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Chapter 1 : Facing Foreclosure? Bookmark | Consumer Information

Home Affordable Foreclosure Alternatives (HAFA): If your mortgage payment is unaffordable and you are interested in transitioning to more affordable housing, you may be eligible for a short sale or deed-in-lieu of foreclosure through HAFA SM.

This section does not cite any sources. Please help improve this section by adding citations to reliable sources. Unsourced material may be challenged and removed. November Learn how and when to remove this template message The mortgage holder can usually initiate foreclosure at a time specified in the mortgage documents, typically some period of time after a default condition occurs. In the United States, Canada and many other countries, several types of foreclosure exist. Judicial[edit] Foreclosure is by judicial sale, commonly called judicial foreclosure, involves the sale of the mortgaged property under the supervision of a court. Judicial foreclosure is available in every US state and required in many Florida requires judicial foreclosure. The lender initiates judicial foreclosure by filing a lawsuit against the borrower. As with all other legal actions, all parties must be notified of the foreclosure, but notification requirements vary significantly from state to state. A judicial decision is announced after the exchange of pleadings at a usually short hearing in a state or local court. In some rather rare instances, foreclosures are filed in federal courts. Nonjudicial[edit] Foreclosure by power of sale, also called nonjudicial foreclosure, and is authorized by many states if a power of sale clause is included in the mortgage or if a deed of trust with such a clause was used, instead of an actual mortgage. In some US states, like California and Texas , nearly all so-called mortgages are actually deeds of trust. This process involves the sale of the property by the mortgage holder without court supervision as elaborated upon below. This process is generally much faster and cheaper than foreclosure by judicial sale. As in judicial sale, the mortgage holder and other lien holders are respectively first and second claimants to the proceeds from the sale. Strict[edit] Other types of foreclosure are considered minor because of their limited availability. Under strict foreclosure, which is available in a few states including Connecticut, New Hampshire and Vermont, if the mortgagee wins the court case, the court orders the defaulted mortgagor to pay the mortgage within a specified period of time. Should the mortgagor fail to do so, the mortgage holder gains the title to the property with no obligation to sell it. This type of foreclosure is generally available only when the value of the property is less than the debt " under water ". Historically, strict foreclosure was the original method of foreclosure. Acceleration[edit] Acceleration is a clause that is usually found in Sections 16, 17, or 18 of a mortgage. Not all accelerations are the same for each mortgage, as it depends on the terms and conditions between lender and obligated mortgagor s. When a term in the mortgage has been broken, the acceleration clause goes into effect. It can declare the entire payable debt to the lender if the borrower s were to transfer the title at a future date to a purchaser. The clause in the mortgage also instructs that a notice of acceleration must be served to the obligated mortgagor s who signed the Note. Each mortgage gives a time period for the debtor s to cure their loan. The most common time periods allot to debtor s is usually 30 days, but for commercial property it can be 10 days. In the letter it informs the Borrower s that they have 10 or 30 days from the date on the letter to reinstate their loan. Also in the acceleration of the mortgage the lender must provide a payoff quote that is estimated 30 days from the date of the letter. Once the Borrower s receives the two letters providing a time period to reinstate or pay off their loan the lender must wait until that time expires in to take further action. When the 10 or 30 days have passed that means that the acceleration has expired and the Lender can move forward with foreclosing on the property. The lender will also include any unpaid property taxes and delinquent payments in this amount, so if the borrower does not have significant equity they will owe more than the original amount of the mortgage. Lenders may also accelerate a loan if there is a transfer clause, obligating the mortgagor to notify the lender of any transfer, whether; a lease-option, lease-hold of 3 years or more, land contracts, agreement for deed, transfer of title or interest in the property. The vast majority but not all of mortgages today have acceleration clauses. The holder of a mortgage without this clause has only two options: Alternatively, the court may order the property sold subject to the mortgage, with the proceeds from the sale going to the payments owed the mortgage holder. Process[edit] The process of foreclosure can be rapid or lengthy and varies from state to state. Other options such as refinancing , a short sale , alternate financing, temporary arrangements with the lender, or even bankruptcy may present homeowners with ways to avoid foreclosure. Websites which can connect individual borrowers and homeowners to lenders are increasingly offered as mechanisms to bypass traditional lenders while meeting payment obligations for mortgage providers. Although there are slight differences between the states, the foreclosure process generally follows a timeline beginning with initial missed payments, moving to a sale being scheduled and finally a redemption period if available. Using a " deed in lieu of foreclosure ," or " strict foreclosure ", the noteholder claims the title and possession of the property back in full satisfaction of a debt, usually on contract. In the proceeding simply known as foreclosure or, perhaps, distinguished as "judicial foreclosure" , the lender must sue the defaulting borrower in state court. Many states require this sort of proceeding in some or all cases of foreclosure to protect any equity the debtor may have in the property, in case the value of the debt being foreclosed on is substantially less than the market value of the real property; this also discourages a strategic foreclosure by a lender who wants to obtain the property. In this foreclosure, the sheriff then issues a deed to the winning bidder at auction. Banks and other institutional lenders may bid in the amount of the owed debt at the sale but there are a number of other factors that may influence the bid, and if no other buyers step forward the lender receives title to the real property in return. Nonjudicial[edit] Historically, the vast majority of judicial foreclosures have been unopposed, since most defaulting borrowers have no money to hire counsel. This type of foreclosure is commonly called "statutory" or "nonjudicial" foreclosure, as opposed to "judicial", because the mortgagee does not need to file an actual lawsuit to initiate the foreclosure. A few states impose additional procedural requirements such as having documents stamped by a court clerk; Colorado requires the use of a county "public trustee," a government official, rather than a private trustee specializing in carrying out foreclosures. In May , the U. Amalgamated Bank, U. Further legal action, such as an eviction , may