

Legal Basics: Foreclosure Prevention

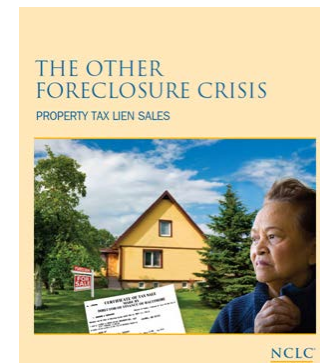
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National Consumer Law Center

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National Consumer Law Center

- Advocate on behalf of low-income consumers
- Provide training, legal analysis, case consultation and advocacy on consumer law issues
- Other training opportunities
 - Webinars
 - Annual conferences
 - In-person trainings



Racial Justice and Equal Economic Opportunity Project

- Address the exploitive and discriminatory practices in the marketplace aimed at individuals and communities of color
- [Read more about NCLC's Racial Justice and Equal Economic Opportunity Project](#)

Legal Basics: Foreclosure Prevention

- What is foreclosure
- Counseling older homeowners
- Options to save the home
- Alternatives to foreclosure
- Accessing resources



What is Foreclosure?

- Real property is sold to satisfy an unpaid debt
- Process that is used varies based on type of debt and type of property
 - Tax lien foreclosure, condominium or homeowner association, manufactured home
- Foreclosure of a home with a mortgage or deed of trust
- Governed by state law

The Foreclosure Process (1 of 3)

Non-Judicial

- Notice of default and acceleration
- Notice of foreclosure sale
- Foreclosure sale
- Reinstatement

Judicial

- Notice of default and acceleration
- File a complaint/answer
- Date to cure
- Date to redeem
- Foreclosure sale
- Confirmation of sale

The Foreclosure Process (2 of 3)

- Mediation, supervised conference or other form of negotiation
- More protections required for
 - Military service members
 - Government insured or guaranteed loans
- Federal laws and regulations which govern the servicing of mortgages

The Foreclosure Process (3 of 3)

- Understand where the homeowner is in the process
- Get help early – missed 2 payments
- Some foreclosure alternatives available to those who anticipate falling behind
- Options to save home may take time to put in place

Assessing the Needs of Older Homeowners

- Older homeowners carrying more mortgage debt into retirement
- Most want to age in place
- Declining or fixed incomes
- Illness or death of a spouse
- Need to maintain the home plus carrying costs
- HUD-approved counselors

Options to Keep the Home

- Repayment plan – catch up on missed payments
- Forbearance – repay arrears over time with regular monthly payments
 - Put payments on hold
- Loan modification – change key terms of the mortgage
 - Reduce the interest rate
 - Extend the term
 - Forbear collection of a portion of principal

Life After HAMP

- Signature program to help homeowners in foreclosure
- Need for modification program remains
- After HAMP no one industry standard for mortgage modifications
- Existing programs may change

Foreclosure Prevention Returns to the Unknown

By STACY COWLEY JAN. 25, 2017



Justina Osorio, with her daughter, Vivianna, is one of the last participants in a government program that tries to fend off foreclosure. Nathan C. Ward for The New York Times

Life After HAMP (cont.)

- What is next?
- Federal government weighs in
- Private industry develops guidelines
- Fannie Mae/ Freddie Mac



GUIDING PRINCIPLES FOR THE FUTURE OF LOSS MITIGATION:

HOW THE LESSONS LEARNED FROM THE FINANCIAL CRISIS CAN INFLUENCE THE PATH FORWARD

Fannie Mae/Freddie Mac

- Flex Modification
- Borrowers who are in default or in danger of defaulting on loan
- Reduce monthly payments by up to 20%
- If less than 90 days delinquent Flex Modification terms are more favorable
- New fixed-rate loan for a longer term

Refinancing

- Refinance with a regular mortgage
 - Monthly payment over the term of the loan
 - Not available if in default and foreclosure
- Refinance with a reverse mortgage

