

ADVISING UPSIDE DOWN REAL ESTATE OWNERS IN A FLAT REAL ESTATE MARKET

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OUTLINE

(1) INTRODUCTION

Historical Background

Economic Cycles - Booms and Busts

Investment vs Speculation

Change in Financing

Democratization of Credit

Securitization of credit

Set-up for Default

(2) GETTING AWAY FROM THE UPSIDE DOWN PROPERTY

(1) **NEGOTIATED REMEDIES**

a. **Do Nothing** - wait it out

b. **Buy Time** - Work-out

Forbearance

Loan Modification or Refinance

c. **Sell the Property**

Equity Sale - Equity Sales Act

No Equity - SHORT SALE

SHORT SALE STRATEGIES

Voluntary Process

Low percentage - hard to find Realtors to assist

Lenders require default & hardship before agreeing

It's all about leverage

(1) Identify chain of security if more than one lender

a. Determine who to be working with - Junior most

Who can get a Judgment

Can they take your other assets

Know CA foreclosure law

(2) What do you have to lose

Disclosure of assets

Credit Damage

Debt Forgiveness Taxes - new law

(3) Legal vs Moral Obligations

(4) Paying something may be worth it

All terms are negotiable

d. **Give it Back to the Lender** - Deed in Lieu of Foreclosure

It's a Sale

Triggers change in title hierarchy

3 RULES

OF FORECLOSURE

- Security First Rule
- Single Action Rule
- Acquisition Loan Rule

(2) **FORCED REMEDIES - FORECLOSURE/BANKRUPTCY**

A. **FORECLOSURE**

1. **Non-Judicial - (Trustee Sale)**

Fast Track: 111 days
Notice of Default
Notice of Sale
Sole Security - No Deficiency Judgment
Realistic Time Line - 7 months

2. **Judicial - (Sheriff's Sale)**

Civil Lawsuit - Breach of Contract - 1 year +
Sheriff's Sale
Deficiency Judgment
Right of Redemption

3. **Impact on Junior Creditors**

Acquisition vs refi lender
Rights of Sold-out Junior lienholders

4. **Collecting rent during foreclosure**

5. **Handling Personal debt - credit cards**

6. **Occupier status after foreclosure**

Cancellation of leases & contracts
Former owner gets 3 day notice
Tenant gets 30 day notice

B. **BANKRUPTCY**

Automatic Stay

New Rules - harder to escape debts

Chapter 7 vs Chapter 13

Means testing and credit counseling

No Debt Forgiveness Tax

Start over

(3) **CONCLUSION**

Don't panic

Get competent legal advice

BPE Consultation program

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