirements of this law include standards for the contents of the contract between the equity purchaser and the homeowner. The contract must contain the entire agreement of the parties and is to include (among others) the



following terms:

- The name, business address, and the telephone number of the equity purchaser;
- The address of the home in foreclosure (subject to an active NOD);
- The total consideration to be paid by the equity purchaser in connection with or incident to the sale;
- A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature which the equity purchaser represents he will perform for the homeowner before or after the foreclosure sale;
- The time in which possession is to be transferred to the equity purchaser;
- The terms of any proposed rental agreement between the homeowner and the equity purchaser;
- A notice of your right to **cancel** with specific language as required by law; and,
- A notice of **cancellation** (with specific language as required by law) to be in at least 14-point boldface type, if the contract is printed, or in capital letters if the contract is typed (word-processed), and the notice must include the name of the equity purchaser immediately above the statement.

The homeowner is entitled to a right of cancellation, and the purchase and sale transaction cannot be concluded and no loan may be imposed on the property by the equity purchaser (or at the request of the equity purchaser) until the cancellation period

has expired. Further, the homeowner is not to receive any consideration for their equity until the cancellation period expires. If the homeowner elects to cancel, the original contract or any other document (instrument) the homeowner may have signed must be returned to the homeowner without any condition being imposed by the equity purchaser.



Equity purchasers also are prohibited from making untrue or misleading statements regarding the market value of your home, the amount of net proceeds you will likely receive (if any) after the sale, about any contractual term (including your rights or obligations incident to or arising out of the purchase and sale transaction), the nature of any document (instrument) which the equity purchaser requests or induces you to sign, or any other untrue or misleading statement. You should be aware that it is unlawful for any person (including the equity purchaser) to initiate, enter into, negotiate, or complete any purchase or sale transaction involving your home in foreclosure (subject to an active NOD); if such person, by the terms of such transaction, takes unconscionable (inappropriate and unacceptable) advantage of you.

As part of the proposed purchase and sales transaction, some equity purchasers will offer you the opportunity (an option) to repurchase your home at some future date. The equity purchaser will demand that title to the property be conveyed (transferred) to the buyer/purchaser but that you may stay in occupancy and at some future time exercise an option to repurchase. Such purchase and sales transaction is presumed to result in a mortgage loan rather than a sale of the home, unless the equity purchaser can prove otherwise (which will be difficult to do).

Applicable California law is intended to protect you (the homeowner) from unethical and unscrupulous equity purchasers who are acquiring your home when it is subject to an active NOD. Even if your home is not



subject to an active NOD, you may need protection when considering a purchase and sales transaction with an investor seeking to purchase your equity. *As you can see from this brief discussion, the law is complex and homeowners would benefit from the advice of an attorney who is knowledgeable regarding real estate transactions.*

### *Selling Your Equity - Quick Tips*

- Selling your equity generally requires hiring a licensed real estate broker to solicit for buyers (purchasers) and to perform other necessary services.
- You may be uninformed about the fair market value of your home – this could expose you to unethical business practices.
- A knowledgeable real estate broker (active in your neighborhood and community) or an independent appraiser can assist you in estimating the current fair market value of your home.
- In California, licensed public escrows, title insurance companies, underwritten title companies, among others who either are licensed or expressly exempt from licensing as an escrow holder, are authorized to perform escrow services. These services include paying off your existing lender as part of the purchase and sales transaction. Avoid private transactions where a request/demand is made by the buyer/purchaser for you to sign papers in exchange for a cash payment (particularly without the use of a separate, third-party escrow holder).
- Unethical persons often attempt to persuade homeowners to complete informal transactions that provide “instant cash” or will offer to buy the homeowner’s equity using what the buyer/purchaser describes as a “contract of sale”. This transaction could ultimately result in financial grief. In addition to obtaining advice from a knowledgeable real estate attorney in



transactions involving equity purchasers, transactions for cash to purchase your home by a person (including an entity) in the business of acquiring homes in foreclosure require advance review by your attorney. Advice from your attorney is necessary before entering into a “contract of sale” (a contract where title remains in your name and the deed is delivered at some later date to the buyer/purchaser).

- In typical purchase and sales transactions where the buyer/purchaser intends to reside in the property, your real estate broker needs time to find such a buyer/purchaser for your home. Begin the marketing of your home as early as possible. You should keep your monthly mortgage loan payments current during this period.
- As long as this transaction involves a complete payoff to your lender or its servicing agent of your mortgage loan, it is not a “short sale”. The prior permission of the lender or its servicing agent is not necessary. However, there may be a prepayment penalty as part of the terms of your mortgage loan, charging you an extra fee if you pay off your mortgage loan early. You should negotiate with your lender or its servicing agent to waive this fee. Some prepayment penalties are contrary to applicable law, and a real estate attorney can assist you in this situation.

## E. Rent Your Home

Sometimes homeowners choose to move to another less expensive residence (like an apartment or a smaller home) and rent their home to a third party. The rental income combined with the cost savings on the new residence may be enough to keep mortgage loan payments current. When the real estate market improves, these homeowners can return to or sell their home.

This option can be effective even when there is a negative cash flow



(the rental income from your former home is less than its monthly mortgage loan payment), especially if the home is well located, in good condition, and likely to rise in market value (as the real estate market should improve over time).

### *Renting Out - Quick Tips*

- Renting your home requires some knowledge of property management. This knowledge includes using required documentation and understanding how to obtain credit standing and personal references on tenant applicants. You should contact a licensed real estate broker specializing in managing apartment and home rentals.
- You should interview real estate brokers with property management experience in your neighborhood and community. In addition, you may wish to check the DRE website to learn of the license status of the real estate brokers you are considering. The link to this on-line information is <http://search.dre.ca.gov/integrationaspcode/>.
- When searching for another place to live, consider living reasonably close to the home you rent out. This makes personal management of your home much easier (maintaining your yard, collecting rent, hiring workers or contractors to maintain or repair your home, etc.)



### **F. Share the Cost with a Boarder**

Depending on the floor plan of your home and its amenities, consider renting a part of your home to earn extra income. The added income might be enough to keep your mortgage loan payment from becoming

delinquent. Even if the extra income is not quite enough, the fact that you have a boarder will be helpful when showing your lender or its servicing agent how serious you are about saving your home and might encourage your lender or its servicing agent to extend concessions to you.

### *Sharing the Cost - Quick Tips*

- Make sure the zoning and conditions, covenants, and restrictions (“CC&R’s”) in your community allow boarders, or you may be subject to enforcement actions by your local government or your homeowner’s association.
- Renting space in your own home to a stranger should be carefully considered. You will need documentation and the help of a real estate attorney who is knowledgeable in residential leases or occupancy agreements.

### **G. Offer a “Deed-in-Lieu” to your Lender rather than Proceed with a Foreclosure Sale**

Also known as, a “friendly foreclosure”, a deed-in-lieu of foreclosure takes place when a homeowner voluntarily gives the foreclosing lender or its servicing agent a deed to the home. This transaction may include, but does not necessarily require, moving out of your home. A deed-in-lieu provides the lender ownership without the delay and expense of a foreclosure sale.

