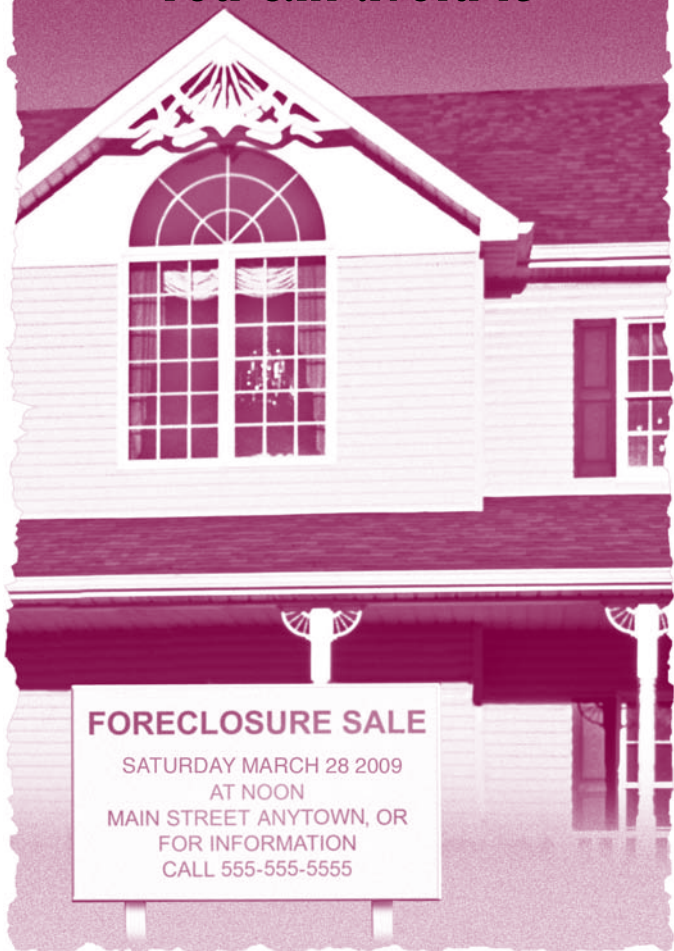


# FORECLOSURE

You can avoid it



*Steps you can take to  
protect your home and  
your credit*



DEPARTMENT OF  
CONSUMER  
& BUSINESS  
SERVICES

Division of Finance and  
Corporate Securities

## **Oregon Division of Finance and Corporate Securities**

### **Our mission**

To encourage a wide range of financial services, products, and information for Oregonians, delivered in a safe, sound, equitable, and fraud-free manner.

The information contained in this brochure is intended for informational purposes only and does not constitute legal or professional advice. Seek the services of an attorney for your particular circumstances.

This agency does not endorse or recommend a particular counselor or mortgage lender. We recommend you contact the agencies listed in the resource section at the end of this publication to verify whether companies and organizations are licensed or registered.

A glossary of terms used in this publication is in the back. Terms in the glossary are in bold italics.

**B**ecoming a homeowner is a great accomplishment, but retaining that home ownership is just as important. Most everyone experiences financial difficulties at some time, but if you're not careful, those difficulties could lead to foreclosure. Foreclosure is the legal means your lender can use to take your house if you are in default. Foreclosures can be initiated by anyone who has a *lien* on your house, including your lender or the county (if you don't pay property taxes).

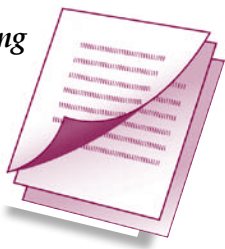
Foreclosure not only means losing your home, it also causes long-term damage to your credit that could make it difficult to buy a home in the near future.

But you can avoid foreclosure. There are many things you can do after you sign your mortgage papers and move into your new home that will help you if you experience financial difficulties down the road. Following are some suggestions.

## **Review your loan documents**

After you move into your new house, review your loan documents as soon as you have the opportunity to make sure you know how your payments are credited and what rights you have if you start missing mortgage payments.

For example, your *Truth-in-Lending* disclosure and your *Note* contain information about when your payments are due and how to ensure your payments are posted on time. If your loan is going to be transferred or sold to another company, which is a common practice, the lender or the holder of your loan must notify you in writing of these changes so you know when and to whom you should send your payments.



If you have problems with your payments being credited properly and cannot resolve them with your lender or holder of your loan, contact the National Servicing Center. See the resources section at the back of this guide for contact information. You can find additional information about your rights in this area in the *Servicing Disclosure* document.

