

Should I stay or should I go? - Part Two

Last time we went over various options in dealing with the “underwater” home mortgage. Unfortunately, most people with a home mortgage are “underwater” on their homes these days. With an unprecedented drop in real property values, homes that were financing at 80%, 90% or with “no money down” (100%) are stuck with a mortgage which is higher than the current value of their property. We’ve already touched on loan modification, litigation and bankruptcy. Other options include the short-sale or deed in lieu of foreclosure. A short-sale (as the name implies) is the sale of the property with an amount of money which is “short” of the amount owed on the mortgage. This can be tried by the homeowner at any time before a home is sold at foreclosure sale. Typically, the homeowner will select a realtor (hopefully one with experience in handling short-sales) who will list the property for current market value. If an offer comes in, the offer is presented to the lender. The lender decides whether they want the deal or not. If the lender indicates interest, they should submit documentation for the homeowner to consider and sign. The homeowner should be cautious with what is stated in the paper-work. Often, we see lenders agreeing to close a short-sale, but only on condition (typically buried in legalese) that the homeowner agree to remain obligated for the balance of the loan after the short sale. In the case of a home equity line second this is even more often the case. One scenario would be if the home is now worth \$250,000.00 and say there is a \$300,000.00 first loan and a \$100,000.00 second or home equity loan. The first lender may agree to take a \$250,000.00 for the \$300,000.00 first loan. The second lender may say that they will take \$3,000.00 to *release their interest in the property*. Red flag! This is a release of the mortgage collateral against the property – not necessarily a release of liability under the promissory note. It seems that people often believe they are being released from the debt, when in fact they are not. There is a four year statute of limitations on a promissory note. If the lender reserves rights in the short-sale documents the homeowner – thinking they are out from under the debt – may be surprised to receive a lawsuit some four years after they close the short-sale. It is important to review the short-sale paperwork before signing. It seems that short-sales are closing much faster and in greater volume than they were a year or so ago. If the paperwork is in order, the short-sale can be a good option for avoiding foreclosure. The deed in lieu of foreclosure is a possible option for underwater homeowners. This is where the homeowner decides they are ready to move on and wish to avoid foreclosure. The homeowner offers to give the deed and the keys to the lender with an agreed move-out date. The advantage to the lender here is that they avoid the time and expense of foreclosure and eviction. The advantage to the homeowner is they avoid the black mark of an actual foreclosure on their credit report. Recently, an offer for a deed in lieu of foreclosure was seen coming in from a major lender. It also had tied to it a “cash-for-keys” offer (an incentive to the homeowner providing money for moving costs). This may be a coming trend and it remains to be seen if the deed in lieu of foreclosure option will become more prevalent. More on underwater home strategies next time.

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