

WARNING! – You Gotta Know When to Fold Em...

By Mildred Wilkins

Short sales are becoming fairly common practice in the real estate market these days and anyone who has completed one knows that you had better be prepared for rough riding when you get the seller to sign a listing contract when they are upside down. If the term "short sale" is unfamiliar to you, it refers to a situation when the sale of a home will not net enough to cover the mortgage and closing expenses. It is a problem which occurs frequently in today's market place. Whether the consumer is upside down because of refinancing, new construction "trickieration," the economy in general, or having used an exotic loan product which resulted in owing more than the home is worth - the end result is they are stuck and want you to help them get out.

This is not the kind of listing timid real estate salespeople, brand new agents or folks who want to close "just one more before Christmas" should take on. Short sales are fast becoming both an integral and significant part of the market, so the rest of you agents should read this article very carefully, turn the page back and keep it handy as a ready reference as you go off into "short sale land."

You're out there, wading in the water and doing an admirable job of trying to get the lender to agree to a short pay-off on a transaction which is rapidly headed toward foreclosure. You're making headway (you think) but you gotta know when to fold em and walk away. The risk to your brokerage firm as well as yourself is significant if you do not recognize when you are no longer able to help and need to withdraw the listing and move on.

WARNINGS: There are a number of opportunities for you to remove yourself from a short sale transaction. Your broker and your errors and omissions insurance company would both appreciate it if you:

1. Understand when these opportunities present themselves and
2. Act prudently by not only removing yourself but by also documenting that by the use of a mutual release or similar document.

When any of the following occur, you should remove yourself from the listing as quickly as possible:

- A. BANKRUPTCY
 - B. JUDICIAL FORECLOSURE
 - C. NOTICE OF SHERIFF'S ACUTION
- I know you heard different someplace else, but I am prepared to explain to you why removing yourself is the right option.

BANKRUPTCY: The borrower files bankruptcy, either 7 or 13. The filing of bankruptcy is a legal action, in fact a lawsuit, against all creditors. Their lender is one of those creditors. The house is not available for sale while it is under the protection of the trustee of the bankruptcy court. It can not be sold, gifted or otherwise transferred. Release the listing immediately once you are informed.

It should not be re-listed unless, or until, you have written authorization from the trustee to do so. It would be a mistake to hold the listing hoping that the trustee will let you sell it after the bankruptcy has been completed. One of the trustee's possible options is to instruct the borrower to sign a deed-in lieu of foreclosure in favor of the lender. This means there will not be an opportunity to sell the property at all unless you later get the listing from the lender who has become entitled.

JUDICIAL FORECLOSURE: The borrower's court date for judicial foreclosure has arrived and you do NOT have a signed letter authorizing a short sale with a closing date prior to the foreclosure date. The lender will become entitled on the date of foreclosure; the borrower who might still be legally entitled to possession does not have the legal right to transfer title. It is mutual release time.

NOTICE OF SHERIFF'S SALE: The borrower informs you, or you become aware, that a sheriff's sale has been scheduled on the home you had listed. It is past time for the mutual release. The borrower no longer has legal ownership to the property. It does not matter that the

lender is suddenly anxious to work with you to facilitate a short sale. State law states that the home is to be offered at sheriff's auction, so you need to remove yourself from this transaction until such time as it has gone to the auction and the redemption period (which ends on the day of confirmation of a sheriff's sale) has expired. The borrower's right to redemption is a strong consumer right.

I am very aware that many short sales are being completed during this window of time. Nonetheless, state law says that they should not be, and as a licensee it would be in your best interest to refrain from any sale between judicial foreclosure and the end of the confirmation period.

Do not participate in circumventing that right by working with an investor or other buyer and the lender at this juncture. The foreclosure is still on the borrower's record. A short sale does not save their credit. The foreclosure (when judicial) has already occurred and is documented.

A lender assuring you that they will not report it does not UNDO the fact that it is recorded as a foreclosure in local court records and that the borrower needs to answer honestly when they apply for a new mortgage that "YES" they had a foreclosure in 2006. You may offer them hope, but no real substance and the risk that you might later be accused of facilitating the signing over of their redemption rights is a risk you need to avoid. Keep it ethical. You might approach the lender later about representing them once the redemption period has ended; but for now, utilize the mutual release.

Mildred Wilkins, founder and president of Home Ownership Matters, LLC. She is the trainer for The Foreclosure Intervention Specialist (FIS) also, an instructor for GRI, NeighborWorks America. Visit her website at www.HomeOwnershipMatters.com or toll-free 1-866-507-5105.



