Cancer Legal Resource Center
A DRLC PROGRAM

ONLINE RESOURCES : www.CancerLegalResources.org
ONLINE INTAKE FORM : www.CLRCintake.org
EMAIL: CLRC@DRLCenter.org
DIRECT LINE: 866-THE-CLRC (866-843-2572)
Fax : 213-736-1428
Video Relay Phone : 213-908-1079

Home Ownership: What to do if Payments are a Problem

A home is the biggest purchase most people will ever make. Buying a home is an important personal and financial decision, and often requires careful planning and saving. When someone becomes ill with a disease like cancer, this can have a substantial impact on their financial situation and ability to pay for expenses, such as those associated with home ownership.

This handout is intended to give an overview of your options if you are having difficulty paying your mortgage, what steps to take if you are facing foreclosure, options to remain in your home if you are elderly or chronically ill, and the impact that certain financial and insurance decisions can have on your property.

I can afford my mortgage payments currently, but is there any way to reduce the total amount I pay to my lender in the long run?
If you have good credit, you owe your lender less than the value of your home[1], and you have been consistently making your mortgage payments, you may consider refinancing your mortgage. To refinance a mortgage, you work with a lender to get a new mortgage to replace your original mortgage. Your original mortgage will be paid off, which will allow the second, more favorable loan to be created. When done correctly, refinancing a mortgage could save you large amounts of money in interest and allow you to pay your mortgage off more quickly and easily. This option can be risky for people with poor credit scores, however, because they may not be able to qualify for lower interest rates on the second mortgage than they had on their first mortgage.

If you are interested in refinancing your mortgage, you should shop around for different lenders and compare the rates and terms of the mortgage refinancing plans they are able to offer you. When you begin this process, you should consider what your goals are for refinancing, how much your home is worth, and your current credit score. When you are comparing mortgage rates and offers, pay special attention to fees: mortgage refinancing can trigger many hidden fees, and even a “no-cost refinance” offer can charge fees in the form of a higher interest rate. For assistance refinancing, you may consider speaking with a financial counselor or other experienced professional for guidance.

I am having difficulty making my monthly mortgage payments. What can I do?
Medical treatment, unemployment, or other sudden changes can make it difficult to meet financial obligations. If you are having trouble paying your monthly mortgage, it is extremely important that you do not ignore the problem and that you take action to avoid foreclosure. If you have a

[1] When the amount of money you owe your lender is less than the amount your home is worth, this is called having *equity* in your home. The amount of equity you have is equal to the difference between your home’s value and the amount of your remaining mortgage, and might be considered the amount of your house you “truly own.” You can use home equity to buy your next home, as collateral for a loan, or to fund retirement.

mortgage, this means that when you borrowed money from a bank or lender to buy your home, you used your home as collateral. Foreclosure is the legal process through which a lender attempts to recover a debt that is not being paid, by taking possession of a loan's collateral and selling it. This means if you fall behind on your mortgage payments, your lender may be able to repossess your home and re-sell it.

As soon as you realize that you are having difficulty paying your mortgage, you should contact a Department of Housing and Urban Development (HUD)-approved housing counselor. These counselors offer free advice and consultations to help homeowners keep their homes and avoid foreclosure. To find a HUD-approved housing counselor near you, call 1-800-569-4287. Some options that they may recommend to help make your payments more manageable are:

- **Forbearance agreements:** If you are having difficulty making payments because of a temporary change in your situation and need some short-term relief, a forbearance agreement may be a good option for you. When you enter into a forbearance agreement with your lender, your lender agrees to allow you to reduce or miss your mortgage payments for a specific amount of time (called the forbearance period), and to not foreclose on your home during this time. You must agree to begin making payments in full at the end of the forbearance period and pay additional money to make up for what you did not pay during the forbearance period.

- **Loan modifications:** A loan modification is a permanent change to the terms of your mortgage to make it easier for you to keep up with payments. A loan modification could include reducing the interest rate or extending the term of a loan. For example, if you had a 20-year mortgage and $1,000 payments every month, you might be able to extend the term of your mortgage from 20 to 30 years total, which would reduce your monthly payment by a few hundred dollars per month. The loan modifications that are possible in your situation will depend on the rules of your original mortgage loan agreement. To be eligible for a loan modification, typically you must show that you cannot make your current payments because of financial hardship, and must complete a trial period to prove that you can afford the new payments after your loan is modified.

