



SHORTSALE:
A WAY OUT IN A
FALTERING ECONOMY

Florida Edition

WARNING: Actually reading this guide will result in less stress for you and your family, as well as for your attorney. It will save you many hours of needless questions and concerns.

Adrian R. Lynn, Esq.

Adrian Lynn & Associates, P.A. has been in Fort Myers since 2003. From the very beginning, we have offered counseling regarding short sales, mortgage foreclosures, real estate, and bankruptcy.

Adrian Lynn founded Adrian Lynn & Associates, P.A. in 2003. Prior to that, he lived and worked in Germany and the Netherlands, where he also obtained his LL.M. (Masters of Law) in International Taxation. He is a graduate of the University of Florida College of Law in Gainesville, Florida, and the University of South Florida in Tampa, Florida. He graduated from high school in Estero, FL.

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Chapter 1

Foreclosure

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What Is Foreclosure?

Buying a piece of real estate is a gratifying experience. It is essentially the American Dream. It is almost always a great investment and if it is a house, it can be a home. At the real estate closing, the seller of real estate will sign over a DEED to the new owners of the real estate. Most Americans, regardless of socioeconomic status, get a loan from a bank to buy real estate. This loan is called a MORTGAGE LOAN. In order for the bank to feel safe about making a loan, the bank will want a SECURED INTEREST in the real property. This will allow the bank to repossess the house if the mortgage payments are not made. Often, only one buyer is required to sign the MORTGAGE NOTE or PROMISSORY NOTE, which legally binds the signor to pay a certain amount of money to the bank. The person(s) who signed the note is called the OBLIGOR. Even though not all owners are generally required to sign the note, the bank will require all the new owners of the real estate to sign a MORTGAGE AGREEMENT. With this agreement, the new owners certify that it is acceptable for the bank to record the legally binding agreement against the real estate. This is done so that if the bank ever needs to exercise its legal rights, the new owners who did not sign the NOTE cannot object to the bank taking the property back.

Often, a husband and wife will buy a house and only one of the two signs the MORTGAGE NOTE. Regardless, both generally sign the MORTGAGE AGREEMENT.

A foreclosure, properly known as a mortgage foreclosure, it is a process by which a bank reacquires title to real property (real estate). The bank usually does not want to initiate a foreclosure action. It does this only as a last resort and usually only after 3-5 months of nonpayment by the obligor(s). The process can be intimidating because all the owners of the real estate will be served a thick foreclosure packet by the sheriff or a representative of the sheriff. This packet is likely include the following:

- SUMMONS: a legal description of the case, case number, the property, and the court where the case will be, and the judge assigned to the case
- LIS PENDENS: a legal document which ties up the title/deed to your property and lets the public know that there is a problem with the real estate.
- COMPLAINT: this spells out in legal terms what went wrong with the property, when the OBLIGOR stopped paying and that the bank wants to and has the right to take the title back and repossess the property

Most often, the entire mortgage agreement and mortgage note will also be attached to the paperwork. Please note, ALL OWNERS will get a copy of the paperwork, and will be named as DEFENDANTS. The reason is because the bank wants the DEED back and the bank has to take the property away from all the owners (defendants).

However, this does not mean, as most people mistakenly believe, that all the owners' credit reports will be affected. Only the OBLIGOR'S credit is on the line; after all, ONLY he signed a NOTE promising to pay money back to the bank.

Defendants have twenty (20) days to respond to the mortgage foreclosure paperwork. If they do not, then the bank can enter a DEFAULT, which essentially means that the defendants admit all the allegations of the complaint. Not answering the complaint is not recommended, especially for the obligor(s). Adrian Lynn & Associates, P.A. can help you file an answer with the court to preserve your legal rights.

Eventually, the bank's attorney will file a **MOTION FOR SUMMARY JUDGMENT**. The court will then set a hearing in front of the judge at which the bank will ask the court to set a **SALE DATE**. Most of the time, no defendants show up at these hearings. If a defendant does show up, he can generally ask the court for some extra time before the real estate is sold, sometimes as much as 120 days. If no defendant shows up, then the property will be set for sale about 25-30 days after the hearing. If you have an attorney, your attorney can attend the hearing on your behalf.

