

When Borrowers Default On Second Homes
Strategic Defaulting
Provided by TCAOR P.R. Committee Chair-Sandra Hayes

Strategic defaulting is where the homeowner has the ability to pay the mortgage, but chooses to stop making payments. Among affluent homeowners with second homes and investment properties strategic defaulting is increasing.

Before you walk away from the mortgage on a second home or investment property keep these facts in mind:

- Homeowners who strategically default are likely to find their credit will be negatively impacted and they should expect to be prevented from getting another mortgage loan for 7 to 10 years.
- Many homeowners are concerned about the possibility of the lender suing for the amount of money owed on the loan when a house goes into foreclosure. Whether or not the lender has legal justification to do so depends largely on where the property is located.
- In “recourse” states, a lender can go after the homeowner, and usually other assets like a primary residence, for the full mortgage amount. In “nonrecourse” states, a lender agrees to accept whatever the property fetches at a short sale, foreclosure sale, or deed-in-lieu, and generally can’t sue for the full loan amount.
- California is in a third category called “single-action” or “one-action,” which allows the lender either to foreclosure on the owner or file a civil lawsuit for the full loan amount.
- Homeowners should be advised that even in a nonrecourse state, those who opt for a strategic default on a previously refinanced property may not be protected from lenders, because the mortgage is not in accordance with a first purchase.
- Although California is a single-action state, lenders can still sue homeowners for repayment of a second mortgage or home equity line of credit.

Reprinted from The New York Times via the California Association of Realtors. Read the full story:

http://www.nytimes.com/2010/12/05/realestate/mortgages/05Mort.html?_r=1&ref=realestate

The next installment of **Decoding the Real Estate Market** will discuss **New Law Affecting Landlords**.