



first tuesday

The California Real Estate Educators

Your October / November 2008 Real Estate Economics Newsletter

Hello,

The unfair advantage lenders take: a call for change

The time is now for real estate brokers to correct a 26-year-old wrong. Real estate sales must again be allowed to take place without lenders interfering solely for their financial gain.

In 1982, at the behest of politically powerful lenders ailing from their failed Wall Street investments in the secondary mortgage market, Congress began a 24-year long run of reducing lender regulation and oversight.

Part of this lender deregulation gave mortgage lenders the ability to use Due-On-Sale provisions in trust deed liens, and deprived owners of their prior right to freely sell their encumbered real estate without lender interference. With these provisions, lenders extract extra earnings on every sale, further encumbrance, or three-year (or longer) lease of the encumbered property.

This lender interference effectively adds a tax to the sale of all encumbered real estate and mobile homes, shifting wealth from the seller to the lender of record. Payable solely to the lender, this infusion of money artificially subsidized lenders in the 80s and 90s as they continued to founder under massive failures in their mortgage investment schemes. Thus began the privatizing of profits and the nationalizing of losses, a moral risk by any standard of free enterprise.

Not only did this undercut the seriousness of losses stemming from Wall Street's erroneous concept that real estate was a liquid asset, but it began a 26-year long (and

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Real Estate Journal Online

November Topics

Cal-FAIR Insurance

Learn about the Cal-FAIR Insurance program coverage and requirements.

Corporation Licenses

Know the differences between a corporation and personal broker's license.

Involuntary Landlords: a guideline for foreclosing lenders

Take a look at the various options available to a foreclosing landlord when tenants remain on foreclosed property.

The Economic Restructuring of Real Estate

first tuesday is looking for your input for inclusion in our discussion of the volatility of the housing market. Please visit the journal for more details.

ongoing) subjugation of the property interests of sellers and buyers to the congressionally mismanaged existence of mortgage lenders. In turn, Wall Street investors pumped more money into the mortgage-backed bond market. Excessive funds artificially inflated housing prices beyond all sustainable levels as controlled by historic real estate fundamentals.

Meanwhile, buyers and sellers whose ownership of homes and investments were now controlled by lenders through their Due-On-Sale provisions were ultimately left with the aftermath of Wall Street's destructive foray into the ATM mortgage-as-cash business.

But it is an uneven playing field when lenders are able to transfer ownership of their mortgages on the click of the mouse while real estate owners have to go hat (cash) in hand to the lender and ask permission to transfer the property that serves as security for that loan.

Congress took away the property owner's right to freely sell properties encumbered with loans, and only Congress can return that right. The only restraints needed to protect the lender's security interest in the value of the collateral real estate upon a sale are a demonstration by the buyer that he will not mismanage the maintenance of the property and that he is solvent with income and assets to continue paying on the loan as has the seller. In essence, proof he is not an insolvent arsonist.

2009 is a year destined for significant change. The restructuring of the political order will favor a return to real estate fundamentals for setting price and value. Included will be changes in the concept of real estate ownership and the handling of brokered transactions. By 2010, the expectations of real estate buyers will have changed rather dramatically from the expectations they held during the recent past. Real estate is a collectible; stocks are for day traders.

Pricing will again be viewed as the inherent value of the property itself, not extrinsic abstractions of leveraged deals, deceitful introductory loan rates, and brokerage promises of profits. In other words, real estate fundamentals will control

the attitudes and conduct of brokers and agents and the prices buyers will pay, and will do so well into 2015 when the demographics of Generation X will begin to move real estate sales.

The political mood is right to ask Congress to return to owners their centuries-old right to avoid lender interference by forcing lenders to live by the consequences of the loan they originally agreed to. Without this correction, the moral risk created by Congress over 26 years ago will go on, and the lenders will continue to strong-arm their way into another financial disaster.

Regards,

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P.S. A reminder of a different sort: we've updated and enlarged our Forms-on-CD! The new Forms-on-CD 4.2 offers 330+ forms, a fill-and-save feature, and give you more protection for your hard-earned real estate fees. To order the Forms-on-CD 4.2, please call 1-800-794-0494 or visit our website at <http://www.firsttuesday.us/FormsCD.cfm>.

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