



Understanding Foreclosure

When prices are rapidly accelerating during a real estate “bonanza”, many people go to any lengths, available, including the use of creative financing, to get into market through investments in vacation homes, rental housing and “trading up” to more expensive properties. Many buyers anticipate that interest rates will drop and home prices will continue to escalate. Neither may occur, and when payments cannot be met, more real property enters the foreclosure process.

In the foreclosure process, one thing should be kept in mind: as a general rule, a lender would rather receive payments than receive a home due for foreclosure. Lenders are not in the business of selling homes and will often try to accommodate homeowners who are having payment problems. The best plan is to contact the lender before payment problems arise. If monthly payments are too hefty, it may be that a lender will be able to make some alternative payment arrangements until the owner’s financial situation improves.

Let’s say, however, that a homeowner has missed payments and has not made any alternate arrangements with the lender. In this case, the lender may decide to begin the foreclosure process. Under such circumstances, the lender, whether a bank, savings and loan or private party, will request that the trustee, often a title company, file a notice of default with the county recorder’s office. A copy of the notice is mailed to the homeowner. Once the notice of default has been recorded the homeowner has until five business days prior to the date set for the sale to cure the default by making up the payments. Once the default is cured, the deed of trust or mortgage will be reinstated and regular monthly payments will continue as before.

If the default is due to a balloon payment not being made when due, the lender can require full payment on the entire outstanding loan as the only way to cure the default. If the default is not cured, the lender may then direct the trustee to sell the property at a public sale.

In cases of a public sale, a notice of sale must be published in a local newspaper and posted in a public place for three consecutive weeks. During this time, it may still be possible for the homeowner to work out a postponement. If a postponement is reached, the property goes “on the block”. At the sale, buyers must pay the amount of their bid in cash, cashier’s check or other instrument acceptable to the trustee. A lender may “credit bid” up to the amount of the obligation being foreclosed upon.

With the recent attention given to foreclosure, there also has been corresponding interest in buying foreclosed properties. However, caveat emptor: buyer beware. Foreclosed properties are very likely to be burdened with overdue taxes, liens and clouded title. A buyer should do this homework and ask a local title company for information concerning these outstanding liens and encumbrances.

