




Short Sales- Are You Ready?

with
Karen Michaels, VP

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What is a Short Sale?

- A sale of a property where the net proceeds from selling the property will fall “short” because of the lien(s) against the property.
- The lien holder must agree to accept less than the amount owed to be able to sell the property.

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What is a Short Sale?

- Lender, or lenders, agree to accept less than the mortgage amount owed by the current homeowner.
- Sometimes the difference is forgiven, or the homeowner must make arrangements with the lender to settle the remainder of the debt.
- Generally costs the lender less than a foreclosure, so can be a viable way for a lender to minimize its losses.

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What is a "Potential Short Sale"?

- Where the listing agent reasonably believes the purchase price may not be enough to cover payment of all liens and costs of sale and the seller is unwilling or unable to bring sufficient liquid assets to the closing.

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Why Short Sales?

- Short sales may be on the horizon because of the many ways we have been affected by Covid-19
- Most lenders are offering payment deferment or forbearance for up to 12 months through the CARES Act or their own programs, which provide relief during COVID-19.

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Why Short Sales?

- The payment deferment and forbearance programs are typically approved at 3 month intervals.
- The homeowner must contact the lender to request and extension approval when their initial 3 months has expired.
- Most programs have the maximum period allowed of 1 year.
- What happens when the assistance stops and is still needed?

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Who is a Candidate for a Short Sale?

- Homeowners experiencing Economic Hardship:
 - Don't have a job and continue fall behind in their finances may never catch up enough to be able to make the payments on their homes after the payment assistance programs stop.
 - An unplanned forced career change or new job paying them substantially reduced income than before may create hardships for making their payments
- The home value is less than the amount owed

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Elements of a Successful Short Sale

- The property is worth less than is owed.
- The seller has some hardship that makes it impossible or extremely impractical for the seller to keep the property.
- The seller is cooperative and willing to work with a real estate broker to package the short sale.
- The lender is contacted and expresses willingness to entertain a short sale.

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Elements of a Successful Short Sale

- The property is listed, with appropriate caveats and protections for the seller, properly priced, and effectively marketed.
- The lender is presented with an offer, accepted by the seller, along with a completed short sale package and narrative explaining why the short sale is necessary and desirable.
- The lender approves the offer and escrow closes as usual. No proceeds go to the seller.

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Getting Started

- How much is owed on the property?
- Is the seller in default on any mortgage liens, taxes, or association dues?
 - Get documentation not just verbal info
- Is the seller in default on any liens (foreclosures)? If so, has any legal action been taken by the lienholder(s)?
 - Some people do not know they are about to lose their home...

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Getting Started - Foreclosure

- Has the Lis Pendens been filed starting foreclosure proceedings?
- In some cases a short sale transaction is a race with the foreclosure transaction
- Be aware if there is a set date for the final foreclosure hearing on the case docket. Contact the judge to let them know you have applied for a short sale closing and they may grant a stay.
- Contact the Foreclosure department as well.

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Note on Lenders

- Typically, the Loss Mitigation and Foreclosure Departments are silos and do not communicate with one another.
- In some cases, this has led to the property being foreclosed even after the Loss Mitigation Department has agreed to a short sale.
- Speak with the foreclosure department directly if the foreclosure date is close to your estimated closing date.

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Getting Started, contd.

- Is the seller aware that there may be insufficient equity?
 - Sellers may think their home is worth more than it is
- Create a careful Comparative Market Analysis (CMA) or Broker Price Opinion (BPO) using the most current comparable sales.
 - Be realistic about the value.
- Find out whether the loan(s) that might be subject to a deficiency in a short sale are "Recourse" or Non-recourse".
 - In a recourse loan, the borrower retains personal liability for any deficiency after a sale or foreclosure.

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Short Sale Negotiation Process

- Written authorization from seller
- Lender's loss mitigation department - Workout/Short Sale Specialist
 - Inform of intention and commitment to timeframes
 - Ask about current turnarounds
- Prepare and submit Borrower Approval Package
- At this time there are limited programs or incentives- ASK FOR THEM

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Short Sale Process – Borrower Approval Package

- Submit financial information (varies by lender) but includes:
 - Financial Statement (basically a detailed 1003)
 - Hardship explanation form and/or letter
 - Most recent checking and savings account statements for all borrowers. Some lenders require 6 months
 - IRS 4506T- To order the last 2 years of tax returns
 - Proof of all sources of monthly household income, such as pay stubs for the last 30 days, or if self-employed, profit and loss statements for the last two quarters along with the most recent federal tax return. Leases and social security, pension, or disability statements are required if applicable.
 - Any other documentation or information you feel may be relevant to the situation

