Elizabeth Kayser, Esq.
Kayser & Associates, LLC
Short Sale Center, LLC
St. Louis, MO 63021
(636) 220-2218 office
(314) 714-6380 fax
attykayser@sbcglobal.net

THE EXIT RAMP TO FORECLOSURE IS A SHORT SALE

"A graceful exit to a difficult situation for a homeowner"

Foreclosures:

- Realtors get nothing out of foreclosures, except lost income and lost clients.
- Devastates homeowners credit ("deed in lieu" has the same effect on one's credit score)
- Further depress property values
- Blight neighborhoods with vacant REO properties
- Results in steep losses for lenders increasing the national financial crisis

In a foreclosure, a long and expensive process which results in banks holding the property in their inventory as a *non-performing asset,* commonly known as toxic in today's economic terminology. Banks have strong incentive to get rid of these toxic assets at discount prices. For a lender, doing a short sale avoids many of the costs associated with the foreclosure process by getting rid of the property faster.

Short sales produce financial and nonfinancial rewards for all key players including the economy:

- They keep the realtors in the loop thus producing commissions
- Protect homeowners' credit
- Keep properties occupied v. vacant properties (blight)
- Produce a happy buyer
- Minimize losses to lenders
- Allow Lenders to avoid having take back more distressed properties which results in the deepening national financial crisis.

WHY is this crucial option being missed? There is no organized system in place with financial rewards to the key players. Realtors are not paid for learning the short sale process, not paid for the hard work, the arduous process a short sale entails, the headaches, the time, and the risk involved in a short sale. All they receive is a discounted commission . . . if the deal goes through.

What is a "SHORT SALE?"

Millions of homeowners are behind on their mortgage and can no longer make their mortgage payment due to either job losses, divorce, bad loans they should have never been placed in, an ARM that's resetting higher, etc. Up to recently the only generally accepted option was foreclosure. That is usually not the ideal solution even if it does erase the mortgage lien since, 1) it does not preclude the bank from seeking a deficiency judgment against the borrowers (a personal judgment that is collectible after the conclusion of the foreclosure) and 2) a foreclosure devastates the homeowners credit. . . not good for realtors either as they are effectively removed from your client base.

Solution: Short Sale. Get the lender to accept an amount below the mortgage payoff and waive the deficiency against the homeowner. In most cases, all closing costs are built into the deal where the lender pays the closing costs. On occasion the Seller will need to bring cash to the closing table. Everything is case by case basis. Lenders generally demand fair market value for the property – which in a short sale is significantly below the mortgage balance.

Credit implications

The number one reason a distressed homeowner should proceed with a short sale is **to protect their *ability to obtain financing in the future*.** Most short sales result in a "settlement" status on their credit report as opposed to "foreclosure**"**. Fannie Mae and Freddie Mac guidelines are much more favorable to borrowers with short sale on their credit report, typically allowing a borrower to obtain financing for a new home within a couple of years. In sharp contrast, a f**oreclosure** remains on a credit report for seven years, making it very difficult to finance another house, a car, open a new business, or even qualify for credit cards. Any loans received will most likely bear very high interest rates. Bottom line: the end result of a short sale is minor when compared to the consequences of a foreclosure. Foreclosures have a devastating effect on credit history, job security, employment opportunities, security clearances, military and law enforcement careers, and the most serious of all **-** the ability to purchase a home in the future. Also, a foreclosure becomes public record, which is searchable by anyone, and can never be removed.

A Short Sale offers a fresh start, eliminating debt, while minimizing damage to credit and avoiding eviction proceedings.

What services are provided as part of the Short Sale Fee?

A crucial part of the SHORT SALE process is negotiating the terms of the short sale. In order to provide the best possible result, we gather the relevant information from the seller, prepare a hardship package to submit to the bank, perform a preliminary title search on the property to determine what liens, mortgages and taxes are due on the property if one has not already been done, and negotiate with the bank in an attempt to have them accept a lower payoff on the mortgage than is currently due…potentially avoiding the credit impact and economic ramifications of a foreclosure or bankruptcy. Most importantly, regular updates and status reports are provided to realtors and homeowners as to the short sale process. Communication is everything and will never be compromised. We will be a team in the short sale process requiring a continuous flow of communication.

