Foreclosure Process in Minnesota

Foreclosure by Advertisement

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Minnesota Homeownership Center

Missed payments → → → **6 weeks before sale** → **4 weeks before sale** → **Sheriff's Sale**

Missed payment notices

Loan servicer calls and sends a letter. Servicer gives information about loss mitigation and assigns point of contact.

Default / intent to foreclose notice

Servicer sends default notice. Phone calls and collection efforts may continue.

Pre foreclosure notice

Account forwarded to foreclosing attorney (legal fees accrue). Receive Preforeclosure Notice.

Sale date scheduled

Sheriff's Sale date scheduled by attorney. (Date published for 6 consecutive weeks.)

Occupant served with notice of Sheriff's Sale

Sheriff's Sale

Deadline to bring mortgage current

OPTION: MN state law allows homeowners to postpone Sheriff's Sale in return for shortened redemption period. Must file for postponement between date sale is published and 15 days prior to Sale.

WORKOUT DEADLINE: If a workout application is completed and returned to the lender at least seven business days prior to the Sheriff's sale, the lender must hold off on the sale and review loss mitigation options before proceeding.

Redemption Period

Typically 6 months. May be 12 months if agricultural.

May be shortened to 5 weeks if property is abandoned or sale was postponed by homeowner.

Redemption period BEGINS → Month 1 | Month 2 | Month 3 | Month 4 | Month 5 | Month 6 → **Redemption period ENDS**

You maintain the right to stay in your home

[To redeem the property you must pay off the entire Sheriff's Sale amount + interest and fees]

Vacate - OR - Eviction — Face eviction

For more information, or for help determining whether a workout option is affordable for you, contact us at: (952) 933-1993.
Community Action Partnership of Suburban Hennepin: www.capsh.org

NOTE: This document represents the most common foreclosure process in Minnesota and may vary. Information is not presented as legal advice.

Understanding Workout Options

If you are behind on your mortgage payments, a "workout" may be available through your lender. Workouts are special arrangements to bring your loan current and/or prevent foreclosure. The workout option available to you will vary based on the type of mortgage you have, your lender and your financial situation.

Options for remaining in your home:

Reinstatement: A reinstatement is when you pay the full amount you owe (total of past due monthly payments plus all fees) in a lump sum by a specific date.

Repayment plan: Under a repayment plan, you make your regular monthly payment to your lender plus some extra each month to catch up on past due payments.

Forbearance: Forbearance is an agreement to temporarily change or suspend your payments. The term **special forbearance** may also be used in situations where the payment is reduced. To prevent foreclosure, forbearance must be combined with another workout option when the forbearance period ends.

Tax Consequences

Some workout options may impact your income taxes. To learn more, see our fact sheet, Tax Consequences: Foreclosure and Workouts

Loan Modification: A loan modification is a change in any of the terms of the mortgage, resulting in a new monthly payment. In a typical loan modification, you have to pay some of the past-due amount you owe, and the rest is added back into your loan. A loan modification may also involve one or more of the following: changing the interest rate from an adjustable rate to a fixed rate, lowering the interest rate, or extending the number of years to repay the loan. Your lender may require a special forbearance or trial period where you make several monthly payments before receiving a permanent modification.

Partial Claim or Advance Claim: If your mortgage is insured, you may qualify for a low interest or interest-free loan to bring your loan current through the insurer (FHA or private mortgage insurance). This loan may have small monthly payments, or it may be repaid when you pay off your first mortgage or sell your home.

Making Home Affordable: A refinance or loan modification may be possible through this federal government program. For more information see our fact sheet, Understanding the Making Home Affordable Program.

Options for moving out of your home:

Pre-Foreclosure Sale or Short Sale: If you owe more on the home than its value, your lender may agree to accept less than what is owed on the mortgage, allowing a "short" sale. Typically you would need a 3-5 month period for your real estate agent to sell the house to a qualified buyer at a price agreed upon by the lender.

Deed-in-lieu: A deed-in-lieu of foreclosure is an option where your lender forgives the debt you owe if you sign over (give back) the property. Typically you would first have to try to sell the home for 90 days before the lender would consider this. If you have a second mortgage or judgment on the property, a deed-in-lieu may not be an option.

