About Short Sales

By Barbara Atkinson, CNE

As the housing market continues to contract, more people become upside down (owe more than their house is worth). Those who are upside down and facing foreclosure but do not have the cash to pay for marketing costs or Realtor's commission, closing costs, and the equity deficiency are faced with a dilemma. One way out of the dilemma is a short sale.

A short sale occurs when a lender agrees to accept a less than what is owed on a property, provided there is a buyer willing and able to purchase the property. A year ago most lenders would make a short sale difficult, if not impossible. The wave of foreclosures and associated expense to lenders has helped change their position.

For a lender to approve a short sale, the owner must prove that that they can not continue to make payments. This is typically done with a financial statement and a hardship letter. A hardship letter is a letter addressed to the lender's loss mitigation department, not the collections department, that narrates how have became unable to continue to make payments, any steps they have taken to try to improve their financial condition, and why their only option is a short sale.

If you are a REALTOR© and learn that your prospective seller is upside down and is facing foreclosure, you may want to talk about a pre-foreclosure sale. A pre-foreclosure sale is where a lender provides a set of terms, conditions, and a bottom line price that allows the property to be marketed thus postponing the auction date up to 90 days. This allows the owner more time to make arrangements to move and if they are able to sell, reduces the negative impact on their credit. Most lenders allow a commission of 6% if there are two agents in the transaction.

Whether you are an investor or REALTOR©, when you begin talking with a lender's Loss Mitigation department on an owner's behalf, you'll need to have an Authorization to Release Information signed by all owners. You will also need to provide at a minimum the owner's financial statement, the owner's hardship letter, and a competitive market analysis documenting the property's current market value.

When the sale closes there will be a deficiency between the amount due on the loan and the amount received. The lender can issue a 1099 to the seller for the end deficiency amount. Arizona statutes prevent lenders other than the VA from suing sellers to obtain deficiency judgments on one or two family dwellings on less than two and one half acres. The seller may want to ensure that the final agreement with the lender include will waive issuance of a 1099 to the original mortgagor and refrain from pursuing a deficiency judgment from to the original mortgagor for the discount amount.

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