The Actual Foreclosure Sale

This event will occur at the time on the day at the location noticed for the scheduled foreclosure sale or the date of the postponed sale. It is a privately-conducted, publicly-held sale. This is called"crying" the sale (as in an auction). In a judicial foreclosure, the day and location of the sale will be determined by the court.

Homeowners: What Not To Do

Losing your home through foreclosure is a traumatic experience that usually occurs at a time when you may be facing significant financial, physical, or psychological stress.

While some homeowners choose to "walk away" from (abandon) or trash their homes in the face of foreclosure, it is important to realize that these actions carry potentially significant legal consequences.

Walk Away from (Abandon) the Home

A homeowner can stop making their mortgage loan payments and abandon their home. This plan is usually unsuccessful in the long-run. If you "walk away" from your home, you essentially abandon the property and your mortgage loan. Once your consumer loan is delinquent by 120 days or more, your lender or its servicing agent may begin the foreclosure process and you may not be off the hook.

- If your home loan is a non-purchase money loan (e.g., if it is a refinance loan with new principal advanced or a vacation home loan which is not your principle residence) you are not necessarily protected against future liability. If you "walk away" from this type of loan, you can be held liable for the lender's losses following a judicial foreclosure sale, including court costs and attorney fees.

- If you purchased your home on speculation (hoping to resell the home for a higher price) and have not occupied the property, the loan you obtained to purchase the property is a non-purchase money loan. If your lender or its servicing agent elects a judicial foreclosure sale, you may remain personally liable for any deficiency in the form of a money judgment at the time of the foreclosure sale.

- If you “walk away” from your home, you are still liable for any non-purchase money loans that are secondary or “junior” loans (claims/liens). Foreclosure sales do not extinguish these debts and your creditors can seek court judgments against you. In these cases, a “junior” lender holding a non-purchase money loan (a “sold out junior”) may sue in court to obtain a judgment for its losses, as well as court costs and attorney fees.

- Federal laws control federally-insured (FHA) loans, federally-indemnified (VA) loans, and loans that are sold to Fannie Mae or Freddie Mac. FHA and VA lenders holding such mortgages typically file claims for the insurance or indemnification coverage. HUD/FHA or VA may be able to pursue you for any losses they suffer following a foreclosure sale and the payment of the proceeds of their coverage delivered to your lender. Additional consequences may be imposed upon veteran homeowners.

Laws pertaining to “walk away” homeowners are complicated and no person should “walk away” from the home and mortgage loan without seeking the advice from an attorney familiar with federal and state foreclosure laws.

A common “walk away” situation occurs through the dissolution of a union or marriage. In most families, both spouses sign the mortgage loan documents for their home. If the couple becomes separated and a properly-constructed property settlement agreement is not established providing for funding of the mortgage loan payments, neither spouse may individually be able to afford the loan payments and the spouse no longer occupying the home may “walk away” potentially leaving the other to shoulder the financial burden.