

## MANDATORY MEDIATION

Beginning July 1, 2009, your lender must include with your notice of default a notice advising you of your right to request mediation. You will also receive two envelopes and you must either elect or waive (give up) mediation within 30 days by sending notice to the mediator and your lender. You must also deposit \$200 with the Foreclosure Mediation Program.

Mediation is mandatory and you and your lender will sit down with a mediator to discuss ways to avoid or lessen the hardship of foreclosure. The mediation requires good faith on the part of both you and your lender. This means you cannot request mediation to simply delay the foreclosure sale. You should have (1) a steady income or the prospects of a steady income in the near future; or (2) you are willing to give up your home (short sale) and want more time and/or money to move (cash for keys). Good faith also requires your lender to accept a reasonable offer. Both you and your lender must also prepare and bring to the mediation certain documents.

For more information, visit the Supreme Court's website at [www.nevadajudiciary.us](http://www.nevadajudiciary.us) or call the Mediation Program Administrator at (702) 486-9380.

Do not have unreasonable expectations. Mediation can result in lenders reducing your monthly payment and giving you more time to catch up. No lender will wait indefinitely for payment and you must have a plan to get caught up or move out.

**Contact a HUD-approved housing counselor:** HUD funds free or very low cost housing counseling nationwide. Nevada Legal Services is a HUD-approved housing counseling agency and can help with your foreclosure issue. Do not wait for the notice of sale or eviction notice. If you think you cannot pay your mortgage, contact your lender. If you receive a notice of default or any other foreclosure notice, you may contact us at (866) 432-0404.

**Avoid scams and foreclosure prevention companies:** You do not need to pay fees for foreclosure prevention, use that money on your mortgage instead. If any business claims they can stop your foreclosure immediately if you sign documents, be very careful and read the documents you are signing. Often foreclosure scammers have you sign blank papers, documents that appoint the scammer to act on your behalf, or even a deed of your property to the scammer. Many scammers ask you to sign immediately without consulting anyone else. You may then end up as a renter in your own home.

To report a problem with your lender, mortgage broker, or escrow agency contact:

### Mortgage Lending Division

The Division is authorized to enforce the statutes and regulations pertaining to Mortgage Bankers, Mortgage Brokers, Mortgage Agents, Escrow Agencies and Escrow Agents. If you feel a mortgage company has given you false information you may contact:

#### Carson City Office

400 W. King Street, Suite 101  
Carson City, NV 89703  
775-684-7060  
[mld.nv.gov](http://mld.nv.gov)

If you have an FHA mortgage or want information on a HUD approved counseling agency contact:

HUD Counseling Agency  
(800) 569-4287  
TDD (800) 877-8339



*PLEASE NOTE: Laws are subject to change. Information contained in this pamphlet is based on the laws in effect at date of publication. 7/1/09*

# AVOIDING FORECLOSURE



[www.nevadalegalservices.org](http://www.nevadalegalservices.org)

## TRUST DEED FORECLOSURE TIMELINE

Record Notice of Default and Notice of Mediation	As soon as 1 day after default
Mail Notice of Default and Notice of Mediation	Same day as Notice of Default recorded
Mediation Request	Within 30 days of Notice of Mediation
Mandatory Mediation	Within 80 days of request of homeowner
Danger Notice	No later than 60 days before sale date
Notice of Sale	3 months after recording Notice of Default or after conclusion of mediation, if later than 3 months
Time to Cure (pay off debt)	No later than 5 days before sale date
Sale by Auction	At least 21 days after Notice of Sale recorded

## TRUST DEED FORECLOSURE

Trust deed foreclosures comprise the majority of foreclosures in Nevada. A trust deed foreclosure is NON-JUDICIAL, meaning your bank, lender, or mortgage servicer does not need to go to court to foreclose and sell your home. If you have missed a mortgage payment, the lender or servicer begins the foreclosure process by mailing and recording a notice of default and election to sell. This is notice to you that the legal foreclosure process has begun and you will have about 4 months to cure the arrearage or work something out with your lender to save your home from a foreclosure sale.

## MAKING HOME AFFORDABLE

In addition to the loss mitigation options offered by HUD for FHA insured loans, homeowners may also qualify for refinancing or loan modification through the Making Home Affordable Program.

**Refinance option:** The refinance option is only available to homeowners with Fannie Mae or Freddie Mac owned loans. You can see if your loan is owned by Fannie Mae or Freddie Mac by visiting their websites at: [www.fanniemae.com/loanlookup](http://www.fanniemae.com/loanlookup) or [www.freddiemac.com/mymortgage](http://www.freddiemac.com/mymortgage).

Homeowners must be current to qualify. This means you cannot be more than 30 days late with your mortgage payment in the last 12 months. The amount due on the first mortgage must be less than 125% of the home's value (and second mortgages do not necessarily make you ineligible).

You will not be able to reduce the amount of the principal balance on the mortgage and will not be able to get more than \$2,000 to pay off other debts. Note: This option currently expires in June 2010 (unless extended).

