

# Representing Distressed Home Owners – What Every Real Estate Broker Needs To Know

By: Johnson Majka, A Professional Law Corporation

- Topics we are going to discuss
  - Types Of Debt
  - Liability For Deficiency
  - Foreclosure Process
  - Remedies
    - Loan Modifications
    - Short Sales
    - Deed In-Lieu Of Foreclosure
    - Bankruptcy
- Types of Debt**
  - **Non-Recourse Loan:** Anti Deficiency Legislation protects borrower. Lender cannot pursue anything other than the collateral.
    - Purchase Money Loans
  - **Recourse Loan:** Lenders are allowed to go after the borrower for amounts that are owed – even after the lender has taken the collateral. If the borrower defaults on a recourse loan, the lender can continue to try and collect the amount owed, seek a deficiency judgment, and may be able to garnish the borrower’s wages.
    - Equity Lines and Second Mortgages where borrower took out cash.
- One Action Rule in California
  - Creditors can only select one action against a delinquent borrower.
  - Exceptions:
    - Fraud, Bad Faith Waste, etc.
- Types Of Foreclosure
- Judicial Foreclosure
- Trustee Sale
  - No Deficiency Judgment
    - Wipes out the security interest and the debt for the lender using this method
    - Extinguishes security interest but not the promissory note for junior lien holders. Junior lien holders, if they hold a recourse loan, may be able to continue to enforce their promissory note and obtain a deficiency judgment.
  - Process
    - Delinquent Borrower – 60 or more days
    - Notice Of Default - 90 days (or more)
    - Notice Of Trustee Sale – 3 weeks (or more)
- Loan Modification**
  - Two types
    - Making Home Affordable Modification Program (HAMP)
    - Traditional Loan Modification Programs
  - May allow client to stay in their home with more affordable payments
  - Not everyone will qualify
  - So far approximately 700,000 temporary modifications have been granted, but only 5% have been made permanent.
  - An understanding of the rules and metrics that the lenders are applying dramatically increases likelihood of it being approved.
  - Still may adversely affect borrower’s credit rating.

For more information contact Nancy Glass or Danielle Coffman at Cardinal Pacific Escrow (562) 493-9393