MICHIGAN STATE UNIVERSITY | Extension

Housing Counseling 101

For the homeowner who wants to know more

Community Education Series

Options in Foreclosure

Housing Bureau for Seniors
Legal Services of South Central Michigan

Catherine McClary, CPFO
Washtenaw County Treasurer

OPTIONS IN FORECLOSURE

MICHIGAN STATE UNIVERSITY Extension

Washtenaw County MSUE

Mortgage Foreclosure Intervention Program (734) 222-9595

The Michigan State University Extension Mortgage Foreclosure Intervention Program works in partnership with the Washtenaw County Treasurer's Office, Housing Bureau for Seniors, and Legal Services of South Central Michigan. We provide mortgage foreclosure intervention counseling to help homeowners sort through options available to resolve a housing crisis.

The following pages provide an overview of important information for homeowners struggling with a mortgage crisis.

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The Mortgage Foreclosure Intervention Program is available to meet with homeowners face to face in our office on Zeeb Road. Please call 734-222-9595 to schedule an appointment.

Pamela Sarlitto
Certified Housing Counselor

Program Services

- Foreclosure Intervention Counseling
- Community Education Presentations
- Workshops and Seminars on Topics of Financial Literacy

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Section I: WHERE ARE YOU IN THE FORECLOSURE TIMELINE?

When facing foreclosure, you can keep the house, sell the house, or allow the foreclosure to proceed. The option available to you depends on where you are in the foreclosure time line and if you have recovered from your financial crisis.

CIRCLE WHERE YOU ARE IN THE FORECLOSURE TIME LINE

1. If your mortgage is due on the 1st, you are delinquent on the 2nd.
2. The first notice of delinquency is mailed on the 16th of the month. You are charged a late fee.
3. If you do not pay by the 30th, the loan is in default; you are sent a second notice.
4. When a loan is 60 days past due, your lender speeds up the loan and warns you that foreclosure is the next step.
5. After 90-120 days past due, foreclosure begins. In Michigan, the most common foreclosure is by advertisement.
6. The attorney for your lender advertises the property for sale in a newspaper for 4 weeks in a row. The Sheriff's sale is generally held on the 5th week.
7. A Sheriff's sale is held on the published date. A deputy conducts the auction and the highest bidder wins the property (usually the lender). If the sale is adjourned (delayed), a notice is posted at the sale location and in the newspaper.
8. After the sale, the highest bidder gets a "Sheriff's deed." It lists the last date the homeowner can redeem (take back) the property. This is usually 6 months to 1 year from the Sheriff's sale date.
9. During the redemption period, you have three options. You can:
    a. **Raise the necessary money to get the property back by getting a new mortgage:** In order to get the property back, you must pay off the mortgage, interest, late fees, court costs, attorney fees, title, appraisal fees, taxes, and insurance.
    b. **Sell the property:** In order to sell the property, you must sell the property at a price that will allow you to pay everything listed above, or, in the case of a short sale, get permission from your lender to sell the property for less than what you owe.
    c. **Live in it for free until the end date of the redemption period:** In order to live in the home until the end of the redemption period (usually 6 months), you must pay the utilities and maintain the property as your principal residence until the end date—at which point you must leave the property.

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. <u>Do not pay other debt with this money. Focus on saving your house</u>.

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. <u>Reinstatement</u>: 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.

Section III: HOW DO I WRITE A HARDSHIP LETTER?

What is a hardship letter?

A hardship letter is a summary of what happened that caused the initial default on the mortgage, what steps the borrower has taken to correct the default, and what the homeowner hopes to accomplish with the help of the lender. It should be presented as a *past*, *present*, *future* perspective and signed and dated by the homeowner. Every request to a lender or servicer MUST be accompanied by a hardship letter.