For more information, or for help determining whether a workout option is affordable for you, contact us at: (952) 933-1993. Community Action Partnership of Suburban Hennepin: www.capsh.org

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Tips for Talking With Your Lender

Your lender may be able to help you avoid missing mortgage payments or catch up on payments you have already missed. Here are some suggestions for talking with your lender about the options they may be able to offer you.

Before you call:

- Open and read your mail from your lender.
- Find the phone number to call on your mortgage statement or letter from your lender.
- Have your loan number available so your lender can look up your account.
- Be prepared to answer questions about why you have missed (or will miss) mortgage payments. They may ask you to provide this information in the form of a letter often called a "hardship letter."
- Know how much money you have on hand to contribute to a workout agreement. If you don't have any money saved, be prepared to explain when you will be able to make a payment.
- Know your monthly household income and expenses; your lender may do a financial assessment to determine what type of workout options may be available. You may be asked to provide documentation like pay stubs or income tax forms.
- Set aside enough time for the call. You may be placed on hold during your call – be patient.
- Have a pen and paper handy so you can take notes.

When you call:

- Write down the date and time of the call, who you talked to and what they told you.
- Ask to talk with the "Loss Mitigation" department; this is the department that can discuss possible options.
- Get a phone number for the person you spoke with in the Loss Mitigation department so you can call that person back directly.
- Tell the lender about your situation and that you want to work with them to bring (keep) your mortgage current.
- Answer all the lender's questions honestly and be prepared to fax or mail any financial documentation they request as soon as possible.
- Ask them what types of workout options are available to you.
- Ask for any proposed workout plan to be sent in writing before you agree to it.
- Don't agree to anything you cannot afford.
- If you have questions or want a second opinion, contact a Housing Counselor.

For additional information, speak with a Housing Counselor by contacting us at: (952) 933-1993.
Community Action Partnership of Suburban Hennepin: www.capsh.org

HOW TO WRITE A HARDSHIP LETTER

When you contact your lender about falling behind on your mortgage payments, they may ask you to write a "Hardship Letter." A Hardship Letter explains why you are behind on your payments, what your income and expenses are, and what resources you have to contribute toward a workout agreement. It is important to be straightforward and provide accurate, current information, because lenders use this to determine what workout options may be available to you. Some lenders prefer that you fill out their hardship form instead of writing a letter, check with them first. Below are some basic instructions on writing the letter:

Contact Information:

- Put your name, address, phone number, loan number, and date on the top of the letter.
- List the name and address of your lender.

Introduction:

- Explain your hardship situation: Tell your lender the reason(s) you fell behind on your payments.
- Explain how your situation has changed so that you will be able to make future house payments. Include information about any money you have saved for a workout agreement.
- Tell the lender you are working with a foreclosure counselor and include their name and agency.

Income and Expenses:

- *Note: Instead of putting all the details of your income and expenses in the content of the letter, you may want to attach a copy of your household budget. Some lenders may prefer to see a budget.*
- Outline your montly net income (your take-home amount after taxes) from employment and/or other income sources (SSI, Child Support, Disability, etc.). Include net income for other people in your household if they help pay the monthly expenses.
- List your current monthly mortgage payment, property taxes, homeower insurance and association dues (if any). If you have more than one mortgage include all monthly payments.
- Outline your other monthly expenses, including car payments, transportation, utility bills, phone/cable bills, health care, childcare, groceries, and anything else you spend on a regular basis.

Closing:

- Ask the lender to contact you when they receive your letter.
- Sign your name(s).

Additional Documents:

- If you used a separate budget to list your income and expenses, include that with the letter.
- Along with the letter, send copies of your last 2 bank statements, your paystubs or income documents from the last 2 months, and a copy of your W-2 from the most recent tax year (if employed). Make copies of these documents for your lender and keep the originals for yourself.
- Authorization form: your foreclosure counselor should have a form you can sign that allows them to talk with your lender on your behalf. You can include a copy with your letter.

Follow Up:

- Keep a copy of the Hardship Letter and attachments for your own records.
- Work with your foreclosure counselor to collect any additional information your lender needs.

Sample Hardship Letter

(Date)

(Your Name)
(Your Address)
Phone: (Your Phone)
Loan #: (Your Loan #)

(Your Lender's Name)
(Lender Address)

Dear Loss Mitigation Department Staff:

I am writing this letter to explain the circumstances that caused us to fall behind on our mortgage payments. We recently contacted (name of foreclosure counselor and agency) to help us prevent foreclosure.

