Housing Help:

Next steps and resources when you're at risk of foreclosure

If you get behind on your mortgage payments, one potential outcome is foreclosure—the process of the lender taking your secured real estate from you. This guide is a resource to help you understand the mortgage delinquency and foreclosure process, identify your options, and take the next steps.

Before you fall behind

Sometimes the inability to make your mortgage payments is relatively sudden—an unforeseen financial emergency that you can't recover from quickly enough. But many homeowners struggle for months or years to keep up. If you are still current on your payments but finding it difficult to stay afloat, there are options to consider that could help you avoid a future foreclosure. It's important to be proactive. The sooner you address financial difficulties, the more options you have.

Refinancing: If you are current on your mortgage and meet borrower qualifications (credit score, income, etc.), you may be able to refinance into a new loan with more favorable terms, such as a lower interest rate (which means lower, more manageable payments). Or, if you have an adjustable-rate mortgage (ARM), refinancing into a fixed-rate mortgage would enable you to avoid potential rate increases. If you have both a first and a second mortgage, combining them into a new loan could result in a single, lower payment. (If your loan carries a prepayment penalty, it's advisable to wait until that provision expires before refinancing.)

Taking out a HELOC: If you have built equity in your home (the difference between the value of the property and the amount you owe) and you meet borrower qualifications, you could apply for a home equity line of credit (HELOC), to be available in case of a financial emergency. As long as the balance on the credit line remains $0, you will not have any payments to make. (Be aware that if you fail to pay any loan that is secured by your home, including a HELOC, it can lead to foreclosure. For this reason, you should not turn unsecured debt—such as a credit card balance or medical bills, which potentially could be discharged in bankruptcy—into debt secured by your home by paying it with your HELOC.)

Selling: If you can predict you'll have serious payment problems in the foreseeable future that could lead to foreclosure, you could try selling your home before you go into default. This works if you have enough equity in the home to pay off the entire loan balance and all expenses associated with selling the home (such as real estate agent fees) from the proceeds of the sale. Such a sale would allow you to satisfy your mortgage obligation, avoid lender-imposed late and legal fees, avoid any damage to your credit rating, and possibly protect the equity you've built.

Credit counseling: If you find yourself with more bills than you can comfortably pay, and you're not sure how to cut expenses or increase income, consider talking to a credit counselor. The counseling service is typically free, though there may be a nominal fee—usually $50 or less. (Learn more here: https://www.experian.com/blogs/ask-experian/how-much-does-debt-counseling-cost/.) The counselor will go over your income and expenses, help you understand your rights, and make suggestions based on your goals—one of which could be a debt management plan, which could result in lower payments on certain non-mortgage debt, freeing up dollars to put toward your mortgage payments. Find a nonprofit credit counseling agency through the National Foundation for Credit Counseling (NFCC) (https://www.nfcc.org).

Bankruptcy: A Chapter 13 bankruptcy could help you save your home, because it immediately stops the foreclosure process (called an "automatic stay") and allows filers who have an income to repay their debts over time (three to five years). As part of this repayment plan, the court can require your mortgage lender to accept a manageable payment schedule that allows you to bring the loan current over a reasonable amount of time. Learn more about how a Chapter 13 bankruptcy can help you keep your home from Nolo (https://www.nolo.com/legal-encyclopedia/chapter-13-bankruptcy-help-after-foreclosure-notice.html) and the U.S. Courts (https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics).

When you miss a payment

Contact your lender at the number on your statement as soon as you realize you will be unable to make your mortgage payment. It might help to know that reputable lenders and loan servicers want to avoid foreclosure, which is a costly process. Your call indicates that you are committed to fixing the problem. And, because the federal government has required the expansion of mortgage relief programs (see box), lenders have multiple tools available to help borrowers avoid foreclosure.

Government loan foreclosure prevention programs

Your foreclosure prevention options will depend in part on whether your loan is backed by the federal government (around 50% are) and, if so, through which entity. Your lender will inform you of your options, but you can get an overview of the programs and eligibility requirements for borrowers with one of five different types of federally-backed mortgages at these sites:

Federal Housing Administration (FHA) Making Home Affordable (MHA) Program
https://www.makinghomeaffordable.gov; 800-225-5342

FHA offers a number of loss mitigation programs (https://www.hud.gov/program_offices/housing/sfh/nsc/lossmit). If your FHA lender/servicer is uncooperative, contact FHA's National Servicing Center at 877-622-8525.

