

FORECLOSURE

You can avoid it



*Steps you can take to
protect your home and
your credit*

Oregon Division of Finance and Corporate Securities

Our mission

To encourage a wide range of financial services, products, and information for Oregonians, delivered in a safe, sound, equitable, and fraud-free manner.

The information contained in this brochure is intended for informational purposes only and does not constitute legal or professional advice. Seek the services of an attorney for your particular circumstances.

This agency does not endorse or recommend a particular counselor or mortgage lender. We recommend you contact the agencies listed in the resource section at the end of this publication to verify whether companies and organizations are licensed or registered.

A glossary of terms used in this publication is in the back. Terms in the glossary are in bold italics.

Becoming a homeowner is a great accomplishment, but retaining that home ownership is just as important. Most everyone experiences financial difficulties at some time, but if you're not careful, those difficulties could lead to foreclosure. Foreclosure is the legal means your lender can use to take your house if you are in default. Foreclosures can be initiated by anyone who has a *lien* on your house, including your lender or the county (if you don't pay property taxes).

Foreclosure not only means losing your home, it also causes long-term damage to your credit that could make it difficult to buy a home in the near future.

But you can avoid foreclosure. There are many things you can do after you sign your mortgage papers and move into your new home that will help you if you experience financial difficulties down the road. Following are some suggestions.

Review your loan documents

After you move into your new house, review your loan documents as soon as you have the opportunity to make sure you know how your payments are credited and what rights you have if you start missing mortgage payments.



For example, your *Truth-in-Lending* disclosure and your *Note* contain information about when your payments are due and how to ensure your payments are posted on time. If your loan is going to be transferred or sold to another company, which is a common practice, the lender or the holder of your loan must notify you in writing of these changes so you know when and to whom you should send your payments.

If you have problems with your payments being credited properly and cannot resolve them with your lender or holder of your loan, contact the National Servicing Center. See the resources section at the back of this guide for contact information. You can find additional information about your rights in this area in the *Servicing Disclosure* document.

You also need to understand what your rights would be if you have to go into foreclosure. The *Deed of Trust*, also known as the *security instrument*, in your loan documents may contain a “power of sale” clause. This means your lender or the trustee has the right to sell your property in a *non-judicial foreclosure*; the clause may specify the time, place, and terms. If there is no power of sale clause, the lender or the trustee must pursue the *judicial foreclosure* process by suing you in court.

Create a budget

You probably have heard the expression “too much month at the end of the money.” If this happens to you, you could miss mortgage payments and face foreclosure.

After you buy a house, it’s important to carefully reevaluate your financial situation and create a budget. Find out where your money goes and how you are spending it. Encourage the whole family to participate as you make the necessary cuts in your spending habits and prioritize your expenses. As soon as you can, create an emergency fund that would cover your living expenses for at least three months. For example, some people use their tax returns to open an account specifically for emergencies. If you are beginning to lose control over your finances, seek the assistance of a reputable nonprofit organization. The resources section of this brochure lists a Web site where you will find government-approved housing counseling organizations and other options you may want to consider.

Make sure you are paying your property taxes

If you do not pay your property taxes, your property may be subject to foreclosure.

In Oregon property taxes are due Nov. 15 of each year, but they can be paid in three installments: Nov. 15, Feb. 15, and May 15. Your property taxes are delinquent if you did not pay in full on or before May 15. Your property likely will be subject to foreclosure after three years of unpaid property taxes. You will be notified in your tax statements when your house will be subject to foreclosure immediately after your first year of unpaid taxes.



TAXES

It is important that you know whether you or your lender is responsible for paying your property taxes. Contact your lender or review the tax statements you receive each year. Often the color of your tax statement sent by the county indicates whether you or your lender is responsible for the payment of your taxes. For example, a yellow statement might mean the financial institution is collecting from you to pay your property taxes in addition to your mortgage loan and required insurance. A green statement might mean that you are responsible for the payments. Contact the county where your property is located to learn more about your annual real property tax statement. Please see the resources section for information about Oregon counties.

If you are disabled or a senior citizen, you may qualify for a property tax deferral if your income does not exceed the annual federal adjusted gross income (FAGI) and you live in the property. If you qualify and decide this program would work for you, the state will pay the county for your property taxes.

