Understanding Default and Foreclosure

Foreclosure is the legal process in which a person who has made a mortgage (the mortgagor or borrower) in order to borrow money loses his or her rights to the mortgaged property. If the borrower fails to make payment at the proper time or fails to meet other obligations specified in the bond or mortgage, the foreclosure process begins. The lender applies to a court for authority to sell the property. Money received from a sale is applied to debts on the property, including payments due to the lender.

The costs related to foreclosure can be high for both families and communities. Missed payments are generally reflected in credit reports, which can impair a borrower's ability to use short-term loans. Borrowers who lose their homes to foreclosure or seek bankruptcy may then have severely damaged credit records, which will restrict their access to loans in the future. In addition, these borrowers suffer financial losses on the home.

Foreclosure can also have negative social and emotional impacts on families as they lose their home and are forced to move. The impacts related to foreclosure also spill over into neighboring areas. It is common for homes to fall into disrepair during the

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default and foreclosure process. In addition, foreclosed-upon homes often sell at lower amounts than nearby homes, depressing neighborhood property values.

As the number of homes facing foreclosure in a particular area increases, the overall value of the neighborhood decreases. To the extent that homes remain vacant during the foreclosure process, properties may become a magnet for criminal activity, adding further blight to the neighborhood. These external costs can be significant for local communities.

Recently, Wisconsin and the rest of the country have seen:

- Depreciating home prices in most markets,
- Rapid & severe tightening of underwriting guidelines, making it more difficult to qualify for loans,
- Record number of houses for sale,
- ❖ Increases in the number of foreclosed homes that are NOT homeowner occupied, and
- Adjustable rate mortgages resetting at record numbers.



Overview and Goals

Because of the above trends, the need for valuable homeownership preservation education is clear. This chapter will introduce the topics of default and foreclosure, with the intention of giving homeowners a much more thorough understanding of the consequences of default and the foreclosure process and providing homeowners with the tools and resources that could possibly help them avoid foreclosure if they are at risk.

While default may be more or less of a risk depending on the homeowner, it is a possibility for anyone and could happen at virtually any time. Because of this, a general background on the default/foreclosure process and some suggestions of ways to help resolve foreclosure before it gets out of hand can become an unexpected safety net if you ever find yourself in this situation.

The goals of this chapter are:

- 1. To provide general background into how and why default and foreclosure occur.
- 2. To outline some of the outcomes of default for both short term and long term problems.
- 3. To give insight into the legal process of foreclosure

Take-away messages:

- 1. Losing your home to foreclosure is in no one's best interest; understand your options
- 2. Decide if you want to stay and are committed to repaying the loan; if not look into a sale
- 3. Talk to your lender
- 4. Take time to learn details of programs and follow up on every detail; Don't be derailed by paperwork
- 5. Ask for help but be careful of anyone offering a quick fix



What is Default?

Mortgages are contracts with terms and conditions that are agreed to by both the lender and the homeowner. When a homeowner fails to make a payment, he or she is violating the contract, which is then in *default*. The borrower remains in default until the loan is brought current or an arrangement is made with the lender regarding payment and terms.

There are many reasons that may cause borrowers to pay late on a mortgage loan. For some, managing a budget is a challenge and certain bills are a priority in any given month. Most households pay their mortgage first, but some cannot make a payment by the due date. Borrowers who make mortgage payments after the due date will usually be forced to pay late fees, especially after the first occurrence. The longer a payment goes unpaid, the harder it becomes for a borrower to catch up. Generally, lenders do not formally consider loan in default until 2 payments are missed, but this may move faster.

Dealing with default

In order to best understand your default situation, it is important to ask yourself some important questions:

- 1. What caused my default? How long will this problem last?
- 2. What is my expected income over 1 month, 6 months, and 12 months?
- 3. Review your payment history: Do I usually pay or is this unusual?
- 4. Review the terms of your loan: How long do I have to pay? What do I owe?

Triggering Default

Need to Understand:

- When is a payment due?
- When is a payment late?
- What is a grace period?

