

EFFECTIVE CLIENT REPRESENTATION IN SHORT SALE TRANSACTIONS

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SHORT SALE MARKET TRENDS

During the foreclosure crisis of 2008 to 2009, one in five homeowners were in default on their mortgages.

It took six years of excess inventory due to foreclosures and resale as bank owned properties and short sales before the market started to stabilize and market values began to increase by any significant amounts.

It will take two major market conditions to arise for values to drop significantly enough for short sales to increase greatly even with the effects of the Corona Virus on the economy:

Excess inventory resulting from defaulted mortgages and foreclosures

Decrease in number of buyers due to unemployment and lost income

PURPOSE OF THIS CLASS IS TO PROVIDE AGENT WITH A BROADER UNDERSTANDING OF THE SHORT SALE PROCESS. THIS KNOWLEDGE WILL HELP YOU PROVIDE GOOD COUNSEL TO YOUR CLIENT LEADING TO APPROVAL OF THEIR OFFER ON A SHORT SALE PROPERTY, SUCCESSFUL CLOSING, AND FUTURE REFERRALS FOR YOU.

**90% OF SHORT SALES TODAY ARE APPROVABLE
PROVIDING BUYER'S OFFER IS AT FAIR MARKET VALUE !**

**NATIONALLY, ONE OF EVERY FOUR SHORT SALE OFFERS CLOSES.
YOUR AVERAGE CAN BE NINE OF TEN CLOSING SUCCESSFULLY
PROVIDING EVERYONE IN THE TRANSACTION HAS:**

KNOWLEDGE

REALISTIC EXPECTATIONS

COMMUNICATION

SHORT SALE APPROVAL PROCESS

SET-UPS

PROCESSING / DOCUMENT COLLECTION

NEGOTIATIONS

INVESTOR / MI APPROVAL

QUALITY ASSURANCE / MANAGEMENT

APPROVAL LETTER ISSUED

SELLER AGREEMENT

CLOSING

NO TWO SHORT SALES ARE ALIKE

INVESTOR SPECIFIC

**Commissions, hardship & default requirements, allowable fees,
buyer closing costs, willingness to approve post sheriff sale**

SERVICER SPECIFIC

**Time line for approval process, willingness to approve post sheriff sale,
short sale affidavits and lender specific addendums**

SELLER SPECIFIC

Financial situation, owner occupancy, default and foreclosure status

BUYER SPECIFIC

What type of financing

Investor guidelines are subject to change and adherence to guidelines can vary depending on servicer. Investors will not pay for lender work orders, home warranties, re-inspections fees, septic tests, property repairs, nor will they allow escrows from their sale proceeds, so **DON'T ASK FOR THEM ON THE PURCHASE AGREEMENT!**

Seller' mortgage type	Seller concessions	Commission	Post sheriff sale approvals	Default requirements
FHA	1% for buyer financing FHA. 0% for all others	Six percent	No	Yes
VA	3% for FHA, USDA, VA buyers. 0% for others	Six percent	No	Yes
USDA	3% for FHA, USDA, VA buyers. 0% for others	Six percent	No	Yes
FNMA Conventional	3% for FHA, USDA, VA buyers . 0% for others	Six percent	MAYBE , but not when Chase, US Bank, SPS, SLS, PNC, PHH, Carrington, Citi, Bayview	Homeowner must be in default or situation shows that default is imminent
Freddie Mac Conventional	3% for FHA, USDA, VA buyers. 0% for others	Six percent	MAYBE , but not when Chase, US Bank, SPS, SLS, PNC, PHH, Carrington, Citi, Bayview	Homeowner must be in default or situation shows that default is imminent
Conventional Private Investor	3% for FHA, USDA, VA buyers. 0% for others	5 or 6 percent	Yes	Most private investors will not consider a short sale unless seller is in default
2nd mortgage	Max 3% considered for any financing buyer	Five percent	Yes	No

SHORT SALE CONTINGENCY ADDENDUM

ADDENDUM TO PURCHASE AGREEMENT: SHORT SALE CONTINGENCY

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1. Date JANUARY 15, 2014

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3. Addendum to Purchase Agreement between parties, dated JANUARY 15, 2014, pertaining

4. to the purchase and sale of the Property located at _____

5. 123 MAIN ST N ANYTOWN, MN 55001

6. The proceeds of the sale will not be sufficient to fully pay off all mortgages and other liens against the Property. As a result, Seller must obtain "short sale" approval from one or more creditors. There may be various lienholders from whom Seller may need approval; this includes but is not limited to senior and junior liens, if any, homeowner's associations or tax liens.

