CHAPTER 1

Don't Ignore the Warning Signs: How to Get past Denial, Deal with the Stress and Embarrassment, and Take Action to Save Your Home and Family

In most households, one person handles the finances, which includes paying bills and balancing the checkbook. If you handle the budget, for example, you know if your household's take-home pay simply isn't keeping up with the bills. A quick review of monthly statements will indicate an increase in credit card purchases for ordinary expenses. Are you charging groceries, doctor visits, or utility bills? Have you made a property tax or car insurance payment by credit card? That anxious feeling you have, that knot in your stomach, that dull pain just slightly above and behind your left ear, are warning signs. That's when you need to examine your spending habits and work toward getting a handle on your finances by preparing or revising your budget. Then, live within the budget.

Unfortunately, early warning signs of financial trouble are easy to overlook if you want to. Denial is a typical human response. However, here's a message you need to hear (and it's the most important idea in this chapter): How your creditors respond to your financial problems depends largely on how quickly you acknowledge your problem, and then accept responsibility by taking appropriate action.

Once your lender or lenders suspect or recognize the problem, you'll begin corresponding with them until the problem is resolved. If you try to deny or hide, the communication will be one way—from them to you. You'll begin to receive late or missed payment notices, followed by collection calls . . . and then certified or hand-delivered notices, termination of service orders, preliminary foreclosure warnings, formal mortgage foreclosure, foreclosure sale, and, ultimately, if the foreclosure problem isn't resolved, an eviction order.

The tone of the communication from your lender will often be ugly. They may make it extremely difficult to get in touch with them. They may return payments you send in. Most mortgage companies don't even pretend to be interested in your problems. They don't care that you're out of work, they don't care that your job interview next Tuesday has been canceled, and they don't care that there is a serious illness in your family. All they care about is getting their money. They employ professional collectors trained in the art of wheedling blood from stones, and making you feel rotten in the process.

But if you want to save your home or avoid foreclosure, the communication must be two way. You will need to contact your lender—even when they make it hard to reach them—fill out lots of paperwork documenting your financial situation, and work with them to find the best resolution to your problems. If you start working with your lenders soon after you get behind in payments, you have a much better chance at saving your home or at least avoiding foreclosure and saving your credit. If you wait to see a resolution with your lender until you're far behind in payments, you will probably lose your home.

Two detailed case studies of homeowners in trouble follow. One lost his home, the other saved it. As you read the stories, ask yourself what lessons are applicable to your situation.

CASE STUDY: HOW DENIAL COST DAN AND BETH THEIR HOME

One of my early cases involved a man who, not unlike Phil from the case in the Introduction, kept his wife in the dark about their severe financial trouble. When Dan graduated from college with a degree in education, he was hired as an English teacher and an assistant baseball coach. He had never known unemployment and had always paid his bills on time. As his earnings increased, so did his responsibilities—and his bills. Dan met his future bride, Beth, who worked in the athletic office as an administrative assistant.

They lived comfortably with their two school-aged children in their recently renovated home. Ten years earlier, before they became parents, they had purchased the perfect starter home. Eventually they hired a contractor to increase the footprint of their home by enlarging the kitchen and adding two second-story bedrooms and a bathroom onto their charming Cape Cod style home at a cost of $35,000, which was financed with a home equity loan. The renovations resulted in an extra 800 square feet of taxable, air-conditioned living space. They needed to furnish the two new bedrooms, so they financed the purchase of two bedroom sets and two new computers.

In addition to the new monthly loan payment, the insurance premium went up, and the home was reassessed for tax purposes. I don't know where you live, but whenever I hear "reassessment," I see higher taxes, and that's what happened to Dan and Beth.

Dan's job as a public school teacher is interrupted each June by a three-month summer vacation, forcing Dan and others like him to seek temporary, seasonal employment. When school let out in June for the summer, Dan took a temporary job with a financial services company as a commissioned salesman, while Beth continued working for the school. As expected, Dan earned no commissions in June or July, but by mid-August, he had closed a couple of sales.

"You're doing well, Dan," his manager told him after he had closed another sale, "So well, in fact, I see a future for you here. I'd like you to go through our company's management-in-training program and, eventually, manage this office. It might be lean for a while during your training, but then the company gives you a manager's base pay, plus commissions and an override. Inside a year you should be clearing a hundred thousand. How does that sound to you?"

