

- When searching for another place to live, consider living reasonably close to the home you rent out. This makes personal management of your home much easier (e.g., maintaining your yard, collecting rent, hiring workers or contractors to maintain or repair your home).

Share the Cost with a Boarder

Depending on the floor plan of your home and its amenities, consider renting a part of your home to earn extra income. This income might be enough to keep your mortgage loan payment from becoming delinquent. Even if the extra income is not quite enough, the fact that you have a boarder will be helpful when showing your lender or its servicing agent how serious you are about saving your home and might encourage your lender or its servicing agent to extend concessions to you.

Sharing the Cost - Quick Tips

- Make sure the zoning, and the conditions, covenants, and restrictions (“CC&R’s”) in your community allow boarders, or you may be subject to enforcement actions by your local government or your homeowner’s association.
- Renting space in your own home to a stranger should be carefully considered. You will need documentation and the help of a real estate attorney who is knowledgeable in residential leases or occupancy agreements.

Offer a “Deed-in-Lieu” to Your Lender Rather Than Proceed with a Foreclosure Sale

Also known as a “friendly foreclosure,” a deed-in-lieu takes place when a homeowner voluntarily gives the foreclosing lender or its servicing agent a deed to the home. This transaction may include, but does not necessarily require, moving out of your home. A deed-in-lieu provides the lender ownership without the delay and expense of a foreclosure sale.



Homeowners may benefit from this alternative as a deed-in-lieu transaction may carry less credit stigma than a foreclosure or a short sale, and the lender or its servicing agent may respond to a proactive homeowner with a cash payment to assist in relocating. While some lenders will not report a deed-in-lieu transaction, this instrument when recorded will be reported as part of the record unlike a deed to convey title in a transaction resulting in a short sale. If a short sale is reported by your lender or its servicing agent to a national credit repository, a negative impact on your credit rating may result.

Certain lenders or their servicing agents will not accept a deed-in-lieu if other liens or claims exist against your home. A foreclosure sale typically creates a “clean” title extinguishing other claims and liens recorded junior to your mortgage loan while a deed-in-lieu will not. Lenders or their servicing agents rely on title company records and title insurance coverage to protect against other liens or claims. Obtaining title insurance coverage may result in lenders or their servicing agents accepting a deed-in-lieu. The lender owns your home after recording the deed-in-lieu and, as with a typical sale, a short sale, or a foreclosure sale, you must move out, unless you become the tenant of the lender or new owner.

Understanding the Homeowner Bill of Rights

The “Homeowner’s Bill of Rights” (HBOR) applies to owner occupants and some landlords who do not own more than three residential properties who’s tenant is unable to pay rent due to a reduction in income resulting from the novel coronavirus. The provisions that protects landlords expire on January 1, 2023. HBOR does not apply to junior liens and encumbrances (mortgage loans recorded in junior priority) and does not apply to mortgage loans specifically exempted therefrom such as home equity lines of credit (HELOCs). Importantly, several sections of this law refer to “residential real property consisting of no more than four dwelling units” and,



therefore, some of the provisions of HBOR may not be limited to owner-occupied units/real properties. This booklet cannot describe this entire law consisting of at least 20 statutes and various sections in the California Civil Code, but highlights the following features about which you, as a homeowner, should be aware:

- HBOR distinguishes between regulated/licensed lenders or their servicing agents who conduct 175 or fewer residential mortgage foreclosures per year in California (“Smaller Residential Mortgage Lenders”) from other lenders (“Larger Residential Mortgage Lenders”) for the purpose of reports to be filed with their respective regulators. Available foreclosure options or alternatives may be limited when Smaller Residential Mortgage Lenders or their servicing agents are conducting the foreclosure.
- You must be afforded the right to explore any available alternative or option to foreclosure with your lender or its servicing agent before a California non-judicial foreclosure can begin and be completed (if you are in default on your mortgage loan).
- The burden of compliance falls on the lender or its servicing agent, or persons who are responsible for interacting with you including the current holder of the promissory note and deed of trust.
- You have no indelible right to a foreclosure prevention option, but must be afforded the opportunity to explore available alternatives to non-judicial foreclosure.
- HBOR applies only to mortgage loans for consumer purposes (residential mortgage loans recorded in first priority against your home) whether secured by a single family residential structure or secured by one-to-four residential units, one of which is occupied by you (with certain complex exceptions not addressed in this booklet).



