

# Things You May Not Know

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- 1989: Graduated cum laude from Stonehill College in Massachusetts
  - Awarded an ROTC 3-year scholarship
- 1989-1991: Attended St. John's Seminary in Massachusetts, studied Philosophy and Theology.
- 1996: Graduated cum laude from the J. Reuben Clark Law School at Brigham Young University
- Earned top honors during law school,
  - Board member for Trial Advocacy
  - Associate Editor of the Education and Law Journal.
- 1996: Became licensed to practice law in Nevada.
- 1997-1999: Worked as an Associate for Pico & Mitchell, handled insurance defense and family law litigation.
- 1998: Became licensed to practice law in MA
- 1999: Began his own practice in Nevada
- Board member for Child Focus, member of the Family Law Section of the Bar, Member of the Elks Club, Arbitrator/Mediator for the Nevada State Bar, and served as a U.S. Army Reserve Captain from 1989-2005.



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# Renegotiation: Ground Rules

- Have a plan:
  - Creditors expect the debtor to have some answers
  - Forget what your neighbor got or what you read in the paper
  - Be flexible and realistic
  - Be prepared to give them something they don't have
  - Know what is important and don't get distracted
- Be prepared to evaluate nearly every conceivable source of recovery for creditors, including tax refunds and equity or equity-like instruments - creditors will not leave windfall opportunities for old equity
- Zero sum game and each side wants and expects as much as possible



# Renegotiation: Ground Rules - Cont.

- Consider how some resurrection in the credit and economic markets could impact both sides posture and expectations
- Be cautiously optimistic but cognizant of your downside
  - Debtor-driven Armageddon typically does not have a positive ending
- Accurately evaluate monetary and non-monetary costs of distress
  - Preparing for full scale restructuring, even if it may not ultimately be required, will likely illuminate multiple courses of action and provide direction



# Full vs. Limited Recourse

- Before October 1, 2009:
  - Lender foreclosing on Real Estate could pursue a deficiency judgment on any type of property, including primary residence
  - Borrower was liable for the deficiency regardless of the loans' purpose
  - Lender had 6 months to file an action against the borrower to recover amounts owing
  - After the 6 months, Lender is barred from filing suit to recover



# Full vs. Limited Recourse

- After October 1, 2009:
  - Lender may no longer pursue deficiency judgment against principal residences when:
    - Property is a single-family residence and continuously occupied since the time of the loan
    - Loan was used to purchase the property
    - No previous refinancing
    - Loan made by a financial institution



# Liens against Units

- NRS 116.3116
- HOA's may only collect the last 9 months of fees when properties have been foreclosed
- Statute does not include short sales
- No laws have been passed placing a cap on arrears
- Liens will be extinguished if proceedings to enforce the lien are not instituted within 3 years of the full amount being due



# Short Sales

- As part of the overall deal, Borrower *may* negotiate with Lender about how short sale will be reported to credit agencies
- Lender may sue for deficiency action after short sale
- Debt is transferable, 3rd party *may* choose to negotiate down the debt, but Lenders are not required to negotiate



# Resale of Units

- NRS 116.4109
- If owner is selling the unit, seller must provide a statement to purchaser with the amount of the monthly assessment and any unpaid assessments currently due
  - Within 10 days of a request from the seller, the HOA must provide a certificate containing the above information
- A purchaser will not be liable for the unpaid assessments if the HOA fails to submit the certificate within the 10 allotted days



# Protecting Tenants at Foreclosure Act of 2009

- Who is protected under the Act?
  - Bona Fide Tenants under leases in existence as of May 20, 2009
  - Does not apply to evictions “for cause”
- Who is a bona fide tenants?
  - Tenant cannot be the owner of the loan or mortgage, or that owner’s child, spouse or parent
  - Tenancy must be a result of an arms-length transaction
  - Tenancy requires receipt of rent that is not substantially less than fair market rent for the property



