

SHORT SALE INFORMATION

Points to Ponder When Representing Sellers

While short sales are no less challenging for homeowners and real estate agents, we are gaining clarity from a practical standpoint. The difficulty arises as we try to retain the mountain of information coming our way. To that end please find below several useful reminders that will assist our agents in navigating the murky waters of the short sale.

- 1) Prior to representing a Seller/Borrower (“Seller”), request and review property status report to determine the extent of the liens and encumbrances attached to the property. Request the verification of title holder. Watch for Notice of Default (“NOD”) and Trustee Sale Notice(s) throughout the transaction.
- 2) When representing a distressed Seller, carefully review the Short Sale Addendum to the Listing Contract with the Seller prior to executing the Listing Contract. Doing so will allow for a better understanding of the alternatives. Of course, seeking tax and legal advice is strongly recommended and should be confirmed in writing.
- 3) If the Seller’s preferred alternative is to retain the property, they may wish to explore a refinance or loan modification. They may discuss this alternative with their Lender or seek the assistance of non- profit entities (see Coldwell Banker Preserving the American Dream; page two of the Coldwell Banker Seller Short Sale package).
- 4) Be mindful of the Sellers wants and needs. Are there sufficient funds to move? Are they seeking forgiveness of debt, a release of lien, or a combination? Use the Coldwell Banker Short Sale Package designed for representing the Seller found in the Short Sale Section of your agent website. You will note that the Borrower Authorization is designed to permit the Seller to decline financial contributions and/or continuing liability for the debt as a condition of approval.
- 5) While a short sale lender may request, or even demand that a borrower access their 401k, IRA or other retirement accounts to make up the deficiency any such agreement would be voluntary on the part of the Seller. If negotiations with the lender on this point do not bring preferred results the Seller can refuse. Prior to agreeing to such terms the Seller should be referred, in writing, to their tax and legal advisors.
- 6) If the Seller elects to proceed with a Short Sale after seeking tax and legal advice with respect to tax, credit and financial consequences, you may want to consider asking the Seller to complete the Statement of Information (“SI”), or similar form available in your state, at the time of listing. This will allow both the real estate agent and the Seller to determine the extent of the Seller’s obligations.
- 7) Contact the lien holder or servicing agent (“Lender”) early on; inquire as to their willingness to cooperate in a Short Sale. It doesn’t hurt to ask! You may find that a “reserve price” is already in place. This is most commonly seen when the loan is “non-performing.” This is a perfect opportunity to inquire with reference to policies and procedures, determine the type of loan, and identify the investor, if applicable. Learn what you can; information is power. **Do not** suggest that the Seller cease making their monthly payments.

- 8) Be certain to include the NAR recommended language in the MLS Broker/Confidential Remarks: “Selling office compensation is subject to Short Sale lien holder approval any reduction to shared 50/50” (the reduction does not have to be shared equally; however a specific distribution must be referenced). Failure to do so can result in the listing agent absorbing the entire compensation reduction as negotiated by lender. **Be certain to follow the rules of your local or regional MLS for any modification.**
- 9) Season the listing! The obligation to the Seller is the same whether or not a Short Sale is being considered. Obtaining highest price and best terms is our duty in all circumstances.
- 10) Once the market has been tested and offers from Buyers are received; exhaust the negotiation process. Most Lenders want a fully ratified contract before seriously considering a Short Sale proposal. If there are multiple offers, counsel the Seller as to the advantages or disadvantages of each offer and allow the Seller to select the offer(s) that are most favorable
- 11) Once the Seller has accepted an offer from a Buyer, unless otherwise agreed in writing, the Seller has the right to continue to market the property and present additional offers to the Short Sale Lender. However, depending on the contracts used in your state the seller may only be permitted to accept subsequent offers in back-up position **KNOW YOUR FORMS**. Review the addenda carefully the terms vary slightly from state to state.
- 12) If the Buyer’s real estate agent neglected to incorporate the required. Short Sale Purchase Contract Addendum with the Purchase Contract; include it in your counter offer. Again **KNOW YOUR FORMS** time periods for performance under the Purchase Contract may vary!
- 13) Assemble the package carefully; an orderly presentation of documents and a complete file is “gold” to a negotiator. Place the loan number and borrower name on each and every page, avoid piecemeal submissions.
- 14) Short Sale negotiations do not stop the foreclosure process! Unless the agreement for a postponement is in writing it is not enforceable.
- 15) **Best practice:** Prior to delivering the lender’s approval letter to the buyer or buyer’s agent: (i) refer Seller to legal and tax advisors, in writing, prior to Seller signing off on the approval (ii) obtain written authorization from Seller prior to delivering executed approval to buyer or buyer’s agent.
- 16) Communication between all the parties is essential. As a listing agent it is up to you to facilitate the transaction. Keep everyone involved, engaged and informed. Remember, nobody likes surprises!
- 17) Remind the Seller, in writing, to seek legal and tax advice **prior** to signing the listing contract, **prior** to accepting an offer and certainly **prior** to accepting the Short Sale Agreement. Many agreements include clauses that allow the Lender to: (i) reserve the right to pursue any deficiency realized as a result of the sale (ii) reserve the right to void approval and reinstate mortgage if the parties to the transaction engaged in fraudulent activity to induce the approval (iii) impose monetary fines and reserve the right to reinstate mortgage if title is transferred within a specified period of time (usually 30 days).

- 18) Document. Document. Document. Every conversation, action and event! Don't leave anything to chance. Use confirming letters as appropriate.

- 19) Use the materials available on your Coldwell Banker Residential Brokerage agent website! In addition to the Buyer and Seller Short Sale Packages you will find tips, check lists and links to many useful websites!

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