Homeowners may benefit from this alternative as a deed-in-lieu transaction may carry less credit stigma than a foreclosure or a “short sale”, and the lender or its servicing agent may respond to a proactive homeowner with a cash payment to assist in relocating. The impact upon your credit rating of a “short sale” may not be entirely clear. Some lenders or their servicing agents have elected not to report “short sales”.



Certain lenders or their servicing agents will not accept a deed-in-lieu because of the possibility of other liens or claims on your home (that may be eliminated from the title of your home by a foreclosure sale). A foreclosure sale typically creates a “clean” title while a deed-in-lieu may not. However, lenders or their servicing agents frequently rely on title company records and title insurance coverage to protect against other liens or claims. With title insurance coverage, lenders or their servicing agents will generally agree to accept a deed-in-lieu.

If you go through with a deed-in-lieu, the lender owns your home and, just as with a typical sale, a “short sale”, or a foreclosure sale, you may be required to move out of your home unless a tenant relationship is arranged with the lender or its servicing agent.

### When all Else Fails - Moving Forward with Foreclosure

If no acceptable solution is achieved for your mortgage loan situation, a foreclosure may be inevitable. The foreclosure procedure includes six events (as previously discussed) designed to balance your needs (enough time to reinstate your mortgage loan by paying your past-due payments and late fees or, if necessary, find a new home and to relocate). The foreclosure procedure also includes your lender’s objectives for a remedy to collect the debt it is owed by directing that your home be sold through a lawful procedure that includes sufficient time to ensure your home is sold at its highest possible price through a properly published and noticed foreclosure sale.

From the time you miss a single mortgage loan payment, you should begin negotiating a modification or restructuring of your mortgage loan terms with your lender or its servicing agent

You should continue negotiating with your lender even after the lender or its servicing agent directs the trustee to prepare and record the NOD. You will have a minimum of three months to accomplish one of the alternatives or options to foreclosure discussed in this guide before the recording of an NOS.



## The Foreclosure Procedure Timeline – A Quick View

Event/Action	Lapsed Time
1 Missed First Payment	
	30 Days (Minimum) before contact with you
2 Direct Contact with You	
	30 Days (Minimum) before NOD is recorded
3 Recorded NOD	
	A minimum of three months before NOS
4 Reinstatement or Cure Period	
	The initial 3-month reinstatement or cure period must occur before the recording of the NOS
5 Delay of NOS	
Loans recorded between 1/1/03 and 1/1/08 may require the delay of the Notice of Sale by 90 days if the lender or servicer does not have an approved comprehensive loan modification program	
6 Recorded NOS	
The foreclosure sale is scheduled at this time (typically 3 to 4 weeks following the notice during which time the reinstatement or cure period continues up to 5 days prior to the date of the foreclosure sale of the postponed date of sale)	
7 Foreclosure Sale	
	The privately conducted and publicly held sale occurs
8 Eviction	
	Up to 30 days if you do not move upon request or unable to arrange a tenant relationship

Throughout the first six events of the foreclosure timeline, you should continue to negotiate an acceptable mortgage loan solution with your lender or its servicing agent. Remember, your lender or its servicing agent (if your mortgage loan was originated during the 5-year window), is required to contact you or to make a good faith effort to contact you before proceeding with recording the NOD or (as discussed in this guide) no later than prior to recording the NOS. Your lender or its servicing agent should refer you to homeowner counseling.



On February 20<sup>th</sup>, 2009 the California Foreclosure Prevention Act was signed into law. This act provides specific borrowers an additional 90 days for the foreclosure procedure to be completed. The lender and the trustee can avoid this time delay if the lender or its servicing agent implements a comprehensive loan modification program as required by this new law and the state regulator of the servicing agent approves the modification program.

This new law is an added incentive for the lender or its servicing agent to negotiate a modification or restructuring of your mortgage loan. Your mortgage loan must have been originated during the period beginning January 1, 2003 to January 1, 2008. You must be occupying the property as your principal residence at the time your mortgage loan became delinquent. Your California home is subject to an active NOD. Your mortgage loan is the senior (first lien) on your home, and wither the home is not subject to a subordinate mortgage loan or lien, or the lender of the subordinate mortgage loan or lien has agreed to subordinate to your senior mortgage loan as modified.

You must be able to document the ability to repay the modified mortgage loan and you must remain in occupancy of your home. In addition, you are not to be subject to an active petition filed under the United States Bankruptcy Law and must have not have contracted with any person whose primary purpose is advising people regarding the foreclosure procedure, including avoiding your contractual obligations to the lender or its servicing agent.

In any event, you should consider contacting one of the homeowner counseling services identified at the end of this guide or contacting a knowledgeable real estate lawyer for assistance (especially when negotiating with the lender or its servicing agent for modification or restructuring of your mortgage loan under the California Foreclosure Prevention Act). When speaking with an authorized counseling service or with your real estate lawyer, discuss what available alternatives or



options to foreclosure remain and whether you should arrange to move out of your home after the foreclosure sale occurs and the eviction process is completed.

At the end of a minimum three month reinstatement or cure period, the lender or its servicing agent is free to direct the trustee to record and publish the NOS in a newspaper of general circulation in the city, county, or judicial district where the foreclosure sale is to be conducted. It will be several weeks between this point and the actual foreclosure sale, as the publication will run multiple times prior to the sale (this is a required notice and procedural delay).

You will typically have a minimum of four months, and potentially up to five or six months, to move out of your home if lender or its servicing agent declines to negotiate a rental arrangement with you, or to modify or restructure of your mortgage loan.

### The Foreclosure Procedure – Revisited

*Missed First Payment:* You miss a single monthly mortgage loan payment; this is referred to as being delinquent, and when the NOD is recorded, as “defaulting on your mortgage loan.”

#### Homeowner Activities You Should Accomplish:

- Contact your lender or its servicing agent – the sooner the better. The sooner you make contact, the stronger your negotiating position. You are in the best negotiating position when you make contact before you miss a single mortgage loan payment.
- Work with your lender or its servicing agent to negotiate alternative mortgage loan terms that are acceptable to both parties.



## Lender Activities Your Lender or its Servicing Agent Should Accomplish:

- Contact you to discuss the nature of your mortgage loan situation.
- Work with you to negotiate alternative mortgage loan terms (a loan modification).

*Last Step prior to record NOD:* The lender or its servicing agent officially directs or instructs the trustee to record a NOD within the county where your home is located. When the direction is given to the trustee depends on the lender or its servicing agent, but it is generally at least 30 days after the failure to make a single mortgage loan payment. In addition, for homeowners who obtained their mortgage loan between January 1, 2003 and December 31, 2007, contact with you by your lender or its servicing agent is required, or a good faith effort to contact you is made 30-days in advance of recording the NOD.

*Recorded NOD:* Your lender or its servicing agent will direct the trustee to record the NOD commencing a minimum three month reinstatement or cure period. These three months are often referred to as a “grace” period because you are allowed to cure or reinstate the default (pay all amounts that are delinquent) without being required to pay off the mortgage loan in full. This reinstatement or cure period continues up to 5 days before the scheduled foreclosure sale date or the date of the postponed sale.