be necessary to obtain possession of the premises if the former occupant fails to voluntarily vacate. Defenses[edit] In some states, particularly those where only judicial foreclosure is available, the constitutional issue of due process has affected the ability of some lenders to foreclose. In Ohio, the federal district court for the Northern District of Ohio has dismissed numerous foreclosure actions by lenders because of the inability of the alleged lender to prove that they are the real party in interest. The involvement of the county clerk or recorder in recording the necessary documents has been held to be insufficient to invoke due process, since they are required by statute to record all documents presented that meet minimum formatting requirements and are denied the discretion to decide whether a particular foreclosure should proceed. A further rationale is that under the principle of freedom of contract , if debtors wish to enjoy the additional protection of the formalities of judicial foreclosure, it is their burden to find a lender willing to provide a loan secured by a traditional conventional mortgage instead of a deed of trust with a power of sale. Courts have also rejected as frivolous the argument that the mere legislative act of authorizing or regulating the nonjudicial foreclosure process thereby transforms the process itself into state action. This effect is the same as the strict foreclosure that occurred in English common law of equity as a response to the development of the equity of redemption. Title search and tax lien issues[edit] In most jurisdictions, it is customary for the foreclosing lender to obtain a title search of the real property and to notify all other persons who may have liens on the property, whether by judgment , by contract , or by statute or other law, so that they may appear and assert their interest in the foreclosure litigation. This is accomplished through the filing of a lis pendens as part of the lawsuit and recordation of it in order to provide public notice of the pendency of the foreclosure action. Failure to give notice results in the lien remaining attached to the real property after the sale. Therefore, it is imperative the lender search local federal tax liens, so that if parties to the foreclosure have a federal tax lien filed against them, the proper notice to the IRS is given. A detailed explanation by the IRS of the federal tax lien process can be found. To keep the right of redemption, the debtor may be able to petition the court for an injunction. If repossession is imminent, the debtor must seek a temporary restraining order. However, the debtor may have to post a bond in the amount of the debt. This protects the creditor if the attempt to stop foreclosure is simply an attempt to escape the debt. A debtor may also challenge the validity of the debt in a claim against the bank to stop the foreclosure and sue for damages. In a foreclosure proceeding, the lender also bears the burden of proving they have standing to foreclose. In other words, to challenge an allegedly wrongful foreclosure, the borrower must make legal tender of the entire remaining balance of the debt prior to the foreclosure sale. California has one of the strictest forms of this rule, in that the funds must be received by the lender before the sale. One tender attempt was held inadequate when the check arrived via FedEx on a Monday, three days after the foreclosure sale had already occurred on Friday. Occasionally, borrowers have raised enough cash at the last minute usually through desperate fire sales of other unencumbered assets to offer good tender and have thereby preserved their rights to challenge the foreclosure process. Courts have been unsympathetic to attempts by such borrowers to recover fire sale losses from foreclosing lenders. In the case First National Bank of Montgomery v. Jerome Daly , Jerome Daly claimed that the bank did not offered a legal form of consideration because the money loaned to him was created upon signing of the loan contract. The myth reports that Daly won, did not have to repay the loan, and the bank could not repossess his property. In fact, the "ruling" widely referred to as the "Credit River Decision" was ruled a nullity by the courts. However, there are a number of issues that affect how pricing for properties is considered, including bankruptcy rulings. In a weak market, the foreclosing party may set the starting price at a lower amount if it believes the real estate securing the loan is worth less than the remaining principal of the loan. Time from notice of foreclosures to actual property sales depends on many factors, such as the method of foreclosure judicial or non-judicial. When the remaining mortgage balance is higher than the actual home value, the foreclosing party is unlikely to attract auction bids at this price level. A house that has gone through a foreclosure auction and failed to attract any acceptable bids may remain the property of the owner of the mortgage. That inventory is called REO real estate owned. In most situations, insurance requirements guarantee that the lender gets back some pre-defined proportion of the loan value, either from foreclosure auction proceeds or from PMI or a combination of those. Nevertheless, in an illiquid real estate market or if real estate prices drop, the property being foreclosed could be sold for less than the remaining balance on the primary mortgage loan, and there may be no insurance to cover the loss. In this case, the court overseeing the foreclosure process may enter a deficiency judgment against the mortgagor. There are exceptions to this rule. If the mortgage is a non-recourse debt which is often the case with owner-occupied residential mortgages in the U. In California and some other US states, original mortgages the ones taken out at the time of purchase are typically non-recourse loans; however, refinanced loans and home equity lines of credit are not. If the lender chooses not to pursue deficiency judgmentâ€”or cannot because the mortgage is non-recourseâ€”and accepts the loss, the borrower may have to pay income taxes on the unrepaid amount if it can be considered "forgiven debt. Renegotiation alternative[edit] In the wake of the United States housing bubble and the subsequent subprime mortgage crisis there has been increased interest in renegotiation or modification of the mortgage loans rather than foreclosure, and some commentators have speculated that the crisis was exacerbated by the "unwillingness of lenders to renegotiate mortgages". Treasury sponsored Hope Now initiative and the "Making Home Affordable" plan have offered incentives to renegotiate mortgages. Renegotiations can include lowering the principal due or temporarily reducing the interest rate. The leading theory attributes the lack of renegotiation to securitization and a large number of claimants with security interest in the mortgage. There is some support behind this theory, but an analysis of the data found that renegotiation rates were similar among unsecuritized and securitized mortgages. Borrowers were heard to complain that they were misled by these practices and would often be "surprised" that their home had been sold at foreclosure auction, as they believed they were in a "loan modification process". The study found that: Other overly represented groups include African Americans, renter households, households with children, and foreign-born homeowners.