It's always better to be SAFE professionally than to be sorry. You should be as diligent in the completion of files as you are in opening them. Your success rate (in life as well as in real estate) is tied to how well you recognize the age old principle of knowing when to fold.

Foreclosure Intervention Specialist (FIS) Program (Levels I, II and III)
With instructor Mildred Wilkins

Due to numerous inquiries for such training, HOM is offering the Foreclosure Intervention Specialist (FIS) series in Feb, in beautiful and WARM Florida.

Why should you be interested in this series? Can it help your business?

Consumers turn to licensees for help when they are facing one of the hardest challenges of their lives: the selling of their home when they are either already in default, expect to go into default and/or /realize the sale of the house will not net enough to cover their mortgage payoff.

There is currently limited professional training available relative to foreclosure /foreclosure intervention. Consumers across the country need licensees who are up-to-date on foreclosure issues impacting real estate transactions.

The FIS certification will set apart those agents who have taken extensive training to be prepared to handle the challenges associated with these types of transactions. It will become another way for agents to market themselves.

With this type of training, REALTORS® could have the power to effectively reduce the number of foreclosures no matter where your market happens to be. If you recognize that you are at a cross-road and need to change the direction of your business, then I encourage you to consider this as an investment in your future. Short sales and REO transactions will be a lion's share of the business for several years to come. Are you prepared to survive in today's foreclosure climate? Do you know what you need to know to close transactions?

If not, what are you waiting for?

Special seminar-FREE to all registrants of the FIS classes
Building a Business Using Foreclosure Intervention Techniques

Three Levels (30 hours) entitles the student to receive the FIS certification.

Level I — 8:30 a.m. to 4:30 p.m. (each day) • Tuition: \$299 (w/ course materials)

Aspects of Foreclosure Mitigation

This course provides information and knowledge to be current on real estate law concerning the representation of buyers and sellers for mitigated residential properties. It also identifies the necessary procedures for compliance with mortgage and title agency laws.

Listing an Upside Down Property

This course will help you make recommendations to your client concerning pricing, price reductions, release memos, sellers disclosure forms, and developing a mutually agreed to marketing plan. Learn what "as is" really means in property descriptions and disclosure.

Short Sales

Stop telling potential clients there is nothing you can do when they owe more than the house is worth... THERE IS! This course will help you to understand why establishing an appropriate list price from the beginning is so critical. You will become an educated housing professional who can take charge of a short sale transaction.

BUYER Agency

This course is designed to explore the challenges a Buyer's agent should anticipate when helping a client with a pre-foreclosure or foreclosed property. Due to the significant increase in foreclosures in the state licensees should be prepared to handle some details not associated with traditional transactions. This course satisfies the educational requirements of Colorado real estate licensing law.

Level II — (1 day – 7 hours) 8:30 a.m. to 4:30p.m. • Tuition \$179 (w/course materials)

Broker Price Opinions

Learn how to more accurately determine the most likely sales price of the subject property. When armed with more definitive data you are in a better position to justify pricing. This class will use an exercise in the completion of a long form BPO to help you sharpen your expertise. (Training is provided using the Fannie Mae form, the form considered to be an

industry standard used by more than 50% of today's lenders.)

Fair Housing Considerations when Listing an Upside Down Property

This course will explore the Civil Rights/Fair Housing law and ways to assure you and your company are in compliance when listing an upside-down property for your clients.

Level III — 8:30 a.m. to 4:30 p.m. (each day) • Tuition — \$249 (w/ course materials)

Foreclosure Intervention Ethics

An intense and interesting look at professional real estate practices following National Association of REALTORS® and the State of Ohio Cannons of Ethics as they pertain to Foreclosure Prevention and Mitigation.

Practical Application of Loss Mitigation

In this class you will learn: what is loss mitigation, be given a practical checklist for interviewing a potential client, options for foreclosure intervention, be provided with and discussed in detail the actual Federal guidelines.

Disclosures: Clear as Mud

This discussion of disclosures will focus on the heart of today's foreclosure problem—understanding the disclosures. Many consumers say they would not have gotten the loan had they understood the prepayment penalty, the variable rate rider, the escrow account, the balloon payment.

Getting to the Closing Table

This 2 hour course provides valuable recommendations to avoid delayed or cancelled closings. A timely closing depends on many factors including preparation BEFORE the home was listed, terms in the purchase agreement, strength of the buyer's financing, lender's ability to perform in a timely fashion and the title company's diligence with title issues and document preparation.

The FIS program is highly recommended for REALTORS® interested in foreclosure intervention. The program also provides a workshop on "Building a Business Using Foreclosure Intervention.