## What and when it happens

There are two common types of foreclosure processes in Oregon — judicial and non-judicial. The most used process in this state is the non-judicial, where the document securing the loan is a “*Deed of Trust*.” The parties involved in this model are: the financial institution or “beneficiary,” which is the institution you owe the money to; the “trustee,” which is the neutral party to whom you conveyed or “transferred” temporarily the title of your house to be held in trust until your loan is paid off; and you as a borrower or “trustor/grantor.”

One of the most important components of the foreclosure process is the proper procedures of notification. For purposes of illustration, we will briefly discuss the process of foreclosure by “advertisement and sale,” which will commonly start if you, the homeowner, are not making your mortgage payments as agreed and they have been continuously late for 60 to 90 days. After trying to contact you to have you bring your mortgage payments current, the financial institution will give instructions to the trustee to start the foreclosure process or, in lending jargon, “accelerate” the loan. First, the trustee will send out a notification of sale to you and all parties with an interest in the property. This notification lets you know your home is in the foreclosure process and it will be filed in the county or counties where your house is located. After the notification of default is recorded, the foreclosure process becomes public information and it will take approximately 120 days until the house is sold or transferred.

You have the right to reinstate your loan by bringing your loan current, in addition to paying the expenses to foreclose, but you should do this no later than five days before the sale (auction date) of the house.

At least 20 days prior to the sale of the property, the trustee should publicize for the last time the sale/auction in a local newspaper in the county or counties where the property is located. The publication will also include the date, time, and place where the sale of the property will take place.

## **Mortgage Rescue Fraud Protection Act**

Effective June 9, 2008, a new state law — the *Mortgage Rescue Fraud Protection Act* — requires trustees to provide homeowners a “*notice of home loss danger.*” The trustees are required to provide this notification to the homeowner at the same time or before the required notification that the house is in foreclosure.

The purpose of the notice is to promptly and clearly notify homeowners who occupy the property as their primary residence, about the risk of losing their homes and, if possible, what homeowners could do to try to save their homes. The notification also must include a toll-free number where homeowners can call to get information about approved non-profit organizations that provide foreclosure prevention counseling programs in different areas of the state. Also, the law and the notice provide homeowners with the opportunity to seek legal assistance if they meet the definition of low income under federal guidelines. For more information on foreclosure prevention counseling and legal assistance, please see the resources section of this publication or call the telephone numbers provided in the required notifications. If you receive such notification, we strongly recommend calling the toll-free number provided and seek help from an approved counselor or legal assistance in your area. Also, you can find the contact information in the resources section of this brochure.

## Create a budget

You probably have heard the expression “too much month at the end of the money.” If this happens to you, you could miss mortgage payments and face foreclosure.

After you buy a house, it’s important to carefully re-evaluate your financial situation and create a budget. Find out where your money goes and how you are spending it. Encourage the whole family to participate as you make the necessary cuts in your spending habits and prioritize your expenses. As soon as you can, create an emergency fund that would cover your living expenses for at least three months. For example, some people use their tax returns to open an account specifically for emergencies. If you are beginning to lose control over your finances, seek the assistance of a reputable nonprofit organization. The resources section of this brochure lists a Web site where you will find government-approved housing counseling organizations and other options you may want to consider.

## Make sure you are paying your property taxes

If you do not pay your property taxes, your property may be subject to foreclosure.

In Oregon property taxes are due Nov. 15 of each year, but they can be paid in three installments:

### TAXES

Nov. 15, Feb. 15, and May 15. Your property taxes are delinquent if you do not pay in full on or before May 15. Your property likely will be subject to foreclosure after

three years of unpaid property taxes. You will be notified in your tax statements when your house will be subject to foreclosure immediately after your first year of unpaid taxes.

Ask your lender if your mortgage payments include your property taxes and insurance.

If you are disabled or a senior citizen, you may qualify for a property tax deferral if your income does not exceed the annual federal adjusted gross income (FAGI) and you live in the property. If you qualify and decide this program would work for you, the state will pay the county for your property taxes.

For more information about this process and property tax information, please contact the Department of Revenue or the county where your property is located. Contact information is in the resources section at the back of this brochure.

## **Avoid unnecessary liens on your house**

You are responsible for all liens on your house. There cannot be any liens when you sell your house. Remember, a lien holder may start the foreclosure process on your property.

