August 10, 2010   **www.oplaw.com**   Vol. 1, Issue 6

OWENS PERKINS

Areas of Practice
Family Law
Business Law
Contract Law
Civil Litigation
Estate Planning
Probate
Guardianship
Criminal & DUI
Real Estate Law

Real Estate Law
Owens & Perkins offers a full range of Real Estate Legal Advice for Short Sales, Foreclosures, Deed in Lieu and traditional commercial and residential real estate transactions.

Attorney Spotlight

James B. Galbraith with academic scholarship, James attended J. Reuben Clark Law School of BYU and has concentrated in the practice areas of civil and commercial litigation including contracts, real estate and class action law suits. James is also fluent in Spanish having lived in Spain for two years and representing many Spanish speaking clients.

The Role of the Attorney in a "Short Sale"

It seems that you can't open a newspaper or turn the channel on the TV without hearing the phrase "Short Sale". If you own your home, chances are good that you have an idea of what the phrase means. But, do you know exactly what a Short Sale is, how the banks handle Short Sales and the critical role that an Attorney can play in the Short Sale process?

What is a Short Sale?
A Short Sale is when you sell your house, investment or commercial property for less than what you owe the bank. Just as a buyer needs their lender's approval to finance the purchase of a property, a short seller needs their lender to approve the sale for a lesser amount than what is owed. The difference between what is owed and the sale amount is called the "deficiency amount". Since a Short Sale is a private sale, the normal laws that govern the sale of real estate in Arizona apply. There are no legal protections safeguarding homeowners in a Short Sale

How do Banks Handle a Short Sale?
Each bank is different, but all tend to follow a similar path in handling residential Short Sales. A residential Short Sale has two parts: the first is selling the property to a qualified buyer and the second step is negotiating with the bank(s) to accept less than what is owed for the property. The Settlement Agreement between the bank and the property owner is commonly referred to as the "Release Document". The Release Document typically will consist of one of three types of financial releases for the homeowner. 1) The bank(s) release the lien on the property allowing the property to be transferred and also release the homeowner from the underlying debt to the bank. This is the ideal outcome. 2) The bank(s) release the lien and require the homeowner to pay back a certain portion of the debt with a promissory note. 3) The bank only releases the lien on the property and the release language is so vague, confusing or misleading that it does not release the underlying debt. This is the least desirable result because the homeowner often believes they do not owe any deficiency amount to the bank but their secured debt has simply become an unsecured debt, meaning you still owe the money. The bank(s) have six years to collect this unsecured debt from you by filing a lawsuit.

The Role of the Attorney
An Attorney's role during the Short Sale process can be limited to reviewing the Settlement Agreement and Release Document between the homeowner and their bank(s) to provide a legal opinion. An Attorney may also manage the whole process from the decision to Short Sell through selling the property with a Realtor, negotiating the terms with the bank, document review and closing of the sale. However you decide to use an Attorney in the Short Sale process, make certain that you have the Settlement Agreement and Release Document reviewed by a qualified Attorney. At Owens & Perkins, we provide a range of services for real estate transactions by qualified Attorneys and Real Estate Advisors that can manage the entire Short Sale process with minimal cost to the homeowner. We have found that creditors tend to respond better to negotiations when they know an Attorney is on the other side. This can translate to an easier and faster sale for you so you can move on with your life sooner!