Knowing Your Rights and Responsibilities

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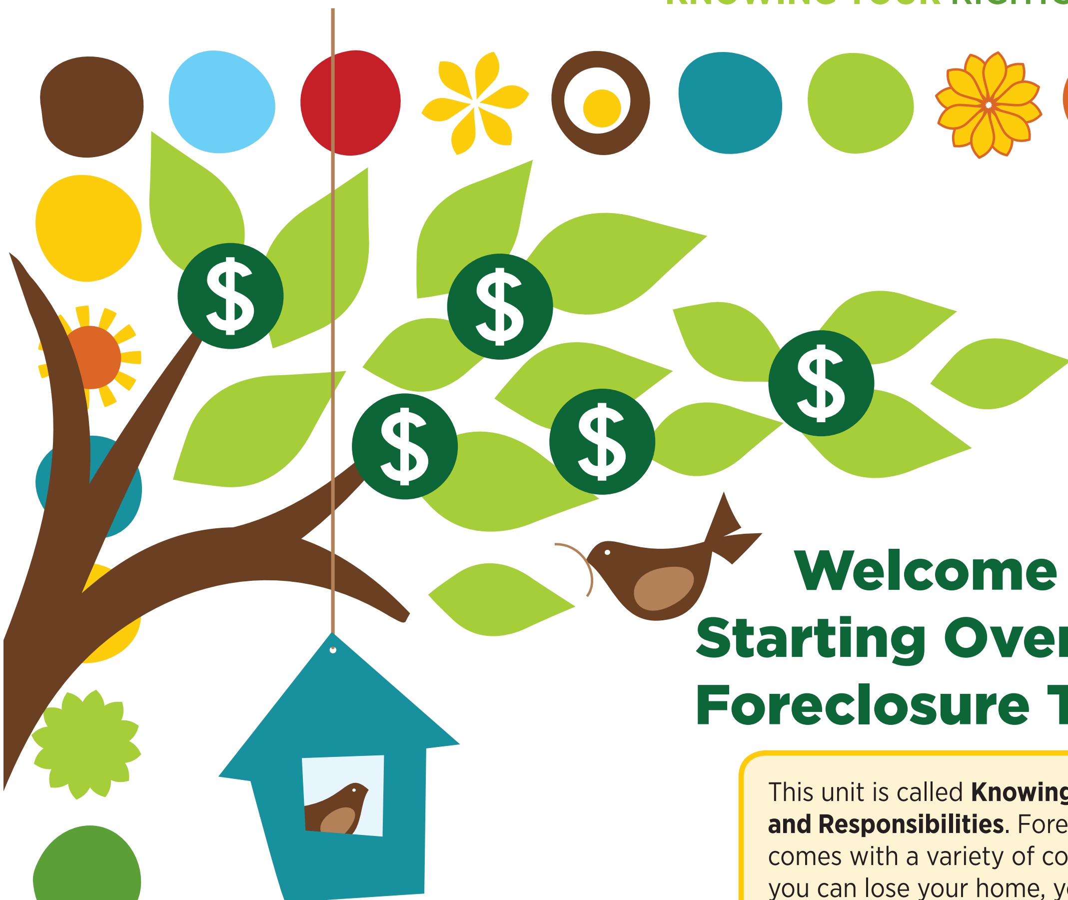


Welcome to the Starting Over After Foreclosure Toolkit

This toolkit is designed to help people who have been through home foreclosure or are now in the foreclosure process to rebuild their financial lives. There are eight distinct units available for use in this toolkit. They are:

- Getting a Fresh Start After Foreclosure
- Reimagining Your Future: What Direction Do You Want to Go?
- Assessing Your Financial Situation
- Rebuilding Your Financial Situation and Credit History
- Finding a Place to Call Home
- Knowing Your Rights and Responsibilities
- Getting Prepared, Getting Organized
- Returning to Homeownership

You may use each of the units in the toolkit when appropriate depending on where you are in the financial rebuilding process after foreclosure. You do not have to read them in order from start to finish, although you could.