According to the National Consumer Law Center (2007) there is no "right" way to write a hardship letter. It should avoid disparaging the servicer, the lender, the homeowner's employer, or any other party involved in the crisis. An effective hardship letter should include:

- Identifying information, including the homeowner's name, address, and account number.
- The introductory paragraph should state the foreclosure prevention tool (reinstatement, special forbearance, or streamline refinance) the homeowner is seeking. (Not always possible to know upfront. Let the lender know you want to avoid foreclosure!).
- PAST: The second paragraph should describe the hardship and the reasons for the hardship in detail. (Make sure to develop timelines that are consistent with missed payments and be realistic; don't overstate or understate the crisis).
- PRESENT: The next paragraph should give a brief overview of the homeowner's income and expenses and explain any anticipated changes in income (or expenses) and when the changes may occur. It should also state whether the homeowner has a lump sum saved to offset any delinquency.
- FUTURE: Then, describe the proposed plan. The description should state when the plan will be effective, list the reasons why the homeowner believes it will work, and include a statement about why the homeowner is committed to seeing the plan through to its conclusion.
- The closing paragraph should state the methods and times to contact the homeowner and counselor.
- Attachments - the attachments that lenders typically require are a detailed home budget including: income and expenses, financial statements listing assets/liabilities, tax returns for prior two years, current pay stubs, and three months of checking/savings statements. If the homeowner has the home on the market, a copy of the realtor listing agreement may be required.

Keeping the letter to one page will ensure the letter will be considered in its entirety (long letters tend to be skimmed!). A housing counselor can help homeowners draft hardship letters, but they should be signed by the homeowners.

REMEMBER TO SIGN AND DATE YOUR HARDSHIP LETTER!

Section IV: WHEN YOU CAN'T KEEP YOUR HOME

A mortgage crisis can be a stressful time during which many decisions must be made by the homeowner. When the homeowner avoids dealing with the crisis, it can mean a loss of control over their finances and a loss of control over the impact the mortgage crisis may have on their credit report. If it is determined that you can't keep your home after a review of your finances and conversations with your lender and housing counselor, there are still options available to you to AVOID a foreclosure on your credit report.

I. STRAIGHT SALE: Even in a bad housing market, put the house up for sale with a reputable realtor at a fair market price. Interview the realtor to be sure they have experience with foreclosures and short sales.

1. Ask the lender to delay the foreclosure and for permission to complete a pre-sale. GET THE AGREEMENT IN WRITING.
2. In a bad real estate market, do not assume that the house will sell quickly.
3. A pre-sale works <u>if</u> the sale price is high enough to pay off the mortgage, any home equity loans, back taxes, selling expenses, and foreclosure fees.

II. SHORT SALE: The lender may allow you to complete a sale even though the price is less than what you owe them. Most servicers will accept a request to short sell the home but will reserve the right to finalize the agreement until a signed purchase agreement has been submitted. Most often, servicers are requiring the home to be listed at fair market value for 60-90 days before they will consider a short sale offer. In order to be considered for a short sale, servicers will want the following information faxed to their loss mitigation department:

1. Hardship letter detailing the nature of the crisis and requesting permission to short sell the mortgage.
2. Two consecutive years of federal tax returns.
3. Thirty days proof of income.
4. Three months of checking and savings account statements.
5. 401(k) statements, list of assets.
6. Home budget summary including income, current housing expense, utilities, car payments, food/gas/insurance, and credit card debt and monthly payments. This budget should reflect the financial hardship to the household by continuing to make the mortgage payment.

Complications: Even if the servicer agrees to consider a short sale pending a signed purchase agreement from a qualified buyer, collection activity will NOT stop while you are trying to sell the home. In some cases, the servicer may agree to delay the foreclosure sale; however, this is uncommon. A short sale can take 90-120 days to be fully executed from the time a purchase agreement has been submitted to the servicer. It is not uncommon for the servicer to foreclose on a property in the middle of a short sale negotiation.

