

Law Help New Mexico

Advancing Fairness and Justice for All

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VA Home Loans

What happens when a veteran with a VA loan falls behind on house payments?

If you have received a Veteran's Home Loan—either directly from the US Department of Veterans Affairs (VA) or through a private VA lender—and have fallen behind on your payments, you have some protections under the law that can help you avoid foreclosure. Very few VA loans are made directly by the federal government, generally for property on tribal land. The government has the same duty to help veterans avoid foreclosure that private lenders have. If your VA loan is with a private lender, contact the lender as soon as you realize that you will not be able to make your payments. The sooner you start speaking with it about your financial troubles, the better. Your lender will be less likely to help if you have fallen too far behind on your payment.

Although many private lenders can choose to offer you a range of options to avoid foreclosure, the government requires that private lenders offer these options:

Forbearance: The lender allows you not to make loan payments for a specified period so that you can get your finances in order and begin making regular payments again. This option is perhaps the most commonly available. It makes the most sense for someone who has had a financial emergency that will end fairly soon. The loan will probably keep accruing interest during the forbearance. That means the loan payments may be slightly higher after the forbearance period is over. You are more likely to be given a period of forbearance if you are not too far behind on your payments. It must be realistic for you to be able to catch up with payments when the forbearance is over.

Reinstatement: This option allows you to get caught up on late payments by promising your lender a lump sum payment in the near future. Reinstatement is usually granted if you can show that you will soon be able to resume regular monthly payments—say after a short-term financial hardship.

Payments-in-Lieu: In some rare cases, your lender may accept small payments in order to avoid foreclosure. The lender wants to avoid foreclosure almost as much as you do! So, if possible, be willing to propose this option for paying back your late payments when you contact the lender.

Loan Modification: The lenders lower the interest rate and/or extends the term of the loan, so you have lower monthly payments. This option is best if you are experiencing long-term hardship. Modification is not a common option, and both your lender and the VA have to agree to the modified terms. You will also be required to pay for the costs and fees associated with modification. To qualify for modification, you will need to be current (or have a plan for paying) your state and local property taxes. Lastly, if you have any other loans on your home, those lenders must also agree to be subordinate to the first VA loan/mortgage.

Refunding: This means that the VA will buy your loan from your private lender. When the VA does this, the total amount of your late payments is added to the original loan amount; you will be expected to pay interest on this new amount. Your new loan will be non-transferable unless the VA approves it. This is a more common option than modification because fewer people are involved in approving it. Requests can take at least 30 days to process and must be completed before your lender has initiated foreclosure.

Deed-in-Lieu of Foreclosure: if you are trying to sell your home and can not make your mortgage payments, this option might be available to you. In order to get a deed-in-lieu, your house must have been on the market (at a fair market value) for at least 90 days. By signing a deed-in-lieu, you give up all rights to the property, and it will be given to your lender. The benefit of this option is that it protects your credit from the negative effects of a foreclosure, and most if not all of your debt from the loan will be erased if your debt is less than the market value of the home.

Does a private lender have the right not to offer me any of these options to save my home?

A private lender can decide which options it wants to offer you. The law requires the lender to offer “all reasonable forbearance” before starting the foreclosure process. This means that your lender has to at least try to help you avoid foreclosure.

If you feel that your lender is not willing to work with you, contact the Loan Guarantee Division (LGD) of your local VA office to file a formal complaint.

Here is the contact info for New Mexico’s LGD office:

Department of Veterans Affairs VA Regional Loan Center

3333 N. Central Avenue

Phoenix, AZ 85012-2402

Phone: 1-888-869-0194

What procedure does the lender have to follow if it does foreclose on my home?

Your lender cannot start foreclosure unless you are at least three months behind on your payments. The lender also must contact the VA at least 30 days before filing court papers to foreclose on the property.

If the lender does not follow these rules, contact the VA LGD office as soon as possible. In addition, if foreclosure seems unavoidable, you should get legal advice about other rights you may have that may prevent the foreclosure.

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