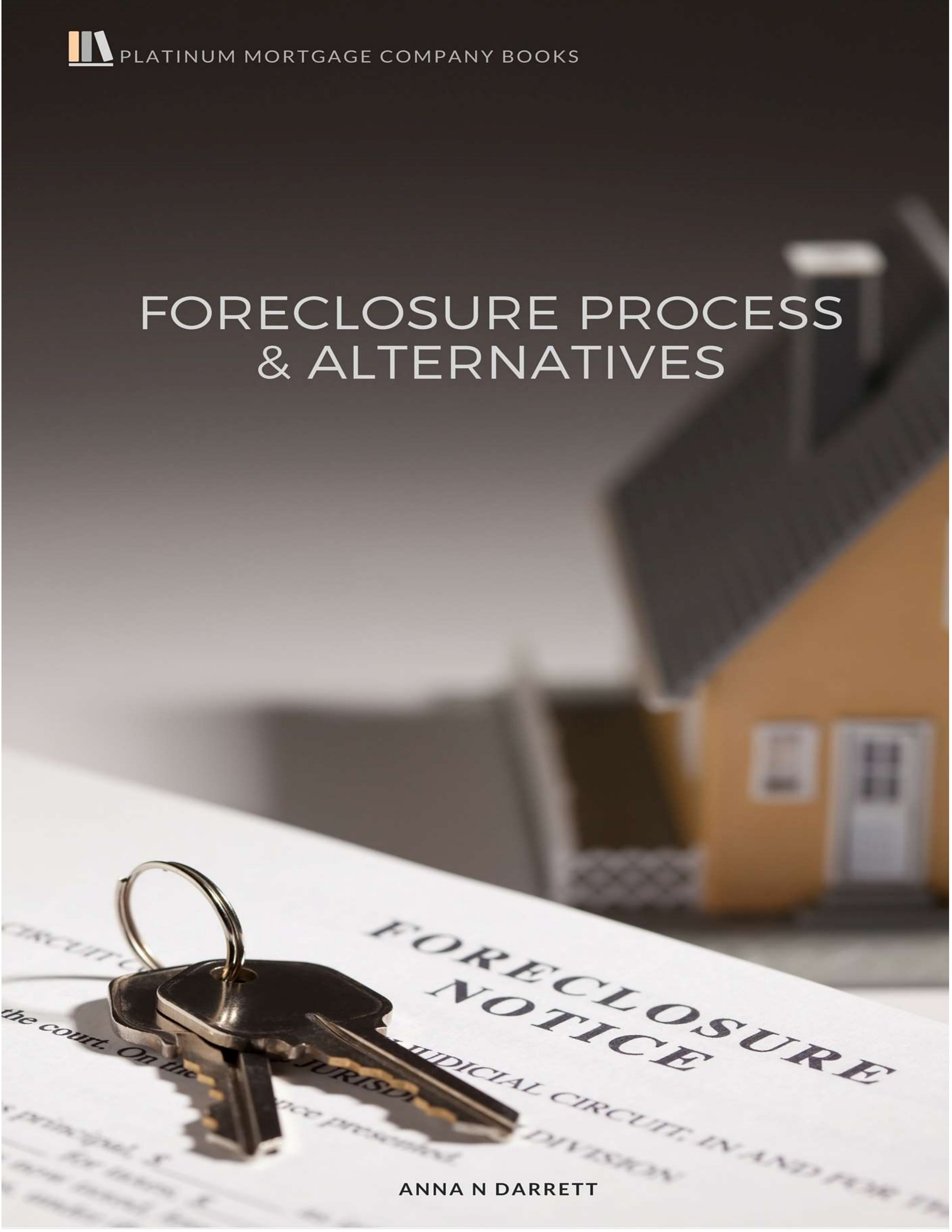
PLATINUM MORTGAGE COMPANY BOOKS

FORECLOSURE PROCESS & ALTERNATIVES



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This publication is designed to provide general information regarding the subject matter covered. However, laws and practices often vary from state to state and are subject to change. Because each actual situation is different, specific advice should be tailored to particular circumstances. For this reason, the reader is advised to consult with his or her own advisor regarding their specific situation.

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Platinum Mortgage Company Home Buyer's Guide™

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Published by Platinum Mortgage Company

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Cover design by Platinum Mortgage Company

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Foreclosure Process & Alternatives

What is foreclosure?

Foreclosure is a legal process by which a bank, mortgage lender, homeowner's association, county assessor or other creditor takes a homeowner's property in order to satisfy a debt. The foreclosure is the result of non-payment of the mortgage (including second mortgages and home equity loans); however, people also lose their homes due to unpaid property. As a result of the foreclosure (at the end of the redemption period), the homeowner loses the rights that he or she had to the property. Economic hardships and financial distress can occur due to a loss of income or employment and unforeseen uncontrollable circumstances.

