



COLORADO FORECLOSURE PROCESS AND TIME FRAMES

This general information is provided for counseling purposes only.
It is not to be taken as legal advice. Application to your specific circumstances may vary.
*See OLD LAW for description of redemption period for NED filed prior to 1-1-08

DELINQUENCY: The day after a payment is due, a loan is DELINQUENT if there are no other unpaid payments. If your grace period runs until the 16th of each month (as it does for all FHA loans), and your payments are posted each month on the 10th, then your loan becomes DELINQUENT for a short period each month.

DEFAULT: A loan is IN DEFAULT as soon as any payment has been due and unpaid for more than 30 days. Lenders often have subdivided collection departments dealing with loans that are in different stages or default.

FORECLOSURE: When a lender says a loan is in FORECLOSURE, they usually mean that the loan file has been transferred to an internal department whose job is to decide if and when to send the loan to the lawyers who handle the lender's foreclosures in Colorado. Most lenders use an outside law firm.

FHA loans cannot be put in foreclosure status until at least three payments are due and unpaid. However, foreclosure on an FHA loan CAN begin before the grace period expires for the third payment.

Conventional (non-government insured) loans can be put in foreclosure AS SOON AS THE LOAN IS IN DEFAULT, which may be only 15-20 days after your grace period ends. However, most lenders will choose not to begin foreclosure until three payments are due and unpaid.

LEGAL WORK: After the lender transfers a loan file to their foreclosure attorneys, the borrower will become responsible for the lender's legal costs, the total of which can be up to \$2500 or more. Foreclosure costs and fees including all legal fees incurred must be paid in addition to back payments and late fees in order to CURE the loan and stop the foreclosure. The attorneys usually spend two to four weeks preparing documents, which, assuming the lender is foreclosing on a Deed of Trust, will be sent to the Public Trustee's Office for the county where the property is located.

PUBLIC AUCTION: When the Public Trustee receives the foreclosure documents from the lender's attorneys, the Trustee will schedule a public action of the property 110-125 days in the future. The borrower's RIGHT TO CURE the loan ends 7 calendar days before the public auction of your property, unless you file an INTENT TO CURE form with the Public Trustee's office for your county. By filing this form you should receive the CURE FIGURES- the amount of money you need to reinstate your loan, within one week before the sale. The Public Trustee's Office must receive a cashier's check of the total amount due before 12 Noon, one day prior to the public auction.

The lender's attorneys must schedule a RULE 120 HEARING to take place before the auction date. The judge may cancel this hearing if the borrower does not officially respond when given notice. The purpose of the hearing is to legally establish whether the lender has the right to foreclose on the property and have it sold at the public auction.

The borrower is not required to attend the RULE 120 HEARING, but your legal rights will be at stake, and a lawyer experienced in defending against foreclosure may be able to help you postpone or avoid the public auction of your home.

DEFICENCY JUDGEMENT: If the debt on your home exceeds what the lender thinks the home is worth, you could still owe the lender money even after you lose your home. If you can convince a court that the lender bid less than a good faith estimate of the property's value at the public auction, then you may be able to avoid a DEFICENCY JUDGEMENT for additional debt. Otherwise the owner of the property will be responsible for the deficient amount.

FORECLOSURE PREVENTION OPTIONS

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OPTIONS TO KEEP YOUR HOME

CURING THE LOAN (Reinstatement): Curing a loan means bringing it current by paying, all at once and in certified funds, all amounts currently due including the past mortgage payments, late fees and all foreclosure costs including any legal fees. Lenders are rarely permitted to reject such full payments.

If your lender is not accepting partial payment, you should SAVE the money you would pay them, so you'll have it available to pay them later. Remember, paying your first mortgage is the top priority.

In Colorado, your right to cure the loan ends **15 calendar days** before the public auction of your property, unless you file an **INTENT TO CURE** form with the Public Trustee's office for your County. By filing this form you should receive the **CURE FIGURES** within **one week before the sale**. The Public Trustee's Office must receive a cashier's check of the total figure before 12 Noon, one day prior to the public auction. You can still try to cure with the attorneys for the mortgage company anytime before the foreclosure sale date.

