

NOTES AND MORTGAGES

Promissory Note: Documents a **Loan** between a **Borrower** and a **Lender**. Must include the **Parties**, **Loan Amount**, **Interest Rate** and **Maturity Date**. Usually includes clauses relating to **Amortization**, **Assumability** or “**Due on Sale**”, **Recourse** or **Non-Recourse**, **Prepayment** or **Lockout**, **Assignment**, **Default** and **Acceleration**.

Mortgage: A two-party **Security Interest** in **Real Property** to secure the repayment of a **Real Estate Loan** that is given by a **Borrower / Mortgagor** to a **Lender / Mortgagee**.

Deed of Trust: A three-party **Security Interest** in **Real Property** that is given by a **Borrower / Trustor** to an independent **Trustee** to secure the repayment of a **Real Estate Loan** for the benefit of a **Lender / Beneficiary**. Used in California and most other states where it is available, because it is preferred over a two-party **Mortgage**.

Senior vs. Junior Mortgage: Determined by state statutes that determine the **Priority** of **Recording**, unless the prior recorded mortgage contains a **Subordination Clause**.

Construction Loan: A **Loan** for the **Construction** of a **Building** or **Improvements**. **Loan** draws are made against a **Maximum Loan Amount**, are secured by a **Mortgage** or **Deed of Trust** against the **Real Property**, usually with **Recourse** to the developer.

Purchase Money Loan: A **Loan** made for a **Borrower** to purchase **Real Estate**.

Default: Failure to perform any of the terms or conditions of the **Loan** or **Mortgage**. The most common **Mortgage Default** is the failure to pay **Interest** and **Principal** when due. **Default** can lead to **Acceleration** of the **Loan** and **Foreclosure** of the **Property**.

Foreclosure: With a Deed of Trust, can be **Judicial** (in court) or **Non-Judicial** (out of court) and involves a **Lender** ultimately taking **Title** to **Real Property** or forcing a **Sale** of the **Property** to satisfy the unpaid **Mortgage** balance. All **Junior Mortgages** are extinguished when a **Senior Mortgage Lender** forecloses on a **Property**, but the **Debt** secured by those **Junior Mortgages** is generally unaffected by the foreclosure.

Deficiency Judgment: Any **Loan Balance** remaining after a **Judicial Foreclosure Sale** can become a **Personal Judgment** against the **Borrower** if the loan is **Recourse**. California law generally protects homeowners from a **Deficiency Judgment**.

Workouts and Extension Agreements: Are usually preferred by **Lenders** over **Foreclosure**, and involve **Negotiations** with the **Borrower** to extend the **Maturity Date**, to increase the **Amortization Period**, or to temporarily reduce the **Mortgage Payments**, rather than permanently lowering the **Interest Rate** or reducing the **Loan Balance**.

Short Sale: When a **Lender** allows the **Sale** of a **Property** for less than the outstanding **Loan Balance**, typically without requiring the **Borrower** to pay the shortfall.

Bankruptcy: **Chapter 7** (liquidation) and **Chapter 11** (reorganization of a business).