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Possible Alternatives or Options to Foreclosure

If you cannot meet your monthly mortgage loan payments, you face the probability of foreclosure. When you purchased or refinanced your home, you borrowed money from a lender and agreed to pay that money back, with interest. The lender is entitled to repayment according to the terms in your mortgage loan documents. If you miss your mortgage loan payments, your lender can cause your home to be sold to pay off the amount due on your mortgage loan. This procedure is called foreclosure.

If you receive notice from your lender or loan servicer that they have initiated the foreclosure process, you must act immediately. The worst thing you can do is to sit idle or ignore the notices.

There are a number of possible alternatives to foreclosure, but they take action on your part to initiate. Because some options are better than others (depending on the situation), you should take some time to learn about the possible foreclosure prevention opportunities. Consulting an attorney early in the process can also help you decide which option is best for you in order to protect your rights as a homeowner. Possible alternatives include:

- Loan modification
- Refinance –pay off your loan with a new loan on better terms
- Sell your home
- Pursue a “short sale”
- Rent out your entire home
- Rent out rooms
- Offer a “deed-in-lieu” of foreclosure to your lender or its servicing agent
- Home equity sale

Home Equity Sale

This advisory focuses on the home equity sale option.

A home equity sale is an alternative to foreclosure only available to homeowners with equity in their home, i.e., the value of your home exceeds what you owe to the lender(s).

The Home Equity Sales Contract Act (the Act) protects homeowners facing foreclosure from being victimized by purchasers who induce them, through misinformation, intimidation, or other unreasonable commercial practices, to sell their homes for a fraction of its fair market value. To qualify for certain protections under the Act, 1) the property must contain one-to-four dwelling units; 2) the owner must occupy one of the units as their primary residence; and 3) the property must be subject to an active Notice of Default.

The Act also provides that the purchase and sale contract between a homeowner subject to an active Notice of Default and a Home Equity Purchaser (someone who acquires homes in a foreclosure as an investment and does not plan to occupy the unit themselves) include certain information. The contract must contain the entire agreement between the parties and must include, among other information, the following:

- The name, business address, and the telephone number of the Home Equity Purchaser
- The address of the home in foreclosure
- The total consideration purchase price to be paid by the Home Equity Purchaser in connection with or incident to the sale
- A complete description of the terms of how the Home Equity Purchaser will pay for your home, other consideration including, but not limited to, any services of any nature which the Home Equity Purchaser represents they will perform for you before or after the foreclosure sale
- The time in which possession is to be transferred to the Home Equity Purchaser
- The terms of any rental agreement
- Proper notice of your right to cancel with an equity purchaser

The right to cancel expires at midnight of the fifth business day following the day you signed a contract or at 8 a.m. on the day the property is scheduled to be sold pursuant to a power of sale conferred in a deed of trust, whichever occurs first. (See California Civil Code sections 1695.3 and 1695.5 for the required notice format.)

The homeowner is entitled to a right to cancel, and the purchase and sale transaction cannot be concluded, nor can the Home Equity Purchaser (or you at their request) refinance or borrow money from the home's equity until the cancellation period expires. Further, you will not receive any consideration (money) for your equity until the cancellation period ends. If you decide to cancel, the original contract and any other document (instrument) you signed must be returned to you without the Home Equity Purchaser imposing any condition(s).

Home Equity Purchasers are prohibited from making untrue or misleading statements regarding: 1) the market value of your home; 2) the amount of net proceeds you may receive (if any) after the sale; 3) any contractual term; or 4) the nature of any document (instrument) you sign.

It is unlawful for anyone to initiate, enter into, negotiate, or complete any purchase or sale transaction involving your home in foreclosure, if that person, by the terms of the transaction, takes unconscionable advantage of you.

As part of the proposed purchase and sales transaction, some Home Equity Purchasers may offer you the opportunity to repurchase your home at some future date. For instance, the Home Equity Purchaser may demand that you transfer title to the property to another buyer in exchange for the right to stay in your home, with an option to repurchase. Such a transaction is considered a mortgage loan, rather than a home sale, unless the Home Equity Purchaser can prove otherwise.

Even if your home is not subject to foreclosure, you may need protection when considering a purchase and sales transaction with an investor seeking to purchase your equity. The law is complex and you should consult an attorney knowledgeable about real estate transactions.

Selling Your Equity – Quick Tips

- Hiring a real estate broker may be helpful, but is not required. A licensed real estate broker will solicit for buyers (purchasers), help you negotiate contract terms, and assist with the closing process.
- Not knowing the fair market value of your home could expose you to unethical business practices. A knowledgeable real estate broker (active in your neighborhood and community) or an independent appraiser can assist you in estimating the current fair market value of your home.
- Avoid private transactions where the buyer/purchaser makes a request/demand that you sign papers in exchange for a cash payment (particularly without the use of a separate, third-party escrow holder).
- Unethical persons often attempt to persuade homeowners to complete informal transactions that provide “instant cash,” or will offer to buy the homeowner’s equity using as a “contract of sale” (a contract where title remains in your name and the deed is delivered at some later date to the buyer/purchaser). This type of transaction could ultimately result in financial grief. Obtaining legal advice is strongly recommended before entering into a “contract of sale.”
- It may take a significant amount of time to find a buyer for your home. Begin the marketing of your home as early as possible. You should keep your monthly mortgage loan payments current during this period.

- As long as the transaction involves a complete payoff to your lender or the servicing agent of your mortgage loan, it is not a “short sale.” You do not need prior permission from the lender or its servicing agent. However, there may be a prepayment penalty, i.e., an extra fee if you pay off your mortgage early, as part of the terms of your loan. You should negotiate with your lender or their servicing agent to waive this fee. Some prepayment penalties are prohibited under the law, and a real estate attorney can help to protect your rights.

For additional resources about alternatives to foreclosure, please visit [DRE's consumer publications page](#).

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