Chapter 1

Digging Into and Out of the Foreclosure Hole

In This Chapter

- Understanding why homeowners end up in foreclosure
- Getting up to speed on the foreclosure process
- Exploring your homeowner rights
- Checking out your options
- Recovering from foreclosure

Foreclosure has a distinct beginning and an end. A series of events usually triggers foreclosure, and in a matter of months or maybe a year in some cases, the foreclosure is usually behind you — whether you save your home or lose it. In a way, that's good news. Within a year, your foreclosure is likely to be no more than a bad memory — a passing blip on your radar screen.

In this chapter, we cover foreclosure from start to finish, beginning with common causes that trigger the foreclosure process. This gives you some comfort in knowing that you're not alone — foreclosure happens to more people than you can imagine, people from all different socioeconomic backgrounds. We then bring you up to speed on the stages of the foreclosure process and reveal the options you have to delay or terminate the process. We end the chapter by showing you that life goes on after foreclosure and, with the right approach, you can look forward to better times.

Stumbling into the Foreclosure Hole

Homeowners end up in foreclosure for any number of reasons, ranging from being the victims of predatory lending practices to abusing alcohol and drugs to having a family member with an expensive medical condition. Foreclosure happens in the inner city, in rural areas, and in ritzy suburbs, towns, and villages, and it afflicts the rich, the poor, and the middle class.

In the following sections, we reveal the most common foreclosure triggers, in the hopes that you may relate to at least one of them and realize that bad things can and do happen to good people. This may seem like little comfort, but by realizing how common foreclosure really is, you may begin to see it more as a problem that needs to be solved than an overwhelming crisis that will ruin your life. With the right attitude and understanding, you can overcome your current challenges and emerge a stronger person as a result.

The first thing we do when we sit down with homeowners facing foreclosure is let them know that they are not alone. We service a tri-county area in Michigan, where an average of 400 properties per week are scheduled for the foreclosure auction. Although some of these are properties owned by chronic deadbeats, foreclosure strikes diligent, hardworking Americans, too. Don't let foreclosure get you down. You have plenty of reasons to remain hopeful and leverage that hope into taking positive action.

Irresponsible lending practices

Major contributors to the foreclosure epidemic that started to heat up in 2007 included mortgage fraud and irresponsible lending practices. Mortgage lenders were offering risky loan packages to consumers, including adjustable rate mortgages (ARMs) with attractive teaser interest rates, interest-only loans, and mortgages that exceeded the value of the homes used to secure them. In addition, many loan originators actually encouraged borrowers to lie on their loan applications in order to get approved.

We were involved in one case in which a mortgage broker tricked a single mother with two children into borrowing so much money at such a high interest rate that over 90 percent of her monthly pay was required to cover her mortgage payment. After making her mortgage payment, she couldn't even afford to pay her utility bills or buy groceries.

Many people who purchased properties during this time were also involved in cash-back-at-closing schemes in which they agreed to take out a mortgage in excess of what the home they were buying was worth, so they could receive the excess cash back when they closed on the deal. In most cases they were misled; an inflated appraisal may have been used to trick the buyers into believing that the home was worth more than it really was. They spent the money, had huge mortgage payments, and, when they couldn't afford the payments, ended up in foreclosure.

Divorce

The mother of all foreclosure triggers is divorce, which is painful in itself but even more devastating when the couple owns a home together. Three major factors contribute to the connection between divorce and foreclosure:

- **Loss of income:** The household requires two incomes to support it. As a result of the divorce, only one or one and a half incomes are available, depending on the settlement.
- **Settlement woes:** The one spouse who is supposed to be making the house payment as part of the settlement can't afford payments on two houses (the ex's house and the new house he just purchased) and defaults on one or both mortgages.
- **Spite:** One spouse, out of sheer spite, allows the house to go into foreclosure, because "If I can't have it, neither can you" or "My husband (or wife) loved this house, and it will kill him (or her) to see it lost in foreclosure."

Overspending

We live in a consumer-based society based on deficit spending. Most people in the United States are living on the edge of foreclosure. A few months without income or one or two unexpected bills, and they're likely to end up in the same place as you. Overspending is commonly caused by one of the following three factors:

- Inability to budget or stick to a budget
- Unexpected expenses or loss of income
- Easy credit, including credit cards, leading to accumulated debt

For tips on how to slash expenses, check out Chapter 8.

Job loss

When income dries up after a job loss or layoff, foreclosure follows close behind. When times are great and everyone is working, families often upgrade into a bigger, better house, only to have the bottom drop out when the perfect job or overtime opportunities disappear. A job loss is less of a problem in a family in which both partners work, but it can still be a problem if both incomes are required to make ends meet.

If the cloud of a job loss has any silver lining, it has to do with the fact that most people understand it. Winding up in foreclosure due to a job loss is less embarrassing than losing your home because you blew a hundred grand in Vegas.

Illness

Illness often strikes with a one-two punch. It hits you in the pocketbook with increased medical expenses and may compromise your ability to generate income through work. You may not be able to generate income if the illness prevents you from working, or if the illness of a family member requires you to take off work to care for them.

Unfortunately, foreclosure has no emotions. It doesn't stop when you or a loved one becomes ill. The creditors move forward to collect the debt regardless of why you're experiencing financial setbacks.

Death

A death in the family can also function as a one-two-three punch, particularly if you experience the loss of a major breadwinner. The emotional blow can be so devastating that you may lose your ability to perform normal activities, such as working. The cost of the funeral arrangements can push your spending over the limit. And finally, the loss of income may add to your financial burden.

