

Explore other options before offering deed in lieu of foreclosure

by Ilyce_Glink

Q: In a previous column, you advised that offering a deed in lieu of foreclosure is a last resort. Here's my situation: I'm current with mortgage payments, but I'm at the end financially and basically at my wit's end. I've tried to sell my property for over two years. I've consulted an auctioneer but he doesn't think I'll be able to sell the property. I can't rent the unit because it's in an owner-occupied building and I can't get a waiver of the rules. Now, I've moved elsewhere because of my job. I'm running out of money and will soon have to start missing mortgage payments on this unit. Can I sell it or give it to the bank before they take action? Is there a way to offer the deed in lieu of foreclosure without hurting my credit? A: Unfortunately, there's no way to do a deed in lieu of foreclosure without hurting your credit unless you can get the mortgage company to report your mortgage account as paid in full. Talk to your financial institution about what's involved and if you're a candidate for a deed in lieu of foreclosure (you may not be if you're current on your mortgage payments). You may also want to consult a real estate attorney, who can help you sort through your options and make the most of the situation. Bear in mind that you may hear from your real estate attorney or lender that your only option may be to sell the property for whatever price you can get, even if you sell at a loss, and then get the lender to accept a "short sale" - a sale where the sale proceeds aren't enough to cover the amount owed, but the lender accepts the payment anyway. You may face income tax issues resulting from the lender forgiving part of the debt (which the IRS will likely treat as income to you, even though you don't receive any cash in the transaction), but you might be able to get yourself out of the hole and start over sooner rather than later.

Q: I'm currently involved in a lawsuit involving my house. The home was built on the wrong lot -- not part of the house, mind you, but the entire thing. I had a Realtor, builder, lender, title company -- all of the parties I thought I needed to have a smooth transaction, but the project still went wrong. I've been dealing with the issues involved for over a year, and the parties have now decided that they can come to a settlement because the builder is willing to pay off the plaintiffs in exchange for the lot on which my house was supposed to have been built. I can't get any good information from my attorney because all he's interested in is his fee. I'm of the opinion that I'm not going to settle for this offer, even though it would get me out of the situation. I'm not willing to allow the builder to turn a profit for his (and other people's) mistakes by taking the vacant lot and building a house on it to sell. Can you offer me any advice? A: If you don't feel as if your attorney has your best interests at heart, get a second opinion. If you feel like the attorney has sold you out without your consent, you can contact the agency in your state that regulates attorneys and file a complaint against him or her for failure to represent you properly. As far as the builder making lemonade out of his lemons, you have no control over that. In any case, you shouldn't focus on this issue. Focus on what's happening to you and your financial stake in the game. The way I see it, a good settlement will mean you'll wind up with good title to your brand-new home. Whether the developer gets additional cash or not, you have to be happy living in the home even if it is on the "wrong" lot. By the way, your Realtor and lender would have relied on other parties to determine that the home was built on the right lot, just as you would have. You can discuss this with your attorney, but you should have found out about the lot issue at closing if you had a survey prepared for the lot. If the description on the survey matched the description of the lot you were buying, then, perhaps, the title company dropped the ball. You need a good attorney to help you think this through and make the right choices. © 2007 Real Estate Matters, Distributed by TMS

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