Short Sales and Foreclosures

Supplemental Webinar
Handout

Presented by

Lynn Madison
ABR, ABRM, GRI, SFR, SRES, SRS, AHWD

WELCOME

Welcome to the Short Sales and Foreclosures Supplemental Webinar from the Real Estate Buyer's Agent Council (REBAC) with presenter Lynn Madison. This Webinar is for students who took either of the following courses:

- Foreclosure: Prevention and Opportunities for Buyer-Clients
- Short Sales and Foreclosures: What Buyer's Representatives Need to Know

We will review what has been added to the course materials for the Short Sales and Foreclosure Resource (SFR) certification from the National Association of REALTORS®:

Completion of this Webinar counts as one of the three required Webinars for the certification. Let's get started!

HOMEOWNER OPTIONS

Slide 2

Real estate professionals should make sure distressed homeowners understand all possible options.

1. Refinance

If the homeowner's credit allows for a refinance and if the homeowner meets the eligibility criteria, an option is HOPE for Homeowners (H4H) a program available through the U.S. Department of Housing and Urban Development (HUD) www.hopenow.com.

Real estate professionals should also urge homeowners to visit the Making Home Affordable Web site for information: www.MakingHomeAffordable.com.

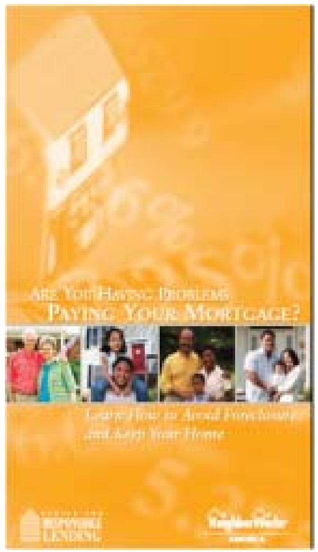
2. Lender Workout

Lenders often will work with distressed homeowners to help them keep their homes by reducing or rolling back interest rates, forgiving back payments, adding them to the loan amount, or possibly recasting the entire loan and wrapping all fees into a fixed-rate mortgage.

Loan Workout Options

- **Forbearance.** Lenders may let you make a partial payment, or skip payments, if you have a reasonable plan to catch up. Tell your lender if you expect a tax refund, a bonus, or a new job.
- **Reinstatement.** Reinstatement refers to making a payment that covers all your late payments, usually at the end of a forbearance period.
- **Repayment Plan.** If you can't afford reinstatement, but can start making payments to catch up, the lender may let you pay an additional amount each month until you are caught up.
- **Loan Modification.** Your lender may agree to amend your mortgage to help you avoid foreclosure. The options include:
    - Adding all the missed payments to the loan amount and increasing the monthly payment to cover the larger loan.
    - Giving you more years to pay off the loan, lowering the interest rate, and/or forgiving part of the loan, to lower your monthly payment.
    - Switching from an adjustable-rate mortgage to a fixed rate mortgage, so you aren't exposed to increases in your monthly payment.
    - Requiring amounts for taxes and insurance to be included with your monthly mortgage payment so you avoid big bills in addition to your mortgage.
- **Sign Over the Property to the Lender in Exchange for Debt Forgiveness.** This can hurt your credit, but is better than having a foreclosure in your credit history.

Source: Reprinted with permission from the National Association of REALTORS® and the Center for Responsible Lending. *Are You Having Problems Paying Your Mortgage? Learn How to Avoid Foreclosure and Keep Your Home.* Available at: www.Realtor.org.



Skill Builder Tip: Free Resources

As part of NAR's "Right Tools, Right Now" initiative, consumer brochures like the one that is excerpted on the previous page are available to members for free or at cost. Visit www.Realtor.org/RightTools for more information.

www.Realtor.org/RightTools

RIGHT TOOLS RIGHT NOW.

Note: Lender workout options like loan modifications are not issues real estate practitioners should broker. Loan modifications are not, in most states, considered real estate transactions. Real estate practitioners who attempt to broker a loan modification could be considered practicing law without a license. In addition, this practice is not covered by standard real estate errors and omissions (E&O) insurance coverage. Homeowners in distress should seek help from their attorney with loan modifications. Alternatively, homeowners may work directly with the lender to modify the loan.

