Short Sales in the Luxury Market

Conference Call Notes for January, 2009*

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The reality of today's market is that you can sometimes face these situations
(even in the luxury home niche)

1. The homeowner owes more than they can realistically expect to net on the sale, especially after all the closing costs are paid.
2. Your homeowners push to overprice their property simply to try to breakeven on the sale.
3. You choose to walk away from short sale transactions because they are difficult and too time-consuming.

You can help sellers and make more money by marketing to homeowner's who need short sales or are in foreclosure. Be a short sale resource to your homeowners, without spending the time negotiating with the bank, coordinating with lawyers, title companies, trustees, and insurance companies. You can turn to a pro to facilitate the short sale process for you and your sellers.

Key Information about Short Sales

How do I know if a homeowner should do a short sale?
Can you sell the property for what the homeowner owes after real estate commissions and closing costs? If the answer is no, then the homeowner is in a position to do a short sale. Many times the homeowner will refuse to drop the list price of the home below a certain point. Often this indicates they are struggling to break even on the property. Time for a frank conversation about their specific situation. Mention that short sales have been on the rise lately in their neighborhood. Tell them what a short sale is and what the advantages are as compared to foreclosure. If they are having a difficult time and have negative equity in their house, then it is very likely they need to do a short sale.

How can I increase my business by offering short sale service?
If you only sell properties that have equity in them, you are probably turning away business and limiting yourself. Many real estate agents believe they have to learn how to deal with negative equity homes and then specialize in them. Not so. You can open this huge market by outsourcing the short sale process to a qualified Short Sale specialist, and continue to focus on your core-competency -- helping people buy and sell houses -- and increase your income at the same time.

How do I market to homeowners who need a short sale?
When you advertise for your services, simply include that you handle short sales. You may want to add what qualifies homeowners for a short sale:

- Owing more on their property than they can sell it for, especially after closing costs
- Not having enough money in the bank to cover the difference between their potential net (given a realistic sales price) and their mortgage debt

When should a homeowner start the short sale process?
It is best to begin a short sale when the homeowner realizes they can no longer afford the mortgage. Then, the property can be marketed before foreclosure becomes an issue; but don't expect the process to be quick.

Can a seller get preapproved by a lender for a short sale?
While this is not standard practice at this point, in a couple of markets (including Orlando) Fannie Mae has been testing a program to reduce approval turnaround time to seven days or less with possibility of a 30-day close. While there was some discussion on what requirement are for this test program, the loan eligibility for this test may be limited to Countrywide loans with no second mortgage.

How long does it take to complete a short sale once the homeowner fills out the proper paperwork?
Typical cases are completed within three months. If there is a foreclosure sale date approaching, the short sale company needs to know that ASAP. An experienced short sale company can often use its relationships with the banks to push back the foreclosure sale date. Recognize that you may be dealing with several levels of organization –the investor, a servicer, and perhaps a sub-servicer. This can create a time-consuming process.

Can anything be done to speed up the process?
1. Price the house right (recognize that there'll probably be no money for repairs)
2. Submit a complete short sale request package (everything submitted at once)
3 You may be able to get an "escalation" to speed up the process

What impacts the lender's decision to accept a short sale?
The *loss severity ratio* is a key factor in the decision. What percentage reduction in the amount of the debt is the lender willing to incur?

Once the short sale is agreed to, if there's a deficiency note, can it be negotiated down?
The deficiency note goes to another department within the lender's operation. Sometimes these notes can be successfully negotiated down.

How will a foreclosure or a short sale show up on the homeowner's credit?
A credit bureau is the only true source of information for determining how a short sale and a foreclosure is going to affect a homeowner's credit. *National Short Sale Center* says, "From our experience with homeowners --which is not to be taken as any form of legal advice -- foreclosures usually show up as FORECLOSURE and can stay on a credit report for seven years. If a homeowner applies for a new loan or has their credit run, the foreclosure could show up. It is also a common disclosure many employers require on most job applications. A short sale is commonly listed as SETTLED DEBT, and can be much less harmful to credit. It is smart for the seller to consult a credit bureau for how a short sale or foreclosure will actually affect his or her credit."

What liability does the homeowner have when doing a short sale?
For advice on sellers' liability when doing a short sale it's best to consult an attorney. Recent changes in law, such as the Mortgage Debt Relief Act of 2007, have reduced homeowners' tax liability. *National Short Sale Center* materials say, "In a short sale of a primary residence, the Mortgage Debt Relief Act did away with much of the tax consequences. For residences other than a primary, in both a short sale and a foreclosure the homeowner could be taxed for the difference in what is owed and what the bank receives as payment. This means the IRS could consider the difference as income, and the homeowner could be taxed on that income.

"In a short sale we seek a full release of lien and request that the debt be considered settled. A short sale is a negotiation, so the bank has the right to ask for an unsecured note (not backed by any assets) or ask for a cash contribution at time of closing the short sale. Every short sale is different, as is every servicer and every situation. National Short Sale Center employs tactics to negotiate the best outcome.

"In a foreclosure, the house is sold at an auction, which typically causes the difference of the total amount owed and the foreclosure sale price to be much greater than in a short sale. This means the homeowner could have a higher potential tax liability. Additionally, the bank could sue for a Deficiency Judgment.

"A successful short sale will eliminate a deficiency judgment, minimize tax liability, and keep the foreclosure off a homeowner's record."

What about a deed in lieu of foreclosure rather than a short sale?
This is usually not practical if there is a second lien on the property. The majority of problem loans (about 80%) have more than one loan.

Does the homeowner need to give you power of attorney to conduct the short sale?
No. Homeowner's should never give power of attorney to short sell their property.

What are the benefits of outsourcing my short sales to a Short Sale Company?
If you have conducted short sales in the past, you know what a time consuming process it can be. Many agents find they would rather utilize their time concentrating on listing more properties, so they ask a service company to handle the collection of financial paperwork from the homeowner and the short sale negotiation with the mortgage servicer. *National Short Sale Center*, established in 2004, is an example of a company focused on helping agents and homeowners with successful short sales.

Does a Short Sale Company buy the property?
No. A purchase by the short sale company could increase the homeowner's liability. There are people/companies who say they will conduct the short sale and buy the property. This places a lot of potential liability on the homeowner. Companies like *National Short Sale Center* work to sell the property for us much as possible, which reduces the liability on the homeowner and increases your commission. Other "people/companies" may try to buy the property at a very low price so they can turn around and sell it for much more- what it is really worth. The banks do not like this and often refuse the short sale and/or ask the homeowner to pay back the difference. Be careful.

How does a short sale company get paid?
To date, the fee is a percentage of the real estate commission – usually 50%. Some short sale companies are moving toward trying to get a seller's concession in lieu of a percentage of the real estate commission.

Why use *National Short Sale Center* instead of other firms?
Here's what they say, "You should go with the company that is most effective at completing short sales. We hire people that have worked in the banks' short sale departments. They know the "ins and the outs" of the banks and the right questions to ask. We are a nationwide service and have relationships with banks from all over."

*<u>Note from Laurie</u>: These are my notes from the call. Any errors are mine. You'll want to consult with a short sale expert or take a short sale seminar for more complete information. This call was designed to give you some basic information on short sales and make you aware of the fact that there are firms you can partner with should you not wish to manage and negotiate the short sale process yourself. Unfortunately, we can expect more short sales in 2009.

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