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Chapter 2 : Facing Foreclosure? - Washington Homeownership Resource Center

To sell the home as a short sale, you should list it with a real estate professional that's well versed in these types of sales. "The concept of short sales being a viable option has gained.

Email The federal government has two choices. It can bail out big banks and hope the help trickles down to homeowners. Or it can help homeowners and hope the help trickles up to big banks. I mean, when has our bureaucracy ever moved with the speed and savvy required in a crisis? Here are some ways you can help yourself. Get Help Ironically, the first step to helping yourself is to ask for help -- but not from the government. If you are facing foreclosure, you cannot -- must not -- go through the process alone. Just as you had a real estate agent and a title attorney who helped you get into the home, you need pros who can help you stay in it. Specifically, you should reach out to one of the wonderful nonprofit agencies that provides housing counseling at low or no cost. Click here for a list of housing counselors nationwide. You can search within your state. If you are facing foreclosure, start with those that list "Mortgage Delinquency and Default Resolution" as one of their services. They have more negotiating tools at their disposal the earlier you start. Many people find it intimidating to approach their lender directly about negotiating a new payment plan. A seasoned housing counselor can help you through all this. Get Organized Do your housing counselor the favor of being on top of your paperwork. You can imagine how swamped they are right now. You will receive better, faster service if you are respectful enough to gather the documentation they need to go to bat for you. One of the first steps a housing counselor will take to help you is to figure out who your lender actually is. The country is crawling with for-profit con artists who say they can help you negotiate a new deal with your lender. Some advise you to declare bankruptcy. Often, these "foreclosure rescue" schemers charge a big fee up front hundreds or even thousands of dollars , then do nothing for you and disappear. Eventually, they evict you and take possession of your home. One key way to guard against these crooks is simple: Fast-talking thieves look up lists of people facing foreclosure and target them. Instead, only do business with companies and counselors that YOU seek out. My term for this advice is, "Be the hunter, not the hunted. Have you thought about renting out an extra room to a college student? Can your family make do with just one car? If you want to go green, selling one vehicle and taking public transit is a big start. Perhaps the thought of working six days a week in your current job is nightmarish. A friend of mine is an HIV counselor during the week, but works at a home and garden store on Saturdays. For her, the retail work is light and easy and she brings in some extra income. You should also take a hard look at whether you really belong in your house. Did you buy over your head because the no-questions-asked loans of the past decade made it possible for you? Perhaps you would be less stressed out in more modest digs. If so, sometimes you can sell your home for less than you owe and your lender will agree to take the loss instead of foreclosing. Ultimately, that is less expensive for them. And families are often pleasantly surprised at how they reconnect with each other in closer quarters.