- **Partial claim**: If you have missed more than four (4) but less than twelve (12) mortgage payments, you may be able to work with your lender to file a partial claim with HUD for a loan from the Federal Housing Agency (FHA)'s insurance fund for the total amount of the payments you have missed. However, this is generally only an option if you are able to begin making full payments on your mortgage again. If HUD grants you this loan, it will place a lien[2] on your home until you have paid back the loan in full.

- **Repayment plans:** If you missed a few payments because of a temporary hardship, a repayment plan may help you catch up on these payments after you have gotten your finances back in order. When your lender allows you to set up a repayment plan, they will total the amount you owe and divide that debt over a certain number of months. You will

[2] When someone places a *lien* on your home, they are legally establishing that you owe them money, and that they have a claim to your home until that debt is paid in full.

pay that amount back in addition to your normal payments. After the repayment period has ended, you will return to making your normal payments.

If you think that any of these options make sense for your situation, you should contact your lender or your lender's loss mitigation department as soon as possible. Lenders are usually willing to work with you to reduce the burden of your mortgage, because it is easier for a lender to collect reduced payments than it is to foreclose on a home.

How does the foreclosure process work?
The law governing foreclosures may vary depending on where you live, but a lender usually forecloses on a home in three steps:

1. **Missed payments:** When a homeowner is having financial difficulties, they may begin missing mortgage payments. When this occurs, the loan becomes delinquent (or overdue), and the homeowner goes into *default*. If you are in default, you should contact your lender right away to try to work out a way to make up the payments you have missed.

2. **Notice of Default:** After being in default for 3-6 months, the lender will contact the homeowner to see whether they can pay their debt, and will also file a Notice of Default with the County Recorder's office. The period of time after a Notice of Default has been filed, but before the foreclosure is final, is called *pre-foreclosure.*

3. **Auction:** If the homeowner does not pay the debt or correct the default within a certain amount of time (usually 3-9 months), the lender will choose a day to sell the home and give the homeowner a Notice of Sale. The Notice of Sale will also be posted on the property, filed with the County Recorder's Office, posted online, and printed in newspapers. On the day chosen by the lender, the home will be auctioned to the highest bidder, who will then be given the deed to the property. This is known as the Trustee's sale. If no one buys the home at auction, then it becomes what is known as real-estate owned (REO), and the lender takes ownership of the home and tries to sell it through a local real estate agency.

What should I do if I am facing foreclosure?
Foreclosures can cause your credit score to drop by more than 100 points, and can make it difficult for you to borrow money, find housing, or even change employment. If you are facing foreclosure, and you do not enter a forbearance period, repayment plan, or loan modification, the following options might have a less damaging impact on your credit score:

- **Selling your home:** You may be able to avoid foreclosure by selling your home and paying off your mortgage. You may be able to sell your home to avoid foreclosure even if the amount you owe your lender is greater than the value of your home. This is sometimes called a "short sale." Your lender may agree to let you make a short sale if you are at least two months delinquent on your mortgage payments, are able to sell your house within three to five months, and meet additional HUD guidelines. If you believe that a sale is your most realistic option, you should speak with your lender and start looking for a buyer as soon as possible. Most lenders will not postpone the foreclosure process to wait for you to find a buyer for your home.

- **Deed in lieu of foreclosure:** This option is where you voluntarily give the deed for your home to the lender in exchange for the lender releasing you from your mortgage debt. This option is for those who want to avoid foreclosure if you cannot sell your home through a short sale. It will not allow you to continue living in your home, and it will still cause your credit score to drop. However, a deed in lieu of foreclosure will not be as damaging to your credit score as would going through the foreclosure process.

I am an older adult with limited income, what are some resources available to help me remain in my home as long as possible?
Cancer treatment and other expenses can be especially burdensome to people who are retired and may not have many financial resources. If you are older and would like to continue to live in your home, there are many resources that can assist you. Medicaid, for example, provides in-home support services that allow people with disabling medical conditions to live independently, and many states have local transportation, food, and financial and prescription assistance programs specifically targeted toward seniors.

If you have equity in your home, it can be a valuable resource that you may be able to use to ease your financial burden. However, before you use your home's equity for any reason, you should speak with a HUD-approved housing counselor about what your goals are for home ownership, and how these actions might affect you. Most professionals advise against using your home's equity except as a last resort.

