keep the home? What type of payment arrangement would be feasible for you?

Throughout the foreclosure prevention process:

- Keep notes of all your communications with the lender and/or servicer, including date and time of contact, the nature of the contact (face-to-face, by phone, email, fax or postal mail), the name of the representative, and the outcome.
- Follow up any oral requests you make with a letter. Send your letter by certified mail, "return receipt requested," so you can document what the lender received. Keep copies of your letter and any enclosures.

Meet All Deadlines the Lender Gives You.

Stay in your home during the process, since you may not qualify for certain types of assistance if you move out. Renting your home will change it from a primary residence to an investment property. Most likely, it will disqualify you for any additional "workout" assistance from the lender. If you choose this route, be sure the rental income is enough to help you get and keep your loan current.

Avoiding Default and Foreclosure: The Options

If you have fallen behind on your payments, consider discussing the following foreclosure prevention options with your loan lender:

Reinstatement: You pay the loan lender the entire past-due amount, plus any late fees or penalties and attorney fees, by a date you both agree to. This option may be appropriate if your problem paying your mortgage is temporary.

Repayment plan: Your lender gives you a fixed amount of time to repay the amount you are behind by adding a portion of what is past due to your regular payment. This option may be appropriate if you've missed a small number of payments.

Forbearance: Your mortgage payments are reduced or suspended for a period. At the end of that time, you resume making your regular payments as well as a lump sum payment or additional partial payments for a number of months to bring the loan current. Forbearance may be an option if your income is reduced temporarily (for example, you are on disability leave from a job, and you expect to go back to your full time position shortly). Forbearance isn't going to help you if you're in a home you can't afford.

Loan modification: You and your loan lender agree to permanently change one or more of the terms of the mortgage contract to make your payments more manageable for you. Modifications may include reducing the interest rate, extending the term of the loan, or adding missed payments to the loan balance. A modification also may involve reducing the amount of money you owe on your primary residence by forgiving, or cancelling, a portion of the mortgage debt.

Before you ask for forbearance or a loan modification, be prepared to show that you are making a good-faith effort to pay your mortgage. For example, if you can show that you've reduced other expenses, your loan lender may be more likely to negotiate with you.

Selling your home: Depending on the real estate market in your area, selling your home may provide the funds you need to pay off your current mortgage debt in full.

Bankruptcy: Personal bankruptcy generally is considered the debt management option of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, and can make it difficult to get credit, buy another home, get life insurance, or sometimes, get a job. Still, it is a legal procedure that can offer a fresh start for people who can't satisfy their debts. If you and your loan lender cannot agree on a repayment plan or other remedy, you may want to investigate filing bankruptcy. If you have a regular income, Chapter 13 may allow you to keep property, like a mortgaged house or car, that you might otherwise lose. In Chapter 13, the court approves a repayment plan that allows you to use your future income toward payment of your debts during a three-to-five-year period, rather than surrender the property. After you have made all the payments under the plan, you receive a discharge of certain debts.

Consider Giving Up Your Home Without Foreclosure

Not every situation can be resolved through your loan lender's foreclosure prevention programs. If you're not able to keep your home, or if you don't want to keep it, consider:

Selling Your House: Your lenders might postpone foreclosure proceedings if you have a pending sales contract. This approach works if proceeds from the sale can pay off the entire loan balance plus the expenses connected to selling the home (for example, real estate agent fees). Such a sale would allow you to avoid late and legal fees and damage to your credit rating, and protect your equity in the property.

Short Sale: Your lender may allow you to sell the home yourself before it forecloses on the property, agreeing to forgive any shortfall between the sale price and the mortgage balance. This approach avoids a damaging foreclosure entry on your credit report.

Deed in Lieu of Foreclosure: You voluntarily transfer your property title to the lender (with the lender's agreement) in exchange for cancellation of the remainder of your debt. Though you lose the home, a deed in lieu of foreclosure can be less damaging to your credit than a foreclosure. You will lose any equity in the property. A deed in lieu of foreclosure may not be an option for you if other loans or obligations are secured by the property on your home.

