Consumer Alert! Fees for Loan Modifications

Homeowners facing foreclosure are frequent targets of predatory scams and the latest of these, for-profit loan modification schemes, is no exception. For fees ranging from $500 to $3,000 or more, companies claim to help homeowners avoid foreclosure by working with a lender to change the terms of a mortgage loan, such as lowering the interest rate, extending the length of the loan or adding missed payments to the balance of the loan. These companies typically take money upfront from the homeowner but provide little to no services in return.

What consumers need to know about for-profit loan modification companies:

- They charge a fee for services that are available FREE to Minnesota homeowners. The Minnesota Homeownership Center’s network of non-profit agencies, known as the Homeownership Advisors Network, offers foreclosure and mortgage counseling services to all Minnesotans. Services provided through the Center’s network are free and counselors are equipped to advocate on behalf of homeowners with lenders. In addition, loan modification may be only one option available to home owners…the Center’s network provides a full spectrum of foreclosure prevention services.

- They may promise results that are unrealistic in an effort to convince homeowners to hire them. Unlike the nonprofit counseling agencies which are mission-driven, for-profit loan modification companies make money when homeowners use their services. They are likely to use high pressure sales tactics to get customers even when it is clear that nothing can be done to save the home.

- They may not be certified or trained specifically to provide foreclosure prevention services. The Center’s network agencies receive extensive training and are certified, meeting state and national standards to provide foreclosure prevention services.

- Fee for service companies are frequently located out of state and may not be familiar with Minnesota laws or the services and resources available to Minnesota homeowners. The Homeownership Advisors Network is located in, and well connected with, communities throughout Minnesota.

Beware of people and companies that:

- Ask you to pay a fee to work with your mortgage company
- Advise you to stop making your mortgage payment
- Make promises that sound too good to be true

What to do if approached by a loan modification company:

- Seek advice from one of the Minnesota Homeownership Center’s counselors before signing any papers or paying money to a company that charges for loan modification services.

- Be an informed consumer. Ask questions; contact the Minnesota Department of Commerce to make sure the company has a license by the state to provide the services that they are offering.

For additional information speak with a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org

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Your lender may be able to help you avoid missing mortgage payments or catch up on payments you have already missed. Here are some suggestions for talking with your lender about the workout options they may be able to offer you.

**Before you call:**
- Open and read your mail from your lender.
- Find the phone number to call on your mortgage statement or letter from your lender.
- Have your loan number available so your lender can look up your account.
- Be prepared to answer questions about why you have missed (or will miss) mortgage payments. They may ask you to provide this information in the form of a letter often called a “hardship letter.”
- Know how much money you have on hand to contribute to a workout agreement. If you don’t have any money saved, be prepared to explain when you will be able to make a payment.
- Know your monthly household income and expenses; your lender may do a financial assessment to determine what type of workout options may be available. You may be asked to provide documentation like pay stubs or income tax forms.
- Set aside enough time for the call. You may be placed on hold during your call – be patient.
- Have a pen and paper handy so you can take notes.

**When you call:**
- Write down the date and time of the call, who you talked to and what they told you.
- Ask to talk with the “Loss Mitigation” department; this is the department that can discuss possible options.
- Get a phone number for the person you spoke with in the Loss Mitigation department so you can call that person back directly.
- Tell the lender about your situation and that you want to work with them to bring (keep) your mortgage current.
- Answer all the lender’s questions honestly and be prepared to fax or mail any financial documentation they request as soon as possible.
- Ask them what types of workout options are available to you.
- Ask for any proposed workout plan to be sent in writing before you agree to it.
- Don’t agree to anything you cannot afford.
- If you have questions or want a second opinion, contact a Housing Counselor.

For additional information speak with a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org
UNDERSTANDING WORKOUT OPTIONS

If you are behind on your mortgage payments, a “workout” may be available through your lender. Workouts are special arrangements to bring your loan current and/or prevent foreclosure. The workout option available to you will vary based on the type of mortgage you have, your lender and your financial situation.

Options for remaining in your home:

Reinstatement: A reinstatement is when you pay the full amount you owe (total of past due monthly payments plus all fees) in a lump sum by a specific date.

Repayment plan: Under a repayment plan, you make your regular monthly payment to your lender plus some extra each month to catch up on past due payments.

Forbearance: Forbearance is an agreement to temporarily change or suspend your payments. The term special forbearance may also be used in situations where the payment is reduced. To prevent foreclosure, forbearance must be combined with another workout option when the forbearance period ends.