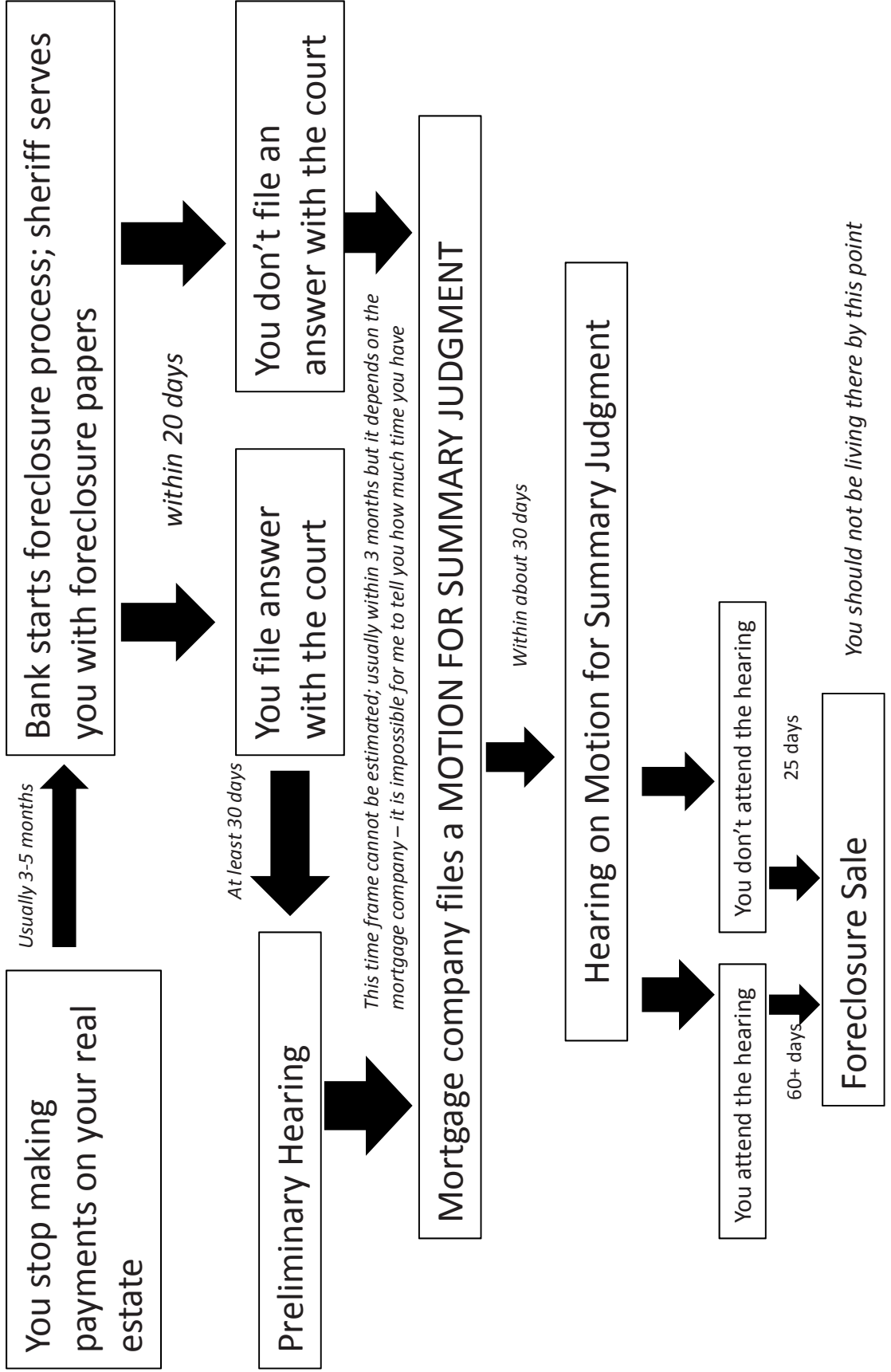
The **FORECLOSURE SALE** is an auction conducted by the county clerk of courts and lasts about 5 minutes. Either an investor or the bank itself will buy the property at the auction. To protect its interests, the bank may bid the price up to the amount of the payoff on the mortgage. Other times, there are no interested buyers so the bank may be able to buy the real estate back for as little as \$100. Nonetheless, this is a legal formality for the foreclosure process and does not reduce the amount that the obligor owes the bank if the bank buys the property.

