SHORT SALE: NO EASY SOLUTION

By: MIRKIN & GORDON, P.C.

Real property values have declined significantly over the past four years. As a result, many homes are 'under water' meaning that they are worth less than the principal balance of the mortgage(s) thereon. Homeowners who must sell their home – whether, for example, due to financial crisis, the need to move/relocate or a pending foreclosure - are unable to do so for an amount that will satisfy the existing mortgage(s).

If the homeowner does nothing, they may eventually be faced with a foreclosure auction that will, *inter alia*, generate additional costs and adversely affect his/her credit. An alternative to this scenario is to ask the lender to agree to a "short sale" of the property by which it agrees to accept less then the full principal balance due on the mortgage in full satisfaction thereof.

A short sale is beneficial to both the lender(s) and the homeowner. The lender is able to realize a particular amount on the sale of the house as opposed to the uncertain and usually lower amount realized at a foreclosure auction that will take months, if not years, later. They also avoid the cost and expense of a foreclosure action including having to pay the taxes, insure and maintain the property during the pendency thereof. Even worse, the lender may end up owning the property after auction because there were no bidders present that will extend the lender's financial commitment to that property. The homeowner benefits because they are not faced with the stigma of a public foreclosure auction or a deficiency judgment[1] thereafter and the resulting impact on their credit.

As good as it sounds, however, a short sale is not an easy proposition. It requires negotiating with the lender to establish an amount that it is willing to accept upon the sale of the property and requires that the homeowner provide copies of tax returns, financial statements and/or an appraisal report. This is an involved process that can take 30-60 days or more to accomplish. Unfortunately, this process cannot be started until there is a signed contract of sale between the homeowner and prospective purchaser. Therefore, all parties must fully cooperate and understand the process including the possibility that the lender may ultimately not agree to accept the price offered by the purchaser. A successful short sale requires a great deal of cooperation, coordination and patience.

One negative aspect of a short sale, however, is that the homeowner may have to report the portion of the mortgage that the lender waived in consideration of the short sale as income on his succeeding year's income tax returns. Nevertheless, if all goes well and the transaction closes, the lender will have accepted a calculated loss on the property; the homeowner will have cut its losses while peacefully vacating the property; and the purchaser will have purchased a house for a price that is at or below the current market value.

[1] Getting the lender to agree to forgive the amount owed on the mortgage in excess of the sale proceeds is a negotiated term of the short sale agreement.

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