## Homeowner Activities You Should Accomplish:

- Contact your lender or its servicing agent to attempt to negotiate a plan to avoid foreclosure.
- Pay attention to any contact (mail or telephone calls) from your lender or its servicing agent.
- Review alternatives available to you to avoid the foreclosure sale.
- Consider making plans to move out of your home after the



foreclosure sale is conducted and the eviction process is concluded (if the sale cannot be avoided or a tenant relationship cannot be established).

#### Lender Activities Your Lender or its Servicing Agent Should Accomplish:

- Notify you of your right to a meeting with your lender or its servicing agent (if one did not take place before the NOD was recorded). You also have the right to a follow-up meeting within two weeks after the first meeting with your lender or its servicing agent to keep the discussions active.
- Give you specific information about how to contact the U.S. Department of Housing and Urban Development (HUD) “hotline” (see page 67) which will assist you in finding a HUD certified agency, attorney, or other agent to negotiate on your behalf. In other words, you can receive free professional counseling or assistance through HUD.
- Continue to work with you to negotiate a plan to avoid foreclosure. Your lender or its servicing agent must contact you and discuss foreclosure alternatives before the foreclosure sale can take place (unless a demonstrated good faith effort occurs to contact you proves to be unsuccessful).

#### General Information

During this minimum three month “cure” or “reinstatement” period, you are entitled to continue living in your home even though you are unable to make your monthly mortgage loan payments. You are under no obligation to move from your home until after the foreclosure sale is conducted and the eviction process is completed. It may be beneficial to stay in occupancy of your home to avoid any loss of property insurance coverage that may occur if you move out.

If you are a veteran, federal law establishes an extended grace period. Veterans should contact the U.S. Department of Veterans Affairs (see



page 67) for the latest homeowner safeguards so that both you and your lender or its servicing agent are aware of and comply with this special set of guidelines.

The free assistance through HUD may involve your authorization of a person to negotiate on your behalf with your lender or its servicing agent. You will need to provide enough financial information to your HUD agent (or to your lender or its servicing agent if you are negotiating personally) so they can verify a monthly mortgage loan payment that you can reasonably afford.

Remember that your lender or its servicing agent has a huge incentive to arrive at a modified or restructured mortgage loan payment! Stay positive and proactive.

If you and your lender or its servicing agent cannot agree on an alternative plan to avoid foreclosure before the end of this minimum three month reinstatement period, the lender or its servicing agent will move forward with the foreclosure procedure (unless further delayed by the California Foreclosure Prevention Act).

Some lenders or their servicing agents are willing to pay “cash for keys” to obtain possession after the foreclosure sale has been conducted. Although lenders or their servicing agents are not required to make these payments, you have nothing to lose by asking for them.

*Last step prior to recorded NOS:* This is the end of the minimum three month “reinstatement” or “cure” period (potentially longer for veterans or individuals who make alternative arrangements with their lenders or their servicing agents), which continues up to 5 days before the date the foreclosure sale is scheduled or the date of the postponed sale.

*Recorded NOS:* This occurs when the lender or its servicing agent directs the trustee to move forward and record the NOS. The specific timing of the recording of the NOS depends on when the trustee receives the



direction and how long it takes the trustee to act.

#### Homeowner Activities You Should Accomplish:

- Be planning to move out of your home after the foreclosure sale has been conducted. Your obligation to move occurs after the completion of the eviction process.

#### Lender Activities Your Lender or its Servicing Agent Will Accomplish:

- Direct the trustee to post the NOS on your home and to publish the NOS in an authorized newspaper of general circulation in the city, county or judicial district where your home is located. You will receive a copy of the NOS by certified postage prepaid U. S. Mail.
- The NOS must be completed in English, Spanish, Korean, Chinese, Vietnamese, or Tagalog, depending upon which language your mortgage loan was negotiated at the time of its origination.

*Scheduling the Foreclosure Sale:* The date of the foreclosure will be set at the date, place, and time described in the NOS, subject to postponement of that date as authorized by law.

#### Homeowner Activities You Should Accomplish:

- If you are not prepared to move out of your home upon the request of the lender or its servicing agent (or the successful bidder) after the foreclosure sale has been conducted, you may be subject to an eviction process. The eviction process may be avoided if you are able to establish a tenant relationship with the new owner of your home.
- As part of the eviction process, the court may require you to pay court costs and attorney fees. You are obligated to move from and vacate your home when the eviction process is completed



and you are served with a notice of the eviction.

#### Lender Activities Your Lender or its Servicing Agent Should Accomplish:

- Directs the trustee to “cry” the foreclosure sale and to perform any activities necessary to properly conduct the foreclosure sale, including the bidding procedure the lender or its servicing agent requires (this procedure must be consistent with applicable law).

*The Foreclosure Sale:* The foreclosure sale is to occur at a date, time, and place set by the trustee and as described in the NOS. The sale will be “cried” by the trustee or an authorized agent of the trustee. The technical term for a foreclosure sale conducted by the trustee (or the authorized agent of the trustee) is a non-“judicial” foreclosure (referred to as a “trustee’s sale”). The term “trustee” appears on many mortgage loan and foreclosure documents, including the trustee’s deed issued to the successful bidder/buyer (either a third party bidder or the lender).

Most homeowners going through foreclosure take little interest in the foreclosure sale. However, two aspects of the sale you should understand:

- Resolving “junior” claims/liens against your home; and,
- Determining what happens to the net sale proceeds, the amount the proceeds exceed your unpaid mortgage loan.

*Resolving “junior” claims/liens against your home:* One legal effect of a foreclosure sale is to extinguish (remove) “junior” claims/liens against your home. Purchase money mortgage loan status is established when you purchased your home (a loan or loans obtained to purchase the home you are now occupying, whether “senior” or “junior” in recording order).

Any other loans you might have obtained (“junior” claims/liens),



for example, to put in a swimming pool, are non-purchase money mortgages. When the lender or its servicing agent of the “senior” mortgage loan forecloses, “junior” loans (whether purchase money or non-purchase money mortgages) are removed from the title of your home. This way, the buyer/purchaser of your “foreclosed-on” home acquires the title free and clear of any “junior” loans (claims/liens) you might have had against the title of your home.

Even though “junior” loans (claims/liens) are removed from the title to your home, they remain unpaid. You are still personally responsible (and liable) for repaying **non-purchase money mortgages**, “junior” loans (claims/liens) even after the foreclosure sale. If these junior loans remain unpaid, the owners of those loans may sue you for payment. If you face foreclosure and have secondary or “junior” non-purchase money mortgage loans, you should consult a real estate attorney or an authorized credit counselor to determine the best way to handle them.

Should the lender or its servicing agent elect to pursue a judicial foreclosure, it is generally because your “senior” mortgage loan is a **non-purchase money mortgage** (established if you obtained the mortgage loan to refinance existing loans secured by your home). Should your lender or its servicing agent start a judicial foreclosure, you need to consult with a knowledgeable real estate attorney. This is important because your home may sell at the judicial foreclosure sale for less than you what is owed on the mortgage loan. The difference is known as a deficiency for which you may be personally liable.

