

FORECLOSURES AND SHORT SALES, HOW THEY WORK

By Sue Saunders, NVAR General Counsel

As we all know, the real estate market has taken another extreme twist, that of “short sales” and/or foreclosures. Dealing with transactions which involve short sales and/or foreclosures is filled with new challenges and the need for special knowledge. Because of the extraordinary know-how necessary to represent clients in a short sale, agents are compelled to become educated in this field.

Pre-foreclosure Period

Initially, it is necessary to know Nevada’s foreclosure laws. Nevada foreclosures are primarily accomplished out of court. An out-of-court foreclosure in Nevada can be completed in about four months.

In Nevada, most mortgages allow lenders to sell a property once an owner defaults without having to file a lawsuit. A lender begins the foreclosure process by recording a notice of default with the county recorder and mailing the notice to the borrower. A borrower or any secondary lender has 35 days from the date the default notice is recorded to pay off the default and stop the foreclosure.

At least three months after recording the notice of default, the lender can schedule a foreclosure sale if the borrower has not paid off the default amount.

Notice of Sale/Auction

A trustee (third party named in the deed of trust) carries out the foreclosure sale (also referred to as a public sale). A notice of sale is posted at least 20 days before the trustee sale date in three public places and published in a local newspaper once a week for three weeks. The notice of sale is also mailed to the affected parties.

The sale may be at the trustee’s office and anyone may bid. The winning bidder has to pay the full bid amount in cash or cashier’s check to the trustee. If the sale is postponed, a public announcement is made at the time and place of the sale. After the sale, the trustee transfers ownership to the winning bidder.

An out-of-court foreclosure provides the winning bidder with clear title, and there is no redemption period for the borrower after an out-of-court foreclosure sale. Although court foreclosures are uncommon in Nevada, they are possible under certain circumstances.

Short Sales

If the borrower is faced with foreclosure, he/she may try a last-ditch effort to avoid foreclosure by the short sale. If the borrower is unable to pay the mortgage, he/she may negotiate with the lender to accept a discounted payoff on the loan. This is called a “short sale” or “short payoff”. A short sale occurs when the value of the property is less than the amount owed to the lender, and the

lender agrees to write off the difference. It allows the borrower to avoid a foreclosure action, and may offer the lender an expedited and less costly resolution to the situation.

Most lenders have specific criteria to consider a short sale that relate to the borrower's ability to repay the debt.

An agent representing a seller in a short sale has several more steps to complete the transaction than in the ordinary sale of a home. These extra steps involve working with the lender.

- Each lender will have its own set of rules, so the agent needs to be sure to talk with the appropriate department for its list of requirements.
- Inquire about the time frames for all processing, and send everything requested as soon as possible.
- Be aware of the foreclosure date (if any) and ask for a postponement if possible.
- Discuss the benefits of a short sale with the lender.
- Confirm everything in writing.
- Collect all the contact information (including physical address and/or delivery options) of the appropriate person or department at the bank or lending institution.
- Negotiate a purchase price with the lender including:
 - ✓ Commission
 - ✓ Repair costs
 - ✓ Escrow
 - ✓ Title insurance
 - ✓ Recording fees

Once the lender has agreed to the short sale and the terms, the agent can begin marketing the property. The agent must be sure to inform prospective buyers that any contract entered into between the seller and the buyer is "subject to" the lender's approval and will not become binding on the seller until the lender has approved all the terms of the contract.

MLS Co-op

Frequently advertising the property in the MLS has its own set of problems because MLS requires the listing agent to offer a specific co-op commission for the cooperating agent. The lender must approve the contract before it becomes binding and frequently the lender will not approve the co-op offered by the listing agent. Of course to make matters more difficult, the lender usually will not tell the listing agent in advance what commission rate it will accept. It is possible that the lender will agree to all the terms of the short sale contract, but will reduce the listing broker's commission.

What can the listing agent do? MLS Policies allow a change in the commission, but it must be negotiated by separate agreement. Only the seller's broker and the buyer's broker can agree to change the co-op. If the buyer's broker does not agree to reduce his commission, the matter is arbitrable under Article 17 of the Code of Ethics. The Code of Ethics also provides that the listing broker's obligation to compensate any cooperating broker may be excused if through no fault of the listing broker it is impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement.

A short sale may be the answer for assisting a borrower in a tight situation. A short sale allows the borrower to maintain a better overall credit record. It can help the lender in avoiding the expense of foreclosure. But short sale may not be the solution to all borrower-in-distress situations.

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