

City of Clearwater
Economic Development & Housing Department
Affordable Housing Loan Foreclosure and Loan Foreclosure Alternative Policy
June 1, 2017

The City of Clearwater, through its affordable housing and community development programs, provides a variety of loans to very-low, low and moderate income households and to qualifying businesses. The funds for these loans come from local, state and federal affordable housing and community/economic development grant programs. From time to time, loans issued by the city fall into default status. This policy sets forth the guidelines of an analysis of whether city staff will seek permission from Clearwater City Council to take legal measures to initiate a foreclosure. Prior to initiating a foreclosure, staff will evaluate all reasonably available alternative options to foreclosure.

Loan Foreclosure Alternatives

Change of Ownership (typically following the death of a borrower)

Under the city's loan programs, the full balance of a loan is due when the borrower no longer resides in the mortgaged home. With written approval from the Director of the Economic Development & Housing Department, the loan may be assumed by a new owner and/or restructured at the city's discretion if the following requirements are met:

- The new owner obtains title to the home and conditions of title are satisfactory to the city.
- The new owner meets income-qualifying criteria as determined by the applicable loan program requirements.
- The new owner will occupy the home as his/her principal address.

If the new homeowner fails to meet all of the aforementioned conditions, but is willing to make payments on the loan, the city will convert the loan to a low-interest loan under the following conditions provided the loan was not funded with HOME program funds:

- The proposed loan conversion is allowable under the applicable loan program.
- City staff and the new homeowner agree to modified loan terms.
- The new interest rate shall not be more than three percent (3%).
- The loan balance will be due upon the sale of the home.

If staff and the new homeowner are unable to agree on loan payment terms and the new owner of the property is unable or unwilling to pay the balance of the loan in full, the city may seek a deed in lieu of foreclosure; otherwise, city staff will seek City Council approval to initiate foreclosure.

If the loan was funded with HOME program funds and the new homeowner does not income-qualify, the city shall recapture the loan balance per HOME program requirements. Failure to recapture funds will be cause for staff to seek City Council approval to initiate the foreclosure process. See attached flow chart titled "Change in Ownership – Loan Balance Due" showing the process staff will follow under a Change in Ownership situation.

Nonpayment/Noncompliance

If a monetary or non-monetary delinquency or default occurs, city staff will notify the borrower in writing of the delinquency. The notice will also inform the borrower of housing counseling programs that may be available to the borrower. Should borrower fail to respond, city staff will follow the following guidelines:

- Borrower will have thirty (30) days to bring the account current, supply the requested information and/or contact city staff.
- If borrower fails to respond within thirty (30) days of the date of the first notice, staff will send a second notice.
- If borrower fails to respond within thirty (30) days of the date of the second notice, staff will send a third notice.
- If borrower fails to respond to the third notice within thirty (30) days, the borrower's loan will be placed in default status and will accrue charges per the loan documents.
- If borrower responds during the notice period and represents a valid hardship preventing borrower from making payments, city staff will evaluate borrower's circumstances and may grant up to a six-month (6-month) deferral. If the deferral is granted, borrower's loan will be placed in a "Suspense/Deferred" status and will not accrue late fees during the deferral period.

Financial hardships may include but are not limited to the following:

- Loss of full-time job or substantial loss of income, through no fault of their own
- Death of spouse or partner that substantially reduces household income
- Call to duty – U.S. Armed Forces
- Loss of value where repayment of the city loan will result in a negative equity situation
- Substantial decrease in household income
- Temporary or permanent disability that reduces income
- Recent divorce that reduces income

For those loans that have payments and that are in a Suspense/Deferred status, the City will reevaluate the financial situation of the borrower in six (6) months from the date that the loan was put into Suspense/Deferred status to determine if the borrower is in a position to resume payments. If the borrower is still unable to resume payments after six (6) months, the City will reevaluate the borrower once again at one (1) year from the date that the loan was put in Suspense/Deferred status. If after one (1) year, the borrower is still unable to resume payments, and if a hardship exists that is preventing the borrower from repaying the loan or resuming payments, the City, at its sole discretion, may grant a longer deferment (up to six months). City staff will monitor borrower's circumstances during the deferment period to confirm that a hardship continues to exist. The city may consider requiring lower payments or converting a payment-type loan into a deferred payment-type loan whereby payment is deferred until such time as the borrower's financial situation improves or no longer resides at the mortgaged property. Regardless of borrower's hardship, the full balance of the loan is due upon sale of the home or if borrower no longer resides at the home (refer to "Change of Ownership" section herein). See attached flow chart titled "Loan Default" showing the process staff will follow under a Nonpayment/Noncompliance situation.

Deed in Lieu of Foreclosure

If city staff and borrower are unable to agree to a workout plan, then city staff will determine whether a deed in lieu of foreclosure is a viable option. A staff analysis will determine the financial feasibility and the condition of the home. If staff determines that a deed in lieu of foreclosure is an acceptable alternative to foreclosure, and borrower is amenable, staff will seek approval from City Council to accept a deed whereby the city takes title to the property and borrower's loan is forgiven.