For more information about this process and property tax information, please contact the Department of Revenue or the county where your property is located. Contact information is in the resources section at the back of this brochure.

Avoid unnecessary liens on your house

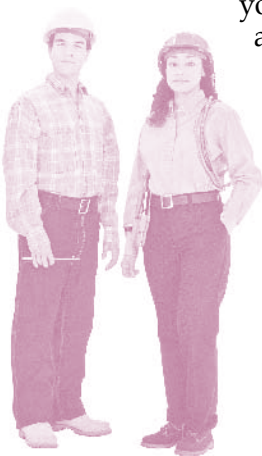
You are responsible for all liens on your house. There cannot be any liens when you sell your house. Remember, a lien holder may start the foreclosure process on your property.

Voluntary and involuntary liens can be placed on your property. An example of a voluntary lien is your loan mortgage or any junior liens. Equity loans or equity lines of credit, when you use your house as collateral, are examples of junior liens. Usually the lien recorded first would have priority to be paid first over subsequent liens.

An involuntary lien can be placed by the county where your house is located or the IRS if you have unpaid taxes, for example. Contractors and subcontractors also can place a lien, commonly known as a *mechanic's lien*, on your house if they have not been paid for work they did on

your property. Mechanic's liens are governed by different laws than other types of liens. It is important that you try to resolve any discrepancies with your contractor to avoid a lien on your house.

Another form of an involuntary lien is a judgment against a property as a result of a lawsuit where monies are awarded to the person who filed the lawsuit.



What you can do if you face foreclosure

If you do get behind on your mortgage payments, you may be able to keep your home and maintain your credit rating if you confront the problem early. The most common mistake people make when they get behind on their mortgage payments is to ignore the problem. Some people don't even open the foreclosure warnings they get in the mail from their lender.

To save your house and your credit rating, contact your lender **immediately** and try to negotiate a solution. Lenders would prefer you pay the loan instead of foreclose your property because foreclosure can be a long and expensive process. Explain your willingness to commit to a payment plan until you are in a better position to resume your regular payments.

If you are foreseeing problems for reasons beyond your control, such as the loss of a job, medical emergency, or divorce, ask to speak with a staff person about a loss mitigation plan. Prepare a letter explaining your situation, the reason you are facing financial problems, and why you think it could improve.

Ask if you can work out a *forbearance* or a loan workout plan. Ask if your unpaid monthly payments can be added to your principal loan and how much this will cost you.

The Oregon law about foreclosures has specific requirements and steps for lenders and individuals holding a lien on a property before they can foreclose a property. This period of time gives homeowners an opportunity to get back on track to save the house as long as they pay the unpaid mortgage payments, interest, and any other expenses charged by the lender. Seek legal counseling to understand your rights under the state's foreclosure laws.

If your lender allows for partial payments during this time, do so and maintain the records; this may help your chances of reaching an agreement with your lender.

Lenders approved by the Federal Housing Administration (FHA) are required to offer borrowers the following options before pursuing foreclosure, providing they qualify. If you have another type of loan, your lender may or may not offer these options, but you should ask your lender if you qualify.

▶ **Mortgage Modification**

With this option, you could refinance or extend the term of your loan to lower your payments.

▶ **Partial Claim**

This allows you to use a one-time payment from the FHA insurance fund to bring your mortgage current.

▶ **Pre-foreclosure sale**

This option may allow you to sell your property for an amount lower than your mortgage balance and avoid foreclosure.

▶ **Deed-in-lieu of foreclosure**

With this option, you may be able to “give back” your house to the lender and avoid foreclosure.

For additional information about these options, the U.S. Department of Housing and Urban Development (HUD) has a publication about FHA foreclosures. To learn how to obtain a copy, please see the resources section of this brochure.

If you are experiencing financial difficulties and do not expect your situation to improve, ask your lender to give you time to sell the house and pay off the mortgage — this will have a less-damaging effect on your credit rating.

If you have exhausted all of these options and your lender forecloses on your house, it is important to talk to a tax adviser. In some home foreclosures the home sells for an amount that is less than the unpaid amount of the mortgage. When this happens, the lender may consider forgiving the difference between the unpaid debt and the fair market value (FMV) of the house. This leads to “cancellation of debt,” or COD, income for the borrower. For example, if your mortgage debt prior to foreclosure was \$200,000 and the FMV of the house was \$170,000, you would have \$30,000 of “COD income.” If you are responsible for the unpaid property taxes, your COD income will be higher. COD income may affect your tax filings. For more information, go to the IRS Web site at <http://www.irs.gov/faqs/faq4-4.html>.

