



# Facing Foreclosure: Tips For Service Members

By John Gilliam

**I**f you have received a Notice of Default from your mortgage company, you are not alone. Last year, 3.1 million homeowners faced foreclosure filings, a rise of 225 percent over 2006. Out of these, over 860,000 actually lost their homes. If you don't want to join this number, here are seven things you can do to increase your chances of working out a resolution with your lender:

**Gather Your Financial Documents.** Before you can make a reasoned decision on whether you can afford to stay in your house, you have to know your current financial situation. The first step in that is information-gathering. So, gather the most recent statements for each bill you pay, including utilities, cable, insurance, and credit cards. Gather your last six months' LES and other income documents, including tax returns. Most importantly, find your most recent mortgage statement.

**Make a Budget.** You need to know where your money goes each month, mainly because if you want to work out a way to keep your house, you will have to be able to pay your mortgage and still eat. Using the documents you gathered, draw up a realistic list of how much you spend each month (look over your bank statement online to help pin down debit card purchases, including groceries, entertainment, etc). Project the income you will have coming over the next few months.

**Talk, talk, talk.** You need to be talking to at least two people: a financial counselor and your lender. A good first step for financial help (including budgeting) is your Command Financial Advisor. You should also find a housing counseling agency approved by the Housing and Urban Development Department by calling (800) 569-4287. If you have a VA loan, you can call (800) 827-1000 to get a referral to a financial counselor. These sources will help you get a handle on what you can afford, and also help identify some extra ways to save money. You also need to be talking to your lender – the sooner, the better. Call the “loss mitigation” department as

soon as you can, without waiting for your financial counseling. DO NOT make any agreements with them until you have gotten counseling, though, as you may be digging a new hole if you make an agreement without a firm grasp on your finances.

**Do Not Abandon Your Home.** Many programs that exist to help you will NOT apply if you do not actually inhabit your home. Also, a notice of default is merely a step in a months-long process that may end up with you keeping your home.

**Be Realistic.** If you want to do a workout, you must be able to keep the new payment schedule. If your financial situation hasn't changed, you have to be realistic about how much you can actually pay each month. If the lender agrees to this, be prepared to hold up your end.

**Look at Options.** Most lenders are willing to work with you – over 2 million loans were modified or “worked out” in 2008. Some options include:

**1) Special Forbearance.** A short-term solution to a short-term problem. Here, your lender may temporarily reduce or suspend your payments. After a set period, you have to either make a lump sum payment or enter into a long-term repayment plan to pay back the forbore amount. Forbearance is only a good option when the cause of your default is specific and temporary (such as a short-term layoff), and you know that you will be able to resume making payments at the end of the forbearance period.

**2) Repayment Plan.** Your lender may arrange a plan that spreads out your default (the amount you haven't paid), adding extra to your normal monthly payment until you are caught up. Your lender may require a good faith payment up front to begin the plan. A repayment plan might work if you were unemployed for several months, fell behind, but are now working again. However, if the situation that caused the default has not been

resolved, you will likely end up defaulting again.

**3) Mortgage Modification.** You may be able to refinance the debt and extend the term of your loan. This will help you catch up by reducing the monthly payments to a more affordable level, especially if the interest rate is better. You may qualify if you've recovered from a financial problem but your net income is less than it was before the default, such as a new, steady job at a lower wage.

**4) Partial Claim.** If you have one of the 25 percent of mortgages that are insured by the Federal Housing Administration, you may qualify for an interest-free loan to get your mortgage current. The money isn't paid back until you pay off the mortgage or sell the house.

**5) Pre-Foreclosure Sale.** You can sell your home and pay off the mortgage. This is the best for your credit rating, as it will show the mortgage as "paid." Also, this is the best option if you have equity in the house, since you get to keep that. Be aware, though, that it takes time to sell a house – the national average is eight weeks. If you want to try this route, let your lender know, as they may work with your real estate agent to allow time to market the property. If there's no equity, the lender may accept a "short sale" for less than the debt – be aware, this may have tax consequences to you.

**6) Deed-in-lieu of Foreclosure.** The lender may agree to take the house back from you and stop the foreclosure. This saves the lender some costs, but may also incur tax liability for you on the forgiven debt. Check with a counselor or attorney before doing this. Lenders view this as a last resort.

**7) Bankruptcy.** If you will be able to make your mortgage payment in the future, but your lender won't work with you on restructuring your default, a Chapter 13 bankruptcy filing will force their hand, as the court can spread out payments on the default over several years. Legislation is pending to restore a court's ability to "cram down" a mortgage, reducing both the interest rate and the principal to reflect the downturn in home prices. If this passes,

Chapter 13 would be an attractive choice for a homeowner whose house has lost value. And, don't worry – despite regulations requiring "financial responsibility," federal law prohibits adverse action against a service member who seeks bankruptcy protection.

**Don't Get Scammed.** Reports of mortgage-related scams almost tripled last year. A reputable counseling agency will not charge up-front fees and won't tout special "connections" that will help you. There is no valid reason for you to sign over ownership of your home to a third party to avoid foreclosure. Finally, while there are still predatory lenders who will offer to refinance your home to avoid foreclosure, be aware of the interest rate, points, and fees.

Additionally, you may qualify for two special protections of the Servicemembers Civil Relief Act (SCRA), which applies to mortgages you entered into prior to coming on active duty or being called to active duty for more than 30 consecutive days.

If you submit a written request and a

copy of your orders, your lender is required to reduce the interest rate on your mortgage to six percent during the period of your active service, and to recalculate your payments to reflect the lower rate. This is beneficial if you have a subprime loan, which have rates up to 12 percent interest. Cutting the rate to six percent cuts the monthly payment by 75 percent.

The Act also has foreclosure protections. Lenders may not foreclose while you are on active duty or within 90 days after the period of military service unless they have court approval. The lender has to show the court that your ability to repay the debt was not affected by your service.

This is key for reservists and guardsmen, as a Rand Corporation study shows, that about 28 percent suffer a drop in income when called to active duty.

Foreclosure is difficult to face. Remember, lenders want you to succeed – they would much rather have your money than your house. If you follow the steps above, you have a fighting chance of keeping your home. 