

## LAW REVIEW

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### BUY A HOME BEING FORECLOSED UPON AT YOUR PERIL

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In today's economy we are seeing all sorts of seldom-before-seen tricks and schemes to deal with declining property values and upside down loans.

I have seen unrecorded second deeds of trust, contracts of sale (like the old days), "silent" seconds, unrecorded deeds, straw-man owners, deeds-in-lieu-of-foreclosure, walkaways, and today's fix de jour—the short sale—convincing the (usually non-responsive) lender to take less than what is owed. Two years ago, most of us had scarcely heard of a short sale.

We'll go through short sales in another column, but today's advice is to beware if you are attempting to purchase a home in foreclosure unless you intend to use the home as your personal residence.

#### Home Equity Purchases

A home equity purchase occurs when an owner-occupied, 1-4 unit residential property in foreclosure (Notice of Default recorded) is purchased for rental, investment or dealer purposes by a buyer-- called an equity purchase investor. The Legislature assumes you are trying to rip-off the poor, unfortunate homeowner who is unable to keep current on the loan. As a result, home equity purchases are fraught with

problems; read Civil Code section 1695 and the codes immediately following. Go to the Law link at [www.portersimon.com](http://www.portersimon.com).

A home equity purchase contract must be printed in at least 10-pt. bold type and contain specified notices to the seller. One such notice is a five-day right to cancel.

Failure to use the correct form subjects the home equity buyer and any participating real estate agents to liability for all losses incurred by the seller-in-foreclosure, plus harsh penalties.

### Real Estate Agent

The home equity purchase legislation also regulates real estate agents when they act as the buyer's agent for home equity purchasers of an owner-occupied home in foreclosure that their client does not intend to live in.

Such an agent when negotiating a home equity purchase must deliver to the seller-in-foreclosure a disclosure statement that he or she is a licensed real estate; and the agent must be bonded—for twice the property's fair market value. If the agent fails to deliver the notices, the contract is voidable at the discretion of the seller even *after* escrow closes.

Obtaining a surety bond is generally economically impossible, so my advice to real estate agents representing home equity investors buying single family homes (up to a four-plex) in foreclosure: don't do it. Stay away.

Bottom line is if you are buying an owner-occupied home in foreclosure that you do not intend to use as your personal residence, which could be part of a "short sale" transaction, you must use a specified contract with many trip-wires designed to protect the seller-in-foreclosure; and real estate agents should not represent those buyers.

## New Home Equity Case

To underscore the effect of the home equity laws, note that just two months ago a Court of Appeal ruled against a real estate broker who purchased a home in foreclosure, then leased the home back to the previous owner, giving her a one-year right to re-purchase her own home. A win-win for all, right?

The homeowner, who had fallen behind in her payments to the bank, was all too eager to sign the home sale contract. Unfortunately that owner, who sold while in foreclosure, wasn't able to buy back her own home, so the real estate broker tried to evict her. The former homeowner responded by suing to rescind the home equity sale to the broker on the basis that the sale contract did not comply with the home equity purchase contract requirements. She won. She got her home back and recovered a judgment for actual and punitive damages against the real estate broker/buyer.

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