*What Happens to Sale Proceeds:* The proceeds of most foreclosure sales do not cover the unpaid principal amount of the loan. If the sale proceeds do exceed your mortgage loan debt (including foreclosure expenses), you are to receive the difference. While this is a rare occurrence, particularly when home values are in decline, you should monitor the foreclosure sale to ensure that you learn about an ultimately receive the difference (the net proceeds or surplus funds).



*The Actual Foreclosure Sale:* This event will occur on the day of the scheduled foreclosure sale or the date of the postponed sale. It is a public sale “cried” (as an auction) in the place designated at the time noticed.

### Homeowners: What Not To Do

*Homeowners - What Not To Do:* Losing your home through foreclosure is a traumatic experience that usually occurs at a time when you already are facing significant financial, and even physical and psychological stress. It is understandable why some homeowners make poor choices when facing foreclosure.

While some homeowners choose to “walk away” from (abandon) or trash their homes in the face of foreclosure, it is important to realize that these actions carry potentially significant consequences.

1. “Walk Away” from (Abandon) the Home. A homeowner can stop making their mortgage loan payments and abandon their home. However, this plan is usually unsuccessful in the long run. If you “walk away” from your home, you essentially abandon the property and your mortgage loan. Once you miss a single mortgage loan payment, your lender or its servicing agent will begin the foreclosure process and you may not be off the hook.

- If your loan is a non-purchase money mortgage (for example, if it is a refinance loan or a vacation home loan) you are not necessarily protected against future liability. If you “walk away” from this type of loan, you can be held liable for the lender’s losses following a judicial foreclosure sale, including court costs and attorney fees.
- If you purchased your home on speculation (hoping to resell the home for a higher price) and have not occupied the home, the loan you obtained to purchase the property is a non-purchase

money mortgage. If your lender or its servicing agent elects a judicial foreclosure sale, you may remain personally liable for any deficiency at the time of the foreclosure sale. If you “walk away”, your personal liability remains unchanged.

- If you “walk away” from your home, you are still liable for any non-purchase money mortgages that are secondary or “junior” loans (claims/liens). Foreclosure sales do not extinguish these debts and your creditors can seek court judgments against you. In these cases, a “junior” lender may sue in court to obtain a judgment for its losses, as well as court costs and attorney fees (a “sold out junior”).
- Federal laws that generally supersede California law control federally insured (FHA) loans. The lenders holding such mortgages typically file claims for the insurance coverage. HUD/FHA may be able to pursue you for any losses they suffer following a foreclosure sale and the payment of the insurance proceeds to your lender.

Laws pertaining to “walk-away” homeowners are complicated and no homeowner should “walk away” from their home and their mortgage loan without seeking the advice from a real estate lawyer. A common “walk-away” situation occurs through divorce. In most families, both the husband and wife sign the mortgage loan documents for their home. If the couple divorces, neither may be able to afford the mortgage loan payment and there may be little to stop either spouse from walking away leaving the other to shoulder the financial burden.

2. If a foreclosure sale occurs because of divorce and both spouses signed the original mortgage loan documents:

- Each spouse will be required to vacate the home after the eviction process is completed.
- Each spouse will experience a loss in credit rating.



- Each spouse will struggle to secure mortgage loans for at least five years.

Divorce does not automatically erase the name of either spouse from their mortgage loan or from the consequences of a potential foreclosure. Lenders or their servicing agents are unlikely to “remove” one spouse from the mortgage loan before the foreclosure sale simply to preserve that person’s credit rating.

3. Trash the Home. Your home is collateral for repayment of your mortgage loan. Its value is the ultimate source of repayment, and its value should not be impaired by your intentional or unintentional behavior.

Deliberate damage to your home is one form of “waste”. If serious damage occurs, you may be prosecuted for a crime and you may be sued for damages. Arson (the deliberate destruction of a home by fire) is the most egregious example of waste.

No matter what circumstances bring a homeowner to the point of foreclosure, there is no justification for that homeowner to retaliate against a lender or its servicing agent by damaging the home.

4. Bankruptcy. Foreclosure is not personal. Lenders are simply protecting their interests. If you seriously damage your home before the foreclosure sale, you can be held liable and have a money judgment entered against you that can survive for as long as 20 years. Bankruptcy usually does not remove this kind of money judgment. Over the life of the judgment, the creditor may pursue a variety of collection proceedings, including taking a part of your wages.

While your lender may elect not to sue you for physical damages (called waste), trashing your home is an ill-advised risk. Even if your lender chooses not to pursue a money judgment against you, your lender can notify the district attorney and ask that criminal proceedings be brought



against you. The successful bidder/buyer who purchases your home at the foreclosure sale, typically “as is”, can also notify the district attorney or bring a civil action against you for intentional damages to the home.

### Post-Foreclosure Option for the Former Homeowner

Bankruptcy can also be a pre or post-foreclosure option for the homeowner. You are entitled to file a petition in bankruptcy under the applicable chapters of the U. S. Bankruptcy Code. Bankruptcy is an option for homeowners who are hopelessly in debt, or are using this method to sell their home under court supervision.

The bankruptcy option may be pursued either before or after the foreclosure sale. While there are different types of bankruptcies for different situations, mortgage loan debt is a secured debt. However, a bankruptcy court may convert the mortgage loan debt in certain fact situations partially to an unsecured debt, and may be able to modify or restructure the mortgage loan. As of this writing, the ability of the bankruptcy court to modify or restructure the mortgage loan has not been extended to personal residences/homes of the debtor. However, legislation is currently pending in the U. S. Congress to achieve this objective. It is not clear whether the proposed legislation will become law. Bankruptcy after the foreclosure sale may allow you to discharge certain debts. If you are considering bankruptcy, consult with a knowledgeable bankruptcy lawyer.

Many lenders will not loan money to borrowers who filed bankruptcy petitions within the past seven years. Others may, but during the first seven years following a discharge or dismissal from bankruptcy, borrowers will typically pay a substantially higher interest rate and increased loan fees to obtain a mortgage loan.



## Conclusion

Now that you have a better understanding of the foreclosure procedure and possible alternatives or options that you as a homeowner can take to avoid it, you are prepared to negotiate with your lender or its servicing agent and to take the initiative to protect your home from foreclosure.

The following segment of this guide includes a list of resources, agencies, and organizations where you can find additional information and support.

Remember, to successfully solve your mortgage loan situation, you must be proactive, and that includes utilizing all available resources to the best of your ability to the extent that they apply to your particular situation.

### Consumer Alerts Issued by the California Department of Real Estate

#### Fraud Warnings for California Homeowners in Financial Distress

Advance fees for loan modifications are now illegal in California.

Pursuant to Senate Bill 94, as of October 11, 2009 it is illegal in California for any person, including lawyers, real estate brokers, real estate salespersons, corporations, companies, partnerships, or any other licensed or unlicensed person or party, to demand, charge, or collect any advance, up-front, or retainer fees, or any other type of pre-payment compensation, for loan modification work or services, or any other form of mortgage loan forbearance.

