
CALIFORNIA ASSOCIATION OF REALTORS

PRESENTS

THE FORECLOSURE EXPLOSION AND OTHER LEGAL CHALLENGES IN THE CURRENT MARKET

The following are ten issues which you should keep in mind as you navigate through the current market:

1. Foreclosures

- There are two primary types of foreclosure, judicial and non-judicial
- Deficiency judgments are available only in judicial foreclosures
- Some holders of seconds are suing on the note when the first position is “wiped out”
- Refer clients to the proper experts to assess the best course of action

2. REO's

- What are REO's?
- REO's are bank owned and not subject to the Home Equity Sales Act
- REO's are bank inventory and often will be discounted substantially more than borrower owned property
- REO's ordinarily do not require the same disclosures as a borrower owned property

3. Short Pay Transactions

- What is a short pay transaction?
- Short pay transactions impact less adversely on borrower's credit than foreclosure
- Certain procedures must be followed to obtain a short pay
- Disclosures must be made in a short sale transaction

4. Home Equity Sales Contracts and Loan Foreclosure Consultants

- Under what circumstances does one need to comply with these statutes?
- A person may have civil liability for failing to comply
- A person may have criminal liability for failing to comply
- Courts are divided where an NOD is recorded after the contract is signed by the parties?

5. Loan Fraud

- Types: Fraud for housing and fraud for profit (18 U.S.C. § 1014)
- Price inflation schemes: what are they and how to be avoided
- Implications: criminal, civil and license discipline
- Lender's consent is no excuse (*U.S. v. Niro*, *U.S. v. Bush*)
- Read CAR's “Mortgage Fraud - Avoiding Price Inflation Schemes” Q & A

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6. Seller Financing

- Defined: seller carrying back note secured by trust deed as part of sale
- Requirements: Seller Financing Addendum and Disclosure (SFA)
- Understanding the seller as “the bank”, with foreclosure as only “remedy”
- The risks inherent in seller financing (*e.g.*, foreclosure by senior trust deed)
- Putting an attorney’s assets, not yours, at risk

7. Financial Market and Lending Trends

- The subprime crunch
- Creative financing (*e.g.*, leases with options to purchase, seller trusts, etc.)
- Last minute review appraisals (often after contingencies removed)
- Post-close audits by lenders (even of performing loans)
- Pressure up and down the lender “food chain”

8. Property Value and Related Fiduciary Duty Issues

- This is likely to be the hottest area for claims
- Make sure buyers have opportunity to properly assess values which are in flux
- Be cautious with buyers over-extending themselves
- Defer to experts (appraisers, attorneys, mortgage brokers) but this does not insulate you
- Be particularly careful in dual agency situations

9. Seller’s Disclosures and SPQ Issues

- Down Market makes sellers reluctant to disclose
- Use of SPQ more important than ever
- Do not rely on SPQ as sole information
- Push for inspections
- Make sure all forms, disclosures and disclaimers are provided and properly completed

10. Current Trends in Defects

- Water Intrusion
- Mold
- Geological
- All Minor Defects
- Roofs

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