

The following are examples of some of the many ways to lose a home. Generally, the descriptions below only apply to home owners who are delinquent in their monthly mortgage payments or in default. This is not a complete list. It is sometimes possible to rework or recast a mortgage with your lender, particularly if there is equity in the property. It is also sometimes possible to obtain a grace period or be given extra time by your lender to get ones financial problem under control. But if the lender has not heard from the borrower and the home owner is three months or more behind on payments, they are in serious jeopardy of losing their home and should be aware of the concepts below.

It is important to read and understand the mortgage contract and how it defines delinquency and default. If a borrower is late in your mortgage payments or believes that he/she might be delinquent or in default now (or if the borrower anticipate that he/she may be delinquent or in default on the mortgage at some time in the future) then immediately contact a real estate attorney who may be able to help. Time is of the essence in these situations and it is possible that a number of arrangements could be made to save money and credit.

### **Short Sale**

A short sale real estate transaction occurs when a buyer is willing to purchase a home for an amount less than the outstanding mortgage on your property. However, in a short sale the lender must agree to write off the portion of a mortgage that is higher than the value of the home. Not all lenders will accept short sales, especially if it would make more financial sense to them to foreclose on the property.

A short sale is a difficult residential real estate transaction to get approved by the lender and involves as much, if not more paperwork than an original mortgage application. But this time the current home owner must prove his/her financial hardship, not financial well being.

Additionally, there must typically be an existing and valid real estate purchase agreement between a buyer and seller. Once these two criteria are met, then the next step is often a lengthy negotiation process between the lender and current home owner.

This seems like a difficult and arduous process, and sometimes it is. However, in general, a short sale is a better option for a current home owner then bankruptcy or foreclosure proceedings. This is because a short sale allows the home owner to get away from the property and the associated indebtedness with much less damage to their bottom line. A home owner who chooses a short sale suffers significantly less damage to his/her credit report and can sometimes negotiate a full release from his/her mortgage obligation as opposed to some of the other options below. However, on the negative side, there are often tax consequences to the seller in a short sale stemming from the lender's forgiveness of debt (for agreeing to take less from the sale than the outstanding mortgage

indebtedness). Please contact an accountant or tax professional in order to understand the individual tax consequences from a short sale.

### **Involuntary Foreclosure**

This is the process by which the lender takes back and sells the property. There are two common types of foreclosure: 1) Judicial Foreclosure – which provides the home owner a level of protection by due process in court, is regulated by state rules, and is used in most mortgages; and 2) Power-of-Sale Foreclosure – which is used in deed of trust situations (which are common in Virginia), is less regulated, and provides fewer protections to the home owner. There are serious credit repercussions to allowing involuntary foreclosure on your home, much more so than with a short sale. Often the home sells for a lower price during a foreclosure sale or auction, potentially leaving the home owner with an additional obligation for the deficiency amount. Additionally, the home owner may be responsible under its agreement with the lender for the costs of the foreclosure process, which can often be tens-of-thousands of dollars.

### **Deed in Lieu of Foreclosure**

This is considered a “voluntary foreclosure” and may even damage your credit record as much as an involuntary foreclosure. However, this process allows home owners to avoid public notice of a foreclosure sale. Generally, the lender will work with a real estate agent to complete a sale of your home, and sometimes the home owner will not be held liable for the deficiency if the home sells below the debt amount. However, there may be tax consequences if the home sells for less than the outstanding mortgage indebtedness. Moreover, lenders are not obligated to accept your home’s deed in lieu of foreclosure. Many lenders will not agree to this proposal because it transforms them from lenders to home owners trying to sell the property.

### **Bankruptcy**

This is the last resort, if your home cannot be sold. It may save your ownership of your home, but it will severely damage your credit record for at least seven (7) years and you will lose control of your finances. Foreclosure proceedings are usually stopped until bankruptcy is resolved. Contact a bankruptcy attorney if you are contemplating this course of action.