Short Sales……Short This!!!

“A Guide To Sanity”

.

Written by
Kenneth Straley

Broker/Owner: Offsite Realty Inc

TABLE OF CONTENTS

Short Sales……….Short This.

INTRODUCTION

I've been doing short sales for over 8 years and I still see things that astonish me daily. I see people leave their homes and just walk away because they are not informed of their options to short sale VS foreclosing. I see people leave their homes after the Sheriff Sale because they do not know they have another 6 month statutory redemption period. I see people leave their homes because they cannot refinance to lower their payment. I see people leave their homes angry and pissed off because they feel abandoned by their lender during tough times. I am here to tell you that short sales are the way out and can benefit everyone involved.

I have dealt with over 30 lenders and servicers all over the United States. I have done business with the largest lenders to the smallest servicers and each one has their own set of rules, guidelines, paperwork and timelines. I've done short sales on Residential, Commercial, and Land. Each short sale has an attitude, an emotion, an appetite, a name, and a face; and all of them are memorable.

Short Sale Definition**:**
A short sale is a sale of real estate (residential, commercial, land), in which the proceeds from selling the property will fall short of the amount owed on the property. The lien holders release the liens on the property and settle for less than the amount owed at closing.

Quick Example:
A seller owes $350,000 on their primary residence. The seller loses their job and has no cash reserves to cover their loss of income for many months. The seller chooses to do a short sale due to not being able to afford the home any longer. The home is listed for $275,000 because that is the fair market value of the home as it's upside down. The seller's lender accepts an offer for $275,000. The amount of loss for the lender is $75,000. The lien on the property is released at closing by the lender. (Keep in mind this is a simple example).

This book will explain in detail the many intricacies, both positive and negative, that are involved in doing a short sale. It will answer almost all your questions and can even act as a guide for doing a short sale. I will give you background information and resources for further research and outline the process for both buyers and sellers. I will give you my strategies to best maximize your time and efforts and therefore expediting the process and increasing the possibility of lender/investor acceptance. It is important to keep in mind the short sale process defers from being a seller of a short sale to being a buyer of a short sale. It is also important to know there are risks involved for both buyers and sellers in a short sale transaction.

Risks:
Sellers: A seller is responsible for the overall short sale, timelines/deadlines, document collection, financial risks, credit risks and tax consequences involved in selling the home.

Buyer: A buyer of a short sale is responsible for risks associated with potential loss of time and money prior to the sale.

SELLING A SHORT SALE

In 2007 George W. Bush enacted, through Congress, The Mortgage Forgiveness Act of 2007, which has now been extended through December 31 2015 (copy found at www.IRS.gov search key word Mortgage Forgiveness Act). The Mortgage Forgiveness Act gives debt relief to homeowners who sell their home for less than the amount owed in the years 2007 – 2015. Investors of residential, land and commercial properties may qualify for the Mortgage Forgiveness Act but should read the details carefully and consult a qualified accountant or attorney before proceeding.

The Mortgage Forgiveness Act of 2007 generally allows homeowners/investors who have a legitimate hardship to liquidate their home in their current market for a fair market value with relief given for the discharge of debt. Examples of hardships may include:

- *Loss of employment*
- *Reduced income*
  - *Underemployment*
  - *Unemployment income*
  - *No benefits at current job*
- *Business failure*
- *Property conditions*
- *Loss of renter or rental income*
- *Death/Illness of borrower or co-borrower*
- *Divorce*
- *Break-Up*
- *Relocation for job*
- *Military leave for service/orders*
- *Mortgage default*
- *Increase in Mortgage payment due to loan type*
- *Increase in property taxes*
- *Assessments*
- *Judgments*

While there are many more different types of hardships these seem to be the most common hardships for short sales.

Things that do not constitute a legitimate hardship may be the following:

- *Paid too much for the property*
- *Neighbors are not nice*
- *Pregnancy (unless under Doctor Orders or occupancy issues)*
- *Unable to refinance (unless it's to lower the monthly payment to meet monthly debt obligations)*

The sale amount of the property depends on many things, which will be discussed in detail later in the book. The type of loan involved also plays an important role in the sale i.e. Conventional (insured, uninsured), FHA, DVA, Fannie Mae, Freddie Mac. A homeowner or investor may receive a 1099C from your lender for the amount of loss sustained stating the exact amount of debt incurred. Sometimes, the homeowner may not receive a 1099C from their lender if all debt was forgiven under a DWA (deficiency waiver agreement) or if the lender had Mortgage Insurance on the loan to protect them from the loss. Many FHA insured loans have this procedure in place where the lender accepts the loss and then turns in a claim to FHA for the loss. The homeowner then has an FHA insured claim on file regarding their property. These claims can last up to 3 years.

Before proceeding it is important that we explain a few key terms that are very important for homeowners to understand and know about.

