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

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## WHY DOESN'T THE FIRST POSITION LENDER SHARE MORE LOAN PROCEEDS WITH THE SECOND POSITION LENDER?

In approximately 94 % of our cases, there are two lenders involved in the short sale transaction.

### FIRST LENDER IS A COLLATERAL-BASED LENDER

The lender in first (or primary) position is usually referred to as the "Collateral Based Lender." This will be the lender who generally will conduct a foreclosure. It is this lender who evaluates closely the collateral value of the property in relation to the debt due them.

This lender knows that the value of their collateral has decreased, but it is still very much existent. It is a matter of how much less than full payment that they are willing to accept. They know that the value of the collateral has decreased. The question is just how much?

First position lenders don't want to leave too much money on the table either. They are willing to allow a sale, but wish to minimize their loss. They compare the benefits of a short sale with the ultimate time, cost, utility and risk of going all the way through foreclosure. In most cases they want to sell, but do not want to take a loss greater than the loss they would take if they proceeded all the way through foreclosure. That is the essence of short sale negotiations.

### SECOND LENDER IS A FINANCIAL-BASED LENDER

The lender in second position pretty much knows that they have no equity LEFT in the collateral. As a result of the recession and reckless lending, they are merely financial base lenders that need to collect from the debtor realizing that there is no collateral value left in the real estate given their subordinate interest in the property.

However, lenders in second position do have some negotiating power with the holder of the first position loan. They know that without agreement by them, a short sale cannot be completed as a short sale requires that holders of both first and second position loans agree as to terms.

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A second position lender can force a first position lender to actually complete a foreclosure and can preclude even the best of short sales for lenders in first position. It has happened at times and it is such a shame.

It has become common practice to provide a holder of a second position loan an "administrative amount" or "walk-away money" to allow the sale to be concluded and the lien released. That does not mean that the actual debt goes away, however.

The typical amount is \$1,000.00. However, Fannie Mae provides a \$3,000.00 stipend to obtain a release for a second lien holder.

#### CONCLUSION

There is a significantly stronger collateral position for a first lender versus a second lender or a lender in second position. In most cases, a successful foreclosure by a first lender will result in no money going to the holder of the second position lender.

The laws provide what is called "priority" to the holder in the first position over and above all loans in subordinate positions. There is no sharing and there is no obligation whatsoever that the holder of the first position give anything at all to a holder of second position loans.

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