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COMMENTARY: Realtors, learn about foreclosures

By Rose Meily
For the Los Gatos Weekly-Times

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Although it is fortunate the Silicon Valley region has not been hard hit with foreclosures in comparison to the rest of the state, a California real estate and tax attorney believes foreclosures will be with us for some time.

Pamela Simmons, an attorney with the law office of Simmons and Purdy in Soquel, said at a recent Silicon Valley Association of Realtors tour meeting the number of California homes going into foreclosure continues to increase as the market works its way through declining home values and a pool of at-risk mortgages. According to DataQuick Information Systems, Trustees Deeds recorded, or the actual loss of a home to foreclosure, totaled 47,171 during the first quarter of 2008, up 327.6 percent from 11,032 in the same period last year.

Simmons started seeing the first flow of cases pertaining to foreclosures about a year and a half ago. Those affected in this first wave were homebuyers "who had no business buying a home in the first place," she said. These were people without steady jobs, who were targeted by predators with offers of zero down payment loans. She indicated these homebuyers have lost their homes.

Included in the second wave of foreclosures are homebuyers impacted by subprime borrowing, many of whom entered into loan agreements with adjustable interest rates. Those rates have now adjusted upward, and the homebuyers cannot keep up with the higher house payments.

Today, Simmons is seeing more of the third wave of foreclosures--homeowners with negative amortization loans. Included here are homeowners who could not afford their debt and took out too much equity from their home. Some of these homeowners have payments that have increased by as much as \$3,000 a month. Homeowners with multiple properties, popularly known as "flippers," also belong in this third group.

"It's like playing musical chairs, and the music has stopped and these people are left without a chair," Simmons said.

Simmons explained the difference between a judicial foreclosure and a non-judicial foreclosure. Judicial foreclosures are processed through the courts, beginning with the lender filing a complaint that states what the debt is, and why the default should allow the lender to foreclose and take the property given as security. If the court finds the debt valid, it will issue a judgment for the total amount owed, including the costs of the foreclosure process. After the judgment has been entered, a writ will be issued by the court authorizing a sheriff's sale. Since this process can entail as much as \$100,000 in costs to a lender, virtually all of the foreclosures in California are conducted through the non-judicial foreclosure process.

Non-judicial foreclosures are processed without court intervention. Simmons said if a lender chooses this route, the lender cannot seek a deficiency judgment for the loss the lender suffers.

These days, cases involving lenders going after homeowners for misrepresentations on loan applications and lenders going after agents and brokers are on the rise as well, Simmons said.

She said, at least for much of the state, "I see a continuing market for people losing their homes."

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The Silicon Valley Association of Realtors urges homeowners who anticipate falling behind on their payments to seek help immediately by calling 888-995-HOPE (or visit www.995HOPE.org). This toll-free, confidential hotline is sponsored by the Homeownership Preservation Foundation, which offers free advice and counseling to homeowners.

Information provided in this column is presented by the members of the Silicon Valley Association of Realtors at www.silvar.org . Send questions on any topic to rmeily@silvar.org .

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