Chapter 3 : Facing Foreclosure? Know Your Options

Signs of a Foreclosure Rescue Scam. If you are in danger of foreclosure, AVOID any individual or company that: Requires a fee in advance. Don't pay any business, organization, or person who promises to prevent foreclosure or guarantees you a new mortgage.

If you are struggling to make your payments If you are current but having trouble paying your mortgage, you should contact your mortgage servicer. You do not have to be behind to qualify for a loan modification. However, if you are current, you will have to show that you are at risk of imminent default. Do not stop making payments. A default in payment brings you closer to foreclosure and damages your credit score. If you are current on your mortgage, you may be able to refinance with a different lender. A refinance could lower your interest rate and monthly payment. For refinancing options, talk to the lending department at your preferred banking institution. If you are behind on payments Do not ignore the problem. Open the letters from your lender or servicer and answer their phone calls. Be honest about your situation. The earlier you talk to your servicer, the better your chances of working together for a solution. If that happens, you may lose your home and all of the money you have already invested in it. Speak to qualified advisers Many resources can give you free guidance on avoiding foreclosure. Watch out for those who makes promises and ask for payment of upfront fees. Such offers are likely fraudulent and against the law. Know your rights There are many steps a servicer must take before they can foreclose on your home. To cure, you will need to make all your missed payments to the lender before the cure period ends. If you get this notice, read it carefully. Review and complete the Notice of Election form and return it to the address listed by the due date. Even if you do not receive this notice, you can still apply for a loan modification with your servicer. This protection applies for 90 days after active duty. The SCRA notice is one of the steps the servicer takes in the forclosure process. But, it is very important you apply right away. Want to know more? Here are specific Massachusetts laws about the foreclosure process:

Chapter 4 : Foreclosure - Wikipedia

The entire foreclosure process can take anywhere from two to 12 months, depending on how fast your lender acts and where you live. Some states allow a nonjudicial process that's speedier, while others require time-consuming judicial proceedings.

When it comes to your home and your mortgage you have certain rights under the law. Contact a Not-For-Profit Housing Counselor Housing counselors that handle foreclosure-related issues can give you advice on your options and resources at little or no cost. They may also be able to negotiate with your lender for free and help you find free legal services in your area. CNYCN partners with more than 50 agencies and coordinates foreclosure prevention and intervention services in all five boroughs. CNYCN can help you find the right services for your needs. Seek Legal Assistance Contact a lawyer and review your mortgage documents. Make sure your loan is not in violation of any laws. If you do not think you can afford a lawyer, you may qualify for free legal assistance. For more information, you can call the Legal Aid office in your area, visit Law Help at www. Watch Out For Scams Solutions that sound too good to be true usually are! BEWARE of anyone who asks for an upfront fee in exchange for getting you a loan modification, saving your home from default or stopping a foreclosure or tax sale. New York law prohibits the collection of such fees in most cases. NEVER submit your mortgage payments to anyone other than your mortgage company without their approval. If you still have questions about where to turn for assistance or if you believe you are a victim of mortgage fraud, call the New York State Department of Financial Services at Our staff can help you file a complaint. We can also answer your questions about mortgages, personal debt and the foreclosure process and can help you find professional help and resources in your area. File A Complaint Learn how how to file a complaint against a regulated entity by mail, fax, e-mail or in person. Please use this Homeowner Checklist as a tool for collecting the key documents that should be submitted to the Department with your complaint. National Mortgage Settlement If you were foreclosed on between January 1, and December 31, by one of the five mortgage servicers involved in the settlement, you maybe eligible for some compensation. Your Attorney General and the Settlement Administrator will contact you by mail if you qualify for a payment. If you have questions about your eligibility or compensation under the settlement, please call the Settlement Administrator on its toll-free hotline at To learn more about the settlement visit the Office of Mortgage Settlement Oversight.