Veterans Administration (VA) loan modification
https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/; 877-827-3702

This chart (https://www.benefits.va.gov/HOMELOANS/documents/docs/modification_comparison_chart.pdf) lays out all of the VA loan modification programs and eligibility requirements.

U.S. Department of Agriculture (USDA) foreclosure prevention
https://rdhomeloans.usda.gov/fcls.html; 800-793-8861

Options for USDA loan borrowers could include arrangements to pay the amount past due over time; a payment subsidy; or a moratorium (payment deferment).

Fannie Mae/Freddie Mac Flex Modification

- Fannie Mae: https://www.fanniemae.com/here-help-single-family/fannie-mae-flex-modification; 800-232-6643
- Freddie Mac: https://sf.freddiemac.com/working-with-us/servicing/products-programs/freddie-mac-flex-modification; 800-373-3343

Here's an overview of Fannie and Freddie's Flex Modification Program from Bankrate (https://www.bankrate.com/mortgages/flex-modification/) and Nolo (https://www.nolo.com/legal-encyclopedia/about-fannie-mae-and-freddie-mac-flex-modification-program.html).

If you don't know if your loan is federally backed, you can use the lookup up tools offered by Fannie Mae (https://www.knowyouroptions.com/loanlookup) and Freddie Mac (https://myhome.freddiemac.com/resources/loanlookup). You can also ask your loan servicer—they are required by law to tell you.

If you want to keep the home, ask the lender about your options, which might include:

1. **Repayment plan:** Under a repayment plan, a portion of the past-due amount is added to your regular monthly payments until you are caught up. This typically is only an option if you have a small amount to make up—one or two missed mortgage payments—and have the ability to temporarily make higher monthly payments.
2. **Loan modification:** A loan modification is a change in the loan terms that makes it possible to avoid foreclosure. This could include reducing the interest rate, extending the loan term, adding missed payments to the loan balance, forgiving (canceling) a portion of the mortgage debt, or some combination of changes. The loan servicer is not allowed to begin the foreclosure process while they are evaluating your completed "loss mitigation" (modification) application. (The Consumer Financial Protection Bureau [CFPB] has established rules about what mortgage loan servicers must and must not do when working with borrowers who have missed payments and who may be at risk of foreclosure: https://files.consumerfinance.gov/f/201312_cfpb_foreclosure-avoidance-procedures.pdf.)
3. **Forbearance:** If you are unable to make monthly payments because of a temporary hardship (a layoff, for example), you might be eligible for a forbearance—an agreement that the lender will suspend or reduce your

payments for a limited period (typically three to 12 months). If approved, the lender gives up its right to foreclose during the forbearance period, though interest typically still accrues. How you make up the missed payments at the end of the forbearance period depends. If you have a Fannie Mae or Freddie Mac loan (*https://www.consumerfinance.gov/ask-cfpb/what-are-fannie-mae-and-freddie-mac-en-1959/*)—the majority of borrowers do—you may have the option to defer the repayment until the loan matures or until you sell or refinance the property. If you don't have one of these loans, the lender could require a lump sum payment, or you might be able to get on a repayment plan or apply for a loan modification.

4. **Deferral:** Your servicer may be able to defer (postpone) your past-due payments to the end of the loan term. This option is best for someone who has had a temporary financial setback but can make their regular monthly payments going forward. Deferral doesn't reduce your current payment amount; it does allow you to avoid having to make up the missed payments now.
5. **Reinstatement:** If you are able to come up with the money to pay off the entire delinquency—say, through a personal loan or gift, or a lump sum from a lawsuit or inheritance—contact your lender about the mortgage "reinstatement" options available to you, which could depend on how far along you are in the default or foreclosure process, the lender's policies, and even state law.

Every foreclosure prevention program has eligibility requirements, and these vary across lenders and loan types. Examples of eligibility requirements include having had the loan for a certain amount of time, being behind by a certain number of payments, your ability to make future payments, etc. Your lender or loan servicer will let you know which foreclosure prevention measures you qualify for based on a variety of criteria.

Another way to stop a foreclosure (at least temporarily) is to file for Chapter 13 bankruptcy, which triggers an "automatic stay"—a period when creditors are prohibited from continuing any collection efforts (including a foreclosure). During this time, you work with the court to determine a repayment plan (and maybe a loan modification), which the court might require the lender to accept. This could allow you to keep your home if you can reasonably catch up on your past-due payments over a three-to-five-year period while staying current on your regular monthly payments. (Learn more here: *https://www.justia.com/foreclosure/alternatives-to-foreclosure/filing-for-bankruptcy-to-avoid-foreclosure/*.)