From grieving to foreclosure

You never quite know how the death of a loved one will affect a person. We had the good fortune of meeting a very nice gentleman who found himself in a very unfortunate situation. He was a successful, well-educated businessman in a managerial position at a well-known corporation. We met him on the day he was being evicted from his home.

We had been trying to contact him for months, but we couldn't track down his work number until the court officer showed up at his home to evict him. When we found the number, we called him at work, explained the situation, and asked him to meet us at his home, which he did.

He was calm the entire time the court officer arranged to have his belongings set out on the curb. We waited with his possessions while he went and rented a moving truck. A couple workers on the eviction crew loaded all his items into the truck.

While we waited, he explained to us that he had lost his mother some six to seven months before. She had been living with him for years, and they were very close. He took her passing especially hard — so hard, in fact, that he just stopped paying attention to things. He still went to work, but he ignored just about everything else. He had stopped paying his bills, including his mortgage, and was pretty much going through life in a haze.

What was odd was that he had over $100,000 in his bank account. It wasn't that he *couldn't* pay, he just *wasn't* paying. Never underestimate the power of grief.

Gambling

Gambling has become a huge problem in the United States, primarily because it's so convenient. You can go down to the local gas station or convenience store and load up on lottery tickets. In many areas, the casinos are a short drive away. And online gambling is huge — you don't even have to leave your home.

Gambling can start out innocently enough, as a form of entertainment, and quickly escalate as the gambler tries to win back her losses, which is always a recipe for major trouble. The losses pile up as quickly as the guilt and embarrassment, and it usually remains a secret until it's far too late and the damage is done. People are devastated when they discover that their homes are in foreclosure because, instead of making the house payments, their spouses have been gambling them away.

Alcohol and substance abuse

Alcoholism and substance abuse can be even more devastating than other illnesses due to the emotional fallout that typically follows. A breadwinner who is more committed to the bottle or a certain drug than to fulfilling his responsibilities to his family is eventually consumed by the substance. This often results in a host of problems, including increased medical bills, job loss, and divorce, any one of which can trigger foreclosure on its own.

Like gambling, alcoholism and substance abuse are often kept a secret. Many families are in denial about the problem until it's too late.

Whatever challenges your family faces, don't try to sweep them under the carpet. Confront those challenges head on, and work as a team to develop solutions before your problems get the upper hand. Thinking a problem is just going to go away often leads to foreclosure.

Digging Deeper Through Denial and Avoidance

One sure way to make matters worse in foreclosure is to deny you have a problem or avoid it entirely; yet, that is exactly what many people choose to do. Overwhelmed by their financial setbacks or the accompanying embarrassment, they spend all their time and energy trying to keep a secret. Unless they take a different approach, they're sure to lose their homes and all the equity they have in them.

The longer you put off taking action, the fewer your options and the less time you have to explore existing options.

In the following sections, we reveal three of the most common mistakes people make in an attempt to deny or avoid dealing with their situations. Our hope is that you won't repeat these same mistakes.

Say what?! Our house was auctioned off?!

We follow foreclosures in our area. We read the foreclosure notices, attend the sales, and network throughout the area to contact people as early in the foreclosure process as possible. When we discover homeowners who are facing foreclosure, we attempt to contact them and explain their options and rights. You see, plenty of people knock on the doors of distressed homeowners to capitalize on their misfortunes, but very few are willing to openly and honestly discuss the process and lay out possible solutions. We believe that informed homeowners are in a position to make educated decisions and are less likely to be conned into something that's going to make matters worse.

One day, after attending a foreclosure auction, we were out knocking on doors. We knocked on one door, and when the gentleman answered, we introduced ourselves and handed him one of our cards. We told him that we had just come from the sheriff's sale where his home was auctioned off. He looked at us as if we were standing there in Girl Scout uniforms trying to sell him a box of Thin Mints.

Finally he said, "You must be mistaken." We then asked whether his name was Mr. X and the address was 123 Main Street. He said, "Yes." We then informed him that there was no mistake. His home had, indeed, been auctioned off at the sheriff's sale.

He was pretty shaken. He looked like a dazed boxer who had just gone down after an eighth-round beating. He had enough composure left, however, to invite us in to have a seat. He explained that he didn't pay the bills — his wife did and she would be home from work any minute to clear things up. It was already clear to us from our past experience. His wife hadn't been making the mortgage payments and had kept him completely in the dark.

As we were walking into the house, the man looked over our shoulders out to the driveway and said, "Great, here's my wife now." We stepped out of the doorway to let her through. As she came up the sidewalk toward the front door, he said, "Honey, these folks say we're in foreclosure and our house was sold this morning at a sheriff's sale." If looks could kill, we would have dropped dead in the bushes.

Again he invited us in to sit at the kitchen table and explain what was going on, but his wife pushed past us and began to close the solid door. As she did we heard the husband say, "He's mistaken, isn't he? I mean, you pay the bills — please tell me our house didn't just sell at a sheriff's sale!" Before we could reach the end of the sidewalk leading from the front door to the street, it was all-out war.

Fortunately, the couple lived in a state with a redemption period and they had the opportunity to redeem their house. If they had lived in a jurisdiction that offered no redemption period, they would have lost their home.

Remember: As bad as you think it may be to let your spouse in on your little secret, it's a hundred times worse for your spouse to find out from a complete stranger. Let your loved one know early on, when you have options and time to explore them.