The house should be vacated by the time of the foreclosure sale. Essentially, only bankruptcy can stop a mortgage foreclosure sale. Bankruptcy, per the U.S. Constitution is handled by the federal courts. Mortgage foreclosure will be handled in the state court. Bankruptcy can usually extend a person's time in the house by 3-5 months or more.

Once the bank has the property back, it will hire a real estate agent to list the property and then sell the property. Then it will sell the property for what the property is worth. The property might be worth less than the mortgage amount. If this occurs, the bank still has a right to sue any of the **OBLIGORS** for the difference. If the bank is successful, it will get a **DEFICIENCY JUDGMENT** against the **OBLIGOR**. The bank can then garnish (take) part of the **OBLIGOR'S** wages, bank accounts and other property.

That, in a nutshell, is the foreclosure process.

Foreclosure Timeline



Alternatives To Foreclosure

There are several alternatives to the foreclosure process; most people do this in order to avoid a deficiency judgment.

SHORT SALE: The obligor/owners put the real estate on the market with a qualified real estate agent; the agent will sell the property for what it is worth. The bank can agree to a few options for the difference: issue an IRS 1099, which means that the obligor will pay just the tax on the difference¹; require the obligor to sign a promissory note for the difference; or have the obligor pay the difference at closing.

LOAN MODIFICATION: The obligor/owners want to keep the real estate and work with the bank to modify the mortgage in order to get a lower payment, a lower interest rate or to decrease the principle.

DEED IN LIEU OF: This is properly known as a deed in lieu of foreclosure. This means that the bank agrees to take the property back, without seeking a deficiency judgment. It is like a voluntary repossession of a vehicle.

BANKRUPTCY: Not technically an alternative to foreclosure, bankruptcy can be a way of either preventing a foreclosure² or at least avoiding liability from a foreclosure; bankruptcy can also create delays in the actual foreclosure process and allow homeowners to stay in their homes for extended periods of time

1 Certain exceptions apply.

2 Applies only where the debtor is actually paying for the mortgage through the bankruptcy.

Chapter 2

Short Sales

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What Is A Short Sale?

Since the economic collapse of the late 2000s, America has suffered from a falling stock market, decreasing home prices and the loss of jobs.

In states such as Florida, Nevada, and California, thousands have vacated their home and let the bank foreclose. Even though our government gladly handed big banks billions of dollars, homeowners were not given such a benefit. As discussed previously, banks can and DO go after people for the difference between what is owed and the value of the home.

Short Sale offers the homeowner a great bargain. The homeowner can sell the property for LESS than the amount owed on the mortgage, and in most situations, the bank will forgive the difference. There is a caveat to this, of course. Banks want to see that the homeowner is financial unable to pay for the home and that the homeowner will NOT be paying for the property.

Many clients come to Adrian Lynn & Associates, P.A. wanting to save their precious "credit score" even though it is backbreaking to maintain. Unfortunately, that mind-set will not work with short sales. The homeowner must stop making payments on the home and face a somewhat lower credit score. This is not a reason to despair, however. Credit scores are fluid and change daily. Having rid oneself of a house payment is more relief than a great credit score could ever be.

Adrian Lynn & Associates, P.A. can handle all aspects of the shortsale process if you so choose. We can get a realtor to list the property and find a buyer. It is important to choose a realtor that you trust and with experience. While you are free to choose any realtor, the realtors we work with have a strong working relationship with our firm and we make sure that your property is prioritized.

Lastly, the next few pages detail some of the required documents for a shortsale. It is VERY IMPORTANT that you continually and regularly send us updated documents. Banks often ask for updated documents and if we do not have them, we cannot move your case forward quickly and efficiently.

Short Sale Document Requirements

Our office will need copies of the following documents:

1. Listing agreement with a realtor (we can provide this service)
2. Purchase & Sale Contract (we can provide this service)
3. Two most recent bank statements (60 days)
4. Last two years tax returns
5. Most recent paystubs (2 months)
6. Financial statement
7. Hardship Letter



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BANKRUPTCY
WILLS & TRUSTS
PERSONAL INJURY
REAL ESTATE
BUSINESS PLANNING
INTERNATIONAL TAXATION

Information Release Authorization

I/We, the undersigned, being the owners of the real property below, do authorize the my bank and/or mortgage company, and all their assigns and/or agents to release to Adrian Lynn & Associates, P.A., Carla Masse/Sun Realty and _____

_____ any and all of that information pertaining to my/our Promissory Note and Deed to Secure Debt, including but not limited to an itemized breakdown of the total amount of monies necessary to bring the note current, the payoff balance, and any other information requested by Adrian Lynn & Associates, P.A., Carla Masse/Sun Realty and _____

_____ that might otherwise be protected through the Right to Financial Privacy Act of 1978, Fair Credit Reporting Act, or any other Federal, State, Local or Lender regulations. It is understood that a photocopy of this form will also serve as authorization.