Loan Modification: A loan modification is a change in any of the terms of the mortgage, resulting in a new monthly payment. In a typical loan modification, you have to pay some of the past-due amount you owe, and the rest is added back into your loan. A loan modification may also involve one or more of the following: changing the interest rate from an adjustable rate to a fixed rate, lowering the interest rate, or extending the number of years to repay the loan. Your lender may require a special forbearance or trial period where you make several monthly payments before receiving a permanent modification.

Partial Claim or Advance Claim: If your mortgage is insured, you may qualify for a low interest or interest-free loan to bring your loan current through the insurer (FHA or private mortgage insurance). This loan may have small monthly payments, or it may be repaid when you pay off your first mortgage or sell your home.

Making Home Affordable: A refinance or loan modification may be possible through this federal government program. For more information see our fact sheet, Understanding the Making Home Affordable Program.

Options for moving out of your home:

Pre-Foreclosure Sale or Short Sale: If you owe more on the home than its value, your lender may agree to accept less than what is owed on the mortgage, allowing a “short” sale. Typically you would need a 3-6 month period for your real estate agent to sell the house to a qualified buyer at a price agreed upon by the lender.

Deed-in-lieu: A deed-in-lieu of foreclosure is an option where your lender forgives the debt you owe if you sign over (give back) the property. Typically you would first have to try to sell the home for 90 days before the lender would consider this. If you have a second mortgage or judgment on the property, a deed-in-lieu may not be an option.

For more information contact a Housing Counselor in your area by calling the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org
Understanding the Home Affordable Modification Program (HAMP)

Making Home Affordable is a federal program that offers qualified homeowners a loan modification to help make mortgage payments affordable. This modification is known as the Home Affordable Modification Program or HAMP.

HAMP Eligibility

You may be eligible for HAMP if all the following are true:

- You own a home (1-4 units)
- Your loan originated on or before January 1, 2009
- Your unpaid first mortgage balance is less than $729,750 (for one unit, more for 2-4)
- You have experienced a hardship (such as a change in income) that makes your mortgage payment unaffordable
- Your mortgage is owned by Freddie Mac or Fannie Mae OR your servicer is participating in Making Home Affordable

To find out if your mortgage servicer is participating, call your servicer or use the online Look-Up Tool at www.makinghomeaffordable.gov. Note that Freddie Mac and Fannie Mae have their own guidance for HAMP.

HAMP Application

If you meet all of the above eligibility criteria, you can apply for a HAMP modification by submitting an “Initial Package” to your servicer. The Initial Package must include:

- Completed and signed Request for Modification and Affidavit (RMA) form
- Completed and signed Form 4506-T or form 4506T-EZ
- Income documentation (copies from all income sources)

For more information about applying for HAMP, including the Initial Package forms and details about income documentation, visit www.makinghomeaffordable.gov

Qualification and Trial Period Plan

Your servicer will determine whether you meet the HAMP eligibility criteria and review the Initial Package for completeness. Within 30 days of receipt of the Initial Package, the servicer will decide if you qualify for a modification. The servicer will run your loan through a Net Present Value (NPV) model to evaluate whether a HAMP modification would be of greater value to the investor than foreclosure. If the modified loan would be of greater value (i.e. the NPV results are positive), the servicer must offer you a modification under HAMP. You will then be placed on a Trial Period Plan (typically three months) at the new payment amount.

If you successfully make all Trial Period Plan payments on time (each payment made within the month it is due), your servicer will make the HAMP modification permanent and execute an official modification agreement for you to sign.
**HAMP Payment Amount**

If your loan is modified under HAMP your monthly payment will be lowered to a new, affordable amount. The servicer will take some or all of the following steps to reach the affordable payment target:

- Capitalize any late payments and fees
- Reduce the interest rate
- Extend the mortgage term up to 40 years
- Defer a portion of the unpaid principal balance

Your modified interest rate will be fixed for the life of the loan unless the servicer lowered it below the current market rate\(^1\). In this case, your modified interest rate will be fixed for five years, and then go up 1% each year until it reaches the market rate at the time of your modification agreement.

HAMP includes government incentives for servicers, investors and homeowners. If you make your new mortgage payments on time you may qualify for up to $1,000 per year for five years towards your principal balance\(^2\).

