

Whitecap Investments

Gary Smith, Broker / Owner

P.O. Box 5212

Laguna Beach, CA 92652-5212

grsmitre@cox.net

Ph (949) 500-8555

Whitecap Investments Land Trust System... Foreclosure Alternative for Homeowners

Options to Foreclosure

There are few options for people in foreclosure. This is especially true for those who want to remain in their home. The Whitecap Investment Land Trust System is an option that you need to consider if you are in this situation.

There may seem to be only four options when you are in foreclosure:

- 1) Payoff the past-due payments to the bank and keep your home;
- 2) Refinance your home and payoff the lender;
- 3) Rent the house out and hope you get enough up front to bring the payments current, and that you can get enough per month to continue to cover the payments; or
- 4) Sell your home before it's too late.

If you have decided that your first choice is to stay in the home, and yet you are not in a financial position to pay off the past-due payments and are unable to refinance for personal, credit or financial reasons, you may still have an option. It can all happen quickly, legally, and without a new loan or loan assumption. This is a little known option open to those facing foreclosure. The program entails finding an investor to become a partner with you in helping you stop the foreclosure. The investor, in exchange for a beneficial interest in the trust into which the property will be placed, will bring in enough cash to catch up the past - due payments. The title of the property is put into a specialized revocable *inter-vivos* trust. You keep the equity in the home. A portion of the trust's beneficial interest is conveyed to the investor (instead of selling any of the real estate itself). A set period of time is allowed for you to either refinance or sell the property. The property will be refinanced or sold at the market value at the time of the refinance or sale (determined by an appraisal).

You can choose to allow a third party resident to live in the house and take over your payments and maintenance issues, or you can continue to live in the house. If you continue to live in the house, your payments for a year will be less than you are paying now. At the end of the set period of time, you can either refinance the house or sell it. The investor beneficiary will first receive his refundable contribution to the trust. You would receive your beginning equity; and then you would split with the other beneficiaries any additional equity in the property. This is a very good option for many situations, and should be explored as early as possible in a foreclosure cycle.

There are other benefits to using this Whitecap Investment Land Trust System.

- **PRUDENT & MOST PROFITABLE** – It can eliminate the need for standard renting, leasing or optioning-out.
- **EASY LANDLORDING** - If you choose to allow someone to reside in the

home, it eliminates costs of negative cash-flow, maintenance & vacancies.

- **TAX DEFERMENT** - A Land Trust transfer is a "contingent sale," possibly deferring capital gain for years. 1031 Like Kind Tax Deferred Exchange privileges can remain intact.
- **ASSET PROTECTION** - The Whitecap Investment Land Trust System may shield against tax-liens and creditor judgments.
- **THE LOGICAL WAY OUT** – It can be an excellent alternative to any Short-Sale or Foreclosure by wholly avoiding the lender approval process, averting any tax on debt-relief, and gives time to repair credit injury.

HOW IT WORKS

The Beginning

1. First, you must fill out a Whitecap Investment homeowner information form to determine whether the property will meet our criteria for the Land Trust. This form will ask you for information on the property and the encumbrances (mortgages, liens, etc.) on the property, as well as information on taxes, homeowners or condo associations, and any other monthly payments attached to the property.
2. If your property matches our criteria, you will receive an Offer that sets the Mutually Agreed Value on the property. This amount will generally be similar to the amount you would receive if you sold your house through a real estate agent and paid closing costs.
3. An investor will be located that is interested in the transaction.
4. A title search will be conducted to determine that the title of the property is clean.
5. A closing will take place in which all legal documentation is signed, and the title of the property is transferred into a specialized revocable *inter-vivos* trust, of which you will be a beneficiary, as will the investor. A trust termination period is set at that time to allow you to refinance or sell the property (usually 1 to 3 years).
6. The investor will bring in sufficient funds to bring the loan and other past-due obligations current. The banks, tax authorities, homeowner's associations, and all others who have past-due payments and liens on the property will be brought current.

The Middle

1. You may sign an Occupancy Agreement with the Trustee and continue to reside in the property.
2. If you are in foreclosure and choose to stay in the house, your monthly payments will be decreased by about 5% per month.
3. Your payments are made directly to the Trustee. The payments will include all monthly obligations (tax impounds Insurance, and principle & interest).
4. An additional option maybe to lease the property out to another tenant if that is more desirable.

The End

1. At the end of the trust period, if as a tenant you choose to remain in the property, you will refinance the property at the appraised market value, and the title will be transferred back to your name and the trust terminated.

2. If you choose not to remain in the property, the property is sold on the open market and the trust will be terminated.
3. At the time of the refinance or sale, the underlying encumbrances and liens on the property are paid off.
4. The investor beneficiary's refundable contribution is returned to him in accordance with the agreements signed at the original closing.
5. Your existing equity (based on the Mutually Agreed Value) will be returned to you. You may either apply the equity towards the refinance amount (thereby allowing you to borrow less on the property), or take the equity as a cash payment.
6. The additional equity - that is, the difference between the Mutually Agreed Value and the appraised value of the property at the time of the refinance or sale - is split as mutually agreed between you and the other beneficiaries.