If the cause of your financial problems is the COVID-19 pandemic, you could be eligible for financial assistance through the government's Homeowner Assistance Fund (HAF) (*https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-homeowners/get-homeowner-assistance-funds/*). Find out if your state still has funds available and how to apply (*https://www.ncsha.org/homeowner-assistance-fund/*). Find programs for Tribal members here: *https://naihc.net/tribal-housing-assistance-resource-hub/*.

If you cannot or do not want to keep the home (perhaps the value of the home has dropped steeply or you don't foresee being able to manage the various costs of homeownership going forward), you should still contact the lender to find out what options are available that would allow you to avoid the full impact of a foreclosure on your finances and your credit. These might include a:

1. **Lender-approved sale:** Your lender might hold off on foreclosure proceedings for an agreed-upon time to give you a chance to put your home on the market. Or they might postpone the foreclosure sale if you have a pending sale contract.
2. **Short sale:** This is permission from your lender to sell your property for less than you owe. If you have any other loans or liens on the property, you will need to get permission from those lenders/lien holders as well—and that will be difficult, since they will only receive funds if there is money left over after the first lender is paid off. If you live in a state that allows lenders to sue for the remaining money owed (deficiency balance), you'll want to be sure to get a written agreement from the lender not to sue you for the deficiency balance. A short sale could result in a tax debt if you don't qualify for an exemption.

3. **Deed in lieu of foreclosure:** In this scenario, you surrender the property, saving the lender the expense of a foreclosure. The advantage for you is that a deed-in-lieu won't harm your credit as badly as a foreclosure, and you may be able to avoid paying the remaining balance on your loan. However, as with a short sale, you might get taxed on the forgiven debt. The lender may not accept this solution, and is even more unlikely to accept it if you have any other liens on your property (home equity line of credit, second mortgage, tax debt, etc.). If the lender is open to the deed-in-lieu, you should have a professional (attorney, housing counselor, tax advisor) help you verify that you can't be sued for a deficiency judgment (a court order, allowed in some states, that the lender can come after you for any remaining unpaid balance) and determine whether you qualify for a tax exemption. Be aware that if you have a second loan on the property, that lender could still come after you. Learn more here (*https://www.investopedia.com/terms/d/deed_in_lieu_of_foreclosure.asp*) and here (*https://www.thebalancemoney.com/what-is-a-deed-in-lieu-of-foreclosure-1798489*).

When you speak with your mortgage servicer, be prepared to:

- Explain why you are unable to make your payment(s)
- Explain whether the problem is temporary or permanent and, if temporary, when you expect to be back on track
- Provide details about your income, expenses, assets, and any changes you foresee
- Let the loan servicer know if you are a servicemember and have received permanent change of station (PCS) orders (which may qualify you for loss mitigation options)

With this information, the loan servicer can determine which, if any, loss mitigation options you qualify for. You may be asked to fill out a mortgage assistance application; be sure you submit this and any other required documents by the due date. Keep careful records of everyone you talk to (with times and dates) and record exactly what anyone has promised you. Open and respond to all letters and calls from your mortgage company.

Get expert help

Dealing with a mortgage delinquency or impending foreclosure can be complicated, and it's crucial that you understand all your options, your rights, and the ramifications of any choices you make. A professional housing counselor or an attorney experienced in foreclosure and/or bankruptcy can guide you through the process and help you avoid mistakes.

Housing counseling

At the same time you contact (or are contacted by) your lender about your missed payment(s), you should also contact a nonprofit housing counseling agency certified by the U.S. Department of Housing and Urban Development (https://www.consumerfinance.gov/ask-cfpb/what-is-a-hud-approved-housing-counselor-how-can-they-help-me-en-261/). A housing counselor working through a HUD-approved housing counseling agency is qualified to help you assess your housing situation, evaluate your options, and guide you through the steps toward your goal. If you are having trouble paying your mortgage, a housing counselor can examine your finances, outline your rights and options, explain the loan modification and foreclosure processes, and help you communicate more effectively with your lender—at no cost to you! With the help of a housing counselor, you are more likely to be able to avoid foreclosure.

