



McFerran, Burns & Stovall, P.S.

A T T O R N E Y S A T L A W

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WHO OWNS THE MORTGAGE LOANS ON YOUR PROPERTY?

Ninety-four percent of the short sale transactions that we take on require that we negotiate two (2) loans on the client's property. Both lenders must agree in order to allow a short sale to move forward. This can create some real challenges.

PRIMARY LENDER (NOT REALLY A LENDER AT ALL!!)

Most sellers really believe that the lender in first position actually owns the loan. In fact, in most instances, the company is merely "servicing" the loan on behalf of an investor/owner of the loan.

Fannie Mae or Freddie Mac are large owners of loans who employ certain servicing agents to handle collection of monthly payment, foreclosures and the like. These companies are paid a percentage fee for returning a certain return on investment for the loan owner/investor.

So, when you (or we as your negotiator) are talking with the lender in first position, we are really dealing with an "agent" of the true lender. They generally do not make the decisions. They are tasked with getting all the information together so that a decision can be made by the true loan owner/investor.

No one anticipated that there would ever be a huge recession with short sales such a dominant part of the sales marketplace. It has created a huge backlog with lenders as we all are vividly aware.

Lenders in this position are collateral based. They will focus on the value of the property in a much more focused fashion than a second position lender. They will focus more on B.P.O. (Broker Price Option or Broker Option of Value) matters than the second position lender.

Our real problem with servicing companies is that they are scared to death that if they somehow make an inappropriate decision, the investor may require that they (the servicing company) buy back the loan. This is part of the reason why the negotiation process takes so long.

SECOND POSITION LENDERS

Second position lenders generally own the loan and are not servicing agents. Even if the same company appears to be both first and second position lenders, in reality, they are generally not the same lender.

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