

# BofA Wording May Cause More Foreclosures

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Mindy Moore faces potential foreclosure on her Edmonds condo because of lending provisions that affect her decision to short sell the property.

When her Edmonds condo went on the market, Mindy Moore thought she had managed to avoid foreclosure.

Moore listed the home in Edmonds for about \$30,000 less than she owed on the mortgage. She thought the “short sale” agreement signed with the bank meant the bank would absorb the loss.

Then she discovered that her lender, Bank of America, might still come after her for the difference. That means she may have to let the bank take back her property, or file for bankruptcy because she can’t afford to pay up.

Experts say the wording, which was recently and quietly added to Bank of America’s short-sale agreement, could have major ramifications for a large group of distressed homeowners in Washington and across the country.

As one of the country’s largest home lenders — and the largest bank by deposits in Washington — Bank of America could end up pushing thousands more homeowners into foreclosure or personal bankruptcy, said Richard Eastern, a short sale consultant in Bellevue.

It’s unclear whether other lenders are following suit. But Bank of America could be harming itself with this tactic, Eastern says, because the foreclosures would have to be carried on its books until sold. Bank of America also owns Countrywide Financial, one of the largest mortgage lenders in the country.

“You’re trying to do the right thing by selling the house,” said Eastern, of his clients. “But now you’re going to owe them the difference. That’s huge.”

Bank of America said in a statement that it asks for a promissory note from sellers — the term used to describe the written promise to pay back the difference — to protect its “investors and shareholders from the losses in a short sale.”

“Many investors and mortgage insurance companies require this process,” according to the statement. The bank declined further comment.

While Bank of America’s short-sale agreement wording appears new, Kevin Kim, a short-sale consultant in Seattle, said other lenders have similar wording in their agreements that would require homeowners to pay the money left on their loan amount.

Bank of America’s short-sale agreement illustrates the financial complexities facing hundreds of Washington homeowners struggling to deal with underwater mortgages (in which the owner owes more than the house sells for). It also shows the tug-of-war between banks and borrowers as banks try to recoup as much money as they can from their failed loans.

As the foreclosure rate soars in Washington, and elsewhere, more homeowners are turning toward short sales in a last-ditch attempt to offload their property before foreclosure hurts their credit score, say short-sale experts.

Of the single family homes listed on the Northwest Multiple Listing Service, about 12 percent — or 4,400 — are listed as short sales, according to Eastern, who analyzed homes on the market. The Northwest MLS doesn't officially track short sales.

But that's only an estimate. The real number is likely much higher, as not every short sale is identified as such, he said.

The number also is growing. Although no local agency tracks those figures, short-sale consultants and real estate agents say the volume in Washington has jumped dramatically in the last year.

It's not clear whether other banks will follow suit with Bank of America on short-sale agreements, but if they do, that would be "alarming," said Jason Bloom, president of the Washington Association of Mortgage Professionals and vice president at Elliott Bay Mortgage in Seattle.

Bloom, who only recently learned about the issue, said at least two homeowners working with Elliott Bay Mortgage could be affected it. While Bloom isn't sure why Bank of America would change its agreement, he said it's likely the bank is attempting to avoid unnecessary short sales.

"They're trying to recoup any of their costs and, at the very least, try and discourage some people who might be able to make it through without doing a short sale," said Bloom.

Short sales could become a dead end for homeowners, said Eastern, who's chief executive of Washington Property Solutions. And that would complicate the clearing of bad debts from the housing market.

About a third of the 150 homeowners Eastern is currently working with would be affected by Bank of America's more stringent short sale agreement.

At issue is a sentence in Bank of America's agreement that says its mortgage servicing arm "and/or its investors may pursue a deficiency judgment for the difference in the payment received and the total balance due unless agreed otherwise or prohibited by law."

That means Bank of America could pursue a court order against a homeowner after the short sale is completed. Under Washington law, it would have up to six years to do so.

That's a scary proposition for Moore, who doesn't want to be on the line for thousands of dollars after her condo is sold. She bought her 600-square-foot home in 2006 and is struggling to make her roughly \$1,000 monthly mortgage payment while working two minimum-wage jobs and paying student loans for nursing school.

She recently put the condo on the market for \$100,000, about \$30,000 less than she bought it for during the height of the market three years ago.

"I didn't want to go into foreclosure, because that's not good for anyone," she said.

But that may end up being the cheapest option for Moore, even though it would affect her credit and ability to get financing in the future. Another option may be to file for personal bankruptcy.

"(The bank) is better off doing the short sale, because they're going to net more money than in a foreclosure," said Eastern.

Often, homeowners are able to negotiate that wording out of the contract to allow them to go through with the short sale, said consultant Kim.

Still, dealing with the lender can often be a complicated and arduous task, making foreclosure seem almost like a relief.

“If you Google ‘short sale’ and ‘misery,’ you’ll probably find 1 million hits,” Kim said.