There are HUD-approved housing counseling agencies across the U.S. You can meet with someone in person or by phone. You can find a housing counselor through any of these agencies/programs:

- **HUD**

  Online: https://apps.hud.gov/offices/hsg/sfh/hcc/fc/

  Phone: 800-569-4287 or 202-708-1455 (TTY) (help available in languages other than English)

- **HOPE Hotline** (part of the federal Making Home Affordable program: https://www.makinghomeaffordable.gov)

  Online: https://995hope.org

  Phone: 888-995-HOPE (4673) (available 24/7, in more than 170 languages)

- **Consumer Financial Protection Bureau (CFPB)**

  Online: https://www.consumerfinance.gov/find-a-housing-counselor/

  Phone: 855-411-CFPB (2372)

Legal advice

A foreclosure defense attorney licensed in your state can advise you on your options, your rights, and how to achieve your objectives (learn more about what they do and what they cost here: https://upsolve.org/learn/foreclosure-defense-lawyers)—preventing foreclosure (if you want to keep the house), protecting your credit, avoiding a deficiency judgment, etc. If you live in a state with judicial foreclosure, an attorney can advise you on how to respond to the suit. (Learn more here: https://www.nolo.com/legal-encyclopedia/free-books/foreclosure-book/chapter9-3.html.)

An attorney can also explain how filing for bankruptcy (Chapter 13 or Chapter 7) can be used as a tool. There are advantages and disadvantages to bankruptcy, which an attorney can outline. If you choose to file for bankruptcy, an attorney can take you through the process and serve as your advocate.

There are many ways to find a bankruptcy (https://www.nerdwallet.com/article/finance/find-bankruptcy-attorney) or foreclosure defense attorney, including through these organizations:

- **National Association of Consumer Advocates (NACA)**

  Online: https://www.consumeradvocates.org/findanattorney/

  Phone: 202-452-1989

- **National Association of Consumer Bankruptcy Attorneys (NACBA)**

  Online: https://nacba.org/page/find-an-attorney

- **Legal Services Corporation (free or low-cost legal aid services)**

  Online: https://www.lsc.gov

  Phone: 202-295-1500

- **American Bar Association**

  Online: https://www.americanbar.org/groups/legal_services/flh-home/flh-bar-directories-and-lawyer-finders/

- **LawHelp.org**

  Online: https://www.lawhelp.org/find-help/

- **CFPB (links to state legal aid websites)**

  Online: https://www.consumerfinance.gov/ask-cfpb/how-do-i-find-an-attorney-in-my-state-en-1549/

- **U.S. Armed Forces Legal Assistance (JAG) (for servicemembers)**

  Online: https://legalassistance.law.af.mil

Preparing to talk to a housing counselor or attorney

Being prepared with the following documents and information will help a housing counselor or attorney give you the most accurate information and advice for your particular circumstances and goals.

- Your monthly mortgage statement, as well as statements for other mortgage debt (a second mortgage or home equity loan/line of credit) or liens on the property (for example, if you are behind on your property taxes)
- Any notices from your mortgage lender/servicer that state you are in default and/or that you are at risk of foreclosure
- Account balances and minimum monthly payments due on all of your credit cards, auto and student loans, and any other debts
- Your monthly gross (before tax) and net (after tax) income for your household (recent pay stubs, and documentation of income you receive from other sources, including benefits, alimony, child support, etc.)
- Statements/balances for your financial accounts and the value of other assets
- Your most recent income tax return
- A statement in which you explain the circumstances that caused you to fall behind on your mortgage payments (for example, a job loss, divorce, illness) and the outlook for your finances going forward (is this a temporary problem, or is it a long-term or permanent situation?); provide any proof of the circumstances (for example, an unemployment benefits letter)

Questions to ask:

- What are my options if I want to keep the home? If I can't or don't want to keep the home?
- What are the advantages and disadvantages of each of these options?
- What is the timeline for these options?
- What are the next steps for the option I choose?
- If I've been denied a loan modification, can I appeal that decision?
- Is my lender/servicer carrying out the foreclosure process properly?
- If foreclosure is imminent, by when must I leave the home?
- Does my state allow the lender to pursue a

deficiency judgment on any unpaid mortgage balance after the foreclosure sale?

- Will I owe taxes on the amount my lender forgives on my mortgage (for example, as the result of a short sale or a deed in lieu of foreclosure)?

The default and foreclosure process

It can help to be aware of the stages of the default and foreclosure process (https://www.investopedia.com/financial-edge/0510/the-6-phases-of-a-foreclosure.aspx) so that you know what to expect and roughly how much time you have to act.

One or two months delinquent: Missing one or two payments will result in a late fee and a call or letter from your loan servicer. Do not ignore these communications—this is the time to discuss your options. If you haven't already contacted a housing counselor, do so now.