FUNDS TO CURE YOUR LOAN:

1. Colorado Housing Assistance Corporation (CHAC): This is a second mortgage loan of up to \$4,700.00 provided to help residents from the City & County of Denver save their homes. Qualification are:
 - You must have owned and occupied your home for at least three (3) years;
 - Your income must be within the low-income guidelines for the Metro Area;
 - You must be able to resume regular mortgage payments including a CHAC payment each month, along with all your other monthly expenses;
 - You don't have a second mortgage on your home;
 - You must have saved the difference to totally Cure the Loan, if you owe more than \$4,700.00.
2. Commercial Second Mortgage (or Unsecured Consumer Loan): Lender policies vary, but the more equity you have and the less you've damaged your credit history, the higher your chance of qualifying for a loan at an affordable interest rate. Note: *When considering any new loan to cure your mortgage, think carefully about whether the new loan is a long-term solution, and that you will be able to make the higher payments, or will only solve your mortgage problem on a short-term basis;*
3. Selling assets (extra car, boat, collectables, jewelry, items for yard sale, etc.);
4. Cashing in retirement accounts (withdraw due to hardship) or borrowing from insurance policies;
5. Borrowing from family or friends.

REDUCE EXPENSES AND/OR INCREASE INCOME: While this may seem self-evident, think creatively about ways to condense your budget so you can cure your loan, or convince your lender to accept a repayment plan. Ideas include:

1. A roommate, for rental income;
2. Trying to increase the child support or alimony you receive;
3. Retraining to move into a higher paying job or field in the very near future;
4. Working overtime and/or working a second job;
5. Having a yard sale, selling unneeded items (i.e. trailer, car, etc.);
6. Consumer Credit Counseling to lower credit card interest and fine tune your budget;
7. Modifying your lifestyle by eliminating unnecessary items (e.g. cable/satellite TV, eating out, etc.)

OPTIONS AVAILABLE THROUGH THE MORTGAGE COMPANY

- **REPAYMENT PLAN:** Although lenders accept full payments of all arrears, including late charges, all mortgage payments due, and any accrued foreclosure costs and fees, they generally have **NO OBLIGATION TO ACCEPT YOUR PAYMENT OF ANY LESSER AMOUNT.** Therefore, a plan for you to catch up over a period of months is an area for negotiations between you and the lender.

Your lender is less likely to agree to a repayment plan if you:

1. Have broken previous repayment agreements;
2. Have been chronically late with your payments;
3. Have just recently gotten the loan;
4. Have too low an income to make an increased repayment plan;
5. Have none of the back payments saved up;
6. Owe more than three payments;
7. Are not able to catch up within 4-6 months;

Your housing counselor can help you try to negotiate a repayment plan that you will be able to follow and afford. If three payments or less are due, lenders will often accept a proposal to pay 25% to 50% more than your normal payment each month until you are current. If you have saved money and are able to make a larger first payment, this will add to your negotiating power.

- **PARTIAL PAYMENT ON FHA LOANS:** In contrast to the general rule that lenders may reject all partial payments if they choose, FHA lenders are generally required to accept payments of **AT LEAST HALF** of the total amount due on FHA loans that are in default **UNLESS:**

1. Four full payments (or more) are due and unpaid;
2. The account has not been current at any time during the last six months; or
3. The payment is less than the borrower agreed to in a repayment agreement.

In most cases, lenders cannot begin foreclosure on a FHA loan until three full payments are due and unpaid (the third payment need not be late, 92 days delinquent), unless the property has been abandoned. In calculating whether three full payments are due and unpaid, the lender must apply to your account any partial payments.

- **SPECIAL FOREBEARANCE :** Your lender may be able to arrange a repayment plan based on your financial situation. Your lender may even provide for a temporary reduction or suspension of your

payments. You may qualify for this if you have recently lost your job/ source of income, or if you had an unexpected increase in expenses. You must furnish information to your lender to show that you will on a specific date definitely be able to meet the requirements to your new payment plan.

- **MORTGAGE MODIFICATION:** This may be an option to help you catch up by adding the missed payments into the loan. The loan may or may not be reamortized to a longer term (normally 30 years). The interest may also be changed, either temporarily or for the duration of the loan. you may qualify if you have recovered from a financial problem, and can show that you can pay the new payment. .
- **PARTIAL CLAIM ON FHA LOANS:** Your lender may be able to work with you to obtain an interest-free loan from HUD to bring your mortgage current. You may qualify if:
 1. Your loan is at least 4 months delinquent, but no more than 12 months delinquent;
 2. Your mortgage is not in foreclosure; andYou are able to begin making full mortgage payments.
- **VA REFUNDING:** The Veteran's Administration has a program specifically for veterans with VA insured loans. Basically, the VA takes over the loan of qualified veterans and reduces their payments, either temporarily or permanently, to allow the veteran to keep their home. This option is not available for those who have assumed a VA loan, and are not veterans themselves.