This unit is called **Knowing Your Rights and Responsibilities**. Foreclosure comes with a variety of consequences: you can lose your home, your credit score goes down, and you may not be able to purchase another home for 3 to 5 years or more. Most financial disasters occur because of a single event such as getting sued or filing for bankruptcy. However, it's helpful to think of foreclosure as a process rather than a single event. Each state has different laws regarding foreclosure.

Visit the Michigan State Housing Development Authority (n.d.-a) (MSHDA) website (*www.michigan.gov/mshda/*) for information about the foreclosure process in Michigan. The MSHDA website will guide you to free, local foreclosure counseling and other important resources to help you through this process.

This unit will outline your rights and responsibilities regarding foreclosure and introduce you to definitions and terms you will need to know to help you through the foreclosure process in Michigan.

What Is Foreclosure?

According to Black's Law Dictionary (Foreclosure, n.d.), **foreclosure** is defined as a legal process in which a lender can take back collateral (your home), from a borrower (the homeowner) in **default** (failure to pay a debt). Foreclosure can occur if you fail to make your mortgage payments (including first mortgages, second mortgages, home equity loans or lines of credit) or fail to pay real estate property taxes. If you stop making payments, the property, and possibly your assets, can be seized.

Foreclosure Timeline

The foreclosure process in Michigan can be very complicated. The MSHDA has created a foreclosure timeline to help explain the process. According to the Michigan State Housing Development Authority (n.d.-b) *Stages of Foreclosure* website (http://www.michigan.gov/mshda/0,4641,7-141-45866-177816--,00.html), as of June 2014, a payment is **delinquent** (overdue) if you do not pay it on the day it is due, even if you are given a "grace" period of 10 or 15 days after it is due. Once the mortgage payment is more than 30 days late, the lender or servicer (usually a bank or mortgage company, see page 7 for more information) must try to reach out and make "live" contact with the homeowner(s). The live contact may be over the phone or in person. When contact is made with the homeowner, the lender or servicer will talk with the homeowner about the delinquency and, if appropriate, provide information on how to apply for options available to resolve the homeowner's delinquency problems.

Before the homeowner becomes 45 days delinquent, the lender or servicer must send a written notice of the delinquency to the homeowner encouraging the homeowner to contact the lender or servicer if he or she had not previously done so. In this letter, the lender or servicer must provide the phone number for the personnel assigned to the homeowner, and give the homeowner examples of **loss mitigation** options the lender or servicer offers. In loss mitigation, a mortgage lender works with a homeowner to negotiate terms to prevent foreclosure. The lender must also provide the homeowner with information about how to find a housing counselor.

When the borrower is more than 120 days delinquent, the lender may post a notice of foreclosure on the lender's home and file a foreclosure notice of sale with the court. The period between day 45 and day 120 of delinquency gives homeowners time to learn about workout options and to file an application for mortgage assistance. In addition, if the homeowner submits a complete application for mortgage assistance – often called a loss mitigation application – the lender or servicer may not begin the foreclosure process while a homeowner is being evaluated for a loss mitigation plan.

TRY IT!

Learn more about the Foreclosure process in Michigan. Review the Michigan State Housing Development Authority (2014, June) Foreclosure Timeline at http://www.michigan.gov/documents/mshda/Foreclosure_Timeline_427085_7.pdf.

Types of Foreclosure

According to the Michigan Foreclosure Task Force (2012-13), as referenced in the *Michigan Community Foreclosure Response Toolkit*, two types of foreclosure occur in the state of Michigan. If you reside in other states, please visit *http://www.nolo.com/legal-encyclopedia/state-foreclosure-laws* for your state specific foreclosure laws.

Michigan Foreclosure by Advertisement

The law firm hired by the bank or mortgage company will list the property as being up for foreclosure sale in a newspaper that covers the county in which the property sits. The listing must appear for four consecutive weeks. Within 15 days of the first publication of the sale in the newspaper, the lender must also post a copy of the advertisement on the property.