Reverse Mortgages

- Allow older adults to cash out the equity in home without need for immediate repayment
- FHA-insured reverse mortgages
 - Home Equity Conversion Mortgage (HECM)
- Loan due when the last surviving borrower dies or moves from home permanently, home is sold, or borrower fails to maintain the home or pay property charges

Government & Private Assistance

- State programs
 - Loan program
 - Direct assistance/ grants
- Private resources
- Programs targeted at elders

HEMAP FACT SHEET

Provided by the Pennsylvania Housing Finance Agency



This Fact Sheet contains important information about your legal rights and ways to save your home from foreclosure. The Homeowner's Emergency Mortgage Assistance Program (HEMAP) is a state-funded loan program that offers valuable protections for homeowners and could help you keep your home. This document describes HEMAP, explains the foreclosure process and describes actions your lender may take if you choose not to apply for HEMAP or if your application is not approved. If you have additional questions about HEMAP, contact the Pennsylvania Housing Finance Agency (PHFA) toll-free at 800-342-2397 or visit the HEMAP page on our website at www.PHFA.org/hemap.

If you are not eligible for HEMAP or choose not to apply, you may wish to contact your lender directly regarding other options that may be available to stop the foreclosure of your home. It is also possible to explore options with your lender while your HEMAP application is pending.



Additionally, you may wish to consult with an attorney who can explain your rights and discuss any possible defenses to the foreclosure action. The local bar association in your county may be able to provide information about the availability of free legal services for which you may qualify.

Foreclosure Alternatives

- Short sale – accept proceeds of sale even if proceeds will not cover the amount due on the mortgage
- Deed-in-lieu of foreclosure – accept voluntary return of the property
- Sell the home



What You Can Do...

- Discuss goals or plans regarding home
- Apply for benefits
- Gather documents
- Find a HUD-approved housing counseling agency
- Seek legal assistance and other resources

UNIFORM BORROWER ASSISTANCE FORM

If you are experiencing a temporary or long-term hardship and need help, you must complete and submit this form along with other required documentation to be considered for available solutions. On this page, you must disclose information about (1) you and your intentions to either keep or transition out of your home; (2) the property's status; (3) bankruptcy; and (4) your credit counseling agency.

On Page 2, you must disclose information about **all** of your income, expenses and assets. Page 2 also lists the required income documentation that you must submit in support of your request for assistance. Then on Page 3, you must complete the Hardship Affidavit in which you disclose the nature of your hardship. The Hardship Affidavit informs you of the required documentation that you must submit in support of your hardship claim.

NOTICE: In addition, when you sign and date this form, you will make important certifications, representations and agreements, including certifying that all of the information in this Borrower Assistance Form is accurate and truthful and any identified hardship has contributed to your submission of this request for mortgage relief.

REMINDER: The Borrower Response Package you need to return consists of: (1) this completed, signed and dated Borrower Assistance Form; (2) completed and signed IRS Form 4506T-EZ (4506T for self-employed borrowers or borrowers with rental income); (3) required income documentation; and (4) required hardship documentation.

Loan Number _____		(usually found on your monthly mortgage statement)	
Servicer's Name _____			
I want to: <input type="checkbox"/> Keep the Property <input type="checkbox"/> Vacate the Property <input type="checkbox"/> Sell the Property <input type="checkbox"/> Undecided			
The property is currently: <input type="checkbox"/> My Primary Residence <input type="checkbox"/> A Second Home <input type="checkbox"/> An Investment Property			
The property is currently: <input type="checkbox"/> Owner Occupied <input type="checkbox"/> Renter Occupied <input type="checkbox"/> Vacant			
BORROWER		CO-BORROWER	
BORROWER'S NAME		CO-BORROWER'S NAME	
SOCIAL SECURITY NUMBER	DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE OF BIRTH
HOME PHONE NUMBER WITH AREA CODE		HOME PHONE NUMBER WITH AREA CODE	
CELL OR WORK NUMBER WITH AREA CODE		CELL OR WORK NUMBER WITH AREA CODE	
MAILING ADDRESS			
PROPERTY ADDRESS (IF SAME AS MAILING ADDRESS, JUST WRITE SAME)			EMAIL ADDRESS
Is the property listed for sale? <input type="checkbox"/> Yes <input type="checkbox"/> No		Have you contacted a credit counseling agency for help?	
If yes, what was the listing date? _____		<input type="checkbox"/> Yes <input type="checkbox"/> No	
If property has been listed for sale, have you received an offer on the _____		If yes, please complete the counselor contact information below:	

