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SB 306 & California Short-Sales- Easy as it Sounds?

Senate Bill 306, signed into law this September, changes some of the rules for California real estate short sales. Much of the excitement around this legislation is a revision to Civil Code section 2943 that provides, when an owner/borrower submits to the lender a “short sale request,” the lender is required to accept or decline it within 21 days.

This excitement overlooks what is required by the statute to trigger the lender’s duty to respond quickly. The “short sale request” is actually the request for payment demand that the escrow officer sends to the lender; not the initial request to allow a short sale..

The statute describes a short sale request as a written request that includes;

- A. A copy of an existing contract to purchase the property for an amount certain;
- B. A copy of the short-pay agreement in the possession of the entitled person.
- C. Information related to the release of any other liens on the property, if any.

Item B, the “short pay agreement,” is further defined as an agreement in writing in which the beneficiary agrees to release its lien on a property in return for payment of an amount less than the secured obligation.

It appears that the procedure is as follows:

1. The owner/borrower the gets a bona fide purchase offer, and requests a “short-pay agreement”. There is no deadline for the lender to provide the agreement. This is the status quo- the seller still has to wait for a response at the lender’s leisure.

2. The seller, or more accurately, the escrow officer, makes the short sale

request

3. The lender then has 21 days to respond, setting forth whether they accept the existing offer, or state that they changed their minds and do not want to accept the offer.

The hitch still is in getting the short-pay agreement from the lender initially. There is no time requirement for the lender to provide one, if they will at all. It is possible that government backed loans will have new requirements requiring when they be provided, but remember-this is only a California law. Presumably the lending industry is now dealing with how to apply the law, and what the agreement should look like. The only solution for owner/borrowers may be to start immediately asking their lender for a short-pay agreement.

SB 306

http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0301-0350/sb_306_bill_20090806_chaptered.pdf