**Unemployment Program**

If you are recently unemployed and qualify for unemployment benefits, you may be able to get forbearance through a subset of HAMP called the Home Affordable Unemployment Program (UP). You may qualify for UP if you meet the basic HAMP eligibility criteria and can document that you receive or will receive unemployment benefits. During the UP forbearance your mortgage payment would be reduced to 31% of your gross income including unemployment. The UP forbearance period is a minimum of 12 months\(^3\). At the end of the forbearance or upon reemployment, you will be evaluated for a HAMP modification.

**Foreclosure Alternatives**

If you are denied a HAMP modification or you do not successfully complete the Trial Period Plan, your servicer will consider different workout options that may be available based on investor guidelines. You may also be eligible for the Home Affordable Foreclosure Alternatives (HAFA) program. The HAFA program includes the opportunity to sell your home through a Short Sale agreement or sign a Deed-in-Lieu of foreclosure. Ask your mortgage servicer for additional details.

For more information contact a Homeownership Advisor in your area by calling the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org

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\(^1\) HAMP defines the market rate as the Freddie Mac Primary Mortgage Market Survey Rate for 30-year, fixed-rate conforming mortgages

\(^2\) If your loan is modified under HAMP "Tier 2" you will not qualify for incentive payments towards your principal balance.

\(^3\) Loans owned by Freddie Mac or Fannie Mae have different guidelines for unemployment forbearance
Short Sale Considerations

A short sale is a process that allows you to sell your home for less than the amount currently owed on your mortgage in order to avoid foreclosure. Your lender must agree to accept less than what is owed on the mortgage.

It might be appropriate to attempt a short sale if:
- You are behind on your house payments.
- Your financial situation isn’t improving.
- You owe more money than the house is worth.
- You have insufficient equity to cover costs associated with selling.
- You want to try and prevent a foreclosure.
- You have found alternative housing.

There are some things to consider if you are thinking about short sale:
- Doing a short sale can be a lengthy process with no guarantee that the lender will approve it, or that the process can be completed in time to avoid foreclosure.
- A short sale is not an option to just walk away from your mortgage.
- Your lender will require proof of what caused the mortgage default, what you have done to try and rectify the situation as well as current financial statements and budget.
- Your lender can still proceed with the foreclosure process during the short sale process.
- There may be income tax consequences.
- After the sale, you may be faced with a “deficiency judgment.” This means you may have to repay the debt that was not covered by the sale of the property and could result in wage garnishment and confiscation of other assets you may have.
- If there are multiple mortgages on the property, ALL mortgage holders must agree to the terms of the short sale.
- If there are other liens on the property there could also be financial implications for those debts.

If you want to explore a short sale further:
- Contact a non-profit Homeownership Advisor to discuss your options.
- Contact your lender to ask if a short sale is an option.
- Find a trusted real estate professional that is experienced with short sales. An agent needs to thoroughly understand the process to help you avoid or minimize many of the considerations mentioned above.
- Read the Mortgage Debt Forgiveness and Deficiency Judgment’s fact sheets on www.hocmn.org to learn about possible financial consequences of Short Sales.

This information is provided as a service of the Minnesota Homeownership Center and is not legal advice. Consult a competent legal professional for advice specific to your situation.

For additional information about foreclosure contact a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org.
Bankruptcy and Foreclosure: Frequently Asked Questions

Q: What happens to my mortgages in bankruptcy?

A: It depends on which type of bankruptcy you file.

In Chapter 7 bankruptcy, most of your assets are liquidated and distributed to creditors, and then your remaining debts are discharged. This essentially means the creditor cannot pursue you for payment. If your home is included in the Ch. 7, delinquent amounts on the mortgages will still be owed to creditors. Furthermore, the lien (which gives the lender the right to take your property through foreclosure) still exists, so the lender may still proceed with foreclosure.

Under Chapter 13 bankruptcy, your debt is reorganized into a repayment plan, which allows you to repay your debts in full. Repayment plans typically last 3 to 5 years. Ch. 13 bankruptcy allows you to keep assets such as your home.

In a Ch. 13 bankruptcy, only the delinquent mortgage debt is included in the repayment plan. Therefore, you will need to make your regular monthly payment on all mortgages AND a monthly payment to the bankruptcy trustee under the repayment plan. The bankruptcy does not affect the mortgage lien, so lenders retain their right to foreclose if you fail to make timely payments.

Q: What is an automatic stay?

