

Considering a Short Sale – For Sellers

There are many ways to lose a home but signing away ownership in a manner that destroys credit, embarrasses the family and strips an owner of dignity is one of the hardest. For owners who can no longer afford to keep mortgage payments current, there are alternatives to bankruptcy or foreclosure proceedings. One of those options is called a "short sale." When lenders agree to do a short sale in real estate, it means the lender is accepting less than the total amount due. Not all lenders will accept short sales or discounted payoffs, especially if it would make more financial sense to foreclose. If you are considering a short sale, there could be drawbacks. For your protection, I suggest that you

- Obtain legal advice from a competent real estate lawyer
- Call an accountant to discuss tax ramifications

As a real estate agent, I am not licensed as a lawyer or a CPA and cannot advise on those consequences.

Be aware the I.R.S. will consider debt forgiveness as income, and there is no guarantee that a lender who accepts a short sale will not legally pursue a borrower for the difference between the amount owed and the amount paid. In some states, this amount is known as a deficiency. A lawyer can determine whether your loan qualifies for a deficiency judgment or claim.

Although all lenders have varying requirements and may demand that a borrower submit a wide array of documentation, the following steps will give you a pretty good idea of what to expect.

Call the Lender

You may need to make a half dozen phone calls before you find the person responsible for handling short sales. You do not want to talk to the "real estate short sale" or "work out" department, you want the supervisor's name, the name of the individual capable of making a decision.

Submit Letter of Authorization

Lenders typically do not want to disclose any of your personal information without written authorization to do so. If you are working with a real estate agent, closing agent, title company or lawyer, you will receive better cooperation if you write a letter to the lender giving the lender permission to talk with those specific interested parties about your loan. The letter should include the following:

- Property Address
- Loan Reference Number
- Your Name
- The Date
- Your Agent's Name & Contact Information

Preliminary Net Sheet

This is an estimated closing statement that shows the sales price you expect to receive and all the costs of sale, unpaid loan balances, outstanding payments due and late fees, including real estate commissions, if any. Your closing agent or lawyer should be able to prepare this for you if you do not know how to calculate any of these fees. If the bottom line shows cash to the seller, you will probably not need a short sale.

Hardship Letter

The sadder, the better. This statement of facts describes how you got into this financial bind and makes a plea to the lender to accept less than full payment. Lenders are not inhumane and can understand if you lost your job, were hospitalized or a truck ran over your entire family, but lenders are not particularly empathetic to situations involving dishonesty or criminal behavior.

Proof of Income and Assets

It is best to be truthful and honest about your financial situation and disclose assets. Lenders will want to know if you have savings accounts, money market accounts, stocks or bonds, negotiable instruments, cash or other real estate or anything of tangible value. Lenders are not in the charity business and often require assurance that the debtor cannot pay back any of the debt that it is forgiving.

Copies of Bank Statements

If your bank statements reflect unaccountable deposits, large cash withdrawals or an unusual number of checks, it's probably a good idea to explain each of those line items to the lender. In addition, the lender might want you to account for each and every deposit so it can determine whether deposits will continue.

Comparative Market Analysis

Sometimes markets decline and property values fall. If this part of the reason that you cannot sell your home for enough to pay off the lender, this fact should be substantiated for the lender through a comparative market analysis (CMA). Your real estate agent can prepare a CMA for you, which will show prices of similar homes

- Active on the market
- Pending sales
- Sales from the past six months.

Purchase Agreement & Listing Agreement

When you reach an agreement to sell with a prospective purchaser, the lender will want a copy of the offer, along with a copy of your listing agreement. Be prepared for the lender to renegotiate commissions and to refuse to allow payment of certain items such as home protection plans or termite inspections.

Now if everything goes well, the lender will approve your short sale. As part of the negotiation, you might ask that the lender not report adverse credit to the credit reporting agencies, but realize that the lender is under no obligation to accommodate this request.