

BPE LAW GROUP, INC.
11140 Fair Oaks Bl., Suite 300, Fair Oaks, CA 95628
(916) 966-2260
www.bpelaw.com sjbeede@bpelaw.com

GUIDE FOR UPSIDE DOWN PROPERTY OWNERS **(California)**

If you're like millions of property owners today, your real property value has declined dramatically to the point where you owe far more than the property is actually worth. Perhaps a job loss or cut-back has made it a struggle to keep current on the loans and now you're wondering what to do. This Guide is intended to give you a brief outline of the options available and where you can find help.

1. OPTIONS FOR KEEPING THE PROPERTY

A. DO NOTHING

For some people, it may be possible to wait out the downturn. However, most economists believe that the high prices leading up to 2006 were the result of financial changes that created a false appreciation that will not re-occur. If you like the property enough and its sale price is not a factor, then keeping it may work but for most, this is not an option.

B. BUY TIME

Several Options may exist for owners although the success rates are slim:

1. Work-out / Forbearance

Lender provides time for your financial situation to improve
Usually only a short-term

2. Loan Modification

Private Modification - lender sets the conditions
HAMP Modification - Government Program
Mostly a failed Program. Is being shut down

3. Refinance

Most do not qualify - Insufficient income or Property has no equity
Lenders are very restricting

2. OPTIONS FOR SELLING THE PROPERTY

A. EQUITY SALE - Property has equity value but Seller can't afford to keep it
CA Equity Sales Act applies to any such sales if a foreclosure is started
Specific contract requirements include a 3 Day Right of Cancellation

B. NO EQUITY - SHORT SALE - No equity, Seller owes more than Property value
Voluntary Negotiation Process - Lender does not have to take less than owed

HAFAs - Government Program has had little success
Proof of Hardship Required
Recourse Negotiations are the key
 Know if the Lender can get a Judgment against you
Generally will be better than a Foreclosure
 Negotiate better result on liability
 Less exposure to Debt Forgiveness Tax
 Less Credit Damage
 Reduce risk of career and job damage

WORK WITH AN EXPERIENCED REAL ESTATE AGENT

3. CALIFORNIA FORECLOSURE

Foreclosure is the legal means by which a lender takes the real property if a borrower defaults in paying the loan. California has two methods

A. Non-Judicial - (Trustee Sale)

90+% of all home foreclosures
Fast Track: 111 days
 Notice of Default - 90 days
 Notice of Sale - 21 days
 Sole Security - *No Deficiency Judgment*
 Realistic Time Line - 7-12 months

B. Judicial - (Sheriff's Sale)

Generally on large properties: shopping ctr, office bldg, apt. complex
Civil Lawsuit - Breach of Contract - 1 year +
 Sheriff's Sale leads to Deficiency Judgment
 1 year Right of Redemption if deficiency judgment

C. Impact on Junior Creditors

Generally the risk of a deficiency judgment is from a junior lender (2nd, HELOC)
Need to know type of loan and whether recourse is available
 Must Use Judgment Avoidance Strategies

D. Handling Property during foreclosure

You're still the owner
 Decide whether to pay Property Tax / Utilities / HOA bills
 If rental Property:
 Rent Collection - Assignment of Rents under Deed of Trust
 Dealing with defaulting tenants

E. Occupier status after foreclosure

Foreclosure cancels leases & contracts
 Owner-Occ gets 3 day notice to vacate
 Relative gets 60 days notice
 Unrelated Tenant gets 90 day notice
 Lease may survive but rent must be paid

Cash for Keys offer may be available
If no agreement, new owner can evict occupants

4. THE BPE \$200 CONSULT

Created by BPE Law to provide individualized legal counseling and strategic planning for upside-down property owners at a low \$200 flat fee. Process takes approx. One Hour with Attorney (or trained Real Estate Counselor).

Includes:

1. ASSESSMENT OF FORECLOSURE IMPACTS

A. JUDGMENT RISK

- Analysis of the Loans on your property
- Determination of priority
- Application of Purchase Money Loan Rules
- Likely actions by lender based upon loan priority
- Trustee Sale vs Judicial Foreclosure
- Impact on Junior Lenders
- Sold-Out Recourse rights
- Impact of Merger Rule

B. DEBT FORGIVENESS TAX

- Is forgiveness likely
- Do Exemptions apply
 - Purchase Money
 - Insolvency
 - Others

C. CREDIT DAMAGE

- FICO Score
- Ability to buy another home

D. CAREER & JOB IMPACTS

- Security employment
- Fiduciary employment

2. REDUCING IMPACTS THROUGH SHORT SALE

- Avoids Foreclosure
- Reduces Credit and Debt Forgiveness Impacts
- Negotiates and maybe eliminates liability
- Identify Short Sale Process
- Identify Liability risk if not sold (goes to Foreclosure)
 - Determine Leverage
- Discuss Hardship and Proof
- Discuss likely lender reactions
- Discuss role of Real Estate Agent in negotiations

3. DISCUSS ALTERNATIVES

HAMP / HAFA

Deed in Lieu

If you would like to schedule a BPE Law \$200 Consult, call us at the office: **(916) 966-2260**, Monday through Friday, 9-5 PST. Although most such consults are done in-office, we can do these by telephone as well and by conference call.

*Want the latest news about changes in Real Estate and Business law?
Check out Steve's Blog at www.stevebeede.com*

Recent Topics:

- Debt Forgiveness Tax Update
- Real Estate Outlook for 2011
- National Foreclosure Reform
- Good News in Housing Mess
- Robo-signing Issues

NEED LEGAL HELP NOW?

Contact us at:

BPE Law Group, Inc.

11140 Fair Oaks Bl., Suite 300

Fair Oaks, CA 95628

(916) 966-2260

www.bpelaw.com

sjbeede@bpelaw.com