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DON'T LET YOUR SECOND LOAN GET 91 DAYS PAST DUE

In any practice of negotiating short sales there is by far one problem that dramatically decreases our ability to complete short sales and that is something hardly anyone thinks about. It goes against reason and logic. It's the matter of keeping second position loan on your property from being "written off."

In our practice of negotiating short sales, 94% of our clients have both a first position loan as a second position loan on their property. This, in and of itself, creates its own set of challenges as both lenders must agree. There are wildly differing bargaining positions between the first and second lenders as a result. However, most lenders in second position know that they will most likely get nothing if the first position lender completes its foreclosure, so they may as well accept a small amount in order to "get what they can from the property sale before foreclosure."

The second lender's agreement to release the lien of the Deed of Trust anticipates for many lenders with whom we negotiate that they still have some ability to collect the residual sums owed them by the borrower. The second position lender is not releasing the debt. They are only releasing the lien of the deed of trust on the property.

Many second position lenders at some point (as early as 91 days after non-payment) internally declare that the debt is "written off" and that loan goes from "active" status to "collections/write-off" status. In most companies it moves to a different department called the "Collections Department."

When that happens, the traditional relationship between the first and second position lender and the short sale negotiator goes down the drain. The collections departments at these organizations typically make huge demands for compensation far beyond the scope of most party's willingness to contribute. Many times, this can be death to a short sale transaction.

The second lender may ask for the total debt amount owed or may make requests for amounts 10-15 times greater than that negotiated in a normal transaction. They don't care. They operate

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under a different set of rules. They only want to maximize the dollars they receive even if they lose out to a successful foreclosing first mortgage holder.

It can happen when you least expect it (unless you plan for it as we do in our practice). However, there are still many sellers that have no way of paying anything at all at any time to the lender in second position. This creates a stumbling block ready to happen.

Most lenders will write off the loan at 91 days, but some hold out longer and still others keep their files active if negotiations are actively occurring. With negotiations of the first position lender taking longer and longer, this will only get worse in the future.

Most lenders in second position are willing to accept a monthly payment even if it doesn't bring the whole loan current. For many clients this can allow a short sale that's doomed to failure to have a chance at successful completion.

We suggest that a seller inquire and find out from his/her second lender the period of time before write-off. If so, make a payment before that event occurs to preclude this occurrence.

If this is not available, the buyer may wish to advance that amount to the lender during the course of negotiations to preclude the second position loan from going into "written off/collections" status. Of course, there are certain risks in making such advances.

This article is general in nature. You should discuss more detailed matters affecting your individual situation with one of our negotiators or attorneys.

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