Underutilized Section 702 Short Sale Can Save Grace for All

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By Amilda Dymi

At least one expert sees Section 702 of the Helping Families Save Their Homes Act as a "grossly underutilized" strategy that could minimize homeowner abandonment and neglect.

Marian Anthony, president of San Diego-based consumer advocacy agency Anthony Realty Group and founder of the California Default Mortgage Hotline, a nonprofit that assists financially stressed homeowners facing default and foreclosure, says it can save grace to distressed homeowners.

In Anthony's viewpoint it "saves grace" to the mortgage industry as well.

And to a large degree so far there consensus in the belief that along with the borrower and the investor everyone, including the servicer and the lender, incur loses if a home is abandoned.

What has changed? Traditionally only the note holder and investors had, as the expression goes, "skin in the game." Now one significant way the crisis has changed the industry is that servicers, too, incur loan losses and have more influence in the mortgage chain.

Educating their borrowers about options such as the Section 702 program is an effective way servicers could use their influence in a win-win fashion.

According to Anthony, the program helps distressed homeowners "walk away" from their mortgage "without further damaging the economy" since this strategy allows qualified buyers to take possession of homes before these properties are foreclosed.

Anthony's recent book, "Short Sale Rush - A How-to Guide for Nonperforming Assets," explains how using a bona fide lease agreement and paying fair market rents as stipulated in Section 702, buyers can contribute rent capital to the bank that holds the paper.

It works as a recovery mechanism for banks and default borrowers, he says, and helps protect owners from further losses in home and neighborhood values.

There are several key reasons Section 702 can be of great benefit to mortgage borrowers and real estate investors alike.

Anthony starts with "a more palatable exit strategy" for borrowers that owe too much, reducing the incidence of the so-called strategic defaults that undermine the economy at large.

It prevents banks from foreclosing on a home while a qualified buyer is in possession, allows owners and borrowers to get more equitable terms, removes the "monopoly" power from banks to selectively distribute properties to affiliates, generates fair market rent income that offsets the delinquent taxes, interest payments, property maintenance and other consequences that damage property.

Also, it provides the seller with a less damaging "walk away option" to the financial markets, he says, including many U.S. retirement plans and pension funds that own CDO and MBS investments, and better safeguarding home values.

It "minimizes the chances of a home becoming neglected or abandoned, which also adversely affects" property values and creates opportunities for fraud.

And finally, it reduces demand for taxpayer funds that are deployed through TARP and HAMP to avoid foreclosure.

And all of the above ensure a win-win outcome for all parties, he says.

The problem, however, is in finding better ways to inform the public and the industry about the program.

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