Second Mortgage Complications: It is very difficult to execute a short sale for property that has a second mortgage involved. It might be possible for the homeowner to negotiate with the second lien holder to release their lien for a small fee (sometimes as little as $1,000) but that does NOT absolve the homeowner from responsibility for the second mortgage debt. It simply transforms the secured debt to an unsecured debt (by releasing the lien). The homeowner may be asked to sign a promissory note or negotiate a payment arrangement to the second mortgage holder. If repayment arrangements are not worked out, it is possible for the second mortgage holder to sue the homeowner and garnish wages. It is worth noting that even in a foreclosure situation, the second lien holder will attempt to collect the debt after the Sheriff's sale. The foreclosure eliminates the second mortgage lien; however, it doesn't eliminate the obligation of the homeowner to the debt.

When negotiating a short sale, it may be possible for the first mortgage lender to "cancel any deficiency," (the difference between what you owed and what you sold the home for). In other words, ask the lender to waive their right to demand repayment on the rest of what you owe. The sale will be reported to the credit bureau; however, it might be reported as "paid less than what is owed without deficiency" which is technically a settlement statement and has less of an impact on your credit report than a foreclosure. **It is important to get all commitments in writing.**

There are income tax consequences of a short sale option. In situations like this, the IRS considers the amount of debt the lender cancels for you (the amount you don't pay back) to be passive income. If you have lost income and will be in a lower tax bracket, it could work out fine. If not, you could be left with a big tax bill. Talk to a tax professional, a tax lawyer, or a non-profit advocate familiar with tax law. If by doing a short sale you will be facing a big tax bill you cannot pay, sometimes the better choice is to let the foreclosure proceed. Even in a foreclosure, there are tax implications; however, the Mortgage Debt Relief Act allows for certain exemptions that can significantly reduce or completely eliminate tax implications of foreclosure for Sheriff's sales between December 31, 2007 and December 31, 2012.

III. MORTGAGE ASSUMPTION: A third party takes over your mortgage, brings it current, and continues paying it. Some servicers and investors are waiving the assumption clause in the original mortgage contract and allowing QUALIFIED arm's-length assumptions to avoid foreclosure.

1. Some mortgages are assumable while others are not. Look at your original mortgage documents or ask your lender. The person assuming the mortgage must qualify with a good credit score, good debt-to-income ratio, and strong credit history.

2. See a lawyer before you proceed with a mortgage assumption because when someone else assumes the mortgage, they become the new owners of the home. It may work, but you need to fully understand it and avoid some major pitfalls.

3. Sometimes, adult children assume their parents' mortgage or vice versa in order to keep the equity (the amount of the house that you own) from being lost to foreclosure and to keep the equity within the family. Consider this if you have an assumable mortgage; have a lot of equity in your home; and have a relative who has the money, credit, and willingness to assume the mortgage.

4. DO NOT WORK OUT AN ASSUMPTION with strangers or real estate companies who claim to want to "save your house." There are scammers in the community that will offer to

assume the mortgage and allow you to become a renter. While you are "renting" from them, they can "strip" or take the equity in the home and often times will leave town allowing the home to foreclose anyway.

IV. DEED IN LIEU OF FORECLOSURE: You voluntarily turn over your house to your lender. It offers several advantages to both the borrower and the lender. The principle advantage for the borrower is that it immediately releases him/her from most or all of the personal indebtedness associated with the defaulted loan. The borrower may receive more generous terms (keys for cash) to leave the property than if a formal foreclosure proceeded. Advantages to the lender include a reduction in the time and cost of repossession.

Ask the lender to:

- Cancel any deficiencies and fees.
- Eliminate negative credit references.
- Allow you to have extra time in the house.
- Pay your moving expenses.

Complications: To be considered for deed in lieu, most servicers/investors require the property to have been listed at a fair market price for 60-90 days prior to the request. Both sides must enter into the transaction voluntarily and in good faith. Generally, the investor will not proceed with a deed in lieu if the outstanding balance of the mortgage exceeds the current fair market value of the property. DO NOT DO THIS unless you get something in writing.

Complications: DO NOT LEAVE YOUR PROPERTY PENDING A DECISION BY THE SERVICER/INVESTOR OF A DEED IN LIEU. You must be living in the home to be considered for a deed in lieu. There are scammers in the community that prey on vulnerable homeowners and have convinced many to leave the home. Don't be one of them.