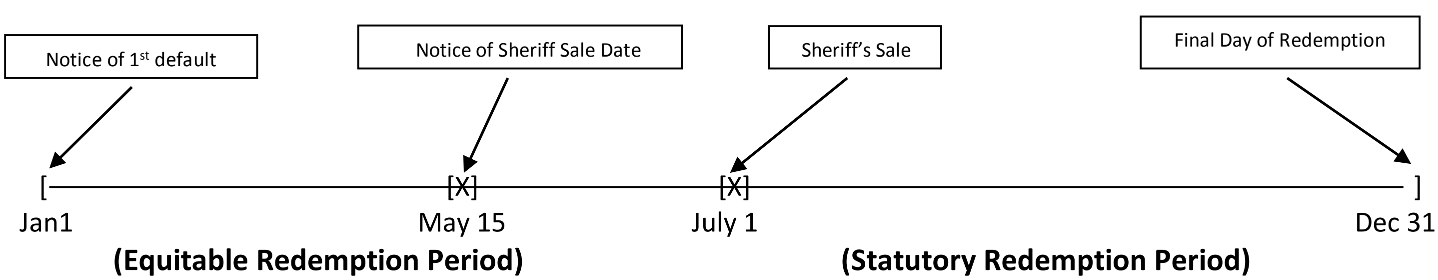
Key Terms to KNOW:

Sheriff Sale:
The sheriff may or may not show himself at your doorstep to deliver a notice from your lender(s) stating they are buying their property back. Many times it is a court appointed servicer or delivery agent. This date is usually 6 months from date of foreclosure proceedings or 6 months from the first month of a delinquent mortgage payment to your lender. You will be notified of the sale date within 6 weeks prior to the sheriff sale date. BE AWARE OF THIS DATE.

Equitable Redemption Period:
This redemption period is the first 6 month period in which the homeowner may redeem the property by paying all derogatory late fees and re-instating the loan to its current balance of principle and interest. After this 6-month period the Sheriff Sale occurs and a Certificate of Redemption is issued to the lender. It is important to check the state you live in to confirm the state does not have different redemption periods and how they each apply.

Statutory Redemption Period:
This redemption period is the period in which the lender attempts to redeem the property through due process of foreclosing on the property and changing the title to their name. This is a legal process, which involves attorneys, courts, and legal fees. This process is also 6-months but may be shortened to a minimum of 5-weeks should the lender extend the Equitable Redemption period or put in place a forceforelcosure proceeding for the property being neglected, vacant or abandoned. At this point in time you can still work with the lender and their attorneys to redeem the property by paying the full balance owed, plus all legal fees and any re-instatement fees. Also, the statutory redemption period on Reverse Mortgages is 12 months. It is important to check the state you live in to confirm the state does not have different redemption periods and how they each apply. During this period you may still reside in the property and continue with a short sale.

Example of Redemption Periods



Documentation Required by Lenders

While each lender has their own required paperwork that needs to be filled out prior to, during and after the short sale occurs I am going to outline the general paperwork needed to start the process. It is important to speak with your lender or qualified real estate professional about the proper documentation needed by your lender. More important than receiving the required documentation from your lender is making sure the documentation is filled out properly. If the documentation is not filled out properly the lender may reject it and it may cause delays in the short sale timeline. Many lenders post the required documentation or borrower hardship package on their websites for borrowers to view and download. If you are using an attorney or professional short sale negotiation company they too may have their own list of criteria and required documentation needed.

1. *W-2's for the previous two years. If you are self employed you also need previous two years federal income tax returns – ALL PAGES. Self employed borrowers with a corporation and/or partnership will also need corporate and/or partnership returns.*
2. *Most recent 2 month pay stubs. If you are paid monthly bring one stub, if you are paid every two weeks bring two stubs, etc. Self employed borrowers must provide a year to date P&L or schedule K-1 for current year. Also corporate and/or partnership YTD if applicable.*
3. *Bank or stock statements for all accounts encompassing the most recent 2 months.*
4. *Current mortgage statement. If you pay your mortgage online please provide a copy of the statement.*
5. *If you have rental income 12 months proof of rent and deposits will be required. Also, you will need a schedule K-1 or documentation on tax returns.*
6. *Current utility bill for property being sold.*
7. *If collecting Unemployment/Disability, a benefit or reward statement is needed.*
8. *If collecting SSI, an approval and award letter is needed.*
9. *Copy of BK discharge papers if a bankruptcy took place.*
10. *Financial Information sheet filled out stating monthly debt.*
11. *Hardship letter filled out, signed and dated.*
12. *2 years currents income tax returns (all pages).*
13. *Signed 4506T Request for Tax Transcripts.*
14. *RMA (Request for Mortgage Assistance) form.*
15. *Dodd-Frank form*
16. *Fannie Mae form 726*
17. *Freddie Mac form 710*
18. *RASS (request for approval of short sale)*
19. *Letter of Authorization signed and dated. Each lender has a letter so make sure you fill out the correct one.*
20. *Copy of Divorce Decree if recently divorced.*
21. *Copy of Quit Claim Deed if someone was removed from title.*
22. *Copy of Judgments if liens are against the property.*
23. *Copy of contractor work orders/estimates if work is needed on the property.*
24. *Detailed pictures of work needed.*
25. *Listing contract with start dates and expiration dates.*
26. *Copy of HUD1 settlement with lender net amounts.*
27. *Copy of appraisal, CMA (comparable market analysis), BPO (broker price opinion)*

LISTING THE PROPERTY

When listing your property for short sale it is very important that you work with a qualified Short Sale Specialist or a CDPE (certified distressed property expert). Many real estate brokerages and offices have CDPE's and Short Sale Specialists that handle their short sale files on a full time basis. Due to the many intricacies and large amount of paperwork and timelines involved a borrower cannot afford to waste valuable listing time working with a real estate agent or broker who is not familiar with the short sale process or lender requirements. As you can see from the required documentation list there is no room for error. If you are not familiar with the real estate market in your area you can also request a list of qualified agents and brokers from your lender as many agents and brokers are registered with specific lenders.