A: An automatic stay prevents further proceedings against you from anyone except the bankruptcy court. The stay goes into effect immediately when you file for bankruptcy.

In a Chapter 7 filing, the automatic stay halts the sheriff’s sale until after the bankruptcy case is closed. A Ch. 7 stay lasts until the case is dismissed or the discharge is granted, and the property is no longer in your bankruptcy estate. If the sheriff’s sale has already occurred but you are still in your redemption period, you would be able to extend your redemption period for up to sixty days following the date of filing the bankruptcy petition.

In a Chapter 13 filing, the automatic stay will generally prevent creditors from collecting on the mortgage until the court confirms the repayment plan. A Ch. 13 stay lasts until the repayment plan is confirmed or the case is closed or converted, which usually takes between 3 and 6 months. Talk with your bankruptcy attorney about when you need to begin making your regular mortgage payments, because remember that in a Ch. 13 you need to pay your regular monthly payment on all mortgages AND your monthly trustee payment under the repayment plan.
Q: Can a lender avoid the automatic stay?
A: Creditors may ask the court for relief from an automatic stay after thirty days. Courts are more likely to lift the automatic stay in Ch. 7 bankruptcies, since the purpose of Ch. 7 is not to save the debtor’s assets.

Q: What happens if, after filing for Chapter 13, I default on my regular mortgage payments?
A: If you default during the automatic stay period, foreclosure is prohibited. In order to foreclose on your home, the lender will have to file a court motion for relief from the stay, as discussed above. Courts may be hesitant to grant the motion during the stay period, since the point of Ch. 13 is to help people keep their assets, but that is up to the court.

If you default on your regular mortgage payments after the automatic stay ends, the lender will have its normal right to foreclose on your home, pursuant to the lien.

Q: What happens when I file for bankruptcy and don’t include my mortgage?
A: In a Chapter 7 proceeding, some assets are exempt from inclusion in the bankruptcy estate that is liquidated. One such asset is equity in your home, up to a certain limit. If you own less equity in your home than the limit, your equity will not be liquidated and distributed to creditors. If you can stay current on your mortgage payments, you will probably be able to keep your home. You can try to negotiate a modification with your lender, but your lender is not obligated to offer you any modification.

As discussed above, in a Chapter 13 bankruptcy you will need to keep making mortgage payments to keep your home. Delinquent debt on the mortgage will be included in your repayment plan.

Q: Can I convert my Chapter 7 filing to a Chapter 13 filing, or vice versa?
A: Ch. 13 filings may always be converted to Ch. 7 filings. Ch. 7 filings may be converted to Ch. 13 filings with court permission; however, most courts will not permit this conversion if the case had already been converted one or more times.

Q: Who can I talk to about bankruptcy?
A: Only an attorney can give you advice about whether to file bankruptcy. Attorneys charge varying fees for bankruptcy. Ask a lot of questions and get everything in writing to avoid problems later on.

Mortgage lenders may be hesitant to speak with you about the decision to file for bankruptcy, since that may cross the line into giving legal advice.

Housing counselors can give you general information about bankruptcy but cannot give you advice about whether bankruptcy is a good option for you. A housing counselor can help you develop a budget to assess whether a Ch. 13 repayment plan may be affordable.

For information on how to contact a nonprofit Housing Counselor, call the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or visit www.hocmn.org
Stripping Off Second Mortgages in Bankruptcy

Q: What is a second mortgage strip off?

A: A second mortgage strip off is when a homeowner who has filed a Chapter 13 bankruptcy is allowed to "strip off" (no longer be liable) for a totally underwater second mortgage. Typically, the limitations in the Bankruptcy Code prevent a mortgage on a principal residence from being modified in a Chapter 13 case. Various courts have held that when the amount of the first mortgage is more than the value of the property, the second and third mortgages are no longer secured and the limitation on modification no longer applies. For this reason, courts have held that these underwater second and third mortgages can be treated as unsecured claims and stripped off by a Chapter 13 plan.

Q: Are second mortgage strip offs recognized in Minnesota?

A: Yes. In a recent Minnesota Bankruptcy Court decision, *Fisette v. Keller*, for the first time in Minnesota the Court allowed a debtor to explore a plan to strip off a second and third mortgage because the first mortgage was for over $175,000 when the appraised value of the property was only $145,000. Therefore, no equity existed in the property to secure the second or third mortgages and they were treated the same as unsecured debt.