Failing to act quickly

The longer you wait to take action, the fewer your options and the less time you have to pursue whatever options remain. Keep in mind that foreclosure proceeds in stages. Your options and the prognosis vary according to which stage you're at in the process:

- **Stage 1:** You missed a payment, but the bank hasn't accelerated the mortgage yet (see Chapter 5). You probably still have the option to pay the missed payment plus a late fee and get off scot-free.
- **Stage 2:** You missed more than one payment, but the bank hasn't auctioned off your property just yet. At this stage, you can still negotiate payment options with your bank (see Chapter 11).
- **Stage 3:** Someone purchased your home at auction, but your jurisdiction has a redemption period, during which time (in some cases) you can still buy back your home, typically for more money than you owed at Stage 2.
- **Stage 4:** The redemption period (if any) expires, and you're now a trespasser in your former home.
- **Stage 5:** If you don't move yourself and your stuff out of the home by a specific date, the court sends an officer to evict you and your belongings.
- **Stage 6:** You feel the aftershocks. If you haven't planned ahead, you now have no place to live and damaged credit. If you did plan ahead, you may be able to start anew and leave this crisis behind you.

REMEMBER

As you can see, your options dry up pretty quickly. By Stage 4, your fate is sealed and you're wondering what the heck just happened. Foreclosure runs a fairly fast course, particularly if you live in an area with no redemption period. Contact your lender as soon as you suspect that you're going to miss a payment — the sooner the better.

Paying unsecured debts first

When you start missing credit card payments, your phone starts ringing off the hook. Your credit card company wants its money immediately, if not sooner, and its representatives will badger you until they get it. Your first impulse is to shut them up by making a payment, but this is usually not the best move. The money you owe the credit card company is *unsecured debt* — you didn't put up your house, car, or other belongings as collateral for the loan, so the credit card company can't take that stuff unless it files and wins a suit against you.

Your mortgage and the loan you used to buy your car are secured debts — when you took out the loan, you put your home or your car up as collateral to secure payment. If you fail to make your mortgage payments, the mortgage company can take your home. Fail to make your car payments, and the bank that loaned you the money can repossess your car.

When you're facing foreclosure, pay your property taxes first, your secured debts second, utility and grocery bills third, and your unsecured debts last. Working out a payment plan with your credit card company or a hospital is easier than working out a payment plan with your mortgage company. If you miss one or two mortgage payments, the mortgage company may declare you in default, stop accepting payments, and file for foreclosure.

REMEMBER

Your creditors can't throw you and your family into a debtor's prison, because such prisons no longer exist in the United States. The government has placed certain restrictions on what creditors can do to collect on debts. If you feel that creditors are harassing you, send them a "bug-off" letter, citing your rights under the Fair Debt Collection Practices Act (`www.ftc.gov/bcp/conline/pubs/credit/fdc.shtm`) and mentioning any state consumer protection statutes. If the collectors still won't bug off, file a complaint with the Federal Trade Commission (FTC) at `www.ftc.gov`.

Don't buy trouble

We recently met a woman who had just lost her home in foreclosure. She took the right first step and called her lender. Unfortunately, the person she got a hold of was clueless and transferred her to another department, where a representative told her that he couldn't do anything and didn't even know how she was able to secure the loan.

Next, she called the local Chamber of Commerce. The person she talked to there referred her to someone who came out to her home and charged her $500 for the initial consultation — to call and talk with the lender and assess options.

After trying to work with them for several weeks and seeing no progress, she filed a police report. When the scammers found out about the police report, they returned her $500, but not before they used up all the time she had to save her home. She called back to the Chamber of Commerce and learned that this particular "foreclosure rescue" company wasn't even a member; the person answering the phone at the time referred the homeowner to one of her friends.

The ex-homeowner was now living in an apartment. She was doing okay, but she would have been doing much better had she not trusted her situation and her money to con artists.

No matter where you get a referral, if someone tries charging you money upfront to save your home from foreclosure, tread carefully. Ask what the fee covers and what the service provider is going to do for you, and make sure the company has an address (not just a post office box) and a phone number. Ask for references and check them out.

Seeking a quick fix

Foreclosure information is publicly accessible, so as soon as that foreclosure notice is published, everyone who follows foreclosures is going to know about it, and some of these people are shady characters. Foreclosure rescue crews may show up at your door offering to bail you out. All you have to do is sign on the dotted line. Don't trust them.

Far more people are going to show up at your door to take advantage of you than to offer real assistance. We strongly recommend that you work out solutions directly with your lender. If someone does show up to offer assistance and you want to pursue whatever solutions he offers, consult with a qualified attorney who's well-versed in foreclosure and bankruptcy before signing anything or handing over any money.

Boning Up on the Foreclosure Process

Most people think that as soon as you receive a foreclosure notice, you've pretty much lost your home. This is simply not true. The posting of the foreclosure notice is the first step in a process that may take several weeks or months to unfold. By understanding the process, you can often gain more control over the outcome.

In the following sections, we describe the various stages of the foreclosure process to give you a better understanding of how it works.

Receiving missed-payment notices

Although your bank expects to receive your monthly mortgage payment on or before the due date, it's probably set up to cut you some slack. Most banks offer a ten-day grace period. As long as the bank receives payment within ten days of the due date, you're okay. If the bank still hasn't received payment, then it sends you a missed-payment notice, typically stating that you need to send in your payment ASAP to avoid further action. That usually means you have some additional time, but not much.

