

The Florida Foreclosure Chronicles

The Bang After the Boom

THE FLORIDA FORECLOSURE CHRONICLES

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The History of Mortgage Lending

When purchasing a home, most people must borrow the money needed from a bank or lender. In exchange for the loan, the lender requires that the home owner sign a promise to pay back the loan over a specified time period (the "promissory note"), and requires that the home owner record a public lien stating the lender is entitled to ownership of the home if the loan is not paid back as promised ("mortgage"). Upon signing the promissory note and mortgage, the borrower gains given title and ownership of the home by recording a public document along with the mortgage (the "deed"). Subsequently, the borrower owns the house free and clear subject to living up to the promise to pay the lender the agreed upon amount over the agreed upon time period.

Money lending has a long and documented history:

- The origins of the word mortgage come from the ancient French words *mort* (death), and *gage* (a pledge). The word mortgage literally translates to "Death Pledge." The great jurist Sir Edward Coke, who lived from 1552 to 1634, has explained why the term *mortgage* comes from the Old French words *mort*, "dead," and *gage*, "pledge." It seemed to him that it had to do with the doubtfulness of whether or not the mortgagor will pay the debt. If the mortgagor does not, then the land pledged to the mortgagee as security for the debt *"is taken from him forever, and so dead to him upon condition, and if he doth pay the money, then the pledge is dead as to the [mortgagee]."* This etymology, as understood by 17th-century attorneys, of the Old French term *morgage*, which we adopted, may well be correct. However, taking out a mortgage did not mean that the mortgagee expected to die if he did not pay back the mortgage; it merely meant that his entitlement to the mortgaged property would cease if he fell behind on his payments. The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2003. Published by Houghton Mifflin Company. All rights reserved.
- The narrative of Jesus and the [Money Changers](#) occurs in both the [Synoptic Gospels](#) and in the [Gospel of John](#), although it occurs close to the end of the Synoptic Gospels (at [Mark 11:15–](#)

[19](#), [11:27–33](#), [Matthew 21:12–17](#), [21:23–27](#) and [Luke 19:45–48](#), [20:1–8](#)) but close to the start in John (at [John 2:12–25](#)) and as a result some biblical scholars think there may have been two incidents. In the episode, Jesus is stated to have visited the [Temple in Jerusalem](#), [Herod's Temple](#), at which the courtyard is described as being filled with [livestock](#) and the tables of the [money changers](#). Jesus took offense to this, and so, creating a [whip](#) from some cords, drives out the livestock, scatters the coins of the [money changers](#), and turns over their tables, and those of the people selling [doves](#). From Wikipedia, the free encyclopedia.

- The Lord's Prayer, Matthew 6:9-13 (King James Version) . . . and forgive us our debts, as we forgive our debtors.

Money lenders come in a variety of forms. The most common forms of lenders are national institutions such as banks, credit unions and investment firms. Additionally, there are many state and local lending institutions formed in accordance with the laws of each respective state. There are also a plethora of private lenders all around the country that are not subject to many of the laws which regulate large lending institutions. Another common form of money lending comes from a concept known as an 'investment pool.' An investment pool is the pooling of funds from multiple lenders and investors that all contribute monies towards the total amount of the borrower's loan. In exchange for their money, each lender or investor receives a proportionate share of the money repaid by the borrower pursuant to the terms of the promissory note.

Money lenders often handle their collections in various forms. Some lenders internalize the collections process and use their own employees. While others out source their collections activities and hire third party 'servicing' companies to collect and process the monies as they come due. These third party money collectors are known as 'mortgage servicing companies.' Mortgage servicing companies often lead to increased confusion in the mortgage collections process. Often times, the 'servicing' company may also be a lender in its own right and a may also act as the third party 'servicing' company for its own loans. To add to the confusion, mortgage lenders typically trade the borrower's promise to pay the loan to another lender, investment pool, and/or servicer while the loan is still current and ongoing, and often the borrower or home owner is not given any notice of these changes.

If a borrower begins to have trouble making the monthly loan

installments, most lenders have a 'loss mitigation' department, which will attempt to assist the borrower with a number of different options that may not result in a final foreclosure judgment. Loss mitigation programs were established by the federal government and the mortgage industry in order to stop home foreclosures. They help foreclosure victims in default on their mortgages to find alternatives to home foreclosure. Every homeowner's situation is unique and each lender has their own policies regarding the use of these programs to stop foreclosure. Loss mitigation options are generally only available when the borrower is actually late on payments, and has suffered a hard ship where the borrower can no longer afford to pay the mortgage loan. Loss mitigation options are usually not for a borrower who can afford to pay the mortgage loan, but just does not wish to do so any longer for whatever reasons. In fact, most lender's will have an application process for a borrower to even qualify for loss mitigation options, and these applications will generally require the borrower to submit a number of different financial documents such as recent tax returns, bank statements and pay stubs.