5. Estimate your home value & condition: If I had to sell, could I?



Outcomes of default

Most mortgage loan providers will attempt to contact the borrower as soon as a payment is past due. The best servicing operations actually track payment envelopes in the postal system to verify if the check is in the mail. Lenders typically begin with phone calls to a borrower, using call-center based systems designed to find a borrower at home, then send letters, certified mail and even DVDs or representatives to the borrower's door. After two payments go unpaid, the borrower's situation becomes more challenging and the lender will increase efforts to make contact.

The worst-case scenario for a homeowner who has defaulted on a mortgage is *foreclosure*, a legal process that results in a homeowner's rights to a property being eliminated. The foreclosure process varies by state, but borrowers generally have at least 60 days from their first missed payment to take action and avoid the start of foreclosure proceedings. The foreclosure process concludes when the borrower pays off the loan or signs the home over to the lender or when the lender takes possession of the home and attempts to sell it at a foreclosure auction. Generally speaking, lenders do not want to take possession of a foreclosed-upon home or sell it at auction. Homes in foreclosure usually sell far below market value, and properties can be expensive to maintain as time passes. As a result, lenders typically offer several options to borrowers prior to initiating the foreclosure process.

Where to Go?

One great first step to assess your options is the Foreclosure Prevention Counseling available over the phone at 1-888-995 HOPE, or online at www.995HOPE.org.

You may also want to contact the Wisconsin Housing Counselors to better connect you to your lender or servicer. Be aware that hold times over an hour are common, so be patient and plan ahead. Checking the lender website first can help you find the best ways to contact your lender.

Beware "Rescue" Scams

Phantom Help

"Rescuer" charges outrageous fees for services it never provides.

Bailout Scheme

Homeowner knowingly surrenders the property title to the *rescuer*.

Balt and Switch

Homeowner surrenders ownership without realizing it until it is too late.

What information and documents will I need?

Before you contact your lender for the first time about your situation you need to have some documents and information available:

- Opened mail from your lender
- Your account number
- Your hardship information/present circumstances (just be ready to describe it)

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

- ❖ Pay Stubs for the last 30 days for each member of the household
- Award letter for Social Security/Unemployment/Pension Income
- Federal Tax Returns for at least 2 years
- ❖ Bank Statements (most current 2 months) for all accounts/assets
- Statements/bills for all household expenses and Budget



- Promissory Note, Deed of Trust/Mortgage
- Home Equity Loan/Line of Credit/Judgments/Tax Liens
- ❖ Any Trustee Sale information from your mortgage company or its attorney
- Any documentation from the courts regarding a foreclosure

Loan Mitigation or your housing counselor may also need these:

- ❖ A hardship letter
- ❖ A Release of Authorization letter
- Truth in Lending (TIL) Form
- HUD 1 Settlement/Closing Statement
- ALL correspondence, letters (opened and unopened envelopes) from banks, courts or anyone regarding your home or the foreclosure.

Short term problems (less than 2 years)

If circumstances in your life have caused you to be late on your loan payments, and the problem has been getting worse for less than two years, your options may include:

- 1. Repayment agreement
- 2. Modification
- 3. Forbearance
- 4. Partial or advance claim
- 5. Reverse equity mortgage
- 6. Refinance

1. Mediation

Mortgage mediation is an alternative way to negotiate with a lender or loan servicer when there is a dispute over a residential mortgage or in the case of a default. Several states and even a few counties in Wisconsin have implemented voluntary mediation as way to facilitate a lender and borrower to finding a solution to a problem that does not result in the loss of a home.

Mediation typically occurs before a case would be referred to the courts for a foreclosure. Both the borrower and lender promise to negotiate in "good faith" with the help of an objective third party who serves as the mediator or facilitator.

Both the mortgage lender and borrower must agree to a pre-foreclosure resolution process. Once the mediator designated by the courts or provided by a community-based program. Professional mediators also exist and payment for the mediator would be agreed to before starting mediation (typically the lender pays or the costs is split between the lender and borrower).

The goal of mediation is to negotiate schedule of how much the borrower will pay in future mortgage payments and when, based on the financial circumstances of the situation. If no agreement can be achieved, the case moves for foreclosure intervention by the court.

Typically a borrower requests mediation, often in consultation with the court. Most programs require the borrower to obtain an assessment and advice from a nonprofit housing counselor to determine if there is any feasible way to retain the home. Then the borrower and lender sign necessary authorization documents are to arrange for an alternative to mortgage foreclosure.

