Start Loss Mitigation Discussions As Early As Possible. Starting early avoids the difficulty of negotiating at the last minute with a potential foreclosure sale date pending and also avoids potential foreclosure fees and costs, which can be substantial. It is better to begin negotiations before the lender has turned the matter over to a foreclosure lawyer. You also appear more responsible if you try to prevent the problem from getting out of hand.

In some cases you can even apply for relief before you default on your mortgage when a default is reasonably foreseeable—for example, after you lost your job or your adjustable rate mortgage is about to reset to unaffordable monthly payments. Some servicers are reluctant to consider loss mitigation if you are not in default, but they may have the authority to do that if your default is imminent.

When a foreclosure is pending, careful attention must be given to preventing the sale as part of your request for a modification. A foreclosure sale cuts off your ability to modify the mortgage loan and also ends your ownership in your home. You should also request a modification prior to filing for bankruptcy. Once bankruptcy is filed, some servicers may (incorrectly) act as though their options for assisting you are more limited, when in fact they are not.

The Importance of Getting Help. Find a nonprofit counselor or lawyer with experience with mortgage workouts to help you through the process. In many cases, counselors will have access to programs and lender personnel that you cannot reach directly yourself.

Find a nearby HUD-approved counseling agency by calling 800-569-4287 (TDD 800-877-8339) or by checking www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm [1]. Many cities and states also have programs to assist homeowners in default. Contact your local government housing office or a community group that addresses housing and homeownership to see if they can refer you to a counselor. If you received pre-purchase education about homeownership, contact the organization that provided your classes to find out if they also provide foreclosure prevention assistance or can refer you to an organization that does. It also can’t hurt to ask the servicer if it has a program for homeowner assistance in your community.

If someone unsolicited offers to help, make sure you are dealing with a legitimate nonprofit agency with experience in default and delinquency counseling. Too often, someone who advertises or approaches you about mortgage counseling is really just a con artist who will get you into more trouble.

Your Loss Mitigation Application. In applying for loss mitigation, do not contact the owner of your mortgage loan, but instead, contact your mortgage servicer. The servicer should have workout specialists who will tell you what documents you need to provide, take your application, and provide information on the application process.

Some servicers will ask you to speak only to their attorney once the legal process of foreclosure has begun. Although some attorneys will readily participate in workout discussions or give you permission to speak with the servicer directly, others will need to be pushed. Unresponsive attorneys should be reported to the servicer or to the mortgage owner if necessary.

Federal rules require that your servicer assist you in completing the application. As long as a foreclosure sale is not scheduled within 45 days, your servicer must acknowledge in writing within 5 days that it received your application and must describe any missing documents you still need to send.

As long as the servicer has received your complete loss mitigation application at least 37 days before a scheduled foreclosure sale, it must within 30 days evaluate you for all available loss mitigation options and tell you which ones you are eligible for. You do not have to ask for a specific option, although there is nothing wrong with doing so. The servicer’s letter must give specific reasons for any denial of a loan modification. As long as the servicer receives your complete application at least 90 days before a scheduled foreclosure sale, you can appeal the denial of a loan modification.

These rules only apply to your initial application to a given servicer for the current loan default. You can always submit multiple applications to the same servicer, however the servicer has more discretion as to the nature and speed of its responses for any subsequent applications.

Pay Attention to Any Pending Foreclosure Sale. It is not unusual for mortgage servicers to continue with a foreclosure while you request loss mitigation options. Often the servicer’s loss mitigation department and the servicer’s lawyers conducting a foreclosure sale do not communicate. But if you submit your first complete loss mitigation application at least 37 days before a scheduled foreclosure sale, federal rules require the servicer to delay the sale, review the application, and give you a written decision before allowing a sale.
If this rule does not protect you, always request a delay of a foreclosure sale long enough to complete the loss mitigation review. Unless the servicer agrees in writing to suspend the foreclosure proceeding, assume that the foreclosure process will continue. If the foreclosure sale is a court-supervised process, make sure you notify the court of your agreement with the servicer to delay the foreclosure. Always verify that the sale is actually canceled.

**Loss Mitigation Fees, Foreclosure Fees, and Late Charges.** While modification fees are not permitted under some loss mitigation programs, servicers otherwise may charge a fee for handling workout options. Some servicers want this fee at the beginning of the workout process regardless of the application’s outcome. Request a waiver or a fee reduction to make the workout affordable. Late charges will almost always be waived.

The servicer’s out-of-pocket costs to modify your mortgage, such as appraisal fees and credit report charges, probably will not be waived. The servicer will also expect reimbursement from you for foreclosure fees and costs if the servicer has already begun to incur such fees. Examine all fees to make sure that they are reasonable. You can also request an agreement to pay some or all of the fees in installments or to have the fee lumped together with the loan balance.

Where you are charged attorney fees for a foreclosure and the foreclosure does not take place due to your loss mitigation agreement, ask for them to be credited back to your account. Refunds or credits for fees paid to auctioneers, sheriffs or court officials, or for legal advertisements should also be made depending upon when the foreclosure sale is canceled. To the extent foreclosure fees and costs are valid, they need to be paid or otherwise accounted for in the loss mitigation process.

**Documenting a Workout Agreement.** Even if there is a delay in signing the final forms for the workout, make sure you have a writing spelling out the agreement’s basic terms and that any foreclosure proceeding is postponed or stayed. Never sign a release or similar agreement asking you to give up all your legal claims against the lender until after the actual workout agreement is finalized. Make sure the lender signs the agreement and it is recorded, if necessary, with the mortgage in the property registry.

**If Your Loss Mitigation Review Is Not Going Well.** If you aren’t receiving sufficient cooperation from a servicer in reaching a loss mitigation resolution, ask for them to be credited back to your account. Refunds or credits for fees paid to auctioneers, sheriffs or court officials, or for legal advertisements should also be made depending upon when the foreclosure sale is canceled. To the extent foreclosure fees and costs are valid, they need to be paid or otherwise accounted for in the loss mitigation process.

You can also send the servicer a “notice of error” or a “request for information,” as described in Chapter 16 [2]. This may get your servicer to focus appropriately on your loss mitigation review. You can also register a complaint about a mortgage servicer directly with the Consumer Financial Protection Bureau that may attempt at least an informal resolution at www.consumerfinance.gov/complaint [3].

Your efforts in all of these steps may be more effective with the help of a housing counselor or attorney. Even if you tried to obtain a workout on your own, it may be time to seek help if the negotiation with the lender is not working out well.

**Source:** National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library

**Source URL:** https://library.nclc.org/sd/1708

**Links**