REAL ESTATE PROBLEMS

Many people are having trouble paying their mortgage, others see no point in struggling to pay a mortgage when they owe far more than the property is worth.

California has two methods of foreclosure:

1. Trustees Sale is the most common. A lender must wait 30 days after first contacting a Homeowner who has missed a payment. Then the lender can cause a Notice of Default to be recorded starting the foreclosure time period (a minimum of 3 months + 20 days) during which the Homeowner may avoid foreclosure by paying enough to bring the loan current and to pay the lender's foreclosure costs. The Lender may delay or postpone the foreclosure for their own reasons (too many properties in the lender owned inventory, slow market, etc); we have seen delays of up to 1 year, or even up to 3 years. After the Trustee's sale, the Purchaser/New Owner (who is usually the Lender if they bid in the full amount of their loan) will take possession of the Property, with the Sheriff's help if necessary. Sometimes the New Owner will offer to pay the Homeowner a "move out sum" as an incentive to move without damaging the premises. A foreclosing lender "wipes out" the interest of any interests in the property recorded after the interest of the foreclosing lender [for example, a foreclosing lst Mortgage would eliminate the 2nd Mortgage holder's lien]; but liens recorded prior to the foreclosing lender are not eliminated by the Trustee's sale. Proceeds from the sale are applied first to the payment of funds due to the foreclosing Lender, and any excess funds (usually none in today's market) would be applied to payment the liens recorded after the foreclosing lender. A Trustee's Sale eliminates any right that the foreclosing Lender may have had to pursue the Homeowner/Borrower for a deficiency judgment for any sums still due the Lender; making the loan a "non-recourse" loan by reason of the Trustee's Sale.

2. Judicial Foreclosure is less common because of the time and expense of court proceedings, and the existence of redemption rights which delay the Lender's resale of the property; but a Judicial Foreclosure does not eliminate a foreclosing Lender's right to pursue the Homeowner/Borrower for a deficiency judgment for sums still due on the loan after the application of any sale proceeds to the loan.

After a home is lost in foreclosure, a lender may be able to sue the Borrower for the balance owing on the loan. Loans which are not "purchase money loans obtained when the property was first purchased for the purpose of buying the property occupied by the Borrower" are "recourse loans", and if the Lender does not utilize a Trustee's Sale, that Lender will be able to pursue the Borrower and sue for the amount due.

Homeowners may attempt to avoid foreclosure by a number of methods:

1. Short Sale: Selling the property for less than is owned on it with the Lender's agreement to allow the sale to proceed by accepting less than full payment. Lenders usually require a Homeowner to present a "short sale" package setting forth their financial condition. Buyers often tire of waiting for a Lender to respond to a short sale offer, and unscrupulous Real Estate professionals often obtain an option to purchase from their own Seller, get it approved by the Lender, and then attempt to make a profit by selling to a Buyer for more. Homeowners should have all Short Sale listings, offers, and agreements reviewed by an attorney **before**

signing. Only Attorneys and licensed Real Estate professionals are entitled to request payment to negotiate a short sale with a lender. If the Homeowner has other assets, or is financially able to pay the mortgage payments, a Lender is unlikely to approve a short sale.

2. Loan Modification: An agreement with the Lender that changes the loan terms, usually by reducing interest for up to 5 years, extending the term of the loan to up to 40 years, adding arrears to the end of the loan term, or reducing the monthly payment. It is unlikely that a Lender would reduce the principal. Lenders who do not participate in loan modification programs must add 90 days to the usual Trustee's Sale foreclosure time line if the property was owner occupied when it went into default; and Lenders may not hold the Trustee's sale while the Lender has a loan modification proposal under consideration. The Lender will require written documentation of the Homeowner financial hardship, their inability to meet the current terms, and their ability to meet the modified terms. There are a number of governmental programs that offer financial incentives to Lenders to agree to loan modifications for owner occupied homes.

3. Deed In Lieu of Foreclosure: Lender accepts a Deed back from the Borrower as payment in full for the loan. Used very infrequently because of costs and necessity of Lender having to obtain new title search and insurance before accepting Deed.

4. Bankruptcy: Can "stop" and "stay" a foreclosure, and allow Borrower to pay off mortgage arrears over time. Contact our office for an appointment with our Bankruptcy attorney if you want to explore this option.

HUD approved counselors are available free of charge to assist troubled Homeowners evaluate their options and to prepare loan modification and/or short sale proposal packages. Two local agencies that provide HUD foreclosure avoidance counseling are:

Affordable Housing Centers of America, 395 Taylor St, #230 297-3053

Surepath Financial Solutions 1190 South Bascom Ave, #208 877-615-7873

Information on HUD foreclosure avoidance programs (all administered through participating lenders or loan servicers) can be viewed at makinghomesafordable.gov

CONSEQUENCES OF FORECLOSURE: When a Lender is unable to collect from a Borrower who is personally liable on a "recourse" loan, the amount that the Lender deems "discharged/or written off" is usually taxable "income" to the Borrower on which the Borrower must pay Federal and State income taxes. This is not true if the Borrower is "insolvent" at the time of the discharge, if the Borrower discharges the debt in Bankruptcy, or if the debt discharged was indebtedness incurred for the purchase or improvement of the Borrower's primary residence. Any sale, including a foreclosure sale and a short sale, are also taxable events. Homeowners should consult an attorney or a tax professional concerning tax effects.

Lenders will report delinquent payments to credit reporting agencies; this makes it harder to obtain credit. Fannie Mae and Freddie Mac now intend to deny new loans for 5 to 7 years to anyone who "walks away" from a property when they could have afforded to pay the mortgage.

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