Regardless of whether or not a delinquent borrower is attempting loss mitigation efforts, most large institutional lenders will file a mortgage foreclosure law suit when the loan becomes 90 days late. Florida is a judicial foreclosure state, which means that a civil action must be commenced in order to foreclose upon a delinquent loan. The lender will file a law suit against the delinquent borrower and seek to involuntarily force the sale of the borrower's home or real estate at a public auction to the highest bidder present on that day. The proceeds of the sale will be delivered to the lender to pay all remaining amounts owed on the delinquent mortgage. If there are no bids at the foreclosure sale, the lender will be permitted to take title to the property or home, at which time, the lender will attempt to sell the home or real estate on the open market to recover its mortgage debt.

Once a foreclosure has commenced, the main goal should focus on how to bring the loan current or pay it off as much as possible, or to mitigate the losses and damages as much as possible. It is imperative to develop an exit strategy for the borrower one way or the other as soon as possible in the delinquency and foreclosure process. As a general rule, there are generally only two categories of loss mitigation options for a delinquent borrower to pursue. The first category is about coming up with a solution to somehow pay the loan as agreed. The second category is about vacating the property.

Section I of this manual contains a list of the more common loss mitigation options a borrower can pursue, and some lenders may offer even more programs than those listed below. Some of these options are quite a lengthy process, so a borrower may not be able to wait until the last minute to pursue them. Therefore, it is imperative that a borrower decide exactly what they wish to do and hope to achieve out of the situation as soon as possible.

I. Loss Mitigation Options.

A. CATEGORY ONE ("Paying the Loan")

- **Loan Refinance/Payoff ("Redemption").** Qualifying for a new loan with a different lender to pay off your existing mortgage balance. This option will be difficult while in the foreclosure process, and would usually require a substantial amount of equity in the property.
- **Bring the Mortgage Current ("Reinstatement").** Quickly paying the entire amount of the delinquency in full to the lender usually in the first 30 days. Only after reviewing your financial situation will this option be considered. All clients must be able to show that they can afford this plan in order to be eligible. This option is usually not an absolute right, but most lenders often voluntarily consent to reinstatement.
- **Assumption.** When the borrower is able to find a new qualified buyer that the lender will accept in place of the old borrower as the primary borrower. However, the lenders usually do not easily agree to this request, and often the old borrower is not completely released from the loan obligation and will remain a secondary obligor. This means that if the new assuming borrower does not make the mortgage payments, then the lender may come after the new borrower first, then the old borrower second.
- **Repayment Plan.** Lender permits pay back of some of the delinquency now (usually at least 50% down), and then the remaining balance of the delinquency in equal installments (usually 6-12 months). Only after reviewing your financial situation will this option be considered. All clients must be able to show that they can afford this plan in order to be eligible. To pursue this option, tell us immediately how much money you have as a down payment towards the delinquency, and a specific date in which the lender can

expect to receive it, otherwise, we may not be able to successfully achieve this desired result. However, keep in mind that the lender's new terms are often unrealistic to the borrower as a real solution. Furthermore, requests that the lender may perceive as not being realistic to their repayment plan expectations will often go ignored. The borrower may also need to call the lender to see if this type of request with specific amounts and dates of payment will be possible. All requests are subject to your lender's approval.

- **Loan Forbearance.** If there has been a short term financial hardship and a loan is 90 days to 365 days past due, the loss mitigation specialist may also consider submitting a request for a special forbearance. A special forbearance is designed to provide more relief than is possible with a regular repayment plan. Typical approval can result in spreading the repayment over 12 to 18 months. To pursue this option, tell us immediately the reasonable suggested terms, and a specific date in which the lender can expect to start receiving payments again, otherwise, we may not be able to successfully achieve this desired result. However, keep in mind that the lender's new terms are often unrealistic to the borrower as a real solution. Furthermore, requests that the lender may perceive as not being realistic to their loan forbearance plan expectations will often go ignored. The borrower may also need to call the lender to see if this type of request with specific terms and dates of payment will be possible. All requests are subject to your lender's approval.
- **Loan Modification/Loan Restructuring.** If the borrower has incurred a long term financial hardship, our office can assist in supplying the appropriate information to lender to take the appropriate measures to modify the term(s) of your mortgage. This could lower the interest rate and/or extend the term of the loan resulting in lower payments. There are costs and fees associated with a modification that the borrower will be responsible for. Generally, all taxes and insurance must be current. Any additional liens or mortgages must agree to be subordinate to the first mortgage. To pursue this option, tell us immediately the reasonable suggested terms, and a specific date in which the lender can expect to start receiving payments again, otherwise, we may not be able to successfully achieve this desired result. However, keep in mind that the lender's new terms are often unrealistic to the borrower as a real solution. Furthermore,

requests that the lender may perceive as not being realistic to their loan modification/loan restructuring plan expectations will often go ignored. The borrower may also need to call the lender to see if this type of request with specific terms and dates of payment will be possible. All requests are subject to your lender's approval.

- **Chapter 13 Bankruptcy-Reorganization.** A Chapter 13 can stop the foreclosure permanently. It may allow a delinquent borrower to pay back the delinquency and reinstate the mortgage, over a period of time, usually five years. A borrower must make a regular payment and part payment each month until the delinquency is caught up or cured. It is similar to a repayment plan or forbearance agreement, but Chapter 13 permits more time to pay back the delinquency. In a chapter 7, you will have to pay back the arrearages much quicker than 5 years, or the foreclosure will continue.