The main reason that caused us to be late is (explain reason for hardship/reason for falling behind in a few short sentences). We will be able to make on-time payments in the future because (explain how situation/income has changed).

(Explain income and expenses or attach a budget)

I have enclosed copies of (budget, bank statements, paystubs, W-2, etc.)

Please consider a workout agreement (or repayment plan, loan modification, etc.) for our loan. We appreciate your willingness to work with us to prevent foreclosure of our home.

Please contact us at (phone number) when you receive this letter so we can talk about our options.

Sincerely,

(Your Signature)

Date:__________

Via Certified Mail

[Servicer Name
Servicer Address – use address designated for QWRs found on statement or customer service address]

RE: QUALIFIED WRITTEN REQUEST
[Name of Homeowner]
Loan Number: [ ]

Dear Sir/Madam:

Please treat this letter as a "qualified written request" under the Truth in Lending Act, 15 U.S.C. §1641(f)(2).

Please respond with the name, address, and telephone number of the holder and owner of our mortgage loan (Loan No. [ ]).

In addition, my application for a HAMP loan modification was recently denied. Please identify the section of the Pooling and Servicing Agreement ("PSA") between the note holder and servicer that prohibits HAMP eligibility. You should be aware that even if there is a conflict between the PSA and a HAMP modification, HAMP allows the servicer to skip steps in the waterfall if required by the PSA or to substitute amortization extension for term extension. HAMP FAQs 2301, 2304.

Lastly, please tell me what steps you have taken to get the note holder to waive the restrictions on HAMP modifications in the PSA. According to the HAMP Supplemental Directives, reasonable efforts are required to get the note holder to waive the prohibition. Sup. Dir. 09-01, p. 1. Under Sup. Dir. 10-02, effective June 1, 2010, the servicer must write to the investor requesting a waiver at least once.

Please be advised that failure to comply with this request will result in damages and attorneys' fees under 15 U.S.C. §1640.

Sincerely,

[Homeowner]

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Understanding the 'Making Home Affordable' Program

Making Home Affordable is a federal program that offers qualified homeowners a refinance or loan modification to make mortgage payments affordable now and in the future.

Home Affordable Refinance

You may qualify for a lower interest, fixed rate, 30- or 15-year mortgage if all the following are true:

- Your loan is owned by Fannie Mae or Freddie Mac;
- You are current on your mortgage payments;
- The amount due on your first mortgage is less than 125% of the value of your home;
- You have a stable income sufficient to make new mortgage payments.

NOTE

For more information about Making Home Affordable visit www.makinghomeaffordable.gov

To find out if your loan is owned by Fannie Mae or Freddie Mac:

- Contact Fannie Mae 1-800-7FANNIE (8am to 8pm EST); www.fanniemae.com/homeaffordable
- Contact Freddie Mac 1-800-FREDDIE (8am to 8pm EST); www.freddiemac.com/avoidforeclosure/

Home Affordable Modification

You are eligible to apply for a Home Affordable Modification of your first mortgage if all the following are true:

- The house has one to four units and one of the units is your primary residence;
- Your unpaid first mortgage balance is less than $729,750 (for one unit, more for 2-4);
- Your loan originated on or before January 1, 2009;
- Your mortgage payment (including property taxes, insurance and homeowners association) is more than 31% of your gross (before tax) monthly income;
- You have experienced a change in income or expenses to the point that your mortgage payment is no longer affordable.
- Your mortgage servicer chooses to participate in this program. To find out if your mortgage servicer is participating, call your servicer or use the look-up tool online at www.makinghomeaffordable.gov.

Home Affordable Modification (cont.)

To determine if you qualify for a Home Affordable Modification, your mortgage servicer will:

- Determine if your loan meets the minimum eligibility criteria.
- Add past due charges (interest, property taxes, insurance and costs – late fees must be waived) to your loan balance.
- Determine how much your interest rate must be reduced to get your mortgage payment to equal 31% of your gross monthly income.
    - The servicer may also extend the term beyond 30 years or defer some of the mortgage balance to get the payment to 31% of your gross income.

If you meet the above criteria, you will have to complete a three month trial period making payments at the new amount. Upon successfully completing the trial period, the servicer will make a final analysis and apply a test to determine if the modification will be less costly than foreclosure. If the modification is the best option, the servicer will make a permanent modification.