As long as you send in your payment, you may not suffer much at this point. You may be required to pay a late fee, and the late payment could negatively affect your credit rating, but the bank is probably not going to initiate foreclosure proceedings.

Receiving a notice of default

If your payment is 30 days late or more, the bank may send you a notice of default (NOD), essentially telling you to "pay up, or else." This NOD includes the property information, your name, the amount you're delinquent, the number of days that you're behind, and a statement indicating that you're in default under the terms of the note and the mortgage you signed when you purchased your home. (See Chapter 5 for more information about your note and mortgage.)

The notice may also briefly explain that if the default is not cured immediately, the bank will be forced to take further measures, including foreclosure. Some notices are not that friendly and are, in fact, just a very coarse statement that you're in default, the bank has elected to accelerate the mortgage and note, and you have *x* days to cure the default.

You may receive the notice via certified mail, or your lender may have it published in a local newspaper or legal news publication. Sometimes, the court sends out an officer to post the notice on the home, usually on or near the front entrance. However the bad news is delivered, it still means the same thing — pay up, or end up in foreclosure.

Getting the dreaded foreclosure notice

If you don't respond to your bank in a way that satisfies the bank, it eventually sends you a foreclosure notice, like the one shown in Figure 1-1. The foreclosure notice informs you that the bank has initiated foreclosure proceedings and scheduled the sale of your home at auction. It also includes the amount you currently owe, the percentage interest, the name of your bank, and contact information for the bank's attorney.

Losing your home at a foreclosure sale

In some jurisdictions, the foreclosure sale is the end of the line — as soon as someone submits the winning bid (or nobody bids and the bank gets the property by default), you lose all rights to your home and either have to move out or be evicted. In states that have a redemption period following the sale (see the next section), you have one more chance to buy back your property.

At the foreclosure auction, the bank sets an opening bid at an amount that covers the balance you owe on your mortgage plus any interest and penalties that have accrued prior to the sale. If nobody enters a bid in excess of that amount, the bank obtains the property by default. Otherwise, the property goes to the high bidder.

THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION WE OBTAIN WILL BE USED FOR THAT PURPOSE. PLEASE CONTACT OUR OFFICE AT THE NUMBER BELOW IF YOU ARE IN ACTIVE MILITARY DUTY.

MORTGAGE SALE — Default has been made in the conditions of a mortgage made by **JOHN DOE** and **JANE DOE**, husband and wife, original mortgagor(s), to BIG BAD MORTGAGE COMPANY, INC., as nominee for lender and lender's successors and/or assigns, Mortgagee, dated September 1, 20__, and recorded on September 7, 20__, in Liber 123 on Page 456, in Wayne County records, Michigan, on which mortgage there is claimed to be due at the date hereof the sum of Two Hundred Thirty-Five Thousand Eleven and 01/100 Dollars ($235,011.01), including interest at 5.375 percent per annum.

Under the power of sale contained in said mortgage and the statute in such case made and provided, notice is hereby given that said mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, at public venue, at the place of holding the circuit court within Wayne County, at 10:00 a.m., on **SEPTEMBER 14, 20__**.

Said premises are situated in Township of Grosse Pointe, Wayne County, Michigan, and are described as:

The North 1/32 of Lots 400895, Supervisor's Plat of Mountain Cove View Lake Bluff Orchard Farms, according to the recorded Plat thereof, as recorded in Liber 1 of Plats, Page 2.

The redemption period shall be 6 months from the date of such sale, unless determined abandoned in accordance with statute, in which case the redemption period shall be 30 days from the date of such sale.

Dated: August 17, 20__

File # 12-10-123-456

For more information, please call:

ABC, P.C.
Attorneys and Counselors
123 Any Street
Detroit, Michigan 48201
313-555-1212
Attorneys For Servicer

Figure 1-1: The foreclosure notice lets you know that the bank has initiated foreclosure proceedings.

We recommend that you attend a sale in your area to experience the process for yourself. You may even meet someone at the auction who can answer some of your questions. If your home ends up on the auction block, attend the sale, so you can be sure that your house has been sold and you know who purchased it. This information can come in handy later if you have the resources to buy back your home or if something happened to delay the sale.

The location, date, and time of the sale may be published in the local newspaper or legal news publication, or may be included in correspondence you receive from the bank's attorney or the court. If in doubt, contact your county's register of deeds and ask where the sales are held and the dates and times. Sales are typically held on the same day and time each week — for example, Wednesdays at noon.

Finding a glimmer of hope in the redemption period

Redemption is like a do-over. You lose your home at the foreclosure sale, but then you have an additional period of time to buy back your home from whoever purchased it at the sale. The only hitch is that you have to come up with the cash to cover what the buyer paid for the property at auction, plus interest and expenses that the person paid and filed an affidavit for having paid.

Not all states have a redemption period. Redemption periods range from a few days to up to a year, depending on the state and on your particular situation. In Michigan, for example, the redemption period is six months for most

Know your redemption rights

Some crooked real estate investors don't play by the rules, so you need to know your rights. In Michigan, one investor who didn't like the six-month redemption period decided to take matters into his own hands. As soon as he purchased a property at auction, he would visit the homeowners to inform them that he had purchased their home and they had to move out. He failed to mention that they had six months to move out.

We're not sure how successful he was, but we suspect that some homeowners who were unaware of their rights would have gotten scared and moved out as soon as physically possible. After they vacated the premises, the investor could have had the home declared abandoned — and abandoned homes have a redemption period of only 30 days.

