

**NBI
TELECONFERENCE:
NAVIGATING A
SHORT SALE**

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What I Do

- I am a real estate attorney in Connecticut
 - In Connecticut, attorneys do the bulk of real estate transactions, where in most other states they are run by title or escrow companies
 - I do lots of short sales
 - This is a practical guide how to do them well and keep your sanity
 - I repeat stuff in this presentation for a reason

THE PROBLEM

**The rising foreclosure rates
have prompted lenders to
accept shortages on
mortgage payoffs that would
have unthinkable a few years
ago**

Properties are upside down

(i.e., with decreasing prices and 100% financing, borrowers owe more than properties are worth)

A short sale is a process in which the sale of a property occurs, with the lenders permission, for less than the outstanding loan obligations on the property

Discuss the Seller's Options

- Keep the property
 - Social aspect – everyone else is doing it, so will I
 - Property values will eventually come back up
 - Cost of letting it go (have already paid for moving, the loan and have made initial payments where most payments are interest; lose tax advantages)
- Attempt a workout with the lender (resetting of payments or forgiveness of arrears)

Discuss the Seller's Options

- Sell the property and bring cash to close escrow
- Offer the lender a “short sale”
- Offer the lender a “deed in lieu of foreclosure”
- Allow the property to go to foreclosure

THE SHORT SALE PROCESS

Real estate agent driven

Must have:

- Motivated agent (generally a given)
- Motivated seller (not always so)
- Patient buyers

If your seller is not motivated,
you will be wasting your time

Motivator: credit score decrease

- Short sale – 50 points
- Foreclosure – 200 points

The Listing

- Due diligence - agent
 - Complete inquiry of seller
 - Payoffs - current
 - Prepayment penalties
 - Judgments and other liens
 - Taxes
 - Water, sewer and other statutory liens
 - Assessments
 - Past due condo and association fees

The MLS

- Short sale
- Commission
 - Agents getting paid
- **RW&A buyers** (ready, willing and able)
 - Buyers **MUST** be informed
 - The MLS is the first step
 - The contract is the second
 - What happens if deal dies and buyers' agent was not informed?
 - Who pays?

Contact lender early

- Who is best?
 - Owners by far
 - How motivated are they?
 - They must bond with someone at the other end
 - Real estate agent – MUST be involved
 - Attorney / title or escrow company
 - Make sure agent, attorney, & title “permission slips” get to lender with application package

Contact lender early

- Lane Guide
- payoffassist.com
- Put each and every loss mitigation point of contact in your database
 - Email is best
 - Once you have a name, guess at their address
 - E.g., John Doe at Wells Fargo:
 - » john.doe@wellsfargo.com
 - Then send exploratory email

Contact lender early

- Lender guidelines
 - Each lender is different
- Some lenders won't take action without a contract in place
 - Can still get lender guidelines early to start gathering data required
- Develop good relationship with lender rep on the first phone call

The Process

- Attorney/agent title search
 - Good marketing for you to teach agents
 - Teach them how to do it
 - Does not substitute for the “real thing”
- Authorization to speak to lender
 - Make it part of your package for real estate agent and everyone on your staff to speak to lender: if you don't have it on file, you will be beating your head into a wall

The Process

- Before contract comes in
 - Have client prepare financials and written statement
 - Get from lender
 - Fill in authorization forms
- Prepare the HUD
 - See Due Diligence above
 - Must know amount of mortgage(s), taxes, liens, etc.

The Process

- Contract comes in
 - Addendum
- After contract comes in
 - Get a point of contact if possible
 - Email is best (can guess at it once you learn their name: e.g., John.Doe@BankofAmerica.com)

The Contract

- Keep it clean
- Minimize closing costs credits, etc.
- All offers must have **BANK APPROVAL**
- Closing date v. approval time
 - Drop dead date for extensions (Time Is Of The Essence) are not a good idea
 - Second (and better) contract may trump first contract, even if first one had bank approval
- Tell sellers and buyers to be patient

The Contract

- Put verbiage in contract to ensure payment of commission; too much work to get shorted
 - E.g., if 2.5% in MLS, increase to 3% in contract
 - 6% commission – FNMA Servicing Guide Announcement #09-03
- Communication is paramount
 - The contract is the first step in informing everyone that this is a risky transaction
 - Imagine short sale falling through after buyer has done home inspections and appraisal but didn't know about short sale
 - Who will pay?

The Contract Addendum

- Contingent upon Seller obtaining short sale approval from all Lienholders by ____ 20__
- Seller shall use best efforts to obtain Lienholders' approval
- Buyer and Seller understand that Lienholders' approval may take several weeks or months to obtain
- No Guarantee of Lienholders' Approval.
- Buyer acknowledges that Seller or Lienholders may not make or pay for repairs to the Property
- Buyer and Seller understand that additional offers may be received and such offers may be accepted by the Lienholders
- During the short sale process a foreclosure proceeding may be filed and the Seller may lose all rights and interest in the Property

Home inspection issues

- Who pays for correction of deficiencies found?
 - Wait until approval to do inspection? NO
 - Lender must approve any credits
 - Adds time; once HUD is approved, hard to change bottom line lender is receiving
 - Do inspection during normal course of transaction?
 - What if lender does not approve short sale
 - Who pays?

Attorney/Title Co. Role

- Prepare HUD
 - Rundown title
 - Include all liens, taxes, etc., plus interest
 - Escrow for water, sewer and statutory liens
 - Include release fees
- Never use less than a 6% commission
- Make sure your include ALL possible fees
 - You can reduce your fee after it's done, you can't increase it – it's A LOT of work

Attorney/Title Co. Role

- Short Sale Approval Letter
 - Read it completely and carefully
 - Get your HUD approved early
 - Identify and deal with discrepancies early on
 - If property is being foreclosed, there is an attorney representing the lender
 - In Connecticut; procedures in other states vary
 - If you are an attorney representing the defendant-debtor, you must interface with that attorney

Attorney/Title Co. Role

- Second mortgages
 - \$1,000 to \$3,000
 - FNMA requirement
 - Proving a loan is FNMA
- Money to seller for relocation
 - \$1,000
 - Lender may try to have Seller take a haircut

Post-closing issues

- Follow short sale approval letter to a tee
 - After closing, scan everything and email to all parties
- Two closings this year where everything was done correctly and still got calls
 - Money was returned in one case (stress!!)
 - Lender apologized and took money back when they realized their error
 - Following their instructions to a tee is critical
 - » What would happen if instructions were not followed?
 - » Title issue?

Taxable event

“The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence.”

<http://www.irs.gov/individuals/article/0,,id=179414,00.html>

I am not a tax attorney or CPA; I do not give tax advice

MHA

Making Home Affordable

https://www.hmpadmin.com/portal/docs/hamp_servicer/sd0909.pdf

MHA

Loss Mitigator's (LM) Role

- Sequence
 - Refinance, or
 - Loan modification
 - If these don't work, can do short sale
- Formula
 - LM will use a formula to determine whether a SS will net more than a FC
 - Will do whatever is better for lender

MHA

Loss Mitigator's (LM) Role

- LM sets price and listing term (90-365 days)
 - Lender/servicer must still approve contract
- Commission stays at 6%

Negotiators

- Federal requirement for certifying negotiators
- State requirements for certification (Connecticut has a program in place)

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