General Information

During the minimum three-month cure or reinstatement period, you may continue living in your home even though you are unable to make your monthly mortgage loan payments. You do not have to move from your home until after the foreclosure sale is conducted and the eviction process is completed. It may be beneficial to stay in occupancy of your home to avoid any loss of property insurance coverage or to prevent vandalism that may occur if you move out.

Should you be a borrower under a FHA loan or a veteran under a VA loan, federal law establishes extended grace periods. FHA borrowers should contact HUD/FHA and veterans should contact the U.S. Department of Veterans Affairs for the latest homeowner safeguards so that you and your lender or its servicing agent are aware of and comply with this special set of guidelines.

The free counseling assistance through HUD-approved counseling services may involve your authorization of a person to negotiate on your behalf with your lender or its servicing agent. You will need to provide enough financial information to your HUD-certified loan/credit counseling service (or to your lender or its servicing agent if you are negotiating personally) so they can verify a monthly mortgage loan payment that you can reasonably afford.

If you and your lender or its servicing agent cannot agree on an alternative or optional plan to avoid foreclosure before the end of the minimum three-month reinstatement period, the lender or its servicing agent will move forward -subject to rare exception- with the non-judicial foreclosure procedure (unless otherwise delayed by the operation of federal or state law).

Some lenders or their servicing agents are willing to pay “cash for keys” to obtain possession after the foreclosure sale has been conducted. Although lenders or their servicing agents are not required to make these payments, you can still ask for them.

Many homeowners subject to a non-judicial foreclosure sale may fail to address two aspects of the sale which warrant further review:

- Resolving "junior" claims/liens against your home and
- Determining what happens to the net sale proceeds, if any, when the amount of the sale proceeds exceed your unpaid mortgage loan (referred to as a surplus).

Resolving "junior" claims/liens against your home

One legal effect of a foreclosure sale is to extinguish (remove) "junior" claims/liens against your home. Foreclosure sales cause liens against the property to be extinguished, but your obligation to pay the indebtedness underlying subordinate liens that are wiped out may continue to exist for (1) non-purchase money loans and (2) other obligations arising from an abstract of judgment or consensual lien not specific to the property. This is true because while the security is gone, the underlying obligation or contract to pay a debt still exists, even if no longer secured by the property.

When foreclosing purchase money loan obligations, the foreclosure extinguishes both the debt and the lien. Purchase money loan status is established when you purchase a home that you intend to occupy and obtain a loan or loans, whether "senior" or "junior" in recording priority. This is true even if you first obtained one loan when you bought the property and then refinanced that loan later and received no new loan funds. Under current California law, the refinanced loan is still a purchase money loan for deficiency judgment purposes except for the new funds added to the original loan.

Any other loans you might have obtained ("junior" claims/liens), for example, to put in a swimming pool, are non-purchase money loans. When the lender or its servicing agent of the "senior" mortgage loan forecloses through a non-judicial foreclosure, "junior" loans (whether purchase money or non-purchase money loans) are removed from the title of your home. This way, the new owner or the lender or its servicing agent (in the absence of a successful third-party bidder) acquires the title of your home free and clear of any “junior” loans (claims/liens) you may have created or suffered.

When your home in foreclosure is subject to secondary or “junior” non-purchase money loans or judgment claims/liens, you should consult an attorney or an authorized loan/credit counseling service to determine the best way to handle these debts.

When the lender or its servicing agent elects to pursue a judicial foreclosure, it is generally because your “senior” mortgage loan is a non-purchase money loan, or you refinanced a purchase money loan and obtained additional new loan funds from the lender.

If your lender or its servicing agent start a judicial foreclosure, you will should consult with an attorney familiar with federal and state foreclosure law. This is important because predicate steps are required to be performed of a lender or its servicing agent prior to your home being sold at a judicial foreclosure sale. It is also important if your home sells for less than you owe on your non-purchase money loan loan. The difference is known as a deficiency in the form of a money judgment for which you may be personally liable.

What Happens to Sale Proceeds

The proceeds of most foreclosure sales do not cover the unpaid principal amount of the mortgage loan. If the sale proceeds do exceed your mortgage loan debt (including foreclosure expenses), you are to receive the difference (surplus). While this is a rare occurrence, particularly if home values are in decline, you should monitor the foreclosure sale to ensure you learn about, demand, and ultimately receive the net proceeds or surplus funds.