Dan was excited about the prospect of a six-figure income. He told his boss he would have to think it over and discuss it with his wife. He knew Beth would object, but he reasoned his family would have to get by on her salary for about two months. At first, Beth was surprised, and then worried.

"I thought you loved teaching," Beth gasped, and then became lost in thought. "I hope you know what you are doing, Dan. Do you have to quit your job? Can't you just do this part-time? Tell them you can't just quit your job and take a six-week training course. Tell them you can, but not until next summer."

But Dan was adamant things would work out and assured Beth he was right. He took the new job based more on hopes and dreams than on fact.

By the next afternoon, Dan had resigned his tenured position as a teacher. His new career as a financial consultant began when he bought himself a new business wardrobe and leased a new car. Since he was no longer employed as a teacher, he lost benefits not provided by his new employer. Dan's pretax training salary barely covered Beth's enrollment in a health plan offered to school employees and their family.

When Dan completed the six-week management training program, he reported for work expecting to be an assistant manager with a base salary that would have been fixed at about half of his previous salary as a teacher. Unfortunately, he wasn't named assistant manager, and the promised salary was on hold during a probation period . . . so Dan had to rely on commissions, and he found these slow to materialize.

But after several months on the new job, his income and routine interrupted, he found himself having to decide which of the bills to pay and which bills to set aside instead of paying them as they came in. He found himself making minimum, allowable monthly payments, or no payment at all.

To compensate for the reduction in income while expenses were rising, he first began making withdrawals from the college fund, promising to replenish the account when his earnings increased. "This is an emergency," he reasoned. Before long, he had depleted their savings to support a relatively modest lifestyle. Beth had no idea what was going on.

Beth's workday ended at 5:00 p.m., but Dan was able to care for his children when they came from school. Each day, before Beth came home from work, Dan read the daily mail that often included late notices, and once there was a service shut-off notice. The telephone answering machine messages often included collection calls urging Dan to take some action.

Dan had recognized, but then dismissed, the early warning signs we may all have received from our creditors at one time or another when something was wrong with an account. First came letters advising of late or missed payments, then the telephone calls. More often than not, however, the creditor is telling us what we already know.

One afternoon, Dan answered a call from the mortgage company.

"Hello, this is Ms. Roberts, and I'm looking over your account. Our records show we haven't received your scheduled payment for last month, this month's payment is way overdue, and on Friday your payment for next month will be due," the voice said.

"No kidding? Really? Thanks," he thought to himself. But the call took him by surprise. He knew he hadn't made the payments, but had hoped he would be able to from his last commission check that, as it turned out, was far less than he had hoped it would be, and certainly not enough to bring his loan current.

"Oh, yeah. I'll have a check out to you today," he said, thinking he would hold off paying the auto insurance premium and the huge electric bill for another week or two. He knew Beth would be getting paid on Friday, too.

Undaunted, Ms. Roberts helpfully suggested, "You can make your payment by telephone, right now. Would you like to pay by check over the phone? It will only take a few minutes."

Knowing full well he didn't have the funds to make this payment as promised, he declined her offer, saying instead, "I'll make sure it goes out today."

"I'll note on the account that you'll be sending out a check today. Can you tell me the check number you'll be sending? Will you be overnighting the payment? Do you need the address for overnight delivery?" she asked methodically, as if she had repeated these same questions hundreds of times in her job as a customer service (bill collector) representative.

"I'm not sure which checking account I'll use," he stated truthfully.

"If I don't get that payment by Friday, Dan, you'll have left me no choice but to send your account to our legal department. After Friday, your loan will be in default. You can avoid default and foreclosure by making your payment by Friday."

But Dan did not make the payment that day as promised, and struggled to send his payment three weeks later. The late payment was declined by the lender, and Dan's check was returned, uncashed, with the first of several letters saying it could not accept a partial payment, and urged Dan and Beth to contact their lender to make payment arrangements to avoid foreclosure. The amount due was for the three missed payments, plus late fees, and some additional fees. Dan knew he didn't have the money to make the lump-sum payment. He called the lender, who advised him that his account was overdue, and he must send in the total amount due. Dan explained he could not, so the lender agreed to send him a workout application that he and Beth would have to complete and return.

Dan couldn't bring himself to admit his job wasn't going as well as he had hoped, and chose not to confide in his wife, nor to tell her that they were having serious financial problems.

