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HOW TO BENEFIT FROM REAL ESTATE SHORT SALES

The recent downturn in the housing market has caused many sellers to attempt *short* sales. But, what is the difference between a *short* sale and a regular sale?

2008 HOUSING AND ECONOMIC RECOVERY ACT

Lost in the recent financial upheaval gripping the country is the fact that \$300 billion was already earmarked to help stave off foreclosures and stimulate a recovery of the mortgage market. The Housing and Economic Recovery Act of 2008, signed by President Bush on July 30, 2008, will begin on October 1, 2008. It was designed to allow homeowners to refinance to more affordable government loans.

The Act's most important provision is called Hope for Homeowners and will allow an estimated 400,000 borrowers who are in danger of losing their homes to be able to refinance into more affordable government-insured mortgages. To be eligible to participate in this program, however, a borrower must have a loan on an owner-occupied principal residence and have a monthly mortgage payment greater than at least 31 percent of the borrower's total monthly income, as of March 1, 2008. Thus, investors and second-home owners will not qualify.

Also, the Act will offer government insurance to lenders who voluntarily reduce
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A regular sale contains an offer and an acceptance by the seller. The contract then is filled with contingencies that mainly favor the buyer. The buyer can walk away from the deal in many cases as it progresses. The seller does not have this ability unless the buyer breaches the contract. Most notable of the contingencies, usually, is that the buyer must borrow money to buy the house and has a financing contingency to obtain a loan from a lender.

In a *short* sale, everything is the same including an offer by the buyer and an acceptance by the seller, except there is a contingency regarding both the buyer's and the seller's lenders. The seller owes more to the lender than the house is worth and usually more than the contract is for; he must now ask his mortgage lender to allow him to be short some of the money owed on his mortgage, and to accept a lower amount than is owed to pay off and satisfy the mortgage.

Thus, two lenders are involved in this transaction – one for the buyer and one for the seller. And as always, the lenders make multiple demands to be able to close. The main difference between a short and regular sale is that the paperwork is slightly different:

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mortgages for at-risk homeowners to at least 90% of the property's current value. It attempts to prevent future lender abuses by establishing a nationwide loan originator licensing and registration system to set minimum standards for all residential mortgage brokers and lenders. It also strengthens mortgage disclosure requirements to help ensure that borrowers understand their mortgage loan terms.

Many think the Act does not go far enough to help individual homeowners because it requires lenders to reduce mortgages to 90% of current value, meaning they must write down the value of the mortgages. It is likely that one of the homeowner benefits in the new Financial Bailout Law will expand this law and help to homeowners in danger of foreclosure.

YOU BE THE JUDGE

ALIMONY PAYMENT IN PENNIES

Angry that the Divorce Court Judge awarded his wife \$5,000 in lump-sum alimony, Frank decided to pay it in his own way. He delivered several barrels containing 500,000 pennies to her lawyer's office and told her to give it to his ex-wife. Instead, her lawyer asked the judge to find Frank in contempt of court.

If you were the judge, would you rule for the wife or the husband?

The wife wins. Frank was found guilty of contempt of court because he tried to use a court order to harass his wife. "Pay by Cashier's Check or go to jail", said the judge.

(Based on a Georgia Supreme Court decision)

**Additional YOU BE THE JUDGE cases
can be found at: johnaritter.com**

the seller must be able to prove hardship and document why he cannot pay what he owes the lender. On the other hand, the buyer must prove why and how he can pay back his lender when the seller could not.

Neither of these lenders owns the house and never will unless they are forced to foreclose on it. The seller's lender has a lien on it that must be released so that the buyer's lender can place a new first lien on the house. But why would a seller's lender agree to a *short* sale, thereby causing it to lose money? Mainly so that it won't lose more money. The seller's lender wants to make the deal to avoid the expense of foreclosure and the problem of owning the property with the duty to pay taxes, insurance, and maintenance, without knowing when it will sell. A short sale benefits the seller, seller's lender, and the buyer.

The seller might have an IRS liability for the amount saved on his short sale. If he pays off a \$250,000 mortgage with \$200,000, he may receive a Form 1099 for \$50,000 from the mortgage company. However, the Mortgage Forgiveness Relief Act passed by Congress in 2007, will probably exempt him from having to pay tax on this paper profit.

LEGAL TIPS

1. Put safe deposit boxes in name of corporation you control so court order will not be required to obtain its contents after death of owner.
2. Foreign nationals should own U.S. real estate in name of American corporation they control in order to avoid 10% withholding tax at closing when they sell.

LEGAL PEARLS

A handshake among friends is worth 1000 legal papers (old Cuban legal maxim).

Verbal contracts aren't worth the paper they're written on (modern American legal maxim).