

Section II: KEEPING YOUR HOME

Deciding whether or not to keep your home is something that only you, the homeowner, can determine. The best housing counselors will ask what you'd like to do rather than assume that you want to try to save your home from creditors. The first step in making the decision is a careful review of your budget, income, and expenses. The second step is making a call to your lender!

I. MAKE A WORKOUT PLAN WITH YOUR LENDER

Recent studies report that 50% of homeowners who get behind on their mortgage never call their servicer/lender. Without a call, there is no way to find a solution. Often, the first call to servicers on mortgages that are 30 days or less past due is to the collections department. This department's sole purpose is to collect on past due accounts. This department is usually not authorized to offer more than a repayment plan. **To get real help with a mortgage crisis, it is important to ask for the loss mitigation department.**

If making a call to the servicer creates anxiety for the homeowner, it is important to contact a U.S. Department of Housing and Urban Development (HUD) certified counseling agency (800- 569-4287) and ask for help. A housing counseling session will create an Action Plan.

An **Action Plan** is a strategy for resolving the crisis based on the goals of the homeowner.

1. It is imperative to develop a budget. The majority of the time spent in an initial housing counseling appointment will focus on income and expenses. It is critical that a realistic overview of the current financial situation is presented to the servicer. Cut all unnecessary spending. Increase income. Determine what can be promised and realistically done.
2. Write a hardship letter presenting a past, present, and future narrative about the mortgage crisis. Detail the events that led up to the delinquency on the mortgage. Describe what your current situation is and how you would like the lender to help you. Emphasize how your life will be improved by getting the lender's help with the mortgage (see *Section III: How Do I Write a Hardship Letter?*).
3. Call the mortgage company as soon as the budget and hardship letter are complete. Ask to speak to someone in the loss mitigation department and ask for a workout package. A workout package is an agreement between you and your lender that outlines how you will pay your mortgage default and avoid foreclosure. To negotiate a workout package, know what you need and what you are able to give. Be assertive, but not rude.
4. Fill out the workout form promptly, keep a copy for your records, and send the form back by fax or certified mail. Include your hardship letter.

5. Keep a record of all communication (calls, letters, etc.) between you and your lender including dates, times, names, and phone numbers. Purchase a notebook to organize your records.
6. If the lender does not allow partial payments, it is important to ***save the money*** that you would have sent to the mortgage lender each month in a designated savings account. This will allow you to have a lump sum to offer for a workout or to move if you lose the house. Do not pay other debt with this money. Focus on saving your house.

II. POSSIBLE WORKOUT OPTIONS

Not all lenders offer the same workout options. It is important to know who your investor is and do research about what they offer. Ask the servicer: *Who owns my loan? Who has the most to lose if this loan goes into foreclosure?* Consult a certified housing counselor if you are in doubt.

All servicers ask for documents to support a borrower's request for hardship assistance. The following are the most frequently requested documents:

- Hardship letter (see *Section III: How Do I Write a Hardship Letter?*).
- Financial statement reflecting income and expenses (budget).
 - Some servicers will allow borrowers to present this information verbally or on a simple sheet of paper. Others have special forms they require borrowers to complete, sign, and date.
- Thirty days of the MOST RECENT income statements (pay stubs) for all financial partners.
- Two consecutive years of Federal Tax Returns.
- Three to six months of checking and savings account statements.

Most servicers will not consider a hardship request until ALL of the documents are RECEIVED in their office. Once all of the documents are compiled, it can take two to three weeks to have the file assigned to a specialist. Sometimes it can take as long as two to three months to complete the entire review process. The following are general servicer guidelines of workout options when the mortgage is in crisis.

Short-term solutions (3 to 12 months):

1. Reinstatement: All servicers are required to pursue a reinstatement as the first option for resolving a delinquency. A reinstatement occurs when a homeowner pays all delinquent mortgage payments and past-due amounts, making the mortgage current. A homeowner may reinstate a delinquent mortgage at any time, even after foreclosure proceedings begin or while a relief or workout plan is in progress. A reinstatement can be partial with a repayment option or full bringing the mortgage completely current.

2. Repayment agreement: This option will allow you to eliminate the delinquency by making your regular house payment AND some of the past due amount for a certain number of months. This method works best if you had *temporary financial difficulties*, are now able to maintain financial stability, AND have enough money to pay the extra amount owed each month. Do not agree to an unrealistic plan—if you default on a workout package agreement, your lender will not be as likely to work with you in the future.
3. Special forbearance: Some investors accept a reduced payment for a period of time to allow a temporary financial crisis to pass. The expectation is that once the crisis has passed, the homeowner will repay the amount that was in forbearance through a repayment plan bringing the mortgage current.

Long-term solutions (for permanent changes in financial situations):

It may be possible to delay a Sheriff's sale pending a decision by the servicer/investor. Be aware of the timeline. After the Sheriff's sale, there are fewer workout options available to you. Move quickly!