Stages of Foreclosure

Foreclosure Timeline

Day 1-15

Mortgage payments are typically (not always) due on the first of each month. If the payment is not made by the due date it is considered delinquent. Some lenders allow you to change the date the payment is due. You may have set up bi-weekly payments, which is actually equates to one extra payment a year that is paid straight towards the principal balance to save on back end interest.

Day 16-30

A late fee is usually assessed to the mortgage account after day 15. The first notice is usually mailed on the 16th of the month. You may begin getting phone calls at this time.

Day 31-45

A loan enters default when it is 30 days late, and a second notice is sent at that time. This default date will have a negative impact on your credit score.

Day 45-60

Servicer sends a "demand" or a "breach" letter to the borrower pointing out that terms of the mortgage have been violated.

Day 61-90

When a loan is 60 days past due, the lender may initiate acceleration procedures by sending a letter notifying the borrower that foreclosure is the next step. At this time the lender will only accept your total past due which includes: all past and current payments with late fees and interest.

Acceleration procedures include lenders refusing to accept any partial payments and requiring that the past due balance on the mortgage be paid in full, and can even mean that the lender will void any payment agreement and call the loan due in full.

Day 91-105

Servicer refers loan to foreclosure department. Hires local attorney or other firm to initiate foreclosure proceedings.

Depending on the state where the home is located, the servicer's representative may record a formal notice of foreclosure at the local courthouse, publish details of the debt in the local newspaper, attend hearings on the case and make appropriate court filings.

Once acceleration begins, if you abandon the property or the property is red tagged, your home may be repossessed. This may include your locks being changed and your utilities are disconnected.

Foreclosure proceedings can start any time after the acceleration notice is sent, but usually happens when the loan is 90 or more days past due. This is when attorney fees become a significant part of the fees due. On average attorney fees will add about $2,000 to your total amount due.

Day 150-415

House sold at foreclosure sale or auction. Wide time range due to different state requirements. Foreclosure can happen either by judicial action or by newspaper advertisement (sheriff sale). The most common foreclosure action is by advertisement. In this procedure, the lender's attorney advertises the property for sale in a general-circulation newspaper for four consecutive weeks.

The sheriff sale date is listed in the advertisement, and following the four weeks the county sheriff sells the property to the highest bidder (which is usually the lender).

The sale must be a public sale that happens between 9:00 a.m. and 4:00 p.m. and will be held at a courthouse. The sheriff or deputy usually conducts the auction and the winner will be the highest bidder.

The sale may be adjourned, and the notice of adjournment must be posted where the sale would have taken place. Adjournments will be published in the same newspaper where the original notice was advertised.

The officer conducting the sale will execute and deliver a “sheriff’s deed” for the premises to the highest bidder. The deed will specify the last date that the mortgagor can redeem the property. This deed must be recorded within 20 days of the sale, and the person recording the deed will endorse the date and time it was received on the document. If the property is redeemed the sheriff’s deed will be destroyed.

Borrowers in states with judicial foreclosures, or those in which lenders have to retake property titles via the court system, can get almost a year to straighten out their affairs before the sale. Those in non-judicial states have as little as two months.

Day 150-415+

After the property is sold at a sheriff sale the mortgagor has a redemption period during which time the property can be reacquired.

The redemption period is usually six months, except in situations where there are more than four units; less than 2/3 of the original debt owed, multiple acres and/or abandonment occur.

In order to redeem the property at this point you must pay off the mortgage, all interest and late fees, court costs, attorney fees, title and appraisal fees. If the sheriff deed holder paid taxes or insurance after the sheriff sale, the mortgagor must pay those fees as well. Redeeming the property by getting another mortgage is very difficult because of the bad credit rating that resulted from the foreclosure. Redeeming the property by selling it on the market is often a good option. If the property is redeemed, the original rights and obligations of ownership are reinstated.

Foreclosure Timeline

How does foreclosure work?

A loan servicer, the company that accepts payments, disburses loan proceeds, maintains contact with the borrower and has very little flexibility in working through the foreclosure process. The timeframes mentioned below are meant to be a general rule of thumb, and do not apply in all situations.

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A loan enters default when it is 30 days late, and a second notice is sent at that time. This default date will have a negative impact on your credit score up to 100 points.

When a loan is 60 days past due, the lender may initiate acceleration procedures by sending a letter notifying the borrower that foreclosure is the next step. At this time the lender will only accept your total past due which includes: all past and current payments with late fees and interest.

Acceleration procedures include lenders refusing to accept any partial payments and requiring that the past due balance on the mortgage be paid in full, and can even mean that the lender will void any payment agreement and call the loan due in full.