Mortgagor name(s): _____

Property Address: _____

County: Lee Collier Charlotte Hendry

Signature

Date

Signature

Date

Social Security Nos.: _____

Loan Nos. _____

BORROWER'S FINANCIAL STATEMENT

		Servicer Loan Number
Property Address		
Is your home listed for sale? Yes <input type="checkbox"/> No <input type="checkbox"/>	Agent's Name:	Agent's Phone Number:
Borrower Name		Social Security Number
Mailing Address (#, Street, Apt.)		
Mailing Address (City, State, Postal Code)		
Total Number of persons living at this address:		Number of dependents at this address:
Home Phone:		Work Phone:
Co-Borrower Name		Social Security Number
Mailing Address (#, Street, Apt.)		
Mailing Address (City, State, Postal Code)		
Total Number of persons living at this address:		Number of dependents at this address:
Home Phone:		Work Phone:
Have you contacted any credit counseling services? Yes <input type="checkbox"/> No <input type="checkbox"/>		Number of cars you own?

INCOME

DESCRIPTION	MONTHLY INCOME Borrower	MONTHLY INCOME Co-Borrower	TOTAL
Gross Salary/Wages			
Overtime Pay			
Commissions			
Bonuses			
Interest/Dividends			
Alimony/Child Support			
Rental Property			
Other income:			
Other income:			
Taxes - FICA			
Taxes - Federal Income Tax			
Taxes - State Income Tax			
Taxes - Other			
Other Deductions			
NET INCOME			

MONTHLY EXPENSES ONLY

DESCRIPTION	MONTHLY PAYMENT	BALANCE DUE	# MONTHS DELINQUENT
Mortgage			
Alimony/Child Support			
Child/Dependent Care			
Other mortgage(s)			
Personal loan(s)			
Automobile Loans/Leases			
Automobile Loans/Leases			
Installment			
Other loans			
VISA			
MasterCard			
Other credit cards			
Electric/Heat			
Telephone			
Water/Sewage			
Cable TV/Internet			
HOA Fees			
Automobile Insurance			
Health/Life Insurance			
Charity			
Club/Union Dues			
Medical Expenses			
Gasoline - Car			
Food			
Monthly Parking			
New Clothes/Shoes			
Laundry/Dry Cleaning			
Rent			
Other			
Other			
Other			
Other			
TOTAL			

ASSETS

ASSET TYPE	ESTIMATED VALUE	DEBT OWED IN CONNECTION WITH THIS ASSET			
			1 st Mortgage	2 nd Mortgage	Equity Line
Home Property Address: _____					
		Current Balance			
		Lender Name & Address			
		Acct. #			

Other Real Estate: Property Address: _____			1 st Mortgage	2 nd Mortgage	Equity Line
		Current Balance			
		Lender Name & Address			
		Acct. #			

Asset Type	Estimated Value	Acct. #	Monthly Payment (if any)	Balance Due (if any)
Checking Accounts				
Savings/Money Market				
IRA/Keogh Accounts				
401(k)/ESOP Accounts				
Stocks/Bonds/CD's				
Other Investments				

EMPLOYMENT HISTORY

Borrower	Borrower
Are you currently employed? Yes <input type="checkbox"/> No <input type="checkbox"/> ----> Unemployment?	Are you currently employed? Yes <input type="checkbox"/> No <input type="checkbox"/> ----> Unemployment?
Present or last employer:	Present or last employer:
Address:	Address:
City: State: Zip:	City: State: Zip:
Position Title: Self? Yes <input type="checkbox"/> No <input type="checkbox"/>	Position Title: Self? Yes <input type="checkbox"/> No <input type="checkbox"/>
Type of Business: Business Phone:	Type of Business: Business Phone:
Years on job: Years in Line of Work:	Years on job: Years in Line of Work:

Please attach a hardship letter and describe, in your own words, all of the events which have occurred which cause you to be unable to honor your mortgage obligation. Be specific and include comments regarding what you have done to try to solve your problem. Also comment on your ideas as to a possible solution to your problem now. Please indicate the amount of available funds you may have to contribute to the lender as a down payment.