B. CATEGORY TWO ("Vacating the Property")

- **Pre-Foreclosure Sale and Short Sale.** A short sale in real estate occurs when a house is sold for less than the total loan payoff value and all lien holders agree to release their liens against the property for less than the full amount owed. However, they may not release the borrower from their obligation to pay any short fall that may result from a short sale. From the bank or lender's perspective, short sales save many of the costs associated with a Florida mortgage foreclosure lawsuit, such as attorney or lawyer fees, the eviction process, delays from the homeowner or borrower, delays from bankruptcy, damage to the property, as well as the cost associated with maintaining the property just to name a few. Banks and lenders know they could lose substantially more if the property goes all the way to auction, so it is sometimes better to sell the real estate now at its fair market value and get rid of a non-performing asset. Therefore, a bank or lender may sometimes decide to accept less than the full amount of a borrower's loan balance in certain situations. In turn, this provides the homeowner and borrower an opportunity to avoid or minimize the damaging affects of a mortgage foreclosure lawsuit. If the borrower has suffered a financial hardship and is unable to maintain the loan, it is possible that the lender may be able to

accommodate you with a short payoff. A qualified buyer is required. If this is an option you wish to pursue, you must inform the loss mitigation specialist assisting you immediately. Keep in mind that if there is no equity in the property, then even the lender's own foreclosure sale will be a 'short sale.' However, the odds are that it will be even a 'shorter sale' than what you should be able to get for the property on the open market.

- **Deed-in-Lieu of Foreclosure.** If you have incurred a long term financial hardship and your house has been on the market (at fair market value) for at least 60-90 days, you may be eligible for a deed-in lieu of foreclosure. To be considered for this option, you must complete a financial package and provide a copy of your recent active listing agreement. Also, there cannot be any additional claims or liens (other than the mortgage) against the property. If you are approved for a deed-in-lieu, you will be giving up all rights to the property and the property will be conveyed to your investor. In exchange for the deed-in-lieu, the lender may waive all deficiency judgment rights. You may be asked to participate in a short sale program before a deed-in-lieu of foreclosure is accepted. The credit consequences of a deed in lieu of foreclosure are usually not any better than the foreclosure itself, and the borrower will still have to deal with any deficiencies and tax implications when the lender resells it.
- **Do Nothing.** Ignore the situation, and the bank will ultimately take the property back with a final foreclosure judgment and auction sale. However, this is bound to become the worst case scenario for the borrower. The foreclosure process will absolutely have serious, long lasting ramifications that a borrower may have to deal with in the future, so it is absolutely best for the borrower to participate now while the process is occurring. This decision to participate now may preserve, protect and safeguard valuable rights affecting future income, credit worthiness and income tax consequences.
- **Chapter 7 Bankruptcy-Liquidation.** A Chapter 7 can stop the foreclosure temporarily. It will not allow a delinquent borrower to pay back the delinquency and reinstate the mortgage over a period of time. A borrower must pay back the arrearages much quicker on the lender's terms, or the

foreclosure action will continue again after about a 60 day delay.

II. Friend, Family or Borrower as listing agent

This is typically a bad idea. The banks will make every effort to ensure that the distressed homeowner does not financially benefit in any way, shape, or form as the result of a short sale. The bank is very diligent about disallowing any transactions that put money back into the borrower's pocket, or are not deemed 'arms-length' transactions. The borrower will be unable to sell and earn a commission towards that sale. Additionally, if the borrower is the sales agent then the bank will usually be skeptical about the borrower's ability to bring the top asking price to the table. Also, they may assume that the borrower has hand-picked a 'straw' buyer in an effort to rip the bank off and trim their mortgage at the same time. This is also true for the borrower's friends and/or family. If people close to the borrower are involved in the short sale then the bank will continue to question their motives and relationships. A clear arm's-length transaction provides the most successful scenario in the short sale process.

III. Tenants

Lease agreements can be oral or written. If the duration of the lease is longer than one year from its inception, Florida requires that the lease be in writing in order to be valid. If a lease contains a provision as to the duration of the tenancy and the tenant complies with all the terms of the lease, then any new buyer will have to honor the lease throughout its duration. However, the bank will be permitted to extinguish the tenants lease entirely when they file a mortgage foreclosure law suit.

If the lease is silent as to its duration or has expired with no renewal, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week. If the rent is payable monthly, then the tenancy is from month to month. As a general rule, you can terminate a weekly or monthly tenant the next month. However, if a tenant will not voluntarily leave, any new buyer will still have to file an eviction law suit to have them removed from the property. An uncontested tenant eviction law suit can usually be completed in about 20-30 days. However, contested evictions could cause greater delay and costs.

You can still sell property or attempt other loss mitigation options during a foreclosure process even though rental tenants occupy the property. In fact, some investment buyers may even desire to have a paying tenant in place to fully or partially debt service their investment when they assume acceptance of these rental payments upon buying the property. However, the presence of tenants may create a number of different problems for all the parties involved.