Beth knew nothing about the workout application, the preliminary collection notices, or that formal foreclosure proceedings had begun. She was unaware a Sheriff's Sale would soon take place. She was unaware her life was about to change, forever.

While shopping at a local department store, Beth's credit card was declined. Convinced it was an error, and at Beth's insistence, the clerk called the credit card servicer, who spoke to Beth while she was still in line at the register. Beth was dumbfounded. Then, to her continued embarrassment, the clerk returned her credit card, but not before he used scissors to slice the card into two unusable halves.

She confronted Dan that afternoon, and he confirmed problems with the credit card accounts. But she wouldn't learn the worst news of all until they were both seated in my office.

I vividly recall meeting with them. They were both seated, uncomfortably, in my office, under the harsh, perhaps inappropriate incandescent work lights, and declined to accept my offer of freshly brewed coffee. "No, thanks. The kids are home alone, and we've got to get back."

"Okay then, what did you bring for me?" I asked Dan, eyeing the bulky folder he held firmly in his grip.

"Well," he began, placing the folder on the conference table, and looking nervously at Beth for her reactions, "We seem to have a little problem with our mortgage company. It stopped accepting our payments, and Beth thinks we need someone to explain what we can do."

"Okay, how about if you take a few moments to complete this application while I look over these documents?" I said as I handed them each an application form that asked for basic financial and employment information. Later, as I looked over their applications, I noted that Beth's response to the question, "What is the cause for your financial hardship?" was simply, *I don't know.*

She seemed startled and then perplexed by all the official-looking letters, bearing her name, that she had never seen. She wheeled around in her seat, and then glared at Dan, visibly growing upset.

"What does all this mean?" she asked me.

"Don't worry. We'll get this fixed," Dan assured the increasingly agitated Beth.

I didn't have to read all the letters to know what had happened. I methodically, but delicately, explained to them the procession of letters, notices, summons, and court orders resulting in the last letter, which was an eviction notice.

Mustering up all the compassion I could, wanting to diffuse a potentially violent reaction, I said, "It appears to me your home has been sold at Sheriff's Sale, and the new owners want you to move."

"But we still have time to keep it, right? I mean, if they accepted our payments we wouldn't be in this mess."

Dan stated, "Honey, they wouldn't take the payments. What could I do?"

Beth looked dazed by the news, and then began to sob uncontrollably. I felt absolutely helpless.

CASE STUDY: HOW BOB FOUGHT FOR HIS HOME AND WON

After a year of heavy borrowing on plastic for necessary home improvements, Bob consolidated a handful of those high-balance credit cards by refinancing his mortgage loan. Because he had a few late pays, his credit hadn't been perfect, so the interest rate and monthly payments on the new, supreme mortgage loan were a bit higher than he had hoped. Still, at least temporarily, Bob was saving about $150 every month.

Three months later, Bob's regular hours at work were cut back, but he considered himself lucky because most of his department was laid off. His regular paycheck after that was less, and because the bills stayed the same, it was impossible to pay everything on time. He had to choose which bills to pay and which ones to delay or not pay at all. He was hoping that work would pick up and he would be able to get back to working more hours, but at quitting time one day, Bob was called into the personnel office and told that he needed to pack his things and leave for good. A painful, major setback!

Five months after being let go, Bob still wasn't able to find a new job commensurate with his experience or previous salary. The unemployment benefits barely covered food and utilities. He learned about COBRA. His wife took a part-time job outside the home so that the kids could keep up with their after-school activities. He was discouraged, but kept on looking for work every day.

Bob hadn’t been able to pay the mortgage for the past three months and ABC Mortgage Company was pressuring him for payment, so he decided to take the last available cash advances from three credit cards just to catch up. On the day that he sent in his payment, the mortgage company sent a “demand letter.” He sent the mortgage company a triple payment and thought things would be okay. A couple of days later, he received a certified letter from the lender, advising that they would foreclose unless payment was received. Bob called the mortgage company to tell them that he had sent in payment, but he couldn’t get through to the customer service department. The line was busy or he was directed to an overflowing voicemail box.

The next week, Bob opened a letter from the lender and found the check he had sent, returned because (1) it wasn’t in certified funds, (2) it didn’t include late fees and returned check charges, and (3) his loan was now in default. In the letter, the lender demanded an extra $1,750 just to bring the loan current. Bob was so mad at the lender’s behavior that he tore up the check and paid the cable bill, the Internet account, the car insurance, the orthodontic bill, and went on a long-overdue grocery shopping trip; then he had to choose between the COBRA payment and replacing badly worn tires on the family car.