Q: What if a mortgage is only partially secured?

A: Under existing Bankruptcy law as interpreted by the Supreme Court in *Nobleman v. Am. Sav. Bank*, 508 US 324 (1993), if a mortgage is even partially secured, meaning that any portion of the property value is higher than the amount owed on the first mortgage, that mortgage cannot be modified (i.e. reduced to the value of the house) as it is not unsecured according to the Bankruptcy Code. In this situation the mortgage remains on the property, and cannot be stripped off in a Chapter 13 bankruptcy.

Q: When does the strip off of a wholly unsecured mortgage go into effect?

A: According to the court in *Fisette*, the strip off of a wholly unsecured mortgage is effective as soon as the debtor has fulfilled his or her obligations under the bankruptcy plan. Fulfillment of a Chapter 13 bankruptcy plan includes completion of monthly trustee payments over an average period of three to five years as established in the plan.
Q: How has this changed?

A: Before *Fisette*, Minnesota courts had refused to allow for strip off defaults of unsecured mortgages in bankruptcy plans. After this case however, a new tool is available. In line with most other courts, Minnesota now formally recognizes the ability to strip off second mortgages of underwater homeowners in Chapter 13 bankruptcy proceedings. Second mortgage strip off does not apply in Chapter 7 bankruptcies.

Q: Who can I talk to about bankruptcy?

Only an attorney can give you advice about whether to file bankruptcy. Nonprofit Homeownership Advisors can give you general information about bankruptcy but cannot give you advice about whether bankruptcy is a good option for you. A Homeownership Advisor can help you develop a budget to assess whether a Ch. 13 repayment plan may be affordable, and discuss other options if you’re struggling with your mortgage payments.

*This information is provided as a service of the Minnesota Homeownership Center and is not legal advice. Consult a competent legal professional for advice specific to your situation.*

For additional information about foreclosure contact a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org.
MORTGAGE DEBT FORGIVENESS – KEY FACTS

In late December 2007, Congress passed legislation changing the tax code relating to mortgage debt forgiveness. Ordinarily, debt forgiveness – including short sales, short refines, deed-in-lieu of foreclosure or other ways lenders forgive debt owed - counts as taxable income. This legislation changes the tax code, offering an exception specifically targeted for home mortgage debt forgiveness.

Minnesota homeowners need to know that there are a number of stipulations in the legislation:

1. The burden is on the taxpayer to assert the exception.
   
   In other words, debt forgiveness (short sale, deed-in-lieu, permanent loan modification, etc) still counts as income and lenders are required to issue Form 1099-C to the homeowner whose debt was forgiven. It is then the taxpayer’s burden to tell the IRS that they qualify for an exception to paying tax on this income. To do so, they need to fill out a special form (Form 982), which can only be used with the long-form 1040 as opposed to the 1040A or 1040EZ.

2. The exception is only for “qualified” debt, which is defined to exclude any cash-out in a refinancing.
   
   The exception for debt forgiveness only qualifies if the original debt was incurred for home acquisition or to pay for home improvement costs – not cash out to pay other bills. Any cash-out amount is subtracted off the top of any debt forgiveness amount before the exception kicks in. For example, if a homeowner refinanced their home with a $120,000 loan, of which $15,000 was cashed out to pay debts unrelated to home improvement, and then sells short for $100,000 - with the lender agreeing to forgive the remaining $20,000 - only $5,000 of this amount will qualify for the exception. The taxpayer will need to pay income tax on the remaining $15,000 of forgiven debt.

3. Lower-income taxpayers claiming this exception may still be able to use VITA clinics for help filing their returns.
   
   Note that Form 982 is likely to be too complicated for many people to fill out themselves. Most VITA or IRS tax clinics can generally assist taxpayers who need to fill out the long-form 1040 and Form 982. However, the issues may be complex and beyond the scope of VITA. Such taxpayers should be prepared to use a professional tax preparer.

CAUTION
 Exceptions are not automatic.
 Taxpayers must file Form 982 with the long-form 1040 when filing their taxes.

UPDATE
 In early 2013, this tax relief was extended an additional year, covering debts discharged through calendar year 2013.

This information is provided as a service of the Minnesota Homeownership Center and is not legal or tax advice. Consult a professional regarding your specific tax and legal obligations.

