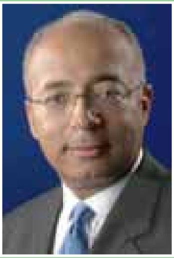

William C. Thompson, Jr.
New York City Comptroller

Save Our Homes

Foreclosure Prevention Guide

2nd edition

Dear Friend,

Since I established a Foreclosure Prevention Helpline in 2007, my office has assisted thousands of individuals and families in taking the first step toward keeping their homes. As the number of foreclosures in New York City continues to rise, we are strengthening our efforts to help even more New Yorkers. We have updated this guide with information that can help you, your family, your friends, or your neighbors avoid foreclosure.

Many of you may ask, what is foreclosure? Foreclosure is a legal process through which a lender seeks to take ownership of a borrower's home because the borrower has failed to pay his or her mortgage loan as agreed. The foreclosure process typically begins when a borrower is more than 90 days late on a mortgage payment and the lender files a notice of default.

Although there is no simple or single solution, it is important that at-risk borrowers take immediate action. Foreclosures may be avoided if individuals and communities are well-informed about available resources. According to some studies, half of home foreclosures occur without borrowers ever talking to their mortgage servicer or to a non-profit mortgage counselor.

If you or someone you know is facing the possibility of foreclosure, we are here to help. Our Foreclosure Prevention Helpline has trained staff who will assist you with contacting your servicer and guide you to other non-profit resources. Helpline staff can be reached at (212) 669-4600.

Unfortunately, for many New Yorkers, the dream of home ownership has turned into the nightmare of foreclosure. It is my hope, however, that this newly revised and improved guide will help provide individuals with the options and resources necessary to prevent foreclosure.

By serving the needs of each community in our city, we will secure a better quality of life for all New Yorkers.

Very truly yours,

William C. Thompson

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How to minimize the risk of foreclosure before you purchase or refinance:

- **Seek counseling services offered by non-profit organizations before you purchase or refinance your home.** You should meet with certified experts to learn how to improve your credit rating, avoid predatory lenders, review financial budgets, and understand all the steps necessary for buying or refinancing a home.

- **Avoid prepayment penalties and balloon payments.** A prepayment penalty may add significant additional costs if you decide to refinance your loan. Individuals who finance or refinance their mortgages with loans containing prepayment penalties or balloon payments are at greater risk of foreclosure. Borrowers should avoid these costly and risky loans.

- **Stay on top of home repairs and maintenance.** Know which improvements increase the value of your home, and have only reputable contractors perform any improvements or repairs. Dishonest contractors often pressure homeowners into loan products that may lead to foreclosure.

Missed a mortgage payment . . . what's next?

- **Contact your lender as soon as you realize you are having difficulty.** There is a saying: "the sooner, the better." This is a good standard for deciding when you should notify your lender that a payment will be late. The further behind you are on your payments, the fewer options you have available. Follow up with a letter to your lender documenting your conversation with your lender's representatives.

- **Open and respond to all mail from your lender.** Your lender will likely contact you as soon as your loan is in default. It is important that you respond to all mail and phone calls from your lender. The first notices you receive will contain valuable information about your options to prevent foreclosure. Additional letters may include important notices of pending legal action. Failure to respond quickly may result in further foreclosure actions and additional costs.

Beware of uninvited solicitations from private parties.

Be skeptical of unsolicited offers or advertisements from private parties and unfamiliar companies offering to assist homeowners with delinquent mortgages or mortgage foreclosures. Some of these predatory lending traps include: high-risk second mortgages, unsolicited "loan approvals," refinancing to access equity and equity skimming. In many instances, these offers require the payment of inappropriate fees or involve an offer to purchase your property with the false promise that it will be resold to you at some time in the future.

Remember, "if it sounds too good to be true, it probably is." If you sign the deed to your home over to another party, there is no guarantee that you will be able to get it back.

Are there options if I cannot make payments?

If you are having difficulty paying your mortgage due to short-term financial hardships such as illness, family emergencies, or temporary loss of income, you may be permitted to delay your mortgage payments for a short time. But you must first contact your mortgage lender.

Similarly, if you have funds to make at least a partial mortgage payment, your lender may allow you to add a payment in the future. However, be aware that you should not simply cease making payments or make only partial payments without first discussing your options directly with the mortgage lender.

Ask your lender about alternatives to foreclosure, including repayment plans, forbearance agreements, reinstatement arrangements, or workouts.

- **Repayment Plan:** Repayment plans are used when a person has missed a few payments, can afford to make regular payments going forward, and expects to be able to "catch up" on the missed payments in the near future. Generally, a repayment plan does not extend beyond 12 months. Since monthly payments during the term of the plan are higher than a regular monthly payment, this method may not be

suitable for people experiencing an ongoing interruption to their income.