3. Sell and Bring Cash to Closing

Although many homeowners today may not have the necessary cash to cure deficiencies at closing, they may have to liquidate assets, e.g., U.S. Treasury bonds, individual retirement accounts (IRAs), to do so. By curing deficiencies at closing, homeowners can avoid the credit damage that a short sale or foreclosure can cause. However, homeowners are strongly encouraged to consult with their finance and tax professionals before bringing liquid assets to closing.

4. Deed in Lieu of Foreclosure

A deed in lieu of foreclosure occurs when the borrower agrees to trade the property to the lender in exchange for the cancellation of the note. This foreclosure alternative is more likely to work in states where there is a long foreclosure timeline. The lender will be able to get the property much sooner than going through the foreclosure process, which lessens the probability of the property being in disrepair as well as eliminates the lenders costs to foreclose. Market conditions as well as state-specific laws will influence whether and how a lender accepts a deed in lieu of foreclosure. Typically, lenders are less willing to consider a deed in lieu of foreclosure in declining markets. However, in appreciating markets, lenders may accept properties in lieu of foreclosure.

5. Foreclosure

If the homeowner is only weeks away from the foreclosure sale taking place, the homeowner may not be able to pursue any of the previous options, including a short sale. If contacted by the homeowner at a late date, recommend that the homeowner contact the lender immediately, and see if there is any way to explore foreclosure alternatives. Also, in some situations, foreclosure may even be in the best interest of distressed homeowners, although doing so will wreak the most damage to their credit.

If the lender will not explore foreclosure alternatives, real estate professionals should instruct their clients and customers to contact their attorneys for advice.

6. Do Nothing or Walk Away

If homeowners are simply unhappy that the value of the property is less than what they paid or owe, they need to contact an attorney for advice. Walking away from the loan or asking the lender to proceed with a short sale simply because the value went down may not be a viable option and if it is, there will often be additional financial consequences.

IS THE LOAN RECOURSE OR NON-RECOURSE?

Slide 3

In a recourse loan, the borrower retains personal liability for any deficiency after a short sale or foreclosure. The lender reserves their right to pursue the personal assets of the borrower by obtaining a court ordered deficiency judgment.

In a non-recourse loan, the lender is limited to whatever funds are available from its security interest in the property itself and cannot force the borrower to repay any deficiency.

Slides 4-5

AGENT OPTIONS

In which of the options for distressed homeowners can real estate professionals get involved?

1. Sell and bring cash to closing
2. Short sale

Slide 6

FORECLOSURE ALTERNATIVES PROGRAM

In May 2009, the Obama Administration announced the development of Foreclosure Alternatives, another program of the Making Home Affordable initiative. Under this program, borrowers and mortgage servicers are provided incentives and documentation is standardized to help facilitate short sales or deeds-in-lieu-of-foreclosure if short sales are not successful.

Incentives are:

- $1,000 for servicers for successful short sale or deed-in-lieu-of-foreclosure
- $1,500 for borrowers/homeowners to help with relocation expenses
- Up to $1,000 toward cost of paying junior lien holders to release liens

Features of this program include, but are not limited to:

- Depending on market conditions, 90 days up to one year to market and sell the property
- No foreclosures may occur during the marketing period specified in the Short Sale Agreement.
- Mortgage servicers cannot charge fees to borrowers for participating in Foreclosure Alternatives
- Mortgage servicers cannot negotiate lower commission after an offer has been received.

Note: If you need more details regarding refinance or modification programs go to http://makinghomeaffordable.gov.

Slide 7

ALERT SELLERS TO RESCUE SCAMS

Real estate professionals should warn sellers to watch out for unethical investors who will try to convince an owner facing foreclosure to (1) sign a quitclaim deed for the property and then (2) lease the property. In such cases, the former owners will still be liable for the mortgage payments, even though they no longer own the house.

SHORT SALES

Slide 8

Counseling Sellers

In working with distressed sellers, it is vital for real estate professionals to adhere to state agency and license laws regarding agency disclosure and maintenance of confidential information. For example, in a listing presentation with a distressed seller, it is very likely that the seller will divulge highly confidential financial information to the real estate agent. If the agent does not get the listing, however, and shares that information with clients and to the detriment of the distressed seller, the agent is likely in violation of state license law. Again, real estate professionals who work with distressed sellers are encouraged to review their state agency and license laws.