What are foreclosure scams?

Homeowners facing foreclosure should beware of foreclosure scams. Scammers can cause you to lose both your home and the equity you have built.

Many scammers contact homeowners offering to “save” their houses. Information about your property is a matter of public record and fairly accessible by anyone interested in obtaining it.

In addition to the information recorded with the county when you bought your house, notifications of default filed by the lender or a lien holder or if the house is subject to an auction or to be foreclosed are all public record. Unfortunately, unscrupulous individuals can use this information to take advantage of homeowners in distress.



Other times, homeowners facing foreclosure may respond to ads offering to pay cash immediately for houses. Although this sounds like a quick solution, it may not be the right option if your ultimate goal is to keep your home. And you need to be very careful, because many of these offers may also be scams.

Scammers are particularly interested in properties where homeowners have been living for a long time or there is an indication the homeowner has built a significant amount of equity. The schemes vary depending on what the scammer is trying to obtain. For example:

- ▶ Scammers advertise their services to negotiate with the lender on behalf of the homeowner to save the house. They often collect fees up-front, usually one month's mortgage payment. The scammers prohibit the homeowner to contact the lender so the process will not be "disrupted." In many cases, the scammers do very little or nothing to help consumers.
- ▶ In other cases, scammers will convince the homeowner to convey or give up the title of the house with the promise to return the house after it has been taken out of the foreclosure process. Scammers commonly pay the homeowner an amount significantly less than the real value of the home, sometimes as little as \$1. In some cases, the deal includes a rental agreement where the homeowner pays rent, which can be more than the original mortgage payment. The homeowner is still responsible for the payment of taxes, insurance, and other obligations as if nothing has changed except for the ownership of the house. Since the homeowner no longer has the title, the scammer can evict the homeowner if he or she does not pay the rent.

- ▶ Some scammers say they will help homeowners save their house by refinancing the loan in default. They ask the homeowner to sign papers that appear to be refinancing or lease-to-buy agreements. But in most cases, the documents give the scammer the title of the house.

If you or someone you know is victim of a foreclosure scam, immediately contact the state's Attorney General Office. You can find the contact information in the resources section of this brochure.

Resources

Tax information:

Counties:

<http://bluebook.state.or.us/local/counties/counties34.htm>

Department of Revenue:

(503) 378-4988

www.oregon.gov/DOR

For information on mechanic's liens:

Construction Contractors Board:

(503) 378-4621

www.oregon.gov/ccb

For help in ensuring your mortgage payments are credited:

Department of Housing and Urban

Development (HUD) National Servicing Center:

(888) 297-8685

www.hud.gov

Federal Trade Commission

Mortgage servicing publication

www.ftc.gov/bcp/online/pubs/homes/mortgserv.htm

Financial counseling:

Department of Housing and Urban Development (HUD) approved housing counseling agencies:

www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=OR
or www.hud.gov

Foreclosure Hotline:

(888) 995-HOPE,
(888) 995-4673

Other services:

Housing Connections:

Dial 2-1-1
www.housingconnections.org

To report scams:

State Attorney General Office:

(877) 877-9392
www.doj.state.or.us
E-mail: consumer.hotline@doj.state.or.us

To learn more about federal tax liens against your property for unpaid taxes and to learn about cancellation of debt income:

www.irs.gov



To check mortgage lender licenses/registrations

State-chartered institutions

If your institution is regulated at the state level, contact the Oregon Division of Finance and Corporate Securities (DFCS), (503) 378-4140, toll-free (866) 814-9710, or TTY (503) 378-4100. To file a complaint you can download the complaint form from the DFCS Web site, www.dfcs.oregon.gov, file the complaint online following the instructions, or write to:

Oregon Department of Consumer and
Business Services
Division of Finance and Corporate Securities
350 Winter Street NE, Room 410
P.O. Box 14480
Salem, OR 97309-0405

Commercial banks

If the name of your bank includes the word "National" or has the initials "N.A.," it is regulated by the Office of the Comptroller of the Currency (OCC). The phone number for the OCC is (800) 613-6743 or (415) 545-5976.