So if someone tells you that they can (i) help you modify or renegotiate your home loan, (ii) help you arrange to have your lender refrain from collecting your mortgage payments, and/or (iii) help you convince your lender to abstain from foreclosing on your home, and they ask you for,

charge or collect money or fees up front, that is a violation of California law.

If you are interested in the details of the law change, a copy of Senate Bill 94 (Calderon) may be obtained at [www.leginfo.ca.gov](http://www.leginfo.ca.gov) and clicking on “Bill Information”.

Please report all violations of the new law to the California Attorney General, and to the California Department of Real Estate. If a lawyer is involved, or if a company or entity claims to be attorney-backed or attorney-affiliated, also report those violations to the California State Bar. Contact information for the Attorney General, Department of Real Estate and State Bar is provided in this Department of Real Estate Consumer Alert.

## I. HOME LOAN MODIFICATION AND FORECLOSURE RESCUE PROGRAMS

**BEWARE OF SCAMMERS AND CON ARTISTS, WHO ALMOST ALWAYS DEMAND THE PAYMENT OF MONEY UP FRONT.**

As homeowners continue to feel the pinch from the recession, and as home loan worries, delinquencies, defaults, and foreclosures continue to occur in California, loan modification and foreclosure rescue scams are growing and soaring. The FBI has said that a “rampant mortgage fraud climate” currently exists, and that California is one of the top states for loan fraud.

Whether they call themselves foreclosure prevention or rescue consultants, forensic loan auditors, loan restructuring agents, debt settlement specialists, loss mitigation experts, loan modification specialists, mortgage modification consultants, or some other official or important sounding title(s), there are thousands of dishonest and rogue individuals and companies (most of whom are unlicensed, many of whom use lofty sounding names, and some of whom falsely claim to be



non-profits, to be attorney backed or affiliated, and/or to be affiliated with the federal and State governments—e.g., they suggest the backing of the Obama Administration, a Member of Congress or some other elected official, or of a government agency or department, such as HUD, FHA, the California Department of Real Estate, the California State Bar, etc.) that have popped up and appeared all over the State of California. Many of the individuals have criminal and/or disciplinary records, and many of the companies are just fraud factories and high-pressure sales mills operating out of telephone boiler rooms that are in the “business” of offering impressive sounding but non-existent loan services so that they can steal your money. Some are operating nationally, and some are even operating outside of the country.

To find their homeowner victims, they scour foreclosure notices, they get information on adjustable rate loan re-sets from title companies, and they use other tools. Quite simply, the bad players look for homeowners who are in foreclosure, who are struggling to make home loan payments, or those who need to modify their mortgages to find relief from financial distress. Once they find their victim targets, they market hope – and all too often, it is false hope.

The scammers advertise on the radio, in newspapers, through the Internet, via email and the U.S. Mail, and on television. Some even go door-to-door.

While there are people and entities in the business of modifying loans that are licensed, legitimate and qualified, you must be cautious and BEWARE.

**DON'T LET THE FRAUDSTERS TAKE YOUR HARD EARNED MONEY AND DON'T BE THE NEXT VICTIM OF THE CON ARTISTS.**

## II. LOAN MODIFICATIONS AND THE UNSCRUPULOUS CON.

While there are “foreclosure rescue” scammers who promise to save



homeowners from foreclosure – or to delay a foreclosure via litigation and/or bankruptcy filings, the most common type of fraud (the “fraud of the moment”) relating to home loans is Loan Modification fraud.

Because of the current economic situation, you may not be able to afford your mortgage payment, or you may be in foreclosure. If you are not able to negotiate a deed transfer to your lender in lieu of foreclosure, to sell you home through a “short sale”, or to refinance your home loan, an option that may be available to you is a Loan Modification.

What is a Loan Modification? That is where you and your lender (or the loan “servicer” on behalf of the lender or loan “investor”) (both the loan servicer and lender will be referred to below as “lender”) agree to modify one or more of the terms of your home loan. The terms could be a lower interest rate, an extension of the length of the loan (like making a 30 year loan into a 40 year loan), a conversion of an adjustable rate loan (called an ARM) to a fixed rate, a rate freeze, the deferring of some of your payments, or any other modification of loan terms.

The goal of a successful Loan Modification is to help you keep your home and to give you a real, meaningful, sustainable, and long-term adjustment to your current home loan that works for your financial situation. But loan modifications are not possible for every homeowner, and the loan modification “success rate” is currently very low in California. The available data suggests that loan modifications vary from lender to lender. Many lenders have guidelines for loan modifications. If your financial situation meets the guidelines, a loan modification is possible with the necessary showing of financial “hardship” on your part. If you do not meet the guidelines, a loan modification may not be possible. It really depends on your lender and your hardship.

This is where the scammers come in. They often falsely claim that they can guarantee to “negotiate” you into a loan modification, make huge and hollow promises, exaggerate or make bold statements regarding their modification successes, publicize their supposed expertise, ask



for money up front, and then take your money and leave you in worse shape than before. They may simply take your money and run. Please see and review the section captioned “Signals of Fraud/Red Flags to Watch Out For” below.

### III. THINGS TO DO TO PROTECT YOURSELF FROM BECOMING A LOAN MODIFICATION/ RESCUE SCAM VICTIM.

A. Do It Yourself (and Do It As Soon As Possible) -- You can contact your mortgage lender directly and request a Loan Modification that works for you and your lender. Don't wait to call if you cannot make or believe you will not be able to make your mortgage payments. Be persistent! - call back many times. Make detailed notes about your attempts to call, when you have left messages, who you speak with, what was said, and what offers are discussed and/or made.

The Department of Real Estate has some practical tips for you for working directly with your lender on a loan modification. Those consumer tips can be accessed at [http://www.dre.ca.gov/faq\\_home.html](http://www.dre.ca.gov/faq_home.html).

B. Other Free and Safe Options -- If you don't believe you can negotiate a Loan Modification yourself, or if you do not want to, there are free and safe options available to you.

1. The U.S. Department of Housing and Urban Development (“HUD”) offers Foreclosure Avoidance Counseling through non-profit agencies in California. Go to HUD's web site at [www.hud.gov](http://www.hud.gov), or call 800-569-4287, to find counselors. HUD also offers information to homeowners facing the loss of their home.

2. HOPE NOW Alliance - this is a cooperative effort of home loan counselors and lenders, and it consists of HUD intermediaries. Go to the HOPE NOW web site at [www.hopenow.com](http://www.hopenow.com) or call 888-995-HOPE.

C. Locate and Work with a LEGITIMATE, LICENSED, and QUALIFIED



person or company (“Log on, Look em up, and Check em out”) – [www.dre.ca.gov](http://www.dre.ca.gov)

If you don’t want to negotiate a loan modification by yourself (or believe you are unable), and if you also decide not to use the free counselors provided through HUD or the Hope Now Alliance, you can hire a representative to negotiate for you. But BEWARE – YOU NEED TO FIND SOMEONE WHO IS LEGITIMATE, LICENSED AND QUALIFIED BY EXPERIENCE AND TRAINING. And remember that you do NOT have to pay anything up front!!!

