



## DAVE WINDSOR ANSWERS YOUR REAL ESTATE QUESTIONS

### Mortgages and Mediation

**Dear Dave:** We have just moved to Anchorage after living in Hawaii for some 10 years. We are a bit confused because the paperwork for closing the mortgage loan is completely different from what we are used to. Can you explain why Alaska's real estate practices are so weird? What is a Deed of Trust anyway?

**Answer:** Quite a number of States operate similarly to Alaska. In Hawaii, the lending process for real estate is Mortgage based. Alaska operates under a Deed of Trust theory. These are 2 distinctly different styles under which Lenders give loans for the real estate purchase.

In the case of a mortgage, there is simply the exchange of a Note and Mortgage between the lender and borrower. The Note is your promise to pay and the Mortgage gives the Lender a lien against the property which will, if you default, give them the right to recover the money and foreclose against the property if necessary.

In Alaska, and in some 20 other States, a third party (the Trustee) is involved. Instead of you receiving the Title to the property, it is held in trust by a Trustee, usually a Title Insurance Company. The 'Deed of Trust' contains all kinds of protections for the lender in the event of a default, including tak-

ing possession of the property, collecting rents if possible, and providing for a much cleaner foreclosure process than with a mortgage.

***There is no such thing as a Mortgage Lender in Alaska no matter what anyone says.***

Since the title to the property is already held by a trustee, in the event of a default the lender simply instructs the trustee to foreclose. With a mortgage the foreclosure often has to go through the Court. Hawaii may be described as 'Old School' in this respect because the 'Deed of Trust' procedure is more advantageous to lenders and enables them to provide loans at a lower cost in States which allow it to replace the common Mortgage.

**Dear Dave:** Could you explain the difference between Mediation, Arbitration and Litigation in a Real Estate contract?

**Answer:** Most contracts, including a Real Estate contract, provide for a remedy in the event of a dispute between the parties.

The lowest level of dispute resolution, and often the best, is mediation. In mediation, a neutral third party simply helps the disputing parties to talk calmly to each other and, in effect, resolve their own dispute. It is the least expensive way to solve the problem.

Arbitration involves an agreed-upon Arbitrator hearing the points of view of each party and handing down a legally binding decision. The Arbitrator will charge a fee for his or her time and usually is someone with a legal background.

Litigation is when you go to Court, with or without an Attorney. The court hears the case, makes a decision and, after the exhaustion of the Appeals process if chosen by either party, the dispute is resolved by Law. Lawsuits generally are expensive and can easily exceed \$30,000 in cost.

*Dave*

*Windsor*

