

LAWYERS LINK



FINANCIAL CRISIS OPTIONS: FORBEARANCE VS. FORECLOSURE AND YOUR TITLE REPORT

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In times of financial hardship it may be difficult to make a mortgage payment. Property owners could be looking at forbearance or foreclosure.

WHAT IS A FORBEARANCE?

Forbearance is an agreement between the property owner and the lender to postpone the mortgage payments for a set time period. At the end of the agreed time period the property owner would be required to continue making the normal mortgage payment and repay the balance

owed, including interest and fees that accrued during the forbearance time.

Property owners who wish to get a forbearance need to contact their lender. The lender will provide the steps and request necessary documentation to enter into a forbearance agreement. They should also check with their lender to see if it would limit their ability to do a refinance in the near future.

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WHAT IS FORECLOSURE?

Foreclosure is a legal process by which the lender takes ownership of the encumbered property. When the property owner is unable to make the monthly mortgage payment and enters into default, they forfeit rights to the encumbered property. The foreclosure process varies from state to state, but generally speaking, 30 to 45 days after a missed payment the lender will send the property owner(s) a letter outlining the time period to repay the missed payment(s) and reinstate the loan to good standing. At 90 days after the first missed payment the lender will record of public record a Notice of Default. At 120 days after the missed payment the lender will record of public record a Notice of Sale stating the date and time the property will be sold at auction or default ownership to the lender.

When you enter into a real estate transaction whether it be selling, buying, or refinancing a property, the title company will perform a search of the public record for items affecting title to the property.

In the case of foreclosure, the title company will have knowledge of the documents recorded of public record and include that information in the title report. The title

report will indicate the property is in foreclosure and there is a limited time to close the transaction and pay the lender to stop the foreclosure. Knowledge of the pending foreclosure helps all parties ensure the transaction will go as smooth as possible.

In the case of forbearance, there may not be any documents recorded of public record to indicate the property owner entered into a forbearance agreement. Without knowledge of the forbearance, the closing could be hindered if the payoff comes in higher than expected because it includes the payments that were not made during the agreement period, plus interest and fees associated with the agreement. To ensure that there are no surprises at closing, it is imperative that realtors, escrow/closing officers, and lenders in pending transactions ask the right questions to determine if the property owner has entered into a forbearance agreement with their current lender.

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TIPS FOR A SUCCESSFUL ESCROW

A homebuyer can help their agent and escrow officer bring their transaction to a successful conclusion by acting promptly to answer any requests for information and by following these helpful hints:

- Completely fill out and sign all paperwork sent to them from their escrow officer or lender as quickly as possible.
- Make sure they have ordered insurance for their new home and provided the insurance agent's name and number to the escrow officer. Insurance is required before the lender will fund the loan on their new home.
- Review vesting choices (how they will take title for the property) and discuss them with their tax attorney or CPA. This is an important choice that catches many buyers by surprise. They should be prepared so that they choose the best vesting option for their unique situation.
- During the course of their escrow, they may have questions or concerns. It helps to know who to call. In general, they may:
 - » Call their lender if they have questions about the loan (rate, terms, costs, time frames, etc.)
 - » Call their real estate agent if they have questions about the new home or the property
 - » Call their escrow officer if they have questions about the escrow process or title insurance
- They should be sure to bring their valid photo ID with them to the document signing appointment. They (and anyone signing with them) should bring a current driver's license, passport or valid state-issued ID card.
- They should keep in mind that their escrow officer is a neutral third party who follows mutual instructions from the parties to the transaction. Their escrow officer cannot give them advice, and they are encouraged to seek the advice of their tax attorney or legal counsel if necessary.



MONTHLY INDUSTRY TERMS

Adjustable Rate Mortgage

A mortgage in which the interest rate is adjusted periodically in accordance with a market indicator, to more closely coincide with the current rates. Also sometimes known as renegotiable rate mortgage, the variable rate mortgage, or the graduated rate mortgage.

Discount Point

An additional charge made by a lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent.

Negative Amortization

Occurs when your monthly payments are not large enough to pay all the interest due on the loan. This unpaid interest is added to the unpaid balance of the loan. The danger of negative amortization is that the home buyer ends up owing more than the original amount of the loan.