<u>Terms to know</u>

Lender: A lender can best be described as the company or institution providing the funds for the purchase of a property.

Servicer: A servicer can best be described as the company or institution that collect the monthly payment and service the homeowner's loan.

Investor: An investor, when related to Mortgages, can best be described as the company or institution providing security to the lender by backing the mortgage given to a homeowner by an insurance policy.

Confusing right?

Here is an example: John Smith gets a mortgage for his home from a local bank (Lender), the local bank then sells the loan to another financial institution (Servicer). John Smith then writes the monthly payment to the new bank as they are servicing the loan for the old bank. The new bank then gets Fannie Mae, Freddie Mac or some other company (Investor) to insure the loan should it default. If a loan is never sold to a new bank then the *Servicer* role will not be in place, only the *Lender* and *Investor*.

<u>Setting the list price</u>

When meeting with a qualified real estate agent or broker when you are ready to sell your property they will more than likely do a CMA (comparative market analysis) , BPO (broker price opinion), or Appraisal to set the listing price. If the investor working through the lender is Fannie Mae, Freddie Mac or FHA there may be a listing price set by them after all documentation is received by the lender. Sometimes the lender may even require a net amount and not care what the listing price is so long as the number is met at closing time. After the net amount is given by the lender you can add all real estate costs on top of that and get a listing price. Many times the lender or investor will reduce the listing price for the days on market based off a percentage. Example would be the list price for first 30 days on market is $223,400, 60 days on market $209,500, 90 days on market $188,000 etc.

Listing Contract

When filling out the listing contract make sure the property address, city, state, and zip code are filled out correctly. If you are married or how multiple owners of the property all parties must be listed on the contract and sign the listing contract. If the lender or investor requires cancellation or acceptance verbiage it is important to have this typed on the contract for them. This verbiage is also in place to protect the homeowner and lender. An example of the verbiage that may be required on the listing contract is: "seller may cancel this contract at any time prior to the ending date without advance notice to the broker and without payment of commission or any other considerations if the property is conveyed to the mortgage insurer or mortgage holder. The sale completion is subject to approval by the mortgagee."

Personal Property

I get asked all the time when doing short sales about personal property such as: lawn mowers, snow blowers, TV's, refrigerators, washers, dryers, microwaves, and window treatments. In Real Estate we have a term for this stuff and it's called "Chattel" which means personal property. In a short sale anything can be sold separately by using a separate addendum or personal property agreement whereby the seller agrees to sell to the buyer whatever is listed on it for a set amount or price. I do not recommend verbal agreements as it's always important to get everything in writing for personal and financial protection.

Required City Inspections

Depending on the City or State you live in it is important to find out if a City Inspection is required prior to the listing of the property. Many times a City may have their type of inspection required or a person licensed with the City may be required to do the inspection. This information can usually be found on the City website. There is almost always a fee involved for this and the amount may vary from $150 - $550 depending on the inspection type and the City in which the property is located. Examples of these types of inspections may be:

TISH Report (Truth in Sale of Housing)

POS (Point of Sale)

TOS (Time of Sale)

Depending on how the inspection goes the City may require a homeowner to have certain items fixed or repaired within a set amount of time or they may require the buyer to have the repairs made within a set amount of time. Make sure you know who is responsible for the repairs. Many times the lender will pay for these required inspections and repairs if they notified in advance.

Timelines for Short Sale Approval

The timelines involved in a short sale vary greatly depending on which lender is involved and if there are any special circumstances related to the loan. Typical timeframes for short sale approval should be 90 – 180 days with qualified lenders once all documentation and required paperwork has been submitted. There are many cases of 12 – 18 months for approval depending on the lender and special circumstances that may apply. It is important to remain patient, be positive, work diligently and continue to work with the lender and their internal reps that handle the files. Much of the paperwork and documentation will need to be updated every 60 – 90 days should the file go past the 90 day mark. The lender has to keep the documentation current for their investors and underwriters.

Utilities/Maintenance

If the property is occupied make sure all utilities are functioning. If the property is vacant or plans are made to vacate the property you have 2 choices: you can leave all utilities on or shut all utilities off. There are multiple companies that can be hired to have the property professionally winterized and preserved so as to not cause damage by broken water pipes or gas leaks. The cost can vary based off the square footage of the property and amount of work. General cost that I have seen is $250 - $750. The maintenance of the property can be tedious for upkeep so it is important to stay on top of this. If the property is vacant it is important that the driveway and lawn be maintained. If there is heavy tree cover then leaves may need to be cleaned up as well. Many lenders are now requiring this for property preservation. There are also property preservation companies that will manage the property for the homeowner if the property is vacant. There may be a bundled fee or monthly fee involved.

