

# THE LAW OFFICE OF JOHN C. ORCUTT, III

---

6210 RIVERSIDE BOULEVARD C38  
SACRAMENTO, CA 95831  
WWW.JOHNCALBORCUTT.COM

TELEPHONE (916) 247-0680  
FAX (866) 406-1772  
EMAIL JOHN@JOHNCALBORCUTT.COM

## Alternatives to Foreclosure

We have all felt the effects of the downturn in the economy. For some of us, the impact has been much greater than for others. Home payments that were once affordable are now impossible to maintain. In these discouraging times, it is good to know that you can still make decisions that will positively affect your future and will allow you to control the disposition of your home. There are alternatives to foreclosure that will not damage your credit score as greatly. Some of the options that may be available to you are explained below.

### Modification

A loan modification may be an option when an individual wants to keep his or her home but, due to unavoidable hardship, the home may be in jeopardy of foreclosure. This option can allow changes to the existing terms of your mortgage (i.e., balance, monthly payment, interest rate, and maturity date). In some cases, the amount past-due can be rolled into the balance.

A modification may lower your monthly payment. For example, a reduction in the interest rate could result in a lower monthly payment. A modification may lower your monthly payment, making it easier for you to pay the full amount each month on time. Often, the date of the payment can also be changed to fit your budget better.

This option can be a permanent change or a temporary change. If your account is past due, a modification will make your account current. The first month your loan is modified, a report will be sent to the credit bureau, showing the loan's current status.

MODIFICATIONS PERFORMED PRIOR TO JULY 2010. Congress has recently enacted a law that provides relief to owners who are residents of the property that is in question. If your loan is from Fannie Mae or Freddie Mac, or if your bank has received bailout money, then you are probably eligible for this special program. Additionally, your loan may not exceed the Fannie Mae or Freddie Mac loan limits, which is \$417,000 in most areas, but it can be greater in higher-cost areas, such as California. In Sacramento, the limit for 2009 is \$474,950.

If you think that a modification may be a profitable course of action for you, I can represent you and advocate on your behalf with your lender. We will need these things in order to proceed:

1. A hardship letter. This will explain to the lender the details of your hardship. (If you would like help crafting a clear and persuasive letter, then please contact me, and my professional writing staff can assist you.)
2. Paycheck stubs. Two of the most recent paycheck stubs from each name on the loan.
3. Bank statements. Statements for the past two months will be needed.

## Forbearance Agreement

A forbearance agreement is considered by a lender when a loan has become past due because of a temporary hardship. This is used in a situation in which you are facing a temporary financial difficulty but you anticipate being able to meet your financial obligations in the near future.

A forbearance agreement will keep a lender from foreclosing on your home in the meantime. If, in the future, you are able to pay a full payment each month plus a portion of the past due amount, then we may be able to set up a forbearance agreement with your lender. These agreements range in duration and often require a down payment. If the total payments are paid consistently, then the loan company will often review your account to see whether you qualify for a modification. The benefit of this arrangement is that any pending foreclosure action is placed on hold, giving you time to get back on your feet, while keeping your home out of danger.

If you think that this option may be a viable alternative for you, then you can contact me to discuss it.

## Short Sale

A short sale is an option when it is no longer possible for the borrower to afford the home or when the borrower does not intend to keep the home. This program allows the property to be sold for less than the full payoff amount, when the property value is less than the balance owed on the mortgage. This is an especially popular option in today's economy, when it is common for a home to devalue to the point where the owner owes far more than the house's current worth. Although this is an extreme option, it is sometimes necessary, and it has less impact on your credit than a foreclosure.

It is important to note the tax implications of this program. When you dispose of your mortgaged home via a short sale, the difference between the amount remitted to your mortgager and the amount you owed on your mortgage is taxed as income.

Fortunately for many borrowers who are contemplating short sales, Congress enacted the Mortgage Forgiveness Debt Relief Act of 2007. This Act applies to short sales conducted from December 2008 until the end of the calendar year of 2012. This act provides that during this time period, a borrower and lender may negotiate a short sale free of this tax burden.

Should you decide that a short sale is a viable option for you, I can represent you throughout the process and negotiate with your lender. Please contact me so that I can help you. Here is what we will need in order to work through this:

1. A hardship letter; this will explain to the lender the details of your hardship. (If you would like help crafting a clear and persuasive letter, then please contact me, and my professional writing staff can assist you.)
2. Paycheck stubs; two of the most recent paycheck stubs from each name on the loan.
3. A contact person who can allow the lender onto the property in order to assess its value.
4. Tax returns from each borrower for the most recent two years.
5. Bank statements for the past two months.
6. An authorization letter, signed by the borrower, that grants the lender permission to speak to myself, John C. Orcutt, about your loan.

### Deed-in-lieu

A deed-in-lieu allows the debtor's home to be deeded back to the mortgage company, allowing the debtor to walk away free and clear. Generally, this is available when the house has been on the market for at least two months and no offer to purchase has been made. In order for this to be feasible, the property must be vacant and must have no other liens or judgments against it. This will be reported to the credit bureaus as a "voluntary repossession." Sometimes, lenders will not allow this option unless the value of the home exceeds the amount of debt.

It is important to note that the same tax considerations that are present in a short sale are also present for a deed-in-lieu; the amount of debt that is forgiven is taxed as income. For a deed-in-lieu, the entire amount that you owed on the property will be taxed as income.

If you decide that you want me to represent you in a deed-in-lieu situation, then these items will be needed:

1. A hardship letter; this will explain to the lender the details of your hardship. (If you would like help crafting a clear and persuasive letter, then please contact me, and my professional writing staff can assist you.)
2. Paycheck stubs; two of the most recent paycheck stubs from each name on the loan.

3. A contact person who can allow the lender onto the property in order to assess its value.
4. Tax returns from each borrower for the most recent two years.
5. Bank statements for the past two months.

I hope you have found this information to be helpful for your situation. Please feel free to contact me for a consultation or with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Orcutt, III", with a stylized flourish at the end.

John C. Orcutt, III