Chapter 5 : Facing Foreclosure â€“ The Law Office of Barry D. Moore

Foreclosure is a situation in which a homeowner is unable to make mortgage payments as required, which allows the lender to seize the property, evict the homeowner and sell the home, as stipulated in the mortgage contract.

Looking for a suitable home and making an offer to purchase the home can be an exciting and nerve racking experience. Fortunately, a real estate agent , mortgage broker, and escrow agent are often present to guide you through the process and ensure that all of the proper paperwork is prepared and executed. However, after the sale is completed, there is often not anyone available to consult with when you experience financial troubles and face foreclosure. In many situations, the homeowner cannot afford to hire an attorney and does not have enough knowledge about the law to feel comfortable communicating with the lender alone. This pamphlet is designed to provide a basic introduction and description of the foreclosure process,the laws governing foreclosure, and possible options and sources of further guidance for those facing foreclosure. Below are several key terms that you may encounter in the foreclosure process. Several of these are discussed in greater detail later in this pamphlet. Collateral â€" Property pledged to the lender in the deed of trust as security for the repayment of the loan. Deed of Trust â€" Mortgage instrument that creates a lien on the collateral and allows the trustee to sell it to satisfy the loan debt in the event of a default. Default â€" The failure of the borrower to make the loan payments as agreed in the promissory note or workout plan, as declared by the loan servicer. Delinquency â€" A loan payment that is not paid on the due date, but within the period allowed before actual default is declared. Lender â€" The entity that gave you the mortgage loan. It may not be the same entity to whom you send your payments. Mortgagee â€" Lender or holder of the security interest in the property; the lienholder; the mortgage servicer under certain conditions. Mortgagor â€" Debtor, borrower and grantor of the security interest in the collateral; owner of the property. Mortgage Servicer â€" The entity to whom you send your monthly payments. The lenderor investor has contracted with the servicer to handle your loan after closing. The servicer is your contact for any issues you have with your mortgage loan. The original mortgagee or lender may be the mortgage servicer, if it still receives payments from the debtor. Nonjudicial Foreclosure â€" Foreclosure process that involves no judicial intervention and is free of court involvement. In other states, the security instrument is also known as the mortgage. Substitute Trustee â€" Person appoint ed by the current mortgagee or mortgage servicer to exercise the power of sale in lieu of the original trustee designated in the deed of trust. Trustee â€" Person or persons authorized to exercise the power of sale under the terms of the deed of trust. What are the different types of foreclosures? In Texas, the type of foreclosure process that is used by a lender depends on the type of debt that is owed. There are two general classes of foreclosure: There is also a third type of foreclosure that combines parts of the non-judicial and judicial foreclosures and is used only for specific types of loans. Non-judicial Foreclosure A non-judicial foreclosure is used when the loan was used to purchase the home or to refinance the original purchase loan. In a non-judicial foreclosure, the foreclosure is performed without involving a court or judge. The non-judicial foreclosure is often performed by attorneys hired by the lender. As discussed in more detail below, the non-judicial foreclosure occurs at the courthouse on the first Tuesday of the month after at least two notices have been sent to the homeowner. Non-judicial foreclosures are the most common type and will most likely be the type of foreclosure that a homeowner will encounter. Judicial Foreclosure A judicial foreclosure generally occurs when a government entity is seeking to collect taxes owed on the property. The government will file a lawsuit with the court seeking to have your property sold to pay for property taxes that are owed. If the government proves that the taxes are owed and the judge signs an order for foreclosure, the property will be sold by the sheriff or constable at the courthouse on the firs t Tuesday of the month. It is possible that a private lender may choose this method instead of a non-judicial foreclosure, but it is unlikely because it usually takes longer than a non-judicial foreclosure and the lender has less control. If you are served with a lawsuit seeking foreclosure of your property for failure to pay taxes, it is recommended that you con-tact an attorney in your area to assist you in filing a proper response. If you cannot afford an attorney and cannot locate a legal aid center to assist you, you should contact the government office that has filed the law-suit because they may be willing to work out a payment plan or enter into some form of payment agreement. Obtaining legal advice in these situations is strongly encouraged because there are special rules for senior citizens and the disabled that may stop the foreclosure. Combination Foreclosure If a homeowner has received a home equity loan or a loan that was used to pay property