There is a law requiring the deed in lieu is voluntary, and lenders often will not act upon a deed in lieu unless they receive a written offer from the borrower specifically stating that the offer to enter into negotiations is being made voluntarily. Neither the borrower nor the lender is obliged to proceed with a deed in lieu until a final agreement is reached. In the state of Michigan, if a homeowner agrees to a deed in lieu, they forfeit their six months right of redemption.

V. GENERAL FORECLOSURE TIPS

1. Record information on calls. Keep a phone log with who you spoke to, when, and what you discussed.
2. Get all agreements in writing.
3. *Never* sign a release giving up all legal claims until the actual workout agreement with your lender is finalized.
4. If you are ever unsure, seek advice from an attorney or non-profit HUD housing counseling agency.
5. Stay organized. Stay focused.

Section V: LET FORECLOSURE HAPPEN

Letting foreclosure happen should be a decision about what is possible in your situation and what is best for you and your family. Do this if you have explored all options and agree that this is the only or best option for you and your family. If you let foreclosure happen simply because you do not know what to do or are afraid of making contact with your lender, YOU NEED TO FACE YOUR SITUATION AND GET HELP. There are many options available to you, and letting foreclosure happen is a last resort.

If you cannot keep the house and have not had success selling it or negotiating with the lender for a deed in lieu of foreclosure, your decision is about <u>when</u> to leave - either immediately or near the end of the redemption period. For most people, the redemption period is six months from the date of the Sheriff's sale.

Staying in your home until the redemption period ends:

Go back to your budget. Without the house payment, look at your income minus expenses. What money do you have to work with for your next living situation?

Ask yourself these questions:

1. Will I be better off moving quickly because the cost of rent, utilities, and renter's insurance will be less than the monthly upkeep of the house I must leave?

2. By moving early in the redemption period, am I facing reality and the need to start over?

3. Will I be better off staying because I can save money for the first month's rent, security deposit, and moving expenses?

4. Will staying give me more time to look for new housing and to sell items?

5. Will staying in the house prevent me from taking the steps to face the reality of losing my home?

Section VI: LIFE AFTER FORECLOSURE

A financial crisis is a very stressful time, but you are not your house. You can start over and have a good life. Have hope! Things to remember moving forward:

1. It is best to spend less than 30% of your monthly gross income on rent.

2. Do not rent a storage unit. Recovering from a crisis takes time and finances will be tight. Many people end up losing their personal possessions they store due to non-payment on the storage unit. Sell your possessions or store at a friend's or relative's home for free. Concentrate on the essentials!

3. Take a money management class. USE A BUDGET! Spend less than you earn.

4. Get renter's insurance and car insurance. Search for affordable health and dental insurance. Insurance protects you from going backwards.

5. Limit junk mail so you aren't overwhelmed by credit card and other loan offers. The maximum amount of debt you should have (not counting a mortgage) is 11% of your income. Do not go overboard! The Fair Credit Reporting Act provides that all consumers can opt out of pre-approved offers. To stop unwanted solicitation, call the National Opt Out line at 1-888-567-8688. This one call provides your request to three of the major credit bureaus and will remove your name and contact information from all pre-approved credit offers. To remove yourself from marketing lists, you can call the National Do Not Call List at 1-888-382-1222. The call must be made from the phone that will be excluded on the list.

6. A lender will consider you for a mortgage application three to five years after a foreclosure if you have steady employment, modest debt, and a good payment history during the time between the foreclosure and the new mortgage application. You could qualify for first time homebuyer programs after three years of not owning a home.

7. Make an appointment with a housing counselor to discuss next steps after a foreclosure.

Section VII: OPTIONS AFTER THE SHERIFF'S SALE

The Sheriff's sale is held weekly on the county court steps and is open to the public providing an opportunity to the community to purchase your home for the highest bid. Most homeowners picture hundreds of hungry bidders looking for a good deal on a house. This is rarely the case. In fact, the majority of the time, the mortgage is purchased by the original lender and rarely to an independent buyer. At the time of the auction sale, a Sheriff's deed is issued and your redemption period begins.