The interest rate on a permanent Home Affordable Modification will remain fixed for five years. If the initial interest rate is below market rate, after five years it will adjust up no more than 1% per year until it reaches the market rate.

If you make your mortgage payments on-time you may qualify for up to $5,000 towards your mortgage balance.

Contact a Housing Counselor to help you determine if Making Home Affordable will work for you. Housing Counselors offer free, unbiased advice. Contact us at: (952) 933-1993. Community Action Partnership of Suburban Hennepin: www.capsh.org

Postponement of Foreclosure Sale – Homeowner FAQ

What does postponement mean?

Minnesota state law allows you to delay the foreclosure sale ("Sheriff's Sale") of your home. If the original redemption period was six months, you can postpone the sale by five months; if the redemption period was 12 months, you can postpone the sale 11 months. In both cases postponement will automatically reduce the redemption period to five weeks.

What does this mean for me?

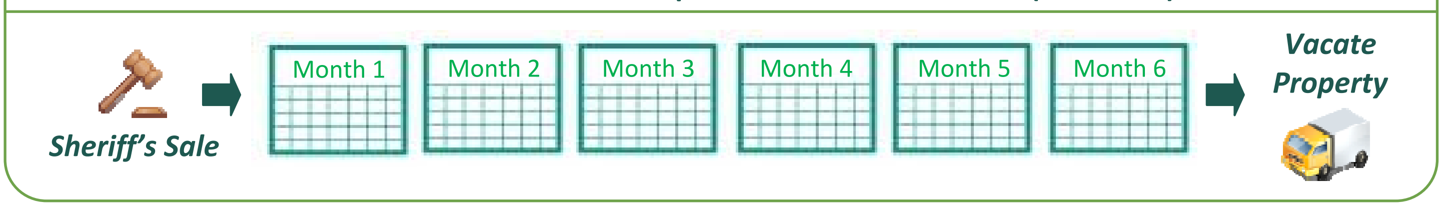
Postponing the Sheriff's Sale gives you additional time to bring your mortgage current and prevent foreclosure. Postponing also reduces the redemption period. During the redemption period you must pay off the amount bid at the Sheriff's Sale to retain ownership of the property (generally this is about equal to the amount owed on the mortgage).

Time Sensitive

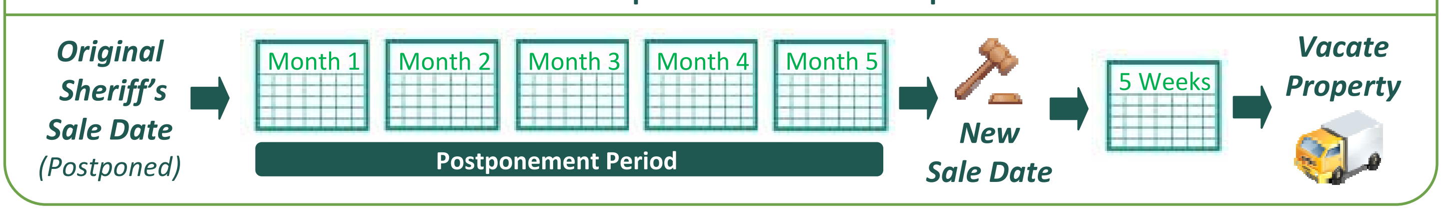
There is only a small window of time to postpone the foreclosure sale.

When is the new Sheriff's Sale date?

The new Sheriff's Sale date will be the first day that is not a Saturday, Sunday or legal holiday and is five or 11 months after the originally scheduled Sheriff's Sale (depending on the original redemption period):



Traditional Foreclosure Redemption Period in Minnesota (6 Months)



Foreclosure Redemption Period with Postponement

Am I eligible to postpone the Sheriff's Sale?

- The property must be classified as homestead and be 1 – 4 units.
- You must complete all the steps outlined below within the following timeframe: after the first publication of the Sheriff's Sale AND at least 15 days before the scheduled Sheriff's Sale.

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Postponement of Foreclosure Sale – Homeowner FAQ

What does postponement mean?
Effective June 15, 2009 Minnesota state law allows you to delay the foreclosure sale ("Sheriff's Sale") of your home by five months.