Three months delinquent: If you go three months without a payment, you typically will receive a demand letter (https://www.investopedia.com/terms/d/demand-letter.asp) stating the amount of the delinquency and giving you 30 days to bring the mortgage current. If you do not bring the mortgage current within the 30 days, you will receive a notice of default (NOD) (https://upsolve.org/learn/notice-of-default/) or notice of intent (NOI)—the final notice before foreclosure. (Notice types differ based on state law: https://www.nolo.com/legal-encyclopedia/whats-the-difference-between-notice-default-notice-sale-foreclosure.html.) You typically will have 30 days to remedy the situation before the formal foreclosure process begins.

Four months delinquent: If you haven't resolved the default by this point, the foreclosure proceeds. (Under federal law, a lender generally can't foreclose until at least 120 days [https://files.consumerfinance.gov/f/201312_cfpb_foreclosure-avoidance-procedures.pdf] have passed without a mortgage payment.) You will likely receive a notice of sale (https://upsolve.org/learn/what-is-a-notice-of-sale/) indicating that your property will be sold at a public auction. You have until the date of the sale to make arrangements with your lender or pay the total amount due, which now will include attorney and related fees.

You can stay in the home until the foreclosure is completed. Some states have a redemption period—a period after your home has been sold at a foreclosure sale during which you can still reclaim the property by paying the outstanding mortgage balance and all foreclosure-related costs (https://www.nolo.com/legal-encyclopedia/getting-your-home-back-after-foreclosure). If your state does not have such a period, or you can't pay the amount due, the foreclosure will stand. If you don't leave the home by the vacate date following the foreclosure, you may be evicted.

The foreclosure process and timeline vary from state to state. In states that have judicial foreclosure (where the lender needs court approval to foreclose), the timeline between delinquency and the foreclosure sale typically is longer than in states with nonjudicial foreclosure. Find your state's foreclosure laws on the Nolo website: https://www.nolo.com/legal-encyclopedia/state-foreclosure-laws. View your state's estimated timeline at https://www.realtytrac.com/real-estate-guides/foreclosure-laws/ or https://noteassistanceprogram.com/foreclosure-laws-and-procedures-by-state/.

Foreclosure- and mortgage modification-related scams

Once a lender files a notice of default or similar legal document, your mortgage troubles become public record, which means you could become a target for scammers and predatory lenders. Do not believe people who contact you promising to stop the foreclosure if you pay them a fee for their services, or who promise help that seems too good to be true. (It is!) Follow these tips to avoid becoming a victim:

- Be suspicious of anyone other than your lender who contacts you with a loan or service they promise will solve your money troubles and save your home.
- Never agree to pay an upfront fee for foreclosure prevention or mortgage modification help (a Federal Trade Commission [FTC] rule makes it illegal for a company to charge you any money to prevent foreclosure until you receive the results you were promised).
- Ignore offers to refinance. The only lenders

contacting you to refinance after you've gone into default are predatory lenders whose loans have terms that are structured to get you into even more debt and enable this new lender to foreclose when you can't pay.

- Avoid any company that guarantees they can stop a foreclosure.
- Ignore any pressure to sign paperwork that you haven't read or don't fully understand. Do not deed your property to anyone offering to pay off your mortgage or sell the home. Signing your home over to someone else does not relieve you of your mortgage obligation.

Learn more about mortgage relief scams:

- Making Home Affordable: Beware of Foreclosure Rescue Scams! (*https://www.makinghomeaffordable.gov/get-answers/get-answers-how-avoid-scams*)
- Federal Trade Commission: Mortgage Relief Scams (*https://consumer.ftc.gov/articles/mortgage-relief-scams*)

Report mortgage fraud at 800-347-3735.

Learn more

Following are some additional resources.

- If you do not understand how to read your mortgage statement, find a section-by-section explanation here: *https://www.bankrate.com/mortgages/mortgage-statement/*.
- Locate the contact information for your loan servicer on your monthly statement or coupon book, or search for your servicer here: *https://www.mers-servicerid.org/sis/*.
- If you have unresolvable problems with a mortgage servicer, file a complaint with the Consumer Financial Protection Bureau here: *https://www.consumerfinance.gov/complaint/*.
- The California Homeowner Bill of Rights (*https://oag.ca.gov/hbor*) gives the state's homeowners facing foreclosure certain protections.

About Consumer Action

www.consumer-action.org

Through education and advocacy, Consumer Action fights for strong consumer rights and policies that promote fairness and financial prosperity for underrepresented consumers nationwide.

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