Know your rights and don't be afraid to stand up for them. If you're not sure about your rights, visit your county's register of deeds or a community center and ask for the names of foreclosure attorneys who may be able to provide you with some free information.

residential properties, 30 days if the property is abandoned, and a year for any parcels of property 3 acres or larger or any original mortgage that has been more than 50 percent paid off.

In some jurisdictions, the method of foreclosure determines whether you have a redemption period. For example, if the foreclosure is nonjudicial, you may have no redemption period and the bank may not be able to pursue a deficiency judgment, whereas in judicial foreclosure, you may have a right of redemption but the bank has the right to pursue a deficiency judgment. (A *deficiency judgment* is a court order that the borrower must pay the balance that remains on the mortgage if the proceeds from the sale of the home did not fully pay off the mortgage.)

Spotting the Early Warning Signs of Financial Trouble

The early warning signs of financial trouble can be as obvious as a lost job, a layoff, or a huge medical bill, or as secretive as an addiction. In either case, you and your partner (if you have a partner) should remain on the lookout for these warning signs and work together to build a strong financial foundation that can protect you from foreclosure:

- **Budget.** Make sure you have at least as much money coming in as is flowing out each month. If you have a partner, you and your loved one should agree, upfront, on how much to spend and what to spend it on. When partners are off spending money on their own pet luxuries, problems often arise.
- **Pay your bills.** When the bills arrive, prioritize them and pay them as soon as possible, so they don't stack up. If you have a partner, pay your bills together. Blaming your spouse for overspending is easy when you don't know how much it costs to heat your house or feed your family. You both need to be aware of where the money's going, so you can hold yourselves, and one another, accountable.
- **Audit your books.** Add up all the money you spend each week on nonessentials and try to trim the fat. If you're teaming up with a partner, determine how much you're responsible for and how much your partner is responsible for. This shouldn't be a blame game, but it can open your eyes to any potential spending problems that could leave the checkbook short when it comes time to make the mortgage payment.
- **Watch for addictive behavior.** Any addiction can be a problem, including alcohol, drugs, or the Internet. Anything that takes time, energy, and resources away from a paying job and your family (if you're supporting a family) could cause financial problems. Identify addictions early and nip them in the bud.

If you and your partner can't have an honest discussion about household finances and troublesome behaviors, then your entire relationship is in jeopardy. Communication is key to avoiding the problem in the first place and recovering from it if avoidance isn't possible.

Brushing Up on Your Rights as a Homeowner

As a homeowner, you have rights, but those can vary a great deal depending on the jurisdiction in which you live and your situation. Redemption rights can vary depending on the state in which you live, whether you stay in the home or abandon it, and even the size of the parcel of land on which your home sits (see "Finding a glimmer of hope in the redemption period," earlier in this chapter).

We can't possibly cover all the variations for all jurisdictions, so you need to ask someone in your area who can answer your questions, preferably an attorney who has experience in foreclosure law. Here are some of the questions you may need to have answered:

- **Does my area have a redemption period? If so, how long is it?** Ask your attorney to explain any specifics.
- **How long after the sale do I have to move?** If you live in an area with no redemption, can the buyer kick you out the next day, or do you have some time to move your belongings?
- **How does the bank have to notify me of the pending foreclosure?** If the bank fails to notify you in the proper way, you may be able to file a suit to buy yourself some more time.
- **How long do I have prior to the sale to reinstate my mortgage?** If you want to catch up on payments prior to the sale, make sure you do it before the deadline.
- **If something happens to the property prior to the expiration of the redemption period, who gets the insurance money?** Do you get the money, or does it go to the bank or the investor who purchased your home?

Many of your rights and responsibilities are spelled out in your mortgage and promissory note. For instructions on how to decipher these legal documents, check out Chapter 5. You also have rights under the Fair Debt Collection Practices Act (as explained earlier in this chapter in the "Paying unsecured debts first" section) and under the Truth In Lending Act (see Chapter 4).

Drafting Your Plan of Attack

Before you even start missing payments, your bank has a plan in place to deal with the situation and collect on the debt. You need your own plan to counter that attack. Are you going to try to save your home? Do you want to sell it to get out from under the burden? Would it make sense to simply live in the home as long as possible and then bail out before the sheriff comes to evict you?

In the following sections, we provide a brief overview of your options and highlight the resources you may have at your disposal. When you know your options, you can begin drafting your own plan of attack.

TIP

Purchase or create a large calendar on which to mark important dates, events, and conversations relating to your foreclosure. Mark the last day you have to reinstate, the date of the sale, the last day you can redeem the property, dates on which you discussed options with your lender, court dates, and so on. Make notations on dates when you had important conversations. You can then keep more detailed notes of the conversations in a separate notebook. Use the calendar to give you a big-picture view of what's happened and is about to happen.

Contacting helpful folks

Your most valuable assets in foreclosure are people who can assist you, so before you begin drawing up a plan, draw up a list of people you can lean on. Your list is likely to include the following:

- **Friends and relatives with money:** Your mom, dad, grandma, grandpa, or your rich aunt or uncle may be in a position to assist you financially, by loaning you the money you need to catch up on payments or redeem your property. Don't hesitate to ask for assistance. After all, if you were in a position to help a friend or relative in the same situation, wouldn't you want him to ask you for help?
- **Friends and relatives without money:** Even if your friends and relatives are not well off financially, they can assist in other ways, such as watching your kids so you can work overtime, cooking meals for you and your family, or offering moral support.
- **Bank representative:** Although you may see the foreclosing bank as your bitter enemy, the bank's representative or attorney may be your biggest ally or at least the person who can offer the most assistance. She may give you a few extra weeks to get your money together or work out a payment plan with you (see Chapter 11).

