



California Department of Real Estate
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Consumer Alert

Possible Alternatives or Options to Foreclosure

Regardless of your particular situation, if you are unable to meet your monthly mortgage loan payments, you face the probability of foreclosure. When you purchased or refinanced your home, you borrowed money from a lender. The lender is entitled to repayment according to the financial terms described in your mortgage loan documents. If you miss your mortgage loan payments, your lender can cause your home to be sold to pay off your mortgage loan. This procedure is called foreclosure.

While going through foreclosure is an overwhelming experience, the last thing you should do is nothing. You may pursue a number of possible alternatives to foreclosure and should take the initiative to do so. Because not all alternatives or options are appropriate, you need to decide which solution might be best for you in your particular circumstances. Consulting an attorney early in the foreclosure process can help you decide which option is best for you and protect your rights as a homeowner. Possible alternatives or options include:

- Loan modification;
- Refinance: pay off your loan with a new loan on better terms;
- Sell your home;
- Pursue a “Short Sale”;
- Rent out your entire home;
- Rent out rooms;
- Offer a “Deed-in-Lieu” of foreclosure to your lender or its servicing agent; or,
- Home equity sale.

This article addresses a home equity sale, one of the potential alternatives to foreclosure.

A home equity sale is an alternative to foreclosure and only available for homeowners who still have equity in their home, meaning that the value of the home exceeds the indebtedness owed to the lender or lenders. California Law contains protections for residential real property in foreclosure. In order for the protections to apply, the property must be one to four dwelling units, the owner must occupy one of the units as his/her primary residence, and the property must be subject to an active Notice of Default.

Home Equity Purchasers are persons who acquire homes in foreclosure as an investment and not for occupying. Purchase and sale transactions between a Home Equity Purchaser and a homeowner whose home is subject to an active Notice of Default are subject to specific provisions of California law. Requirements of this law include standards for the contents of the contract between the Home Equity Purchaser and the homeowner. The contract must contain the entire agreement of the parties and must include, among other information, the following:

- The name, business address, and the telephone number of the Home Equity Purchaser;
- The address of the home in foreclosure (subject to an active Notice of Default or Trustee Sale);
- The total consideration purchase price to be paid by the Home Equity Purchaser in connection with or incident to the sale;
- A complete description of the terms of how the Home Equity Purchaser will pay for your home, other consideration including, but not limited to, any services of any nature which the Home Equity Purchaser represents he or she will perform for you before or after the foreclosure sale;
- The time in which possession is to be transferred to the Home Equity Purchaser;
- The terms of any rental agreement;
- Proper notice of your right to cancel with an equity purchaser. The right to cancel expires at midnight of the fifth business day following the day on which you signed a contract or 8 a.m. on the day scheduled for the sale of the property pursuant to a power of sale conferred in a deed of trust, whichever occurs first. The required format for the notice can be found in Sections 1695.3 and 1695.5 of the California Civil Code.

The homeowner is entitled to a right of cancellation, and the purchase and sale transaction cannot be concluded, nor can the Home Equity Purchaser (or you at the request of the Home Equity Purchaser) refinance or borrow money from the equity in the home until the cancellation period has expired. Further, you will not receive any consideration (money) for your equity until the cancellation period expires. If you elect to cancel, the original contract and any other document (instrument) you may have signed must be returned to you without any condition being imposed by the Home Equity Purchaser.

Home Equity Purchasers are prohibited from making untrue or misleading statements regarding the market value of your home, the amount of net proceeds you may receive (if any) after the sale, about any contractual term, or the nature of any document (instrument) you sign. You should be aware that it is unlawful for any person to initiate, enter into, negotiate, or complete any purchase or sale transaction involving your home in foreclosure, if such person, by the terms of the transaction, takes unconscionable advantage of you.

As part of the proposed purchase and sales transaction, some Home Equity Purchasers will offer you the opportunity to repurchase your home at some future date. The Home Equity Purchaser will demand that you transfer title to the property to another buyer and that you may stay at your home and at some future time exercise an option to repurchase. Such purchase and sales transaction is presumed to result in a mortgage loan rather than a sale of the home, unless the Home Equity Purchaser can prove otherwise.

Applicable California law is intended to protect you (the homeowner) from unethical and unscrupulous Home Equity Purchasers who are acquiring your home when it is in foreclosure. Even if your home is not subject foreclosure, you may need protection when considering a purchase and sales transaction with an investor seeking to purchase your equity. As you can see from this brief discussion, the law is complex and you would benefit from the advice of an attorney who is knowledgeable regarding real estate transactions.

Selling Your Equity - Quick Tips

- Hiring a real estate broker may be helpful, but is not required. A licensed real estate broker will solicit for buyers (purchasers), help you negotiate contract terms, and will assist with the closing process.
- Not knowing the fair market value of your home could expose you to unethical business practices. A knowledgeable real estate broker (active in your neighborhood and community) or an independent appraiser can assist you in estimating the current fair market value of your home.
- Avoid private transactions where a request/demand is made by the buyer/purchaser for you to sign papers in exchange for a cash payment (particularly without the use of a separate, third-party escrow holder). In California, licensed public escrows, title insurance companies, underwritten title companies, among others who either are licensed or expressly exempt from licensing as an escrow holder, are authorized to perform escrow services. These services include paying off your existing lender as part of the purchase and sales transaction.
- Unethical persons often attempt to persuade homeowners to complete informal transactions that provide “instant cash” or will offer to buy the homeowner’s equity using what the buyer/purchaser describes as a “contract of sale”. This type of transaction could ultimately result in financial grief. Obtaining advice from an attorney is highly recommended before entering into a “contract of sale” (a contract where title remains in your name and the deed is delivered at some later date to the buyer/purchaser).
- It may take a significant amount of time to find a buyer for your home. Begin the marketing of your home as early as possible. You should keep your monthly mortgage loan payments current during this period.
- As long as this transaction involves a complete payoff to your lender or its servicing agent of your mortgage loan, it is not a “short sale.” The prior permission of the lender or its servicing agent is not necessary. However, there may be a prepayment

penalty as part of the terms of your mortgage loan, charging you an extra fee if you pay off your mortgage loan early. You should negotiate with your lender or its servicing agent to waive this fee. Some prepayment penalties are contrary to applicable law, and a real estate attorney can assist you in this situation.

For additional resources about alternatives to foreclosure, please visit the Department of Real Estate's consumer publications page at <https://dre.ca.gov/Publications/>.

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