

Foreclosure Prevention: Legal Issues & Strategies

Memphis Housing Counseling Network
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Subprime Foreclosures

- 20% of subprime loans made in 2006 will fail (TN)
- Servicers are modifying only 3% of loans that reset to higher rates.
- Borrowers whose original loans had abusive terms need legal assistance to prevent foreclosure

Counseling or Legal Assistance?

- Foreclosure counseling helps borrowers who made informed decisions to get high-risk ARMs, 80-20, or interest-only loans
- Legal assistance needed for borrowers whose original loan terms were abusive/predatory to get complete and lasting relief

Making an Assessment

- Helpful references:
 - Predatory Lending Practices
 - Characteristics of Predatory Loans
 - Tennessee Home Loan Protection Act
- **IMPORTANT:** Use your interview skills to identify “red flags” that may not be obvious

Predatory Lending Practices

- Telemarketing, Door-to-door solicitation
- Home improvement scams
- Reverse redlining, steering, targeting
- Loans made without regard to the borrower’s ability to repay
- Lending to an incapacitated homeowner
- Falsifying loan applications, incorrect credit scoring
- Failure to provide disclosure documents
- Bait and switch, loan padding
- Multiple refinancing or “flipping”
- Converting unsecured (credit-end) debt into secured debt
- Payment of yield spread premiums

Characteristics of Predatory Loans

- High interest rates, high points, unearned fees
- Unaffordable monthly payments
- Prepayment penalties
- Loan padding
- Balloon payment
- Yield spread premiums
- Flipping
- Falsified loan applications, inflated appraisals, forgeries
- Mandatory arbitrations
- Negatively or non-amortizing loan
- “Ghost” second mortgage
- Making loans in excess of 100% of loan-to-value (LTV)

Tennessee Home Loan Protection Act

(refer to handout for complete summary)

- Defines a high cost loan: Over 5% in fees.
- Consumer Protections
 - Flipping
 - Pre-Payment Penalties
 - Financing Points and Fees
 - Lending Without Regard to the Borrower's Ability to
Balloon Payments
- Negative Amortization

Tennessee Home Loan Protection Act (cont'd)

- Lender Requirements & Restrictions
 - Cannot call the balance of the indebtedness due
 - Seriously restricts late fees
 - Prohibits increasing interest rate after default
 - Cannot recommend defaulting on a high-cost loan
 - Must provide two free payoff statements
 - Must give borrower written high-cost loan warning

Tennessee Home Loan Protection Act (cont'd)

- Provisions applicable to ALL mortgage loans
 - Right to Cure
 - Assignee Liability
 - Enforcement

Foreclosure Prevention Options

- Loss Mitigation/Forbearance Agreement
- Deed in Lieu of Foreclosure
- Short Sale
- Loan Modification/Restructuring Loan

Restructuring Loans

- Reduce principal indebtedness of loan
- Change loan terms
- Obtain forgiveness of debt arrearages

Filing Bankruptcy to Prevent Foreclosure

- Can stop foreclosure up until time of foreclosure sale
- Protects home by an “automatic stay”- either until end of Ch. 13 plan or lender petitions Court to lift stay
- Requires counseling. Use of attorney is recommended (fee can be included in Ch. 13 plan)
- Memphis and Nashville Bankruptcy Courts are part of Tennessee Mortgage Mitigation Project

The Foreclosure Process

- Tennessee is a Non-Judicial Foreclosure State
- Lender must notify borrower in writing
- Foreclosure sale date must be published 3x- first time must be at least 20 days before sale
- Sale takes place on courthouse steps

Post Foreclosure

- Client may be offered “Cash for Keys” to move out by certain date
- Client is served with a detainer warrant (FED), which has a court date; served by process server or sheriff
- At 1st court date, client may ask for 2 wk continuance
- Next court date, judgment is entered. Client has 10 days before sheriff can come to remove belongings

Foreclosure Rescue Scams

- The "rescuer" charges outrageous fees for light-duty phone calls or paperwork that the homeowner could easily do, none of which results in saving the home.

Foreclosure Rescue Scams

- Homeowner is deceived into signing over the title with the belief that he will be able to remain in the house as a renter and eventually buy it back over time.

Foreclosure Rescue Scams

- Homeowners think they are signing documents to bring the mortgage current, but instead actually surrender their ownership. They usually don't even know they've been scammed until they're evicted.

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