

# **The Albatross in Divorce: Marital Home**

## **1. What's it worth?**

- 2 x SEV
- Appraisal (is it stale?)
- Comparative market analysis
- Websites:
  - Trulia.com
  - Zillow.com

## **2. How much do they owe the lender(s)?**

- Who is the lender/servicing agent?
- Are there junior mortgages/home equity loans?
- Obtain a current loan statement or payoff amount.
  - Are there payments in default, taxes and insurance in default?
  - Statement may show principal balance plus payments in arrears plus escrow payments in arrears plus late fees.

## **3. What's new with the foreclosure process?**

- Temporary amendment to foreclosure by advertisement: MCL 600.3201 et. seq..
- 2009 amendments provide for a 90 day pre-foreclosure process.
  - MCL 600.3204; 3205a, b, c, d & e
  - Temporary Relief: automatic repeal of amendments on July 5, 2011.
- Before beginning foreclosure by advertisement, lender must send borrower written notice of rights and opportunity to avoid foreclosure.

- Contents of the Notice:
  - Notice of Default.
  - Name, address, telephone number of lender or its agent.
  - Designated contact person with authority to make agreements to modify loan.
  - List of housing counselors approved by HUD/MSHDA.
  - Borrower has 14 days to request meeting with designated agent to work out loan modification and request loan counselor to attend meeting.
  - If borrower requests meeting, foreclosure is delayed 90 days after date of mailing notice.

**4. The loan modification process:**

- Target debt to income ratio of 38% or less (debt includes principal, interest, property taxes, insurance and homeowners fees).
- To reach the 38% target may include:
  - Reduction of interest rate.
  - Extension of the loan term.
  - Deferral of a portion of the unpaid principal until maturity.
  - Reduction or elimination of late fees.
- If borrower is eligible for loan modification, lender is not required to accept the modification, but must pursue judicial foreclosure.
- If borrower is not eligible for loan modification, lender may proceed with foreclosure by advertisement.

## 5. Other solutions:

- Sell the property for a loss, homeowner must pay any deficiency at closing.
- Short sale
  - Buy-Sell Agreement must be conditioned on lender approval
  - Short sale terms are negotiable with lender.
  - Seller must negotiate payoff of junior lienholders to obtain discharge
  - Lender may send Seller 1099 for debt forgiven
  - Seller may have to bring cash to closing or re-negotiate sale price with Buyer
  - Key problem: Delay in obtaining lender approval
    - Ace in the hole: Lender doesn't want the property
- Reverse mortgage.
- Cash for keys/walk away.