It is your right as a homeowner to live in the home without paying rent or mortgage payments for the FULL redemption period. In the state of Michigan, homeowners are protected by a six months right of redemption, and, in some cases, up to a year. This is a period of time to gather resources and "redeem" ownership of the property. It is important to maintain the utilities and property as if you owned it. Shovel the snow and cut the grass to clearly establish that you still live in the home. If the holder of the Sheriff's deed can establish in court that the home has been abandoned, they can ask the court to SHORTEN the redemption period to as little as 30 days. If you receive a letter regarding issues of abandonment, call the court immediately.

It is your right as a homeowner to stay in the home until you are evicted by court order. Even on the outside chance that your home is purchased by an independent buyer, **it is your right** to live in the home for the full six months right of redemption. Do not let anyone pressure you into moving out. Contact an attorney if you are feeling harassed or pressured to move. At the end of your redemption period, you will be served with eviction papers. The final eviction order will be served by the county Sheriff's office. If you choose to challenge the eviction, you can go to court and plead your case before a judge.

Caution: It is important to note that while it is your right to wait until an eviction is served before you vacate the premises, being evicted is a matter of public record and will be recorded on your credit report. A foreclosure on your credit report will be challenging; an eviction on your credit report will make it nearly impossible to rent housing moving forward! We suggest transitioning from the foreclosed property gracefully, leaving all of the fixtures and structures sound and in place. The better the condition your property is in when you leave, the more likely the lender can sell it for a good price, thereby, reducing the amount that you might owe to the lender after the home closes. Think your decision all the way through.

It is your right as a homeowner to know what the redemption price is. At one time, the amount required to redeem the property was always more than what the homeowner owed on the mortgage when it first went into default four to six months before the auction. Legal fees, interest, late fees, and court costs are added to the balance of the mortgage. In recent days, the redemption price has been the same amount that the lender purchased the property for during the auction. While this is confusing, one thing is for sure - throughout the redemption period, per diem (daily) interest can be tacked onto the mortgage increasing the redemption amount by the end of the six months right of redemption period. The following Michigan law outlines how the records are kept:

Effective March 30, 2005 pursuant to HB 929 and HB 931 of 2004:

HB 929 of 2004, Section (3). The Register of Deeds **shall not determine** the amount necessary for redemption. The purchaser (at auction) shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of auctioneer. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

To determine who is acting on behalf of the holder of the Sheriff's deed, call your county Registrar of Deeds office for a copy of the record.

It is your right as a homeowner to refinance your home with another lender. The challenge is that your credit score and credit history take a hit during the foreclosure process and qualifying for a mortgage can be very challenging. If you have a family member who is willing to finance the mortgage on your behalf, you might be able to work out a short payoff (less than the redemption price) to redeem the property.

It is your right as a homeowner to try and sell the home during the redemption period. If you can sell it for more than the redemption price owed, you keep the equity! Be sure to interview the realtor before you list the property to be sure they have experience working with foreclosed properties.

Additional Information about Sheriff's Sales

Taken from the Washtenaw County Treasurer's website.

Sheriff's Sale (also called Mortgage Sale)

1. A **Sheriff's sale** occurs after four consecutive weeks of newspaper publication ("insertions") and posting of a notice on the property.

2. Sheriff's sales are scheduled for every Thursday at 10:00 a.m. in the Washtenaw County Courthouse in downtown Ann Arbor. You are not required to attend a Sheriff's sale. Sheriff's sales for individual properties are sometimes adjourned for a week at a time. The homeowner is not given additional notice of an adjournment; it is only posted at the Courthouse.

3. Most properties are purchased by the bank that holds the loan (a "credit bid") for the amount of the outstanding loan balance plus various fees and interest. Sometimes another person or company will outbid the bank.