- **Forbearance Agreement:** You are allowed to delay payments for a fixed period. When the forbearance period ends, the homeowner is required to resume paying the mortgage, and payments that were skipped will need to be repaid according to the terms of the agreement. This short-term agreement does not reduce the total amount owed or the interest rate charged. As a result, this plan is unlikely to help a homeowner whose mortgage payment has become unaffordable.

- **Reinstatement Arrangement:** The process of correcting (or "curing") a default in your mortgage and returning to a condition where your lender will treat you as if you had never fallen behind.

- **Workout:** A process through which you and your lender discuss ways of correcting a default on your loan. If you need time to correct the default, you and your lender may be able to reach a formal agreement about how you will bring your loan back into good standing.

  Workout options are tailored to your individual situation, but you must qualify for a workout plan. Lenders must evaluate each borrower's circumstances on a case-by-case basis and go through an approval process to arrange workout plans. This can take time, so it's important that you act immediately and promptly provide any information requested by your lender to avoid further foreclosure action. Be prepared to provide detailed financial information to assist your lender in approving you for a potential workout option. Be honest about your circumstances and personal finances—it will lead to the workout option that best fits your situation. Keep your promises on any workout arrangement.

Long-term inability to make mortgage payments

If you have missed mortgage payments because you have an Adjustable Rate Mortgage (ARM) that has increased and is now not affordable, contact your mortgage servicer to explore other options to foreclosure. You may want to consider modifying your mortgage agreement and converting your mortgage to a fixed-rate product. This way you will know what your mortgage payment will be for the duration of the loan. It is important for you to make sure that the option you choose is affordable for the duration of the loan.

- **Modification Agreement:** Making a permanent change to the loan agreement. A modification generally reduces a borrower's monthly payment by reducing the interest rate on the loan and lengthening the repayment period. Before agreeing to a loan modification, the lender will want to verify that the new payment will be financially feasible for the borrower over the long term, so that current problems are not simply pushed into the future.

  If you find that you cannot afford the terms offered by a modification agreement, you may want to explore the following options with your servicer:

- **Pre-foreclosure Sale**: Sale of a house in anticipation of foreclosure or repossession, usually with the lender's consent. A pre-foreclosure sale is particularly useful when the homeowner has significant equity in his or her home and wants to reduce the amount of the equity that will be consumed by the lender's collection and foreclosure costs.

- **Short Sale:** An arrangement through which your lender agrees to let you sell your home (usually with assistance from a real estate professional) at a price that generates less money than is needed to fully repay the amount you owe. Even though the money generated by the sale is less than what you owe, the lender agrees to accept the sale proceeds as full satisfaction of the debt. As a condition of a short sale, lenders generally agree not to seek a "deficiency judgment" for any loss they may experience. Homeowners entering a short sale arrangement should be aware that the amount forgiven by your lender (i.e., the difference between the amount you owed the lender and the net proceeds generated by the sale of your home) generally will be reported to the

Internal Revenue Service (IRS) as taxable income for the homeowner. To determine whether you qualify for an exemption from taxes on this amount, please consult a lawyer or an income tax professional.

Congress recently passed a *temporary* federal law (Public Law 110-142) that allows distressed homeowners to avoid income taxes on mortgage debt forgiven by their lender. For a summary of this legislation, please visit the following website to determine if you qualify for the exemption:

http://www.aaabor.com/downloads/Education/LegalUpdate/MortgageCancellationSummary.pdf

Foreclosure Proceedings

If you are in default, before a lender can take title to your home, the lender first must start an action in court, often referred to as foreclosure proceedings. A lender cannot take title to your home unless that court issues a written order permitting the lender to do so. You have a right to defend against that action in court. For that reason, if you ever receive a foreclosure notice or other court papers, you need to contact a lawyer immediately.

Foreclosure Prevention Counseling

If you believe your home may be in jeopardy of foreclosure, you should immediately contact the **Comptroller's Foreclosure Prevention Helpline**: **(212) 669-4600.** Our staff will research your case and make the appropriate referrals to your mortgage servicer and non-profit organizations certified by the U.S. Department of Housing and Urban Development (HUD).

The Comptroller's Office can help you:

- Review your situation and determine what options are available to you.
- Discuss the various workout arrangements lenders have available.
- Obtain information regarding services and programs in your area that provide financial, legal, or other assistance.

When you contact the Foreclosure Prevention Helpline or any HUD-certified counseling agency, you should have the following documents and information:

Information about the home being foreclosed:

- Year purchased
- Original purchase price
- Estimated current value
- Whether it is owner-occupied
- Whether it is a multi-family home
- Condition of the property

Mortgage information:

- Number of mortgages
- Purpose of mortgage(s) (purchase, refinance, home equity, debt consolidation, etc.)
- Original mortgage amount(s)
- Loan account number(s)
- Year the mortgage was obtained
- Name of the lender(s) and any servicer(s)
- Contact information for the current lenders and servicers, including mailing address, telephone and fax numbers, and contact person
- Type of mortgage (fixed-rate, adjustable rate, length in years, etc.)
- Interest rate
- Total monthly payment
- Number of months behind
- Total arrears (including fees and costs)
- Current principal balance
- Any correspondence you have received from the lender

Important Mortgage-related Definitions:

- **Adjustable Rate Mortgage (ARM):** A loan with an interest rate that changes at regular intervals during the life of the loan. The interest rate is calculated by adding a pre-determined number of percentage points ("the margin") to a specific market rate of interest ("the index"). For example, a loan agreement for an ARM might state that your interest rate will change ("reset") every six months, and the new rate will be calculated by adding 3 percentage points to the London Inter-Bank Offered Rate (LIBOR).