Some buyers will absolutely insist that the tenant be removed, and this is more likely to occur when the new buyer intends to reside or renovate the property. Also, if you have taken a deposit from a rental tenant, the new buyer will not want to have the liability to refund the deposit, and the property owner's budget may not permit its payment either. Furthermore, tenants often will stop paying rent when they get notice of the foreclosure law suit, and they will get notice, because they will be defendants in the law suit due to possession of the property. This will create a situation where an eviction law suit must be filed in order to sell the property, and neither the current owner, new buyer or the current lender would enjoy paying for or performing this action. Please also keep in mind that disgruntled tenants tend to like to destroy and trash the property as much as possible for some reason, and so do some borrowers for that matter.

Another common problem that tenants may create is that delinquent landlords will often times try and juggle the very difficult schedule of trying to receive as many rental payments as possible during the foreclosure law suit, but timing it so they will also be able to pursue a loss mitigation option at the last hour. A sort of 'have your cake and eat it mentality.' However, it may more akin to playing 'Russian roulette.' Trying to time the conclusion of a complicated foreclosure law suit with another agenda is not a good route to pursue if there is going to be a realistic chance of saving the borrower from a final judgment in foreclosure. In fact, the closer the lender is to getting a final judgment and auction sale, the less likely they will work with the borrower in furtherance of loss mitigation options. Especially when the lender is aware that the borrower is collecting rental profits the whole time. Furthermore, the borrower may collect a little more money on the monthly rental payments at the current moment, but may lose thousands more in tax consequences, future credit worthiness, financing terms and income should a foreclosure judgment be entered against the borrower and the home sold at auction.

Furthermore, the borrower may still remain liable to the lender for any rent payments received by the borrower during the foreclosure law suit. In fact, if the lender would request permission from the court during the foreclosure law suit, the court may enter an order that the tenant submit all rental payments directly to the lender or the court. However, most institutional lenders do not routinely file such requests with the court. Another problem with tenants may arise from possible unforeseen liability as a result of the lease agreement and possession of the property by the tenant.

Bottom line here is that you can sell property and attempt other loss mitigation options during a foreclosure law suit, even though rental tenants occupy the property. However, tenants can kill a deal and create additional liability.

IV. Deficiency Judgments

If there is no equity in the property, then it will most likely produce a result where the sale of the property will not be sufficient to pay the entire loan balance in full. This remaining balance after the sale is what is commonly known as the 'deficiency.' The lender's are fully within their right to pursue the full amount of any deficiency, as the borrowers signed an unconditional promise to pay the full amount of the loan when the property was purchased. Whether or not the lender is going to decide to collect the deficiency is usually not determined until the last minute. If the lender decides not to collect the deficiency, then they will cancel the debt and report the canceled amount to the IRS as taxable, 1099 income to the borrower. The lender can decide on a combination to partially collect some of the deficiency, and to partially cancel some of the deficiency, but they can not collect 100% and report 100% as canceled debt. For example, if the property is sold for \$150,000.00, and the remaining loan balance is \$200,000.00, then the deficiency amount would be \$50,000.00. A lender could either collect the \$50,000.00, or report the \$50,000.00 as canceled debt. The lender could also collect \$25,000.00 and report \$25,000.00 as canceled debt. However, the lender can not collect \$50,000.00 and report \$50,000.00 as canceled debt. In most cases, the lender's will cancel 100% of the debt, as they must receive a more advantageous treatment somewhere else on their own business books by doing so by showing this loss.

To the extent that the borrower has non-exempt assets to pay the deficiency, the more likely the lender is to try and collect all or a part of the deficiency. In Florida, and probably a lot of other states, exempt

assets would include a person's homestead, automobiles, 401 K Plan's, IRA's and other similar retirement accounts. Also, to the extent the lender has 'private mortgage insurance' (PMI), the more likely that the debt will be collected upon. PMI is extra insurance that lenders require from most borrowers who obtain loans that are more than 80 percent of their new home's value. In other words, borrowers with less than a 20 percent down payment are normally required to pay PMI. The reason PMI is more likely to produce a collection scenario is that the insurance company will have to pay out a claim usually equal to the lender's loss. When an insurance company has to pay an insurance claim due to a possible at fault party, the defaulting borrower, they will step into the shoes of the lender in a legal process known as 'subrogation.' When the insurance company subrogates in, they will generally bring in their own lawyers, and well, the insurance litigators are a different breed of lawyers than the bankers.

Please keep in mind that the issues of a deficiency are created as a result of the foreclosure law suit, not due to the fact that a borrower may choose to do a 'short sale.' This is a common misunderstanding. If a borrower fails to pay the mortgage, and the property has no equity, then the deficiency will be there even if the lender 'short sells' the property for the borrower at a foreclosure auction sale. However, the lender's auction sale will generally be a much 'shorter sale' than even a reduced price on the open real estate market. Even if another third party does decide to bid at the foreclosure sale, the amounts generally bid are, again, much less than even a reduced price on the open real estate market. In theory, the public auction sale is supposed to produce an audience that will create a competitive bidding environment that will drive up the property to its highest value. However, from experience, this is often not the case. The foreclosure auctions are usually advertised very poorly and ineffectively in minor local news paper publications that generally have very small circulations and are very limited in additional content outside of the legal notices. In addition, public foreclosure auctions are generally cash auctions. Any successful third party bidders will have to put down a deposit the day of the sale, and will have to pay the entire balance within 48 hours. Furthermore, public foreclosure auctions are generally attended by the same group of investors who are there to get a great deal, not pay top dollar. Also, the sales are usually held on week days during work hours. As a result of these factors, the public foreclosure auctions do not generally produce the type of bidding audience that may produce a higher amount than the open real estate market. In fact, many lenders often buy back the borrower's property at these