# Protecting Tenants at Foreclosure Act of 2009

- What must a Landlord do to evict a tenant?
  - Provide tenant with a 90-day Notice to Vacate
  - Notice must describe the tenant's rights under the law
- What are the Tenant's rights?
  - Remain in the property until lease expires, unless:
    - Landlord will be moving into the residence to live there as a primary residence
    - If no lease exists or if the lease is able to be terminated "at will"
      - Note: Landlord must still provide tenant with 90-day Notice to Vacate



# 1031 Tax Exchange

- Defers capital gains and depreciation recapture taxes on sale of investment, trade or business property
  - Only when another like kind of property is exchanged
- Delayed Exchange:
  - Owner sells relinquished property
  - Sales proceeds held by qualified intermediary
  - Owner purchases another property from different party
- Simultaneous Exchange:
  - Investor swaps the property for one owned by another investor



# Loan Modifications

- Must follow specific operating rules
- All persons conducting loan mod's in Nevada must be licensed in the state
  - Exception: attorneys assisting with loan mod's
- Client's money must be deposited in trust account
  - Trust account must be accounted for
  - Consultant must keep records for client's inspection
  - Violation could result in cause of action for mortgage lending fraud



# Qualified Principal Residence Indebtedness

- Mortgage Forgiveness Debt Relief Act of 2007
- Excludes debt forgiven on principal residence from taxable income
  - Debt must have originated from a loan to buy, build, or improve a principal residence
  - Debt must be secured by the principal residence
  - Does not apply to: rental or investment properties, home equity lines of credit, business property, credit cards, or car loans



# Qualified Principal Residence Indebtedness - Cont.

- Applies when debt is reduced due to:
  - Loan modification
  - Short sale
  - Foreclosure
- Mortgage debt must be forgiven between 2007 & 2012
- Balance of Loan is \$2M or less (or \$1M if married person filing separate return)



# Mandatory Mediation

- Homeowners receiving Notice of Default are allowed to request a mandatory mediation with the lender to obtain a loan modification or estimate a short sale value
- Documents Lender must provide:
  - Deed of Trust and each of its assignments
  - Mortgage Note and each of its assignments
- Lender must provide to mediator the evaluative methodology used to decide whether to approve loan modification
- Lender must also provide most current appraisal of property (made within last 6 months) and estimate of the short sale value



# Mandatory Mediation - Cont.

- Has 30 days to request mediation
- It is obligation of grantor/owner to request the mediation through the Administrative Office of the Court
- Once mediation is requested, no sale is permitted until mediation is completed
- Mediation is to be conducted by senior justice, judge, hearing master or other designee
- Fees
  - To be borne equally by the parties
  - Cannot be more than \$85/hr (up to \$400)



# Home Affordable Refinance Program

- Fannie Mae and Freddie Mac loans only
- Borrower must be current in payments
- Amount owed on 1st mortgage not more than 125% of current value of property
  - If there is a 2nd mortgage, the borrower must agree to remain in a junior lien position and borrower must be able to pay the modified payments on the 1st mortgage
- Borrower must have reasonable ability to make payments
- Refinance must improve the long-term affordability or stability of the loan
  - Can be accomplished through lowering interest rates, reducing monthly payments, refinancing out of an Adjustable Rate Mortgage, etc.



# Home Affordable Modification Program

- Borrower owns 1-4 unit home
- 1st mortgage originated before January 1, 2009
- Have unpaid balance that is less than or equal to:
  - 1 unit: \$729,750
  - 2 units: \$934,200
  - 3 units: \$1,129,250
  - 4 units: \$1,403,400
- Monthly mortgage payment is greater than 31% of borrowers monthly gross income
  - Monthly payments include taxes, insurance and HOA dues
- Must have financial hardship documented that makes borrower unable to pay mortgage
  - Applies whether or not there have been missed payments



# Foreclosure

- Lender is entitled to nonjudicial foreclosure of its Deed of Trust
- Minimum of 111 days after filing serving Notice of Default (NOD) with county records
- NOD starts 35-day reinstatement period
  - Homeowner has 35 days to pay all delinquent payments
  - After 36th day, homeowner must pay entire loan amount to avoid Trustee's sale
- In final 21 days of the 111-day period, Trustee must publish a notice of sale each week for three consecutive weeks
- After the sale, homeowner has no right of redemption



Q u e s t i o n s ?



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