The OCC's Web address is www.occ.treas.gov.

Savings and loan associations or savings banks

If your institution has the word "Federal" or the initials "F.S.B." or "F.A." included in its name, it is regulated by the Office of Thrift Supervision (OTS). The number for the OTS is (800) 842-6929. The OTS Web address is www.ots.treas.gov.

Credit unions

If your credit union has the words "federal credit union" in its name or the initials "F.C.U.," you can contact the National Credit Union Administration (NCUA), (703) 518-6330. The NCUA Web address is www.ncua.gov.

Other regulating agencies

Federal Reserve Board (FRB)

Regulates state banks that are members of the Federal Reserve System

(202) 452-3693

www.federalreserve.gov

Federal Deposit Insurance Corporation (FDIC) San Francisco Regional Office

Regulates federally insured state banks that are not members of the Federal Reserve System

Division of Compliance and Consumer Affairs

(877) 275-3342

www.fdic.gov

Glossary:

Deed of trust or security instrument

In Oregon a debt is secured by a deed of trust instead of a mortgage, which means there is a neutral third party called a trustee. If the borrower does not make the mortgage payments, the lender will instruct the trustee to sell the property to pay off the debt.

Forbearance

Lenders may be willing to work with you on a payment plan, which can temporarily help you until you are in a better financial situation if you are expecting funds from other sources such as settlements or tax returns in the near future. You would need to show documentation about the money you are anticipating.

Judicial vs. non-judicial foreclosure

A judicial foreclosure means the process of taking the house would go to a judge as a lawsuit against the homeowner. A non-judicial foreclosure does not go to court and is not heard by a judge. If your “deed of trust” document has a power-of-sale clause, the trustee can initiate a non-judicial process.

Lien

A hold or a claim placed on a property to secure the payment of a debt or other obligation.

Mechanic's lien

This type of lien can be placed by anyone who made an improvement or provided materials for your house. Subcontractors or laborers can place a lien on your house as well. Contact the Construction Contractors Board to learn about your rights. See the resources section of this publication.

Note or promissory note

This document, which you should have received when you closed your loan, has the details and conditions under which you borrowed the money to buy your house. The note includes the amount of money you borrowed, the interest rate, the amount of your payments, when they are due, the grace period, and late fees.

Servicing disclosure

This required notification provided by your lender or the holder of your loan will notify you of your rights when your loan is sold or transferred. The notification will give you contact information, including a toll-free number, if you have questions when your loan has been sold or transferred to another institution. This disclosure also includes information about what you can expect if you file a complaint or dispute with the company holding your loan.

Truth-in-lending disclosure

A document you should have received from your lender within three business days after you applied for a mortgage loan. In it you will find, among other clauses, when your payments are due, a grace period, if any, for late payment charges, and if your loan has a pre-payment penalty.

Do's:

- ▶ Establish an emergency fund of at least three month's worth of living expenses.
- ▶ Make sure your payments are credited/posted properly. Review your statements when you receive them.
- ▶ Contact your lender as soon as you foresee difficulties in making your loan payments.
- ▶ Explain your situation. Ask your lender/servicer for a forbearance and a loan workout plan.
- ▶ Ask if your unpaid mortgage payments can be added to your mortgage principal.
- ▶ If you are unable to resume the regular monthly payments, ask the lender for time to sell your home to pay off the mortgage balance.
- ▶ If your lender forecloses on your house, talk to a tax adviser. The foreclosure may affect your tax filings if the house sells for less than the amount you owe on your mortgage.

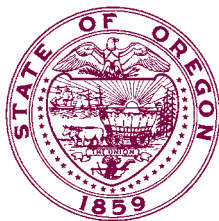
Don'ts

- ▶ Don't overuse your equity to consolidate other debt.
- ▶ Don't respond to offers in the mail or media offering good deals to refinance.
- ▶ Don't ignore late payments notifications from your lender.
- ▶ *Don't sign any documents you don't understand!*
- ▶ Don't respond to offers to "save" your house.
- ▶ Don't give away the title of your house without consulting with an attorney first.

Notes

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Oregon Department of
Consumer and Business Services

Division of Finance and Corporate Securities

350 Winter St. NE, Room 410

P.O. Box 14480

Salem, OR 97309-0405

Toll-free: (866) 814-9710

Web: *dfcs.oregon.gov*