Once acceleration begins, if you abandon the property or the property is red tagged, your home may be repossessed. This may include your locks beginning changed and your utilities are disconnected.

Foreclosure proceedings can start any time after the acceleration notice is sent, but usually happens when the loan is 90 or more days past due. This is when attorney fees become a significant part of the fees due. On average attorney fees will add about $2,000 to your total amount due. Once you have become 150+ days past due you may have lost up to 150+ on your credit score.

Foreclosure can happen either by judicial action or by newspaper advertisement (Sheriff Sale). The most common foreclosure action is by advertisement. In this procedure, the lender's attorney advertises the property for sale in a general-circulation newspaper for four consecutive weeks.

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If you have a pre-foreclosure, short sale or pre-foreclosure reporting on your credit report you may not be able to buy another home for two years for VA, three years for FHA and USDA and up to seven years for Conventional financing.

Alternatives to Foreclosure

Advancement of Claim: In conventional mortgages insured with private mortgage insurance, the PMI Company can advance the money needed to bring the payment current. The home owner will be required to repay the debt, sometimes with no interest charges. An advancement of claim payment may be postponed until the first mortgage is paid off.

Assumption: An owner who purchased a home under a VA or FHA loan may be able to sell the home with an assumption. The new buyer would take over the seller's loan and pay the difference between the selling price and the mortgage amount to the seller. This may be a large amount of money needed as a "down payment". Today most if not all loans require the buyer to be mortgage ready prior to assuming a loan ~ the only way it's not required is if the original mortgage was dated before 1988. This is an especially attractive loan product when the interest rate on the previous loan is significantly lower than today's rates and can transfer to the new buyer.

Bankruptcy: This is a legal procedure that will stop or postpone a mortgage foreclosure for a period of time. Repayment will be determined following the bankruptcy hearing and the amount and length of time for payment will depend on the type of bankruptcy that is filed (Chapter 7 or

13). A person must hire an attorney in order to file bankruptcy, and the very low cost attorneys begin bankruptcy costs around $1,000.

Deed in Lieu of Foreclosure: In this option the deed is transferred to the lender in exchange for canceling the mortgage debt. This option is good for the seller if there is little or no equity in the home, but is not a good choice when there is a lot of equity. This option is attractive for lenders holding Michigan properties because it takes so long for the foreclosure process to be completed and because property values are on the rise. Even if there is a second mortgage interest in the property, the first mortgage holder may pay off the second interest in order to acquire the property and resell it. With some loan products the lender may be willing to pay the family a nominal amount to sign a deed in lieu.

Forbearance: In forbearance, the lender schedules increased monthly payments for the homeowner so s/he can catch up the past due amount following a period where there is a payment moratorium. Lenders often request 1½ times the original payment amount, require a large up-front payment (which includes attorney fees), and most often want the loan caught up in 12 months (in some cases 18 months are allowed). The counselor must be very sure the owner can afford to make the additional payment amount every month, which may require a second job or another way to increase in household income. With type two forbearance, the lender can allow a moratorium from payments, schedule a time frame of payments and then structure an advancement of claim or partial claim to catch up the past due amount.

Modification: This option requires changing the terms of the loan by reducing the interest rate or extending the loan term. A modification may work better than a forbearance or repayment plan for many customers experiencing a financial setback, since the resulting payment may be lower. There is usually a cost involved with initiating a modification, which can often be rolled into the loan. Modifications may be used with conventional and government insured loans Past due arrears may be added to the balance to cure the default, but late fees and foreclosure fees must be paid another way (usually an out of pocket expense to the borrower). The home owner must be able to afford the new payment amount (debt to income ratio in line with the loan product) and with some loans the modification may need investor approval. Borrowers will also pay processing and title search fees.

Pre-Sale: A foreclosure pre-sale allows the home owner to sell the home for an amount less than the balance due on a conventional loan. The private mortgage insurance will often subsidize the sale, especially when the house is in a negative equity situation. The seller must sell the home for a price high enough to pay most of the mortgage amount and fees, and the insurer will pick up the remaining balance, sometimes releasing the seller from liability. Borrowers must have experienced a permanent involuntary loss of income and no other alternatives exist to cure the default. Lenders/Servicers agree to this option when the pre-sale will bring in a higher return than the foreclosure will.

Partial Claim: Used in the same manner as an advancement of claim in conventional mortgages, the servicer can bring the loan current by writing a check to themselves, with the past due balance tacked on the end of the loan as a “sleeping lien” for FHA mortgages. The homeowner will repay this lien once the first mortgage is paid, and if the property is sold prior to the mortgage being repaid, this lien will be paid before funds are disbursed to homeowner. Partial claims are usually considered only after foreclosure has been initiated (that is, after the notice of sale has been sent to the borrower). The borrower must demonstrate that the problem that caused the default has been resolved, and will sign a promissory note to repay the advance. HUD pays lenders a fee to use this program, and HUD money is used to reinstate the loan.