The foreclosure sale takes place on a date set by the foreclosing law firm. The sale usually takes place on the fifth week – after the four weeks of newspaper advertising. Either the bank that services the loan or a private individual can purchase the property. Until the mortgage company or bank is ready to do the sale, the foreclosure sale can be postponed from week to week. If the homeowner is working to resolve the delinquency in the loan, the sale is often postponed.

Michigan Judicial Foreclosure

A mortgage company may have to file a judicial foreclosure if the mortgage documents were not drafted or recorded properly. The company will need the court to correct the situation to allow the foreclosure to proceed.

If your mortgage company files a judicial foreclosure case, you will receive a **summons and complaint**. A summons and complaint is a document that notifies you that you are being sued. It will be delivered to you in person or by certified mail – restricted delivery for which you have to sign. If the process server cannot find you or you refuse to sign for the certified mail, then the mortgage company can receive permission from the court to send the papers to you in a different way such as posting them on your door or sending them by regular mail.

You should consult with an attorney. He or she can review your situation with you to see if you have any defenses or arguments that should be presented to the court. Only an attorney can provide you with individual legal advice.

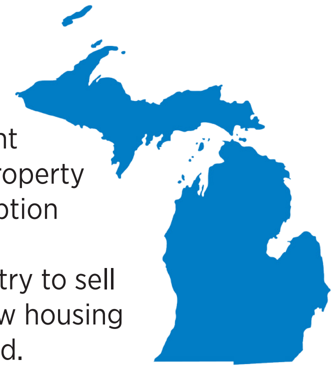
You must file a written answer within 21 days of when you received the summons and complaint. No court date or trial will be scheduled if you do not file a written response with the court. If you do not file a written response, the court will enter a **default** against you, meaning that you have failed to meet the legal obligations of your mortgage. The mortgage company can obtain a judgment for the amount they request in their summons and complaint.

Once a judgment is entered against you, the court will then order that your home may be sold by the sheriff and any proceeds from the sale will be applied to the amount of the judgment. If the court enters a money judgment finding that you are personally responsible for the debt and the proceeds from the sale of your house do not pay the entire amount of the judgment, then the mortgage company can try to take other enforcement action against you. This could include **garnishing** your wages, your bank account or your state income tax return. For example, when your wages are garnished, your employer is required by law to withhold a certain amount of your paycheck and send it to the mortgage company until your debt is paid. The mortgage company could also seize or sell other property such as a vehicle. However, taking this type of action is fairly rare.

There must be at least six months between the filing of a complaint and the court's order that the property may be sold. The court process may take longer depending upon the complexity of the case, the court's schedule, whether you file a response or if the case proceeds by default. Once a judgment is entered, it will take a minimum of six weeks to schedule, advertise and conduct the sheriff's foreclosure sale. After the sheriff's sale, the court will confirm the sale and you will have a six-month redemption period.

Although both types of foreclosure are available, the first, Michigan Foreclosure by Advertisement, is more common. Communicating with a local attorney or housing counselor can assist you in this process.

Michigan Foreclosure Redemption Period



As described in the Michigan State Housing Development Authority (2014, June) Foreclosure Timeline, after the property is sold at the sheriff's sale, the homeowner has a redemption period. During this time, several things can happen. The borrowers can try to buy the property back or they can try to sell the property. If they can do neither, they must locate new housing and move out at the conclusion of the redemption period.

The redemption period in Michigan is usually six months, except in the following situations: there are more than four units; less than two-thirds of the original debt is owed; the property is a farm with multiple acres; or the property has been abandoned. If the property is abandoned, the redemption period is 30 days.

To redeem the property during the redemption period, the homeowners must pay off the amount bid at the sheriff's sale, all interest and late fees, court costs, attorney fees, and title and appraisal fees. If the sheriff's deed holder paid taxes or insurance after the sheriff's sale, the homeowner must pay those fees as well. Redeeming the property by getting another mortgage is difficult because of the bad credit rating that resulted from the foreclosure. If a homeowner intends to redeem the home, they must file a petition to redeem at the courthouse before the redemption period expires. The homeowners will need to provide proof of funds to show the court they have sufficient resources to pay the balance. The homeowners must pay the entire balance plus all attorney fees and costs to the county register of deeds. If the property is redeemed, the original mortgage is put back in place and all obligations to pay back the loan are reinstated.

