

# Homeownership Preservation Toolkit

A guide to  
understanding and  
avoiding foreclosure

Sponsored and Endorsed by



Loveland-Berthoud Association of REALTORS®

CONSUMER CREDIT COUNSELING SERVICE OF NORTHERN COLORADO AND  
SOUTHEAST WYOMING

FORECLOSURE PREVENTION TASK FORCE OF LARIMER COUNTY

# **Local Resources: Are You Experiencing Challenges With Your Mortgage?**

**There were nearly 40,000 homes in foreclosure in Colorado in 2008. But 80 percent of homeowners that meet with a HUD-approved housing counselor avoid foreclosure.**

The **Colorado Foreclosure Hotline** is the most successful state-based foreclosure prevention program in the country, having fielded over 60,000 calls from homeowners facing foreclosure since its October 2006 launch. The main purpose of the Hotline is to connect borrowers with local HUD-approved housing counselors. A housing counselor's role lies in assisting a borrower in resolving pending foreclosures through education, mediation, and focusing on positive resolutions. Residents in the state of Colorado can reach the statewide toll free number by dialing 1-877-601-HOPE.

**Consumer Credit Counseling Service (CCCS)** now offers Home Ownership Preservation classes in Spanish and English. In this class you will: take a critical look at your budget and expenses, evaluating what options you may have to avoid foreclosure; discuss a comprehensive overview of the current foreclosure process; leave with a full understanding of how to work with your mortgage company, clearly identified next steps, and a great toolkit that will help you through the process; and be encouraged to schedule a one-on-one, follow-up appointment with a housing counselor. Northern Colorado and Southeast Wyoming residents should dial (970) 229-0695 or toll free 1-800-424-2227.

**Neighbor to Neighbor** provides free, confidential, HUD-approved counseling. Our goal is to help Larimer County homeowners avoid foreclosure by providing education on the Colorado foreclosure process; developing a realistic household budget; determining borrower's long term viability for making timely payments; recommending appropriate loss mitigation options acting as an advocate and mediator with the client's mortgage company; referring client to appropriate local

resources; and collaborating with client to create a strategic plan for either curing the mortgage default or transitioning to other housing. Larimer County residents in Fort Collins should dial (970) 488-2365 or if you live in Loveland you should dial (970) 663-4163.

**United Way 2-1-1** is your community connection to local resources. People call 2-1-1 Information and Referral line for aging services; disaster recovery; food, housing, and utility assistance; health information; medical needs; and legal resources. Services are confidential and free-of-charge.

Larimer County residents should dial 2-1-1 or (970) 407-7066.

*The information found in this document was created by CCCS, and represents a small sampling of the information that can be found in the course materials that are given to each participant of the Home Ownership Preservation class.*

## Terms of Foreclosure

### **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 the 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. Mortgage servicers often have multiple collection departments dealing with loans that are in different stages of default.

### **Foreclosure**

When a mortgage servicer says a loan is in FORECLOSURE, they usually mean that the loan file has been transferred to an internal department whose job it is to decide if and when to send the loan to the attorney who handles the mortgage servicer's foreclosures in Colorado. Most mortgage servicers use an outside law

firm. FHA loans cannot be put into foreclosure status until at least three payments are due and unpaid. However, a foreclosure on an FHA loan CAN begin before the grace period expires for the third payment. Conventional (non-government issued) loans can be put in foreclosure as soon AS SOON AS THE LOAN IS IN DEFAULT, which may be only 15-20 days after the grace period ends. However, most mortgage servicers will choose not to begin foreclosure until three payments are due and unpaid.

### **Legal Work**

After the mortgage servicer transfers a loan file to their foreclosure attorneys, the borrower will become responsible for the mortgage servicer'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 mortgage servicer is foreclosing on a Deed of Trust, will be sent to the Public Trustee's Office for the county where the property is located.

### **Rule 120 Hearing**

The mortgage servicer'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 mortgage servicer 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.

### **Public Auction**

When the Public Trustee receives the foreclosure documents from the mortgage servicer's attorneys, the Public Trustee will schedule a public auction 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 the 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 or the amount of money needed

to reinstate your loan, within one week before the sale. The Public Trustee's Office must receive insured funds of the total amount due before **Noon**, one day prior to the public auction. Personal checks are generally rejected as a form of payment.

### **Deficiency Judgment**

If the debt on the home exceeds what the mortgage servicer thinks the home is worth, a homeowner could still owe the mortgage servicer money even after the loss of the home. If a court can be convinced that the mortgage servicer bid is less than a good faith estimate of the property's value at the public auction, then a DEFICIENCY JUDGMENT for additional debt may be avoided. Otherwise the owner of the property can be held responsible for the deficient amount.