Hardship – No Hardship

Slide 9

Many panicked homeowners seeking a short-sale solution may be unclear on what constitutes a valid hardship—and event or events that change a homeowner's ability to keep current in mortgage payments. Loss of equity, for example, is ***not*** considered a hardship. However, lending institutions may entertain short sales for homeowners who have experienced any of the following:

- Job loss
- Business failure
- Illness and medical costs
- Divorce or death of a spouse
- Natural disasters

If the seller has liquid assets, the lender will want the seller to contribute some of the assets at closing.

Documentation Now or Later

Slide 10

Short sales require substantial documentation and responsibility for preparing the documentation is largely the seller's. There are merits on whether sellers should begin gathering the documentation right away or weeks into the short-sales process.

Reasons why sellers should gather documentation **now:**

- Demonstrates seller cooperation
- Documentation is ready when the contract comes in

Reasons why sellers should gather documentation **later:**

- If the short-sale process is lengthy (more than 4 months), the seller will need to update all of the documentation when the contract comes in
- Real estate professionals can use the time at the beginning of the process to market the property

Slide 11

Getting It Right

One of the listing agent's primary goals is to price the property so the seller receives an offer from a qualified buyer with a realistic chance of closing. Some agents advertise short sales at unbelievably low prices in the hope that a buyer will be enticed to submit an offer. Other agents set the list price too high to attract an offer or too low for the bank to accept. Still others list the property at what the seller needs rather than what the property is worth.

The proper price should be the low end of fair market value. And although there is no standard formula for what a lender will accept on a short sale, Freddie Mac has stated that their target sales price on a short sale is 88% of the broker price opinion (BPO).[1] In the FHA Preforeclosure Sale Program, the guidelines are similar depending on market time and other factors. Information on the FHA program can be found at www.hud.gov/offices/hsg/sfh/nsc/faqpfs.cfm.

Slide 12

Sellers' Questions

Homeowners in distress need to engage the services of qualified finance, tax, and legal professionals. However, homeowners who are in mortgage default or facing foreclosure may argue that they cannot afford to pay them. Real estate professionals should note:

- Attorneys who work with distressed owners may take into consideration the owners' current financial realities and allow for ways to navigate the process with little or perhaps no attorney fees upfront.
- Consider the U.S. Foreclosure Network (USFN) as a possible source for locating attorneys who specialize in bankruptcy and foreclosure: www.usfn.org.
- In many cases, the foreclosure attorney fees are considered part of closing costs.

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[1] Freddie Mac. "Introduction to Short Sales." Available at www.realtor.org/government_affairs/foreclosure_prevention/foreclosure.

Sellers should be scrupulous in selecting a foreclosure attorney. Questions sellers should ask include:

- How many short sales have you done?
- How many were successful?
- What will I owe if the short sale is not accepted?
- Do you charge billable hours or a flat fee?

If attorneys charge by billable hours, real estate professionals should request permission of the seller before contacting the attorney.

COMMON QUESTIONS

Slide 13

Who Do We Talk To? When?

The appropriate department may be called any of the following:

- "Loss Mitigation"
- "Work-Out"
- "Asset Recovery"
- "Loan Modification"
- "Loan Reinstatement"

In some instances, the appropriate department may even be called the "Foreclosure Department."

All lien holders must be contacted as soon as possible.

> Note: Real estate professionals must consult their state laws to ensure that it is lawful for them to contact lenders on behalf of their clients. For example, in Maryland, real estate professionals may ***not*** contact lenders on their clients' behalf.

In states where agents may contact lenders on behalf of clients, agents should contact lenders and inquire whether or not the lender has a specific authorization form to release financial information. If not, real estate professionals may consider using the form on the next page.

Sample Authorization to Release Financial Information

Date: ______________ Loan #:________________________________

Lien Holder _____________________Property Address ________________

Seller consents that Lien Holder and its representatives may supply and communicate any loan, financial or other information of Seller, confidential or otherwise, with any of the following involved in the transaction and their representatives:

❒ Seller's Attorney or Representative (names) ________________
❒ Seller's Broker and Agent (names) ________________________

Seller ____

Slide 14

What Should We Ask?

The lenders should be asked the following:

- Do they want the short-sale application now or with the contract?
- Will they begin the process before we get a contract?
- What is the anticipated time frame to review and approve a short sale?

Note: The Federal Housing Administration (FHA) Preforeclosure Sale (PFS) Program does allow for short sales. However, pre-approval is required. For an overview of eligibility criteria for the PFS Program, see the next page.