auction sales for \$100.00 because no one else bids on the property. It is the opinion of this writer that the governmental units conducting these distressed sales must realize the value of the internet and employ a web based advertising and bidding system, or even out source to service providers such as ebay.com. Otherwise, the auction sale results will stay the same as they always have.

V. IRS Tax Implications

PLEASE CONSULT WITH A CERTIFIED PUBLIC ACCOUNTANT OR OTHER TAX PROFESSIONAL. NOTHING IN THIS MANUAL SHOULD BE CONSTRUED AS TAX OR ACCOUNTING ADVICE. The rules concerning a foreclosure deficiency are complicated and may come with unexpected financial and tax consequence. Seller is advised to make a thorough examination of its personal financial situation with an experienced tax professional and/or attorney during any foreclosure mortgage process.

The Internal Revenue Service will consider debt forgiveness by the lender as taxable Form 1099 income. Additionally, the borrower may also have taxable income in the form of capital gains from the sell or transfer of the property. Homeowners whose mortgage lenders allow them to walk away from their debt got a big break from the new Tax Increase Prevention Act just passed by Congress for 2007-2010. This recent change in the tax laws makes mortgage debt forgiveness tax-free if the loan was to buy, build or substantially improve the borrower's primary residence. Cash out refinancing is not eligible to the extent that it exceeds the original mortgage amount. Owners of investment homes still face these tax consequences unless they can show they were insolvent when the debt was forgiven or they have other investment or business losses to offset this additional Form 1099 'phantom' income.

VI. Bankruptcy. – www.myBANKRUPTCYatt.com

Bankruptcy is a legal process which allows a person (a "debtor") who owes more money than he or she can currently pay to either: (1) reorganize the debtor's budget to repay a portion of their debts over time; or (2) to liquidate and have most debts forgiven ("discharged"). After a debtor has filed a case (a "petition"), creditors must stop all collection efforts against the debtor for a period of time, unless they get permission from the bankruptcy court to continue. This protection from collection efforts is referred to as the "automatic stay." A husband and wife may file a joint petition or individual petitions.

Generally speaking, there are 2 types of bankruptcies for most consumers to consider, Chapter 7 and Chapter 13.

Chapter 7 Bankruptcy-Liquidation. www.myCh7.com

A Chapter 7 can stop the foreclosure temporarily. It will not allow a delinquent borrower to pay back the delinquency and reinstate the mortgage over a period of time. A borrower must pay back the arrearages much quicker on the lender's terms, or the foreclosure action will continue again after about a 60 day delay. A debtor's nonexempt assets, if any, are sold and the proceeds are used to pay your creditors. Part of your property may be subject to liens and mortgages that pledge the property to other creditors. Accordingly, potential debtors should realize that the filing of a petition under Chapter 7 may result in the loss of property.

The primary purpose of Bankruptcy is to discharge certain debts to give you, the honest individual debtor, a "fresh start." As a result, you have no liability for discharged debts. In a Chapter 7 case, however, a discharge is only available to individual debtors, not to partnerships or corporations. Although an individual Chapter 7 case usually results in a discharge of debts, the right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property. A discharge releases you from personal liability for most of your debts and prevents unscrupulous creditors from taking any collection actions against you. However, some debts are not dischargeable such as debts owed to:

- **debts for alimony and child support**
- **certain taxes**
- **debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit**
- **debts for willful and malicious injury by the debtor to another entity or to the property of another entity**
- **debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances**
- **debts for certain criminal restitution orders**

Chapter 13 Bankruptcy-Reorganization. www.myCh13.com

A Chapter 13 can stop the foreclosure permanently. It may allow a delinquent borrower to pay back the delinquency and reinstate the mortgage, over a period of time, usually five years. A borrower must make a regular payment and part payment each month until the delinquency is caught up or cured. It is similar to a repayment plan or forbearance agreement, but Chapter 13 permits more time to pay back the delinquency. In a Chapter 7, you will have to pay back the arrearages much quicker than 5 years, or the foreclosure will continue.

Any individual, even if self-employed or operating an unincorporated business, is eligible for Chapter 13 relief as long as the individual's unsecured debts are less than \$307,675 and secured debts are less than \$922,975. 11 U.S.C. § 109(e). These amounts are adjusted periodically to reflect changes in the consumer price index.

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

What Property Can I Keep?

In a Chapter 7 case, you can keep all property which the law says is

"exempt" from the claims of creditors. In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth now. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement. You also only need to look at your equity in property. You may only exempt up to \$100,000.00 of equity in your homestead. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 which is your equity if you sell it. While your exemptions allow you to keep property even in a Chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a Chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy

What Will Happen to My Home and Car If I File Bankruptcy in Florida?