- **Real estate agent:** A real estate agent may be able to sell your house for you before you lose it and all the equity you have in it, through foreclosure. Even if you don't plan on selling your home, contact a real estate agent (see Chapter 13) to explore this option.

  We estimate that selling the home is the best option in about 90 percent of all foreclosure cases.
- **Register of deeds:** Your county's register of deeds is likely to be reluctant in offering any advice, but the person may be able to refer you to others who can assist you.
- **Sheriff:** If the county sheriff is in charge of handling the foreclosure sale, he may be willing to explain to you how the system works and provide you with some valuable information.
- **Bankruptcy attorney:** As we explain in Chapter 10, filing for bankruptcy may be your best option. Depending on your situation, you can either liquidate assets under Chapter 7 bankruptcy and have all debts erased, or reorganize under Chapter 13 bankruptcy to pay off as much debt as reasonable and possibly even save your home.
- **Foreclosure attorney:** A qualified attorney who has experience in foreclosures in your area is the ultimate go-to guy or gal, assuming you can afford the services. The attorney can review your mortgage, note, and other legal documents; inform you of your rights; let you know when the lender has failed to adhere to the rules and regulations in your jurisdiction; and represent you in court.

For additional information on obtaining assistance from people who can help you through the foreclosure process, check out Chapter 4.

Gathering important documents

Before you get too far into the foreclosure fight, gather important documents and other materials you're going to be called upon to deliver at some point in the process. In Chapter 5, we show you how to decipher the most important of these legal documents:

- **Mortgage, deed of trust, or contract for deed:** If you financed the purchase of your home through a bank, you have a mortgage or deed of trust. If the seller provided financing, you may have a contract for deed. All three documents stipulate the agreement between you and the lender, name the home as collateral for the loan, explain what the lender can do in the event of a default, and perhaps even explain what the bank must do before foreclosing.
- **Note:** The note or promissory note or contract is your promise to pay the loan in full. The mortgage or deed of trust backs up your promise by offering the home has collateral. The note explains what you agreed to

when you took out the loan and what the bank can do if a deficiency arises; that is, if the proceeds from the sale of your home are not enough to cover what you owe on it.

- **Modifications to the mortgage or note:** If your bank agreed to modify the mortgage or note in the past, you should have the documents showing those modifications, including any forbearance agreements.
- **Deed:** Your deed shows you as the legal owner of the property, but it may also contain warranties from the seller. You need to know the type of deed you have and what that deed warrants (see Chapter 5).
- **Correspondence:** Save a copy of anything the bank and/or its attorney sends you and anything you send the bank. For additional instructions on the types of correspondence you should record, check out Chapter 3.
- **Notice of default:** Keep a copy of the notice of default (NOD). If your jurisdiction requires the lender to publish the NOD once a week for so many weeks in the local paper or legal news, then cut it out each week along with the cover section of the newspaper to show the date of publication. If you're going to challenge that the notice wasn't properly published, you need to have this information to prove your case. Read the notice to make sure the information is accurate and complies with what the bank agreed to in the mortgage or note.
- **Sheriff's or trustee's deed:** If your house has already been sold, obtain a copy of the sheriff's or trustee's deed, which should also include information about your redemption period (if any) and where you can go to redeem your property. Check the deed for any errors; you may be able to challenge the sale if the deed contains errors.
- **Canceled checks:** If you sent payments to the bank or the bank cashed your checks and failed to credit your account, you should have a record of the checks you sent. These can be invaluable in proving that you paid on time when the bank claims you didn't.
- **Bank statements:** Bank statements can come in handy to show checks that have been cashed. If you decide to refinance your way out of foreclosure or take out a loan to reinstate the mortgage, lenders are going to want to see your most recent bank statements, as well.
- **Listing agreement:** If you decide to place your home on the market, obtain a listing agreement from your real estate agent proving that you're trying to sell your home. You should also keep copies of any offers you receive. In addition, ask your agent to supply you with copies of all marketing fliers and ads and a history of how many times she showed your home to prospective buyers. If you're having trouble selling the home for enough money to pay off the loan, all this information can help you convince the bank to accept a *short sale* (less than full payment of the loan balance — see Chapter 11).

- **Current appraisal:** Although you may not want to pay for a new appraisal, if you already have a recent appraisal of your home's market value, keep it handy. This information can be valuable in convincing the lender to accept a short sale and can assist you in understanding the current market conditions so you can decide whether selling your home is a viable option.
- **Phone logs:** Keep a written journal of all your phone conversations, and include a copy of these in you files. These records can be useful down the line if and when you need to recall a conversation.
- **Other stuff:** Keep anything else you think may be relevant. Having more than you need is better than needing something later and not having it.

The best way to keep all this information accessible and organized is to use a three-ring binder. If you can't find a copy of your deed or mortgage or anything else that's part of the public record, schedule a trip down to your local county building; you can usually obtain copies of most documents by paying a small per-page copy fee.

Getting your financial house in order

When foreclosure strikes, the first order of business is to get a handle on your finances. Do whatever possible to keep more cash flowing in than flowing out — boost income with overtime or a second job, slash unnecessary expenses, and sock away as much money as possible.

