

# Disposition Loss Mitigation Options



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## Pre-Foreclosure Sale

*This involves selling your home to avoid foreclosure.*

### **What you need to know:**

- ⇒ A pre-foreclosure sale helps you avoid legal fees and protects your **equity**.
- ⇒ Your lender may postpone the foreclosure process once your home is up for sale or when you have a pending **sales contract**. This could ultimately protect your **credit**.
- ⇒ Your lender may allow you to stop making your mortgage loan payments until you sell the home.
- ⇒ Your lender may require that you list your home for sale with a **real estate professional**.

### **This might be the right option if:**

- ⇒ You cannot resolve the **delinquency**.
- ⇒ Your mortgage payments are more than you can afford under normal financial conditions.
- ⇒ You have enough equity in the home to pay off your entire mortgage loan and pay for all selling costs.

## Hardship Mortgage Assumption

*This involves selling your home to a buyer who agrees to become responsible for the repayment of your existing mortgage loan on the home. As a result, you avoid foreclosure.*

### **What you need to know:**

- ⇒ Mortgage assumption is a true option on some mortgage loans. When it is, lenders include the option in the mortgage loan paperwork.
- ⇒ If your loan has the assumable option, you may want to consider it as a way to avoid foreclosure.
- ⇒ In the case of a *hardship* mortgage assumption, your loan does *not* have the assumption option. But lenders are willing to consider it an option anyway.
- ⇒ Lenders do not have a formal policy on hardship mortgage assumption. However, they will consider it if it reduces their loss.
- ⇒ The new buyer may have to **qualify** with the lender to take over your existing loan.
- ⇒ Be sure your lender agrees to the assumption. If it does not, you remain legally responsible for the repayment of the loan.

### **This might be the right option if:**

- ⇒ You are unable to get a new mortgage loan.
- ⇒ You have less than 15% equity in your home.
- ⇒ You have a quality potential buyer.
- ⇒ The buyer is motivated to take over your existing loan.

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## Short Sale

This is the process of selling your home for less than what you owe. Your lender then agrees to excuse you from the remainder of the loan balance.

### What you need to know:

- ⇒ A short sale is a type of pre-foreclosure sale. However, in the case of a short sale, the **proceeds** do not cover the entire amount you owe the lender.
- ⇒ Some lenders refer to a short sale as a short payoff.
- ⇒ If you agree to a short sale, your lender receives all proceeds from the sale. This amount is not enough to cover the full amount that you owe. As a result, you lose any equity in the home.
- ⇒ The advantage to your lender is it avoids the:
  - Cost of a foreclosure
  - Expense of owning the home
  - Risk of reselling the home
- ⇒ The advantage to you is you avoid:
  - A foreclosure on your **credit report**
  - The emotional distress of a foreclosure
- ⇒ Some lenders may still report your late payments on your credit report.
- ⇒ Some lenders may require you to sign a **promissory note** for the difference between what you owed on the loan and the amount it received from the **foreclosure sale**.
- ⇒ Some lenders may seek a **deficiency judgment**.
- ⇒ You may have to pay taxes on the forgiven debt.
- ⇒ The sale must be an **arm's length transaction**.
- ⇒ A short sale becomes more complicated if you have more than one loan on your home.
- ⇒ If you decide on this option, it is best to do two things first: get the lender's approval and settle on a sales price before finding a buyer. This eliminates the risk of finding a buyer who is unwilling or unable to wait until the lender approves the short sale.

### If your loan is an **FHA mortgage loan**:

- ⇒ The FHA may not require you to make your mortgage payments while the home is up for sale.
- ⇒ The FHA may not require you to make a contribution to offset the loss on the loan.
- ⇒ The loan **servicer** cannot seek a deficiency judgment.
- ⇒ You receive a **1099 Form**, which means you must pay taxes on the forgiven debt.
- ⇒ You may get a bonus from the FHA if you sell your home.