- No person (or entity) is authorized to record a NOD until a minimum of 30 days after (a) initial contact is made with you to assess your financial situation and explore alternatives or options for foreclosure avoidance, or (b) the due diligence requirements for locating you have been met with no response from you. A declaration of compliance with either (a) or (b) must be attached to the NOD.
- “Dual tracking” is prohibited. Lenders or their servicing agents may not record either the NOD or NOS and may not conduct a non-judicial foreclosure sale while a “complete” application is pending for modification of your mortgage loan, during any applicable appeal period following initial denial of your application, or while you are in compliance with an approved loan modification agreement.
- “Robosigning” refers to the practice of signing documents without personal knowledge of the accuracy of their contents and is prohibited. Lenders or their servicing agents have hired third-party document processing companies to sign foreclosure documents even when the employees of these companies lacked any personal knowledge of the statements contained therein.
- You must be provided with a “single point of contact.”
- No application, processing, or other fees for establishing a foreclosure prevention alternative or option can be assessed in connection with your mortgage loan recorded in first priority.
- While a foreclosure prevention alternative or option is being considered, or a denial of your application for modification is being appealed, the lender or its servicing agent cannot collect late fees.



- A non-judicial foreclosure may not be initiated other than by the lender or its servicing agent. This requirement is not limited to consumer loans.
- When accomplishing a foreclosure prevention alternative, you must receive new disclosures and notices required under applicable federal and state law and are entitled to copies of the promissory note and deed of trust, the payment history, and documents evidencing the modification or restructuring of your mortgage loan terms.
- HBOR affords a private right of action. You may be able to seek a court injunction for a material violation of this law up and until a non-judicial foreclosure sale is completed. You may ask the court for the payment of your attorney's fees. Lenders or their servicing agents may move to dissolve the injunction based on an adequate showing the material violation of this law has been corrected and remedied. Post foreclosure sale rights to recover actual damages arising out of violations of this law include recovery of attorneys' fees which can be assessed by the court against the lender and its servicing agent.
- When a foreclosure alternative or option has been achieved, no NOD may be recorded and, if achieved subsequent to such recording, then the NOD must be rescinded. If a NOS has been recorded, it must be cancelled.
- Violations of HBOR are deemed to be a violation of the lender's or its servicing agent's licensing laws. Real estate brokers who violate this law are also in violation of the Real Estate Law.



Servicing agents, also identified as mortgage servicers, are required to implement the procedures of HBOR and the benefits of foreclosure prevention alternatives or options to foreclosures to successors in interest of decedents who were borrowers of the loan in default. This requirement is triggered upon the servicing agent's receipt of notice of the death of borrower from a person claiming to be an eligible successor in interest and must be (a) the spouse, domestic partner, joint tenant, parent, grandparent, adult child, adult grandchild or adult sibling of the decedent, and (b) have occupied the property as their principal residence for the last six continuous months (at the time of death of the decedent).

The ability of a person to qualify as a successor in interest is dependent upon the limitations imposed upon lenders when exercising the due-on-sale clauses under the federal Garn St. Germain Act (the Federal Depository Institutions Act of 1982).

The exercise of due-on-sale clauses is prohibited when transfers of title or any interest therein to the security property occurs to certain successors in interest of the decedent: (i) joint tenant or tenant by the entirety, (ii) surviving spouse or children, or (iii) relative.

Extending the procedures and benefits of HBOR to qualifying successors in interest do not apply to state or federally chartered depository institutions, mortgage bankers, finance lenders, and real estate brokers that foreclosed on 175 or fewer residential real properties consisting of one-to-four dwelling units located in California during the immediately preceding annual reporting period.

Servicing agents collectively servicing loans for one or more of the exempt lenders which in the aggregate foreclosed on more than 175 qualifying loans during the immediately preceding annual reporting period, would be subject to complying with HBOR. Accordingly, such servicing agents are required to apply the benefits and protections of HBOR regardless of the number of qualifying foreclosures conducted by any one exempt lender during the immediately preceding annual reporting period.