Mediation takes place on a set dates and times, usually at a location near the borrower. A mediation



hearing may take place on the telephone, as well. The lender will hire local counsel or participate by telephone.

Mediation relieves the courts foreclosure and ideally takes cases which are likely to be saved from foreclosure into a neutral process.

If you've missed a payment, a repayment agreement is a temporary change in the terms and conditions of your mortgage so that you can pay back the money you owe while also continuing to pay the original loan. These agreements can exceed 12 months, but they typically last between 3 and 9 months. In this agreement, the servicer expects a cash "down payment." Repayments are often the simplest and quickest options to obtain.

Another look: Mediation

A homeowner was laid off for 6 months but has found a new job. Her house payment is \$800, and her loan is 5 months delinquent. She can afford \$1200 in house payment with new salary and other delinquent accounts, but she is \$4000 delinquent.

Repayment Plan Option 1:

Down payment: \$800. Next 10 payments are \$1100. The 11th payment is \$1000 and the 12th payment returns to \$800.

Repayment Plan Option 2:

Down payment: \$800. Next 8 Payments are \$1200. The 9th payment the amount returns to \$800.

2. Modification

Refinancing your existing mortgage to obtain a more affordable mortgage payment is one option if you are having trouble making payments. Unfortunately, once you are in financial trouble, it is nearly impossible to refinance a loan. Loan modifications are designed for homeowners in financial hardship with no mortgage refinancing options to change the terms of their loan—notably interest rate, length and balance owed.

If you have a documented financial hardship due to a change in financial circumstances and have not filed bankruptcy, you may be able to modify a mortgage loan for a home you live in as your primary residence.

The first step is to contact your lender or check their website to get more information. Only the lender or servicer that current holds your mortgage can offer you a modification. If you are not sure where to call or what website to see, check your monthly statement or mortgage coupon book.

Every lender or servicer has a different loan modification processes. Since many programs are new be sure to document and verify whatever the lender or servicer tells you. Since some staff have little training on modifications, do not be surprised if you hear conflicting information.

Remember the lender views a modification as a better solution than a foreclosure—it is a business decision and not an act of charity. Be sure to help them to understand as clearly and quickly as you can that you are managing a substantial change in your financial circumstances and that you want to stay in your home and will make every effort to pay your mortgage payments. Always be honest

and provide all necessary documentation requested in an organized way. Too often modifications fail because of paperwork.

Another look: Modification

A homeowner was laid off for 6 months but has found a new job. His house payment is \$800 and his loan is 5 months delinquent. He can afford \$900 in house payment with new salary and other delinquent accounts, but he is \$4000 delinquent. The loan balance is \$135,000 with 25 years remaining and the interest rate is 5.75%.

Modification terms:

Down payment: \$800. Recording and processing fees: \$200. The new loan balance equals the original \$135,000 plus \$3,200, or \$138,200. The loan is re-amortized over 25 years for a new payment of \$870. The interest rate remains at 5.75%

3. Forbearance

A third option for settling delinquent payments with a lender is *forbearance*, also known as a "payment moratorium" by some servicers. In forbearance, the servicer agrees to allow a loan to remain delinquent long term due to clear hardship. There is an anticipated lump sum settlement at the end. This solution is usually sought when the cause of the default is specific and temporary-usually 12 months or less.

Another look: Forbearance

The homeowner's wife is dying of stage-4 cancer and is the main source of income. The wife has a life insurance policy and survivor's benefits that will cure the delinquency and allow her husband to afford future payments.

The servicer agrees not to pursue collection or foreclosure for six months, but still requires escrow items be paid monthly by the homeowners during forbearance.

4. Partial claim or advance claim

If a mortgage insurance company decides to forward a homeowner the money that they owe in delinquent payments, this may be known as a *partial claim* or *advance claim*.

Typically, this loan is paid back after the mortgage has been paid off or if the homeowner sells the property. Often, it is at 0% interest. Also, it reduces coverage on remaining debt for conventional loans with mortgage insurance.

Another look: Partial or advance claim

A homeowner was laid off for 6 months but has found a new job. His monthly house payment is \$800, and unfortunately, his loan is 5 months delinquent. He can afford \$900 in house payment with his new salary and other delinquent accounts. Delinquent amount: \$4,000.