He grew afraid to answer the telephone because he knew it would be a collection call.

By this time, Bob was well aware that, even if he could manage to send in a payment of anything less than the full amount due, it would be returned, attached to a note advising that his loan had been sent to their foreclosure department. He needed to bring the account current or make acceptable payment arrangements to avoid foreclosure. Like most people, he wasn’t even sure exactly what that meant. The next day, he opened two letters from his lender: one certified, receipt requested, and one by regular mail. They both said the same thing: They were formal “Notices of Intent to Foreclose.”

Usually, but not in every state, the lender's first step in the foreclosure process is to send to you an official *Notice of Intent to Foreclose.* This starts the foreclosure clock ticking. Up until this point, Bob's inability to send the mortgage payments was a financial problem. Now, it became a legal and financial problem. If Bob didn't bring the loan current within 30 days, the loan would be foreclosed. Bob's letter said that to reinstate his loan, he would need to pay $6,000, which would cover back payments, penalties, and other fees. It also invited him to call about nonforeclosure options.

Around day 50 following the Notice of Intent, Bob began to receive letters from bankruptcy lawyers, real estate brokers, mortgage brokers, private investors, and foreclosure rescue companies, all offering to help save his home from foreclosure.

"So the worst that could happen is we have to sell the house, right?" Bob's wife says. "Neither one of us wants that, but maybe a change would be good for us. Let's do all we can do to keep it, but we'll keep an open mind. I'm off on Sunday. Let's leave the kids with my mom and drive out to Cumberland County; it's between Philadelphia and Atlantic City, and I'm sure we can find something nice and still be close to a job. I hear the casinos are hiring, and I can always get a job working for a doctor in Philadelphia." Her support and suggestions of alternative plans relaxed Bob; all is not lost, even if the worst happens.

He chose one from about three dozen letters from mortgage brokers who advertised that they offered foreclosure bailout loans, but eventually learned that he had to have about 30 percent equity before he would be considered for a loan. Even if he had the equity, the loan's interest rate, terms, and fees would make it unaffordable.

One night after the 60th day around 9 p.m., there was a loud and startling knock on the door. Standing on the doorstep was an impatient, burly guy with a clipboard. His car was running in the driveway. He announced himself to be a sheriff's deputy dutifully serving a summons. He asked for Bob and his wife by first name. Bob's hands trembled as he opened the screen door, and the deputy pushed himself into the doorway.

"Got any ID?" he barked.

He confirmed Bob's identity, handed him the clipboard, and instructed him to sign. Bob's wide-eyed kids peered from behind a chair. The sheriff's deputy, satisfied with Bob's signature, handed over some papers and stepped back outside. The "service" lasted all of 90 seconds.

Bob didn't know exactly what the papers meant. Most of it was redundant and in legalese, but he knew it wasn't good. After a fitful night's sleep, Bob sifted through the growing pile of unopened letters from lawyers, real estate brokers, mortgage brokers, foreclosure consultants, and speculative investors, and started making phone calls. A bankruptcy attorney offering a free consultation told him that to save the house, bankruptcy may be the only solution. No surprise. A real estate broker advised Bob to sell his home. No surprise. If he had called a car dealer, he would advise Bob to buy a car. No surprise.

Everyone had a service to sell, and Bob had a headache; how was he supposed to go about choosing what's right for him? He really didn't want to file a petition for bankruptcy; even if he did, there would be no guarantee that he would be able to keep his home. The bankruptcy laws have changed, making bankruptcy more expensive. An attorney may charge $2,000 or more just to prepare and file a Chapter 13 plan. If accepted, a Chapter 13 plan requires that you resume making your regularly scheduled payments and make an extra payment each month for a portion of the payments that you've missed. Many people facing foreclosure find this to be an unaffordable option, especially if the underlying problem (not enough income) hasn't been fully resolved.

To add insult to injury, Bob's long-awaited job interview went well until he was told about the salary. The job offered much less than what he had been making before he lost his job, and after estimating the take-home pay for each month, Bob realized that it would only be a little more than his unemployment pay (which was about to run out). But without a job, he couldn't qualify for a new mortgage loan or for bankruptcy; so he took the job and agreed to start work one week later, telling himself that it's a start on the road to recovery.