The homeowners can try to sell the property during the redemption period. If the homeowners receive an offer for the home that is less than what the homeowners owe on the loan, the bank must approve the sale price of the home. The bank will determine if the homeowners are still responsible for the unpaid loan or if the loan will be forgiven. According to Michigan law passed in June 2014, as described in the Michigan State Housing Development Authority (2014, June) Foreclosure Timeline, the purchaser has a right of interior inspection to come in and inspect the home. They must provide written notification communicating who they are and their right to inspect the home, and must give the homeowner 72 hours in notice of the inspection.

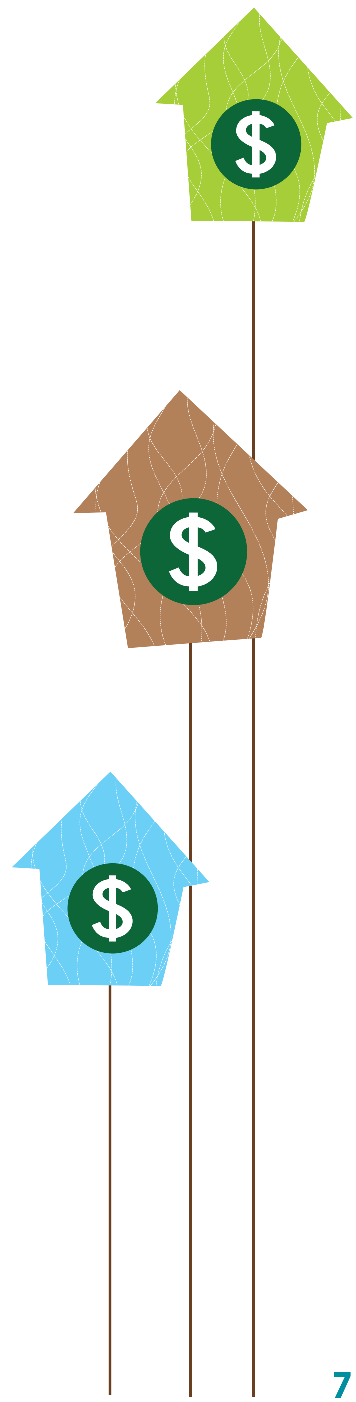
If the homeowners are unable to buy back or sell the property, they must vacate the home by the end of the redemption period. If the homeowners do not leave the home by the end of the redemption period, they may be evicted. Eviction is a legal process. If the homeowners do not move out of the property, the sheriff will come to the home, put all the contents of the home on the curb and change the locks. The homeowners should seek legal advice from an attorney. For more information, please visit the unit **Finding a Place to Call Home**.

Major Players in the Foreclosure Process

The foreclosure process can be complicated. Understanding who the major players are in the process can help to simplify the experience. Servicers, investors and debt collectors, described below, are a few of the players you will face through this process.

Servicers and Investors

The bank or mortgage company that you make your payment to is most likely a **servicer** of the loan. Servicers only collect the monthly payments. They keep part of the payment as a processing fee and send the rest of the payment to the entity that holds the loan, known as the **investor**.



Some investors are backed by the federal government. These include Fannie Mae, Freddie Mac and Ginnie Mae, which provide Federal Housing Administration (FHA) and Veterans Administration (VA) loans.

Other investors are private companies, cities or individuals that bought large groups of mortgages on the stock market as an investment. Private investors are not required to do loan modifications. If a private investor holds your mortgage and you request a loan modification, the private investor is not required to provide it to you.

Through this process, the homeowner must work with the servicer to apply for a loan modification. The servicer will determine if you will receive the modification.

Debt Collectors

A **debt collector** is any person who regularly collects debts owed to others. This includes attorneys who collect debts on a regular basis.

A collector may contact you in person, by mail, telephone, telegram or fax. However, the Federal Trade Commission (n.d.) enforces the Fair Debt Collection Practices Act. Under this act, a debt collector may not contact you at inconvenient places or at inconvenient times such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves of such contacts.

