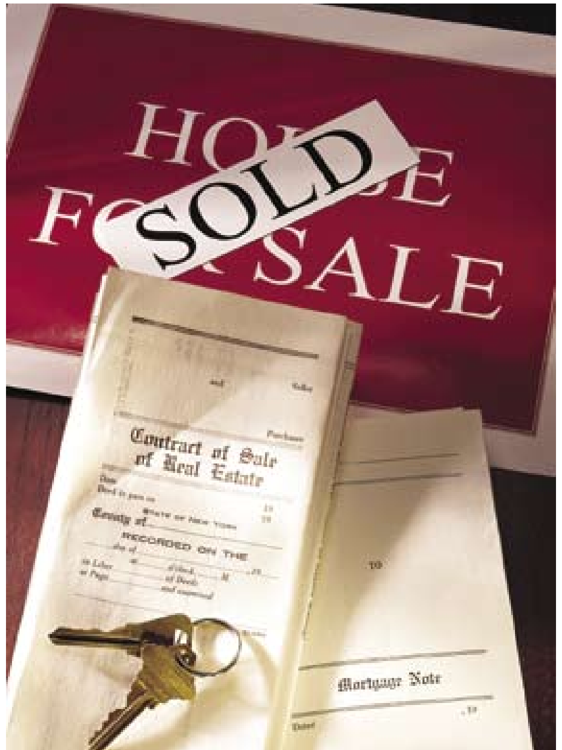
Pre-foreclosure Sales – Short Sales

One of the options available to a homeowner facing foreclosure is to sell the property before it is foreclosed. Real estate licensees are licensed and trained to assist clients in the sale of real property and are a valuable resource for information and advice on all aspects of the sale of real property. REALTORS® are licensed real estate professionals who subscribe to a national Code of Ethics and pledge themselves to promote and protect the interests of their clients.

If the potential for foreclosure has been made public by the lender, the homeowner should anticipate being approached by "foreclosure consultants" of all kinds. Although there are honest and reputable people involved in foreclosure consulting and loss mitigation, these activities can involve very sharp business practices and even fraud. Extensive information about foreclosure scams is available on the Web at: http://dfcs.oregon.gov/ml/foreclosure/foreclosure_fraud.html



In many cases, the market value of the property facing foreclosure may not be sufficient to pay off the entire debt the property secures. In such a situation, the homeowner must either bring sufficient money of their own to closing in order to clear the title or convince one or more creditors to accept less than full value on their loan or other lien. A sale contingent on the agreement of creditors to accept less than full value in order to sell the property is called a "short sale." Information on short sales is available at: http://www.realtor.org/rmosales_and_marketing/handoutsforcustomers/handouts/shortsales_sellers

The short sale process involves two agreements. One is the sale agreement between buyer and seller. The other is the agreement between seller and lender necessary to reduce the payoff on the mortgage. Lenders and other creditors may demand changes in the sale agreement between buyer and seller as a condition of agreeing to reduce the payoff on their loan or lien. The buyer or seller may be unwilling to agree to such changes in the sale agreement. It is also possible that the seller and lender cannot come to terms over the forgiveness agreement. In either case, the sale of the property will fail. All this creates a good deal of uncertainty for both buyers and sellers in short sales.

> Careful discussion, planning and communication are the key to a successful short sale.

Careful discussion, planning and communication are the key to a successful short sale. A homeowner considering a short sale should understand that such sales are an alternative to foreclosure, not a way to shed poor real estate investments. Lenders will generally have to be convinced that foreclosure is likely before they will even consider forgiving debt. There is no guarantee the lender will not require the homeowner to sign a new note for the difference between the loan payoff and what the lender receives as a result of the short sale. Lender forgiveness of the difference may result in a taxable event for the homeowner. Such matters should be considered and resolved to the extent possible by communicating with a creditor before marketing property as a short sale. Discussion of these matters with your REALTOR® is essential at the time the property is listed.

Additional Resources

http://www.hud.gov/local/or/homeownership/foreclosure.cfm

http://dfcs.oregon.gov/ml/foreclosure/foreclosure_fraud.html

http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm

http://ftcsearch.ftc.gov/search?q=foreclosure&site=NewsRelease&proxystylesheet=ftc_consumer&skip=0&output=xml_no_dtd&client=ftc_consumer&access=p

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Are you a Homeowner Facing Foreclosure?

Here is important information for you if you're considering the sale of your property to avoid foreclosure.

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The purpose of this pamphlet is to provide important information to homeowners considering the sale of their property to avoid foreclosure. REALTORS® are licensed and trained to assist clients in the sale of real property. They are not trained or licensed to practice law, give tax advice or provide financial or loan modification consulting services. Accordingly, the information in this pamphlet is intended to provide general information about foreclosure, bankruptcy, credit counseling or other alternatives that may be available to a homeowner facing foreclosure and is not intended as legal advice.