What does this mean for me?
Postponing the Sheriff's Sale gives you five more months to bring your mortgage current. It also reduces the redemption period to five weeks. During the redemption period you must pay off the amount bid at the Sheriff's Sale to retain ownership of the property (generally this is about equal to the amount owed on the mortgage).

When is the new Sheriff's Sale date?
The new Sheriff's Sale date will be the first day that is not a Saturday, Sunday or legal holiday and is five months after the originally scheduled Sheriff's Sale.

Am I eligible to postpone the Sheriff's Sale?

- The property must be classified as homestead and be one to four units.
- You must complete the steps outlined below within the following timeframe: after the first publication of the Sheriff's Sale AND at least 15 days before the scheduled Sheriff's Sale.

Time Sensitive

There is only a small window of time to postpone the Foreclosure Sale.

How do I postpone the Sheriff's Sale?
Complete ALL of the following steps:

1. Complete the Affidavit of Postponement (found at http://www.hocmn.org/en/foreclosurepostponement.cfm), including having it notarized and attaching a copy of the Notice of Mortgage Foreclosure Sale.
2. Make two sets of photocopies of the complete Affidavit and Notice of Mortgage Foreclosure Sale.
3. Take the original and two copies to the county recorder or registrar of titles where your mortgage was recorded.
   - Bring cash or check to cover the recording fees. Fees vary by county but expect about $50-55 total.
   - The county recorder will note the date and filing information on the two copies required for the next steps. *Important note: Some counties will mail the two copies back to you which may take 2-4 business days. Plan accordingly so you do not miss the timeline allowed for postponement.*
4. File one set of copies with the Sheriff conducting the sale. Contact the Sheriff's office in your county to determine the process.
5. Deliver one set of copies to the attorney conducting the foreclosure. Contact the foreclosure attorney to determine acceptable method of delivery (in-person, mail and/or fax).
6. Confirm receipt of the copies and the new sale date with the Sheriff's office and foreclosure attorney.

What other facts should I know about postponing the Sheriff's Sale?

- If you are unable to bring the mortgage current before the Sheriff's Sale or redeem you must vacate the home at the end of the five week redemption period.
- The lender and foreclosure attorney are not required to publish notice or serve you with additional information about the change in the Sheriff's Sale or the date the redemption period ends.
- Postponement can only be done once regardless of whether you bring the mortgage current or not.

This information is provided as a service of the Minnesota Home Ownership Center and is not legal advice. Consult a competent legal professional for advice specific to your situation.

For additional information about foreclosure speak with a Housing Counselor by contacting us at: (952) 933-1993. Community Action Partnership of Suburban Hennepin: www.capsh.org

www.hocmn.org

(Top 3 inches reserved for recording data)

AFFIDAVIT OF POSTPONEMENT
Minn. Stat. 580.07

Minnesota Uniform Conveyancing Blanks
Form 60.8.1 (2009)

State of Minnesota, County of ______________________

____

(whether one or more, "**Owner**"), being first duly sworn on oath, states as follows:

1. (He is)(She is)(They are) the owner(s) or mortgagor(s) of the real property (the "**Property**") situated in ____________________ *(insert name of County)* County, Minnesota, legally described in the attached published Notice of Mortgage Foreclosure Sale (the "**Notice**"), and make this affidavit for the purpose of postponing the foreclosure sale of the Property pursuant to Minnesota Statutes, section 580.07, subdivision 2, for five months from the date scheduled in the attached Notice.

2. The Property is classified as homestead under Minnesota Statutes, section 273.124, is occupied by Owner as a homestead, and is improved with not more than four dwelling units.

3. Owner has elected to shorten Owner's redemption period from any foreclosure sale of the Property to five weeks in exchange for the postponement of the foreclosure sale for five months.

Check here if all or part of the described real property is Registered (Torrens) ☐

Owner

____
(signature)

____
(signature)

Note: The published Notice of Mortgage Foreclosure Sale must be attached to this document and recorded in order for it to be enforceable.
Note: After recording, Minn. Stat. 580.07 subd.2 requires that a copy of this recorded affidavit be filed with the County Sheriff and delivered to the attorney foreclosing the mortgage.