Voluntary and involuntary liens can be placed on your property. An example of a voluntary lien is your loan mortgage or any junior liens. Equity loans or equity lines of credit, when you use your house as collateral, are examples of junior liens. Usually the lien recorded first would have priority to be paid first over subsequent liens.

An involuntary lien can be placed by the county where your house is located or the IRS if you have unpaid taxes, for example. Contractors and subcontractors also can place a lien, commonly known as a *mechanic's lien*, on your house if they have not been paid for work they did on your property. Mechanic's liens are governed by different laws than other types of liens. It is important that you try to resolve any discrepancies with your contractor to avoid a lien on your house.

Another form of an involuntary lien is a judgment against a property as a result of a lawsuit where monies are awarded to the person who filed the lawsuit.

## What you can do if you face foreclosure

If you do get behind on your mortgage payments, you may be able to keep your home and maintain your credit rating if you confront the problem early. The most common mistake people make when they get behind on their mortgage payments is to ignore the problem. Some people don't even open the foreclosure warnings they get in the mail from their lender.

To save your house and your credit rating, contact your lender **immediately** and try to negotiate a solution. Lenders would prefer you pay the loan instead of foreclose your property because foreclosure can be a long and expensive process. Explain your willingness to commit to a payment plan until you are in a better position to resume your regular payments.

If you are foreseeing problems for reasons beyond your control, such as the loss of a job, medical emergency, or divorce, ask to speak with a staff person about a loss mitigation plan. Prepare a letter explaining your situation, the reason you are facing financial problems, and why you think it could improve.

Ask if you can work out a *forbearance* or a loan workout plan. Ask if your unpaid monthly payments can be added to your principal loan and how much this will cost you.

The Oregon law about foreclosures has specific requirements and steps for lenders and individuals holding a lien on a property before they can foreclose a property. This period of time gives homeowners an opportunity to get back on track to save the house as long as they pay the unpaid mortgage payments, interest, and any other expenses charged by the lender. Seek legal counseling to understand your rights under the state's foreclosure laws.

If your lender allows for partial payments during this time, do so and maintain the records; this may help your chances of reaching an agreement with your lender.

Lenders approved by the Federal Housing Administration (FHA) are required to offer borrowers the following options before pursuing foreclosure, providing they qualify. If you have another type of loan, your lender may or may not offer these options, but you should ask your lender if you qualify.

▶ **Forbearance**

Ask your lender if you can reduce or suspend your monthly payments for a short period of time. This option may be available if you, for example, are expecting funds that would help bring your loan current.

▶ **Mortgage Modification**

With this option, you could refinance or extend the term of your loan to lower your payments.

▶ **Partial Claim**

This allows you to use a one-time payment from the FHA insurance fund to bring your mortgage current.

▶ **Pre-foreclosure sale**

This option may allow you to sell your property for an amount lower than your mortgage balance and avoid foreclosure.

▶ **Deed-in-lieu of foreclosure**

With this option, you may be able to “give back” your house to the lender and avoid foreclosure.

For additional information about these options, the U.S. Department of Housing and Urban Development (HUD) has a publication about FHA foreclosures. To learn how to obtain a copy, please see the resources section of this brochure.

The *Making Home Affordable Plan*, a new initiative that is part of the president’s economic stimulus plan, includes two programs for homeowners who *occupy* their houses and use them as their *primary* residence. These programs, the *Home Affordable Modification* and the *Home*

*Affordable Refinance*, have other conditions homeowners must meet to qualify. These programs are *free* to eligible homeowners.

Be sure to explore other relief programs and options available for homeowners who are at risk of losing their homes to foreclosure.

The official Web sites for the above programs are in the **Resources** section of this booklet.

For homeowners 62 or older, another possible option is a loan program called reverse mortgage. There are various types of reverse mortgages, the most common being the Home Equity Conversion Mortgage (HECM), administered by the Federal Housing Administration, and the HomeKeeper, which is a Fannie Mae loan product. This type of loan, unlike a regular mortgage, does not have to be paid back unless the house is no longer occupied as the primary residence or is sold. It is very important that you seek counseling prior to obtaining this type of loan, because it may not be the type of loan you are interested in. Please see in the resource section of this brochure about how to find a HUD-approved non-profit organization near you that offers counseling on a reverse mortgage.

If you are experiencing financial difficulties and do not expect your situation to improve, ask your lender to give you time to sell the house and pay off the mortgage — this will have a less-damaging effect on your credit rating.