One way to use the equity in your home is to convert your home equity into cash through a reverse mortgage. A reverse mortgage, or *home equity conversion mortgage* (HECM) is a type of loan designed for seniors 62 or older whose home is their only property, and either own their home outright or have very little left to pay on their mortgage. When someone takes out a reverse mortgage, they can receive a loan for up to half the value of their home, and may receive this money in monthly payments, a lump sum, or as a line of credit. A reverse mortgage may be appealing because you do not have to pay the loan back as long as you are living in your home, and because the money you get from the reverse mortgage can be used to pay off debts and improve your quality of life.

However, reverse mortgages typically have higher fees and interest rates than other kinds of loans, and you must continue to maintain your home and pay property taxes. If you move out of your home for more than 12 months, you immediately become responsible for paying back the entire balance of the mortgage to your lender. If you live in your home for the rest of your life, your family or whoever you name to be in charge of your estate[3] will be responsible for paying back your reverse mortgage loan once you pass away. In most cases, this means that your estate will need to sell or auction off your home to pay back the money you borrowed. This can be especially hard for couples who take out a reverse mortgage but only have one person's name on the reverse mortgage. If the spouse who took out the reverse mortgage dies or moves into a nursing home or other facility, the remaining spouse will have to repay the loan immediately. A reverse mortgage usually only makes sense if you do not have any other assets, you think you will be

[3] An *estate* is a term for all the money and property left behind by someone who has died.

able to live in your home for the rest of your life, and do not want to leave your home to your children or other family members.

Some alternatives to taking out a reverse mortgage include taking out a home equity loan or home equity line of credit. These are loans in which your home is used as collateral to allow you to borrow money. Some people prefer these options because the amount of interest you pay on these loans is tax deductible up to $100,000, and because in most cases you will still be able to pass your house on to your loved ones when you die. However, if you default on these loans, your lender could still foreclose on your home.

A less risky option might be to sell your home and downsize to a smaller home that is easier and less expensive to maintain. If you choose to do this, you could use the money from the sale of your home to buy a new home, and potentially have money left over to help you live more comfortably. If it is important to you that your home stays in your family, you could even consider selling your home to your children or other family members.

If I sign up for Medicaid, can the state take my home?
Medicaid is a state-run federal program which provides health coverage to people with low incomes, disabilities, seniors, and other groups which may not be able to afford other types of health insurance. When Medicaid provides long-term care benefits (such as in-home support services or nursing home care) to people over the age of 55, federal law requires state Medicaid programs to try to recover the cost of these services after the death of the person who was receiving these services. Medicaid does this through a process called *estate recovery*. In the estate recovery process, Medicaid will try to recover money from the estate of the person who was receiving the long-term care benefits. Usually, the only part of your estate that Medicaid would be able to recover any money from is your home. This process would only potentially happen if you used long-term care services like in-home support or nursing home care, and generally does not affect people who simply use Medicaid for other health care, though rules vary from state to state. If you think that you may need to receive long-term care from Medicaid in the future, it is also important to consult with an attorney to reduce the amount that can be recovered from your estate after your death. Medicaid estate recovery rules vary depending on where you live, so an attorney can advise you about what the law is in your state.

If you are the child of, or are inheriting property from, someone who died and had received long-term care benefits from Medicaid, you may receive a notice from Medicaid stating that the person's estate owes Medicaid a specific amount of money and that the state will be placing a lien on the person's home. However, Medicaid will not place a lien on someone's home if the person's spouse, disabled child, or child under the age of 21 is still living there. Similarly, Medicaid cannot place liens on homes if it would cause an "undue hardship" on surviving family members. If you have been contacted by your state's Medicaid Estate Recovery Program, you should speak with an estate planning or elder law attorney about what options may be available to you to prevent Medicaid from recovering these expenses.

Resources

For more information about avoiding foreclosure and for information on how to contact a HUD-approved housing counselor, please see: https://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure

For more information about the Department of Housing and Urban Development, please see: www.hud.gov

For more information about refinancing a mortgage, please see: https://www.usa.gov/mortgages

For information about reverse mortgages, please see: https://www.consumer.ftc.gov/articles/0192-reverse-mortgages

For more information about Medicaid estate recovery, please see: https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html

For an online guide to foreclosure prevention and neighborhood stabilization, see: www.foreclosure-response.org (developed and maintained by the Center for Housing Policy, KnowledgePlex, the Local Initiatives Support Corporation, and the Urban Institute)

For more information on foreclosure and prevention, please contact:
NACA Home Save
https://www.naca.com/home-save
1-888-302-NACA
(Non-profit HUD certified organization providing the most effective solution for at risk homeowners.)

