Mortgage Default: What Are Your Options?

Brought to you by:

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About the Speaker

- Primary Practice Areas:
  - *Debt Relief*
    - Foreclosure Defense
    - Bankruptcy
    - Credit Card Debt
      - Litigation and Negotiation
    - Collection Harassment Claims
  - *Civil Litigation*

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Topics

- Understanding Mortgages and Mortgage Servicing
- Default Options
- New Developments

Understanding the “Mortgage” Documents

1. The promissory note – the “financial” instrument
   A. Generally considered a “negotiable instrument” under the Uniform Commercial Code
2. The mortgage – the “security” instrument
3. Various addendums, notices, etc
4. Who is the obligor

Negotiable Instruments

- The Promissory Note is a "Negotiable Instrument" as defined under the Uniform Commercial Code, (Fla. Stat. 673.1041)
  - "…an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order"
  - Can be payable to a specific individual/company, or can be payable "to bearer" (the physical holder)
  - Even if it is not payable to bearer, the instrument can later be endorsed to bearer

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Negotiable Instruments

- Examples:
  - A check – generally is a negotiable instrument
- The promissory note in a mortgage is generally a negotiable instrument, and can be freely exchanged between owners

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Understanding Mortgage Servicing

- The Owner of the Loan
  - Often a securitized entity
  - Can change hands on multiple occasions without the knowledge of the borrower; no consent required of the borrower
- The Servicer
  - The "face" of the loan
  - Can change hands without borrower's permission. Must notify borrower of change
  - Incentive: makes money based on work, not on loan profitability

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"Life Happens" to Homeowners

Per February 2014 RealtyTrac

- Florida is #1 state for foreclosure activity
  - FL = 1 in every 372, compare to National 1 in every 1170

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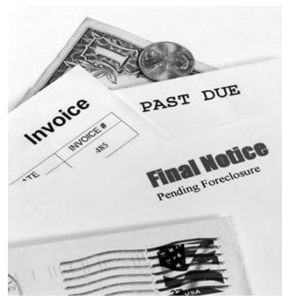
Why Look for an Alternative: The Dangers of Foreclosure?

- Loss in right to property
- Can inhibit lending for future mortgages
- Injury to credit score
- Deficiency Judgment



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Impact to FICO® Score

	Consumer A	Consumer B	Consumer C
Starting FICO® Score	~680	~720	~780
FICO® Score after these events:			
30 days late on mortgage	600–620	630–650	670–690
90 days late on mortgage	600–620	610–630	650–670
Short sale / deed-in-lieu / settlement (no deficiency balance)	610–630	605–625	655–675
Short sale (with deficiency balance)	575–595	570–590	620–640
Foreclosure	575–595	570–590	620–640
Bankruptcy	530–550	525–545	540–560

Estimated Time for FICO® Score to Fully Recover

	Consumer A	Consumer B	Consumer C
Starting FICO® Score	~680	~720	~780
Time for FICO® Score to recover after these events:			
30 days late on mortgage	~9 months	~2.5 years	~3 years
90 days late on mortgage	~9 months	~3 years	~7 years
Short sale / deed-in-lieu / settlement (no deficiency balance)	~3 years	~7 years	~7 years
Short sale (with deficiency balance)	~3 years	~7 years	~7 years
Foreclosure	~3 years	~7 years	~7 years
Bankruptcy	~5 years	~7–10 years	~7–10 years

Note: Estimates assume all else held constant over time (e.g., no new account openings, no new delinquency, similar outstanding debt).

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Foreclosure Alternatives

Re-establish Payment:
Å Modification/Re-fi
Å Reinstatement
Å Chapter 13

Eliminate the Debt:
Å Short Sale
Å Deed in Lieu
Å Chapter 7

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Modifications

- Modification tips:
  - Make sure your application packet is complete
  - Include your name, address, and loan number on every document submitted
  - Be patient
  - Be persistent

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Modifications

- Words of Wisdom:
  - Understand that there are many rules and restrictions that influence a loan "behind the curtain" that influence outcome
    - Servicer, Investor, MI, FHA/VA, Junior Liens
  - Principle Reductions are an exceptional outcome, not the norm
  - No Guarantee
    - Generally, borrowers are not "entitled" to a mod

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Short Sale

- List property at current market value, rather than at (or above) amount of mortgage
- Sale must be reviewed and approved by lender
- Deficiency is typically waived or reduced

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Deed-in-Lieu

- Deed property to Lender
- Typically need to first list property as a SS before lender will consider
- Deficiency is typically waived or reduced

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Bankruptcy

- Several different options:
  - 1) Use bankruptcy as a forbearance tool to catch up
  - 2) Use bankruptcy to stop FC and request a mod
    - Note: Mod is given by lender, not be BK Court
  - 3) Use bankruptcy to eliminate deficiency.
    - Note: Bankruptcy does not transfer title. Even if house is “surrendered” in BK, that does not automatically transfer property to bank.
    - ***Important to prevent tax liability
  - 4) May be able to use bankruptcy as a “de facto” principle reduction by eliminating junior liens.

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New Trends

- Speedy Foreclosure Bill
- Expiration of Mortgage Debt Forgiveness Relief Act
- Updates to RESPA from CFPB

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Speedy Foreclosure Bill

- Effective in Florida on June 7, 2013;
- Allows second mortgage holders, condominium and homeowner associations the right to *speed up the bank's foreclosure* action; and
- Reduces the Statute of Limitations on deficiencies created by mortgage foreclosure and deed-in-lieu of foreclosure;

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Expiration of Mortgage Debt Forgiveness Relief Act

- What is it?
  - Primary Residence
- May be extended later
- Does not preclude SS or DIL, but can alter cost/benefit
- Talk to financial advisor, may be other tax exemptions
  - bankruptcy

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RESPA

- Changes promulgated by federal Consumer Financial Protection Bureau
- Help give consumers a fair shake of obtaining loss mitigation when possible, but does not guarantee a result

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