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### WHAT IS A SHORT SALE?

For real estate owners who can no longer afford to keep current on their mortgage payments, a short sale is a possible alternative to foreclosure that can help preserve their credit and avoid bankruptcy.

A short sale is when a distressed owner finds a purchaser who is willing to buy a property for less than what is owed to the lender (bank) and the bank agrees to accept less than what is owed on the mortgage in full settlement of the seller's obligations to avoid having to foreclose on the property.

It may seem counterintuitive, but a lender may not want to foreclose on a property because the foreclosure process is expensive and time-consuming for the lender. In today's market with foreclosures on the rise, lenders may be willing to negotiate short sales with distressed sellers if the bank can net a certain percentage of what is owed.

Real estate agents may be enlisted by sellers who are at risk of being foreclosed to help market their properties and find potential purchasers. And just as in any sale, brokers are entitled to commissions on the short sales of properties. The lender may limit the brokers' commission (to 4 or 5%) in a short sale. The lender will also normally conduct an appraisal of the property to determine a minimum short sale price. The lender will want a seller's attorney to submit a contract of sale, estimated HUD-1 and mortgage pre-approval letter for the buyer before making a final determination about a proposed short sale. Based on the appraisal and HUD-1 the lender may deny a proposed short sale outright, approve a proposed short sale or make a counteroffer, which the buyer is able to accept or reject. (For example, see attached counteroffer letter from Option One Mortgage).

Finding a competent attorney with experience in negotiating short sales is important because there are many ramifications of short sales that people may not immediately consider. For example, in addition to paying off the lender, there are various closing costs which will need to be paid as part of the sale such as transfer taxes, real estate agent commissions, legal fees and any judgments and/or liens against the sellers. All of these closing costs need to be considered in determining the short sale price. Also, debt forgiveness by the lender may result in income tax for the short sale seller which would be tax at the seller's ordinary tax rate.

With foreclosure rates on the rise, adjustable rate mortgages scheduled to be re-set and property values on the decline, property owners may be able to avoid foreclosure by entering into such short sales. The James G. Dibbini & Associates, P.C. has experience in the negotiation of short sales and will strive to ensure that all parties work together toward a favorable settlement. For legal representation for your sellers or buyers in short sales or for more information regarding short sales in general, please do not hesitate to contact our office.

Disclaimer: The information provided is not intended to be legal advice, but merely conveys general information related to legal issues commonly encountered.

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