Foreclosure

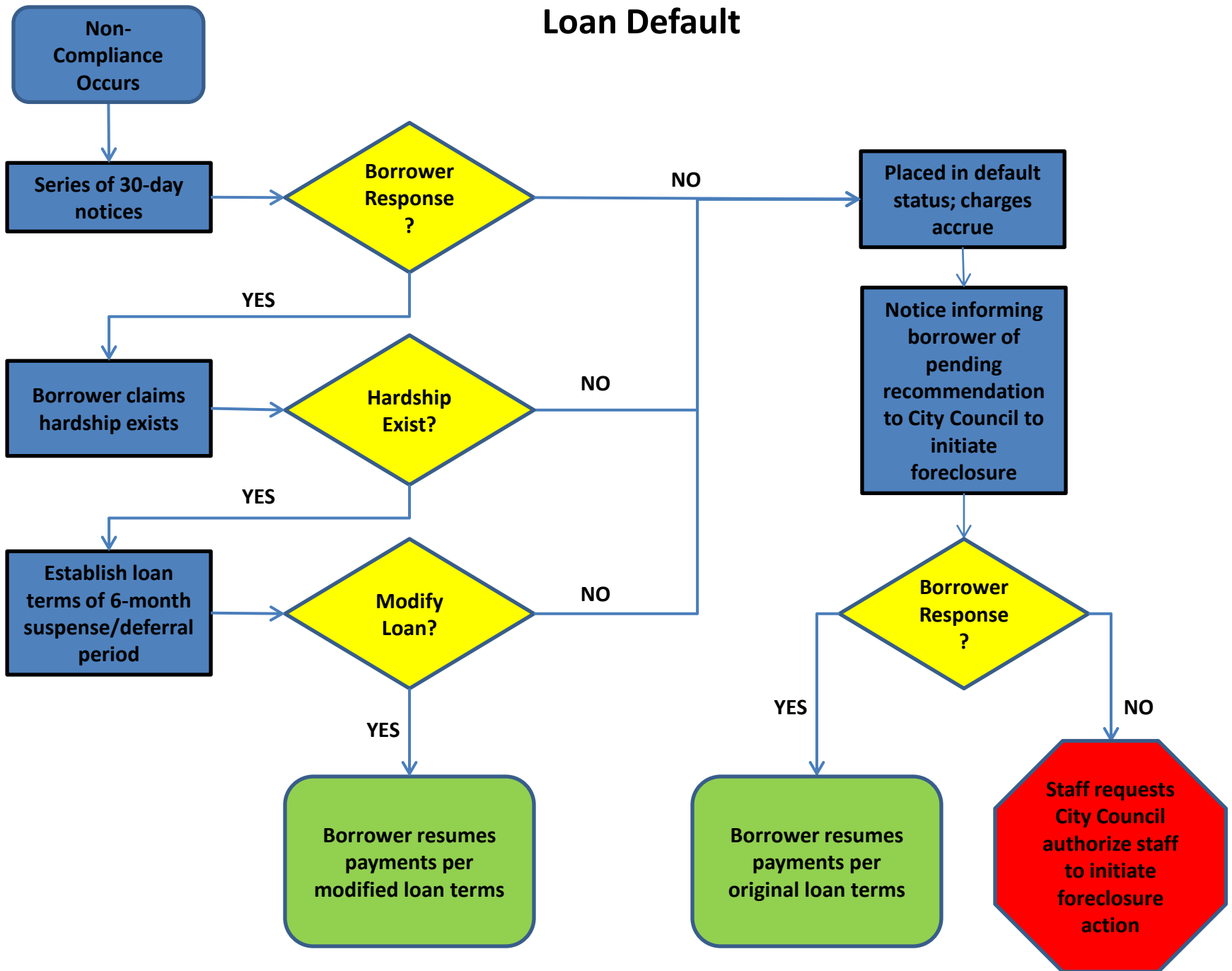
Foreclosure may occur if the City and borrower (or heir(s)) are unable to come to an agreeable workout plan. Foreclosure is the legal means the City of Clearwater may use to recover the balance of a loan from a borrower who has stopped making payments on a loan, by forcing the sale of the asset used as

the collateral for the loan. When this happens, a person must move out of the mortgaged property. If a property is worth less than the total amount owed on the mortgage loan, the City may seek a Deficiency Judgment which may result in the borrower owing the lender an additional debt. Foreclosure will serve as the last resort the City will use when pursuing recovery of loans, delinquent payments and/or required documentation (see Loan Foreclosure Alternative section herein).

Housing Division staff will conduct a comprehensive analysis of funding source rules & regulations, financial and other repercussions of a potential foreclosure, and a borrower's willingness and ability to pay back the loan. For properties encumbered by a Land Use Restriction Agreement (LURA), staff will consult with the City Attorney's Office to determine potential consequences arising from the LURA if a foreclosure action is taken. Such consequences must be acceptable to staff and allowable under the funding program used to finance the subject loan. Following the staff analysis, the Director of the Economic Development and Housing Department will determine whether to submit a staff recommendation to City Council to initiate a foreclosure. Initiating the foreclosure process requires City Council approval at a duly noticed City Council meeting. If staff determines that alternatives to foreclosure are not adequate and pursuing foreclosure is in the city's best interest, staff will inform the borrower of the Council Meeting at which staff will seek City Council approval to initiate a foreclosure action.

In certain situations, a property may have been foreclosed on without the City of Clearwater, as a debtor, being notified of the foreclosure action. When the City is informed of a foreclosure that has occurred, the Housing Division will notify the City Attorney's Office and request that they obtain a copy of the Final Summary Judgment. The Legal Department will also confirm that the title to the property has been transferred and that it is no longer in the original borrower's name. If the property is in the original borrower's name then the City will pursue recovery. If the City has verified, via Final Summary Judgment and Certificate of Title, that the property has been transferred and is not in the borrower's name, the City will evaluate legal options on a case-by-case basis.

Loan Default



Change in Ownership – Loan Balance Due