1. Loan modification: When you can no longer afford the original loan terms due to a **permanent change** in your financial circumstances AND the lender is willing to avoid foreclosure as well, you may be able to ask them to:
 - a. Reduce your interest rate (the cost of borrowing money).
 - b. Extend the loan (increase the number of years over which you pay back the money borrowed).
 - c. Refigure the loan using your equity (the amount of the home that you own). The past due amount and fees are rolled into the loan amount.
 - d. Combine any of these approaches.
2. Special Mortgage Protections: Federal Housing Authority (FHA)/HUD, Fannie Mae, or Freddie Mac loans provide added foreclosure protection - the following options should be explored:
 - a. Forbearance: If you have a reasonable chance to recover from the crisis and begin paying again, the lender may agree to reduce or suspend payments for up to 12 months. After the period ends, you make the original payment and a small installment on the missed payments each month. Do not agree to an unrealistic plan—if you default on a workout package agreement, your lender will not be as likely to work with you in the future.
 - b. Partial Claim (HUD loans only): If you are 4 to 12 months behind but have not recovered from the crisis, the lender can loan you money to get your monthly payments caught up. HUD pays the lender and puts an interest-free loan as a lien against your property. When you sell or refinance, you pay the partial claim loan back.

- c. Home Saver (Fannie Mae loans only): This is an unsecured personal loan and is payable over 15 years at a fixed rate of 5% that is designed to bring a delinquent loan current. No payments will be required nor will interest accrue during the first six months. Borrower must qualify for this option.
 - d. Assumptions: A mortgage assumption permits a qualified applicant to assume both the title to the property and the mortgage obligation from a homeowner who is currently delinquent in the mortgage payments.
3. Refinance with another lender: Recently, the FHA and Michigan State Housing Development Authority (MSHDA) have developed loan products to assist borrowers who are struggling in this mortgage crisis.
- a. Refinancing is only an option when these criteria are met:
 - ✓ You have a high enough credit score to refinance.
 - ✓ You owe less on your home than the current market value of the home.
 - ✓ You have enough income to support the new mortgage amount including your insurance and taxes.
 - ✓ You would have a lower interest rate or longer payment period than on your existing mortgage.
 - ✓ You refinance a first mortgage and a second mortgage into a single mortgage that is affordable and includes taxes and insurance. (Having two mortgages is not a requirement to refinance. However, if there are two mortgages, the new originator will consider both mortgages in a refinance).
 - b. When refinancing, consider these points:
 - Shop ‘til you drop.
 - Compare interest rates, length of the loan, and closing costs.
 - Get an idea of what you would qualify for, and *then* apply to a reputable lender.
 - Do not assume that you can only get a high interest loan.
 - Review the loan documents carefully with a real estate attorney, if possible, to be sure you are getting what you asked for!
4. Reverse Mortgage (For people over 62 years of age only):
- a. You can use the equity in your home to live on with payments not due until you move or pass away.
 - b. It is a VERY expensive mortgage and may not solve your financial problems, but in some circumstances, it is a good choice.
5. Bankruptcy: Traditionally, bankruptcy has been known to stop collection activity and a foreclosure allowing the homeowner time to bring the mortgage current. In recent times, the bankruptcy court has been known to lift the automatic stay protection a bankruptcy affords to allow the foreclosure to precede. Only a qualified bankruptcy attorney can provide you with bankruptcy counseling. Seek the advice of an attorney.

III. LEGAL POSSIBILITIES TO SAVE THE HOME

(This information should NOT be considered legal advice. For legal advice please contact the Washtenaw County Bar Association Lawyer Referral Service 734-996-3229)

1. Procedural defenses: If anything was done incorrectly with the foreclosure process, the lender has to start over. This could buy you some time in the process.
2. Bankruptcy: This is a very complicated process and should not be entered into lightly. Please consult a bankruptcy attorney to understand the implications of this option.
3. Substantial hardship or substantial equity: Some circumstances can result in special judicial consideration, including a high amount of equity in the home or an unforeseen catastrophe.
4. Truth In Lending rescission: A complicated but powerful tool when dealing with predatory mortgage companies and home improvement companies. It is only for refinanced mortgages, home equity loans or credit lines, debt consolidation loans, and home improvement loans that involve the house as collateral. Was the lender dishonest? Did a bad loan put you at risk of foreclosure? A Truth in Lending rescission cancels the mortgage and therefore the foreclosure.

IV. GENERAL MORTGAGE FORECLOSURE PREVENTION TIPS

1. Get help early in the process. You don't have to go down this road alone. Contact a certified housing counselor and discuss all of your options.
2. If the foreclosure sale date is close at hand or the lender will not agree to a workout, try to save your house through the courts.
3. Often, people postpone getting legal help until it is too late. Others walk away from the homes in frustration, leaving themselves without equity and vulnerable to deficiency claims.
4. Most lawyers will provide a free or low cost 30-minute consultation. Go prepared with a copy of your mortgage document, your home budget, and a hardship letter. It is up to you and the attorney to negotiate a fee for the service.