The utilities may need to be turned on for the buyer's inspection or appraisal so arrangements must be made when the time comes.

Negotiating the Short Sale

While there may be an art to negotiations, the art of short sale negotiations is no more than having everything in order and knowing what you're doing. Most lenders have a set amount they will take for the property and set terms they have in place in order for the short sale to be processed. There are however short sale tactics that must be used to protect the seller and get the best terms if repayment is necessary or if there are required fees that need to be paid to offset seller's costs in the transactions. Depending on the lender(s) or investors and depending on the amount of loss sustained a seller may be required to pay for certain items come closing time.

Closing Fees/Costs

When doing a short sale it is important to know that most fees incurred within a short sale can be paid by the lender with advance notice. A lender will request a Preliminary HUD1 Settlement Statement from either the listing agent/broker or title company. It is important that you work with an experienced title company that has done short sales before. They must know what fees will go onto the Preliminary HUD1 Settlement Statement and what fees cannot be placed on the HUD1. If the fees are not labeled correctly or properly placed in the correct section on the HUD the HUD may be rejected causing substantial delay or even cancellation of the short sale. Some of the fees that are covered by lender include the following:

Real estate commissions
HOA dues
Transfer taxes
Title services
Closing fees
State deed tax
Conservation fees
Property preservation fees
Negotiation fees
Appraisal / BPO fees
Jr. Lien payoffs
Judgment payoffs
Property taxes
Wire transfer
Delinquent utilities
County Recording fees
City Inspection fees

While this may not be all the fees that can be approved by lenders they are the fees that are generally accepted and approved.

Seller Contribution of Funds

During a short sale process many things have to be considered. The lenders usually take a substantial loss on the property. If there are multiple lenders or investors involved there could be more loss sustained.

Many times a seller will be required to come to the transaction with their own funds. If the 1st mortgage lender has no mortgage insurance on the loan then a seller may be required to either pay funds at closing or sign a promissory note for a certain amount to cover the substantial loss. If the 2nd mortgage or Jr. Lien holder does not agree to accept the amount given by a 1st mortgage lender or lien holder, then negotiations can be made for a seller to contribute cash at closing or sign a promissory note. If there is a MI (mortgage insurance) investor working with either the 1st or 2nd mortgage or lien holder the MI investor may also require the seller to execute a promissory note or bring cash to the closing. Many of the promissory notes that are issued can be interest free and usually for 5 years at a small monthly payment.

While this is never a good thing it can be advantageous for the listing agent or broker to negotiate a higher purchase price by the buyer and therefore offset the cash contribution or promissory note required. This does not always work but most time it does.

Jr. Liens/2nd mortgages, HELOC' (home equity line of credit)

This part of a Short Sale can be the trickiest and most difficult. Prior to listing a property the listing agent or broker should contact a Title Company to have an O&E (ownership and encumbrance) report pulled on the property. This will allow you to find out what liens are against the property and for how much. Many homeowners do not know the difference between a HELOC (home equity line of credit) and a 2nd mortgage. A HELOC is a line of credit (it can be an open line or closed line) that is placed against the property by lien and generally after the property was purchased. A 2nd mortgage is a Note against the property that was used to purchase the property. Both must be paid and settled at closing.

The typical negotiation or amount given by the 1st lender or lien holder to satisfy a 2nd mortgage or Jr. Lien debt is $3,000 or 10%. It is the responsibility of the homeowner or person doing the short sale negotiation to make sure there is an Approval Letter or Demand Letter issued by the Jr. Lien holder or 2nd mortgage lender. While there is not set amount a 2nd mortgage or Jr. Lien has to accept from the 1st lender or lien holder, many times they get nothing if the property goes through the foreclosure process.

If the 2nd mortgage or Jr. Lien holder does not accept the payoff amount given by the 1st mortgage or lien holder the property cannot be closed and will be forced into foreclosure. The 2nd mortgage or Jr. Lien holder has a higher amount of risk should the property default, hence there is almost always a higher interest rate involved when dealing with these types of liens.

Depending on the 2nd mortgage lender or lien holder, many times they will collect an insurance claim for the loss of money in the transaction. If the 2nd mortgage or Jr. Lien holder is a private portfolio lender or investor, many times they cannot settle for the amount offered by the 1st lender or lien holder. The general acceptance for a private portfolio lender or investor is 70% – 80%. This makes the short sale negotiations difficult at this point because you have to now find money to contribute to the transaction by either the seller or buyer. You must make sure this is approved by the 1st mortgage lender or lien holder prior to making arrangements. Many times neither the seller nor buyer is allowed to bring any money to the table to close the transaction, which can make finding funds to settle all liens difficult.

Seller Paid Closing Costs or Buyer Closing Costs

Buyer closing costs and seller paid closings costs are different. Buyer paid is paid by the buyer and seller paid closings costs are paid by the seller. When referencing seller paid closing costs in a short sale it is important to know this means the sellers lender is paying the closing costs in place of the seller. Depending on which type of financing a buyer is choosing when purchasing a property depends on what amount the sellers lender will pay for the buyers closing costs.