Be Alert to Scams

Scam artists follow the headlines, and know there are homeowners falling behind in their mortgage payments or at risk for foreclosure. Their pitches may sound like a way for you to get out from under debt, but their intentions are far from honorable. They mean to take your money. Among the predatory scams that have been reported are:

The foreclosure prevention specialist: The "specialist" really is a phony counselor who charges high fees in exchange for making a few phone calls or completing some paperwork that a homeowner could easily do himself. None of the actions results in saving the home. This scam gives homeowners a false sense of hope, delays them from seeking qualified help, and exposes their personal financial information to a fraudster.

Some of these companies even use names with the word HOPE or HOPE NOW in them to confuse borrowers who are looking for assistance from the free 888-995-HOPE hotline.

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

The bait-and-switch: Homeowners think they are signing documents to bring the mortgage current. Instead, they are signing over the deed to their home. Homeowners usually don't know they've been scammed until they get an eviction notice.

Tax Considerations

Under the Mortgage Forgiveness Debt Relief Act of 2007, forgiven debt may be excluded from income when calculating the federal taxes you owe, but it still must be reported on your federal tax return. For more information, see www.irs.gov, and consider consulting a financial advisor, accountant or attorney.

The Missouri Bar

Steps You Can Take to Avoid Foreclosure

What You Need to Know

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The thought of possible foreclosure is guaranteed to stress or alarm anyone having trouble making payments. It may feel like the end of the world, but it isn't. The better you understand the laws and business practices affecting real estate, the better able you will be to cope with the stresses and to find ways to avoid losing your home.

Perhaps you're having trouble making ends meet because you or a family member lost a job or received medical treatments that insurance didn't cover. Maybe you're one of the many people who took out a mortgage that has an adjustable rate, and you are now struggling with a higher payment. Regardless of the circumstances leading to your financial troubles, you can act to either avoid foreclosure or reduce its impact on your life and finances.

Keep Informed; Don't Ignore the Problem

- The further behind you become, the harder it will be to hold onto your house.
- Contact your lender as soon as you realize that you have a problem.
- Lenders do not want your house. They have options to help borrowers through difficult financial times.
- Open and respond to all mail from your lender.

The first notices you receive will offer important information about foreclosure prevention options that can help you weather financial problems. Later mail may include notice of pending legal action. Your failure to open the mail will not be an acceptable excuse in court.

Know Your Mortgage Rights

Find your loan documents and read them so you know what your lender may do if you can't make your payments. Depending on what those documents say, you may face one of two different types of foreclosure – judicial foreclosure or a nonjudicial foreclosure under a power of sale.

Nonjudicial Power of Sale Foreclosures — This is by far the most common type of foreclosure in Missouri. It can occur if a person misses payments on his/her house. The lender may accelerate the loan and call the full balance to be due.

Judicial foreclosure – The lender must go to court and file a suit in order to foreclose.

Contact a HUD-Approved Housing Counselor

The U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling nationwide. Housing counselors can help you understand your options, organize your finances and represent you in negotiations with your lender if you need this assistance. To find a HUD approved housing counselor call (800) 569-4287 or TTY (800) 877-8339.

Prioritize Your Spending

Review your finances and see where you can cut spending in order to make your mortgage payment. Look for optional expenses — cable TV, memberships, entertainment — that you can eliminate. You might decide to delay payments on credit cards and other "unsecured" debt until you have paid your mortgage.

Avoid Foreclosure Prevention Companies

You don't need to pay fees for foreclosure prevention help — use that money to pay the mortgage instead. Many for-profit companies will contact you promising to negotiate with your lender. While these may be legitimate businesses, they will charge you a hefty fee (often two or three months' mortgage payments) for information and services your lender or a HUD approved housing counselor will provide free if you contact them.

Don't Lose Your House to Foreclosure Recovery Scams!

If any firm claims they can stop your foreclosure immediately if you sign a document appointing them to act on your behalf, you may well be signing over the title to your property and becoming a renter in your own home! Never sign a legal document without reading and understanding all the terms and getting professional advice from an attorney, a trusted real estate professional, or a HUD approved housing counselor.

Read the Small Print. Know What Kind of Mortgage You Have

Do you know what kind of mortgage you have? Do you know whether your payments are going to increase? If you can't tell by reading the mortgage documents you received at settlement, contact your loan servicer and ask. A loan servicer is responsible for collecting your monthly loan payments and crediting your account.

