

# Forbearance vs. Foreclosure and Your Title Report

By: Tracy Leonard, Lawyers Title

In times of financial hardship it may be difficult to make a mortgage payment. Property owners could be looking at forbearance or foreclosure.

## WHAT IS A FORBEARANCE?

Forbearance is an agreement between the property owner and the lender to postpone the mortgage payments for a set time period. At the end of the agreed time period the property owner would be required to continue making the normal mortgage payment and repay the balance owed, including interest and fees that accrued during the forbearance time.

Property owners who wish to get a forbearance need to contact their lender. The lender will provide the steps and request necessary documentation to enter into a forbearance agreement.

## WHAT IS FORECLOSURE?

Foreclosure is a legal process by which the lender takes ownership of the encumbered property. When the property owner is unable to make the monthly mortgage payment and enters into default, they forfeit rights to the encumbered property. The foreclosure process varies from state to state, but generally speaking, 30 to 45 days after a missed payment the lender will send the property owner(s) a letter outlining the time period to repay the missed payment(s) and reinstate the loan to good standing. At 90 days after the first missed payment the lender will record of public record a Notice of Default. At 120 days after the missed payment the lender will record of public record a Notice of Sale stating the date and time the property will be sold at auction or default ownership to the lender.

When you enter into a real estate transaction whether it be selling, buying, or refinancing a property, the title company will perform a search of the public record for items affecting title to the property.

In the case of foreclosure, the title company will have knowledge of the documents recorded of public record and include that information in the title report. The title report will indicate the property is in foreclosure and there is a limited time to close the transaction and pay the lender to stop the foreclosure. Knowledge of the pending foreclosure helps all parties ensure the transaction will go as smooth as possible.

In the case of forbearance, there may not be any documents recorded of public record to indicate the property owner entered into a forbearance agreement. Without knowledge of the forbearance, the closing could be hindered if the payoff comes in higher than expected because it includes the payments that were not made during the agreement period, plus interest and fees associated with the agreement. To ensure that there are no surprises at closing, it is imperative that realtors, escrow/closing officers, and lenders in pending transactions ask the right questions to determine if the property owner has entered into a forbearance agreement with their current lender.

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