Resources

- [U.S. Department of Housing & Urban Development \(HUD\)](#)
 - Apply for options/ documentation
- [Consumer Financial Protection Bureau](#)
- Legal assistance
 - Legal services
 - Volunteer attorneys

RESOURCES

National Consumer Law Center

Webinars Archived Online

- Elder abuse, neglect and exploitation
- Legal tools to avoid guardianship
- Advance care planning for people with dementia
- What you need to know about SSI
- Delivery of legal services to older adults

The screenshot displays the NCLC website interface. At the top left is the NCLC logo with the tagline "Advancing Fairness In The Marketplace For All". A navigation menu includes "About", "Services", "Issues", "Projects", "Litigation", "Legislation & Rulemakings", "Conferences & Trainings", "Bookstore", and "For Consumers". A search bar at the top right contains the text "SUPPORT OUR WORK" and "Search for...". Below the navigation is a breadcrumb trail: "Home > View all Upcoming Webinars".

The main content area shows "Search results" for the query "aging into poverty". The first result is titled "AGING INTO POVERTY: Economic Insecurity among Older Adults of Color & LGBT Elders". It lists speakers: Odette Williamson, staff attorney, National Consumer Law Center; Fay Gordon, staff attorney, National Senior Citizens Law Center; and Bryan Pacheco, National Coordinator, Diverse Elders Coalition. A table shows the event date as 05-07-2014 2:00 pm and the event end date as 05-07-2014 3:30 pm. A "Details" button is visible.

The second result is titled "The Fine Art of Balancing Protection with Self Determination". The description states: "Research shows that empowering individuals to actively participate in personal decision making improves life outcomes and can reduce the risk of abuse and exploitation. There is a risk of abuse and exploitation in all models of decision making for persons with differing abilities. An overly protective response to situations where a person with varying levels of capacity may be at risk can stifle self-determination and empowerment. Protection needs to be carefully balanced with protecting human and constitutional rights. Adults have a basic right to make choices, good or bad, and determine the course of their lives. An overly aggressive, or inappropriate protective response to limited capacity can itself be a form of abuse. This session will talk about recognizing the signs and signals of abuse, neglect (self-neglect) and exploitation, tools to maximize communication with persons with differing abilities, and promoting self-determination".

On the right side, there is a "SEARCH WEBINARS" section with a search input field containing "aging into poverty", a "Select Category" dropdown, and a "Search" button. Below it is a "BROWSE WEBINARS BY CATEGORY" section with a search input field, a "Select Category" dropdown, and a "Search" button. A second "BROWSE WEBINARS BY CATEGORY" section is also visible, listing "National Elder Rights Training Project" and "Racial Justice".

Consumer Alert for Elder Advocates



New Year, Major New Changes for HECM Reverse Mortgages

Please Complete our Brief Survey on Non-Borrower Spouses

HUD recently announced long-awaited revisions to its policy on non-borrowing spouses kept off loans originated prior to August 4, 2014, and added new financial assessment guidelines to its Home Equity Conversion Mortgage (HECM) reverse mortgage program. The changes address several key issues facing the HECM program, including the fate of spouses currently facing foreclosure due to the death of a borrower-spouse and the ability of borrowers to meet ongoing financial obligations.

Non-Borrowing Spouses on HECM Loans made prior to August 4, 2014

HUD created an option that allows lenders to seek an early assignment of the loan to the agency if the loan and the non-borrowing spouse meet certain qualifications. An early assignment of the loan to the agency will defer repayment of the loan until the death of the non-borrowing spouse (under certain conditions). HUD is seeking comments from the public regarding the option - called the Mortgagee Optional Election (MOE) Assignment - outlined in [Mortgagee Letter 2015-03](#) (January 29, 2015).