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Property Approval and Contract

- A signed and ratified listing agreement
- A sales contract signed by buyer & seller, **subject to Lender Approval.**
- An estimated settlement statement showing all proposed seller paid closing costs.
- Proof of Buyer's financing (i.e. pre-approval letter, etc...)
- Copy of Earnest Money Deposit
- Broker's Price Opinion (BPO) or (CMA)
 - Some lenders require up to three different BPO's.
- Title Commitment
- Junior lien holder release agreement (they must be willing to take little of nothing)

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Lender's Response

- The lender can do one of several things.
 - Ignore the offer. (This happens.)
 - Refuse the offer, either with or without an indication of what net proceeds would be acceptable.
 - Ask the seller to bring some or all of the shortfall to escrow. This is a typical first response. If the seller is unable or unwilling to do so, you will need to contact the lender immediately with a letter from the seller to that effect.
 - Approve the offer.

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What Happens on the Lender Side?

- Bank acknowledges receipt of file
- Negotiator is assigned
- BPO ordered (results typically not shared)
- 2nd negotiator is assigned
- File sent to review
- Request for arm's length affidavit
- Bank issues a short sale approval letter

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If Lender Approves...

- It will typically be in the form of a demand to escrow (and possibly to you) to the effect that the lender will accept no less than X dollars in proceeds no later than X date.
- The lender may also attempt to reduce your commission.

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What About the Seller?

- Negative impact, but less than foreclosure
 - Shows on credit report for 7-10 years
 - They will have to adhere to future lender guidelines before purchasing a new home
 - Tax implications: a seller must count any amount forgiven by the lender as income and pay taxes on that income, even if no actual money was received.

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How to make a Short Sale more appealing to a Lender

- A matter of economics...
- You have to provide hard numbers to show that the amount of money a bank will realize on the short sale is better than the amount it may recoup from foreclosing on the property and selling the property as an REO.

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Realtor Challenges

- Banks are going to want you to discount your commission.
 - Typically 1 percent to 2 percent below averages in the market
- If there is rapid increase in the number of short sales the system may get bogged down
- Lender's lack of experienced staff to process short sales
- Realtors with limited experience in short sales

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Realtor Challenges

- Absence of a uniform process and application
- 2nd lien holder negotiation and demands
- Buyers walking due to difficulties with unresponsive lenders; lost documents; inaccurate or unrealistic value assessments and long processing delays

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MLS Disclosure

- NAR's MLS policy requires multiple listing services to give their participants the ability to disclose any possibility of a short sale to other MLS participants.
- May also, but are not required to, communicate to other realtors how any lender-mandated reduction in the gross commission stated in the listing contract will be apportioned between the listing and cooperating brokers.

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MLS Disclosure

- Short sale information should be included in the confidential remarks field of a listing as soon as the listing broker knows about the possibility of a short sale.
- In particular, practitioners must be careful not to compromise the seller's chance of getting the best price possible for a home by disclosing the sellers' distressed condition too early.

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Other Considerations

- Look out for Fraud
- Kickbacks from secondary lenders from buyer or realtor not disclosed on the settlement statement
- Flip Transactions
- Non arms-length transactions
- Funds between transaction parties
- Occupancy

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Educate and Prepare yourself

- Ask your broker if your company has policies and procedures regarding short sales.
- Know the laws, procedures, and timelines regarding foreclosure.
- Read the most up-to-date material on short sales from reputable sources such as NAR an Florida Realtors Association.
- Research and read online articles and advice on short sales so you will be prepared for seller questions based on those materials

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Short Sale Negotiation

- Florida licensed real estate broker **is authorized** to prepare a real estate contract and negotiate the terms of the sale between the seller and buyer
- **Not allowed** to prepare other documents that finalize the transfer of real estate

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Short Sale Certification- Realtor

- The Short Sales and Foreclosure Resource (SFR®) certification is for REALTORS® who want to hone the skills that will allow them to help buyers and sellers of distressed properties.
- <https://www.nar.realtor/education/designations-and-certifications/sfr>

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Short Sale Workflow - NAR

- <https://www.nar.realtor/legal/risk-management/the-short-sale-workflow>

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Other Options Besides Short Sales

- Sell but bring cash to close
- Loan Modification
- Deed in Lieu of Foreclosure
- Bankruptcy

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Thank You!

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