If a buyer is choosing FHA financing for their new loan a lender will almost always pay 3% seller paid closing costs and even higher depending on the lender. The reason a lender will pay the 3% seller paid closing costs on an FHA loan for a buyer is because the funds are part of the transaction and to pay for the buyers upfront FHA MIP (mortgage insurance premium) required by their lender plus the additional amount of funds needed to start their escrow.

If a buyer is choosing conventional financing and asking for seller paid closing costs the lender typically will only pay 1% and many times they will not contribute at all. The reason a lender will generally only pay 1% is because the fees incurred by a buyer for conventional financing is much less then for FHA and there is not required FHA MIP (mortgage insurance premium). Also, there is option with conventional loans to escrow taxes and homeowners insurance where an FHA loan requires the escrow of taxes and homeowners insurance.

If a buyer is choosing DVA for their financing a lender will pay the Funding Fee plus 3% in seller paid closing costs if needed for the buyer. The lender will pay this because it is part of the requirement for DVA financing just like FHA financing.

On the HUD1 settlement statement there will be a debit to the seller's lender for the closing cost and a credit to the buyer. The seller paid closing cost credit will be marked as "seller paid closing cost to: John Smith" and the amount will be listed. Remember the term seller is still referencing the lender but this is how it must be listed on the HUD1 settlement statement.

ODDS & ENDS

Judgments

I cannot tell you how many times during a short sale situation I have found there to be thousands of dollars in Judgments that were not disclosed by anyone or known about. The creditors will put these Judgments in place by court order for not paying a debt. The Judgments can be for medical, credit, debt, etc. and must be paid, settled or negotiated prior to closing. Many times the lender will pay for these Judgments but must be disclosed and negotiated prior to closing. A Release of Judgment must be provided at closing to the closing officer. The Release of Judgment then has to be recorded with the County the property is located in to have the Judgment removed from the property as a lien. There will be a cost of $46 - $65 per document recorded.

Divorce

The separation of a couple through divorce process is never good, but it does happen quite often. When it does happen and there is a property at stake or a property is given to either party of the divorce, by will or by force, it is important to keep all divorce documentation and make sure the divorce decree is executed properly. Many times 1 person is removed from the Spousal Interest on the property thereby leaving only 1 person liable for all debt on the home. It is important that correct language and verbiage be used in the Divorce Decree when removing a person from the debt obligation of the property and making sure the Divorce Decree acts as a transfer or ownership at closing. If the Divorce Decree does not remove a person and their rights and interests in the property, then a Quit Claim Deed will be needed to remove the other person and their interest in the property. The lender or Title/Escrow Company will require a Certified Copy ($7 - $36) prior to closing issued by the county in which the divorce took place.

Death of Borrower/Co-Borrower or Spouse

If there is a death of a spouse the lender and Title Company may require a copy of the death certificate as proof of removing that person from Title and Mortgage. If you do not have a copy, a copy may be obtained from the county and cost can vary from $14 - $32.

Property Taxes

Prior to closing the Title/Escrow Company will call the County or Township the property is located in and confirm the amount of property taxes paid or owed on a property. Depending on how you pay the real estate property taxes on a property depends on how they get paid at closing. If you escrow your taxes with the lender the taxes will be paid up to the date of closing. If you do not escrow your property taxes and either pay 2 times a year or 1 time per year, the lender will more than likely pay the amount due at closing by way of pro-ration.

Property Assessments (pending/levied/certified)

The same as property taxes, a Title/Escrow Company will also confirm with the City, County or Township if there are any pending (upcoming), levied (due for collection) or certified (added to) assessments due on a property. These must be paid at closing by the buyer or seller prior to transfer of ownership.

Homeowner Association Dues

While I do not condone people not paying their Homeowner Associations Dues, it may actually help sellers who are in a financial bind. Most lenders will pay up to 6 months and many times a few years' worth of delinquent association dues at time of closing. I have had up to 2 years of delinquent association dues paid by lenders in the state of Minnesota. It is important to know there will be late fees incurred for not paying and depending on what type of association the property is located in there may be additional legal penalties and consequences incurred. It is always important to consult with your association before you make the choice to not pay.

Homeowner Insurance

If you escrow for homeowner insurance with your lender and you stop paying your monthly mortgage payment you will be in default of not only your Principle, Interest and Taxes but also your Insurance. Most lenders require that you buy an annual insurance policy when you purchase your home, which gives them 12 months of protection on the property should you default. The monthly escrow ensures the lender will have the funds to pay for the next year's homeowner insurance policy when it comes due.

If you do not escrow monthly for your home owners insurance policy, which depends on the lender, you may have to pay this policy annually. If you do pay annually the policy may be pro-rated at closing for the months not used or rolled over to something else. It is important to contact your insurance company to make sure you know which type of coverage you have.

If you do not pay your homeowner insurance policy monthly or annually, your lender may put a force placement homeowner insurance policy on the property and pay for it with the proceeds from short sale.

Whichever type of payment method you have, it is always a great idea to contact your Insurance Company to make sure the property is covered while going through the short sale process.

BORROWER ASSISTANCE FUNDS

HAFA, HIN, Graceful Exit, Relocation Assistance, Cash for Keys

There has been much discussion in regards to these funds and how a seller receives them. The amount of assistance and type of assistance depends on the following: what lender a seller has, if the sheriff sale has occurred yet, if the mortgage is Fannie Mae or Freddie Mac and the value of the property. For more information visit www.MakingHomeAffordable.gov

HAFA: Home Affordable Foreclosure Alternative of $3,000 which is paid to the seller at closing.