For information on how to contact a Housing Counselor that specializes in foreclosure issues, call the Minnesota Homeownership Center today at (651) 659-9336 or (866) 462 – 6466 or visit www.hocmn.org

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Tax Issues: Foreclosure and Workouts

Homeowners should be cautioned about the tax consequences of forgiveness of any portion of a loan, including a loan that goes through foreclosure. Generally, there are no tax consequences for the foreclosed homeowner as a result of a foreclosure sale. However, certain workout plans, including reducing the principal amount of the debt or waiving the deficiency under a deed in lieu, generate cancellation of debt ("COD") income.

Taxability of Foreclosure

A foreclosure occurs when a borrower becomes delinquent, and the home is sold at a sheriff’s sale to the highest bidder. In Minnesota, a homeowner typically has six months to remain in the home once it has been sold. If a lender forecloses on property, the owner of the property is treated as having sold the property once the foreclosure is completed and any redemption period available to the owner has expired. Since the property is treated as sold, the IRS views this as a potential “taxable event.” If there was any debt forgiven as a result of the sale, that forgiven debt is typically treated as COD income. Generally, but not always, any tax owed on COD income generated from a foreclosure is forgiven because of the Mortgage Forgiveness Debt Relief Act of 2007.

Debt Relief from Mortgage Forgiveness

The Mortgage Forgiveness Debt Relief Act of 2007 allows taxpayers to exclude debt forgiven on their principal residence (some loan limits apply). Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, may qualify for this relief. The original debt must have been used to buy, build or substantially improve the homeowner’s principal residence and must have been secured by that residence. Refinanced debt, up to the amount of the qualifying debt just before refinancing, is also eligible. In rare circumstances, a homeowner may receive a tax Form 1099-C from their mortgage lender, indicating the homeowner may owe COD income. If a homeowner receives a Form 1099-C, please encourage them to speak with a tax professional.

Non-Foreclosure Workouts

The owner may also be treated as having sold the property in a variety of other workout scenarios. This means some workouts may be taxable. Potentially taxable workouts include the following:

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• Deeds in Lieu of Foreclosure: A “deed in lieu of foreclosure” occurs when the lender accepts a voluntary return of the deed to the property as an alternative to foreclosure.

• Short Sales: A short sale occurs when the owner (with the consent of the lender) allows the property to be sold to a third party, even if the proceeds of the sale will not cover the amount due on the mortgage.

• Cash for Keys: A foreclosed homeowner or a renter in a building facing foreclosure can sometimes be offered “cash for keys” in order to vacate the premises without requiring the lender to exercise all its legal remedies. While it may seem strange, the cash amount received by the homeowner or the renter in this situation may represent taxable income to them depending on how the transaction is documented.

*Note: This Fact Sheet provides general information and is not meant to be legal advice. Consult a competent legal professional or tax adviser for advice specific to your situation.*
Understanding Deficiency Judgments

**Question:** If a home has been sold at a sheriff’s sale, but the sale price wasn’t enough to cover the debt, can the creditor seek a personal deficiency judgment?

A **deficiency judgment** is a judgment lien against a borrower whose foreclosure sale did not produce sufficient funds to pay the mortgage in full. As a general rule, if the first mortgage is foreclosed by advertisement (the most typical type of foreclosure in Minnesota), there will be no deficiency judgment.

**Foreclosure by Advertisement: NO Deficiency Judgment**
In Minnesota, a lender or lien holder can obtain a deficiency judgment, but only in limited circumstances. The law is written so that a lender **may** obtain a deficiency judgment against the homeowner if the amount received from a foreclosure sale is less than the amount remaining unpaid on the mortgage.\(^1\) However, a “deficiency judgment is not allowed if a mortgage is foreclosed by advertisement . . . and has a redemption period of six months or five weeks.”\(^2\)

Since most foreclosure sales in Minnesota are by advertisement, and most homeowners get a six month or five week redemption period, most foreclosed homeowners will not have a deficiency judgment against them. If, however, the property is agricultural property, a deficiency judgment can be sought even if it was foreclosed by advertisement. This is because agricultural property is afforded a one year redemption period.

**Foreclosure by Action: Possible Deficiency Judgment**
If a lender decides to foreclose on the property in court rather than by advertisement, this could result in a potential deficiency judgment. However, this is a rare occurrence in Minnesota. If you are served with a summons and complaint in a foreclosure action, you are being foreclosed upon by action. You have 20 days to answer the plaintiff’s complaint, so seek legal advice immediately.