If you have exhausted all of these options and your lender forecloses on your house, it is important to talk to a tax adviser. In some home foreclosures the home sells for an amount that is less than the unpaid amount of the mortgage. When this happens, the lender may consider forgiving the difference between the unpaid debt and the fair market value (FMV) of the house. This leads to “cancellation of debt,” or COD, income for the borrower. For example, if your mortgage debt prior to foreclosure was \$200,000 and the FMV of the house was \$170,000, you

would have \$30,000 of “COD income.” If you are responsible for the unpaid property taxes, your COD income will be higher. COD income may affect your tax filings. Some of the exceptions about the cancellation of debt can be complex. We recommend contacting a tax professional for your particular circumstances. Please see our resources section for the IRS Web site containing information about cancellations of debt.

A new law, the “Mortgage Forgiveness Debt Relief Act,” which amends the Internal Revenue Code, provides additional exclusions for some homeowners who lost their homes — if occupied as their primary residence — to foreclosure and the lender canceled or “forgave” a debt secured by the house. This new law can be applied for residential discharged debts of up to \$2 million (\$1 million if married filing separately) made on or after Jan. 1, 2007, but before Jan. 1, 2010.

For more information, please see our resources section for the IRS Web site or contact your tax adviser.

## What are foreclosure scams?

Homeowners facing foreclosure should beware of foreclosure scams. Scammers can cause you to lose both your home and the equity you have built.

Many scammers contact homeowners offering to “save” their houses. Information about your property is a matter of public record and fairly accessible by anyone interested in obtaining it.

In addition to the information recorded with the county when you bought your house, notifications of default filed by the lender or a lien holder or if the house is subject to an auction or to be foreclosed are all public record. Unfortunately, unscrupulous individuals can use this information to take advantage of homeowners in distress.



Other times, homeowners facing foreclosure may respond to ads offering to pay cash immediately for houses. Although this sounds like a quick solution, it may not be the right option if your ultimate goal is to keep your home. And you need to be very careful, because many of these offers may also be scams.

Scammers are particularly interested in properties where homeowners have been living for a long time or there is an indication the homeowner has built a significant amount of equity. The schemes vary depending on what the scammer is trying to obtain. For example:

- ▶ Scammers advertise their services to negotiate with the lender on behalf of the homeowner to save the house. They often collect fees up-front. The scammers prohibit the homeowner to contact the lender so the process will not be “disrupted.” In many cases, the scammers do very little or nothing to help consumers.
- ▶ In other cases, scammers will convince the homeowner to convey or give up the title of the house with the promise to return the house after it has been taken out of the foreclosure process. Scammers commonly pay the homeowner an amount significantly less than the real value of the home, sometimes as little as \$1. In some cases, the deal includes a rental agreement where the homeowner pays rent, which can be more than the original mortgage payment. The homeowner is still responsible for the payment of taxes, insurance, and other obligations as if nothing has changed except for the ownership of the house. Since the homeowner no longer has the title, the scammer can evict the homeowner if he or she does not pay the rent.

- ▶ Some scammers say they will help homeowners save their house by refinancing the loan in default. They ask the homeowner to sign papers that appear to be refinancing or lease-to-buy agreements. But in most cases, the documents give the scammer the title of the house.

The *Mortgage Rescue Fraud Protection Act*, passed by the Oregon Legislature in 2008, provides protection for homeowners facing foreclosure who are targeted by these scams. The law addresses “foreclosure consultants,” who offer to help a homeowner negotiating with the lender or financial institution to save a home, and “equity purchasers,” who acquire the title of a home in foreclosure.

The law requires that foreclosure consultants or equity purchasers provide the homeowner with a contract with clear disclosures at least 24 hours before they are personally signed and dated. The law also gives homeowners the opportunity to cancel the contracts.

If you decide to use such services to help you save your house or any type of assistance when your house is at risk, you should take the time to read the entire contract *before you sign it!* While the law has some protections and restrictions to prevent fraud, signing a contract means you agree with the terms and conditions included in it. It is strongly recommended you seek legal assistance to make sure you are protected by the provisions of this new law.

The resources section of this brochure lists a Web page from this agency which has additional foreclosure information, resources, and Oregon-related laws. The resources section also has contact information for the state’s Attorney General Office if you or someone you know is a victim of a foreclosure scam.