### **Working with Your Mortgage Servicer**

When faced with foreclosure, one of the decisions you will have to make is whether or not to try to keep your home. Whether you decide to try to remain in the home, or prefer to leave, there should be options available to you to avoid foreclosure. A housing counselor can help you determine which of these options might be appropriate, and help you work with your mortgage servicer to develop a plan to avoid foreclosure given your unique situation.

### **Short-term Repayment Plan**

Traditionally, the first option that mortgage servicers use when borrowers are behind is to negotiate a short term repayment plan by asking the borrower to begin paying the full payment due plus a partial payment to get the loan caught up.

### **Forbearance Agreements**

Forbearance agreements are when the mortgage servicer agrees in writing to allow the borrower to "catch-up" on the mortgage payments over a longer period of several months. With agreements, you may be able to postpone payments for a period of time, depending on circumstances.

## **Refinancing**

Refinancing occurs when a borrower applies to the original mortgage servicer, a different bank or a mortgage company to re-write the mortgage loan. This would be done to lower the interest rate, establish a fixed rate, or lower the monthly payment, or all of the above. The purpose of the refinancing is to make the mortgage payments more affordable and to prevent future default.

## **Modification**

A modification changes one or more of the original terms of the loan, such as the interest rate, payment amount, maturity date, or the amount of the unpaid principal balance. A modification can cure the default by adding the delinquent amount to the end of the loan or reducing the monthly payment to an amount, whichever is more affordable.

## **Partial or Advance Claim**

A mortgage servicer may be able to help a borrower obtain an interest-free loan, also called a partial claim, from HUD to bring mortgage current. Borrower will execute a Promissory Note and a Lien will be placed on the property until the Note is paid in full.

## **Selling the Property**

If the borrower has sufficient equity, they may be able to sell the property prior to foreclosure and net enough from the sale to pay off the loan.

## **Assumption**

Some mortgages can be assumed by a third party. When a mortgage is assumable, the property can be transferred, and the person to whom it is transferred can pick up the payments. If payments were behind when the mortgage was assumed, without a workout agreement, the person assuming the mortgage will be in default and subject to foreclosure. The advantage may be the assuming party better fit to amend the default.

## **Short Sale**

Sometimes the mortgage company will allow the borrower to sell for less than the amount necessary to pay off the loan, known as a short sale. In doing so, the mortgage servicer agrees to accept the proceeds of the sale (or some other amount) to be applied toward the debt. When negotiating a short sale, it is useful to work with a Realtor® who is experienced in short sales. Ask your housing counselor for a list of considerations.

## **Deed-in-Lieu of Foreclosure (DIL)**

A Deed-in-Lieu of foreclosure is the borrower's voluntary conveyance of the title to the mortgage servicer in exchange for discharge of the debt. In accepting the deed, the mortgage servicer is also accepting responsibility for all liens against the property including judgments, junior liens, lease obligations, etc. Mortgage servicers research ownership and liens very carefully before accepting a DIL.

## **Checklist to Avoiding Foreclosure**

You may not be having financial trouble now, but many people encounter money problems at some point. The best way to avoid foreclosure is to make your mortgage the first bill that you pay each month. In the event that is not possible, the following provides general suggestions on preparing for and working through tough financial situations.

### **Before Trouble Starts**

- Start a file, in a safe place, for records relating to your home:
  - Purchase and sale agreement (copy of real estate contract)
  - Mortgage application
  - Closing documents
  - Property tax bills
  - Property insurance information

- Copies of letters to and from the mortgage servicer
- Use checks, money orders or automatic withdrawal to pay bills
  - Do not send cash
  - Do not use credit cards
  - Keep a record of all payments
  - Correct errors quickly
- Pay high priority bills first
  - Food
  - Mortgage
  - Utilities (heat, hot water, electricity, gas)
  - Do not pay credit cards or unsecured debts before the mortgage

### **When Things Start to Feel Tight**

- Track where your money is going
  - Write down every cent you spend
  - Create a budget that shows your current income and expenses
  - Review every item on your budget
  - Prepare a realistic budget to live on until circumstances improve
- Increase your income
  - Collect federal and state benefits if you are eligible
  - Claim the earned income tax credit if you are eligible
  - Stop all voluntary deductions out of your paycheck
  - Consider selling unnecessary property to raise money



## -Reduce Your Expenses

- Review all expenses for potential savings
- Eliminate unnecessary expense

*This checklist is not comprehensive and is not intended to serve as legal advice. If you need legal advice, you should speak with an attorney.*

- Pay only for the type of phone service you need (cancel cell phones)
- Cancel cable or satellite television service temporarily
- Identify ways to conserve on energy and other utilities
- Participate in a home weatherization program
- Review homeowner's and auto insurance policies and other options

## *Other Considerations*

- Contact your mortgage servicer at the first sign of trouble
- Ask the utility company for budget-billing, allowing you to pay the amount each month
- If you are behind on utility bills, start an affordable repayment plan

## **After Falling Behind**

- Identify the problem, including the cause of the situation
  - How long do you expect your difficulty to last?
  - What specific type of help do you need?
  - How much can you afford to pay toward your mortgage?