4. The purchaser receives a **Sheriff's deed** (Sheriff's Deed on Mortgage Sale) but does not yet own the property.

5. The purchaser records the Sheriff's deed with the County Register of Deeds. Once the sale occurs, the **redemption period** begins.

Your Rights After Sheriff's Sale

1. Even though an auction has been held and a Sheriff's deed issued, you have not yet lost your property.

2. Most foreclosures give you a **six months redemption period** which usually begins on the date of the Sheriff's deed (if your property is large or you have a lot of equity in your home, your redemption period may be longer). If you know you won't be able to redeem, you can use this time to find new housing. You do not have to pay anything to your lender; save your money for moving expenses and/or a rental deposit. Seniors can contact the Housing Bureau for Seniors (734) 998-9339 for assistance in finding rental housing. Others can call SOS for help (734) 484-4300.

3. Don't feel pressured by the lender or its attorney or property management company to move out during the redemption period unless you are ready to go. If you do move early, your property can be declared "abandoned" and the redemption period can be shortened. If you get a **notice of abandonment** and you have not abandoned your property, be sure to respond quickly and in writing that you have not abandoned.

4. You can get your property back if you can "redeem" it by paying the full amount to the holder of the Sheriff's deed, often your original lender or its attorney. The amount due may change from the amount noted on the Sheriff's deed; so ask the lender's attorney or the owner of the Sheriff's deed for the correct amount. If you are able to redeem the Sheriff's deed, make sure that your redemption is recorded so your ownership remains clear in the public record.

5. You can also try to sell your home during the redemption period, especially if you have a lot of equity ("equity" means the difference between the value of your home and the remaining amount of the loan). Again, work with the lender's attorney or the owner of the Sheriff's deed so that you know for certain the amount needed to pay off the debt. You may have to pay a broker's commission and there may be other costs.

6. At the end of your redemption period, if you have not already moved out, you will be served with **eviction** papers. A court hearing will be scheduled, usually within 10 to 20 days. You will then have an additional ten days after the hearing date to move and remove your possessions (lenders' attorneys will often give you more time if you ask). If you don't, a court officer will go to the house to remove you. Your lender or its attorney or property management company may imply that you must move out immediately but *the only legal eviction is one that is court-ordered by a judge.*

7. Once your redemption period ends, you no longer own your home. There are **two important financial issues** that you should be aware of. **One**, it is rare but possible that your lender will sue you for any deficiency. "Deficiency" means the difference between the amount of the Sheriff's deed and the amount your former home is sold for (plus additional costs). Being sued for a deficiency is somewhat more common with second mortgages or home equity loans. If this happens to you, you should contact an attorney to respond to the lawsuit. **Two**, the IRS requires your lender to record a 1099c which treats the deficiency as income to you. You would then owe taxes on the deficiency. You can protest this with the IRS—contact an attorney, certified public accountant, or qualified tax preparer to assist you.

8. Scam artists target people who are facing financial difficulties, including foreclosure. You should be very suspicious of anyone who contacts you offering to "help". One common scam is someone who offers to help save your house if you pay a fee. Another scam is an offer to buy your house and allow you to stay on as "renters." The most recent scam is the use of a Reverse Mortgage with the elderly leaving them with the debt and signing the deed over to the scammer.

MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007

On December 20, 2007, President Bush signed into law the "Mortgage Forgiveness Debt Relief Act of 2007". This Act, among other things, relieves the taxpayer from including cancelled debt arising out of home foreclosure as income.

To qualify, the home must be the taxpayer's "Principle Residence", or the non-business location where the tax payer and his or her family reside. This act applies to principle residence debt that is cancelled between JANUARY 1, 2007 AND DECEMBER 31, 2012. In the case of cancelled debt that is only partially for a mortgage on a principle residence, only that portion of the cancelled debt that applied to the mortgage of the principal residence can be excluded from the adjusted gross income. In other words, only acquisition debt or debt incurred to improve the home is protected under this legislation. If the borrower took a cash-out refinance to pay off credit cards or to purchase a car or take a vacation etc., that portion of the debt is not protected and the borrower will have to pay taxes against it.

