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SOME FREQUENTLY ASKED QUESTIONS ABOUT FORECLOSURE AND BANKRUPTCY

What is meant by a Note and Mortgage? When a bank lends money on real estate, they will typically have the borrower sign a mortgage and a note in case the payments are not made. The note is essentially a personal guarantee by the borrower to the bank that the payments will be made. If they are not made, the bank can go after the borrower's personal assets or income. The mortgage is the lender's security interest in the real estate. If payments are not made as promised by the borrower, the bank can foreclose or force a sale of the real estate in order to obtain the money that they are owed.

What is Foreclosure? Foreclosure is a judicial process that banks can use in order to force a sale of real estate on which they have a mortgage. The process is highly regulated by the courts and can only be followed if a borrower does not make his or her mortgage payments. Typically, a bank will not even start the legal foreclosure process until at least two to three payments are missed. In New York, the process usually takes 12-18 months from the start of the foreclosure action until the bank can actually sell the home. Anytime prior to the foreclosure sale, the borrowers have the right to pay off the mortgage and redeem their property.

What is a Deficiency Judgment? If a property is sold by the bank at foreclosure and the sale proceeds do not fully payoff the outstanding mortgage and fees, the bank can obtain a deficiency judgment against the borrower. The

bank must go back to court and prove that there are still monies due to them. If the statute of limitations has not run out and the court agrees with the bank, a judgment will be issued. The judgment is valid for ten years, and can be renewed for another ten years. Any property or wages that the borrower obtains in the future is susceptible to the judgment.

How can I prevent Foreclosure & Deficiency Judgments? One method that can be used is called a foreclosure workout or a short sale. If a person is behind in his or her mortgage payments, has no assets, and the property value is below the mortgage balance, he or she can do a foreclosure workout. This is a process whereby, the property is sold at whatever price the market will bear and a deal is made with the bank to accept the proceeds of the sale as full settlement of the note and mortgage. This procedure will avoid foreclosure and prevent the bank from obtaining a deficiency judgment against the borrower.

Suppose I want to keep my home but have fallen far behind on my payments? Many times, people will go through a difficult time whereby they lose a job, have an illness, or have marital problems that result in long periods of missed mortgage payments. Although these people can probably afford to resume the regular monthly payments once the crisis is over, they cannot catch up with the large amount of arrears. In order to prevent foreclosure, the banks will typically work

out deals with the borrower. There are two methods that will allow the homeowner to get caught up with his payments and keep his home:

A. Forbearance Agreement - sometimes the banks will structure a forbearance agreement whereby the borrower is allowed to pay the arrears in payments along with their regular monthly mortgage. Forbearance agreements are typically made over an 18 to 36 month period.

B. Re-Modification Agreement - here, the bank will take all of the arrears owed, add them to the mortgage balance and make a new mortgage. Thus, the borrower will have a new loan which includes all of the monies owed stretched over a 30 year period with a new interest rate. Many times the payment on the re-modified mortgage will be at or below the monthly payments they had on the original loan.

What if the bank won't make a deal with me? If your bank either refuses to make a deal, or the deal they offer is not acceptable, you still have some options. Although you probably want to avoid bankruptcy, it may be a necessary tool to prevent the loss of your home or having a deficiency judgment against you.

Chapter 7 & Chapter 13 Bankruptcy Defined

Chapter 7 Chapter 7 Bankruptcy involves the liquidation of one's non-exempt assets in order to pay back as much debt owed as possible. Any debts that are not paid back from the liquidation, including deficiency judgments, will be discharged. Typically, a debtor who has no assets will end up with what is called a Liquidating 7, where all debts are liquidated. A debtor can re-affirm or keep paying certain debts, such as a mortgage or car loan, if there is no equity in the asset and the payments are current.

Chapter 13 Chapter 13 Bankruptcy is usually used when a debtor has assets that he wants to keep, such as a home, but he is behind in the mortgage payments, or the asset has equity. The court will structure a monthly payment plan based upon the amounts of equity and the outstanding debt that the client has. A three year plan is allowed by code, but the court can approve a plan for a five year period based upon each individual situation.

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