Refinance: Refinancing usually requires substantial equity in the home, a good payment history, and a difference of at least 2% lower interest rate to make the refinancing fees cost effective. A type of refinancing tool known as a “stream line refinance” is not as costly as regular refinancing, as is available to government insured (FHA) loan borrowers. This is where an FHA loan is refinanced with another FHA loan that has different terms and that result in a lower monthly payment. Interest rates can go up with a streamline refinanced only if no closing costs are charged; otherwise rates can decrease to current market rates. Terms may be extended to 30 years or 12 years past the current term, whichever is less. Borrowers must be two months or less delinquent, and are allowed to bring in payments to make the loan no more than two months behind.

Refunding: In a VA loan, the VA has the authority to buy a loan from the lender and take over the servicing. This happens rarely and only when it can be determined that the home owner is only temporarily unable to make the payments, will make them again in the future, and the lender can no longer extend repayment flexibility (i.e., forbearance and modification cannot be used again).

Repayment Plan: This is when a borrower experiences a temporary financial problem and a workout plan is developed to reinstate the mortgage by adding additional partial payments to the current payment. The borrower must be able to afford the higher payment for the period determined by the lender, and counselors should push for repayment periods to be extended when the payment is unaffordable. Many servicers will resist agreeing to extension but are often able to do so without permission from the lender or investor.

Rural Development (RD) Loss Mitigation Options: Rural Development loans have many foreclosure prevention options for their borrowers built into their programs. Following is a brief description of the options that may be available to a customer with an RD loan:

- **Delinquency Workout Agreements**: Repayment of delinquent mortgage amounts over an extended period of time.

- **Interest Credit Payment Assistance Subsidy**: Interest subsidies may be increased in order to make payments more affordable during difficult financial times.

- **Payment Moratorium**: Monthly payment reductions that can last up to two years, after which time RD will recalculate loan to include remaining past due amount. If payments remain unaffordable, some interest can be cancelled.

- **Protective Advance**: RD will sometimes advance money to pay for taxes or insurance and then recalculate the loan balance and/or extend the payment period.

Short Sale: This is FHA's comparable option to conventional loans "pre-sale" situation. In a short sale or pre-foreclosure sale, FHA will agree to share some or all of the loss if the seller has a buyer that offers close to the amount due. This way the lender remains relatively harmless, and the homeowners credit report will reflect the loan being paid in full. Home owners may request forbearance on a delinquent loan in order to sell the home on the real estate market. If the sale will cover all mortgage debt in full and will happen before the foreclosure date, no approval is needed. But if the foreclosure sale date is delayed or if the sale will result in less than the total due on the first or subsequent mortgages, approval from either the investor or the second mortgage holder is usually required. The home owner may also receive help with closing costs.

Straight Sale: One way to avoid foreclosure is to put the home up for sale. Important in considering this option is how far behind the payments are and how much equity there is in the home. Many people are reluctant to go this route because they are afraid that the foreclosure will go through before the property is transferred to the new buyer. The home owner must be willing to sell the home at a price that will facilitate a quick sale. If a real estate professional is involved, s/he must be willing to accept less than the typical 7% total commission (buyer and seller agents combined). The counselor will have to negotiate for an extension or delay in the foreclosure process, and will usually be able to be awarded extra time in s/he can prove the home is listed with a real estate professional.

Temporary Injunction: This is a court order that will stop the foreclosure process. This is recommended only when the foreclosure has proceeded past any hope of modification, forbearance or other workout plan and when it can be proved that the home owner's financial situation has improved to the point of being able to make payments and catch up arrears. An attorney is required to initiate the court proceedings and request the injunction.

If you are currently behind on your mortgage, Platinum Mortgage Company may have a solution for you to keep you in your home or we can refer you to the proper non-profit loan modification division in your area. Call us at 800-385-3657 or email us at info@pmccanhelp.com.

Helpful resources:

Fannie Mae "Know Your Options": http://knowyouroptions.com/avoid-foreclosure

Freddie Mac "My Home": http://myhome.freddiemac.com/

FHA "Avoiding Foreclosure": http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure

USDA "Find Help: https://ric.nal.usda.gov/find-help-rural-housing-foreclosure-0

VA "Foreclosure Fact Sheet" pdf:
http://www.benefits.va.gov/homeloans/documents/docs/foreclosure_avoidance_fact_sheet.pdf

Great reads:

http://money.usnews.com/money/blogs/my-money/2010/09/29/when-foreclosure-is-a-good-option

http://www.nolo.com/legal-encyclopedia/how-foreclosure-works-30066.html

https://www.credit.com/debt/understanding-your-foreclosure-rights/


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