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in Chapter 13. However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case. There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

When considering whether bankruptcy is right for you ask yourself the following questions:

1. Do I have too much credit card or 'unsecured' debt?
2. Do I want to save my house?

Scenario #1

1. No.
2. No.

Answer: Maybe

You are probably not a great bankruptcy candidate at this stage. Pursuing the foreclosure defense program and a sale or short sale of your home may sufficiently relieve you of your financial problems. You may reconsider the Chapter 7 option in the event the bank is unreasonable on their short sale terms.

Scenario #2

1. Yes.
2. No.

Answer: Chapter 7.

Filing a petition under Chapter 7 stops most bill collectors and collection agencies in their tracks. They will no longer be allowed to collect any debts that you may owe. Filing a Chapter 7 will also stop harassing phone calls and any other means employed by unscrupulous collectors in their efforts to collect their debt. Upon filing Chapter 7 notice is sent to all creditors whose names and addresses you provide.

A successfully discharged Chapter 7 releases you from any personal liability for most debts. Not only will you be released from liability but all future collection efforts by the named creditors will stop.

You may 'reaffirm' debts you wish to keep, i.e., car, house, etc., and keep those separate and distinct from the Chapter 7. You will continue to be liable for any debts you choose to 'reaffirm.'

Scenario #3

1. Yes or No.
2. YES!!

Answer: Chapter 13.

If your priority is to save your home then a Chapter 13 is the plan for you. Chapter 13 is the plan within the bankruptcy code that is tailor made for those seeking to save their homes. A Chapter 13 will stop the

foreclosure process and give the homeowner the opportunity to cure the late payments on the mortgage over time.

A Chapter 13 requires the homeowner to make current payments on the mortgage while simultaneously setting up an agreeable plan with the Government that cures the late payments on the mortgage within 36-60 months.

Another advantage of the Chapter 13 is that it allows the homeowner to reduce unsecured debt (i.e., credit cards, unsecured value on a car payment, etc.) and reorganize the remaining debt into a more affordable payment schedule. The money saved on unsecured debt payments (credit cards and other unsecured debts are often reduced to \$.20-\$.30 on the dollar) give the homeowner the extra money they need to save the home and catch-up mortgage payments.

While you are in a Chapter 13 you will have no contact with your creditors. For more information on Chapter 13 please visit our website at www.MyCh13.com)

VII. Collections, Telephone Calls and Harassment.

Most debt collection efforts by the bank and their attorneys are governed section 12 of the Fair Debt Collection Practices Act (FDCPA). This Federal Act governs the types of letters and language allowed in letters used to collect debts. Visit our website www.myCREDITatty.com to read Section 807 for 16 examples of false or misleading tactics used by typical debt collectors and their attorneys. Debt collectors and their attorneys can face fines up to \$1,000.00 per violation and potential punitive damages in the event that you or your reputation is damaged through their dirty tactics.

Practically speaking, the bank will begin calling and writing the moment you fall behind on your mortgage. This type of collections activity will continue until the bank files a foreclosure suit against you. Calls from the bank during our preforeclosure representation process may continue indefinitely despite our efforts to stop them. If they do not stop pursuing their collections upon proper notice then you may be able to file a counterclaim to their foreclosure suit for violation of the FDCPA. The best thing to do is simply give the bank the name and number of our law firm and ignore their calls. Please remember, that all written letters from the bank are very important and should be opened and read. It is important that you maintain a thorough understanding of your account throughout this process. Any

documents whatsoever sent from the Court or the Bank's attorneys should immediately be sent to us, as this will always be more crucial information regarding any foreclosure law suit.

Visit our website www.myCREDITatty.com for information on pursuing legal action against a debt collector in violation of the FDCPA.

The purpose of the FDCPA letter you signed in our intake packet is to force the bank to prove they are the true owners of your mortgage. In many instances your loan is being collected by a servicing company that was not the original lender at the time you closed the loan. Often times these servicers do not have properly executed assignments of the note and mortgage. Our letter will ensure that your rights are protected in court once the bank files their foreclosure suit.

The end of the phone calls typically occur once a foreclosure suit is filed against you. When this happens the banks attorneys run to court with the hope that you do nothing and go away. If you have filed bankruptcy, you should immediately notify all creditors and debt collectors in writing that you have filed bankruptcy, and provide them with the case name, case number, and filing date, or a copy of the petition that shows it was filed. If a creditor continues to attempt to collect, you may be entitled to take legal action against the creditor to obtain a specific order from the court prohibiting the creditor from taking further collection action. If the creditor is willfully violating the automatic bankruptcy stay, the Court can hold the creditor in contempt of court, fine the creditor and award damages.

There are several other consumer statutes that may also govern the collection of debts. However, keep in mind that none of debt collection laws place an absolute prohibition against a creditor from collecting its debt in a reasonable manner. Most of the prohibitions on collections activities are largely designed to protect against abusive and unreasonable collection efforts. What is abusive and unreasonable is usually a case by case situation, but there are some practices in which the Courts have already decided what will be a violation of the law. While it may not be possible to stop all collections activities in their entirety, you may have a cause of action if the collection activities become abusive and unreasonable. As a result, we recommend that you keep a written log of all collection attempts which you believe are abusive and unreasonable.