Signed and sworn to before me on ______________________, by ______________________
(month/day/year)

____
(insert name(s) of person(s) making statement)

____.

(Seal, if any)

____
(signature of notarial officer)

Title (and Rank): ______________________

My commission expires: ______________________
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)

FTC Facts For Consumers

focus on CREDIT

Federal Trade Commission
For The Consumer

www.ftc.gov ■ 1-877-ftc-help

February 2008

Foreclosure Rescue Scams:
Another Potential Stress for Homeowners in Distress

The possibility of losing your home to foreclosure can be terrifying. The reality that scam artists are preying on the vulnerability of desperate homeowners is equally frightening. Many so-called foreclosure rescue companies or foreclosure assistance firms claim they can help you save your home. Some are brazen enough to offer a money-back guarantee. Unfortunately, once most of these foreclosure fraudsters take your money, they leave you much the worse for wear.

Fraudulent foreclosure "rescue" professionals use half truths and outright lies to sell services that promise relief and then fail to deliver. Their goal is to make a quick profit through fees or mortgage payments they collect from you, but do not pass on to the lender. Sometimes, they assume ownership of your property by deceiving you, the homeowner. Then, when it's too late to save your home, they take the property or siphon off the equity. You've lost your home to foreclosure despite your best intentions.

If you think you may be facing foreclosure, the Federal Trade Commission (FTC), the nation's consumer protection agency, wants you to know how to recognize a foreclosure rescue scam. And even if the foreclosure process has already begun, the FTC and its law enforcement partners want you to know that legitimate options are available to help you save your home.

How the Scams Work

Foreclosure rescue firms use a variety of tactics to find homeowners in distress: Some sift through public foreclosure notices in newspapers and on the Internet or through public files at local government offices, and then send personalized letters to homeowners. Others take a broader approach through ads on the Internet, on television, or in the newspaper, posters on telephone poles, median strips and at bus stops, or flyers or business cards at your front door.

The scam artists use simple and straight-forward messages, like:

"Stop Foreclosure Now!"

"We guarantee to stop your foreclosure."

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

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

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

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

Once they have your attention, they use a variety of tactics to get your money:

Phony Counseling or Phantom Help

The scam artist tells you that he can negotiate a deal with your lender to save your house if you pay a fee first. You may be told not to contact your lender, lawyer, or credit counselor, and to let the scam artist handle all the details. Once you pay the fee, the scam artist takes off with your money.

Sometimes, the scam artist insists that you make all mortgage payments directly to him while he negotiates with the lender. In this instance, the scammer may collect a few months of payments before disappearing.

Bait-and-Switch

You think you're signing documents for a new loan to make your existing mortgage current. This is a trick: you've signed documents that surrender the title of your house to the scam artist in exchange for a "rescue" loan.

Fraudulent foreclosure "rescue" professionals use half truths and outright lies to sell services that promise relief and then fail to deliver.

Rent-to-Buy Scheme

You're told to surrender the title as part of a deal that allows you to remain in your home as a renter, and to buy it back during the next few years. You may be told that surrendering the title will permit a borrower with a better credit rating to secure new financing – and prevent the loss of the home. But the terms of these deals usually are so burdensome that buying back your home becomes impossible. You lose the home, and the scam artist walks off with all or most of your home's equity. Worse yet, when the new borrower defaults on the loan, you're evicted.

In a variation, the scam artist raises the rent over time to the point that the former homeowner can't afford it. After missing several rent payments, the renter – the former homeowner – is evicted, leaving the "rescuer" free to sell the house.

In a similar equity-skimming situation, the scam artist offers to find a buyer for your home, but only if you sign over the deed and move out. The scam artist promises to pay you a portion of the profit when the home sells. Once you transfer the deed, the scam artist simply rents out the home and pockets the proceeds while your lender proceeds with the foreclosure. In the end, you lose your home – and you're still responsible for the unpaid mortgage. That's because transferring the deed does nothing to transfer your mortgage obligation.

Bankruptcy Foreclosure

The scam artist may promise to negotiate with your lender or to get refinancing on your behalf if you pay a fee up front. Instead of contacting your lender or refinancing your loan, though, the scam artist pockets the fee and files a bankruptcy case in your name – sometimes without your knowledge.

A bankruptcy filing often stops a home foreclosure, but only temporarily. What's more, the bankruptcy process is complicated, expensive, and unforgiving. For example, if you fail to attend the first meeting with the creditors, the bankruptcy judge will dismiss the case and the foreclosure proceedings will continue.

