TIPS TO NAVIGATE THE SHORT SALE PROCESS

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What is a Short Sale?

A short sale in real estate is when a property is sold for less than what is currently owed on the property's mortgage(s). This can happen when a homeowner is under financial distress and has missed at least one mortgage payment, especially in a down market when a homeowner can owe more to the bank than the market value of the property.

Unlike a normal sale, all proceeds of a short sale go to the lender(s) and any applicable creditors. A short sale is an arrangement that must be agreed upon by the lender(s), typically in order to avoid foreclosure.

Because of its nature, the short sale process can be a tricky, and time consuming one that needs a great deal of care and expertise to navigate. There are a lot of possible issues that can arise, especially if you are working with multiple lenders and other lien holders.

What are some of the most common pitfalls to avoid?

1. There are many charges that a short pay lender may not allow that include, but are not limited to, title and escrow fees, delinquent taxes, second loans, notary fees, messengers, city inspection reports, home warranty, HOA fees, etc. Clear communication between the agent and the Asset Manager or lender's representative regarding fees and payments is crucial so there are no suprises that prevent your transaction from closing. Title and Escrow are not authorized to negotiate these fees on the sellers' behalf.

2. Second lien holders may not receive their full payoff amount from the proceeds of a short sale. For example, they may be owed $10,000, but the short sale lender has only authorized a payment of $5,000 to the junior lienholder. If this happens, other parties may be asked to "contribute" to help make up the shortage and obtain formal short sale approval on the 2nd loan. The senior lienholder will have to approve any such agreements. This is especially important when dealing with subordinate lienholders as they may find foreclosure more beneficial to recover their funds. Short sale agreements do NOT automatically stop or even stall the foreclosure process.

3. The short sale lender may require the seller, buyer, escrow, and agents to sign a Short Sale Approval Letter, along with an Arms Length Transaction Affidavit. This affidavit may restrict when the property can be resold and to whom. These documents are not created by escrow, but are a condition of the lender's final approval to close. If required, make sure they are signed by all parties as soon as possible to avoid delays. The buyer's lender may also want a copy of the documents for their records.

Tips for a successful short sale:

Pre-screen any potential short sale listing. Consider the likelihood that it will close. How much shortfall will the lender have to approve? How much time do you have before the lender forecloses? How many liens are on the property? Have **Monarch Title** pull sales comparables and a full property profile to ensure you have as much information about the property as possible to help determine the viability of your transaction.

Have your client speak to an attorney or accountant familiar with the short sale process so that they understand the legal and financial ramifications of a short sale. A short sale will affect credit, and may come with tax liabilities on the forgiven debt. Refinance loans may be subject to the lender taking legal action to collect any deficiency. Make sure that they have considered all of their options, including refinancing, a loan modification, using their PMI insurance (if applicable), a deed-in-lieu of foreclosure, foreclosure, and bankruptcy. The last thing you want is to go down a long, arduous road only to have a seller file for bankruptcy to avoid tax liability half way through the process. Communication and mutual understanding are vital throughout the transaction.

Do not change the buyer's vesting once the contract has been submitted and accepted by the short sale lender. This includes adding another buyer or transferring the vesting into a trust. Make sure your buyer is clear on how they want to have the property vested BEFORE submitting the contract for approval.

Make sure you are able to close on or before the date specified in the lender's Short Sale Approval Letter. If two or more lenders are involved that have different closing dates, escrow MUST close on or before whichever date comes first in the approval letter. The lender may grant an extension at their discretion, but a new Short Sale Approval Letter is required, and may take several days to obtain. Escrow needs to submit an estimated HUD-1 as early as 72 hours prior to close.

Check your local MLS regulations to make sure your short sale listing is properly entered into the MLS system.

Submit a complete Short Sale Package. Your chances of getting your short sale approved will increase dramatically if you have everything in order, including financial statements, pay stubs, a hardship letter, tax returns, sales comparables, information on the condition of the property with repair estimates and photos, an estimated HUD-1 Settlement Statement, listing and sales agreements, and C.A.R.'s standard form Authorization to Release and Convey Information (ARC).

Be proactive. Start the process as soon as possible. Make sure short sale packages are submitted to all lenders and creditors as early as possible and that they approve the terms. Monitor the progress frequently, and don't be afraid to ask questions. Document all of your conversations with lenders and other parties.

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