

OBSERVATIONS

from the desk of Mildred Wilkins, (FIS)...

The “Expectant” Short Sale Buyer

Whether or not you have ever completed a short sale, you are painfully aware that it is a different kind of transaction. First question: “Have you thoroughly INTERVIEWED your “Expectant” short sale buyer” to be sure they suit the role of such a buyer? If not, better back up.



Living on the edge

The prime candidate for a short sale attempt is someone who, quite frankly, likes living on the edge. They gamble in their spare time and hold their breath the rest of the time. Seriously, they must be educated (by you, of course) about how the short sale game works and STILL be in for the long haul. The game requires extraordinary fortitude. In addition, they should:

- Have no urgent need to move
- Be willing/able to stay in current housing on a month-to-month basis
- Have a few thousand more than they offered available at the last minute
- Be really comfortable living with dead silence, for long periods of time
- Be totally comfortable with missing out on the \$8,000 tax break

Uncertainty hangs in the air

The entire process of trying to buy a home which is listed for short sale is one of uncertainty:

- a. Will the seller *qualify* for a short sale when the lender completes a review of their hardship package
- b. Does the listing REALTOR know how to handle a short sale which is substantially different from a regular transaction
- c. Will your offer be the only one considered or might they receive (heaven help you if they accept) another offer? How will you know?
- d. How long will this mess take
- e. And 10 other questions we don't even want to think about today

Nasty Uncertainties Abound. .

1. Suppose the seller files for bankruptcy, then what? **The house is a frozen asset.**
2. Suppose the guarantor refuses to approve the sale? **They can and they do.**
3. What happens if the lender moves ahead with the foreclosure?
It could happen, and does on a regular basis.

4. Maybe the seller won't even qualify for the house to be sold as a short sale—where does that leave a buyer? **No option on this one, the SELLER has to qualify in order for the short sale to be approved. It would be a shame if the listing agent did not understand the process well enough to pre-qualify her client for a short sale attempt.**
5. If you don't do an inspection until the short sale is approved (whenever that is), suppose you then find out after waiting several months that you can't live with the results of the inspection? **You can still walk (with earnest money, if you put some down) but what a long wait for nothing.**
6. What if the seller gets tired of all the drama and decides to give the house back by deed-in-lieu? **Happens all the time.**
7. Or you sit there and wait for 6 months only to find out that the house for which you have a signed contract was sold at sheriff's (Trustee or Master's) sale yesterday? What do you do with your contract now? **May I suggest a good attorney could be helpful?**

Valuation is Hard to Pinpoint

It has become increasingly difficult to determine what the value of any home is in today's market. When the market was comprised of traditional listings with relative short marketing timeframes it was easy to gather data which could pinpoint what a home was worth to a buyer.

However, during the past 24 months there has been such an influx of REO properties and short sales that the market has become somewhat skewed and it has become more challenging to get a handle on what a given piece of property will command. It is, nonetheless, critical that a good agent become more in tune with the dynamics which are CURRENTLY impacting values in a given neighborhood in order to make an appropriate recommendation to a buyer as to what is a reasonable amount to offer for the home they are considering.

I also recommend creating a disclosure which:

- a. States that the lender may counter at the last minute and ask for an increase in the offer amount should be anticipated
- b. That the buyer has made an independent decision regarding the offer amount and that the REALTOR has provided the information to facilitate that decision based on the resources available to them
- c. That the brokerage/agent can assume no responsibility for the ACTUAL value of the real estate being purchased and will be held harmless if the value is subsequently determined to be less than the amount offered and accepted

Disclosures

Please watch for an entire article: "Short Sale Buyer's Guide to Disclosures" to address the numerous disclosures which should be made to an expectant buyer. It will be available at Home Ownership Matters by the middle of April.

Any Phone Calls for me?

If you are an "expectant" buyer you should expect to wait a long time—perhaps a very long time before you receive a call indicating the lender has decided to CONSIDER your offer. Now we can talk about little details, like how much more money they need, can you close in 7 days if they give the go

ahead and will your REALTOR stand in your way if the total commission is only 4%? Literally, a counter may come after a protracted period of silence. The choice: take it or leave it. Now this dynamic is likely to change somewhat during the next 6-12 months but this has been the way the game has been played for the past 3-4 years. Aren't we lucky the tide has turned? Expectant buyers can expect more respect in the future. Their POTENTIAL stock value has gone up considerably.

Desperate Times Call for Desperate Measures

If the listing agent doesn't seem to understand this new real estate game, then hopefully your agent will step to the plate and offer to handle whatever needs to be handled; to the extent that they can. If this does not seem like a workable situation and the listing agent appears to be clueless about short sales—better to select another house and move on than stay in a tailspin for 4-6 months only to find out that the pilot has been asleep in the cockpit the entire trip. Short Sale transactions require everyone to be well-rested and suited up for the ride.

It Ain't Closed Til It's Closed. . . .

The expectant buyer has probably become pretty jaded by now, but may still be under the illusion that they can breathe a sigh of relief as soon as the lender FINALLY calls and says that the deal has been approved and a closing can be scheduled. I would be remiss if I did not mention the occasional last minute glitch—where the entire deal is called off—and no closing ever ensues. Robin and I were co-agents back in Indiana a number of years ago. She had processed a short sale transaction like clockwork (just like I taught her). Everything had been accomplished in about 2 ½ months and all parties were delighted that the end appeared near. The lender gave her a call on Tuesday and approved a short sale, with the closing set for Friday. She relayed this information to the buyer's agent who called the expectant buyers to share the happy news.

Wednesday morning the lender called again—oops, he had missed opening an envelope which contained updated title work showing a \$10,000 judgment against the seller which would be attached to the real estate and therefore was rescinding his approval of the sale. The bank was moving forward with foreclosure.

The buyers have given notice at their apartment, their furnishings totally packed for a move as soon as the closing was completed. They had to quickly find alternative housing since they could not stay where they were, nor could they move into what would have been their dream home. While there were threats of a lawsuit, no lawsuit occurred because the buyers had signed the seller disclosure AND written into their purchase agreement that they understood that final approval from the lender would be required for a closing. Alas, the lender had not approved. My point—it ain't over until the fat lady sings.

Does your buyer have the stomach for a short sale attempt? Remember: they never promised you a rose garden. Short sales require a strong constitution—for all parties involved.

A Short Sale Closing—Today's *Ultimate* Success Story

Did I give the impression that short sales might not be suited to everybody? They are not. However, a pair of competent REALTORS can make this transaction go smoothly and move to a closing where all parties have received what they wanted and walk away with a win-win-win-win.

Throw one neophyte in the mix and you've got a wild ride. Especially if that happens to be the pilot for the listing side. If you don't know how to handle a short sale listing, have not received some pretty strong training or have limited real estate experience, please do yourself and your client a favor and refer them to someone who does have experience and training. They will appreciate you for it.

Ah-h-h operating outside of your area of expertise...I think that is mentioned somewhere in the Code of Ethics.



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