

BANKING CAREER FEATURE

SEYMOUR LAW FIRM, LLC

## What Options Does a Homeowner Have When Facing Foreclosure?

[By Gary L. Seymour]

Option 1: Contact the lender and ask for help before falling behind on payments! Many homeowners assume that the bank will not help them restructure payments or modify their mortgage. Although there is no guarantee that the lender will assist the homeowner, this is still the first place to start. If there is little or no equity in the house, the homeowner may decide to give the bank the property by executing a deed in lieu of foreclosure. In this scenario, the bank releases the debt in return for the homeowner deeding the house to the bank. This may save the homeowner's credit if it has not already gone bad.

Option 2: Refinancing may be an option if the homeowner is not yet in foreclosure. Not too long ago this was all the rage. Now, in the age of falling home values and severely restricted lending programs, it is not nearly as easy to refinance. In addition, refinancing often serves to only stem the tide and does nothing to actually solve the homeowner's problem. Refinancing will certainly not help the homeowner make more money to pay his debts. If other debts such as credit cards are folded in, the homeowner's payments can actually get higher!

Option 3: If the bank will not work with the homeowner and the homeowner cannot find other resources to make payments, the homeowner should consult an attorney immediately. Many states have statutes that help the homeowner when he is unable to make payments due to financial hardship. Qualifying for help under the statutes may be hard, but it is worth a shot.

Option 4: If the aforementioned options are not available to the homeowner, the bank will foreclose usually within three months

of non-payment. The homeowner should visit with an attorney and see if there are defenses against the foreclosure. There is currently a ground swell around the idea of "predatory lending." Perhaps this can be asserted as a defense against foreclosure. The bottom line is that if the homeowner puts his head in the sand, he will lose his home *and potentially be liable for a deficiency judgment!*

Option 5: The homeowner may qualify to do a "short sale." A short sale occurs when the home is not worth the amount of the debt and expenses necessary to sell it. For instance, if a home is worth 350K but the bank is owed 380K, there will not be enough money to pay the bank off. Add to that expenses of selling such as realtor commission, transfer taxes, attorney fees, etc., and there is potential for a 50K shortage. In this scenario, the homeowner lists the property for sale with a realtor and solicits a buyer in the conventional way. When the offer comes in, it gets submitted to the bank for approval. If the bank approves the short sale, then the homeowner will be relieved of the debt, and

it will be reported to the credit agencies as paid.

Option 6: The homeowner may qualify for either Chapter 7 or Chapter 13 bankruptcy. Chapter 7 allows the debtor to discharge all debts, including a deficiency judgment should the bank obtain one. In Chapter 7, the homeowner does not keep the home unless all payments are made under the original terms of the loan. On the other hand, Chapter 13 allows the debtor to set up a payment plan through the bankruptcy court to be administered over several years. Provided all payments are made as scheduled, the homeowner's default with the bank will be cured, and he will retain the home. The catch is that the homeowner must make enough money to support the Chapter 13 payment plan.

*For more information on this and other related topics, please feel free to contact Gary L. Seymour by visiting [www.theseymourlawfirm.com](http://www.theseymourlawfirm.com), calling 203-924-6700, or by emailing him at [gary@theslf.com](mailto:gary@theslf.com).*

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