VIII. Assets and Homestead.

The bank will ask to review your personal financial picture when considering a short sale. This typically includes 2 years tax returns, W2's, bank statements, and proof of income. The bank may ask for additional money from you to complete a short sale transaction. Typically, they do not seek to obtain a specific account or asset; they simply request additional money or the execution of a new, modified and unsecured note. We make every effort during negotiations to avoid the seller coming out of pocket on a deal. Unfortunately, in some instances it is the only way to get the bank to agree to the deal. Please keep in mind that as the seller, you always maintain the right to 'just say no' to any deal that you are uncomfortable with. Turning down the banks terms for the short sale will force them to seek their damages from you in court.

IX. Foreclosure Process: The Law Suit.

Below, is a brief outline of the time frames in which you can expect the foreclosure law suit to proceed.

- Day 1- Complaint-Filed and served on borrower. YOU MUST RESPOND IN WRITING AND/OR SERVE AND FILE AN ANSWER AND AFFIRMATIVE DEFENSES WITHIN 20 DAYS OF BEING SERVED WITH THE COMPLAINT. Any delay may make the situation you are in worse, and if a borrower or homeowner fails to do anything at all, the situation may become the worst case scenario possible. Contact us immediately for a free consultation. Florida's mortgage foreclosure process will absolutely have serious, long lasting ramifications that you may have to deal with in the future, so it absolutely in your best interest to participate now while it is occurring. Your decision to participate now may preserve, protect and safeguard valuable legal rights affecting your future income, credit worthiness and income tax consequences. Contact us immediately for a free consultation. If I do nothing, what will happen? A default and default judgment will be entered, and the clerk of the court will auction your property, usually within 25 to 30 days from entry of a final judgment.
- Day 20-30- Borrower's Answer to the Complaint is due- Borrower will be defaulted for not responding in writing to the Complaint NOTE: It is absolutely imperative that you act before the Court enters a default. Do not ignore the Complaint
- Days 90-120- Judgment Hearing-Judge will grant the lender a foreclosure judgment and set a sale date usually 30 days out

- Days 120-150- Foreclosure Sale and Eviction-The home or property will be sold to the highest bidder at a public auction.
NOTE: A BANKRUPTCY MUST BE FILED PRIOR TO THE FORECLOSURE SALE, OR THE HOME OR REAL ESTATE WILL BE LOST FOREVER!!

X. Homeowner's and Condo Associations.

The lien of an owner's association who is owed money for unpaid assessments is actually more problematic during loss mitigation than a mortgage lender who is owed money for unpaid mortgage installments. An owner's association lien is just as powerful of a lien as a mortgage lien if not paid. In Florida, we generally see two types of owner's association, home owners and condominiums. A home owner's association is created and enforced by a written agreement or declaration recorded in the public records, and is generally superior to an owner's homestead interest, and later recorded mortgages. A condominium association is created and enforced by both a written and recorded declaration, as well as Florida statutory. A condominium association is generally superior to an owner's homestead interest, and a later recorded second mortgage. As to later recorded first mortgages, a condominium association lien is generally only superior for either six months of past due assessments, or one percent (1%) of the original mortgage balance, whichever is less. All this usually means that when a first mortgage forecloses and sells the home at a public auction, a home owner's association lien must usually be paid back at 100% of the balance, whereas a condominium association's lien must only be paid back six months of past due assessments.

If not paid, the owner's association will generally hire an attorney to record a lien and file a foreclosure action for ownership and possession of the premises. Although, an owner's association would have to also deal with any mortgage(s), if they are not wiped out by the law suit, the common practice is to legally dispossess the owner and rent the premises as soon as possible. Often times too, they will rent the premises right back to the former owner. However, if any of the superior mortgage(s) are not paid in full and timely, the mortgage lender will file a mortgage foreclosure law suit to take ownership and possession of the property. This will leave a situation where the former owner is still obligated to pay the mortgage loans, yet no longer owns the premises. Not an idea situation for loss mitigation. As a result, we do recommend keeping all owner's association dues current during the preforeclosure and foreclosure stages to the best extent possible, especially if the owner is occupying the premises. A lot of owner's

associations, if not all, do not report delinquencies to the credit agencies. Bottom Line: Pay your owner association dues if possible. These associations will expedite the foreclosure process and will aggressively seek to kick you out of your home.