MI/HUD advances \$4,000 to servicer to cure delinquency. Customer agrees to a junior lien of \$4,000 and payments of \$100 per month. Loan term is 40 months.



5. Reverse equity mortgage

For homeowners age 62 or older with substantial equity, a *reverse equity mortgage* may be an option. In a reverse equity mortgage, the lender makes lump sum or monthly payments to the borrower to "buy" the equity in the home. A counseling certificate is required.

Another look: Reverse equity mortgage

A 77 year old homeowner on limited income (\$1050 per month) needed a new roof. She received a second mortgage for more than needed but that's all the lender would agree to.

The loan balance is \$54,000. The second lien is \$26,000. Together, payments total more than \$950/month. Property value is \$250,000.

HECM Mortgage pays off both loans and establishes a monthly income supplement. The homeowner has plans now to enjoy retirement.

6. Refinance

In a *refinancing* situation, the *arrearage*, or payments owed, is added to a new loan. The lenders and services are usually skeptical in this situation, because the costs may end up being a downfall for the homeowner. For the homeowner, it is best to have some equity. Credit requirements have risen sharply since the end of 2007.

Beware: some lending predators may use the idea of refinancing to scam homeowners in debt.

Another look: Refinancing

A borrower badly mismanaged his credit. The mortgage balance on his \$300,000 home is \$90,000, and he is delinquent \$9,000. Based on a new budget, he can afford a \$1500 payment.

He refinances his home with a new mortgage of \$110,000 and payments of \$1250. This helps him to pay back his debt and re-establish his credit. After 2 years, he refinances into a better loan.



Long term problems

If a problem has been going on for longer, the options available to the homeowner will more often than not result in the homeowner losing ownership of home. While there is still some choice involved to figure out the best solution, if there continues to be no action taken, the home will face foreclosure. Long term options and outcomes include:

- 1. Sale of property
- 2. Hardship assumption
- 3. Pre-foreclosure sale/Short sale
- 4. Deed-in-lieu
- Foreclosure

1. Sale of property

If the value of your home is sufficient to cover the costs of your loan and possibly some of your debts, it may be a wise decision to consider selling your home. The balance after the costs from the sale can be set aside for a fresh start elsewhere.

Another look: Sale of property

A homeowner's payments are \$1,000/month and expected to increase by \$200 in 3 months. She can only afford \$750. Her home is valued at \$160,000 and her loan balance is 120,000.

She sells the home for \$155,000. Selling costs are \$15,000. She nets \$20,000, and rents an apartment for \$650 a month.

2. Hardship assumption

In some situations, a family member or someone else can "assume" the mortgage of a delinquent homeowner. If the new owners qualify for the property, they can assume the unpaid mortgage of a person in default.

Another look: Hardship assumption

A homeowner badly mismanaged his credit. His mortgage balance is \$90,000, and he is delinquent \$9,000. The interest rate is 5.5%. Based on a new budget, he cannot afford his current housing payment. The home's value is \$75,000 and was built by the homeowner's great grandfather.

The homeowner's mother requests to assume the current loan and is able to meet underwriting requirements. She makes up back payments and is now responsible for future payments.



3. Pre-foreclosure sale or short sale

If the value of a home is insufficient to satisfy the loan balance, the creditor may agree to take less than they are owed without pursuing a court judgment for the difference. This specifically applies to situations when the homeowner owes more on the mortgage than the property is worth.

Another look: Pre-foreclosure sale or short sale

A homeowner's payments are \$1,000/month and expected to increase by \$200 in 3 months. She can only afford \$750/month. Her home value is \$100,000 and her loan balance is \$120,000.

She sells the house for \$100,000. It takes 3 months to close the loan. Selling costs are \$10,000 and the client nets \$90,000. The investor loses \$30,000 yet agrees to not seek a deficiency judgment.

4. Deed-in-lieu (DIL) of foreclosure

In some situations, the servicer will agree to take the deed to a property in exchange for a release from all mortgage obligations. If a borrower is financially able to make their mortgage payments, a DIL of foreclosure will not be an option.

