

# RECENT DEVELOPMENTS IN REAL ESTATE

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## DISTRESSED PROPERTY SOLUTIONS FOR THE HOMEOWNER

It seems that almost every property is now considered “Distressed Property”; it may be better described, however, as property in a distressed market. For those real estate owners caught in the midst of turmoil, foreclosure may seem like the only option. Some real estate owners have vacated properties that are in foreclosure litigation without putting up a defense, trying to sell their property to avoid or limit any deficiency being owed to their lender, or attempting to modify their loan and remain in possession of their property. Some of these properties were purchased for investment but many more were originally purchased or have become the borrower’s homestead.

In counseling our clients, the attorneys of our Distressed Property Group evaluate all the options in order to identify and implement a strategy. In considering a strategy, we therefore look not only at available options, but also at the costs to the client of implementation, chance of success, and future implications to the client. We will look at all available options, including: pro-active foreclosure defense, short sale, loan modification, forbearance agreements, and even short pay-offs (or short refinances).

The following is a summary of non-litigation strategies of short sale, loan modification, and short-pay that should be fully considered when analyzing options for distressed properties:

### Short Sales

Short Sales have been quite popular over the past year for obvious reasons. In the event an owner is able to sell their property, but the sales price is less than the amount owed to the bank, the bank may be willing to take less than the principal balance owed on the loan, in order to recapture some of their capital immediately without resorting to a foreclosure sale. Though there are

advantages and disadvantages to disposing of a property in this manner, before pursuing this option, there are two entry-level requirements that must be met: First, the owner wants to sell and vacate the property; and second, a buyer, who has the cash/financing available to complete the purchase, enters into a written sales contract for the property. Needless to say,

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## DISTRESSED PROPERTY SOLUTIONS FOR THE HOMEOWNER *continued*

because it is harder to find a buyer that meets the second prong, the efforts of many sellers are stalled or delayed....and yet the lender's collection efforts, including foreclosure, continue.

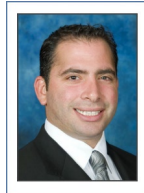
### Loan Modifications

Loan modifications have also become popular, with a variety of solutions depending on many factors and variables unique to each loan, such as the lender, borrower's assets, property value, loan repayment history, etc. The modifications can range from a simple forbearance to reduction of the outstanding loan balance; each loan has its own unique factors and variables that we analyze and evaluate before initiating discussions with a lender. Negotiations with the lender for a loan modification may sometimes be simple, and at other times very complex. The end objective, however, is the same: modifying the terms of the loan to such an extent that the "distressed" borrower can afford the new payments, remain in their home and avoid a foreclosure.

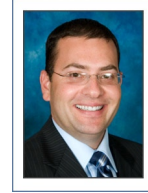
*In a 30 minute presentation, our attorneys can provide an overview of any or all of these options to individuals, brokers, associations, etc. As always, please call us for a free initial consultation. Pamela Anselmo, Marc Wigder and Alejandro Jordan are attorneys in the Distressed Property Group of Becker & Poliakoff. Their contact information is provided below:*



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### Short-Pay

Short-pay is a slightly newer concept that is gaining popularity among lenders. In this scenario the homeowner would re-finance the property based on its current (lower) value, and we would negotiate with the current mortgage lender for that lender to release their lien and satisfy the loan by accepting the proceeds from the re-finance, which are less than they are owed. This scenario is only an option to a homeowner that can qualify for a new mortgage, as the re-financing is the key to the payoff of the existing mortgage lender.

Throughout 2008, many lenders were reluctant to approve a short-pay, holding fast to their traditional notions that a homeowner shouldn't "benefit" or be able to continue to own the property if the lender is paid less than they are owed on the debt, but as the economy continues to spiral downward, we are seeing a heightened interest from lenders. ■

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