## **Resources**

### **Tax information:**

Counties:

<http://bluebook.state.or.us/local/counties/counties.htm>

Department of Revenue:

503-378-4988

[www.oregon.gov/DOR](http://www.oregon.gov/DOR)

### **For information on mechanic's liens:**

Construction Contractors Board:

503-378-4621

[www.oregon.gov/ccb](http://www.oregon.gov/ccb)

### **For help in ensuring your mortgage payments are credited:**

Department of Housing and Urban Development (HUD) National Servicing Center:

888-297-8685

[www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm](http://www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm)

Federal Trade Commission

Mortgage servicing publication:

[www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm)

### **Foreclosure prevention counseling:**

Department of Housing and Urban Development (HUD) approved housing counseling agencies:

[www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=OR](http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=OR)

800-SAFENET or 800-723-3638

[www.211info.org](http://www.211info.org)

### **National foreclosure hotline:**

888-995-HOPE,

888-995-4673

[www.ForeclosureHelpandHope.org](http://www.ForeclosureHelpandHope.org)

### **Other housing services:**

Housing Connections:

[www.housingconnections.org](http://www.housingconnections.org)

**To report foreclosure scams:**

State Attorney General Office:

877-877-9392

[www.doj.state.or.us](http://www.doj.state.or.us)

E-mail: [consumer.hotline@doj.state.or.us](mailto:consumer.hotline@doj.state.or.us)

**For more information about federal tax liens for unpaid taxes go to:**

[www.irs.gov/businesses/small/article/0,,id=108339,00.html#Notice](http://www.irs.gov/businesses/small/article/0,,id=108339,00.html#Notice)

**“Cancellations of Debt” (COD) as a result of a foreclosure and formulas to calculate CODs:**

[www.irs.gov/newsroom/article/0,,id=174034,00.html](http://www.irs.gov/newsroom/article/0,,id=174034,00.html)

**Loan programs:**

**Hope for Homeowners (H4H) Loan program:**

[http://portal.hud.gov/portal/page?\\_pageid=73,7601299&\\_dad=portal&\\_schema=PORTAL](http://portal.hud.gov/portal/page?_pageid=73,7601299&_dad=portal&_schema=PORTAL)

**Making Home Affordable Plan**

<http://www.financialstability.gov/makinghomeaffordable>

*To see if you have a FannieMae loan:*

[www.fanniemae.com/homeaffordable](http://www.fanniemae.com/homeaffordable)

1-800-7FANNIE

*To see if you have a FreddieMac loan:*

[www.freddiemac.com/avoidforeclosure](http://www.freddiemac.com/avoidforeclosure)

1-800-FREDDIE

**Reverse mortgages:**

Information about the Home Equity Conversion Mortgage (HECM):

[www.fha.gov/reverse/index.cfm](http://www.fha.gov/reverse/index.cfm)

Information about Fannie Mae’s HomeKeeper:

[www.fanniemae.com/homebuyers/pdf/findamortgage/mortgages/Homekeeper\\_Fact\\_Sheet.pdf](http://www.fanniemae.com/homebuyers/pdf/findamortgage/mortgages/Homekeeper_Fact_Sheet.pdf)

**Additional information about foreclosures and Oregon-related laws:**

[www.dfcs.oregon.gov/ml/foreclosure.html](http://www.dfcs.oregon.gov/ml/foreclosure.html)

## To check mortgage lender licenses/registrations

### State-chartered institutions

If your institution is regulated at the state level, contact the Oregon Division of Finance and Corporate Securities (DFCS), 503-378-4140, toll-free 866-814-9710, or TTY 503-378-4100. To file a complaint you can download the complaint form from the DFCS Web site, [www.dfcs.oregon.gov](http://www.dfcs.oregon.gov), file the complaint online following the instructions, or write to:

Oregon Department of Consumer and  
Business Services  
Division of Finance and Corporate Securities  
350 Winter Street NE, Room 410  
P.O. Box 14480  
Salem, OR 97309-0405

### Commercial banks

If the name of your bank includes the word “National” or has the initials “N.A.,” it is regulated by the Office of the Comptroller of the Currency (OCC). The phone number for the OCC is 800-613-6743 or 415-545-5976.

The OCC’s Web address is  
[www.helpwithmybank.gov](http://www.helpwithmybank.gov).

### Savings and loan associations or savings banks

If your institution has the word “Federal” or the initials “F.S.B.” or “F.A.” included in its name, it is regulated by the Office of Thrift Supervision (OTS). The number for the OTS is 800-842-6929. The OTS Web address is [www.ots.treas.gov](http://www.ots.treas.gov).