Another look: Deed-in-lieu of foreclosure

A homeowner has been laid off for 5 months and does not expect to find a new job in his field. He has signed up for retraining. His house payment is \$800/month, but he is 5 months delinquent – for a total of \$4,000. His loan balance is \$90,000 with 25 years left. The home is valued at \$95,000. He can afford no more than \$500/month for payment.

Servicer agrees to deed-in-lieu. Homeowner moves to affordable rental and servicer extinguishes debt and takes title to the house.

5. Foreclosure

The final option for resolving default is *foreclosure*. This is typically pursued when no other options are viable or being offered.

Another look: Foreclosure

A homeowner has been laid off for 6 months and does not expect to find a new job in her field. She has signed up for retraining. Her house payment is \$800 and she is 5 months delinquent, totaling \$4,000. Her loan balance is \$90,000 with 25 years left. Home value is \$85,000. She can afford no more than \$500/month for payment.

Servicer refuses deed-in-lieu and short sale. Customer works with counselor to establish new budget and find affordable housing. The home is foreclosed upon.



The Legal Process of Foreclosure

A Wisconsin foreclosure begins when the lender files the appropriate documents with the court. The lender must deliver a notice of the court filing to the borrower and other parties with an interest in the property, in order for a lender to obtain a foreclosure ruling from the court. The court may order in its ruling that all sums paid by the lender for insurance, repairs, and taxes be added to the amount owed. Based on precedent in Wisconsin, the lender customarily warns the borrower that they intend to foreclose on the property before filing with the court.

Once the court has issued a judgment of foreclosure, the borrower has a reinstatement period to stop the foreclosure by paying off the amount owed. The reinstatement period varies widely based on the mortgage date and terms, parcel size, and occupancy status. Abandoned properties have a two-month redemption period, while most other properties have 6-12 months.

Notice of Sale / Auction

The local sheriff gives notice of the time and place of sale either according to the law or as instructed in the court's ruling. In most cases, the foreclosure sale cannot occur until after the owner's reinstatement period is completed. The notice of sale is published within that 12-month period, although the first publication has to be at least 10 months after the date the court's ruling is entered. The parties may consent to an earlier sale.

The sheriff conducts the foreclosure sale, and any party with 10 percent of their maximum bid at the sale may bid. The 10 percent amount must be payable to the county sheriff. Within 10 days, the sheriff files a report of the sale and deposits the proceeds with the clerk of the court. Upon confirmation of sale, the clerk pays the parties entitled to the sale proceeds and delivers the deed transferring ownership to the highest bidder, who must pay the balance of the sale price. If the buyer fails to pay the balance of the sale price within 10 days after the confirmation of sale, the deposit is forfeited, paid to the entitled parties, and a resale is held. If the court does not confirm the sale, the clerk refunds the buyer's deposit and a resale occurs.

In the case of a surplus, other affected lien holders may file a notice with the clerk of the court, and the court determines who is entitled to any or part of the surplus. If the property sells for less than the default amount and sale costs, the sale will not be confirmed and no judgment for deficiency rendered until the court is satisfied that the fair value of the property has been credited on the mortgage debt, interest and costs.

See also: http://www.wisconsinforeclosureresource.com/

And: http://www.wisconsinforeclosurekit.org/



Supplemental Materials

This chapter contains a number of supplemental worksheets, handouts, activities, and other resources to help you or someone else best understand this material. The options are outlined below. Feel free to photocopy or print these supplemental materials and use them as you see fit.

Handouts

HANDOUT: THE HOMEOWNER AFFORDABILITY AND STABILITY PLAN

A summary of the benefits for homeowners of the HASP, a 2009 "economic stimulus package."

HANDOUT: ADDITIONAL RESOURCES

Helpful links to sites that relate to this topic.



Homeowner Affordability and Stability Plan

handout

The **Homeowner Affordability and Stability Plan**, announced in February, 2009, is a \$75 billion program designed to prevent up to nine million American homeowners avoid foreclosure. See: http://www.ustreas.gov/index.html for more information. The plan has many provisions, including:

Refinance "underwater" GSE loans

Fannie Mae and Freddie Mac (GSEs) will refinance their own loans using a streamlined program so that "under water borrowers" (loan-to-value ratios above 80 percent up to 105 percent) aren't losing money on the value of their homes. This is suggested for "responsible homeowners," or those with a good payment history and the ability to make future payments.