1. California licensed real estate brokers can perform loan modification work, and licensed real estate salespersons can do such work under the supervision of their employing broker.

You should go to DRE’s web site at [www.dre.ca.gov](http://www.dre.ca.gov), review and check the information on the prohibition on advance fees for loan modification and other mortgage forbearance services, carefully review the public license information on the real estate broker (that information will include any disciplinary history), and look for any Desist and Refrain Orders (D&Rs) that have been issued against companies and individuals. If a D&R has been issued, that means that DRE has determined the individual and/or company is unlicensed and/or has operated unlawfully.

2. California licensed lawyers can also perform loan modification work, but only when such lawyers render those loan modification services in the course and scope of their practice as an attorney at law.

Just as you should do with real estate licensees, check out lawyers by going to the web site of the California State Bar, [www.calbar.ca.gov](http://www.calbar.ca.gov). Check the lawyer’s bar membership records and look for any discipline. Also, demand to meet and speak in person with the lawyer whom you are paying to represent you. And remember, like real estate brokers, it is illegal in California for lawyers to demand, charge or collect any advance, up-front or retainer fees or any other type of pre-payment



compensation for loan modification work or services, or any other form of mortgage loan forbearance.

**BE ON GUARD AND CHECK THEM OUT (KNOW WHO YOU ARE DEALING WITH)-DO YOUR HOMEWORK (AVOID THE TRAPS SET BY THE SCAMMERS)**

In addition to looking at the license records, contact the Better Business Bureau to see if they have received any complaints about the person or company. But please understand that this is just another resource for you to check, and the loan modification provider might be so new that the Better Business Bureau may have little or nothing on them (or something positive because of insufficient public input).

Also, and very importantly, ask the loan modification “specialists” (whether they are real estate licensees or lawyers) about their financial, mortgage and real estate experience, the options and methods they use to renegotiate home loans, when they were first licensed, whether their license is still active, whether they have ever been disciplined, where, when and how they got their experience, what data they have to prove their past successes, what evidence they have of prior successful dealings with your lender, and also ask them to define a loan modification and the process that they will undertake and the time that they will spend to successfully negotiate a long-term, affordable and sustainable modification for you.

#### D. Signals of Fraud/Red Flags to Watch Out For

1. Demand for payment up front (advance fee payment). The demand or request for advance payment should alert you to the possibility of fraud as noted above. Advance or up-front fees are illegal when demanded in connection with loan modification services. **IF YOU ARE ALREADY STRAPPED FOR CASH, DO NOT PAY ANY MONEY UP FRONT. USE THE MONEY FOR A MORTGAGE PAYMENT, MOVING EXPENSES, OR A SECURITY DEPOSIT ON A RENTAL.** Remember, once the scammers have your money (whether paid by cash, check, debit card, credit card or wire



transfer), it will likely just vanish.

2. Promises or guarantees of success, such as “We Can Save Your Home. We Have Saved Thousands. We can cut through the Red Tape. We have expert, skilled negotiators and specialists on our staff who have worked with lenders. We have an Inside Track, and can get to your lender when you cannot. Free Consultation. Money Back Guarantee”. No such guarantees are possible, and there are no assurances of a successful loan modification. In fact, some lenders will not work with for profit third party representatives.

3. Too good to be true testimonials, such as “We Modified Terri G’s Adjustable Rate Loan, Which Had Spiked to 8 Percent, to a 2.5 Percent Fixed Rate Loan”. False advertising is rampant. Remember the old adage – If something sounds too good to be true, it is probably false.

4. Claims that a loan modification company is attorney-backed, attorney-affiliated, or attorney-based -- especially where no lawyer or law firm is identified or mentioned. Many of these entities are simply using the name of an attorney (the name might be for show only, and/or there might not even be a lawyer involved) and scams skirting the law. We are aware of a case where loan modification scammers used the name of a dead lawyer to commit their fraud!

5. Claims that a loan modifier is operating under a California Finance Lender’s (CFL) license issued by the California Department of Corporations. This is unlawful according to the Commissioner of the Department of Corporations.

6. A request that you grant a “power of attorney” to the loan modifier. The scammer may use the power of attorney to sell the home right out from under you.

7. A request that you transfer title to your home to the loan modifier or some third party. This is likely evidence of a scam where these scam



artists will strip all of the remaining equity in your home.

8. Promises that you can repair your credit history by the payment of rent to the loan modifier or some third party.

9. Lease/rent-back scams, where you are told to transfer title to a third party, rent the home from that party, and then buy it back later. Transferring your deed gives the con artists the ability to evict you and sell the home.

10. Instructions to pay someone or some company other than your home loan lender or servicer. Sometimes the bad guys tell you to pay them your mortgage payment. Always pay your lender/servicer, and no one else.

11. Claims that a loan modification company will file a bankruptcy or other frivolous case for you to “force” a lender to negotiate a loan modification. So-called “forensic loan reviews” may fall into this category.

12. Assertions by the so-called loan modifier that you should just sign documents that they have filled out, without reviewing them first. They will say something like, “Trust me. Sign right here”. You must carefully read and understand all of the documents you sign. Be especially wary of promises by salespeople that they will “take care of everything” and you just need to sign “a bunch of forms with boring legalese”.

13. Lawyers or real estate licensees who tell you that they have no time to meet with you face-to-face.

14. Unlicensed people or companies.

15. Instructions from a loan modification provider that you should not contact your home loan lender or servicer, a lawyer, an accountant, or a non-profit housing counselor. Example: “From today on, talk only to me”.



16. Being advised to miss payments in order to improve your chances of getting a loan modification. While there are lenders who will not modify loans for borrowers who are current on their mortgages but who are in danger of default, following this advice may create other negative consequences and can put you on the path to foreclosure.

17. High-pressure sales tactics or warnings that “you must act today”, “tomorrow may be too late”, or “I need some money from you today so that I can save your home”.

It is impossible to list all of the Red Flags that might suggest fraud, since the scammers and con artists continue to adapt and evolve, and modify and refine their stories, pitches and cons. They are ruthless, cunning and clever. To stay ahead of law enforcement, they change their names, addresses, and bank accounts, and may re-cast themselves as non-profits or bogus law firms. Please be alert, be cautious, be skeptical, and do your own homework using reliable and legitimate sources.

And remember, Don't Rush! You are always able to “slow down” or “pause”, and you should tell the provider of Foreclosure Rescue and Loan Modification services that you want to check out their license status with the DRE or the California State Bar, as well as references. Any service provider who objects to your “checking them out” may have something to hide, like no credentials or license (or bogus credentials) – so be wary!!! Log on, Look em up, and Check em out!!! [www.dre.ca.gov](http://www.dre.ca.gov).

