

Subject Line – This is the last Wednesday Minute FOREVER!

I have been writing Wednesday Minutes for over a year and had a great time doing it. But I decided to do some more things with the minutes so I instructed my attorney to check if I could trademark the name. The answer was that I could get the trademark, but someone else had been using it for two years, but hasn't recently. He said I could fight it and possibly bully them and probably win a protracted court case. So in the Dave Dinkel life-style of doing things – the Wednesday Minute needs a new name and I am looking to my readers for suggestions. Please send your suggestions to Robert at investor@wjl.net. A prize will be given to the winning suggestion.

Lenders Are Scalping Real Estate Investors

A growing trend in the real estate investing community is for lenders to viciously go after investors for deficiency judgments and not attempt to do any type of workouts. These workouts include forbearance agreements, loan modifications with or without principal reductions. These lenders are focused short-term on taking the foreclosure path and taking the properties back. In a few cases the lenders have accepted deeds in lieu of foreclosure but that changed as the market continued to decline.

In the recent past FNMA decided to reduce the number of investor loans they would guarantee for investor properties from ten to five. Within months they reversed their decision because someone in the company realized that only investors buy multi-family properties and without investors, the fragile real estate market might never recover.

I take that back – “the real estate market will never recover without real estate investors.” As soon as everyone in government, the people in charge of the lenders and the realtors across the country admit this, we can start getting on with a recovery plan for the real estate market. If everyone would forget their unreasonable pride and work together as Americans to let real estate investors start returning neighborhoods to the American Dream of individual homeownership, we will begin to see a robust return of the pride of ownership that homeowners knew just a few years ago.

Besides the attitude change, the lenders will have to acknowledge that they are the backbone of the recovery. To date they have been holding back by not allowing good loans to be made to worthy buyers and focusing their efforts on their making money on additional fees and charges that their clients shouldn't ever have to pay. Not to belabor this but doesn't it seem unreasonably greedy to penalize a client for paying their credit card on time? Yet, that is exactly what at least one lender is proposing and may have in place by now. And when is it anything by usurious to accelerate interest on a credit card to 30% or more when the client has never been late? Yet, these types of abuses are happening every day.

So what is in store for the investors? What I am going into in the next few paragraphs is written for any individual who owns more than their homesteaded property – the one they live in 6+ months a year. If you have two residences and are considered a “snow bird”, you qualify.

I have three investor friends who each have 20+ rental properties and who re-financed each one to buy the next one. This investor strategy was taught by national gurus for 10 – 15 years and it worked in flat or rising markets. In the bull markets of early 2000’s this strategy worked especially well and many investors took full advantage of what the lenders offered. No fraud or attempt to take advantage of the lenders, just the chance to fulfill the dream of wealth creation. Another advantage of this borrowing strategy was once you took loans on the properties these loans were not considered income to the investor by the IRS and the income was essentially “tax-deferred”.

With the decline in the real estate market, the properties went upside down, meaning the mortgages owed were greater than what the properties could be sold for. Now the investors had to make a business decision of whether to pay the mortgage or not. Paying the mortgage was akin to throwing money away because it could never be recovered unless the property was eventually sold for a price higher than the mortgage amount due.

Some investors hung on for months that lead into years and finally threw in the towel and said no more payments! Most tried to work out deeds in lieu of foreclosure but the lenders were belligerent and wouldn’t take the deeds back. This meant, by the lenders admission that the foreclosure process they started would cost the lender \$40,000 - \$50,000 to get the same deed they were offered for no cost from the investor-owner. This doesn’t seem to make sense, or does it?

The lenders are under the belief that the added cost will be part of the final deficiency judgment that they get against the investor. So they probably truly believe that in the future they will get this money back. Or it may have been a spiteful move to kill the investor’s credit future and hope that when he sold his personal residence they would get part or all of it back.

It doesn’t matter what their thinking was because they have one ace up their sleeve that we are going to look at now. As I mentioned, whether you own one or 100 properties, if you already have or are getting deficiency judgments, the lenders are “circling the wagons” and filing, recording and certifying these judgments in the court system.

Next, they are putting them in the hands of professional collection agencies that really know how to collect these monies. I got a call from a client who was shouting that the bank had stolen \$17,000 from his account. It was there one day and gone the next! When he asked what happened they gave him a copy of a court order that authorized and commanded the bank to pay the full account balance to the collection agency, and the lender did as was required by law. He related that it was almost four years earlier

that he had defaulted on a condo loan from a developer who financed his purchase using a national lender.

Four years is a significant number because the statute of limitations varies from state to state and some judgments can be renewed when they are about to expire. But all judgments have some "life expectancy" and you should find out what it is in your state.

So to recap, the lenders are counting on your life returning to normal as much as it can. Then they expect you will stabilize your household and income (everyone has to live), next, you will accumulate a car, boat, other toys, maybe more real estate and even a savings account. The collection people are watching, and not sitting in their car down the street. They are watching by computer, perhaps in another state, in public records and where you live in relationship to local bank branches. As soon as the statute of limitations is getting close to expire, they start legal proceedings against whatever assets of yours they found and get court authorizations to garnish everything that can be sold and especially your bank accounts – without knowing where your actual accounts are!

If you are not facing foreclosure on any property this info may not apply. However, I bet that you know someone who does have this problem facing them in the future. The time to start planning for the protection of your financial future is before you have a problem - much less expensive that way. One clue, and it's not legal advice, is to exchange your Sub-S corporations for LLC's – the IRS allows this and it will substantially help you in the future if certain asset protection "problems" occur. One last warning, don't get foolish and just transfer assets to a friend or family member as it could cost you jail time. Talk to an attorney and CPA who handle these cases and take action immediately before your adversary does.