That night, though, Bob's lawyer told him that even with the new job, he still didn't qualify for a Chapter 13 bankruptcy plan, and advised that he liquidate and let the house go. Bob was starting to feel like he was lacking any other options if he didn't want to lose it at the Sheriff's Sale.

He called a company whose claims sounded pretty good. They said that they could help, even if his home was in foreclosure and even if he owed more than his home was worth. A soothing voice assured him, "Don't worry, Bob, we can stop the foreclosure and make the home payments more affordable for you." He set up an appointment. The soothing voice said, "Don't forget to bring the deed, Bob, and your checkbook."

If Bob had kept the appointment, he would have been asked to sign over his house to the company, who would collect rent and then lease the house back to him. The company, while collecting Bob's rent, would (in theory) try to acquire Bob's mortgage loan (at a steep discount) from the foreclosing mortgagee. These schemes often end badly, with the former owner evicted as a nonpaying tenant.

Bob got another job interview. Though he had already accepted a job and he wasn't too optimistic about finding another one, he figured he didn't have anything to lose. He returned home afterward, ecstatic. "They offered me a better job! Good money. I start next week!" he excitedly told his wife. "Let's call ABC Mortgage Company and see how we can save the house."

He finally got through to someone in the loss mitigation department, who said that, since the loan had already been sent to foreclosure, it was too late to do anything. But Bob persisted. He told them that, although his financial hardship was ongoing, it was a temporary situation. He found a great job and wanted to know what he could do to get the loan out of foreclosure and reinstated so that he could begin making payments again.

"Well, let me see what I can do for you," said the loss mitigation specialist. "How much of a payment can you send in now? To bring the loan current you'll need about $8,000, plus attorney's costs of about $2,000. Can you send in $10,000?" she asked.

Bob knew that, at the moment, he could barely scratch up the next payment, let alone an extra amount. He said, “No, I’m just going back to work. I don’t have that kind of money. If I did, I wouldn’t be in this mess.”

“Can you send in $5,000? I’m going to need something to show as your good faith payment toward a reinstatement. I could probably make this work if you could send in $5,000.”

“No, I can’t pay $5,000, but maybe I can withdraw $2,500 from my 401(k) retirement plan. I can do that. I can do $2,500,” Bob said.

“Okay, I’ll send you a workout package,” she said. “There are some financial forms for you to complete. Provide your income tax returns from the past two years, your pay stubs, your spouse’s pay stubs, your bank account statements, and a letter describing why you couldn’t pay the mortgage and what has changed so that you can begin paying again. And include your check for $2,500.”

“It’ll take some time to borrow against the 401(k). What if I sent in the paperwork right away, and then sent the check to you in two weeks?” Bob asked.

“Well, you haven’t been scheduled for a Sheriff’s Sale yet. If you have to wait two weeks, I suppose it’ll be all right, but the foreclosure costs will keep increasing until you send in the check,” she advised. “I’ll overnight you the workout application. No guarantees, but I think my boss will approve it.”

Bob promised to complete the paperwork right away, and was able to apply for a hardship withdrawal from his 401(k) (subject to income tax and penalty) to pay the $2,500 good faith deposit. He would have the check in about 10 days. He completed and returned the financial forms and kept a careful eye on the calendar.

His workout application was approved, subject to the $2,500 payment, which had to be received, generously, within 20 days. After paying the $2,500 (approximate costs for attorney’s fees), there was a delinquency balance that could be repaid over a period of 18 months. Bob then had to make the regularly scheduled payments, plus an extra half payment each month for the next 18 months. The payments had to be in certified funds, and on time. If any payment was late or not certified, the foreclosure would have picked up right where it left off. Once he made the 18th consecutive payment, the foreclosure would be canceled. As long as he kept his job, he would be home free. His wife kept her part-time job to help offset the higher payments, and it was tough, but he considered himself lucky.

Bob *was* lucky. He didn't lose the house to foreclosure or to an investor. Many people aren't able to find work, or don't have investment plans to draw on. Many people do lose their homes to Sheriff's Sale or are forced to sell as their only viable alternative to mortgage foreclosure. But Bob and his wife faced this problem together, and both worked hard through the difficulty. They didn't give up. People facing foreclosure can save their homes if they know the right steps to take, the order in which to take them, and what to avoid. Read on!