

Distressed Deals and the Real Estate Agent

Short Sales –

A real estate transaction where the lender takes less than the full amount of the payoff that would otherwise be due at the closing of the sale to a third party. The lender does not take title to the property and the deed is transferred from the seller to the buyer directly.

Deeds in Lieu of Foreclosure -

A transfer of the real estate from the owner / borrower to the lender by deed where the property does not pass by the power of the courts. In some cases, the borrower will pay an agreed deficiency (the difference between the loan amount due and the agreed value of the property) to the lender over time.

Foreclosures -

A forced transfer of property which is commence by a lender filing a lawsuit against an owner of the property for non-payment of the loan. The title passes to the property by the court ordering a judicial sale of the property and issuing a judicial deed.

REOs (Real Estate Owned) -

A sale of property where the lender is the title holder (owns the real estate) and the seller after the lender has acquired title to the property through a Deed in Lieu or Foreclosure.

The Short Sale Process –

1. Normally, the owner has not made payments to the lender for a number of cycles.
2. Perform title search and determine all lien claimants and other amounts outstanding (taxes, assessments, second mortgages, etc.)
3. Allow attorney or negotiator to contact lenders and lien holders.
4. The owner obtains a sales contract for the property (after disclosing it is a short sale and including a Short Sale Rider to protect the Seller).
5. The lender is contacted and the seller complies with that particular lender's short sale instructions. These documents typically supplied:
 - a. The offer contract.
 - b. The proposed HUD-1 showing the amount expected to be netted to the lender.
 - c. A Hardship Letter (a written explanation as to what "event" has caused the seller to fall behind on payments – health, job loss etc.).
 - d. The listing agreement with the real estate broker with proper Disclosers to Seller.
 - e. Tax returns.
 - f. Broker Opinion of Value (informal presentation of comparables with market analysis)
6. Lender reviews short sale package submitted and obtains its own appraisal of the property.
7. Lender either approves or states the conditions of its acceptance (note for all or part of deficiency, amending the purchase price, reduction of commission).
8. Lender issues it payoff letter and conditions (the seller gets zero funds).
9. The transaction closes and the lender approves the final HUD-1.

Issues for Sellers-

1. Is remaining debt released?
2. Is forgiven debt taxable? (Insolvency test under IRS from 982)
3. Is bankruptcy an alternative?
4. Can the foreclosure be defended in court for violations of lending laws or other defenses?
5. Can the property be sold and leased back to the owner?
6. Can a forbearance agreement be arranged with the lender if the hardship is short-termed?

Issues for Purchasers –

1. Usually "As Is" with no repairs so critical inspections are a must.
2. Expect deferred maintenance and talk to the purchaser about a budget.
3. Can the purchaser wait it out?
4. Is this the tip of the iceberg for the neighborhood or for the condo association?