Here are some examples of types of mortgages:

- Hybrid Adjustable Rate Mortgages (ARMs): Mortgages that have fixed payments for a few years, and then turn into adjustable loans. Some are called 2/28 or 3/27 hybrid ARMs: the first number refers to the years the loan has a fixed rate and the second number refers to the years the loan has an adjustable rate. Others are 5/1 or 3/1 hybrid ARMs: the first number refers to the years the loan has a fixed rate, and the second number refers to how often the rate changes. In a 3/1 hybrid ARM, for example, the interest rate is fixed for three years, then adjusts every year thereafter.
- ARMs: Mortgages that have adjustable rates from the start, which means your payments change over time.
- Fixed Rate Mortgages: Mortgages where the rate is fixed for the life of the loan; the only change in your payment would result from changes in your taxes and insurance if you have an escrow account with your loan lender.

If you have a hybrid ARM or an ARM and the payments will increase – and you have trouble making the increased payments – find out if you can refinance to a fixed-rate loan. Review your contract first, checking for prepayment penalties. Many ARMs carry prepayment penalties that force borrowers to come up with thousands of dollars if they decide to refinance within the first few years of the loan. If you're planning to sell soon after your adjustment, refinancing may not be worth the cost. But if you're planning to stay in your home for a while, a fixed-rate mortgage might be the way to go. Online calculators can help you determine your costs and payments.

Missed Payments? Here is What to Expect on Some Loans

- **First month missed payment**. Technically, the foreclosure process can begin when you miss your first payment. Typically, your lender will contact you by letter or phone. A housing counselor can help.
- **Second month missed payment** – your lender is likely to begin calling you to discuss why you have not made your payments. **It is important that you take their phone calls**. Talk to your lender and explain your situation and what you are trying to do to resolve it. At this time, you still may be able to make one payment to prevent yourself from falling three months behind. A housing counselor can help.
- **Third month missed payment** – after the third payment is missed, you can expect to receive a letter from your lender stating the amount you are delinquent, and that you have 30 days to bring your mortgage current. This is called a "Demand Letter." It could be sent sooner, so don't assume you can miss up to three months' payments without consequence. If you do not pay the specified amount or make some type of arrangements by the given date, the lender may begin foreclosure proceedings. They are unlikely to accept less than the total due without arrangements being made if you receive this letter. **You still have time** to work something out with your lender. A housing counselor can still help.
- **Fourth month missed payment** – now you are nearing the end of time allowed in your Demand Letter. When the 30 days ends, if you have not paid the full amount or worked out arrangements you will be referred to your lender's attorneys. **You will incur all attorney fees** as part of your delinquency. A **housing counselor** can still help you.
- **Sheriff's or Public Trustee's Sale** – the attorney will schedule a sale. This is the actual day of foreclosure. You are notified of the date by certified mail and the sale is advertised in a local paper. The time between the Demand Letter and the actual sale varies by state. In Missouri, the Notice of Sale must precede the sale of the property by at least 20 days. This is not the move-out date, but the end is near. You have until the date of sale to make arrangements with your lender or pay the total amount owed, including attorney fees.
- **Redemption Period** – after the sale, you may have redemption rights if you properly exercised them before the sale. In Missouri, if the company that made the mortgage buys the property at the sale, you may have a one-year redemption period to buy back your property. Except for a very few situations, if someone else buys your property at sale, you have no right to redemption.

Important: Stay in contact with your lender and get assistance as early as possible. All dates are estimated and vary according to your state and your mortgage company.

Contacting Your Loan Lender or Servicer

Before you have any conversation with your loan lender or the loan servicer, prepare. Record your income and expenses, and calculate the equity in your home. To calculate the equity, estimate the market value less the balance of your first and any second mortgage or home equity loan.

Then, write down the answers to the following questions:

- What happened to make you miss your mortgage payment(s)? Do you have any documents to back up your explanation for falling behind? How have you tried to resolve the problem?
- Is your problem temporary, long-term, or permanent? What changes in your situation do you see in the short term, and in the long term? What other financial issues may be stopping you from getting back on track with your mortgage?
- What would you like to see happen? Do you want to