REFINANCING: This means getting a new loan to replace your existing loan. If you have a high interest rate, refinancing is an excellent preventative option to take BEFORE you get behind on your mortgage. If you're already behind, it will be much more difficult to qualify for a new loan with a lower interest rate because of your damaged credit. However, it may still be an option to refinance if you have substantial equity in your home. Types of refinancing include:

1. Traditional refinancing, using any lender who considers you an acceptable credit risk. Note: *This will be a high interest rate,*
2. FHA "Streamline" refinancing is done to reduce your current interest rate. This is only available for certain FHA insured loans. The only qualifying criterion is that you must have made every mortgage payment on time for the past year.

OBTAINING A REVERSE MORTGAGE: This is similar to a refinance in that it would bring your mortgage payments current and pay off the loan. The best part though is that you do not make payments. And further, depending on the amount of equity you have, you may get money back in various forms of a monthly payment, a line of credit, a lump some, or a combination of the above.

You may qualify for a Reverse Mortgage if:

1. You are a senior homeowner over 61 years of age;
2. You reside in the home most of the year;
3. You have some equity left in your property.

If you or a friend meets these requirements, call a housing counselor immediate to see how it might work in your particular scenario.

BANKRUPTCY: Chapter 7 or 13 bankruptcy could stall foreclosure action. A Chapter 13 filed before the foreclosure sale may allow you to keep your home. Consult one or more bankruptcy attorneys to determine if bankruptcy would be appropriate for you. Many bankruptcy attorneys will discuss your situation with no charge for

initial consultation. Note: *Statistic show that 75% of most bankruptcies fail within the first year, because the family hasn't addressed the financial issues in the first place.*

OPTIONS THAT INVOLVE LEAVING YOUR HOME

FORECLOSURE: This is almost always the worst possible resolution of a mortgage problem, yet it is what will happen if you do nothing, or if you don't find another option that works. Foreclosure results in the public auction of your property, in which case you should expect to lose any equity you may have. In addition, there is no guarantee that after losing your home, you wouldn't face a deficiency judgment for other debt from the second mortgage, another lien, etc. Foreclosure would also have a drastic impact on your ability to receive credit for up to seven years, and make renting a property very difficult. For these reasons, it may become necessary for you to consider selling your home to avoid foreclosure, even if you would prefer to keep your home.

SELLING YOUR HOME: Contact one or more realtors to talk about putting your home on the market, and to get a better idea of its current value (market analysis) and how much cash you would likely receive from a sale, minus the realtors commission and any closing costs. Your lender may be willing to delay foreclosure if you have a closing date, and occasionally, an accepted sales contract on the property.

Even if you're trying to keep your home and you don't want to put it on the market right away, it would be an excellent idea to **shop around** for realtors, so that you'll be prepared to act quickly with a realtor you have confidence in if your circumstances change (i.e. unable to cure the loan).

FHA PRE-FORECLOSURE SALE PROGRAM: If the value of your home is not high enough for you to pay off your FHA mortgage with the proceeds of a sale, HUD may be able to pay the difference and allow you to sell the home anyway. HUD pays the real estate commissions, and pays a cash incentive to successful participants in the program. You must be at least 2 months behind to apply, and able to sell your home in 3 to 5 months, depending on what your lender agrees to.

SHORT SALE: A short sale is another way a homeowner may be able to sell a home even though the proceeds of the sale will not be sufficient to pay off the loan balance and cover real estate commissions. The Veteran Administration (VA), HUD, a private mortgage company, or a conventional lender may be willing to accept a loss to make up for the insufficient market sales price. An experienced realtor would assist you in this process.

DEED IN LIEU OF FORECLOSURE: This is a deal between the borrower and the lender whereby the property is transferred to the lender to fully satisfy the debt. The lender may be willing to accept a small loss through this arrangement in exchange for avoiding the expense, time, and trouble of foreclosing. The borrower suffers less credit damage than if foreclosure had occurred, and is relieved of the risk of a deficiency judgment. Some lenders will consider this option only when convinced that the borrower has suffered severe hardship.

CASH FOR KEYS: This is an option for borrowers who eviction is eminent. Basically, you hand the keys over to the mortgage company and leave the house in "broom clean" condition. The mortgage company pays you a fee to leave, rather than having to pay the cost of an eviction.