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## Deed-in-Lieu

*This is when you voluntarily transfer ownership of your home to your lender. In exchange, your lender excuses you from the remainder of the loan balance.*

### **What you need to know:**

- ⇒ If you agree to a deed-in-lieu, you sign a **Deed** to give your home to your lender. In return, your lender cancels out the total amount you owe.
- ⇒ After you deliver the **Deed**, you must move out of your home. You also lose your equity.
- ⇒ Your lender then takes over all responsibilities on the home, including:
  - Payment on all **liens**, property taxes, **homeowners association dues**, **judgments**, and so on
  - Legal responsibility of hazard conditions
  - Responsibility of landlord to **tenants**, if applicable
- ⇒ Your lender may ask you to make a dollar contribution to offset its loss.
- ⇒ You may have to pay taxes on the forgiven debt.
- ⇒ If the deed-in-lieu is on an FHA mortgage loan, the FHA may pay you \$500 to help you relocate.
- ⇒ A deed-in-lieu may not be possible for a variety of reasons. One reason may be if there are other liens on the property. **Second mortgages** and tax liens are examples of other liens.

### **This might be the right option if:**

- ⇒ You have abandoned the property.
- ⇒ No other loss mitigation option will help you avoid foreclosure. A deed-in-lieu is less damaging to your credit than a foreclosure.



***For all loss mitigation, you should consider seeking help from an attorney, housing counselor, or accountant who is familiar with these options.***



***Lenders may require you to show that you are making a good-faith effort to pay your mortgage before they agree to any loss mitigation option. For example, they may require you to show you have reduced other expenses.***

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## *Glossary Terms*

**Arm's length transaction:** A business deal between two unrelated or unassociated parties. It can also mean a business deal between two related or associated parties. In this case, both parties manage the deal as if they were unrelated, so that there is no question of any conflict of interest.

**Credit:** Your ability to pay bills on time. Certain companies track your credit by keeping records of your payments, balances, and other information on loans, credit cards, and other debts.

**Credit report:** A record of your payments, balances, and other information on loans, credit cards, and other debts.

**Deed:** A legal, written document that the property owner signs that transfers ownership of the property from the owner to another. Property is a home, land, or lot.

**Deficiency judgment:** When the foreclosure sale of your property does not cover the total amount you owe on the mortgage loan, the court orders you to pay your lender the unsatisfied portion of the loan. This is the difference between what you owed on the loan and the amount your lender received from the foreclosure sale.

**Delinquency:** Non-payment of a debt.

**Equity:** The current value of your home minus what you owe on the home. It is what you financially *own* of your home.

**FHA mortgage loan:** A loan insured by the Federal Housing Administration (FHA). The FHA, a division of the Department of Housing and Urban Development (HUD), provides insurance to approved lenders on FHA mortgages sold to customers. This means if you fail to make your payments on an FHA mortgage, the FHA pays your lender.

**Foreclosure sale:** The public sale of the property at an auction conducted by a court, attorney, local government official, or trustee. A trustee is a person or company that holds the property for the benefit of another. The profit/income from the foreclosure sale pays the amount you owe on the property.

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**Homeowners association dues:** Money you pay to your homeowners association if you live in a condominium or subdivision. Some subdivisions are also called planned unit developments (PUDs). The association uses the money to maintain the common areas. A homeowners association is an organization of homeowners who live in the community. The association maintains the common areas, and enforces the rules and regulations of the community. Common areas are the playgrounds, swimming pools, tennis courts, elevators, and so on.

**Judgments:** Official decisions of the court.

**Liens:** A lien is a legal hold on property as security for a debt. This means if you fail to make the payments on the debt, the lender can take ownership of the property and sell it to recover its loss.

**Proceeds:** The profit or income from the sale.

**Promissory note:** A document that promises you will make regular payments to pay back the money you borrowed.

**Qualify:** The ability to meet a lender's requirements for approving the mortgage loan.

**Real estate professional:** A person licensed by the state to help a seller sell his or her home or a buyer purchase a home. This includes real estate agents and brokers. A real estate professional may also handle other real estate transactions, such as renting property.

**Sales contract:** The written agreement between two people for the sale of a home. The law enforces this agreement.

**Second mortgages:** A second mortgage is a loan on a home where there is already an existing mortgage loan.

**Servicer:** The company that is responsible for your mortgage loan until you pay off your loan. Responsibilities include collecting your payments, sending you your statements and monthly bills, making contract changes, collecting late payments, and so on.

**Tenants:** Individuals who pay rent to live in a building that is owned by someone else.