You can stop debt collectors from contacting you by writing letters to the collectors telling them to stop. (Use the "Sample Cease & Desist Communication Letter" handout on page 13 as a template.) Once a collector receives your letter, he or she may not contact you again except to say there will be no further contact or to notify you that the debt collector or the creditor intends to take some specific action. Please note that sending such a letter to a collector does not make the debt go away if you actually owe it. The debt collector or your original creditor could still sue you. In addition, before taking this step, you may want to discuss your options with a certified housing or credit counselor.

Prohibited collection practices include:

- **Harassment –** Debt collectors may not harass, oppress or abuse you or any third parties they contact.
- **False statements –** Debt collectors may not use any false or misleading statements when collecting a debt. For example, debt collectors may not state that:
  - You will be arrested if you do not pay your debt.
  - They will seize, garnish, attach or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so.
  - Actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action.
- **Other prohibited actions –** debt collectors may not:
  - Give false credit information about you to anyone, including a credit bureau.
  - Send you anything that looks like an official document from a court or government agency when it is not; or use a false name when communicating with you.
  - Collect any amount greater than your debt, unless your state law permits such a charge.
  - Deposit a post-dated check prematurely.
  - Use deception to make you accept collect calls or pay for telegrams.
  - Take or threaten to take your property unless this can be done legally.
  - Contact you by postcard.

For more information on appropriate debt collection practices, visit the Federal Trade Commission website (*http://www.consumer.ftc.gov/articles/0149-debt-collection).*

Housing Alternatives to Foreclosure

Most life situations involve a choice. You may prefer to avoid foreclosure by choosing one of the two alternatives described below: a short sale or a deed-in-lieu.

Short Sales

According to the Fannie Mae (n.d.) website, a **short sale** (*http://knowyouroptions.com/avoid-foreclosure/options-to-leave-your-home/short-sale*), also known as a pre-foreclosure sale, is a process that allows you to sell your home for less than the balance remaining on your mortgage loan. If your mortgage company agrees, you can sell your home and pay off all (or a portion of) your mortgage loan balance with the proceeds. In a short sale, the financial institution involved and the homeowner work together to sell the property before it becomes another foreclosed property.

This option may make sense if you:

- Do not qualify for any options to keep your home, including the **Home Affordable Modification Program (HAMP)** (*http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx*) (Departments of the Treasury & Housing and Urban Development, n.d.-b), **forbearance** (temporary reduction or suspension of payments) and **reinstatement**.
- Need to move in order to keep or obtain employment.
- Don't think you can sell your home at a price that would cover your loan amount.

Deed-in-Lieu

According to Freddie Mac (n.d.), a **deed-in-lieu** (*http://www.freddiemac.com/mortgage_help/alternatives_to_foreclosure.html#deed*) allows your lender to accept a voluntary transfer of the title of your home back to them in exchange for cancellation of your mortgage debt. The lender promises not to initiate foreclosure proceedings and to terminate any foreclosure proceedings already underway. The lender may or may not agree to forgive any deficiency balance that results from the sale of the property. A **deed-in-lieu** may make sense if you:

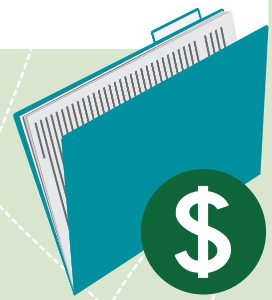
- Do not qualify for any options to keep your home, including HAMP, a short sale, forbearance and reinstatement.
- Are behind on your mortgage and have received a notice of default.
- Have recently filed for bankruptcy protection.
- Owe more on your loan than the home is worth.
- Have tried, unsuccessfully, to sell your home at a price that would cover your loan amount or attempted, unsuccessfully, to sell your home for less than was owed.
- Have no other liens or encumbrances on the property (such as a second mortgage, tax lien or homeowner's association lien) or the other lien holders are willing to cooperate in the short sale.