How Foreclosure Works

In Oregon, there are two kinds of foreclosure processes. Judicial foreclosure takes place when a lender or other lien holder sues for foreclosure in court. Like any lawsuit, a judicial foreclosure begins with a summons and copy of the complaint. A homeowner who is served legal papers in a judicial foreclosure should immediately seek the advice of a qualified attorney. A list of attorneys in your area who specialize in real estate can be found on the Oregon State Bar's website at: www.orbar.org

Foreclosure by "advertisement and sale" is a non-judicial process used in Oregon to foreclose when the loan is secured by a trust deed rather than mortgage.

Non-judicial foreclosure begins with the trustee giving notification of the sale to the property owner, other lien holders and the public. The foreclosure notification must precede the actual sale by at least 120 days. Information about the non-judicial foreclosure processes can be found at: http://www.dfcs.oregon.gov/ml/foreclosure.html

There are two kinds of foreclosure processes:
- **Judicial foreclosure**
- **Foreclosure by "Advertisement and Sale" (non-judicial)**

Regardless of the process used, if the eventual foreclosure auction price is insufficient to cover the full amount of indebtedness, the sale will result in a "deficiency." Oregon law provides considerable protection to residential homeowners facing foreclosure by limiting the lender or lien holder's ability to sue for the deficiency. The protection is not, however, absolute and homeowners facing judicial foreclosure should consult with an attorney if uncertain about the possibility of a deficiency judgment. More information about the deficiency judgments and the foreclosure process can be found at: https://www.osbar.org/public/legalinfo/1202_ForeclosureRealProperty.htm

If no deficiency judgment is allowed under state law, any deficiency resulting from the foreclosure will be forgiven by the lender. Debt that is forgiven or cancelled must be reported by the lender to the Internal Revenue Service (IRS) and a Form 1099 issued to the homeowner. Whether forgiven debt will be considered income on the homeowner's next tax return depends on the provisions of the Internal Revenue Code. Recent changes to the Code under the "Mortgage Forgiveness Debt Relief Act" provide relief for some homeowners facing foreclosure. A homeowner facing foreclosure of any kind should check with their tax advisor. Information about debt forgiveness is available from the IRS at: http://www.irs.gov/individuals/article/0,,id=179414,00.html

Foreclosure Alternatives

Missing mortgage payments has a negative effect on credit ratings regardless of whether foreclosure is avoided or not. Homeowners concerned about the credit impact of foreclosure or foreclosure alternatives should seek the advice of a credit counselor or other financial expert. The federal Department of Housing and Urban Development (HUD) publishes a list of approved nonprofit foreclosure consultants who can advise homeowners on foreclosure alternatives. HUD approved organizations in Oregon can be found at: http://www.dfcs.oregon.gov/ml/foreclosure/counselors.html

Among the foreclosure alternatives available to homeowners are asking the lender for "forbearance" or "mortgage modification" or a "partial claim" or "deed in lieu of foreclosure." Forbearance is when the lender agrees to reduce or suspend monthly payments for a short period of time. Loan modification involves changing or extending the terms of a loan to lower payments. A partial claim is using mortgage insurance, for instance FHA insurance, to bring a mortgage current. A deed in lieu of foreclosure is a "give back" agreement where the owner transfers ownership of the property to the lender in lieu of foreclosure. Homeowners over 62 my be eligible for federal reverse mortgage programs like the Home Equity Conversion Mortgage (HEMC) administered by the Federal Housing Administration (FHA) and the HomeKeeper program by Fannie Mae. Each of these options must be carefully researched and considered. More detailed information on foreclosure alternatives can be found at: http://www.hud.gov/offices/hsg/sfh/owning.cfm

Homeowners concerned about the credit impact of foreclosure or foreclosure alternatives should seek the advice of a credit counselor or other financial expert.

The federal economic stimulus package enacted in early 2009 contains provisions designed to help homeowners who occupy their property as their primary residence. Two programs, the Home Affordable Modification and the Home Affordable Refinance programs are available to qualified homeowners under the Making Home Affordable Plan. An overview of the Plan, including eligibility criteria, is available at: www.cbs.state.or.us/external/dfcs/ml/foreclosure/MHAP.pdf

Filing for bankruptcy is sometimes seen as a foreclosure alternative. Bankruptcy laws are, however, complicated. Whether filing bankruptcy is a viable alternative depends on the homeowner's exact financial circumstances. Certainly, bankruptcy should not be considered unless and until the homeowner has sought the advice of a reputable foreclosure consultant, such as those approved by HUD, or a knowledgeable attorney. Information on bankruptcy can be found at: https://www.osbar.org/public/pamphlets/bankruptcy.html