Eligibility Criteria Overview for FHA's Preforeclosure Sales (PFS) Program

Home	☑ Owner occupied (no investment properties)
Existing Mortgage	☑ Must be 31 days delinquent at time of Preforeclosure Sale closing
Borrower	☑ Must provide documentation (1) substantiating a reduction in income or an increase in living expense and (2) verifying that the borrower needs to vacate the property, if applicable

Features of this program include, but are not limited to:

- $1,000 incentive to Mortgagor if closed within 3 months from the date of application; thereafter, the incentive is reduced to $750.
- An additional amount up to $1,500 for the discharge of junior liens after the Mortgagor's incentive has been applied
- All reasonable costs of the sale are allowed, including up to 6% sales commission, local/state transfer tax stamp and other customary closing costs.
- Up to 1% of the buyer's mortgage amount for closing costs to be included in the "Seller's Costs" on the HUD-1 for all transactions that involve a new FHA-insured mortgage.

For a full description of this program, visit www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm.

What Should Be Disclosed?

Slide 15

State property disclosures and the federal lead-based paint disclosure must be completed for short-sale properties. Real estate professionals should check with your multiple-listing service (MLS) on how short sales are disclosed and how to report on a short-sale property that is under contract.

Disclosure

Slide 16

Seller's permission is required to disclose that the property is a short sale in the MLS. Real estate professionals should note that "short sale approved" in the MLS does not necessarily mean that the lender has approved a short sale. Rather, lender approval is required for the short-sale to close.

Slide 17

Commission Concerns

Although lenders will accommodate the payment of the commission in the closing of short-sale transaction, ***sellers*** are responsible for the compensation that was agreed to in the listing agreement.

If your MLS requires that listing agents disclose a short sale or potential short sale in the MLS, the listing agent should also explain to other participants how any reduction in the gross commission required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. If listing agents do not disclose a short sale or potential short sale in the MLS, they may be liable for payment of the commission even if the lender adjusts it.

Slide 22

Why Short Sales Fail

There are many reasons why short sales fail, including, but not limited to the following:

X Incomplete short-sale package
X No reasonable chance of closing
X Inexperienced listing agent
X Release of deficiency
X No hardship
X Junior liens
X Lender

Slide 19

COUNSELING BUYERS

Considering the exponential growth in short sales and the potential for "bargain deals," many buyers today, including individuals with little to no home-buying experience, are interested in purchasing short-sale properties.

However, not all buyers are ideal candidates for short sales. For example, these buyers are ***not*** good candidates:

- Buyers with lots of contingencies
- Buyers who need to sell their current home before purchasing a short-sale property
- Buyers who need to close the transaction quickly (30-60 days)
- Buyers who do not have resources to repair and rehab the property, if needed

For buyer clients who are good candidates for short sales and who want to make an offer on a short-sale property, buyer's representatives should consider attaching a rider to the contract that stipulates the amount of time the buyer is willing to wait for the lender to review and process the short-sale package.

Price

Slide 21

In terms of the sales contract, if the price is too low, the lender may not approve the short sale, the seller may be liable for a deficiency, and the buyer may have lost valuable time. Buyer's representatives should prepare a competitive market analysis (CMA) for the buyer so that the buyer can be confident with his or her offer.

Timing: Lender Approval

Slide 22

If the timing stipulated in the rider to the buyer's offer is too short or if the lender believes that the transaction does not have a reasonable chance of closing, the lender will not approve the short sale.

Timing: Home Inspection

Slide 23

In an effort to minimize cash outlay, buyers may want to conduct the home inspection after the lender has approved the short sale. Listing agents who allow this may jeopardize the chances for lender approval. Buyers may deprive their chances to negotiate for repairs.

Timing: Mortgage Application

Slide 24

For buyers, there may be a very short time between the lender approving the short sale and closing. Buyers should seek mortgage approval as soon as practicable. Lenders in some markets may grant an extension period after approving the short sale for the buyer to obtain financing.

Interest Rate Issues

Slide 26

To lock in attractive interest rates, buyers may pay money upfront. However, a "lock in" clause gives buyers a possible out of the contract, which may jeopardize the chances for lender approval.

Timing: Earnest Money

Slide 27

Earnest money must be deposited as state law requires. However, because short-sale transactions require lender approval, the timing of earnest money deposits can bring forward a number of concerns. If the earnest money is not required until after lender approval, there is nothing to bind the buyer. If the earnest money is required prior to lender approval, the buyer's earnest money can be tied up while awaiting lender approval.