What you do with the added income and savings depends entirely on your strategy. If you're committed to saving your home, set aside the extra cash for reinstating the mortgage (see the following section) or working out a payment plan with the bank. If saving your home is a lost cause, you may decide to squirrel away as much money during the redemption period as possible, so you have a sufficient nest egg to take with you when you move. (For additional details on getting your financial house in order, check out Chapter 8.)

Playing the bankruptcy card

Tucked in the sleeves of all homeowners facing foreclosure is the bankruptcy card — a powerful card that can stop foreclosure in its tracks. As soon as you file for bankruptcy, you receive an *automatic stay* telling all your creditors to back off.

Unfortunately, the automatic stay is only temporary until the court approves your bankruptcy filing or one of your creditors has the stay lifted. If your bankruptcy is approved, you can liquidate assets to pay off as much debt as possible and have the rest forgiven (under Chapter 7 bankruptcy) or reorganize your finances to pay off your debt over time (under Chapter 13 bankruptcy).

The court is highly unlikely to give the bank relief from the automatic stay if you have equity in the property, or if you and your attorney propose a feasible plan for catching up on back mortgage payments.

Reinstating your mortgage: Getting a second chance

When foreclosure is caused by a temporary financial setback, you may be able to reinstate your mortgage prior to the foreclosure sale and pick up where you left off, as though nothing ever happened. Reinstating consists of paying a lump sum to the bank that covers the total of your missed payments, plus any interest, penalties, and fees that the bank charges you for being late. Your bank may voluntarily accept reinstatement, or you may have the right by law — your mortgage may even include language describing your right to reinstate.

Where do you get the money to reinstate? If you come into some money prior to the sale (from an insurance payment, a client who owed you some money, borrowing against your retirement savings, or some other source), you can always use that money, but most people borrow it from friends, relatives, or a private investor. Just be careful not to borrow even more trouble. If you think you'll be unable to pay off the loan in addition to making your mortgage payments, reinstatement may not be the ideal solution for you.

Reinstating is less costly and painful than redemption. With reinstatement, you're catching up on back payments and penalties, whereas in redemption, you have to come up with a chunk of money to pay off the entire loan, plus any qualifying interest, expenses, and attorney fees that have stacked up as a result of the foreclosure.

Haggling your way to a forbearance

A forbearance agreement is similar to reinstating, except for the fact that you don't have to pay a lump sum all at once. Your bank may agree to let you make payments every month, in addition to your mortgage payments, until you pay the amount past due plus any interest, penalties, and fees. If you owe $2,000 in back payments, for example, your bank may allow you to pay $250 extra for eight months to pay it off. You can then pick up where you left off.

Negotiating a mortgage modification

With a mortgage modification, your bank tweaks your mortgage. It basically says, “Okay, you can’t afford these payments, so let’s make a few adjustments.” The adjustments can include anything stated in the mortgage, including the interest rate and *term* (how long you have to pay off the loan). By dropping the interest rate and adding several months (or years) to the end of the mortgage, your bank may be able to bring your monthly mortgage payments down to an affordable range.

Refinancing: Borrowing your way out of foreclosure

If your current lender refuses to work out a solution with you, perhaps another lender will agree to pick up the slack. Contact a reputable mortgage broker in your area to check out your options. You may be able to consolidate all your debt (what you owe on your house, car, credit cards, student loans, and other loans) into a single loan that has a lower monthly payment than the total you’re paying now. (For more about refinancing your way out of trouble, check out Chapter 12.)

Don’t refinance to turn unsecured debts (such as credit card debt) into debt that’s secured by your home, unless you have a very, very good reason to do so and have considered other options, including bankruptcy. Consult a bankruptcy attorney first, as discussed in Chapter 10.

Don’t borrow trouble. Some shady loan originators may try to take advantage of you by selling you a loan that’ll put you in worse shape months or years down the road. They may offer you a loan at 14 percent interest when you’re currently paying 7.5 percent, or they may try to convince you to take out an adjustable rate mortgage (ARM) with a low teaser rate that’s likely to rise suddenly, making your payments less affordable. Know what you’re getting into before you sign on the dotted line.

Living off your home with a reverse mortgage

If you have plenty of equity built up in your home (it’s worth a lot more than you owe on it) and you’d like to live off that equity for several years while planning to sell your home, consider a *reverse mortgage*. With a reverse mortgage, you receive monthly payments (tax free) from the mortgage holder instead of having to make monthly payments. Reverse mortgages are typically designed for older homeowners who have plenty of equity in their homes and need to draw on that equity to cover living expenses.

For more information on reverse mortgages, check out *Reverse Mortgages For Dummies,* by Sarah Glendon Lyons and John E. Lucas (Wiley).

Cashing out your chips: Selling the house

Almost everyone we meet in foreclosure wants to save the family home, because, well, it's the family home. Few people want to uproot their kids, leave their neighbors and possibly their family behind, and go through the hassle of moving. Yet, for a huge majority of people facing foreclosure, selling the home and moving to more affordable accommodations is the absolute best option. Here are some general guidelines that can help you determine which option is best for you:

- Filing for bankruptcy is always an option, but it could be a costly one. In any event, you should always consult with a reputable bankruptcy attorney in your area before making any final decisions.
- If you've experienced a temporary financial setback, you can get back on your feet to start making payments, and you really want to save your home, then reinstatement, forbearance, or a mortgage modification may be your best options.
- If you really can't afford the monthly mortgage payments and you have a moderate to large amount of equity in your home (you can profit by selling it), then selling your home and finding more affordable accommodations is best.
- If you can't afford the monthly mortgage payments and you have little, no, or negative equity in the home, then your best option may be to stay in the home as long as possible (for free), save your money, and move out just before you're evicted. Keep in mind, however, that if you live in a jurisdiction that allows for deficiency judgments, and your home does not sell for enough money to pay off the liens against it, lenders may sue you for the difference. (See Chapter 13 for more about this option.)