10. Short Sale Approval in this Addendum is defined as a mutually acceptable agreement between the creditor(s) and Seller to accept Buyer's offer to purchase the Property on the proposed terms or any subsequently agreed terms between Buyer and Seller.

13. This Purchase Agreement is contingent on the Short Sale Approval by Seller's creditors.

14. Seller shall obtain the Short Sale Approval(s) and notify Buyer, or licensee representing or assisting Buyer, in writing of the approval(s) no later than 90 DAYS FROM ACCEPTANCE. If Seller fails to obtain the necessary approval(s) and provide Buyer, or licensee representing or assisting Buyer, with written notice by this deadline, this Purchase Agreement is canceled, in which case Buyer and Seller shall immediately sign a *Cancellation of Purchase Agreement* directing the release of the earnest money to Buyer.

19. The following provision(s) modify and supersede any conflicting term(s) in the Purchase Agreement and any Addenda thereto **ONLY IF** the corresponding box is marked (Select appropriate option(s) a-c.):

21. (a) Notwithstanding any provision of this Purchase Agreement to the contrary, Buyer shall not be required to provide earnest money until Short Sale Approval has been obtained. Buyer shall pay the earnest money within three (3) business days after Seller provides written notice to Buyer, or licensee representing or assisting Buyer, that said approval has been obtained from all mortgagees and lienholders.

25. (b) Notwithstanding any provision of this Purchase Agreement to the contrary, the timeframe to perform inspection(s) shall commence on the date that Seller provides written notice of Short Sale Approval from all mortgagees and lienholders to Buyer, or licensee representing or assisting Buyer, rather than on Final Acceptance Date of this Purchase Agreement.

29. (c) Notwithstanding any provision of this Purchase Agreement to the contrary, Seller, or licensee representing or assisting Seller, **SHALL** **SHALL NOT** have the right to continue to offer the Property for sale until this Contingency is removed. (Check one)

32. OTHER: EARNEST MONEY TO BE DEPOSITED WITHIN 72 HOURS OF SELLER'S ACCEPTANCE. HOME INSPECTION DAYS TO BEGIN UPON DATE OF SELLER'S ACCEPTANCE.

35. _____

MN:APA-SSC-1 (8/13)

ADDENDUM TO PURCHASE AGREEMENT: SHORT SALE CONTINGENCY

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ANYTOWN, MN 55001

37. Property located at 123 MAIN ST N ANYTOWN, MN 55001

38. NOTICE: Buyer and Seller acknowledge the following:

- 39. • There are alternatives to short sale;
- 40. • A short sale will have legal, financial or tax consequences;
- 41. • Non-recoverable expenses may be incurred; and
- 42. • Buyer and Seller are advised to seek legal, financial and tax advice prior to executing this agreement.

44. John Doe 1-15-14 James Smith 1-15-14
(Seller) (Date) (Buyer) (Date)

45. Jane Doe 1-15-14 Mary Smith 1-15-14
(Buyer) (Date) (Buyer) (Date)

47. THIS PAGE IS PART OF A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S).
48. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

MN:APA-SSC-2 (8/13)

Seller Relocation Incentive

**ALL PROGRAMS PROVIDE FULL WAIVER OF DEFICIENCY
ALL PROGRAMS REQUIRE OWNER OCCUPANCY
BELOW IS A LIST OF PROGRAMS CURRENTLY AVAILABLE**

