to negotiate a short sale until a qualified buyer makes a specific offer. After recording the NOD, your lender or its servicing agent may pursue foreclosure regardless of your desire to find a buyer to complete a short sale.

- The sale price of your home should take into account the compensation payable to your broker, as well as selling costs and expenses including title insurance premiums (if chargeable to the seller), escrow fees, recording and notary fees, pro-rations of property taxes, and property insurance premiums. You should look for a licensed real estate broker with short sale experience. When reported by the lender or its servicing agent to a national credit repository, participation in a short sale is noted in your credit files, but it likely will be less damaging to your credit standing than a foreclosure.

- Before agreeing to a short sale, you should get in writing whether the lender intends to forgive the entire debt represented by your mortgage loan. Debt forgiveness may lead to a taxable event (see discussion on “Understand What Your Lender or its Servicing Agent Can Reasonably Offer”) - or whether the lender intends to retain its rights to pursue civil action to collect the deficiency, unless prohibited by applicable California law.

Sell Your Home to Access the Available Equity

This option involves selling your present home. However, unlike the short sale, this alternative is only feasible for homeowners who still have equity in their home. Be aware that some home equity purchasers have subjected homeowners whose residences are in foreclosure (subject to an active NOD) to fraud, deception, and unfair dealing. (Equity purchasers are persons who acquire homes in foreclosure as an investment and not for occupying as a homeowner.) Purchase and sales transactions between an equity purchaser and a homeowner, whose home is subject to an active NOD, are subject to specific provisions of California law.

Requirements of this law include standards for the contents of the contract between the equity purchaser and the homeowner. The contract must contain the entire agreement of the parties and is to include (among others) the following terms:

- The name, business address, and the telephone number of the Home Equity Purchaser;
- The address of the home in foreclosure (subject to an active Notice of Default or Trustee Sale);
- The total consideration purchase price to be paid by the Home Equity Purchaser in connection with or incident to the sale;
- A complete description of the terms of how the Home Equity Purchaser will pay for your home, other consideration including, but not limited to, any services of any nature which the Home Equity Purchaser represents he or she will perform for you before or after the foreclosure sale;
- The time in which possession is to be transferred to the Home Equity Purchaser;
- The terms of any rental agreement;
- Proper notice of your right to cancel with an equity purchaser. The right to cancel expires at midnight of the fifth business day following the day on which you signed a contract or 8 a.m. on the day scheduled for the sale of the property pursuant to a power of sale conferred in a deed of trust, whichever occurs first.The required format for the notice can be found in Sections 1695.3 and 1695.5 of the California Civil Code.

The homeowner is entitled to a right of cancellation, and the purchase and sale transaction cannot be concluded and no loan may be imposed on your home by the equity purchaser (or at the request of the equity purchaser) until the cancellation period has expired. Further, the homeowner is not to receive any consideration for their equity until the cancellation period expires. If the homeowner elects to cancel, the original contract or any other document (instrument) the homeowner signed must be returned to the homeowner without any condition being imposed by the equity purchaser.

When the homeowner elects to cancel, the homeowner is to detach, complete and deliver the document entitled Notice of Cancellation, which must include the date the equity seller executed the contract. The homeowner must cause the Notice of Cancellation to be delivered to the equity purchaser.

Equity purchasers also are prohibited from making untrue or misleading statements regarding the market value of your home, the amount of net proceeds you will likely receive (if any) after the sale, any contractual term (including your rights or obligations incident to or arising out of the proposed purchase and sale transaction), the nature of any document (instrument) which the equity purchaser requests or induces you to sign, or any other issue relating to the sale of the home. It is unlawful for any person (including an equity purchaser) to initiate, enter into, negotiate, or complete any purchase or sale transaction involving a home in foreclosure (subject to an active NOD), if such person, by the terms of such transaction, takes unconscionable (inappropriate and unacceptable) advantage of you.

As part of the proposed purchase and sales transaction, some equity purchasers will offer you the opportunity (an option) to repurchase your home at some future date. The equity purchaser will demand that title to the property be conveyed (transferred) to the purchaser but that you may stay in occupancy as a tenant and at a future time exercise an option to repurchase. Such purchase and sales transactions are presumed to be a mortgage loan rather than a sale of the home, unless the equity purchaser can prove otherwise (which will be difficult to do), and should not be agreed to without the advice of an attorney.

Applicable California law is intended to protect you from unethical and unscrupulous equity purchasers who are acquiring your home when it is subject to an active NOD. Even if your home is not subject to an active NOD, you may need protection when considering a purchase and sales transaction with a buyer seeking to purchase the equity in your home. As you can see from this brief discussion, the law is complex and homeowners would benefit from the advice of an attorney prior to proceeding with these contemplated transactions.

Selling Your Equity - Quick Tips

- Whether selling your home to an equity purchaser, or a buyer to occupy, hiring a licensed real estate broker to solicit for buyers and to perform other services requiring a license can be helpful.

- Without professional advice, you may be uninformed about the fair market value of your home – this could expose you to unethical business practices.

- A real estate broker (active in your neighborhood and community) or an independent fee appraiser can assist you in estimating the current fair market value of your home.

- In California, licensed public escrows, title insurance companies, and underwritten title companies, among others who either are licensed or expressly exempt from licensing, are authorized to perform escrow services. These services include paying off your existing lender as part of the purchase and sales transaction. Avoid private transactions where a request/demand is made by the buyer for you to sign papers in exchange for a cash payment (particularly without the use of an independent, third-party escrow agent).

- Unethical persons often attempt to persuade homeowners to complete informal transactions which provide “instant cash” or will offer to buy the homeowner’s equity using what the buyer describes as a “contract of sale,” or an “installment land contract of sale.” This transaction could ultimately result in financial and legal grief. Transactions for cash to purchase your home by a buyer (including an entity, often a LLC or a corporation) in the business of acquiring homes in foreclosure also require advance review by your real estate attorney. Advice from an attorney is recommended before entering into a “contract of sale” (a contract where title remains in your name and the deed is delivered at some later date to the buyer/purchaser).

- In typical purchase and sales transactions, the buyer will intend to reside in the property. Your real estate broker needs time to find such a buyer for your home. Begin the marketing of your home as early as possible. You should keep your monthly mortgage loan payments current during this period.

- As long as this transaction involves a complete payoff to your lender or its servicing agent of your mortgage loan, it is not a short sale. The prior permission of the lender or its servicing agent is not necessary. A prepayment penalty may be part of the terms of your mortgage loan resulting in an extra fee if you pay off your mortgage loan early. You can attempt to negotiate with your lender or its servicing agent to waive this fee. Some prepayment penalties are contrary to applicable law, and a real estate attorney can assist you in this situation.