- **Amortization:** The process of reducing the principal balance of your loan by making regular monthly or bi-weekly payments. Each payment is applied to principal and to interest. Most loans are so-called "fully amortizing" loans, which means that your monthly payment is calculated to ensure that, at the end of the loan, you have fully repaid ("amortized") the amount you borrowed, including applicable interest. If a loan is not set to fully amortize, you will still owe money (a "balloon payment") at the end of the loan. Beware of "negative amortization" loans.

- **Balloon Payment:** A large, lump-sum payment that is due at the end of certain types of loans. The amount of a balloon payment is significantly larger than a regular monthly payment. A balloon payment occurs when your monthly payments are calculated using a smaller amount of money than you actually borrowed or a repayment period that is significantly longer than the life of your loan. Loans with balloon payments are often used by lenders to keep monthly payments low; however, these loans can be dangerous because paying only your monthly payment leaves you with a large amount still owed at the end of the loan.

- **Fixed-Rate Mortgage:** This type of mortgage loan has a single interest rate for the entire length of the mortgage. Since the interest rate does not change, the rate is said to be "fixed." Please note: a fixed-rate loan may have a default rate that is triggered if the borrower fails to repay the loan as agreed. The default rate is essentially a penalty rate that is charged for as long as the default condition lasts.

- **Prepayment:** Repaying some, or all, of a loan's principal balance before it is due.

- **Prepayment Penalty:** For some loans, a fee charged by a lender if you make a prepayment. Prepayment penalties are included in mortgage agreements to discourage borrowers from paying off their loans sooner than expected. Originally, this fee was intended to compensate lenders when a loan was repaid before they had a chance to make enough money to cover the upfront costs of making the loan. In recent years, prepayment penalties were widely abused by predatory lenders to prevent borrowers from refinancing their high-cost loans. For lenders that are regulated by the New York State Banking Department, there are strict limitations on prepayment penalties, especially with respect to high-cost loans.

- **Subprime Loan:** This is a loan that is more expensive than comparable prime loans. Subprime lending is generally defined as less than 'A' (i.e., prime) lending. This type of lending is designed to help borrowers with no credit history or past credit problems obtain a loan. The increased expense of the loan is intended to compensate lenders for the additional risk they accept when making loans to borrowers with weak, troubled, or non-existent credit histories. Whensubprime loans contain requirements that trap borrowers into high payments, repeated refinancing, or deceptive repayment terms, the loan becomes a "predatory" loan. Not all subprime loans are predatory loans; however, there is a greater risk of receiving a predatory loan if you are obtaining financing in the subprime market.

Foreclosure-related Definitions:

- **Default:** Failing to meet the requirements of a loan or mortgage agreement. Most defaults occur when a borrower fails to make required payments; however, other common types of default include: failing to maintain homeowners' insurance; neglecting to maintain the property in acceptable condition; failing to pay property taxes; and failing to pay condominium or homeowners' association fees.

- **Default Rate:** The interest rate that a creditor will charge after the borrower has defaulted on the loan. If there is a default rate, it should be identified in the loan agreement. The default rate on a loan typically is significantly higher than the regular interest rate.

- **Deficiency:** A deficiency arises when a foreclosure sale does not generate enough money to repay the full amount that was owed to the lender. In some states, a lender can sue to obtain a "deficiency judgment" that, if granted, requires the former homeowner to pay the amount of the deficiency.

- **Redemption:** Saving ("redeeming") your house from foreclosure by repaying your lender the entire amount owed, including principal, interest, late fees, and any associated costs.

Please call, fax, e-mail, write, or visit the Comptroller's Community Action Center (CAC). This unit has resolved thousands of problems confronting New Yorkers. We can help you, too.

Foreclosure Prevention Helpline:
(212) 669-4600

Community Action Center:
(212) 669-3916

TTY Users:
(212) 669-3450

Fax:
(212) 669-2707

Website:
www.comptroller.nyc.gov

E-mail:
action@comptroller.nyc.gov

1 Centre Street, Room 835
New York, NY 10007

Call or visit CAC:

Monday–Friday
9:00 a.m.–5:00 p.m.

This guide provides basic information about steps to avoid foreclosure. The guide is not intended to provide legal, financial or regulatory advice and should not be relied upon for that purpose. Please consult a lawyer or a non-profit counseling agency for specific guidance.

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