Slide 28

Subsequent Offer Issues

Subsequent offers are generating interesting trends for short sales:

- Some strong buyers are requesting that the seller not consider subsequent offers.
- In negotiating short-sale contracts, some listing agents will agree ***not*** to consider subsequent offers contingent on the buyer meeting the contract price and terms outlined by the listing agent.

Slide 29

Questions for Listing Agents

Buyer's representatives should consider qualifying listing agents as part of the short-sale process. Questions include the following: [2]

1. "Is the short-sale package ready for submission to the lender?"
2. "How many liens are on the property?"
3. "If more than one lien, what are they?"
4. "What is the plan to satisfy all the lien holders?"

An additional question to ask is "Is there any part of the short-sale package I can help with?"

Slides 30-31

Contract Acceptance

The short-sale contract is signed by the buyer and the seller—**not** the lender. The lender only ***approves*** the contract. And the approval by the lender is an additional contingency, like a home inspection, mortgage approval, etc., and should be treated as you would treat any other contingency.

Note:

> All offers must be submitted to the seller. It is the seller's choice whether or not to submit the offer to the lender.

> There is no contract until it is signed by the seller and the buyer. Either party could back out of the contract without recourse if it is not signed.

[2] REALTOR® Magazine Online. "Short Sales: Finding Income in a Tough Market" Webinar. Available at: www.realtor.org/RMOHome/webinars.

> The fact that a seller accepts the offer contingent on bank approval does *not* guarantee bank approval and therefore does not guarantee the buyer will actually be able to purchase the property.
> Make sure the loss mitigation specialist at the lender is in communication with the department that oversees the foreclosure process.

Common Results

Slide 32

From a lender's perspective, there are many ways short-sale transactions may close:

- The lender releases the lien and requires the seller to carry remaining debt on a payment plan.
- The lender releases the lien and requires the seller to liquidate other assets to pay some or all of the remaining balance.
- The lender releases the lien and forgives the remaining indebtedness.

Mortgage Debt Relief and Emergency Economic Stabilization Act of 2008

Slide 33

Prior to the Mortgage Debt Relief and Emergency Economic Stabilization Act of 2008 being put into effect, money forgiven by a lender in a short sale was considered taxable income. In many circumstances, the new law no longer requires taxpayers to pay federal income tax on the forgiven debt, provided the property is their principal residence ***only.***

Taxpayers may exclude debt forgiven on their principal residence if the loan balance was less than $2 million. The limit is $1 million for a married person filing a separate return. The law applies to debt forgiven in 2007, 2008, and 2009, and the Economic Stabilization Act of 2008 has extended this forgiveness through 2012. It includes debt reduced through mortgage restructuring, refinancing, home equity lines of credit, short sales as well as mortgage debt forgiven in connection with foreclosures. As a reminder, this is debt that was used to buy, build, or improve a principal residence ONLY.

Impact on Credit

Slide 34

Short sales are considered preferable to foreclosures because short sales (1) lessen the impact a foreclosure can have on the surrounding community and (2) won't damage the distressed owner's credit as much as a foreclosure. For example, if the borrower is still current with other payments, a short sale may lower the borrower's credit score by as little as 50 points.

Comparing Impact of Short Sale and Foreclosure to Homeowner's Credit

Short Sale	Foreclosure
• How short sale is reported will affect credit score • After short sale, lender can report as: 1. Paid in full – paid as agreed 2. Paid – settled 3. Paid – unrated • If the owner is current with other payments, a short sale may only lower score by 50 points	• Can lower credit score by 200 points or more • Foreclosure remains a public record and on credit history for 7 years

Slide 35

SHORT-SALE PACKAGE

The short-sale package should be submitted at the direction of the lender. Required documentation may include:

- Short-sale proposal letter (cover letter)
- Seller's signed short-sale payoff application, if available
- Seller's hardship letter
- Seller's financial information
- Supporting financial information
- Supporting hardship information
- Repair estimate for the property, if repairs are required
- CMA with supporting sales history
- Marketing history, showings, and feedback
- Purchase contract signed by both the buyer and seller
- Written proof of the buyer's ability to purchase the property (completed loan application, lender's preapproval, or bank statement if the buyer is purchasing with cash)
- Copy of certified escrow instructions, if applicable
- HUD-1 settlement statement
- Preliminary title report, if applicable

Remember, there can be multiple loans and you will need to repeat this process for each lien holder. If there is more than one lien holder, they will generally want payoff information from each other.