### Credit unions

If your credit union has the words “federal credit union” in its name or the initials “F.C.U.,” you can contact the National Credit Union Administration (NCUA), 703-518-6330. The NCUA Web address is [www.ncua.gov](http://www.ncua.gov).

## Other regulating agencies

### Federal Reserve Board (FRB)

Regulates state banks that are members of the Federal Reserve System

202-452-3693

[www.federalreserve.gov](http://www.federalreserve.gov)

### Federal Deposit Insurance Corporation (FDIC) San Francisco Regional Office

Regulates federally insured state banks that are not members of the Federal Reserve System

### Division of Compliance and Consumer Affairs

877-275-3342

[www.fdic.gov](http://www.fdic.gov)

## Glossary:

### *Deed of trust or security instrument*

In Oregon, a debt is often secured by a deed of trust rather than a mortgage, which means there is a neutral third party called a trustee. If the borrower does not make the mortgage payments, the lender will instruct the trustee to sell the property to pay off the debt.

### *Forbearance*

Lenders may be willing to work with you on a payment plan, which can temporarily help you until you are in a better financial situation if you are expecting funds from other sources such as settlements or tax returns in the near future. You would need to show documentation about the money you are anticipating.

### *Judicial vs. non-judicial foreclosure*

A judicial foreclosure means the process of taking the house would go to a judge as a lawsuit against the homeowner. A non-judicial foreclosure does not go to court and is not heard by a judge. If your “deed of trust” document has a power-of-sale clause, the trustee can initiate a non-judicial process.

### *Lien*

A hold or a claim placed on a property to secure the payment of a debt or other obligation.

### *Mechanic's lien*

This type of lien can be placed by anyone who made an improvement or provided materials for your house. Subcontractors or laborers can place a lien on your house as well. Contact the Construction Contractors Board to learn about your rights. See the resources section of this publication.

### *Note or promissory note*

This document, which you should have received when you closed your loan, has the details and conditions under which you borrowed the money to buy your house. The note includes the amount of money you borrowed, the interest rate, the amount of your payments, when they are due, the grace period, and late fees.

### *Servicing disclosure*

This required notification provided by your lender or the holder of your loan will notify you of your rights when your loan is sold or transferred. The notification will give you contact information, including a toll-free number, if you have questions when your loan has been sold or transferred to another institution. This disclosure also includes information about what you can expect if you file a complaint or dispute with the company holding your loan.

### *Truth-in-lending disclosure*

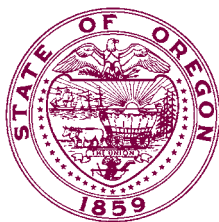
A document you should have received from your lender within three business days after you applied for a mortgage loan. In it you will find, among other clauses, when your payments are due, a grace period, if any, for late payment charges, and if your loan has a pre-payment penalty.

## Do's

- ▶ Establish an emergency fund of at least three months' worth of living expenses.
- ▶ Make sure your payments are credited/posted properly. Review your statements when you receive them.
- ▶ Contact your lender as soon as you foresee difficulties in making your loan payments.
- ▶ Explain your situation. Ask your lender/servicer for a forbearance and a loan workout plan.
- ▶ Ask if your unpaid mortgage payments can be added to your mortgage principal.
- ▶ If you are unable to resume the regular monthly payments, ask the lender for time to sell your home to pay off the mortgage balance.
- ▶ If your lender forecloses on your house, talk to a tax adviser. The foreclosure may affect your tax filings if the house sells for less than the amount you owe on your mortgage.

## Don'ts

- ▶ Don't overuse your equity to consolidate other debt.
- ▶ Don't ignore late payments notifications from your lender.
- ▶ Don't respond to offers in the mail or media offering good deals to refinance.
- ▶ Don't give direct access to your bank accounts or give your personal identification number.
- ▶ *Don't sign any documents you don't understand!*
- ▶ Don't respond to offers to "save" your house.
- ▶ Don't give away the title of your house without first consulting with an attorney.



Oregon Department of  
Consumer and Business Services

**Division of Finance and Corporate Securities**

350 Winter St. NE, Room 410

P.O. Box 14480

Salem, OR 97309-0405

Toll-free: 866-814-9710

Web: *[dfcs.oregon.gov](http://dfcs.oregon.gov)*