

## Facing Foreclosure

"Always live within your income, even if you have to borrow money to do so."

-- Josh Billings, American humorist (1818-1885)

"I'm not the man I used to be, so why should I have to pay off his debts?"

-- Gary Apple (a TV show writer for "Get Smart" and "The Simpsons")

Foreclosures are on the rise. For many, the time period between putting aside money for a "rainy day" and the first drops of "rain" is very short. When illness happens or a job is lost, it can become hard to make the next house payment. This column focuses on avoiding foreclosure.

### Q. What exactly is "foreclosure"?

When you borrow money to buy a house, you are required to sign a legal document called a mortgage. The lender – which may be a bank, or a mortgage company, or a person – gets certain rights under the terms of the mortgage.

If you miss one or more payments, the lender has the option of starting a procedure called "foreclosure." This procedure lets the lender give you notice and sell your house at an auction and make you move out.

### Q. Can a lender start the foreclosure process after I miss just one payment?

Yes – if the mortgage says they can – and most mortgages do say that.

Most lenders do not foreclose after you miss just one payment, but they often have the legal right to start the process at any time after you miss a payment. In some cases there is a grace period when you can make a late payment without the lender having the right to start a foreclosure, but do not assume it is there without checking.

### Q. Can I stop a foreclosure?

Sometimes you can, but you must act fast. You may need expert help from a lawyer or a Realtor®. Do **NOT** just give up and let a foreclosure happen. Try everything you can to stop it. If you can't make your house payment, get help quickly.

Cut back on other bills so that you can make your house payments. Sometimes, you may be able to file

a Chapter 13 bankruptcy. This will let you make affordable payments on your mortgage and your other bills through court.

Another option is to sell the house and pay off the mortgage and foreclosure expenses in full. A final option is to offer to deed the house back to the lender "in lieu of" (which means 'in place of') a foreclosure. This option only makes sense if the lender agrees in writing to cancel out any remaining debt and fees you owe.

### Q. Can I halt a foreclosure by sending in part of a payment?

No. Once a foreclosure is started, even full catch-up payments may not be enough, because there are now extra expenses from the foreclosure process. Get any agreement to stop the foreclosure in writing before you send money.

**Important note:** These Q's and A's are only for when you can't make your house payments. Foreclosures can happen for other reasons, such as:

- You get behind on your property taxes, or
- Your deed requires home owner's insurance and you don't have it, or
- Creditors win a lawsuit against you over a debt.

In any of these cases, you should consult with a lawyer right away!

by Jim Hawkins, Managing Attorney, Gallatin office, Legal Aid Society

**Note:** This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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