

Weisleder: Be proactive if your mortgage goes into default

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Not being able to make your mortgage payments on time can have devastating results on a family.

It is generally a sign that there is not enough money to pay utility bills, property taxes and credit cards. This results in harassing telephone calls from collection companies and can completely disrupt a family life. If a lender exercises their rights to sell your property, it will mean that your family is forced to leave their home involuntarily. It will also leave a very negative impact on your credit rating, especially if you are forced to file for bankruptcy.

It is very important that consumers who find themselves in this situation be proactive in doing everything possible to minimize their losses. There are steps you can take.

The first step is to approach your lender and try to work out a different mortgage repayment schedule. Perhaps you can convert two to three outstanding interest payments into additional principal on your mortgage. If there is sufficient equity in your home, the lender should be agreeable to this.

If you have determined that you cannot carry your home anymore, it is better to be proactive and sell it early to obtain the maximum selling price. If the lender takes over the property and attempts to sell it, buyers will immediately suspect a "deal is to be had" and will come in with offers at least 10 to 20 per cent less than the listing price.

Although a lender is mandated by law to try and get fair market value, in many cases they are not too concerned. The reason is that the only person who can sue the lender is the borrower. If the borrower cannot make their payments, it is very unlikely that they have the money to pay lawyers for an expensive lawsuit against the lender. Lenders know this.

Therefore, by selling your home early at a realistic sale price, before default occurs, you can assure that the home is sold for a fair price and that you obtain the maximum equity out of your home.

But what if your home has no equity left and if you sell it there will not be enough money to pay the lender? You should consider approaching your lender with a discussion similar to the "short sale process" that has been occurring in the United States. In a short sale, the lender agrees in advance to permit the sale even though they will not be paid in full. The reason is that the lender knows that if the property goes into foreclosure, the sale price will be much less and they will recover almost nothing on their loan.

If you are in this situation, approach your lender with a current real estate appraisal as well as a statement of your

net worth and you may be able to demonstrate that even if they are not paid in full, they will receive more than if they try to sell the house after a default has occurred. You can then discuss what will happen if there is a shortfall. Perhaps you can consolidate this amount with other debts and work out a generous payment schedule so that the lender will ultimately get paid in full. Or perhaps the lender will forgive part of the amount owing, depending on what you can realistically pay later. The lender knows that if you go bankrupt, they will receive nothing so they have motivation to work with you.

If the lender refuses to work with you and commences legal proceedings, then you can try and put in a defence to any court application to gain possession of your property. Filing a defence should give you additional time to sell the property yourself, before the lender gains control of your property. Again, do not hide and ignore these proceedings.

By being proactive when facing a mortgage default, you can minimize your losses and protect your credit rating during this very stressful process for you and your family.

Next week we will examine how buyers can protect themselves when they are buying a property from a bank that is attempting to sell a home after a mortgage default.

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