

Just What Do I Do Now?

Consumers Need to understand the Foreclosure Process if Faced with Payment Challenges

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I received yet another call from a friend who asked if I could help her friend who was in the process of losing her home. This individual has had stable long term employment and had a top credit rating all her life. Recently her employer announced they were having to close the business she worked for. Of course everyone that was working there became instantly unemployed. Her paychecks of course stopped coming. She had considerable savings but after a few months all that money was gone, and because she was not able to find employment at all or at considerably lower terms, she found herself unable to make the full mortgage payment.

We see this happening across the United States and around the world. 3 plus years ago Lenders started seeing higher than normal losses on mortgage loans. The National Government went into action looking for reasons why this might be occurring. Immediately there was action and Banks were issued new marching orders for discontinuing Sub-Prime Lending. This was October 2007.

Sub-Prime loans were defined in common language to refer to No Income Qualifying Loans, ARM Loans, Stated Income Loans, and any other loan with liberal qualifying terms. This basically meant that borrowers would qualify with higher ratio's than had been available in the past, loans where employment was not verified, where income was not documented or the rate for qualifying was lower than the actual long term rate.

The real definition for Sub-Prime loans is defined in the banking community to be any loan that did not meet Fannie Mae or Freddie Mac underwriting guidelines. Non-Fannie or Freddie loans include FHA, VA, Rural Housing, and State Bond Loan Programs. These loan programs are considered to be sound lending programs. The loan types above were also included in the term, and they are not bad loans if applied to client needs in the way intended when the programs were created. The media made it a bad term but the real story is much different. However, I digress.

The loans the media was calling Sub-Prime became a target cause for all the problems and the media went wild. The more the media frenzy the more the banking community withdrew loan products. Various business entities within the lending community began to create stricter and stricter standards on lending. And more loans disappeared. What is sad is that as all the lending products disappeared so did options that consumers would have been able to utilize to

stay solvent. Many Consumers that had financial strategies that included a refinance at some point, now had no options.

For example let's take Sally's situation. She spent most of her \$50,000 savings on a remodel with the intent of refinancing to replace the funds after the remodel was complete. She was working with a Banker who had suggested this as her best option. The home would be worth more when the remodel was finished. Sally had been continuously employed and made a good income, so for her there was no worry of qualifying. What Sally did not know is that the loan she was counting on was about to disappear, as was her employer of 10 years. So she finished the remodel and found herself unemployed with no loan options and her savings depleted severely. Unemployment payments were not enough to make her minimum payment so she was placed in foreclosure. Sally had no idea who to contact or what to do.

Unfortunately, I hear stories like this all the time. I hear it from my Professional Relationships and I hear it from friends and other individuals. Because I am known for my teaching and knowledge base I get desperate calls from colleagues and friends. Their mother, cousin, sister, friend is losing their home and need to know what is going to happen, what to do, how it works and what rights they have. I in turn have made calls to State and Federal Regulators, Banks, Lawyers and Housing Counseling Agencies. Until now there were not too many answers other than; oh we hear these stories too and it is very sad when people lose their homes.

I hear about Servicing Departments overwhelmed with calls. Borrowers calling hold for hours, get hung up on, call back hold some more and sometimes spend days going in circles never having spoken to a live person. People that call and do reach someone often don't get the help they need. I get these calls too.

I have always been a proponent of contacting the Lender the moment a payment challenge is known. It is the correct thing to do. There are new loan programs created to help people in trouble, however, if you are not yet late, the Mortgage Servicer does not seem to be very helpful. I am noticing that the new Departments formed by many Lenders; the Loss Mitigation Department, seems to be gearing up to be of service with a kinder approach. It works in the Lender's favor to save the home and work with the borrower rather than have a vacant home that is deteriorating and bringing down entire neighborhoods.

This state of emergency we are in as a Nation weighs heavily on all of us. As professional Real Estate Brokers you must be getting lots of these calls also. Do you know what to say? Do you know what options individuals have? Do you know how the process works? Do you know what impact various decisions can have or where to go to get answers?

I took it upon myself to extensive research on this subject. In this article I will attempt to consolidate the information for you. There will be a number of web sites and resources

mentioned that will be listed on my website, the National Academy of Financial Literacy www.academyoffinance.org (yes a new company name).

In the Mortgage Lending community we call home loans Mortgage Loans. Did you know we don't do Mortgage Loans typically? It's an old term referring to a home loan secured by a security instrument known as a mortgage. Today most loans are closed using a Trust Deed. The terms of the foreclosure process is very different between the two.

The important thing to know when your payments lag behind is what security instrument was used on your loan. One important difference between a loan closed using a Mortgage vs. a Trust Deed is Time. How much time has to pass before the lender can take the property back. The answer to a Deed of Trust is typically 180 days (4 months). The Mortgage is typically 6 months for the minimum proceeding.