- Prequalifying the homeowner
- Assemble excellent lender packages
- Directly and immediately respond to negotiators' calls and emails
- Immediately provide well-written market narratives and critical analyses proving price
- Ensure that appraisers and bank BPO agents understand the subject property's challenges
- Immediately provide additional documentation required by the lender
- Keep the parties well-informed and in the deal
- Document all tasks in detail for transaction-saving reference

- Provide creative solutions to negotiators' demands such as promissory notes and cash contributions
- Use 12 years of negotiations skills as an attorney and mediator to ensure success

Why allow my firm for your short sale negotiations?

Knowledge of short sale process, understand lender's language, reliable, save you hours and hours of time, accurate paperwork, complete short sale packages tailored to that lender's specifications, experience, very high success rate, legal advice, legal knowledge, strong negotiation skills, current research of short sale industry – new rules, new lender policies, government programs and regulations affecting short sales, excellent communication with Seller and realtor, strong relationships with lenders.

There are many articles out there that say it is extremely important to get an attorney to handle your negotiations. Most members of the loss mitigation department are influenced to some degree by the fact that they are speaking with an attorney. The lenders have their attorneys, you should have yours. Short sales involve a myriad of legal issues, timelines, and landmines that can kill the deal, and result in devastating consequences for the buyer, seller, and realtor – a home lost to foreclosure. The process of obtaining approval for a SHORT SALE can be quite lengthy. The first step is to prequalify your client/seller. Lenders in most cases pay Kayser & Assoc. as part of the closing costs on the HUD.

Let's face it - agents need to spend their time putting buyers and sellers together vs. figuring out how to bail someone out in foreclosure. That's where we come in. For all real estate agents we offer 2 types of services:

1.) If you have a client that is facing a short sale situation, refer them over to us. We cooperate with all licensed realtors. We will handle the process from counseling the homeowner, preliminary assessment, gather and prepare the 'hardship package' to submit to the lender, and negotiate the short sale with the lender to a successful closing. We collaborate with you in listing strategies to place the property in a 'short sale position'.

2.) Many agents come across a situation where they have a short sale contract, but don't know what to do next. If you have a contract in hand we also will negotiate the short sale on your behalf. Again, all of our fees are negotiated to be built into the deal. This allows you to concentrate on more sales instead of spending hours trying to get one short sale through.

Fees Associated with the Short Sale Process

In the majority of cases, the lender pays our fees. Sometimes, the lender will cut the commission to 5%. This is what the lenders require, it has nothing to do with my program. Now, with some loans that are Fannie Mae, the lender cannot cut the commissions lower than 6%, but often times the 6% pays for fees for all parties involved including our legal fees. And in FHA backed lender loans, no 3rd party negotiator fees are paid. In those cases, we take 1% of contract price but no less than $1500. In a few cases, where the risk is high, the short sale is multiple liens and is complicated, the Seller is motivated, and has financial means, a small retainer will be collected from the Seller to distribute the risk between the parties. We get paid upon closing, just like you.

Convincing the Lender

The bank will have to be convinced that the seller deserves to be approved for a short sale. They will need to disclose to the mortgage lender financial hardships, including layoffs, loss of jobs, divorce, medical issues. Some or all of the following would be required: hardship letter signed by the homeowners, 2 yrs tax returns, recent pay stubs, bank statements, authorization for the negotiator to discuss the mortgage with the lender. Lenders also request listing history, recent sold properties, repair estimates and photos, second mortgage payoffs if any, and other lien information. Lenders will furnish their requirements as to sellers' assets, liabilities, income, and obligations. Our hardship package aims to fit within each Lender's parameters. Each lender has different parameters, a different short sale policy. The contract must not be contingent upon the sale or closing of another property, also the seller cannot do owner-financing or carry-backs. The Lender often times verifies with the buyers lender that they are pre approved with no contingencies. Also, properties with multiple mortgages, 2nd liens are not the best short sale candidates but it can work.

Short sales may take longer to close than more conventional sales, so plan accordingly. However, it is well worth it. Again, the alternative – foreclosure.

How is a sales price determined?

Most lenders will request a BPO (broker's price opinion) or full appraisal of the property. In some cases they will use a drive-by value or a computer analysis comparing other similar homes that have sold. In this real estate market, this is very difficult – there are few sold homes! This is where the negotiation begins. Some factors negotiated are such things as close proximity to power lines, railroads tracks, busy streets, high numbers of neighborhood foreclosures (blight), declining market, repairs needed, the banks loss severity rate in a foreclosure to justify our offer price. Also negotiated hard is the lenders' Loss Severity Rate.