If this happens, you could lose the money you paid to the scam artist as well as your home. Worse yet, a bankruptcy stays on your credit report for 10 years, and can make it difficult to obtain credit, buy a home, get life insurance, or sometimes get a job.

If you're having trouble paying your mortgage or you have gotten a foreclosure notice, contact your lender immediately.

Where to Find Legitimate Help

If you're having trouble paying your mortgage or you have gotten a foreclosure notice, contact your lender immediately. You may be able to negotiate a new repayment schedule. Remember that lenders generally don't want to foreclose; it costs them money.

Other foreclosure prevention options, including reinstatement and forbearance, are explained in *Mortgage Payments Sending You Reeling? Here's What to Do*, a publication from the FTC. Find it at **www.ftc.gov**.

You also may contact a credit counselor through the Homeownership Preservation Foundation (HPF), a nonprofit organization that operates the national 24/7 toll-free hotline (1.888.995.HOPE) with free, bilingual, personalized assistance to help at-risk homeowners avoid foreclosure. HPF is a member of the HOPE NOW Alliance of mortgage servicers, mortgage market participants and counselors. More information about HOPE NOW is at **www.995hope.org**.

Red Flags

If you're looking for foreclosure prevention help, avoid any business that:

- guarantees to stop the foreclosure process – no matter what your circumstances
- instructs you not to contact your lender, lawyer, or credit or housing counselor
- collects a fee before providing you with any services
- accepts payment only by cashier's check or wire transfer
- encourages you to lease your home so you can buy it back over time
- tells you to make your mortgage payments directly to it, rather than your lender
- tells you to transfer your property deed or title to it
- offers to buy your house for cash at a fixed price that is not set by the housing market at the time of sale
- offers to fill out paperwork for you
- pressures you to sign paperwork you haven't had a chance to read thoroughly or that you don't understand.

Report Fraud

If you think you've been a victim of foreclosure fraud, contact:

- Federal Trade Commission
- Your state Attorney General
- Your local Better Business Bureau

For More Information

To learn more about mortgages and other credit-related issues, visit **www.ftc.gov/credit** and **MyMoney.gov**, the U.S. government's portal to financial education.

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit **ftc.gov** or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

MMFPA
MINNESOTA MORTGAGE FORECLOSURE PREVENTION ASSOCIATION

Bankruptcy Remedies for Homeowners in Foreclosure

Enforcement of Mortgage Loans on a Borrower Prior to Filing Bankruptcy

A mortgage lender generally has a choice of enforcing a mortgage loan agreement in one of two ways:

1) **Foreclosure by advertisement** – Foreclosure of the mortgage after six weeks' advertisement with a 6-month right of redemption, with no right to recover a deficiency from the borrower. Most mortgage foreclosures in Minnesota are by advertisement.

2) **Foreclosure by action** – Foreclosure of the mortgage by first suing the borrower for the loan balance, obtaining a judgment against the borrower, and then foreclosing on the real estate and applying sale proceeds to the judgment. Borrower is liable for the difference if sale proceeds do not pay the judgment in full. Borrower may have a right of redemption of up to a year.

Effect of foreclosure on junior lien holders:
Foreclosure by the first mortgage lender will eliminate the mortgage lien of second and subsequent lien holders, but it will not eliminate or satisfy the liability of the borrower for these loans – the homeowner still owes the loan amount, although it becomes an unsecured debt after the foreclosure by the first mortgage lender is completed.

Prerequisites for Filing Chapter 7 or 13 Bankruptcy

In order to qualify for bankruptcy relief, a debtor must meet the following minimum requirements:

- Be an individual, single or married;
- Not have received a Chapter 7 discharge within the last 8 years, or received a Chapter 13 discharge within the last 2 years;
- Received budget counseling from an approved agency within 6 months prior to the bankruptcy filing date

Chapter 7 & 13 Bankruptcy

Chapter 7 Liquidation: Main purpose is to discharge personal liability on secured and unsecured debt, surrender non-exempt property to the trustee, and gain a fresh start. Mortgage liens on real estate are not affected by a lender's only remedy is to foreclose after bankruptcy discharge. Only individuals may receive a discharge of debt.

Chapter 13 Reorganization: A repayment plan for 3-5 years, to cure mortgage defaults, pay secured debt such as car loans, priority income taxes, and all or a portion of other unsecured debt. Mortgage loans may not be foreclosed unless permitted by the bankruptcy court. Only individuals may file a Chapter 13 case.