#### IV. WHAT YOU CAN DO IF YOU HAVE BEEN SCAMMED (OR BECOME AWARE OF A LOAN MODIFICATION – OR FORECLOSURE RESCUE -- SCAM)? REPORT FRAUD AND FILE COMPLAINTS WITH --

1. The DRE if a real estate licensee is involved, or if the person or company is unlicensed. If the person or company is unlicensed, the DRE will file a Desist and Refrain Order. If the person or company is licensed, the DRE will commence disciplinary action, [http://www.dre.ca.gov/cons\\_complaint.html](http://www.dre.ca.gov/cons_complaint.html).



2. The California Attorney General, at [www.ag.ca.gov/consumers](http://www.ag.ca.gov/consumers).
3. The District Attorney, Sheriff, local police and local prosecutor in your community.
4. The California State Bar if a lawyer is involved, or if an unlicensed person claims to be a lawyer at [www.calbar.ca.gov](http://www.calbar.ca.gov).
5. The California Department of Corporations, at [www.corp.ca.gov](http://www.corp.ca.gov), if a loan modification entity or person claims to be operating under a California Finance Lender License.
6. The Federal Trade Commission, at [www.ftc.gov](http://www.ftc.gov). They have an excellent fact sheet on Foreclosure Rescue Scams.
7. Federal Bureau of Investigation (FBI), at [www.fbi.gov](http://www.fbi.gov).
8. HUD, at [www.hud.gov](http://www.hud.gov).
9. The Federal Deposit Insurance Corporation (FDIC), at [www.fdic.gov](http://www.fdic.gov).
10. The United States Attorney in the District in which you live. Look in your phone book or on the Internet.
11. The Better Business Bureau in your community.
12. The Chamber of Commerce in your community.
13. The California Department of Consumer Affairs at [www.dca.ca.gov](http://www.dca.ca.gov), and your local Department of Consumer Affairs.
14. File a Small Claims Court action. These are informal courts where disputes are resolved quickly and inexpensively by a judge. Since 2008,



you can recover up to \$7,500 in Small Claims Court. You represent yourself, and can request a judgment for money damages. If your judgment is based on fraud, misrepresentation, or deceit, or conversion of trust funds, and the judgment is against a real estate licensee, DRE has a Recovery Fund that may be able to pay your claim. Go to the DRE web site at [www.dre.ca.gov](http://www.dre.ca.gov), and look under the tab for "Consumers". Also, the California Secretary of State has a "Victims of Corporate Fraud Compensation Fund" that provides restitution to victims of corporate fraud. Go to the Secretary of State's web site at [www.sos.ca.gov/vcfcf](http://www.sos.ca.gov/vcfcf) for more information.

### Fraud Warning Regarding Forensic Loan Audits

#### I. FORENSIC LOAN AUDITS (and Claims Regarding Their Use to Avoid Foreclosure and to Modify Home Loans).

The department continues to administratively prosecute those who engage in such fraud and to work in collaboration with criminal law enforcement authorities to bring such frauds to justice.

On October 11, 2009, Senate Bill 94 was signed by the Governor, and it became effective that day. It prohibits any person, including real estate licensees and attorneys, from charging, claiming, demanding, collecting or receiving an upfront fee from a homeowner borrower in connection with a promise to modify the borrower's residential loan or some other form of mortgage loan forbearance.

Senate Bill 94's prohibitions seem to have significantly slowed the rampant fraud that was occurring and escalating with respect to the payment of upfront fees for foreclosure rescue and loan modification work.

But those who prey on vulnerable homeowners have not given up. They just change their tactics and modify their sales pitches to keep taking advantage of those who are desperate to save their homes.



This alert and warning is issued to call to your attention the often overblown and exaggerated “sales pitch(es)” regarding the supposed value of questionable Forensic Loan Audits. It is critical to note that a loan audit (audit report) has absolutely no value as a stand-alone document.

Whether they call themselves Forensic Loan Auditors, Certified Forensic Loan Auditors (there are no such certifications in the State of California), Mortgage Loan Auditors, Forensic Attorney-Backed Foreclosure Prevention Auditors, or some other official, important or lofty sounding title(s), there are thousands of individuals and companies that have popped up and appeared all over the State of California. Most of these individuals and companies are unlicensed, and some were previously engaged in illegal foreclosure rescue and loan modification scams.

The DRE has seen a wide variety of claims and sales pitches, where impressive sounding loan review services are offered with the goal of taking your money.

Quite simply, the bad players market hope – and all too often, it is false hope.

While there are people and entities in the business of providing residential loan audits that may be legitimate and qualified, you must be cautious and BEWARE.

**DON'T LET FORENSIC LOAN AUDIT FRAUDS TAKE YOUR HARD EARNED MONEY**

**II. QUESTIONABLE AND/OR FALSE CLAIMS OF THE SO-CALLED FORENSIC LOAN AUDITORS.**

**A. What is a Forensic Loan Audit, Appraisal, or Review?**

Simply put, a forensic loan audit, appraisal or review is an analysis of your mortgage loan file to determine your original lender's compliance with state and federal mortgage lending laws. These include, but are not

limited to, regulatory requirements related to interest rates, permissible fees, truth in lending, predatory lending, and permissible loan to value.

## B. What are the Claims/Sales Pitches?

They are many and varied, and include:

1. The audit will identify all potential fraud committed by your lender.
2. The audit is guaranteed.
3. The audit is 100 percent free.
4. The audit will show your lender that you are “pro-active”.
5. The audit will identify problems with your home loan that support a lawsuit against your lender.
6. The audit will give you the leverage you need to stay in your home.
7. The audit may give you the right to rescind your home loan, or to reduce your principal.
8. The audit will help you modify your home loan. It will give you a step up in the loan modification process.
9. The audit may allow you to stop foreclosure in its tracks.
10. The audit is the key for gaining leverage in lender or investor negotiations.
11. The audit will be performed by “expert” forensic auditors.

### Discussion –

Some of the claims above might be true, or have a ring of truth, but you must carefully examine and analyze each and every one of them to determine if a forensic loan audit has any value for you and your situa-



tion. Be particularly skeptical of the “100 percent free” claim, since acceptance of the audit may require you to pay for legal or other services.

There is no statistical or other data that supports the claims that a forensic loan audit, even if performed by a licensed, legitimate and trained auditor, will help you modify your home loan or “stop foreclosure in its tracks”. And it is important to note that many audits are done by people with no experience using various software programs.

There are a few important points to be made here:

First, even assuming that the audit is “favorable” and identifies legal violations by your lender in the loan origination process, your loan may be owned by an investor – that is, someone other than your lender. The investor will most assuredly argue that your claims against your originating lender do not apply against the investor (the purchaser of your loan). And even if your lender still owns the loan, they are not legally required to modify your loan or to halt the foreclosure process if you are behind in your payments. Also, the violations may be minor or inconsequential.

Even if the audit discovers fraud, and/or something more than insignificant violations of federal/state legal requirements, you might have to commence a lawsuit against an investor or your lender. That is costly in terms of court fees, deposition costs, attorneys’ fees, and the like, time-consuming (it can take years), and there is absolutely no guarantee with regard to an outcome. Then there are the costly and time-consuming appeals.