HAFA Basic Eligibility: You may be eligible for a Home Affordable Foreclosure Alternatives (HAFA) short sale if:

- Your first mortgage was originated on or before January 1, 2009
- Your first mortgage is past due or you believe that you will miss a payment in the foreseeable future (loan can be current)
- The property is not condemned
- You have not been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction
- The unpaid principal balance on the loan is no greater than the following:

1 Unit: $729,750
2 Units: $934,200
3 Units: $1,129,250
4 Units: $1,403,400

- Your first mortgage is not made to or secured by properties owned by a corporation, partnership, limited liability company or other business entities

HIN/HAFA: Homeowner Incentive of $3,000 - $30,000 paid to the seller at closing. Only Bank of America pays this incentive as of January 2013.

Graceful Exit: Relocation Assistance of $3,000 paid at closing to a seller.

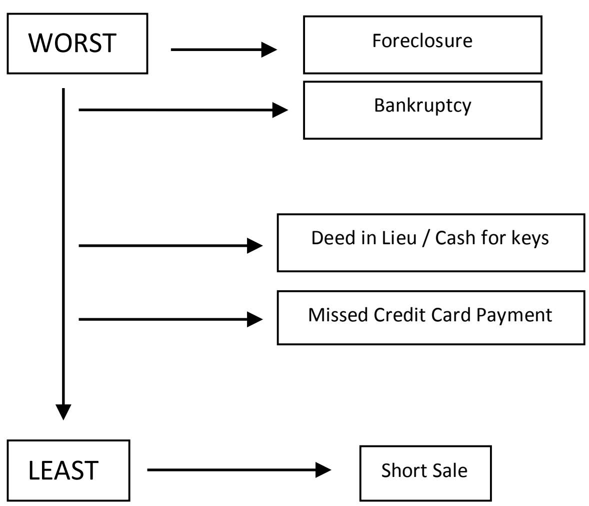
Cash for Keys: Deed in Lieu with funds paid to seller for keys and deed to property being signed over to the lender.

It is important for a homeowner to ask your lender for the specific details on each type of relocation assistance program. Literature and details will be provided to you prior to closing as well as disclosures. Your real estate agent or broker may be able to explain further on how these programs work and what stipulations are applied. Many answers can be found at www.MakingHomeAffordable.gov or by searching your lenders website.

It is important to know the relocation assistance cannot be provided to the seller prior to the sale of the home. These funds will only be provided to the seller of the property at a successful closing.

CREDIT IMPACTS & REPURCHASING TIMES

The main question I get asked daily in my business is what are the credit impacts of not paying my debt? I have come to learn not to answer this question but rather refer this to an expert in the credit industry. Below is a diagram I give my clients showing credit impact worst to least. While different circumstances can be present in each person's case I have found this diagram to be most helpful in understanding the negative impacts of not paying debt. Should you have further questions about credit impacts, credit repair or have general credit questions, please feel free to call, text or email my contact Melonie Ingvall at *Melonie.Ingvall@NeedCPR.com or 612-306-0459*.



Repurchasing after a short sale

Under current FHA mortgage loan guidelines a seller who sells a home on short sale has to wait 2 - 3 years to repurchase.

Under conventional mortgage loan guidelines I have seen sellers who have sold their home on short sale repurchase within 1 year and less than 3 years. This is dependent on credit scores, down payment and lender.

Under DVA mortgage loan guidelines it is currently 2 years unless special circumstances apply.

Many factors come into play when doing a short sale repurchase such as: Credit, Income, Job Status, Down Payment, Date of Short Sale, Purpose of Short Sale, Debt to Income Ratios, and Assets for re-purchasing. It is important to seek the qualified advice of a mortgage expert as the industry constantly changes each month with new rules and guidelines.

Buying a Short Sale Property

When purchasing a short sale property it is important for a buyer to remember 3 things……BE PATIENT, BE UNDERSTANDING and BE IMFORMED. The short sale process, as you read about, is very complicated, never guaranteed and has emotions involved for all parties to the transaction. A seller may be forced to do a short sale for many reasons, some good and some bad. It is important to know the process is very involved for the seller and the seller's agent or broker. Equally important is the buyers situation in a short sale because without a buyer, there will be no sale. This section will explain the duties and tasks a buyer must do in order to protect them, their interests and ensure a successful closing.

Choosing a Real Estate Agent or Broker

As Realtors, we now have an acronyms for people that deal with distressed properties and short sales. The acronyms are a CDPE (certified distressed property expert) and a SSS (short sale specialist). You can choose to work with a normal real estate agent or broker in the transaction, but it is highly recommended to choose a CDPE agent or Short Sale Specialist.