The borrower will receive a form 1099-C from the lender. We suggest taxpayers contact a competent tax attorney to discuss how the Mortgage Forgiveness Debt Relief Act of 2007 impacts their tax liability. The law is complex and has a number of conditions and exemptions and only a qualified tax attorney can provide you with counsel regarding your options. This act does not take away the right of lenders to seek the deficiency for the debt resulting from a foreclosure or a short sale. Seek the advice of an attorney to discuss the implications of a debt incurred through foreclosure.

OTHER EXCEPTIONS TO THE CANCELLATION OF DEBT TAX REPORTED ON FORM1099-C

Cancellation of debt income reported on a 1099-C is not always taxable. The following are five additional exceptions to the general rule that cancellation of debt income is taxable:

1. **Bankruptcy:** Debt cancelled or forgiven through bankruptcy is not considered taxable income.
2. **Insolvency:** If you are insolvent when the debt is cancelled or forgiven, some or all of the cancelled debt may not be taxable to you. Generally, a taxpayer is insolvent when his total debts exceed the fair market value of his total assets. It is often difficult to determine whether or not a taxpayer is insolvent. If you think this applies to your situation, consult a professional before filing your income tax return.
3. **Farm debts:** If you incurred the debt directly in operation of a farm, you secure income from farming, and you secured the loan from an institution or agency regularly engaged in lending, you may be eligible for an exception.
4. **Non-recourse loans:** Forgiveness or cancellation of a non-recourse loan does not result in cancellation of debt income but may have other tax consequences.
5. **Student loans:** If a taxpayer's student loans are cancelled under an agreement with the government lender, then the taxpayer need not include such cancelled debt in his or her taxable income.

It is highly recommended that taxpayers consult a qualified tax professional to discuss these matters in further detail to determine the best course of action.

Consumer Alert: Scams

Taken from Foreclosure Prevention Counseling: Preserving the American Dream, National Consumer Law Center 2007

AVOID FORECLOSURE SCAMS: MAJOR DON'TS FOR HOMEOWNERS IN FINANCIAL DISTRESS

1. **Do not panic!** Get information on the foreclosure process in your state; find out how much time you have to resolve your problems short of losing your home. Make sure you understand all the deadlines for responding to court documents, documents from lenders, and other important papers. Be sure that you know the point at which you can lose the legal right to own your home.

2. **Ask a lawyer to review any contract you are asked to sign**. Make sure this is an attorney that you have chosen without any help from the person who wants you to sign the contract. If the other party will not give you an advance copy of the contract or discourages you from consulting your own attorney, it is a sign that he or she has something to hide.

3. **Never sign a contract under pressure.** Take your time to review the paperwork thoroughly, preferably with a lawyer who is representing your interest.

4. **Do not sign away ownership of your property (often referred to as a "quit claim deed") to anyone without advice from your lawyer.** Be suspicious of offers to take over ownership of your home as part of a deal that will allow you to lease it and then buy it back after two or three years; experience shows that the buy-back is often extremely expensive or otherwise out of reach, so in reality you either never get your home back or, if you do, you have paid an outrageous amount to recover it.

5. **Do not pay your mortgage payments to someone other than your lender, even if he or she promises to pass the payments on to the mortgage company**.

6. **If you find you cannot pay your mortgage, do not ignore warning letters from your mortgage lender**. Call your lender, housing counselor or lawyer for help.

7. **Beware of any home sale contract where you are not formally released from liability for your mortgage.** Surprisingly, some people lose their home but still wind up owing on the mortgage! Make sure you know what rights you are giving up in any contract and that you agree to give them up.

8. **Never make a verbal agreement.** Get all promises in writing and get copies of the agreement.

9. **Do not sign anything containing blank lines or spaces.** Information can be added later without your permission.