Other considerations to know are: Judicial Foreclosure vs. Non-Judicial. Is there a right of redemption period? Are deficiency Judgments allowed? Can the lender file a deficiency Judgment within Oregon Law? These questions and answers (including what the terms mean) can be found state by state on the website www.forclosurelaw.org another site to consider is www.usa-forclosure.com/InfoCenter/stateOverview.aspx?en=Oregon Of course a Real Estate Attorney can help you with all of these questions and answers. It is vital for the individual to know that what decisions they make will have far reaching implications.

The State of Oregon has an arsenal of information on Oregon and Federal Law with regard to Foreclosure to include: What is a foreclosure and how does it work? What if I sell for less than I owe and can I save my home? What are the scams that are misleading consumers? How to locate the legitimate Foreclosure Prevention Counselors. What other good information can should you know to make good decisions? The website for this information is www.dfcs.oregon.bov/ml/foreclosure.html

The Federal Trade Commission is another source with good information. <http://ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm> The FTC says call your lender right away. Talk to Housing and Credit Counselors (Hud approved...Housing and Urban Development) and consider all your options. Can your Lender assist with a new loan program? Can you sell the Home and do you have enough equity to do so? Should you wait for foreclosure to occur or relinquish the home voluntarily? Be alert to scams and get advice from more than one resource.

The State of Oregon has a number of Measures being debated in the State Legislature that may create new provisions with regard to foreclosure. If you wish to stay current on the law, it is a good idea to visit this site periodically to see what might be happening. You might take a peek at State Senate Bill 239 as it has language that apply to this subject.

Lists of HUD approved Housing Counseling Agencies can be found on the HUD website <http://www.hud.gov/foreclosure/>

If you need to know information regarding Loan Modifications Frequently Asked Questions page can be found at <http://www.hut.gov/offices/hsg/sth/nsc/faq/m.cfm>

Fannie Mae, the Federal National Mortgage Association, is a leader in setting standards by which Lenders lend, and loans are securitized and sold. There is a great deal of information on the Fannie Mae web site. Two particularly helpful pages are:

http://www.fanniemae.com/homepath/homeowners/in_foreclosure.jhtml Act Now to Prevent Foreclosure and <http://www.fanniemae.com> and look for the information on the Homestay Program. The first link above covers new loan programs, what to do today, including detailed items to collect before you make your call, and Options you may have.

Fannie Mae did announce late January 2009 a new REO rental policy that allows qualified renters in Fannie Mae owned properties to stay in their homes. The full details can be found on the Fannie Mae web site. You can find a short article <http://www.katu.com/news/business/37575804.html>

Don't forget the IRS. You will want to look at The Mortgage Forgiveness Debt Relief Act to determine tax consequence's should you give up the home voluntarily or be foreclosed upon. <http://www.ris.gov/individuals/article/O,,id=19414,00.html> You can find Publication 4681 on the IRS website regarding Canceled Debts, Foreclosures, Repossessions, and Abandonments.

Many Alternatives are available to the challenged borrower. If the home is to be sold, borrowers need to be versed on values, short sales and Deeds in Lieu of Foreclosure. Bankruptcy is also a consideration. If the Bank can help, Consumers need to understand Repayment Plans, Reinstatements, Forbearance, and Loan Modifications. Of course you need to have the names of GOOD Real Estate and Tax attorneys if you need advice... It may cost some money to work with an attorney, but it might cost more not to work with an attorney.

And how does all of this affect the Credit of the individual? I found a very good, accurate and concise article in the December 2008 issue of the Scottsmanguide, entitled Sell Property, Lose Credit? This article is written by a Credit Attorney, Edward Jamison. http://www.scotsmanguide.com/default.asp?ID=254&Command=default&search_type=Title&title=Sell+Property%2C+Lose+Credit%3F&author=&keyword=&month=%25&year=%25

If you wish to refer to the checklist attorneys use when representing a lender in a foreclosure you can go to our website <http://www.academyoffinance.org> click on the consumer section and you will find a copy of this article and the checklist I am referring to. Don't worry about trying to enter these long email addresses. You should be able to click and go straight to the site.

As I promised earlier in this article, I was as brief as I could be in presenting a mountain of material that covers many of the topics with which you need familiarity.. I am not attorney so giving advice on foreclosure is best obtained from attorneys and government agencies

My goal for this article is to provide consumers with resources that will help in understanding options and basics of the process. I wish you every success in these tough times. Check our website for additional consumer resources (new material added periodically) as we at NAFL are working hard to create information to make a difference in our country.

Most people finding themselves in financial crisis tend to freeze like "deer in headlights" and by the time they start looking for help time is short. Do not be a victim of misinformation.

If anyone wants more information on this subject, I do accept speaking opportunities. I will be featured in the Speaker Series for the City of Beaverton on Thursday February 26, 2009 and will be covering this topic at that time. I am fortunate to be sharing the stage with Patrick O'Clare Finance Director of Beaverton, Senator Suzanne Bonamici Chair of Consumer Protection and Public Affairs , Senator Mark Hass Chair of Education and General Government, and Mark Ellsworth Regional Coordinator for the Governor's Economic Revitalization Team.

If you have any questions or issues, please feel free to email me. linda@academyoffinance.org