**Modification option:** This option applies to Fannie Mae and Freddie Mac owned loans and to any servicer choosing to participate in the program. You can go to [makinghomeaffordable.gov](http://makinghomeaffordable.gov) to see if your servicer has elected to participate in the program.

The loan must have been originated before January 1, 2009, and must have an unpaid principal balance of less than \$729,750. Second mortgages, again, do not necessarily make you ineligible for the program.

Your mortgage payment must be more than 31% of your household's gross income. You do not have to be in default in order to qualify but must generally be in imminent risk of default. Your servicer can reduce your interest rate, extend payment terms 40 years, or forebear principal in order to make the loan affordable for you.

**Borrower Notices:** If the servicer determines that a homeowner is not eligible for a HAMP modification, the servicer must provide notice to the borrower of the primary reason for the ineligibility. Borrowers who are evaluated for the HAMP program but are not offered a Trial Period Plan, are not offered an official HAMP modification, or are at risk of losing eligibility for HAMP because they have failed to provide required financial documentation are entitled to notice of the reason for the denial or loss of eligibility. If the servicer denies a borrower based on a negative NPV (net present value) test, the borrower does have the right to request notification of the values and figures used to determine the NPV of the borrower's home within 30 days.

The NPV test is defined by each servicer/investor and is used to determine whether or not modifying the loan will represent a better deal financially to the servicer than allowing the home to be sold at foreclosure. If the borrower provides new information to the servicer that would result in a different result, the servicer must then run the NPV test again.

## SECOND MORTGAGE MODIFICATION

Homeowners with second mortgages on their home may qualify to modify the second mortgage after they have successfully modified the first loan. The 2MP program only applies when the first mortgage was modified under the HAMP program. The unpaid principal balance may not exceed \$5,000 (unless the second will be extinguished instead). The servicer does not have to have modified the first loan but does need to be a participant in the HAMP program.

Through this program, the interest rate of the second loan will be reduced to 1% (unless it is an interest only loan). The second mortgage's interest rate will also reset on the same terms as the HAMP modified first mortgage. The other terms of the second mortgage will be modified in the same proportion of the first mortgage—same length as the first mortgage, same proportion of any principal forbearance.

The second mortgage may also qualify for extinguishment, but will only be extinguished at the discretion of the servicer/investor. Servicer's do get incentive payments for choosing to extinguish a second mortgage.

## HOME AFFORDABLE FORECLOSURE ALTERNATIVES

HABA, including a short sale or deed-in-lieu of foreclosure, are available to borrowers who meet the same eligibility criteria for HAMP but do not otherwise qualify for a trial period plan, do not successfully complete a trial period, miss 2 consecutive payments during a HAMP modification, or request a short sale or deed-in-lieu instead of a modification. The borrower must first seek authorization from the lender to list the home and execute a Short Sale Agreement with the servicer. The servicer will set a minimum amount of money they will accept as the net proceeds from the short sale and the borrower must list the property with a licensed real estate professional. The borrower will then have 120 days in which to try to sell the home.

Once a sales agreement with a prospective borrower has been reached, even if it is not exactly on the same terms to the authorization, the borrower must submit the Request for Approval of a Short Sale to the servicer within 3 days of receiving a purchase offer. The servicer must approve the request if the sales offer is equal to or greater than the minimum net proceeds amount and adheres to the other terms and conditions of the agreement.

The borrower would then be released from liability for any deficiency resulting from the short sale and entitled to relocation costs of \$3,000.

If the borrower is unable to sell the property and elects a deed-in-lieu of foreclosure, the borrower would be fully released from the debt but must agree to vacate the property by a date certain, leave the property in broom clean condition, and deliver marketable title.

In a deed-in-lieu transaction, the borrower is responsible for clearing all subordinate liens and otherwise fixing any impediments to delivering clear title to the property. Again, the borrower is also eligible for \$3,000 in relocation expenses.

## MILITARY PERSONNEL

The Service Members Civil Relief Act of 2003 provides additional benefits to service members on active duty.

A court order is required before a home is sold at a foreclosure sale while a service member is on activity duty or within 90 days after the end of active duty. This law applies even in non-judicial foreclosure states like Nevada. Therefore, a lender cannot foreclose on a home through the trust deed foreclosure process. Instead, the foreclosing party must file a foreclosure action in court.

If the home is sold at a foreclosure sale without a court order, the sale may be rendered invalid and could subject the lender to criminal prosecution.

The court can also stay foreclosure proceedings while the service member is on activity duty. The military service must materially affect the service member's ability to pay, though, in order to obtain the stay of the foreclosure proceedings. A foreclosure obtained by default during active duty or within 60 days after the end of active duty may be reopened or set aside by the court.

Active duty service members can also request a reduction in the interest rate on any debt incurred prior to active duty. The interest rate must be reduced to 6% while the service member is on active duty. The service member must request the interest rate reduction from the lender and provide proof of the return to active duty in order to qualify. If the ability to pay on the debt, though, is not materially affected by the military service, a court can decide to raise the interest rate above 6%.