If you plan to sell your home, hire an experienced, top-producing real estate agent (see Chapter 13). If you had all the time in the world, you could possibly sell the home yourself, but when you're in foreclosure, you need someone who can sell it in a hurry for the highest price possible.

If you can't sell the house for a profit, you may be able to sell it to break even and pay off your mortgage, so you won't have the foreclosure on your record. Your bank may agree to a short sale, so you can sell the house without losing more money. (For more about short sales, turn to Chapter 11.)

Unloading your money pit

If you can't save your home or sell it for a profit or to break even, then bailing out may be your best option — cut your losses, load up your family and your belongings, and hit the road, Jack. In Chapter 13, we discuss several methods for ditching your home:

- **Deeding the house to your bank in lieu of foreclosure:** Your bank may agree to forgive your debt in exchange for the deed to your home and the keys. You move on without the drama, time, money, and hassle of foreclosure, and the bank gets the property without costly attorney fees and having to wait several weeks or months to place the home on the market.

  When offering a deed in lieu of foreclosure, make sure the bank provides you with a formal release of all obligations for repaying the debt. Otherwise, the bank may be able to file for a deficiency judgment if the house sells for less than what you owe on it; you're then responsible for paying the difference. Read the agreement and have your attorney review it and explain it to you before you sign anything.
- **Selling the house to an investor:** If you can't possibly afford to rehab your home to bring it up to market standards and then sell it for a profit, an investor may be able to. Investors can often negotiate short sales with your creditors that creditors are unwilling to offer you. An investor may even be able to give you a little money to cover your moving expenses. Before pursuing this option, consult a real estate agent or an attorney with experience in foreclosure; you don't want to sell your home for pennies on the dollar if you can sell it for a profit and keep the cash yourself.
- **Moving out and leaving the keys:** You can't sell your home even to an investor, the bank won't accept a deed in lieu of foreclosure, and you have no other options. What do you do? Your best option may be to live in your home for as long as the law allows and save your money for the eventual move. In areas that have a lengthy redemption period, you can squirrel away a lot of cash over the course of several months.

You can often score some additional cash by negotiating a cash-for-keys deal with your bank or the investor who purchases your property. You agree to vacate the premises on a certain date without trashing the place, and the bank or investor agrees to pay you for moving out early. You usually get a percentage now and the rest when you move out. (For more on cash-for-keys deals, check out Chapters 10, 12, and 14.)

Getting Your Life Back After Foreclosure

Whatever plan you have in place for dealing with foreclosure, or even if you have no plan, one thing's for certain: The foreclosure is eventually going to be over, and you'll need to get on with your life.

Having a plan in place to deal with the fallout from foreclosure can give you more control over the outcome and more opportunities moving forward. In the following sections, we show you what you can expect post-foreclosure and the steps you can take to improve your situation.

Starting from scratch

Chances are pretty good that, when you first set out to seek your fortune, you had very few possessions, no home of your own, and little to no money in savings. You had your youth and enthusiasm, and that was enough to get you through each day.

After foreclosure, you may find yourself in the same position, possibly complicated by the fact that you now have a family to support. However, you also have some additional skills and experience to offset the added burden, so you're pretty much starting from scratch.

Fortunately, you live in the United States, where starting from scratch is tradition. You may have to move to where the jobs are, take on some overtime or another job, and dramatically scale back your lifestyle, but relatively few people in the United States are destitute. As long as the foreclosure didn't crush your will to live, you can survive and thrive.

Getting a clean bill of (credit) health

Most people give little thought to their credit until they lose it, and when you suffer through a foreclosure, you usually end up grieving the loss of your high credit score. You may lose your ability to charge purchases on your credit card, borrow money from the bank, or even set up a cellphone account.

The good news is that all these inconveniences are only temporary. As soon as the foreclosure is a thing of the past, you can begin rebuilding your credit. You may have to start out slowly, by obtaining a secured credit card through your bank (see Chapter 15), but by paying your bills on time, you can raise your credit score and become a much more attractive borrower.

Bad or no credit history?

Couples who are first starting out often have trouble getting a mortgage loan, not because they have a *bruised* credit history but because they have *no* credit history. This pretty much puts them in the same boat you can expect to find yourself in after foreclosure; they can't qualify for a loan.

Some time ago, we were showing homes to a young couple who had no credit history. (We didn't know it at the time.) As any good real estate agent would do, we sent the couple to a mortgage loan officer to have them obtain preapproval for a loan. Later, when we called the couple to find out how the meeting went, they told us that they were unable to qualify for a loan at this time and that they needed to work on their credit first.

We asked whether they had any blemishes on their credit history. They said, "No," that the problem wasn't that they had bad credit but that they had no credit. They never used credit cards. They bought used cars for cash. They didn't really have a lot of utilities or other monthly bills in their names. They didn't even have a bank account, because they paid for everything with cash.

The couple had to do some work to build their credit history, and you'll have similar work to do to reestablish your credit.