

## Foreclosure Prevention

If you are facing a foreclosure, please review the steps below to learn about actions you may be able to take to avoid foreclosure.

1) Contact a housing counselor at 208-343-4065 (Boise Neighborhood Housing Services) or 877-888-3135 (Idaho Housing and Finance Association) or 888-995-HOPE (Hope Now)

2) Look into Refinancing

- a) FHA Secure (non-FHA ARM) - 1-800-CALL-FHA
- b) Reverse Mortgage if a senior – talk to a HUD certified reverse mortgage counselor
- c) Home Affordable Refinance Program (HARP) - If you're not behind on your mortgage payments but have been unable to get traditional refinancing because the value of your home has declined, you may be eligible to refinance through HARP.

<http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx>

3) Workout – A “workout” is a negotiation between you and your servicer in order to avoid a foreclosure on your property. Workout options include:

- a) Mortgage Modification - Reduce interest, Extend term to 40 years,
- b) Forgive principal;
- c) Payment Forbearance – no payments are made for a period of time (e.g., during a brief period of unemployment);
- d) Repayment Plan – need to pay back a past due amount over a period of time;
- e) Principal Forbearance - remove part of the principal from the portion of the loan balance that is subject to interest;
- f) Streamline Refinance - lender refinances at current market rates; Special modification programs for IndyMac and Fannie Mae and Freddie Mac loans

Workout proposal tips:

- a) Hardship Letter: 1) Name, address, account number, type of workout being sought; 2) describe hardship in detail and its cause; 3) summarize income and expenses; 4) describe proposed plan in detail and why it will work; 5) homeowner and advocate contact information.
- b) Attach to the hardship letter your workout proposal and a financial statement listing income, expenses, assets, and liabilities.
- c) If loan servicer won't work with you, appeal to the loan's insurer or loan owner

4) Examine loan transaction documents looking for law violations (can be used as leverage in negotiation or as basis for a separate suit against the lender/servicer). These can be difficult to spot, if you suspect a legal violation as discussed below, please contact an attorney.

- a) Predatory Lending
  - High interest rate - more than 8% above Treasury rate
  - Excessive fees - exceeding 8% of loan
  - High referral fees to mortgage brokers - YSP (yield spread premium) = commission paid to broker.
  - Forgery of loan documents - loan terms left blank or changed after signature

- Borrower's income inflated - servicer prepares application and makes it appear borrower is qualified
  - Inflated assessed value of home
  - Equity stripping
  - Prepayment penalties
  - Loan packing - padding costs and adding to principal of the loan
  - Negative amortization
- b) Idaho Consumer Protection Act violations (unfair/deceptive practices)
- Idaho Code Title 48, Chapter 6 and IDAPA 04.02.01.000
    - Mortgage Fraud: 1) Appraisal Fraud - appraisal misrepresents the value of a property (due to pressure or kickback from the lender). 2) Bait and Switch - lender offers a certain set of loan terms in the beginning, but then pressures the consumer to accept less favorable terms.
    - Deceptive Loan Servicing: Failure to post payments upon receipt, charging for unnecessary insurance, collecting unauthorized fees.
    - Insurance Packing: Undisclosed additional insurance fees. Note: under Homeowner's Protection Act, homeowners can request cancellation of mortgage insurance once their mortgage loan balance equals 80% of the original purchase price or the appraised value, whichever is less.
    - Contact AG's office and Idaho Dept. of Finance
- c) Truth in Lending Act/HOEPA violations
- Failure to provide "material disclosures" = 3 year right to rescind
    - 2<sup>nd</sup> mortgages and refinances only
- d) Real Estate Settlement Procedures Act
- Requires Good Faith Estimate of settlement costs and HUD - 1A settlement sheet
  - Servicer must respond to customer inquiries within 60 days
  - No kickbacks or referral fees allowed
- e) Contract Arguments
- Unconscionability
  - Fraud/misrepresentation
  - Duress/coercion
  - Incapacity
- 5) Miscellaneous
- a) Short sale
  - b) Roommate to help make payments
  - c) Deed in lieu of foreclosure
  - d) Bankruptcy
  - e) Fair Housing Act Reasonable Accommodation request for more time to move if foreclosure sale is imminent and homeowner or occupant is disabled.

### For Tenants

**1. If tenant wants to stay:**

- A) Record the lease - may need to get lease notarized prior to recording.

- B) Notify the bank by certified letter that you are a tenant and assert tenancy rights after the trustee's sale.
  - C) Remain in the property past the date of the trustee's sale so you can take advantage of the new federal law protecting tenants in foreclosed properties.
  - D) Offer to purchase through short sale if can get a mortgage through various homeownership programs.
- 2. **If tenant wants to move:** Call bank or servicer to discuss cash for keys agreement.
  - 3. **The Protecting Tenants in Foreclosure Act:** Protects tenants from immediate eviction by persons or entities that became owners of residential property through the foreclosure process. With limited exceptions, tenants with leases must be permitted to occupy the property until the end of their lease terms. At a minimum, tenants must receive 90 days' notice prior to eviction.
    - A) If the new owner gives you a notice of anything less than 90 days to terminate your tenancy, without stating a reason or for the reason that your home has been foreclosed upon, you should send the landlord a letter telling the landlord that s/he must give you a 90-days notice of termination of tenancy. Keep a copy of the letter for your records.
    - B) If you have a lease for a term, such as for a year, and the term is not up, the new owner cannot evict you during the term of the lease for the reason that there has been a foreclosure on your home. The only exception to this rule is in the event that the new owner wants to live in your unit as his or her primary residence. In that event the new owner may give you a 90 day notice to vacate.

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