Since a deficiency judgment is allowed if the home is foreclosed as the result of court action, the balance of the unpaid debt “may be executed and satisfied in the same manner as a personal judgment against the [homeowner].”\(^3\) The deficiency judgment is not automatic; a lender must seek a deficiency judgment order from the court.

**Important Note about Multiple Mortgages**
When a mortgage is foreclosed by advertisement, the foreclosing lender has no right to seek a deficiency judgment on that mortgage. However, if you have multiple mortgages, a junior lien holder could choose to sue and seek a deficiency judgment for the amount due under the junior lien.\(^4\) If you have multiple mortgages, including a home equity line of credit, consult a foreclosure counselor or legal professional for information about how this impacts the foreclosure.

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1. *Minn. Stat. § 582.30, subd. 1 (a) (2008).*
2. *Minn. Stat. § 582.30, subd. 2 (2008).*
4. *Minn. Stat. § 582.30 (2008).*

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For additional information about foreclosure contact a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org.
Have you received an offer from your second mortgage holder for a “discount payoff”? A “Discount Payoff Agreement & Release of Claim” appears to be an offer allowing you to pay a small portion of the total remaining principal balance on your second mortgage in exchange for release of the mortgage. The Agreement also suggests that it will forgive the remaining debt owed on the second mortgage. This seems like a great opportunity, and mortgage holders will encourage you to sign the agreement and send in a check for the payoff amount. But is it too good to be true? Maybe. Before agreeing to a “discount payoff” agreement, consider the following:

1. The Debt May Not BeForgotten

Look for language in the letter that might allow the mortgage holder (or someone else) to collect the debt in the future. The “discount payoff” may only promise a release of the mortgage, but not forgiveness of the debt. This leaves open the possibility that they will pursue you to pay the debt in the future. The creditor has six years from the date of the contract to file a lawsuit.¹

Look for terms such as “advise.” This term may mean that the mortgage holder (or law firm representing the mortgage holder) will “advise” that the debt be forgiven and “advise” that the mortgage be released. This means that nothing is certain, and the mortgage holder may or may not forgive the debt or release the mortgage.

Also look for language indicating that although the mortgage holder may not collect the remaining balance, they may retain the right to sell the debt to someone else, giving someone else the right to collect the remaining balance from you.

2. Release of Claims

A “discount payoff” may include a Release of Claims provision. This provision may explain that in return for the offer to pay a fee to release the mortgage, you will not sue the lender. However, it may also state that even though you promise not sue the mortgage holder, they can still sue you. This could mean the mortgage holder is still able to sue you for the remaining balance (or other legal claim), but you cannot sue the mortgage holder for their wrongdoings.

3. Definition of “Discount Payoff”

“Discount payoff” seems to mean that if you pay what the mortgage holder is asking (the discounted remaining balance), you will have satisfied the loan (payoff). Typically, mortgage holders do not define the term, leaving open the possibility that the mortgage holder could later state it defines the term “discount payoff” differently.

¹ Minn. Stat. § 541.05 (2009).
Facts about Discount Payoffs

4. Seek Advice

If you receive a "discount payoff" offer, consult with a housing counselor or attorney who is familiar with discount payoffs.

Ask Your Attorney:

- Does the release of the mortgage also mean forgiving the debt?
- What is meant by a "discount payoff"?
- Will the mortgage holder be able to collect the remaining balance at a later time?
- Will I be able to sue the mortgage holder if it fails to comply with the agreement?
- Can I add provisions ensuring the mortgage holder will not be able to collect the debt at a later time?

Be sure to keep a copy of the signed discount payoff letter and any proof of correspondence between you and the mortgage holder.

This document represents general information that will vary by lender and is not legal advice. Consult a competent legal professional for advice specific to your situation.

For additional information about foreclosure contact a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org.
Homeowner Rights During the Redemption Period (Minnesota)

The term “redemption period” refers to the period of time after a foreclosure sale (sheriff’s sale) has been held. For residential property in Minnesota, the redemption period is typically six months, but in some cases twelve months. The length of the redemption period is listed on the sheriff’s sale notice.

What happens during the redemption period?