The key issue in a deed-in-lieu of foreclosure is whether the lender is willing to forgive the deficiency balance. Read the contract carefully to see how the deficiency balance issue is handled. If the document is unclear, take it to an attorney with experience in property law. An attorney's time is not cheap, but will be a bargain compared to signing an agreement you do not understand and are surprised later to realize its implications.

To understand how short sales and deed-in-lieu can affect credit, please review the unit **Rebuilding Your Financial Situation and Credit History.**

Tax Implications

Both short sales and a deed-in-lieu of foreclosure are viewed as forgiven debt on the borrower's income tax returns if the lender issues a 1099-C for the amount of the deficiency. Contact a tax professional to determine any tax consequences that may result.



Additional Foreclosure Prevention Resources

- Contact the Michigan Homeowner Assistance (MHA) Nonprofit Housing Corporation's Step Forward Michigan to learn about programs to help homeowners who have endured a financial hardship. The corporation acts through the Michigan State Housing Development Authority (2011). Visit *www.stepforwardmichigan.org* to apply or call 1-866-946-7432.
- Connect with the Homeowners HOPE hotline (*http://www.makinghomeaffordable.gov/Pages/homeowners_hopehotline.aspx*) (Departments of the Treasury & Housing and Urban Development, n.d.-a) at 1-888-995-HOPE (4673) to connect to the Homeownership Preservation Foundation and a housing counselor approved by the U.S. Department of Housing and Urban Development (HUD). These counselors can provide information and guidance on dealing with delinquent mortgage issues. Your call is answered 24 hours a day, 7 days a week, 365 days a year, in more than 160 languages. Hearing impaired, please call 877-304-9709 TTY. You can also access a list on the U.S. Department of Housing and Urban Development (n.d.) website at *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm*.
- Contact Michigan State University Extension Financial and Homeownership Education staff members who can assist with foreclosure prevention resources in your local community. Visit *www.mimoneyhealth.org*, Contact Us tab, to find the one nearest you.

Bankruptcy

Many homeowners in distress file bankruptcy. Two common types of consumer bankruptcy are **Chapter 7** and **Chapter 13**. Immediately upon the filing of a bankruptcy (United States Courts, n.d.-a) under Chapter 7 or Chapter 13 of title 11 of the United States Code – known as the Bankruptcy Code, the automatic stay goes in effect. The **stay** in bankruptcy is an order of the bankruptcy court that can protect people in financial distress. In general, the stay prohibits collectors from continuing collection activities unless and until the court gives them permission to continue (Bankruptcy Code of 1978). Many people file bankruptcy to stop foreclosure.

Chapter 7 Bankruptcy

According to the United States Courts (n.d.-b), Chapter 7 bankruptcy is a liquidation bankruptcy that is asset driven. The Chapter 7 trustee, appointed by the U.S. Justice Department, will investigate to see if he or she can take any of the debtor's property, liquidate it and pay the creditors in part. Debtors in Chapter 7 are seeking a fresh start by having their legal obligation to pay the remaining debts discharged. A debtor must pass a **means test** to qualify for this type of bankruptcy. A means test determines if there is not enough income to support the household *and* repay the outstanding debts.

Under Chapter 7, it is possible to keep your home. However, you will need to be current on your mortgage payments before the stay is removed or "lifted," or you may not be able to keep your home. The person filing the Chapter 7 may sign a voluntary agreement to accept the debt owed to the lender after bankruptcy. Many people will accept the debts owed on their homes in order to keep their homes.

Once all debts including the mortgage loan are discharged, the mortgage company has several options to choose from:

- The mortgage company can evaluate the borrower for possible resolutions to the delinquent payments. Now that the homeowners have more disposable household income because they are using less income to pay outstanding debts, the mortgage company may set up a repayment plan.
- The mortgage company can evaluate the homeowners for some type of loan modification option that would bring the mortgage payments up to date and allow the homeowners to resume paying the mortgage.
- The mortgage company can also decide to move ahead with a foreclosure.