taxes, the lender must obtain a court order approving the foreclosure before performing a non-judicial foreclosure. After the lender provides the First Notice see description below and the homeowner does not pay the debt owed, the lender must file an application with the court requesting an order of foreclosure. Unlike a typical lawsuit, the application does not have to be serve d on the homeowner by a sheriff or constable, but instead can be delivered by certified mail. The homeowner has 38 day s to file a response to the foreclosure application. If a response is filed, the court will hold a hearing to determine whether the lender is entitled to foreclosure. If a foreclosure order is signed by the court, the lender will then be allowed to continue with a non-judicial foreclosure by providing the Second Notice Notice of Sale as discussed below. What documents do I need to locate if I am facing a non-judicial foreclosure? Anyone who has purchased a home or refinanced a home loan knows that there were numerous loan documents signed at the closing. These documents are usually prepared by the lender and presented to you by the title company at closing. When the closing is complete, the title company provides the homeowner with a set of copies that are often placed in a drawer or cabinet. If everything goes well, it may not be necessary to look at these documents again, but they become very important if you are unable to make a mortgage payment and the lender begins the foreclosure process. It is important that the homeowner know where their loan documents are kept and become familiar with the primary documents discussed below when foreclosure begins to become a reality. In Texas, there are three primary documents that serve as the heart of a home purchase: This of course assumes that the purchaser made a down payment and has borrowed the remainder of the purchase price from a bank or mortgage lender. Warranty Deed The Warranty Deed is the document that transfers ownership of the property from the seller to the buyer. At the closing, the purchaser will provide a certain amount of money as the down payment and to pay the closing costs. The larger the amount of the down payment, the smaller the amount that will have to be borrowed from the bank. In addition to the down payment from the purchaser, the lender will arrange for the remaining sales price to be paid to the seller. The individual seller no longer has any rights or claims to the property. The Warranty Deed will be recorded in the property records of the county where the home is located giving notice to the world that the buyer is now the legal owner of the home. Promissory Note The Promissory Note is the document that authorizes the loan from the lender for the purchase of the property. Th e Promissory Note includes information on the lender who made the loan; the payment terms of the loan such as the payment amount, number of payments; and interest rate, and the terms that the lender must follow if the homeowner fails to make the required loan payments, or otherwise defaults under the Promissory Note. The Promissory Note is important because it will describe when a missed payment actually becomes a default, the notices, if any, that the lender must provide to you before a missed payment becomes default, and whether the lender must provide you an opportunity to cure the default before beginning foreclosure. The exact terms will depend on the language of the Promissory Note making it important for you to review this information to ensure that the lender has complied with the terms of the Promissory Note before initiating a non-judicial foreclosure. Deed of Trust The Deed of Trust is the document that actually gives the lender the right to per-form a non-judicial foreclosure on your home if you default in making payments under the Promissory Note. This provision is referred to as the power of sale clause. The Deed of Trust is not an actual deed as described above because it does not give the lender legal title to your home like the Warranty Deed. Instead, the Deed of Trust gives the lender certain rights in your home in exchange for the lender giving you the loan to complete the purchase. One of those rights is the right to foreclose on your home if you default in making your monthly mortgage payments under the Promissory Note. As you can see, it is important to be familiar with the payment and default provisions of the Promissory Note because the lender cannot foreclose under the Deed of Trust until you have defaulted under the Promissory Note. A lender performing a non-judicial foreclosure is bound to follow the provisions in the Deed of Trust regarding foreclosure as well as the statutory laws governing foreclosure that are found in the Texas Property Code. What laws must a lender follow when performing a non-judicial foreclosure? In addition to the provisions in the Deed of Trust that will set the rules for fore closure of you r property, there are statutes that set certain minimum requirements that apply to all non-judicial foreclosures of residential properties in Texas. These laws are contained in Chapter 51 of the Texas Property Code. Because compliance with these statutes has been established as the minimum requirements for a lender, most deeds of trust do not impose any additional requirements on lenders above and beyond the minimums found in Chapter 51 of the Texas Property Code. However, it is possible