Finding/Choosing a property

When choosing the property that best fits you as the buyer there are many things to look for to make sure the short sale is being conducted properly. As the buyer of a short sale it is imperative to ask questions, be aware, and be informed. You do not want to waste your time on short sale properties that may never get approved. These terms and information should be listed in the MLS agent remarks or additional supplements provided by the listing agent for full disclosure to the buyer. Some terms to look for would be the following:

Professionally negotiated by attorney or agency
Agent is CDPE or Short Sale Specialist
All docs to lender
BPO/Appraisal complete
Cooperative seller
Pre approved short sale
FHA short sale
2 lenders or 1 lender
O&E report complete
All title work complete

Buyer pre approval

Now that you have found a property and are ready to submit a purchase contract it is important you obtain an accurate pre approval letter to submit to the seller and seller's lender. A short sale pre-approval letter is much different than a traditional sale pre-approval letter. Many lenders now require the following information on a short sale pre approval letter: Buyer name, buyer address, buyers date of birth, buyers phone number, buyers social security number, pre-approval issuance date, pre approval expiration date, loan officers phone number, loan officer email, buyers interest rate, loan amount, amount of seller paid closing costs and the financing type (FHA, VA, Conventional etc.). Many lenders in a short sale are also starting to require a buyer financial statement stating the job status, years on job, job title, salary or compensation, source of down payment, assets applied to the loan, and many other personal questions. Do not be offended as this is becoming standard operating procedure and to also make sure the buyer is well qualified to purchase the home before they pay employees to start processing the short sale, which costs them time and money upfront.

Waiting for the short sale approval can be a daunting and boring wait. During this time the buyer must keep their loan documents up to date with their lender. Keeping the financials current is what matters most. A buyer must be ready to get their loan closed within 30 days so as to not cause any delay in the transaction once the short sale approval has been issued. The final 30 days goes by quickly.

<u>Purchase Contract</u>

Once you find the property, arrange the financing and your agent or broker has gone through the short sale process with you the next step is to put pen to paper and make the offer. In doing short sales for over 8 years now, I have come to learn the proper way to present a purchase contract to the seller and sellers lender so as to not cause any delay and increase the chances of the contract being accepted by all parties. The info below shall serve as a general guideline for items that should be present in a short sale purchase contract.

Purchase Contract verbiage – It is important to have the correct verbiage in the contract to not only expedite the process and protect the seller and lender but to also protect you as the buyer. The verbiage I have added to all my purchase contracts is the following: "sale of property is subject to lender approval of terms and conditions. Lender reserves the right to cancel the file at anytime should the file not meet approval guidelines. Until an approval letter is received the contract is not fully accepted by seller's lender/investor. If a lender cancels this purchase contract no fees shall be paid to any party to this transaction."

Expiration Dates – Unless the listing agent has been told to use specific dates in contracts submitted to the lender most times the date's section should be left blank or the verbiage of "30 – 45 days from lender approval" should be used. Many lenders do not like exact dates entered into the contract because the dates act as mini termination clauses.

Contingencies – This is the fun part of contracts and contract law. It is very important to make sure you have many contingencies when doing a short sale as they can protect you from a bad transaction. Most purchase contracts come with the following contingencies: Home inspection, Mold & Radon, Lead based paint, Appraisal and Buyer financing. Many times, and depending on the knowledge of the agent or broker, more contingencies can be added for the protection of the buyer.

Timelines – Any timelines that are used in a short sale purchase should be started from the date that "ALL" short sale approval letters are received. The term "ALL" can be used if there is 1 lender or 2 lenders. Many times there are multiple lenders and you do not want the time line to start if 1 short sale approval letter is received prior to the other short sale approval letter. It is important to consider your options and purpose of the timelines given in a purchase contract.

Home Inspections – Nowadays, it is not considered smart to purchase a property without getting a Home Inspection done. Most Home Inspections start when all short sale approval letters have been received by the buyer's agent and buyer. My personal preference is to do the Home Inspection prior to receiving the short sale approval as there can be additional room to negotiate price and repairs prior to final short sale approval. Many home inspectors will provide an inspection report, which can be sent to the lender for valuation purposes. A Home Inspection on a short sale purchase works differently than a Home Inspection on a traditional sale in many ways. First, the lender often will not drop the price based on the condition of the home as the lender is usually already aware of the condition and the list price should reflect repairs needed. Second, most lenders do not do repairs to the property in short sales and the property is usually required to be sold As/Is. Third, the Home Inspection should be used as a tool to provide mental comfort that the property is in good condition. Having to wait 60 – 180 days to receive short sale approval to do an inspection and find out the property is not in good condition and then have wasted that valuable time can be disturbing.

Valuation clause - Depending on the financing type you are choosing can depend on the valuation clause that should be entered on the purchase contract. If you're paying cash for the home, then no valuation clause should be used. If you are doing FHA financing on the property you will have a default clause that states the home must appraise for the purchase contract price or the buyer cannot obtain financing. If you are doing Conventional financing the valuation clause is up to the buyer to choose. You do want to make sure you are not locking yourself in to pay more for the home then the appraised value otherwise a buyer will be responsible for providing additional cash at closing for the difference in purchase price and appraised value.

Financing - Depending on the type of financing a buyer chooses can depend on which type of financing addendum a seller may require. FHA and Conventional financing types have their own addendums that disclose the type of financing a buyer is choosing to the seller. The addendums disclose financing type, interest rate, loan term, date of underwriting approval and if there is denial of financing penalties. The dates chosen for buyer's loan approval and underwriting should be chosen very carefully as this can lead to automatic cancellation of a purchase contract by a seller or lender should the dates not be adhered to.