Chapter 13 Bankruptcy

Chapter 13 bankruptcy, as explained by the United States Courts (n.d.-c), is a three- to five-year repayment plan. Under Chapter 13, the person filing bankruptcy makes regular payments according to a plan that addresses all of his or her debts, often including the debt owed on the home. Bankruptcy under Chapter 13 may allow homeowners to catch up on their mortgage debts over a period of time and in an amount that they could not otherwise afford if they had not filed bankruptcy. The minimum length of the plan is three years if the debtor's income is at or below the median income for a family of its size in Michigan; otherwise the minimum length of the plan is five years. The debtor is required to pay all of his or her **disposable income**. This is the amount left after deducting reasonable monthly living expenses. The amount must be sufficient to satisfy all the requirements of the Chapter 13 plan.

Distressed homeowners may also seek relief under Chapter 13 to allow more options to save their homes. If there is more than one mortgage and the home's value is less than what is owed on the first mortgage, the debtor may be able to legally **discharge** (or get rid of) his or her liability to pay the second mortgage. Another option may be to modify the mortgage under such programs as the Home Affordable Modification Program, or as previously discussed, catch up on the amount of the loan that they are behind in a plan.

How Are Debts Forgiven?

The forgiveness of debt in this country is taxable by the Internal Revenue Service (IRS). This means if the mortgage company or bank reduces the amount you owe on your mortgage loan for any reason, you may need to pay taxes on the amount that the loan was lowered. According to the Internal Revenue Service (2014), under the tax law, the cancelled debt is considered income to the homeowner and is included as part of the household income. Not only does this affect how much you pay, but it can reduce deductions that are limited based on adjusted gross income.

Beware of Scams & Fraud

In the latter part of the first decade of the 21st century, an economic decline began in many parts of the world. Sometimes known as the Great Recession, the crisis financially affected families. Many companies used the situation to take advantage of homeowners. Some companies charged homeowners large sums of money to assist them in getting loan modifications. They made exaggerated claims about modifications available and collected the money up front. These companies did little work to determine if the homeowner would qualify for a modification and would simply submit documents for a modification but do little else. If the homeowner was denied the modification, the company would do little to assist him or her.

Michigan's attorney general worked to get most of these companies closed down. Companies were forbidden from collecting any money until after the homeowner received a modification. So few homeowners received modifications that these companies could not stay in business. Today, the only agencies that can collect money up front for assistance with loan modifications are law firms. Before you pay any money for loan modification assistance, interview the firm to determine what experience and training the attorneys have had to do loan modifications. All HUD-certified counselors will provide free housing counseling to homeowners. To locate HUD counselors in your community, visit http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm (U.S. Department of Housing and Urban Development, n.d.).

Legal Consultation With an Attorney

Although we believe that the information provided in this toolkit is accurate, it should not be relied upon as legal advice. Bankruptcy is a legal process. Any homeowner considering bankruptcy should discuss all of their options with an attorney.

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Sample Cease & Desist Communication Letter

Your Name
Your Address
City, State Zip

Date

Debt Collector's Name
Collection Agency Address
City, State Zip

RE: Account #xxxxx-xxxxxx

Dear Collection Agency,

Pursuant to my rights under federal debt collection laws, I am requesting that you cease and desist communication with me, as well as my family and friends, in relation to this and all other alleged debts you claim I owe. This notice shall include, but is not limited to written correspondence, as well as telephone communication. I do expressly request that you cease any communication to me pursuant to the FDCPA §1692c.

I do not admit or deny liability on the debt. I just want you to stop contacting me. Although you may contact me by mail to tell me that you are ceasing communications.

You are hereby notified that if you do not comply with this request, I will immediately file a complaint with the Federal Trade Commission and the Michigan Attorney General's office. Civil and criminal claims will be pursued.

Thank you for your attention to this matter.

Sincerely,
Your Signature

You can stop debt collectors from contacting you by writing letters to the collectors telling them to stop. Use this letter as a template, filling it in with the proper information.

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Starting Over

After Foreclosure Toolkit

Evaluation

Please consider taking a short, anonymous survey about how you are using this toolkit.

Your response will help us improve future versions. Visit:

bit.ly/ForeclosureToolkit