-Communicate

-Speak with your mortgage servicer's delinquent loan or loss mitigation specialist

-Be persistent! Keep calling the mortgage servicer!

-Explain your situation

-Ask for a mortgage workout package

-Keep a phone log that shows the date and time of your call, who you spoke to, the person's phone number, and what was said

-Follow up your phone call with a letter and keep a copy for yourself

-Send all letters by certified mail and keep the receipt

### **Pay What You Can and Save the Rest**

-Send to the mortgage servicer as much of the mortgage payment as possible, **if** you have received written permission.

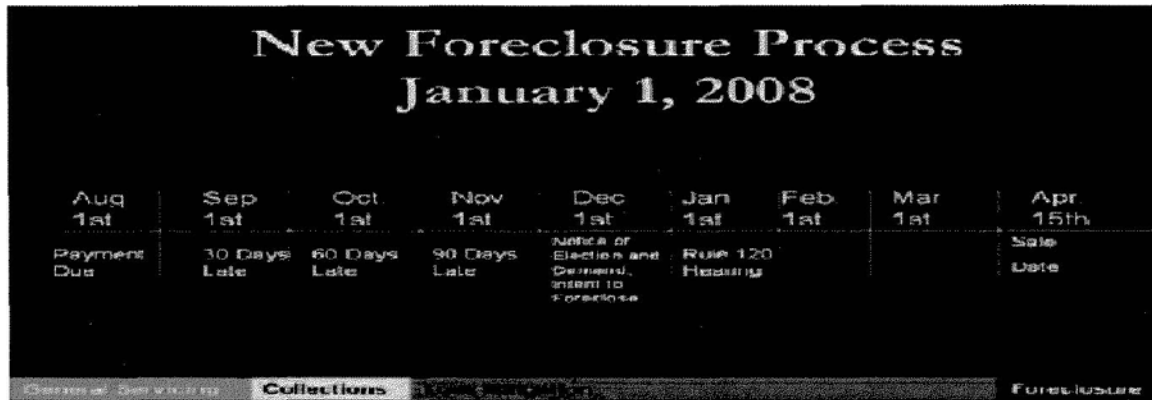
-If the mortgage servicer returns your payment, save the money - **do not spend** it on other bills

### **Know Your Options**

There are many ways the mortgage servicer can help you if you fall behind on your mortgage. Which one you choose/need what the mortgage servicer allows will depend on your individual situation.

### **Know Your Rights**

Don't walk away from your home, there is a legal eviction process, contact a housing counselor to learn what that eviction process is and what your other housing opportunities may be.



### New Foreclosure Process January 1, 2008

Aug 1 <sup>st</sup>	Sept 1 <sup>st</sup>	Oct 1 <sup>st</sup>	Nov 1 <sup>st</sup>	Dec 1 <sup>st</sup>	Jan 1 <sup>st</sup>	Feb 1 <sup>st</sup>	Mar 1 <sup>st</sup>	Apr 15 <sup>th</sup>
Payment Due	30 Days Late	60 Days Late	90 Days Late	Notice of Election and Demand, Intent to Foreclose	Rule 120 Hearing			Sale Date

**Pre-foreclosure** is the time period when a borrower is in default of their loan, usually for lack of payments for more than 30 days. During this time, the mortgage company and eventually their legal department send warning and intent to foreclose letters.

**NED -Notice of Election and Demand** for sale filed by the mortgage company's attorney with the County Public Trustee.

Within 20 days after recording the NED, the Public Trustee will send the Combined Notice to the borrower. The notice will tell the borrower that the home is in foreclosure, and identify the foreclosure sale date.

**Hearing with the District County Court** (not the Foreclosure Sale) must be obtained at least 15 days prior to the sale date of the property.

**Intent to Cure** must be filed no later than 15 days prior to the sale of the home.

**Public Auction Sale Date** -If Curing the default, all sums due and owing must be paid via certified funds to the trustee by 12 noon on the day BEFORE the sale.

**Eviction** should follow Colorado eviction statutes; Cash for Keys should be considered prior to this action.