Faced with unaffordable mortgage payments?

Maybe an attorney would be a better call than your lender

By Gail Liberman and Alan Lavine
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PALM BEACH GARDENS, Fla. (MarketWatch) -- Are you among the adjustable-rate mortgage borrowers getting notice of a high unaffordable loan payment? Although lenders, regulators and credit counselors urge you to contact your lender, a phone call to an attorney in your state might better clarify options.

If it's a payment you can't afford, you may have an action in court based on state and federal predatory lending laws, believes Philadelphia attorney Brian Mildenberg, who specializes in predatory-lending cases. A lawsuit, taken on contingency, could get your mortgage wiped out and attorney bills picked up by your lender. To find a predatory loan attorney in your state, go to www.naca.net.

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On the other hand, William Bronchick, Denver attorney and author of "Defensive Real Estate Investing," says the worst solution for your credit is a foreclosure. He says that, based on practical experience, talking to a lender often helps.

Whichever route you decide to take, don't panic.

Of all foreclosure filings, less than one-half actually get to point of a home being foreclosed upon, notes David Olson, co-founder of Wholesale Access, a Columbia, Md., research and consulting firm. But it could pay to start examining potential options before payments become late.

The Office of the Comptroller of the Currency, in a recent report, listed these steps that mortgage loan servicers may take with your loan:

- Increase the regular monthly payment -- often two to six months -- until a delinquency is repaid.
- Modify a loan via a written agreement between a borrower and servicer. This may include an interest-rate concession, reducing the outstanding principal balance, extending the loan term, establishing escrows for taxes and insurance or adding the delinquent interest amount to the unpaid principal balance.
- Agree to a reduced or suspended payment for a specific period, usually not to exceed three months. But you'll still owe the unpaid amount.
- Agree to accept the proceeds of a preforeclosure sale in satisfaction of the loan -- even though the amount you get may be less than what you owe.
- Take a deed in lieu of foreclosure. You voluntarily convey clear property title to the servicer in exchange for a discharge of the debt.

At least North Carolina, Massachusetts, and Delaware, according to the OCC, are considering a bond sale to establish a pool of funds to help refinance loans in danger of foreclosure into new fixed-rate loans. Ohio and Pennsylvania have rescue funds to refinance loans from areas hit by job losses from industrial dislocations. More states are expected to launch similar programs.

In Massachusetts, the attorney general was reported to be partnering with private lawyers to offer free legal services to homeowners facing foreclosures.

Which solution is best?

You'll need to evaluate your desire to stay in your home, whether you can sell your home, how each potential solution will affect your credit report and credit score, what state and federal resources might help and how much you can afford to pay.

Example: Don't agree to a temporarily increased monthly payment if you have no extra money to make regular payments. Do this, Mildenberg warns, and chances are you'll be asked to sign an agreement that also waives your legal rights. Meanwhile, in a couple of months, if you can't make the increased payment, you'll be sued and the agreement you signed might invoke stiff enforceable penalties, making a bad situation worse.

Prefer to stay in your home? A loan modification may be best because it provides a way to permanently change the terms of your loan for the better, he says. Other solutions may send you further into debt.

Before considering selling your home for less than you owe, evaluate whether bankruptcy is a better option. Often, Mildenberg says, state bankruptcy laws provide property exemptions. If you're married, your state's exemption may be doubled. By filing bankruptcy first, you might keep some equity yet still settle with your lender.

Watch your credit score

Beware that with many options in which you don't repay your full loan balance, your credit report and credit score could suffer. So be sure you negotiate that as part of any settlement -- regardless of the route you take.

Often lenders have discretion over how to and whether to report your arrangement on your credit report. Ask them to "strike or delete" the tradeline, or account, on your credit report, before signing any agreement, Mildenberg suggests. If you ultimately do need a loan again, lender underwriting guidelines may vary, so not all view a blemish the same way. You can check your credit report annually for free at www.annualcreditreport.com.

Ask for a waiver of any "deficiency" clauses. Otherwise, Mildenberg says, your home could go into foreclosure and you still could be liable for an unsatisfied debt.

If you're successful in getting any of your debt forgiven, call your accountant, Bronchick advises. Any discount on debt you might be lucky enough to get from your lender could be considered taxable income by the Internal Revenue Service.

Spouses Gail Liberman and Alan Lavine are syndicated columnists. Their latest book is "Quick Steps to Financial Stability" (Que/Penguin). You can contact them at www.moneycouple.com.