Loss Severity Rate (What is this?)

Let me talk a little bankalese here (not legalese). This is the rate of loss a lender incurs in a foreclosure. Here's an example: In a foreclosure, the bank recoups only a portion of the mortgage balance plus they incur significant property preservation costs (aka maintenance costs), legal fees, liquidation costs, additional "carrying costs". The 'net' the bank receives after a foreclosure sale is divided into the total costs or 'balance' due which is now much higher than the original mortgage balance . . .resulting in the Loss Severity Rate. This rate has climbed to 40% of more. *Much* higher than a short sale!

Closing

Once an agreement is reach, the lender issues a short payoff to the realtor and the title company being used for the short sale closing. This letter will state the closing date, names of the parties, a Release of any deficiencies incurred by the lender, and any cash or promissory notes required from the seller. I am not the closing attorney and I do not go to closings. The title company continues to be the closer.

When is it too late?

In Missouri, the foreclosure process can happen quickly, therefore a short sale must be identified before the seller receives a Notice of Foreclosure. The bank cannot delay foreclosure by more than one week in Missouri, however, the lender may cancel or "continue" foreclosure proceedings only if we have an accepted contract. Short sale candidates need to be identified and counseled before a Notice of Foreclosure is received. However, if a Notice has been received recently, let us still counsel the homeowner, then we'll see what we can do about securing an accepted contract quickly and we will communicate with foreclosure department and attorneys. There are instances where we may be able to get a foreclosure postponed or canceled right before the Foreclosure Sale if we have an accepted contract.

Short Sale vs. Bankruptcy

• Lenders cannot consider a short sale if the borrower is in an active bankruptcy. The bankruptcy would have to be discharged or dismissed prior to the lender considering a reduced payoff.

• There are many bankruptcies that are filed to save a homeowner from the deficiency judgment or shortage in the sale of their home – when really all they needed was a short sale of their home!

• A bankruptcy stays on the homeowners credit report for 10 years.

• Bankruptcies typically only delay the inevitable. . . a foreclosure. Then the homeowner has both a bankruptcy AND a foreclosure on their credit report. The worst case scenario for anyone.

Short Sale vs. Foreclosure

• Foreclosure is devastating to one's credit report. Someone who goes the short sale route generally can buy a home in less than 2 yrs, compared 5 yrs + after a foreclosure. Many employers run credit checks on *prospective* employees and foreclosure is one of the top items that will put a potential *new hire* in jeopardy. Also, *current* employers may run credit checks and a foreclosure can put a *current* position in jeopardy. Security clearances (law enforcement) and government positions can be jeopardized by a foreclosure. Additionally, interest rates will be markedly high on credit cards and any credit with a foreclosure or a deed in lieu on one's credit report.

• The lender can still pursue the former homeowner with a Judgment for any deficiency after the property sells under foreclosure. This deficiency most likely will tack on attorney fees, costs to sell the property, and many other related fees such as property preservation fees, insurance and the like.

• Foreclosure effectively reduces your potential clients as buyers as it is rare to secure financing for another home for a long time after a foreclosure is reported on one's credit report. So, not only did you not make a cent off of that foreclosure. . .you just lost another potential client.

• From the lenders standpoint – see Loss Severity Rate above! Enough said.

Taxes

The Economic Stabilization Act extends the Mortgage Forgiveness Debt Relief Act to **2012**.

Up to $2 million forgiven debt of a taxpayer's principal residence is exempt from taxation due to this Act. It also includes refinancing to the extent of the original debt (not any cash that was taken in the refi). For tax years 07 - 12, the government is waiving any tax liability on this forgiven debt. The lender will send you and the IRS a 1099-C "Cancellation of Debt". You or your accountant then files a Form 982, which can be downloaded from http://www.IRS.gov. Be aware, that forgiven debt on vacation homes and rental properties may be taxable, unless you can prove insolvency. Give this information to your accountant when completing your tax returns. *This section is not intended to give tax advice. It is advisable to confirm the current tax laws with each case with your tax advisor.*

Elizabeth Kayser, Esq.
Kayser & Associates, LLC
Short Sale Center, LLC
St. Louis, MO 63021
(636) 220-2218 office
(314) 714-6380 fax
attykayser@sbcglobal.net