Skill Builder Tip: For Each Page

Prior to sending the short-sale package to the lender(s) you should print the name of your client(s) and the loan number on each page.

Proposal Letter

Slide 36

The proposal letter should be written by the real estate professional and give the needed information to the bank. It should not be more than one page. It should include an overview of the homeowners’ situation, what they owe on the property, and what the property is worth. The proposal letter should also identify the amount of the needed repairs and what the offer to the bank is.

You should either list the contents of the package in your proposal letter (see the following page for a sample) or create a “contents page” to facilitate review of the file.

Sample Proposal Letter

TO:	The Loss Mitigation Department of ABC Lenders
ATTN:	Janice Johnson, Loss Mitigation Specialist
FROM:	Alice Agent
RE:	Short Sale Proposal for 123 Main Street, Anytown, USA

Dear Ms. Johnson,

We have a signed real estate purchase contract with your borrower Daniel and Sandy Smith, the owners of 123 Main Street, Anytown, USA. The Smiths have agreed to sell their property to Lee and Sandra Jones for a purchase price of $375,000.

The current loan balance for loan #456781239 is $450,000. The Smiths are five payments behind in the amount of $9,000. Since their real estate taxes were not escrowed, the current taxes in the amount of $8,000 are also due. Daniel has lost his job as a manager of a large home improvement company and Sandy is a stay-at-home mom with their four children.

Please review the enclosed information. Our market analysis of the property and overview of the market as well as the situation of the seller indicate that it is in the best interest of both you as the lender and the Smiths to accept this buyer's offer.

We look forward to doing business with you.

Sincerely,

Alice Agent

Slide 37

Short-Sale Payoff Application

This application is provided by the lender. The seller should complete the application; the real estate professional should include it as part of the short-sale package. Although the payoff application may have previously been submitted, based on lender request, it is a good idea to include it in the package as well.

Seller's Hardship Letter

Slide 38

The goal of the hardship letter is to have the seller explain their situation to the bank. The hardship letter should communicate three key points:

1. "I'm sorry"
2. "Here are my circumstances (such as job loss, medical issues, divorce, health issues, damage to the property not covered by insurance, etc.)."
3. "I have exhausted all of my options and the only next step is letting the property go to foreclosure."

See the following page for a sample hardship letter. As with the proposal letter, the hardship letter should be kept to one page. It should be clear, concise, and easy to read.

Sample Seller's Hardship Letter

To Whom It May Concern:

This is a very difficult thing to write. I have always been able to pay my debts in the past and am truly sorry that I cannot do so now.

I lost my job as a manager for a large home improvement company. I have been unemployed for six months. I have been receiving unemployment benefits. However, my unemployment check replaces about one quarter of my previous income. My wife is a stay-at-home mom responsible for our four children. We have both been looking for employment. We have exhausted our savings. Our credit cards are maxed out and we are in the process of filing for divorce.

We can no longer afford to make the $1,800 monthly mortgage payment on our home. We are currently five months behind and see no way to make up the $9,000 in back payments. Our real estate taxes are also due and we have no way to pay those either.

We have agreed to sell our property for $375,000. It has been on the market for over 60 days and this is the only offer we have received. We want to avoid a foreclosure sale that will further damage our credit. We respectfully request that you consider this offer and work with our agent to negotiate a short-sale transaction.

We have exhausted all of our options and the only next step is letting the property go to foreclosure.

Sincerely,

Daniel and Sandy Smith

Seller's Financial Information

Slide 39

An owners' financial statement can be constructed very simply with a list of assets and liabilities.

Assets

- Real estate
- Stocks, bonds, mutual funds
- Bank accounts
- Personal property
- Retirement accounts

Liabilities

- Real estate loan(s)
- Personal loans
- Credit card debt
- IRS liens
- Judgments
- Lawsuits

Lenders will want the amount of all the monthly expenses in addition to the assets and liabilities. These would include:

- Credit card bills
- Utility bills
- Car payments
- Insurance costs
- Food and clothing
- Medical bills
- Child support
- Tuition expenses

Supporting Financial Information

Slide 40

These items are typically the same required by a borrower when applying for a loan. The lender will let you know how far back (2 months, 3 months, 12 months) the seller needs to go in supplying this information.