- The homeowner can continue to live in the home until the end of the redemption period.
- If the owner wants to keep the property, the owner must pay off amount bid at the sheriff’s sale, plus interest. The past due payments of a mortgage loan cannot be “caught up” after the sheriff’s sale.
- After the sheriff’s sale date, interest continues to accrue daily at the note rate and is added to the amount bid at the sheriff’s sale. The holder of the sheriff’s certificate is entitled to recover costs associated with preserving or protecting the property during the redemption period.
- The owner has the right to sell the home and retain any equity that may exist. If there is equity, selling home is always preferable to losing the equity at the end of the redemption period. Seek a free analysis from several reputable real estate agents to determine a realistic value of the home.
- The owner has the responsibility to pay utilities and keep the property maintained.
- The owner should keep homeowners insurance in place.
- The redemption period can be shortened to 5 weeks if a judge determines that the property has been “abandoned” and is no longer occupied or maintained.

What happens at the end of the redemption period?

- Whoever holds the sheriff’s sale certificate becomes the rightful owner of the property.
- The owner should vacate the property. They cannot legally remain in the residence.
- If the owner has not moved out by the end of the redemption period, they will be asked to vacate the premises by a specific date. If they do not comply, the new owner can evict them by filing an “unlawful detainer”, which goes on record and can affect ability to rent in the future.
- If the mortgage company is the new owner, they will sell the property. If the house sells for more than what was owed, the mortgage company will keep any excess proceeds.

Other issues:

Filing bankruptcy may extend the redemption period 60 days from the date filed. This may allow time to complete a sale of the property and to retain equity. Seek legal advice if this option is considered.

Some lenders may offer an incentive where homeowners receive up to $2,000 for moving out before the end of the redemption period. For loans that are FHA insured, this is called “Cash for Keys” and is for up to $1,000. Contact the lender to ask if this is available and under what conditions.

If there are loans or liens on the property in addition to the mortgage that foreclosed, the unpaid loans/liens may remain as unsecured, personal debts to be paid even after the property changes ownership. If there is more than one mortgage, be sure to seek advice from a qualified foreclosure counselor or attorney.

There may be tax consequences of foreclosure; seek advice from a qualified tax professional about how this applies.

This information is a general guide and not intended as legal advice.

The above does not apply to contract for deed cancellations or mobile home repossessions.

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Eviction after Redemption Period – Homeowner FAQ

When does my redemption period end?
In most cases the redemption period in Minnesota ends six months from the date of the Sheriff’s Sale. The redemption period is reduced to five weeks if you postponed the Sheriff’s Sale. It may also be reduced to five weeks if the mortgage company determined the property was abandoned. There are other exceptions as well, so it is important you read and keep the paperwork you received during the foreclosure process. Additional information about your rights during the redemption period is available on the Minnesota Homeownership Center’s website.

What happens if I don’t move out?
The new owner of the property, usually the bank, can start the eviction process with the courts. Sometimes the process is referred to as an Unlawful Detainer (UD).

Can I be evicted in the winter?
Yes. Evictions can take place any time of the year, there is no cold-weather exception in Minnesota.

How does the eviction process work?
You will be served with eviction paperwork from the county court telling you to appear at a hearing within 7-14 days.

What happens at an eviction hearing?
If you appear you will have an opportunity to tell your side of the story. You may ask the judge for up to seven days to move out by explaining your reason for needing more time. Examples of reasons a judge may grant more than 24 hours include: dependent children, senior citizens or persons with disabilities in the home. If the judge determines you are in the house illegally you will be ordered to leave, usually within 24 hours. If you lose or don’t appear in court the judge will give the new owner an order called a Writ. The sheriff will post the Writ on your door, telling you to leave within 24 hours.

What if I don’t move by the date specified at the eviction hearing?
The new owner can show up with the Sheriff to supervise the gathering of your belongings, change the locks and store your belongings. You will only have a short amount of time; can be as little as one hour. You will be charged for the moving and storage of the items.

What happens to my belongings?
If you do not take your belongings by the date on the Writ, the Sheriff will come back with the owner to supervise the storage method of your belongings. The new owner must make documented attempts to notify you about where your belongings are and give a date by which you must retrieve them. If you do not retrieve your belongings within the time frame stated they may be sold or discarded. The rules regarding storage (onsite or offsite), time frames, and any costs will vary so carefully read any notices received.

What shows up on my record if I am evicted?
Eviction cases are public record and can stay on your record up to seven years. An eviction can make it more difficult to find alternative housing so avoid if possible.

This information is provided as a service of the Minnesota Homeownership Center and is not legal advice. Consult a competent legal professional for advice specific to your situation.

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