



Foreclosure & Short Sale Consumer Resource Guide

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Overview

Homeowners and homebuyers in today's real estate market face unique challenges. Of special concern are issues arising out of the possibility of foreclosure on their home and possible alternatives. While foreclosure occurrence is relatively low in Wisconsin compared to the rest of the country, the rate and number of foreclosures in the state have risen substantially.

Restaino & Associates has created this Resource Guide to assist you in meeting the challenges of potential foreclosure. It includes general information about foreclosure and "short sales," as well as articles, publications and useful links.

What is Foreclosure?

At the time of settlement, you signed papers agreeing that the mortgage company has a right to take ownership of the property through a process called foreclosure if you stop making your monthly mortgage payments. When you miss mortgage payments, in some cases for as short a period as 30 days, you are considered in default on your mortgage. Mortgage lenders can move your loan into collection, which can be the start of the foreclosure process.

If you are having trouble keeping up with your mortgage payments, or if you have received a notice from your lender asking you to contact them, don't ignore it. Contact your lender immediately to try to work out an alternative option.

Foreclosure Law

General information about the foreclosure process in Wisconsin can be found at:

<http://www.realtytrac.com/foreclosure-laws/wisconsin-foreclosure-laws.asp>

Foreclosure Timeline

- Pre-foreclosure Period

After a borrower defaults on a mortgage or deed of trust, the Wisconsin foreclosure process begins with the filing of a complaint in court. The borrower is given instructions to appear in court within 20 days and provide evidence as to why the foreclosure should not occur. If the borrower cannot be located, this pre-foreclosure period of giving notice to the borrower could be longer. If the borrower does not appear in court within the required time frame, the court could rule that the borrower is in default. If the court rules the borrower in default, the lender can submit a request that the County sheriff conduct a sale of the property. Once the judgment of foreclosure is issued by the court, the actual sheriff's sale usually occurs 6 months

after date of the judgment. The sale can be later (12 months) if the lender is seeking a deficiency judgment, or can be sooner (60 days) if the property is abandoned.

- **Notice of Sheriff's Sale**

The sheriff must properly advertise and give notice of the sale according to law, or as instructed in the court's ruling. The sheriff posts the sale notice on the property and in other public places at least 14 days before the sale date. The notice will include the date, time, and location of the sale, as well as a brief property description and the location of the property. The notice of sale is also published each week for 6 successive weeks in a newspaper of the county, or as directed by statute or order of the court.

Generally, the sale is conducted by the sheriff and takes place at the property or at the local courthouse. After the sale, the judge's confirmation of the sale occurs no sooner than 5 days following notice by personal delivery or registered mail to all parties who have appeared in the action, and at which time the sheriff transfers ownership to the winning bidder. Prior to confirmation, the borrower may contest the sale procedure, but the borrower has no right of redemption after the sale.

Options in Foreclosure Situations

From: <http://www.hud.gov/offices/hsg/sfh/econ/econ.cfm#4>

Call Your Lender!

(To get to the right person, you may need to ask for the department that handles loss mitigation, workouts, or asset recovery or home preservation. Be persistent.)

1. If Your Problem is Temporary, discuss:

- **Reinstatement:** The lender agrees to accept the total amount owed to them in a lump sum by a specific date.
- **Forebearance:** The lender allows you to reduce or suspend payments for a short period of time after which another option must be agreed upon to bring your loan current. A *forebearance* option is often combined with a *reinstatement*. For example, when you know you will have enough money to bring the account current at a specific time in the future due to a hiring bonus, investment, insurance settlement, or a tax refund.
- **Repayment Plan:** You may be able to get an agreement to resume making your regular monthly payments, in addition to a portion of the past due payments each month until you are caught up.

2. If it appears that your situation is long-term or will permanently affect your ability to bring your account current, discuss

- **Mortgage Modification:** If you can make the payments on your loan, but you do not have enough money to bring your account current or you cannot afford the total amount of your current payment, your lender may be able to change one or more terms of your original loan to make the payments more affordable. Your loan could be permanently changed in one or more of the following ways: (i) Adding the missed payments to the existing loan balance; (ii) Changing the

interest rate. Including making an adjustable rate into a fixed rate; (iii) extending the number of years you have to repay.

- **Claim Advance:** If your mortgage is insured, you may qualify for an interest free loan from your mortgage guarantor to bring your account current. The repayment of this loan may be delayed for several years.

3. If Keeping Your Home is NOT an Option, discuss:

- **Sale:** If you can no longer afford your home, the lender will usually agree to give you a specific amount of time to find a purchaser and pay off the **total amount owed**. You will be expected to obtain the services of a real estate professional who can aggressively market the property.
- **Pre-Foreclosure Sale or “Short Sale”:** If the property’s value is not enough to pay the loan in full, the lender must agree and approve that they will accept **less than the full amount owed**. This option can also include a period of time to allow your real estate agent to market the property and find a qualified buyer. **Assumption:** A qualified buyer may be allowed to assume your mortgage, even if your original loan documents state that it is non-assumable.
- **Deed-in-lieu:** The lender agrees to allow you to voluntarily “give back” your property and forgive the debt. Although this option sounds like the easiest way out for you, generally, you must attempt to sell the home for its fair market value for a certain period of time determined by your lender before the lender will consider this option. Also, this option may not be available if you have other liens such as judgments of other creditors, second mortgages, and IRS or State Tax liens.

More About Short Sales

A short sale is an arrangement between the current owner of a home and the current lender holding the mortgage to accept an offer for less than the total amount owed to pay off the home loan (including other transaction-related expenses such as closing costs, property taxes, transfer tax, and/or commission fees).