Second, and very importantly, loan modifications are simply not possible for every homeowner, and the loan modification “success rate” is currently very low in California. The available data suggests that loan modifications vary from lender to lender, and investor to investor. Many lenders and investors have guidelines for loan modifications. If your financial situation meets the guidelines, a loan modification is possible with the necessary showing of financial “hardship” on your part. If you





do not meet the guidelines, a loan modification may not be possible. It really depends on your lender/investor and your hardship.

This is where the forensic loan audit scammers come in and try to convince you that they offer you “a leg up”. They falsely claim or suggest that they can guarantee to “negotiate” or “leverage” you into a loan modification (or stop a foreclosure in its tracks), make lofty sounding but hollow promises, exaggerate or make bold statements regarding their audit successes, charge you for an audit, and leave you with less money.

If you pay a fee for a forensic loan audit, and the use of that audit does not result in an long-term and sustainable loan modification, or in a successful and beneficial legal action against –or favorable negotiated resolution with—your lender or the investor who owns your home loan, the forensic loan audit is of absolutely no value to you, and the money you paid for it has been wasted.

THE KEY HERE IS FOR YOU TO BE ON GUARD AND CHECK THEM OUT (KNOW WHO YOU ARE DEALING WITH) - DO YOUR HOMEWORK (AVOID THE TRAPS SET BY THE FORENSIC LOAN AUDIT FRAUDS)

In addition to looking at the license records of those who claim to be “licensed” to do forensic loan audits, and asking hard and probing questions of those offering the loan audit services, you should contact the Better Business Bureau to see if they have received any complaints about the person or company offering the loan auditing service. But please understand that this is just another resource for you to check, and the loan audit provider might be so new that the Better Business Bureau may have little or nothing on them (or something positive because of insufficient public input).

If you have become the victim of Forensic Loan Audit fraud, or any other real estate fraud, or if you become aware of such fraud, please file a complaint with the DRE. If the person or company is unlicensed and



performing real estate “licensed activities”, the Department will file and serve a Desist and Refrain Order. If the person or company is licensed and performing “licensed activities”, the Department will commence appropriate disciplinary action. Please log on to [http://www.dre.ca.gov/cons\\_complaint.html](http://www.dre.ca.gov/cons_complaint.html).



## Resources

FEDERAL GOVERNMENT AGENCIES	
Federal Housing Administration (FHA)	U.S. Department of Housing and Urban Development 451 7th Street SW Washington, DC 20410
	<a href="http://www.fha.gov">http://www.fha.gov</a> 1-800-CALL-FHA 1-800-225-5342
Federal Trade Commission Consumer Response Center (FTC)	600 Pennsylvania Avenue NW Washington, DC 20560
	<a href="http://www.ftc.gov">http://www.ftc.gov</a> <a href="http://www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm">http://www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm</a> 1-877-FTC-HELP 1-877-382-4357
U.S. Department of Housing and Urban Development (HUD)	U.S. Department of Housing and Urban Development 451 7th Street SW Washington, DC 20410
	<a href="http://www.hud.gov">http://www.hud.gov</a> <a href="http://www.hud.gov/offices/hsg">http://www.hud.gov/offices/hsg</a> <a href="http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&amp;searchstate=CA">http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&amp;searchstate=CA</a> 1-800-569-4287
U.S. Department of Justice U.S. Trustee Program Credit Counseling and Approved Credit Counseling Agencies	<a href="http://www.usdoj.gov/ust/eo/bapcpa/ccde/index.htm">http://www.usdoj.gov/ust/eo/bapcpa/ccde/index.htm</a> <a href="http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm">http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm</a> (202) 514-4100 <a href="mailto:ust.cc.help@usdoj.gov">ust.cc.help@usdoj.gov</a>
U.S. Department of Veterans Affairs (VA)	810 Vermont Avenue NW Washington, DC 20420
	<a href="http://www.homeloans.va.gov">http://www.homeloans.va.gov</a> <a href="http://www.homeloans.va.gov/paytrbl.htm">http://www.homeloans.va.gov/paytrbl.htm</a> <a href="http://www.homeloans.va.gov/rlcweb.htm">http://www.homeloans.va.gov/rlcweb.htm</a>



STATE GOVERNMENT AGENCIES

California Housing Finance Agency (CalHFA)	1415 L Street, Suite 500 Sacramento, CA 95814
	<a href="http://www.calhfa.ca.gov">http://www.calhfa.ca.gov</a> <a href="http://www.calhfa.ca.gov/foreclosure/foreclosure-calhfa.htm">http://www.calhfa.ca.gov/foreclosure/foreclosure-calhfa.htm</a> 1-877-9-CalHFA 1-877-922-5432
State of California Business, Transportation, and Housing Agency Consumer Home Mortgage Information	980 9th Street, Suite 2450 Sacramento, CA 95814-2719
	<a href="http://www.yourhome.ca.gov">http://www.yourhome.ca.gov</a> <a href="http://www.yourhome.ca.gov/counties/index">http://www.yourhome.ca.gov/counties/index</a> (916) 323-5400
State of California Department of Financial Institutions	<a href="http://www.dfi.ca.gov">http://www.dfi.ca.gov</a> 1-800-622-0620 <a href="mailto:consumer@dfi.ca.gov">consumer@dfi.ca.gov</a>
State of California Department of Real Estate	P.O. Box 137000 Sacramento, CA 95813-7000
	<a href="http://www.dre.ca.gov">http://www.dre.ca.gov</a>
NONPROFIT AGENCIES	
Homeownership Preservation Foundation (HPF)	3033 Excelsior Boulevard, Suite 500 Minneapolis, MN 55416
	<a href="http://www.995hope.org">http://www.995hope.org</a> 1-888-995-HOPE 1-888-995-4673 (612) 230-4020
HOPE NOW Alliance	1001 Pennsylvania Avenue, NW, 7th floor Washington, DC 20004
	<a href="http://www.hopenow.com">http://www.hopenow.com</a> 1-888-995-HOPE 1-888-995-4673



NONPROFIT AGENCIES (CONTINUED)	
LawHelpCalifornia.org	www.foreclosureinfoca.org
National Foundation for Credit Counseling	801 Roeder Road, Suite 900 Silver Spring, MD 20910
	<a href="http://www.nfcc.org">http://www.nfcc.org</a> 1-866-845-2227 (301) 589-5600
Neighborhood Assistance Corporation of America (NACA)	3607 Washington Street Jamaica Plain, MA 02130
	<a href="http://www.naca.com">http://www.naca.com</a> 1-888-302-NACA 1-888-302-6222 homesave@naca.com
NeighborWorks America	1325 G Street, NW, Suite 800 Washington, DC 20005-3100
	<a href="http://www.nw.org/ForeclosureSolutions">http://www.nw.org/ForeclosureSolutions</a> (202) 220-2300
BANKS AND MORTGAGE COMPANIES*	
Countrywide Customer Loan Retention Division	1-800-669-6650
Bank of America Mortgage Hotline	1-800-846-2222

\* Countrywide and Bank of America are identified here because they own thousands of California mortgages and settled a class action lawsuit with the California Attorney General in 2008 to assist these homeowners.