that your Deed of Trust may contain terms that require the lender to provide additional notices before performing the foreclosure sale, that provide you with a right to pay the missed mortgage payments to stop the foreclosure sale, or that provide you with the right to redeem your property after the foreclosure sale occurs. Again, it is very important that you review and become familiar with your rights under the Deed of Trust to ensure that the lender has not violated any of those rights in performing the foreclosure. The discussion that follows regarding the foreclosure process will assume that your Deed of Trust only requires the lend er to follow the requirements of Chapter 51, which is probably the most common scenario for most residential properties. What steps are involved in a non-judicial foreclosure? Once a homeowner has missed a mortgage payment and is in default under the Promissory Note, the lender may attempt several unofficial steps to resolve the problem such as collection calls, letters, acceptance of partial payments, or negotiating a temporary payment plan. Notice of Default and Intent to Accelerate First Notice Your lender or its attorney must send you a letter by certified mail notifying you that you have at least twenty 20 days to cure the default, or in other words, to make any payments that were missed plus any late charges that may have been assessed. There is no requirement that the homeowner actually receive the letter so simply ignoring certified mail letters or refusing to sign from them will not protect you. Instead, you should read all letters and mailings from your lender carefully to ensure that you do not miss a deadline or opportunity to fix the problem. If the back due payment s are not brought current within the 20 days, the lender has the right to demand that the entire loan amount be paid immediately. Notice of Sale and Acceleration of Debt Second Notice After the day period has expired, the lender must send a second letter by certified mail notifying you that the entire loan balance is now due, and the failure to pay will result in the sale of your home. Again, there is no requirement that you actually receive or read the notice as long as it was sent by certified mail to the last known address on file with the lender. This reinforces the importance of notifying your lender if your mailing address changes after you purchase your home. The notice must be provided at least twenty-one 21 days before the sale occurs. It is possible that after receiving the First Notice or the Second Notice you are contacted by your lender offering to negotiate a resolution, delay the foreclosure, or other possible solution. These individuals may not be working with or communicating with the attorneys who are performing the foreclosure. If you communicate with anyone other than the Trustee or attorney who sent the First Notice or Second Notice, you should contact the Trustee or attorney who sent the foreclosure notices to make sure that they are aware of the offer made by the lender and ask them to confirm in writing that the foreclosure sale will be postponed. Unless you have written confirmation from the Trustee or attorney that the sale will be delayed, you should assume that it will occur at the time and date in the Second Notice. It is a good idea to get all offers, promises, or other representations from the lender or Trustee in writing so that you have a complete and accurate history of the communications. Foreclosure Sale In Texas, foreclosure sales must occur on the first Tuesday of the month at the designated area of the county courthouse. If the first Tuesday of the month is a holiday, the sale will proceed as usual and will not be delayed until the next business day. The designated area for foreclosure sales is usually the front steps of the courthouse, but may be located elsewhere in the courthouse. The sale must occur betwee n The Notice of Sale will state the earliest time at which the sale will begin, and the actual sale must take place no later than three 3 hours from the time stated in the Notice of Sale. For example, if the Notice of Sale states that the foreclosure sale will begin at If the Trustee does not perform the foreclosure sale on the proper date, at the proper time, and at the proper location, he or she must start the whole process over at the beginning by reissuing the required notices.

Chapter 6 : Stop Foreclosure Fast

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Foreclosure is scary, but it doesn't automatically mean you're going to lose your home. Here are some things you can do to slow down - and hopefully stop - the process.

Chapter 7 : Facing Foreclosure? | Consumer Information

Help For Homeowners Facing Foreclosure. If you are having trouble making your mortgage payments, have already fallen behind or are in default or foreclosure, you may feel scared, ashamed or overwhelmed.

Chapter 8 : The Acropolis Gardens | Wells Fargo | Natixis

Homeowner's Options When Facing Foreclosure Your mortgage payment is probably the biggest expense in your family budget. When money is tight and you've cut as much of your other expenses as possible, it still may be hard to make mortgage payments.

Chapter 9 : Preventing Foreclosure | calendrierdelascience.com

Free report shows struggling homeowners how to stop foreclosure fast. Educate and empower yourself by learning the secrets to stopping foreclosure.