The lender determines if the seller is eligible to sell the home at a price less than the amount of the outstanding debt due to a hardship. The lender then accepts that shortfall as their loss. Simply owing more than the home is worth is not a considered hardship. Hardships include divorce, unexpected hospitalization and medical expenses, job loss, death of a family member or similar catastrophic situation. Additionally, a budget must show that the seller’s expenses exceed their income/assets, that they are behind on their payments, and there is no way to repay the lender.

The buyer of a property in a short sale needs to be aware of several key issues. The contract is usually contingent upon the agreement of the seller’s mortgage lender to accept the net proceeds of the sale as full payment for the underlying debt. This is often a long process, which can delay an anticipated settlement date. Buyers and agents should be prepared for this possibility. The fact that the property is a short sale should be disclosed in the comments section of the listing. The sales contract should also include an addendum SSO, outlining that the contract is contingent upon the agreement of the seller’s mortgagee to accept the net proceeds of the sale as full payment of the underlying outstanding debt.

As always, if you are considering a short sale or any other type of real estate transaction, whether you are a seller or a buyer, it is important to see competent legal and financial professional advice. If purchasing a short sale property, be sure you deal with a real estate professional with experience on short sale transactions.

Foreclosure Help for Homeowners in

- **The Neighbor Works Center® for Foreclosure Solutions** was created to preserve homeownership in the face of rising foreclosure rates. In conjunction with the Homeownership Preservation Foundation, and national nonprofit mortgage and insurance partners, the Center has built a network among certified foreclosure counselors around the nation. It conducts public outreach campaigns to reach struggling homeowners with information about how to keep their homes. Anyone in Wisconsin who calls 1-888-995-HOPE will be then connected to the staff at the National Council on Agricultural Life and Labor Research Fund, Inc., which coordinates counselors for the NeighborWorks® locally.
- **HOPE NOW** is an alliance between counselors, mortgage companies, investors, and other mortgage market participants who want to reach and help distressed homeowners directly (<http://www.hopenow.com/>). The participating mortgage servicers are listed at http://www.hopenow.com/mortgage_directory.html.
- **Consumer Credit Counseling Service of WI, Inc.** is an accredited non-profit community service organization which has been serving the community since 1966. CCCS is dedicated to helping individuals and families resolve financial problems by promoting the wise use of credit through confidential budget counseling, debt management repayment programs, and community education. For more information, call 1-800-350-2227 or go to www.ccsonline.org.
- **The U.S. Department of Housing and Urban Development (HUD)** has created “Tips for Avoiding Foreclosure,” which provides an index of broad information on foreclosure assistance at: <http://www.hud.gov/foreclosure/index.cfm>. A more detailed guide, “Help for Homeowners Facing Loss of Their Home” can be found at: <http://www.hud.gov/offices/hsg/sfh/econ/econ.cfm>.
- **“Keep Your Home. Know Your Loan”** is HUD’s campaign to support approved home mortgage counseling for families at risk of losing their homes. The hotline is 877-HUD-1515 or use the HUD Housing Counseling Program’s toll free number (800-569-4287) or go to www.hud.gov.
- Fannie Mae also has information on the new Streamlined Modification program and useful tips for working with your lender. Go to: http://www.fanniemae.com/aboutfm/borrower_resource.jhtml
- Freddie Mac has created a useful guide, “How to Avoid Foreclosure” Go to http://www.freddiemac.com/corporate/buyown/English/avoiding_foreclosure/

Be Alert for Foreclosure “Rescue” Offers!

Distressed homeowners are prime targets for advertisements that promise homeowners help and rescue from their financial woes. Homeowners who already are in default may make their situation even worse, sometimes signing over the deeds to their home as part of a foreclosure “rescue.” A typical story involves a homeowner who is behind on their mortgage and is contacted by an individual or company that offers to “refinance” the house **or** buy it and rent it back to the family, promising (verbally) that it can be repurchased at a later date. Unfortunately,

in either instance, the desperate homeowner basically signs away the deed in a stack of paperwork without realizing it.

Not all programs that help homeowners keep their homes are scams; there are some legitimate services. To avoid the scams, consumers should follow certain steps.

1. **Do contact your lender and try to refinance the loan or work out a payment plan.**
 - DON'T ignore warning letters from your bank or lender. The problem will not go away, and will only get worse if you ignore it.
2. **Get expert FREE housing counseling, legal and tax advice from trusted sources by calling HOPE Hotline at 1-888-995-HOPE for referrals.**
 - DON'T pay anyone up front who promises to negotiate with your lender.
 - Check the current license status, credentials, reputation and experience of any person or company that you may use, including people who claim to be real estate salespersons, financial counselors, mortgage lenders and brokers, title companies, and attorneys.

Be careful of resources that utilize the word HOPE in their name or advertising. Look for only these trusted sources: www.hopenow.com and www.preservehomeownership.org (888-995-HOPE); Housing Options and Planning Enterprises, Inc. (www.hopeinonline.com)

3. **Do not sign any documents under pressure or duress. Take the time to read and understand the contents of any paper that you are asked to sign!**
 - DON'T sign any documents without first consulting your attorney or a credit counseling agency.
 - DON'T sign any agreement with blank lines or spaces. Information could be added later that you did not agree to.
 - Do not make a verbal agreement. Get all promises in writing and get full copies.
4. **DON'T make a deal with someone who solicits you uninvited by mail, internet, telephone, flyers or in person.**
 - If an offer sounds too good to be true – it probably is! Ask questions!
 - **Never give your social security number** or discuss personal financial information with strangers.
5. **DON'T sign over your deed to a third party or agree to any deal that supposedly allows you to rent the property and buy it back later.**
 - Do not pay your mortgage to someone other than your lender without the lender's prior written approval.