Attach to this disclosure any additional documentation or correspondence, which you feel will help the recipient better understand your situation.

If you are working with a third party, please attach an authorization form or letter signed by you allowing us to communicate with them directly.

Sample Hardship Letter

This is a sample only. Please write your own letter on your own paper.

I am writing this letter because my financial position has recently deteriorated to the point that I cannot afford to make the payments on my real estate. If you will examine all the evidence, it clearly demonstrates this.

I have lost my job/recently divorced/had medical problem that have contributed to my financial problems. I would like to sell my house to avoid the trouble of a drawn-out foreclosure process.

Sincerely,

Distressed Homeowner

Chapter 3

Introduction to Bankruptcy

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What Is Bankruptcy?

Bankruptcy law is a fairly complicated subject, always changing depending on the nation's political climate. In general, however, bankruptcy allows one to get a fresh start from overwhelming and frustrating amounts of debt. A person filing for bankruptcy is known as a **DEBTOR**.

The general public may mistakenly think that a debtor avoids paying debts in a malicious and deceitful way. In the vast majority of cases, debtors did not have an intention to avoid paying a debt back; making an argument to the contrary is akin to arguing that creditors made loans knowing that the debtors could not be paid back.

Many people also feel that bankruptcy is immoral or that God would disagree with bankruptcy; sadly, these people are ignorant of the origins of bankruptcy in the Bible. Specifically, the Bible says the following:

At the end of every seven years you must cancel debts. This is how it is to be done: Every creditor shall cancel the loan he has made to his fellow Israelite. He shall not require payment from his fellow Israelite or brother, because the LORD's time for canceling debts has been proclaimed.³

Bankruptcy helps many people get their lives back, out from underneath mountains of unsustainable debt. A debtor who files bankruptcy will be restricted in the amount of assets that he keeps. Federal and state law dictates these restrictions known as **EXEMPTIONS**.

The basis of bankruptcy law is the following: allow a debtor to start fresh as long as he played fair, does not have too many assets, and does not earn too much income.

With guidance from Adrian Lynn & Associates, P.A., you will decide whether bankruptcy can help you get a fresh start.

There are two chapters of bankruptcy which apply to most consumers: 7 and 13. Chapter 7 is also called a liquidation bankruptcy. Chapter 7 debtors generally have lower than average incomes, a small number of assets and have not done any prohibited transactions, such as transferring assets to hide them from creditors or paying money back to friends or family members. Chapter 13 debtors generally have higher than average incomes, a larger number of assets or have done one of the above prohibited transactions, all of which requires Chapter 13 debtors to pay a certain amount of money back.

➔ It is important that the documents you sign are complete and truthful to the best of your knowledge.

3 Deuteronomy 15:1-2, New International Version Bible.

Glossary

complaint: a court document which spells out what one party is suing the other for

federal court: a court operated by the federal government which handles many types of cases, including bankruptcy cases

foreclosure: a situation whereby a creditor takes back real property upon which it has a secured interest

lis pendens: a notice that creates a cloud on the title; usually to signify that a mortgage foreclosure is in process

mortgage: an agreement to place a lien on real estate in exchange for a loan

mortgagee: typically the bank/mortgage company to whom an owner of real estate owes money

mortgagor: the owner of real property that owes someone money for a loan on the property

motion for summary judgment: filed by a party to a lawsuit whereby the party believes the court can rule without trial because the most important facts of the case are settled already

motion: a court document filed by any party to a court case asking the court to do something

order: a decision made by a court regarding a motion

pay advices: documents which show how much a debtor is paid by working or money received from pensions/government

paystubs: documents which show how much a debtor is paid by working

secured debt: debt for which there is collateral (an asset) backing the loan

short sale: an agreement made with a mortgage company/bank to sell real estate for less than is owed

state court: a court operated by the state which handles many types of cases, including mortgage foreclosure cases

summons: the initial part of a lawsuit whereby the Defendant is notified

unsecured debt: debt for which there is no collateral