



owning a home is one of the biggest investments an individual will make during their lifetime. Unfortunately, in the past few years, residential real estate values have plummeted. Consequently, property owners have found themselves in financial distress, often owing more on their home than it is worth. To make things worse, many of these property owners have lost their jobs and can no longer make their mortgage payments.

When you find a client in that position, what should you tell them? The good news is that there are often many options available. The key is knowing what these options are, and how to counsel your client to make the most informed decision possible.

As you move through these waters, keep in mind that the lender is looking out for the lender and the real estate agent, if one is involved, may be looking out for themselves. No one is looking out for your client, except you.

The most commonly available options for your client include: (1) short sale, (2) deed in lieu of foreclosure, (3) foreclosure and (4) loan modification.



Options for Owners of Distressed Residential Real Estate

By Laurie Gengo

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SHORT SALE

What is a short sale? A short sale occurs when a house is sold for less than the amount that is owed on the mortgage(s). To have a successful short sale you will need the assistance of the lender, your client and a real estate broker who is familiar with short sales. You will also need considerable patience because getting a short sale approved can be a tedious, time consuming process. If more than one loan is involved, the second lender will also need to participate as well as the investor(s) on the loans. The lender(s) will need to agree to accept a reduced amount for the loan payoff(s). You will also want the lender(s) to agree to waive any deficiency (and agree not to sue your client for this deficiency). This should all be set out in a short sale pay-off agreement which should be reviewed by the attorney because real estate brokers are not permitted to render legal advice (unless they are also an attorney). If the lender(s) do not agree to waive any deficiencies, the short sale would be a costly option.

FORECLOSURES

The foreclosure process is a scary process. In many cases, your client may simply not be able to afford the mortgage payment any longer and want to let the lender take the property back.

There are very detailed statutory procedures that must be complied with in the foreclosure process. In North Carolina, most foreclosures are handled under a power of sale clause and are handled by the clerk of court. Clients need

to be aware that a lender may be able to seek a deficiency judgment after the foreclosure if the monies received from the sale, along with attorney's fees and costs, are not sufficient to cover the outstanding monies due.

DEED IN LIEU OF FORECLOSURE

Clients can potentially reduce their financial losses by getting their lender to take the property back voluntarily by using a deed in lieu of foreclosure. The lender receives the property back, but the client can avoid the foreclosure process and additional costs that go along with it.

LOAN MODIFICATION

If your client is financially able to keep his home, but simply cannot make the monthly payments, he may be able to get his lender to modify his loan. Loan modification arrangements vary greatly from lender to lender but essentially, the lender will often extend the loan term to reduce the monthly payment and/or change the interest rate. In the long run, the loan modification will add to the total cost of the home but if your client does not want to move, this may be a viable option.

CONCLUSION

Helping your clients with their distressed residential real estate matters is one of the most valuable services you can provide. By counseling your clients on the available options, you can make a stressful situation more manageable, and ensure your client makes the most informed, financially-viable solution possible.