

**These are generalizations only! Nothing herein creates an attorney-client relationship. Consult a Florida attorney for specific advice. PLEASE DO NOT SEND UNSOLICITED MATERIAL OR CONFIDENTIAL INFORMATION.**

**Question 11: I'm delinquent or can't make/can't pay my mortgage payments. What should I do?**

**Answer:**

[**TIP:** For helpful information and links, Visit the weblog set up by the Collier County Bar's Foreclosure Task Force:

<http://www.foreclosuretaskforce.blogspot.com/> ]

Call the bank! NEGOTIATE WITH YOUR LENDER!!! Today in 2008, banks are now very sensitive to borrower's difficulties. No matter the year, banks often see foreclosure as only their very last step. They often want to keep the borrower in the house. Depending on the circumstances, it may be in the bank's interest to work out this loan with you, either by restructuring the loan, taking a *deed in lieu of foreclosure* or consenting to a *short sale*. Alternatively, they may agree to go forward with the foreclosure, but drop any claim against you for a *deficiency decree*. These terms are defined below. There are some land mines involved in any such negotiations, so you might wish to have the benefit of counsel and/or your CPA. There may be tax consequences. Further, your lender may require updated financial information and various other materials. You should review any such requirements with an attorney before proceeding. A licensed Florida attorney can also help you weigh the options available to you.

1. BE VERY CAUTIOUS about people who call or show up offering to 'save' or 'rescue' you from foreclosure. You could wind up in a worse situation. Consult an attorney before you sign anything!!

## DEFINITIONS

***deed in lieu of foreclosure** --- A deed by which you convey (give) the property back to the bank, without the necessity of a foreclosure. However, this will not be acceptable where the lender has concerns about other liens or judgments against the property. The lender may feel it has to foreclose in order to prove the superiority of its mortgage loan and obtain the house, lot or condominium free and clear. The lender also will not consider this if it appears that any of the borrowers may file for bankruptcy protection. Even if the bank accepts a deed in lieu of foreclosure, that by itself does not excuse the borrower from further liability on the mortgage note or deficiency.*

***deficiency decree** --a personal judgment against the borrower, entered sometime after the foreclosure sale. The short version is that this is for the amount that the bank establishes that it was not able to recoup or get back from the foreclosure sale of the borrower's property. The long version is more complex and you should consult counsel.*

**short sale** --- this is a sale to a third party for LESS than the amount of the outstanding mortgage. In other words, the borrower is “upside down.” You, the homeowner/borrower can bring the extra \$ to the table in order to close the sale. Sometimes, the lender may consider accepting less than the full amount of the mortgage. Generally, the bank will want the borrower/debtor to ‘share the pain.’

Even if the bank agrees to a short sale, that by itself does not excuse the borrower from further liability on the mortgage note or deficiency. This would be a matter of negotiation. However, even if the debtor has a remaining liability to the bank, the borrower has been relived of the lion’s share of the obligation by accomplishing the sale.

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**Ross Lanier & Deifik PA 239 262-2874 or 262-6161** serves Collier & Lee counties (Naples, Fort Myers, Bonita Springs, Marco Island, Cape Coral, Estero).

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~ **FLORIDA ONLY** **May 2008** ~

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask the attorney to send you free written information about the individual’s qualifications and experience.