10. **Do not fall for promises like these**, often used to lure homeowners into deals that will cost them a lot more than they will "save":

    - ⊗ "We will save your credit"
    - ⊗ "We will pay your first two months rent or payments in your new place"
    - ⊗ "You will get several thousand dollars in cash back that you can use any way you want"
    - ⊗ "If you sign the house over to us the foreclosure will be recorded against us, not you"
    - ⊗ "We will buy your house 'as is'"
    - ⊗ "We guarantee we will find you a buy in seven or fourteen days"
    - ⊗ "We will help you file bankruptcy to stop this foreclosure"
    - ⊗ "It may cost you thousands more if your property is sold at public auction"
    - ⊗ "We will give you $40 in Free Gas"

11. **If you don't speak English, use your own translator.** Do not depend on the "rescue" firm's translator.

Referrals

Department of Housing and Urban Development (HUD)

Housing Counseling Line: (800) 569-4287

Michigan State Housing Development Authority (MSHDA)

Central Office Address
735 E. Michigan Ave.
P.O. Box 30044
Lansing, Michigan 48909
Telephone: (517) 373-8370

Michigan Department of Attorney General

Lansing Office
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

Main Number: (517) 373-1110
Consumer Protection: (517) 373-1140
Toll Free: (877) 765-8388
Report all suspected incidents of consumer fraud/scams

Office of Finance and Insurance Regulation (OFIR)

Department of Labor and Economic Growth
Lansing, Michigan

If you think there were misrepresentations, fraud, or other violations of law in making the mortgage loan, contact OFIR to file a complaint at: (877) 999-6442 or www.michigan.gov/ofir (select Consumer Services, How to File a Complaint).

Lawyer Referral Service—(800) 968-0738

Taken from Michigan State Bar Association website (on January 2012): http://www.michbar.org/programs/lawyerreferral.cfm

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The State Bar of Michigan Lawyer Referral and Information Service (LRIS) is designed to assist members of the public who want to hire an attorney and can afford to pay for legal services.

If you have a legal problem and **cannot** afford to hire an attorney, please contact your local legal aid office. For your convenience, the following is a link to the legal assistance programs and services found on the State Bar of Michigan's website (View Legal Aid Programs and Services): http://www.michbar.org/public_resources/legalaid.cfm

How the Lawyer Referral Service Works (View Terms of the LRIS):

http://www.michbar.org/programs/LRS_terms.cfm

- You may dial **(800) 968-0738** between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, to speak with a lawyer referral representative **or** submit an online referral request: http://www.michbar.org/programs/LRS_request.cfm
- When you call the LRIS, you will be asked to provide your name and address, the general nature of your concern, and the county in which you need assistance. A lawyer referral representative will give you the name and telephone number of one attorney **(only 1 referral will be provided per call or request)** who is a LRIS panel member. Referrals are made to panel members on an impartial, rotation basis.
- When you contact the attorney, please state that you received a referral from the State Bar of Michigan. The cost of your initial 30-minute consultation with a LRIS panel member will be no more than $20.00. Any and all fees beyond the initial 30-minute consultation (including, but not limited to, fee agreements for representation) must be negotiated with the attorney.

If the county in which your legal problem arose is on the following list, please call the lawyer referral service for that county **first**. Please note that the rules and fees for the referral services listed below may be different from the State Bar's LRIS.

Counties Covered	Name of Lawyer Referral Service	Telephone Number
Wayne, Oakland, Macomb, Monroe, Lenawee, and Washtenaw	Detroit Metropolitan Bar Association (Wayne County)	(313) 961-3545
Genesee	Genesee County Bar Association	(810) 232-6000
Grand Traverse, Leelanau, and Antrim	Grand Traverse – Leelanau – Antrim Bar Association	(231) 922-4715
Kent, Ottawa, Muskegon, and Allegan	Grand Rapids Bar Association	(616) 855-0273
Macomb, and St. Clair	Macomb County Bar Association	(586) 468-8300
Oakland	Oakland County Bar Association	(248) 338-2100
Washtenaw, Western Wayne, Lenawee, Livingston, and Monroe	Washtenaw County Bar Association	(734) 996-3229