

Short Sale Basics

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Has this ever happened to you? You have put a lot of time and effort into selling one of your listings. Your efforts have produced a contract offer which you are now reviewing with your Seller. Your Seller turns to you and says “This looks good, but just one thing. I may have borrowed more than the house is now worth.” “Oh great,” you think as a sinking feeling grows in the pit of your stomach, “a short sale.”

As real estate prices nationally (and to an extent, locally) continue to either remain flat or fall, a growing number of homeowners are finding that their home is worth less than the total debt on their house. When selling their homes, they are faced with having to

bring money to the closing. When the Seller does not have that additional money but needs to sell the house, one option is to request that the Seller’s lender or lenders reduce the amount that they will accept as payment in full on the outstanding loans. This is called a short sale.

You take a few deep breaths to calm your stomach (an antacid or two might also help), give thanks that your client is at least being honest and upfront with you (they are not always so) and lay out your strategy for tackling the client’s possible short sale.

First, the contract with the Buyer should be made contingent upon the approval of the short sale by the Seller’s lender or lenders.

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This shields the Seller from being obligated to carry out the contract if the Seller's lender decides not to agree to the short sale. Next, the lender will normally require that the Seller supply copies of current financial statements, tax returns, and other applicable documents so they can verify that the Seller cannot afford to come up with the additional money. Obviously, if the Seller is flush with cash, the lender will not likely approve a short sale. The lender will often also require a preliminary HUD-1 settlement statement so they can have an idea as to how much of their loan balance may need to be eliminated. Finally, after reviewing all of the documentation, the lender may impose additional conditions, such as an increase in the sale price or a reduction of the commission or other fees, before approving the short sale. Any such conditions must be approved by all parties which are affected (for example, the Buyer would have to agree to any increase in the sale price).

What if, however, you are representing a Buyer? What effect would a short sale have on your Buyer client? No matter what price range a house is in, you can no longer assume that a Seller has equity. Short sales can happen on million dollar homes just as easily as on one hundred thousand dollar homes. As a Buyer's agent, you can simply ask the Listing agent whether the sale of the property will be subject to a short sale. If the answer is no, require that a representation be put in the contract (for example, "The Seller hereby represents and warrants that the sale of the Property herein is not conditioned upon approval by the Seller's lender(s)"). If yes, negotiate a "drop dead" date after which your Buyer can cancel the contract if the Seller has not been able to obtain short sale approval (be aware that most short sales can take between 30-120 days and that your Buyer should be advised of the length of time often needed to get a short sale approved). Otherwise, your Buyer could get caught in an indefinite waiting game with the short sale contingency neither failed nor fulfilled.

Ultimately, it is imperative to remember a lender can NEVER be REQUIRED to accept a short sale. By agreeing to a short sale, the lender is essentially forgiving a portion of the debt. Thus, as there is never a guarantee that a lender will agree to accept a short sale, both Buyers and Sellers should make sure to adequately protect themselves by including appropriate provisions in the contract of sale. As a real estate agent, you can use these tips not only to help protect your client and guide them through the process, but also to reduce your work load and stress. If done properly, a short sale can provide needed financial relief for the Seller and can be a financial bargain for a Buyer. **L**

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