This material is provided through the Minnesota Mortgage Foreclosure Prevention Association, a statewide non-profit organization providing foreclosure prevention training and education since 1993. For more information on MMFPA's programs, visit our website at www.mmfpa.org.

Automatic Stay – How it Affects Foreclosure

11 U.S.C. §362(a) The automatic stay: The filing of any bankruptcy petition automatically stays any collection action against a debtor, including initiating or continuing any foreclosure action against any real estate owned by the debtor. This applies to all mortgage loans, first or second, homestead or non-homestead.

Note: the bankruptcy case must be filed before the foreclosure sale in order to halt the foreclosure process.

Void foreclosure: Any foreclosure action against a debtor after a bankruptcy filing, without prior approval of the bankruptcy court, is void, unenforceable, and is subject to court sanction.

Effect of Bankruptcy Discharge on Mortgage Loans

A Chapter 7 or 13 bankruptcy discharges the personal liability of the borrower, even though it does not remove the mortgage lien on the home. A discharge applies to all mortgage loans – the lender is precluded from suing the homeowner for the loan balance in lieu of foreclosure.

Short sales: since the personal liability of the borrower has been discharged, there is no deficiency to negotiate with the lender.

Property Protections in Chapter 7 & 13 Bankruptcy

Exempt vs. Non-exempt: Property that is protected from creditors is exempted from the bankruptcy, subject only to voluntary liens place by a lender or to certain tax or other statutory liens. This protection extends to a bankruptcy debtor's homestead. A certificate of property claimed exempt from the Bankruptcy Court is proof the homestead was protected.

Homestead: Minnesota law allows a non-farmer homeowner to protect a maximum or $360,000 of equity in a homestead from creditors; sale proceeds are protected for up to 1 year after the date of sale. Homeowners filing bankruptcy may use this allowance to protect their homestead equity. Federal law allows homeowners in bankruptcy to protect $21,625 per person.

Non-homestead real estate: Included in the bankruptcy estate. If the bankruptcy trustee determines that the property can be sold and funds will be available after payment of sale costs, taxes, and liens, the trustee will liquidate the property and distribute the proceeds to unsecured creditors. If funds are not likely, the trustee will abandon the property back to the debtor.

Extension of Redemption

Although filing bankruptcy after a foreclosure sale and during the redemption term will not reinstate the loan, it will extend the redemption by 60 days from the bankruptcy filing date.

A **promissory note** is a common **debt instrument**. It affects **persons** and evidences **liability** for a debt.

- Personal liability of a debtor may be *discharged* through bankruptcy, but…
  - a person's bankruptcy does **not** discharge the lien; generally, "*liens ride through bankruptcy*."

A **mortgage** is a common **security instrument**. It affects **property** and evidences a **lien** securing a debt.

- A mortgage lien may be "*foreclosed out*" through the foreclosure of a superior lien, but…
  - foreclosure of a superior lien does **not** discharge the personal liability of the debtor.

Short sales and *deeds-in-lieu of foreclosure* necessarily result in release of the lien but do **not** involve release of personal liability unless negotiated as part of the deal and agreed by the parties.

- Limitations periods → note enforceable for 6 years, running from the actionable default (*i.e.*, "breach"). (MINN. STAT. § 541.05)
- Practically, after 3 full calendar years of utter silence, a financial institution is quite unlikely to pursue a note or a mortgage.

- Limitations periods → mortgage enforceable for 15 years, running from the maturity stated in the mortgage, otherwise from the date of the mortgage. (MINN. STAT. § 541.03)
- Peculiarly, a "lien revival doctrine" says that, if property comes back into the hands of a one-time mortgagor, liens that had been foreclosed out are revived.

"Collections" versus "*Enforcement*"

- Phone calls and letters meant to pester one into paying *something* just to stop the plague.
- Action to enforce a promissory note (*i.e.*, obtaining a judgment)
  - Demand (often, but not always)
  - Service of Summons & Complaint
  - Default judgment -or- summary judgment
- Judgment remedies
  - Judgment lien on non-homestead real estate
  - Bank levies
  - Post-judgment discovery and investigation
  - Execution by a sheriff under a "Writ"
  - Wage garnishment
  - Exemptions

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