<u>Appraisals</u> – In this day and age an appraisal can mean the difference between getting a property and not getting a property. Depending on the financing type that a buyer is choosing there may be value restrictions and repair/condition requirements. It is very important that a buyer speak with their loan officer or mortgage broker prior to ordering the appraisal. The 2 types of loan appraisals that I see most often are for FHA and Conventional. Both appraisals types have their own property conditions that must be met in order for the appraiser to sign off on the appraisal. Below is a description of each type of appraisal.

FHA Appraisals – FHA appraisals have strict appraisal guidelines and conditions that must be met in order for the appraisal to be valid and accepted by FHA. If a buyer is having an FHA appraisal done and the appraisal comes in lower than the purchase price the loan will not be granted and a buyer does not have an option to bring additional cash to closing to cover the difference in value. A buyer's loan officer or mortgage broker can order a valuation dispute, but generally they do not work. Some of the FHA appraisal conditions can be roof, plumbing, painting, mold, rotting wood, windows, doors, appliances, electrical and HVAC mechanicals. If repairs are required in order for the appraiser to sign off on then an FHA appraisal re-inspection fee of $100 - $350 will be charged to the buyer. If a buyer chooses to not proceed with the purchase contract due to value or repairs it is important to know that as of current (2013) an FHA appraisal is valid on a property for up to 6 months and remains with the property even if the buyer does not close on that property. The next buyer will be responsible for the appraisal value, conditions, and repairs if needed.

Conventional Appraisals - If a buyer is doing a conventional loan and the appraisal value comes in lower then purchase price the buyer may have an option to bring additional cash to closing to cover the difference in value. Conventional appraisals can overlook many repairs and property condition as the buyer has more stake in the property and the loan is not insured by FHA.

Repairs – If repairs are needed to the property prior to closing for purpose of appraisal or buyers request the seller and buyer must agree as to who pays for the repairs and who is to complete them. Make sure this information is detailed and outlined so all parties understand what is needed. It is important to be detailed and concise because all too often repairs are made and do not meet the requirements of either the buyer or appraiser. If contractor bids are needed then it is important for a buyer or seller to get multiple bids and I strongly advise a buyer to never use a contractor chosen by a seller and a seller to never use a contractor chosen by a buyer. An unknown professional contractor by both buyer and seller is recommended.

Utilities – Many times a short sale is vacant and utilities have been shut off or the property has been winterized. If a buyer is having an FHA appraisal done the utilities must be turned on for the appraisal. If a buyer is choosing to have a Home Inspection it is recommended the utilities are turned on and water system pressurized prior to the home inspection.

Utility Bills - Prior to closing on the property it is very important a buyer find out who the utility company is for the property. This includes electric, water and gas. I put this responsibility on either the buyer or buyers agent to call and confirm all utilities on the property have been paid and no outstanding amounts are due. All too often a buyer closes on a property and then receives a bill from the water company or Gas/Electric Company for hundreds of dollars as this was an oversight. This should not be an oversight.

Title Work - Prior to closing on a property a buyer will choose a Title Company to represent them in closing the transaction. Many times title companies are so busy they have many over sights and do not do their job correctly and rush to close with given deadlines and timelines. This is the most important part of a closing so pay attention to details.

Property Taxes & Assessments - A good Title Company will check for delinquent taxes by doing a search and calling the county to verify. It is important to double check this and make sure all assessments and taxes get paid at closing.

Liens & Judgments – Prior to closing an O&E report will be ordered by the Title Company. An O&E (owners and encumbrance) report shows the owner of the property, the number of loans and liens against the property and if any outstanding Judgments are owed. This is very important to have completed prior to closing.

Closing – When you make it to closing in a short sale situation you have done something that most have not. Make sure you are ready and prepare yourself for anything and everything because it's not over till it's over.

CONCLUSION

It seems like each year the process becomes harder and harder to complete due to the amount of paperwork and timing that is needed to complete a short sale.

While this book is not meant to scare anyone or deter anyone from doing a short sale or purchasing a short sale, it is however meant to inform everyone there is a lot of work and time involved in completing a short sale. The word “Teamwork” comes to mind when I think of short sales and it also involves a lot of trust as well. All parties to the transaction must work together to accomplish the same goals. It is the goal and duty of a buyer’s agent to maintain sanity and calmness on their end when things get long and drawn out, while it’s the job and duty of the seller’s agent to get the file to the closing table on time.

Some lenders are becoming faster than others for providing short sale approvals with their online servicing guides, while other lenders are still sitting in the dark ages with just a fax machine and phone.

It is with much diligence, teamwork and perseverance that a short sale can be completed. Just don’t give up!

References & Websites

Credit Repair / Consulting
www.NeedCPR.com

Loan Programs & Guidelines
www.MakingHomeAffordable.gov

www.FannieMae.com

www.FreddiMac.com

Government Assistance Programs
www.Treasury.gov

Tax Related Questions
www.IRS.gov

Real Estate Info & Consulting
www.OffsiteRealty.com

Appraisal Info & Guidelines
www.FHFA.gov