



Short sales not immune to debt collectors

ORLANDO, Fla. – July 6, 2010 – With more than half of the Central Florida’s homeowners owing more for their homes than the properties are worth, the question for some has become: How do I get out of this?

Of all the existing-home sales reported by Realtors in the core Orlando market in May, 23 percent were short sales. They are called “short” sales because the sales price come up “short” of, or less than, the amount owed on the mortgage.

What these homeowners, whose loans are “underwater,” may not realize is that they could successfully complete a short sale of their house but then face a lawsuit from their lender for not paying off the entire loan, a shortfall known as a “deficiency.”

At particular risk of being hit with such a debt judgment are owners of second homes and investment properties, homeowners who haven’t faced any kind of financial hardship, and owners who have a second mortgage.

“That’s going to be a huge problem moving forward in the next few years,” said Orlando lawyer Matt Englett, who specializes in home foreclosures. “These people who use Realtors to advise them on the transactions can end up facing deficiencies, and the deficiency notes will go to third-party collections agencies, and they will start suing and progressively pursuing those people.”

Homeowners have several options if they wish to avoid getting calls and lawsuits from debt collectors.

In a mortgage document called the “payoff letter,” a lender may include a blanket provision stating that it reserves the right to sue the seller at any time for unpaid mortgage debt. At the very least, Englett said, sellers need to make sure they do not give lenders that right.

Some lenders, particularly smaller ones, have been willing to state just the opposite -- that they will not pursue any mortgage debt from the seller, he added.

Simply asking the lenders to cooperate by removing any wording about collections isn’t enough, Englett said. The seller is usually faced with building a case that details errors and omissions made by the lender in its mortgage documents, to gain leverage and force the lender to forgive the debt.

A new option that emerged in June is a federal program that calls on banks to forgive some of the mortgage debt of certain, qualified short-sale sellers. To qualify, sellers must:

- Meet the criteria of the federal government’s Home Affordable Modification Program.

- Have the house as their primary residence.

- Face a financial hardship, and their mortgage payment must be more than 31 percent of their gross income.

The new program makes short sales a good option for homeowners facing a financial hardship, though it’s not meant for homeowners who can afford their mortgage but want to walk away from an upside-down loan, said Frank Rubino, vice president of the Chase Homeownership Center in Orlando.

“It’s not right. It’s not moral. It’s not the right thing to do,” Rubino said. “Why should customers look to the bank to substantiate a loss for the house they bought? ... If they bought the house and sold it for \$100,000 more than they paid, they wouldn’t share those profits with the bank.”

The decision of whether to pursue a former homeowner for outstanding debt varies from mortgage servicer to mortgage servicer, Rubino said, and can hinge on such things as whether the customer mismanaged his or her finances, Rubino said.

Sellers with a second mortgage face particular challenges if they try to walk away from a short sale without any remaining debt.

Jennifer Davis, a real estate agent for Lifestyles Home Sales Inc. of St. Cloud, said she recently almost lost a sale because of outstanding debt the seller owed on the house. Fortunately, she said, the buyer wanted the house badly enough to cover the outstanding note.

Banks usually have four years in which to file a deficiency judgment, but they can sell it to a third-party collection agency -- "and the collection firms can chase you down for 20 years," Davis said.

In cases where the seller has a second mortgage or can't qualify for the federal programs, Davis said, she usually directs them to a real estate lawyer and a tax adviser.

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