- **Pay stubs.** Pay stubs allow the lender to see if the monthly take-home pay would cover the loan payments plus all the other monthly expenses. If the owner is unemployed, there will be no pay stubs to include.

- **W-2s and/or tax returns.** The lender is trying to get a complete picture of the owner's financial situation. Is the income going up? Is the income going down? Will the borrower be able to make payments if the lender agrees to a repayment program?
- **Bank statements and credit reports.** Again, the lender wants to be sure the borrower is truly unable to make the payments and these support that. The bank will order a credit report on the borrower but if they have one available attaching it is a benefit.

Slide 41

Your CMA

The real estate professional should create a comparative market analysis (CMA) using the most current comparable sales. The lender will order one or two broker price opinions (BPOs) **after** they receive the short-sale submission package. Real estate professionals should ***not*** mislead the lender as to the fair market value. If the CMA is too far below the BPOs, the lender may view the entire short-sale package in a negative light.

When doing the market absorption portion of a CMA for a lender/bank on a short sale, the bank/lender may ask for a one-month base, a three-month base and then a six-month base for comparison, which will indicate pricing trends in a given market. The bank is not a local pricing expert and needs to understand where value and pricing are headed in order to make the appropriate decision on a short-sale contract.

Highlight such data as:

- Average time on market—cumulative market time is critical
- Number of short sales and REO listings in the area
- Price trends
- Recent economic data
- Absorption rate

It is suggested that you take digital photos of the interior of the property and include them as well. Many of the BPOs are drive-bys and no consideration has been given to interior condition.

Slide 42

Absorption Rate

Absorption rate is the most accurate picture of supply and demand and is the "snapshot" of the market and the property. It is a key factor in pricing your listing.

Absorption rate is the mathematical representation of the relationship between supply and demand. The total amount of available properties is divided by the total amount of properties sold in a specified previous time frame. The resulting number represents the number of months it would take, at that same pace, to sell the entire inventory.

Marketing History

Slide 43

Lenders should be presented with a complete history of showings, feedback, and advertising—in short, all the marketing efforts made to provide the lender with a contract. Real estate professionals need to show lenders that they've done a thorough job of attempting to get the best price possible.

The importance of the CMA and marketing history cannot be over emphasized. The decision maker(s) are most likely in another state and will not necessarily understand what is happening in your market. It has been reported recently that the BPOs being done are not as accurate as they could be and this has been affecting the decision by the lender as to whether they approve the short sale.

The listing agents' CMA and marketing history are more thorough than a BPO and should include MLS print-outs of all property in the area as well as pictures of comparables and on-market properties that are in competition with the subject property.

Repair Estimate for the Property

Slide 44

If you didn't request repair estimates at the time of pricing the short-sale listing, now is the time to do so. Providing the lender with a detailed repair estimate from a reputable (licensed) contractor will assist greatly in getting the short sale accepted. The lender doesn't want to own property—and especially not property that needs a complete overhaul.

Some lenders have been known to make some repairs. However, they would much rather sell "as is" and have the buyer make the needed repairs. Two offers netting the lender the same bottom line—one where the buyer will do their own repairs (buying "as is") and one where the lender is asked to do them—usually results in the "as is" buyer being successful.

Slide 45

The Contract

The real estate professional should provide the lender with a copy of the purchase contract, the buyer's pre-approval letter and will have to supply a notarized statement that the buyer is not related to the current homeowner.

Note: The contract for short-sale properties is ***not*** assignable.

Slide 46

The HUD-1

All supporting documents including the HUD-1 should be attached. The HUD-1 may be completed by an attorney or title company.

Note: Many lenders will reference the HUD-1 in their acceptance, e.g., "Lender will accept net proceeds of no less than $327, 500 no later than [specified date]."

Slide 47

Follow-Up

- After the package has been submitted, it is important to verify initially that it was received and there is nothing more needed to approve the short sale.
- Verification that the loss mitigation department has or will communicate with the foreclosure department to try to ensure the foreclosure process is stopped during the short-sale negotiations.
- You should coordinate with the seller's attorney to determine who will be making these follow-up calls.
- At some lending institutions, loss mitigation staff do not answer their phones. You will get a voice-mail message that says the staff person will "return all calls within 48 hours." If you do not receive a call back in that time frame, call again.
- The negotiator may request that all correspondence be via e-mail.
- If the lender does not approve the short sale, real estate professionals should inquire for the reason or reasons. Ask how the broker price opinion (BPO) compared to the CMA.