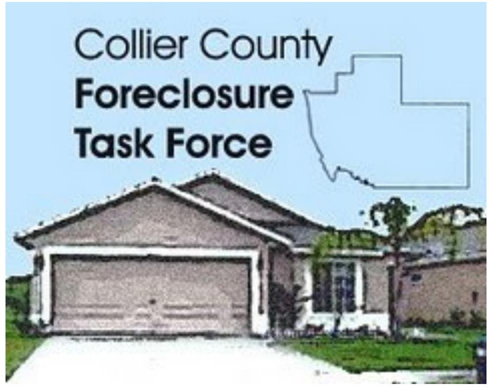

SHORT SALES-THEY ARE NOT WHAT THEY USED TO BE.....

By Eleanor W. Taft, Esq., and Gery Connor

There are several options available to homeowners with mortgage debt greater than the value of their property. The purpose of this article is to provide insight into the short sale process, not to suggest that a short sale is the best or only possibility for homeowners. What is a short sale? It is the process where a homeowner asks the bank to approve the sale of their property for an amount less than what is owed to the lender. For example, this would include a situation where the outstanding loan amount is $250,000, and the homeowner has received an offer from a buyer to purchase the property for $100,000 – thus creating a deficiency balance owed to the bank of $150,000.

The negotiation of a short sale is complex and may create a number of issues for a borrower. To market and sell your home, you should consider working with an experienced real estate agent, perhaps one who has received additional training such as a "certified short sale specialist." Additionally, you should seek the advice and counsel of a lawyer experienced in short sales to discuss negotiation strategies and your legal rights as a borrower, and a Certified Public accountant or Tax Attorney to advise you as to any tax and credit implications. This process is ever changing, but one thing has not changed - you do not have to leave your home immediately. You may stay in your home until the short sale is finalized.
Until February of 2009, there was only one option for a short sale: a traditional, bank negotiated short sale. Currently, borrowers can also apply for the federally regulated Homes Affordable Foreclosure Alternatives Program (HAFA).

A 'traditional' bank negotiated short sale may be more flexible than HAFA; however, you are subject to the rules of your individual bank. Check with each bank as to its short sale requirements. In order for a bank to review a short sale request, a borrower must submit a 'short sale package' to the bank once a binding contract to purchase the home is received. The short sale package must be complete, and usually includes the most current income tax returns for the borrower(s), W-2s, recent bank statements (last 3 months), a completed bank financial report, a hardship letter, and a fully executed Purchase and Sale Agreement. It is important that the package is complete and current - if any of the information becomes outdated, you may have to re-submit. There is little advantage to submitting documents early.

To be eligible for HAFA, homeowners must meet all of the requirements below:
• You live in the home or have lived there in the last 12 months.
• You have a documented financial hardship.
• You have not purchased a new house within the last 12 months.
• Your first mortgage is less than $729,750.
• You obtained your mortgage on or before January 1, 2009.
• You must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

HAFA was designed to streamline the short sale process, and offer protection to owner-occupied sellers. The borrower agrees to pre-approved short sale terms, including a pre-determined sales price based on current market conditions. If you are not able to sell your home at the pre-determined price within the set period of time, the borrower will be released of its loan payment obligations upon mandatory delivery of a “Deed-in-Lieu” of foreclosure to the bank and by moving out of the residence. Unlike a traditional short sale, HAFA guarantees waiver of the deficiency balance for the first mortgage only, and the borrower is eligible for a cash payment of $3,000 for moving expenses. You will therefore not owe any deficiency on the first mortgage if you successfully complete the HAFA process. Not all banks participate in the HAFA program, so check with your bank representative.

Determining which ‘exit strategy’ is best for you can be an overwhelming process. For example, Fannie Mae has waiting periods for borrower financing. Currently, borrowers that have conveyed property by short sale or through a deed in lieu of foreclosure may be able to obtain Fannie Mae or Freddie Mac financing in 2 years if they seek to buy a home. However, a borrower/seller that lost a home due to foreclosure, or filed bankruptcy, may have to wait 5 – 7 years to obtain financing. Please refer to www.efanniemae.com for more information regarding financing implications.

Furthermore, foreclosure and bankruptcy may impact more significantly your credit rating which can potentially have an impact on your employment if your position has a credit rating or bankruptcy element to the qualifications for the position.

This article is one of a series authored by members of the Collier County Foreclosure Task Force, a grass roots pro bono initiative launched in 2008 by Legal Aid Service of Collier County and the Collier County Bar Association. The Foreclosure Task Force (FTF) was formed to promote foreclosure prevention through education and intervention. The FTF has assisted local homeowners through free public workshops and legal clinics, and via a website it created - www.collierFTF.com.