This will reduce the homeowner's monthly payments by allowing no income ceiling for beneficiaries and by declaring that mortgages must be held by or guaranteed by Fannie Mae or Freddie Mac.

Comprehensive \$75 Billion Homeowner Stability Initiative

This initiative is aimed at home owner-occupants "at risk of imminent default," even if they are current in making mortgage payments and those who are already delinquent, The Homeowner Stability Initiative can help to lower interest rates to 2% by emphasizing the use of the FHA Hope for Homeowners loan program to refinance the underwater loans. This initiative applies to mortgages at or below \$729,750 and it applies to all lenders, not just GSEs.

Borrowers will have to sign affidavits attesting to their financial hardships, with the intention of avoiding giving help to 'undeserving' borrowers. The program will have a "one-strike and you're out" policy for re-default.

Home Affordable Modification Program

The Homeowner Stability Modifications are designed to bring a homeowner's monthly payments to 31% of their income. The lender is required to reduce interest rates, without subsidy, so that the monthly payment does not exceed 38 percent of borrower income. A federal subsidy would be used to match, on a dollar-for-dollar basis, further reductions to bring the debt-to-income ratio down to 31 percent. After 5 years, the rate could increase gradually to the loan rate in effect at the time of the modification.

Lenders may also reduce principal and receive a subsidy of an equal amount – so long as reduction lowers payments to 31% of income.

Modification Incentives

Loan servicers will receive \$1,000 up front for each qualified loan modification. For borrowers who stay current on the modified loan, servicers will receive monthly "pay for success" fees up to \$1,000 a year for 3 years. Servicers will also receive \$500 if they modify "at-risk" mortgages before the borrower becomes delinquent. Companies could receive up to \$3,500.

Borrowers will receive a monthly reduction in their mortgage balance, up to \$1,000 a year for 5 years. Additionally, there will be an "insurance fund" for lenders against losses if home prices decline more than expected linked to home price index declines.



Additional Resources handout

Center for Responsible Lending

The Center for Responsible Lending (CRL) is a unit of the Center for Community Self-Help (Self-Help), based in Durham, NC. Self-Help is one of the nation's leading community development lenders and has provided \$3.5 billion in financing to help more than 40,000 under-served families own homes or small businesses. The CRL is partnering with other like-minded organizations to sustain the initial success of anti-predatory lending laws and continue reform efforts federally and in other states. The main components of its work are legislative and policy advocacy, coalition-building, litigation, and industry research. www.responsiblelending.org

Homeowners Emergency Mortgage Assistance Program (HEMAP)

One of the first of its kind, the HEMAP program provides eligible Pennsylvania residents who are facing foreclosure with assistance through its loan fund. www.phfa.org

Homeownership Preservation Foundation

The Homeownership Preservation Foundation creates partnerships with local governments, nonprofit organizations, borrowers and lenders to help families overcome obstacles that could result in the loss of their homes. HPF offers 1-888-895-HOPE, a national homeowner assistance line to help individuals and families who are struggling financially. www.hpf-online.org

National Consumer Law Center (NCLC)

The National Consumer Law Center is America's consumer law expert, helping consumers, their advocates, and public policy makers to use powerful consumer laws to build financial security and assure marketplace justice for vulnerable individuals and families. Provides training to attorneys interested in doing pro-bono work for nonprofit organizations. www.consumerlaw.org

NeighborWorks America

NeighborWorks America is a national nonprofit organization that works to revitalize communities through affordable housing opportunities, training, and technical assistance. The Center for Foreclosure Solutions was created by NWA to reduce the rate of foreclosures as well as the negative impact of foreclosures on borrowers and communities. The Center is convening and supporting a coordinated foreclosure prevention and intervention strategy in communities nationwide. www.nw.org

The Reinvestment Fund

TRF is a national leader in the financing of neighborhood revitalization. What began in 1985 as a small community development organization working in Greater Philadelphia, has evolved into a progressive, results-oriented, socially responsible community investment group that today works across the Mid-Atlantic region. Recent work includes studies on foreclosure filings in Delaware and Pennsylvania. www.trfund.org

