

SHORT-SALES AND VERBIAGE: HUH?

“Short-sales,” as they have come to be known, are quite common in today’s troubling economic times. In a short-sale situation, in order to help facilitate a sale, a lender is approached with an offer to accept less than what is due and owing on a loan in exchange for a release of its mortgage on real estate. Often times, it is a beneficial arrangement for the parties involved as a lender will receive an immediate lump-sum payment and the borrower will be able to sell the real estate.

This may be especially true nowadays as real estate values continue to decline and more borrowers are facing foreclosure. However, lenders should be careful and pay close attention to the language of the documents they are being requested to sign if they want to preserve the right to pursue the borrower for the difference between amount due and owing on the loan and the amount received in exchange for releasing the mortgage. Many times, lenders are presented with a Satisfaction of Mortgage which, when signed, effectively not only satisfies the mortgage, but also all of the indebtedness secured by the mortgage, i.e. the full loan amount. If a lender wants to preserve its ability to pursue the borrower and signs a Satisfaction of Mortgage, they could face a long and uphill legal battle to show that a mistake was made and that they did not intend to satisfy the full loan amount.

Instead, in a short-sale situation where the lender wants to preserve the ability to pursue the borrower, it should make sure that it is signing a simple Release of Mortgage which essentially removes the real estate as collateral for the loan amount.