A non-borrower spouse is one who was taken off the title to the home and not listed as a mortgagor on the loan documents at origination so that the older spouse could qualify for the reverse mortgage or receive more proceeds from the loan. When the spouse who is listed on the loan dies, the non-borrower spouse (often the wife) faces foreclosure and eviction.

If the lender selects the MOE assignment option, repayment of the HECM is deferred until after the death of a non-borrowing spouse or the spouse's breach of one of the required conditions. During this deferral period, the spouse will not receive any loan

Please Help: Complete the Reverse Mortgage Non-borrower Spouse Survey

The National Consumer Law Center (NCLC) has created a survey to solicit information from advocates regarding the scope and nature of the challenges HECM borrowers and non-borrower spouses face with respect to reverse mortgages. Responses to the survey will be relayed to HUD, in the aggregate, as part of



CONSUMER

Information for Advocates
Representing Older Adults

CONCERNS

National Consumer Law Center®

Protecting Social Security and other Federal Benefits in Bank Accounts from Garnishment by Debt Collectors

Federal law provides that Social Security benefits, Veteran's benefits and SSI payments are all protected from seizure for debts owed to banks and other creditors. Despite the law, these benefits have often been seized right out of bank accounts to satisfy judgments in a process called "garnishment." (Garnishment occurs after a creditor brings a lawsuit and obtains a judgment against a debtor; it is used to seize the debtor's property to pay the judgment.) Now, because of the U.S. Department of Treasury's rule (effective May 1, 2011), banks are not permitted to seize these exempt federal benefits in response to garnishment orders in most instances.

The rule only protects federal funds that were electronically deposited directly into the recipient's bank account. In addition to Social Security, SSI, and VA benefits, the rule protects federal Railroad Retirement, federal Railroad Unemployment and Sickness, federal Civil Service Retirement System, and federal Employee Retirement System benefits. We will refer to these types of benefits as "exempt funds" or "exempt federal benefits." The rule does not protect military retirement payments or other military benefits, nor does it protect benefits provided by the states – such as welfare benefits or unemployment compensation. Those benefits are generally exempt from garnishment under state law, but the Treasury Rule does not cover them.



FACTS

FOR OLDER CONSUMERS

National Consumer Law Center®

Protect Yourself From Identity Theft

Identity theft is one of the fastest growing crimes in the country. It can strike anyone, but elders may be particularly vulnerable. Identity thieves often target unsuspecting elders, luring them into giving out personal information. The scammers then use this information to steal the elder's identity and ruin a lifetime of positive credit references.

Discovering the Crime

You may not even know you are a victim of identity theft until you try to get new credit or apply for a loan and are unexpectedly rejected. Identity theft is discovered an average of fourteen months after the crime has occurred.

It is dangerous to be in the dark when it comes to your credit report. The best way to avoid this problem is to order your report on a regular basis. There are three major national credit bureaus. If possible, you should order your report from all three.

Ordering Your Credit Report

Each of the three major credit bureaus requires certain information before they will send you a credit report. Each bureau also has sample reports available on their web sites. The current toll-free phone numbers and web addresses for ordering credit reports are listed below. You can also order by mail for free, but these addresses change frequently and it is best to call or check the web site to get the current mail address.

EXPERIAN: Toll-free phone number: 1-888-EXPERIAN (1-888-397-3742), TTY (1-800-972-0322) Web site: <http://www.experian.com/>.

EQUIFAX: Toll-free phone number: 1-800-685-1111. Web site: <http://www.equifax.com/>.

Trans Union: Toll-free phone number: 1-800-888-4213. Web site: <http://www.transunion.com/>.

Resources for Advocates

- National Consumer Law Center
- CFPB
- Fannie Mae/ Freddie Mac
- FHA/ VA & RHS
- State agencies