XI. Credit Consequences.

The algorithm of the credit bureaus has been very secretive in the past, so it is hard to say exactly how many points your credit score will drop due to a foreclosure. However, most literature will tell us that you should expect anywhere from a 225-300 point drop for a foreclosure judgment. However, there are numerous factors that affect your credit score. It does appear though, that loss mitigation options that do not result in the completion of the foreclosure are better for your credit score, and some experts even quantify the number saved on your credit score from 100-175 points. Typically, any late mortgage payments are viewed as a negative mark. Generally, negative marks will remain on a credit report for 7 years. Foreclosures also remain on credit scores for 7 years. The impact on credit scores diminishes over time though. Loss mitigation efforts and foreclosure are definitely better than a bankruptcy, as the filing of a bankruptcy is viewed by the credit reporting industry as an attack against all trade lines across the board, whereas a mortgage foreclosure is only an attack against a single trade line, your mortgage lender. The general rule is bankruptcy negatively affects your credit score for 10 years, but sometimes the creditors on a chapter 13 will voluntarily remove it after 7 years to encourage people to file a 13 rather than a 7. A maximum of 10 years under provisions of the Fair Credit Reporting Act.

XII. Second Mortgages and JR. Liens.

Types of junior lien holders include a 2nd mortgage, equity line, home equity loan, and homeowners or condo association. Please refer to the section on homeowners and condo associations for discussion as to this type of junior lien. 2nd mortgages must also agree to release their lien for less than they're owed to complete a successful short sale. Typically, the 2nd mortgage holder will require the same paperwork and same financial analysis conducted by the primary mortgage company prior to approving a short sale. Often times, only one of the two lenders on a home will approve a short sale proposal. This is an unfortunate result considering a 2nd mortgage in the current market will gain nothing by withholding approval for a short sale. If they force the matter into court they are unlikely to payoff the 1st mortgage because the loan is too expensive and the fair market value of the

house is falling. If the 2nd mortgage approves the short sale then the same issues concerning tax liability will apply.

XIII. Spouses, Business Partners and Multiple Owners.

Often times multiple signees and investors own a home in foreclosure. In this instance every person signing for the note will be personally sued and every person named on the deed or currently living at the home will be named and noticed as part of the lawsuit. If you are an investor and legally own your property with others then all signatures will be required in order to close the sale of the home.

Additionally, all known investors will be required to submit the required paperwork for short sale review and approval mentioned earlier. Further, all the consequences of a foreclosure will apply to all the legal owners of a home. If you have not heard from one of your co-signees or investors in a while then now is the time to track them down and agree on a course of action.

If your spouse is a signor of the deed but not the note then the bank may attempt to pressure them in pursuit of their loan collections. We often see instances when this spouse shows negative marks on their credit even though they did not sign the note. In this instance you may retain our office to pursue an action for violation of the FDCPA.

XIV. Real Estate Taxes and Insurance.

It is very important that you maintain a full and thorough understanding of your property, its condition, and status throughout the process. Each November your local property appraiser begins collecting taxes for the previous calendar year. This is known as paying your tax certificate. If you do not purchase your tax certificate by the following May then your tax certificate may be purchased by any person at auction. The holder of the tax certificate may foreclose on the homeowner after 2 years and effectively take over control and ownership of the property for the cost of the tax certificate itself. If you choose not to purchase your tax certificate then the bank will likely do so to ensure their investment. The last thing that the bank would want during this process is to lose the property (and the value of the loan owed) to an investor who essentially purchased the home from under them for pennies on the dollar. Because the holder of the tax certificate stands first in line at foreclosure, the bank tries to keep their hands on any unpaid tax certificates.

Insurance, if possible, should always be maintained on your property. Again, if you do not pay for your insurance or it is not part of your escrow payment then the bank will likely continue to purchase the insurance to protect their investment in the case of storm, fire, or severe property damage. Even though you are not paying, the bank will not want to see their money go up in flames. However, the bank may scale down the coverage to only protect their investment in the value of the land and the structure itself and not anything more. Therefore, if your home is filled with valuables then it is probably a good idea to maintain insurance to the extent that it can be afforded.

The homeowner should be careful to maintain personal liability insurance on the property in the event that somebody gets hurt on the property and decides to sue. If you do not maintain your personal liability insurance then you may be sued personally for any injuries or negligent acts occurring on your property.

XV. Requirements and Documents.

- * Signed Authorization Letter
- * Hardship Letter
- * Financial Statements
- * 2 Months Bank Statements
- * 2 Months Pay Stubs
- * 2 Years W2's or Tax Returns
- * Proof of Income and Assets: The Seller may be required to submit a financial disclosure form with information concerning Seller's savings accounts, money market accounts, stocks, bonds, negotiable instruments, cash, other real estate holdings, bank statements, pay stubs and tax returns.

XVI. Time Frames and Notice

Time and No Obligation: It may require three (3) weeks or more to receive an answer from the lender, and the lender is not under any obligation to approve a short sale.

Call the Lender: It may require numerous phone calls by the Seller before reaching the person responsible for handling short sales.

XVII. Foreclosure Prevention Company.

You don't need to pay fees for foreclosure prevention help-use that money to pay the mortgage instead. Many for-profit companies will contact you promising to negotiate with your lender. While these may be legitimate businesses, they will charge you a hefty fee (often two or

three month's mortgage payment) for information and services your lender may provide for free. Watch out for foreclosure recovery scams! If any firm claims they can stop your foreclosure immediately if you sign a document appointing them to act on your behalf, you may well be signing over the title to your property and becoming a renter in your own home. Never sign a legal document without reading and understanding all the terms and getting professional advice from an attorney or a trusted real estate professional.