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A Short Discussion on *SHORT* SALES

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What is a Short Sale?

- A short sale is where the net proceeds from the sale of the property are less than the balance owed on the property's loan.
- In a short sale, the lender agrees to accept less than the loan balance because the home owner is in an economic hardship and can not pay the outstanding balance.

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Why Choose Short Sales over Foreclosures?

- Lenders – Foreclosures result in steep losses for lenders. Short sales result in lower losses.
- Society – Foreclosures depress property values. Short sales keep properties occupied which reduces neighborhood blight.
- Seller, Buyer and Agents – In a foreclosure, the Seller, Buyer or real estate agent have little control over the property, because a court oversees the foreclosure filing. Short sales allow the Seller, Buyer and real estate agents to remain involved in the transaction.

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When is Seller Eligible for a Short Sale?

- Criteria varies from lender to lender
- But generally,
  - Seller must have a true financial hardship, caused by extenuating circumstances such as unemployment, health problems, death of a spouse, divorce, etc.
  - But, it is NOT necessary that seller already be in default.
  - Lenders may not consider a short sale if the borrower is in an active bankruptcy proceeding.

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Effect of a Short Sale on Seller's Credit

- A short sale will have some negative effect on the Seller's credit. But, the negative impact of a short sale on the Seller's credit is a lot less than if the homeowner has to go through a foreclosure or a bankruptcy.
- After a short sale, lenders will generally report that the Seller's loan was "paid in full for less than the full balance".

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Necessary Players in a Short Sale

- The Seller
- The Buyer
- The Real Estate Broker – Seller's/Listing Agent
- The Seller's Attorney
- All of the Seller's existing lien holder(s) ← must be given notice and must approve Short Sale
  - Property Taxes (First Priority)
  - IRS liens (Second Priority)
  - First Mortgage
  - Second Mortgage
  - Mechanic's lien
  - Lawsuit Judgment

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The Short Sale Process

Generally, the following steps are involved:

- The Property must be listed for sale
- A valid offer must be received and Contract of Sale signed
- Short Sale Application Package must be sent to lender
- Lender acknowledges receipt of the file. (10-30 days.)
- A negotiator is assigned (30-60 days)
- A BPO is ordered by the lender (15-30 days)
- Short Sale is preliminarily approved by negotiator (30-60 days)
- The file is sent for final review (10-30 days)
- The lender requests all parties to sign an Arm's-Length Affidavit
- The lender issues a short sale approval letter

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The Short Sale Package

Generally, the following documents must be enclosed:

- Executed Contract of Sale
- Letter of authorization, which lets your agent speak to the lender
- HUD-1 or preliminary net sheet
- Completed financial statement
- Seller's hardship letter (could also include supporting documents)
- 2 years of tax returns/2 years of W-2s
- Recent payroll stubs
- Last 2 months of bank statements
- **Comparative market analysis/recent comparable sales**
- **Buyer's preapproval letter and copy of earnest money check**

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Short Sales – Myths

List of Top 10 Myths re: Short Sales

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Short Sales – Myths

Myth No. 1: Seller must already be in default to qualify for a short sale.

- Not true.
- Seller may qualify for a short sale if a default is imminent even though Seller has not defaulted yet.
- Lenders look for: 1) a "verifiable hardship," such as unemployment, health problems, death of a spouse, etc.; 2) a monthly cash-flow shortfall or pending shortfall/insolvency; and 3) lack of liquid assets to pay down the loan.

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Short Sales – Myths

Myth No. 2: If you qualify under certain recommended government guidelines, then your lender must approve your short sale.

- Not true.
- For example, the U.S. Making Home Affordable plan is just that – a plan. The plan does not require a lender to modify each and every qualifying person's loans. However, the government plans may provide lenders with a financial incentive to offer loan modifications to persons who qualify under the plan's criteria.

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Short Sales – Myths

Myth No. 3: Government restricts what lenders can require from Sellers in a short sale.

- Not true.
- A Lender has the right to deny a short sale.
- If a lender agrees to waive the Seller's shortfall, it may place conditions on that waiver. For example, lenders may ask for more money from the seller - or the buyer (and often do), ask the real estate agents to reduce their commissions (and often do), refuse to pay certain closing costs (and often do), etc.
- The buyer or seller can counter, accept or refuse the lender's demands, but then the deal may die!

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Short Sales – Myths

Myth No. 4: It is smarter for underwater homeowners to walk away from their home rather than do a short sale.

- Not true.
- Walking away and letting your home go to foreclosure is often not a wise decision. New York allows lenders to sue defaulting homeowners and attach their available assets.
- While short sale impacts your credit negatively, the negative impact of a short sale on the Seller's credit is a lot less than if the homeowner has to go through a foreclosure.

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Short Sales – Myths

Myth No. 5: It's smarter for underwater homeowners to declare bankruptcy rather than do a short sale.

- Not true.
- Filing for bankruptcy does not put a permanent stop to the lenders pursuing foreclosure. It merely delays the foreclosure process to a later date.
- The negative impact of a bankruptcy followed by a foreclosure is much more serious on a credit rating than doing a short sale.

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Short Sales – Myths

Myth No. 6: Buyers can help negotiate a short sale with the Seller's lender.

- Not true.
- A Buyer has no involvement in the short sale negotiations with the Seller's lender.
- The approval of the short sale transaction is a mutual agreement between the Seller and his lenders. The short sale cannot be approved unless and until the Seller's lenders agree to accept the terms of the short sale transaction.

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Short Sales – Myths

Myth No. 7: The Buyer's real estate agent may help getting a short sale approved.

- Not true.
- The Buyer's real estate agent has little to do with whether the Seller's lender allows the short sale.
- Instead, lenders look at: 1) the home's fair market value (by a broker's price opinion); 2) the Seller's financials (i.e., does Seller have other funds); and 3) the completion of the Seller's workout application package and follow-up.

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Short Sales – Myths

Myth No. 8: Lenders would rather foreclose than approve a short sale.

- Not true.
- Lenders typically lose 10-15% more on a foreclosure than on a short sale. Foreclosures take longer and involve protracted litigation.
- These days, because of the problems in the foreclosure filings, most lenders have significantly slowed down their foreclosure filings and are instead pursuing short sales.

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Short Sales – Myths

Myth No. 9: After a short sale, lenders may not pursue the Seller for any additional deficiency.

- Not true.
- In New York (and about 30 other states), a lender may pursue any deficiency, if after the short sale (or a foreclosure) additional monies are still owed.
- However, because a short sale is a negotiation between the Seller and the lender, it is often possible to convince the lender to give a full release also known as a “satisfaction of lien”, but you need a forceful and experienced attorney on your side.

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Short Sales – Myths

Myth No. 10: Once you submit a signed contract of sale to the lenders, you need not present any more offers to the lenders.

- *May be true*.
- You need to know what the lender requires. If the lender wants all offers forwarded to it, then all offers must be presented (even if there is already a signed contract). Why? Because the contract of sale is not binding on the lender, and so the lender is entitled to hold out for the highest price.

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Note: *Every person's financial situation is unique and so there is no one-size-fits-all solution. Prudence mandates that you consult a competent attorney to discuss options that may be specifically available to you*.

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Thank You.

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