- **FANNIE MAE OR FREDDIE MAC** conventional mortgages: At closing, the seller will receive **\$3,000** relocation assistance from FNMA or Freddie providing their financial hardship confirms there is an inability to sustain their mortgage payment and their cash reserves are under the required guidelines. Property must be owner occupied at the time the short sale is approved to receive the relocation assistance funds.
- **FHA MORTGAGES:** If seller's mortgage is FHA, property is owner occupied, and they have no 2nd mortgage on the property, seller will receive **\$3,000** in FHA short sale incentive providing seller has less than \$5,000 cash assets. If there is a 2nd mortgage on the property, seller's incentive is used as part of the payment to the 2nd mortgage for release of lien.
- **VA MORTGAGES:** If seller's mortgage is DVA and property is owner occupied at time short sale is approved, seller may receive up to **\$1,500** relocation assistance funds at the closing providing seller meets required financial hardship criteria.
- **PRIVATE INVESTOR CONVENTIONAL MORTGAGES:** (non-Fannie Mae, non-Freddie Mac). Some conventional mortgage private investors may consider payment of up to **\$3,000** relocation assistance funds at closing for qualifying homeowners when property is owner occupied. MZ Law always requests the funds for sellers but it is only approved small percentage of cases.

QUESTIONS TO ASK SELLER BEFORE LISTING

- **Have you ever completed a loan modification on this loan?**
- **How many mortgages on property and who are the servicers?**
- **Is first mortgage FHA, VA, USDA, or conventional?**
- **If conventional, is investor Fannie Mae, Freddie Mac, or other?**
- **Are you in default on any of the mortgages?**
- **If in default, when was last payment made?**
- **Have you received notice of foreclosure proceedings?**
- **Has sheriff sale been scheduled or occurred? When?**
- **Are you aware of any state or federal tax liens?**
- **Are you aware of any judgments against you?**
- **(If HOA), what are your HOA monthly dues and are you current?**
- **If in default on HOA dues, when was last payment made?**

QUESTIONS TO ASK LISTING AGENT BEFORE WRITING OFFER

- **How many mortgages are on the property?**
- **Who are the servicers?**
- **What type of mortgage is the first mortgage?**
- **If conventional, who is the investor? (ie: FNMA, Freddie Mac, private)**
- **Is property in foreclosure?**
- **If yes, is sheriff sale scheduled ? Date?**
- **If sheriff sale has occurred, what was date and what was bid amount?**
- **Have you pulled title work on the property?**
- **If yes, are there any judgments, tax liens, or other clouds on the title?**
- **If HOA on property, is seller current and do they intend to stay current?**
- **Who is negotiating the short sale? If listing agent...."Do you have resources to help you in the event you are unsuccessful?"**
- **Are you willing to provide me with weekly updates as to the progress of the approval process?**

“ODDS AND ENDS”

- If seller has ever successfully obtained a loan modification, check title as there may be a 2nd “partial claim” mortgage which could put seller in short sale situation or leave them with less equity than assumed.
- FNMA & Freddie require property be on market at least five days including a weekend before seller can accept an offer.
- FHA requires property be on market at least fifteen days before seller can accept an offer.
- All short sales must be “arm’s length transactions.
- Average approval process time is approximately 2-3 months from time offer is submitted to approvals issued. Time frame of approval process is servicer specific.
- No electronic signatures are acceptable on any documents submitted to short sale lenders. “Wet signatures” required.
- Only one offer is submitted to short sale lender. All other offers are back up offers and will only be submitted if first offer is declined or cancelled.
- All documents must be fully executed and legible or will be rejected by short sale lender.
- Realtors cannot represent themselves as listing agent if selling a short sale property.
- Realtors can represent themselves as selling agent if buyer of a short sale property but will likely not be paid a commission.
- Short sale lenders do not pay broker administration commission for listing agents and sometimes don’t allow broker administration commission to buyer’s agent either.
- Single agent dual agency is usually capped at 3% or 4% commission
- Homeowners have the right to postpone their own sheriff sale for five months if property is homesteaded and owner occupied
- If buyer is asked to pay any or all of short sale negotiation fees, MNAR and the DOC say this is potentially a MARS, agency, and/or RESPA violation. Be sure to consult your broker before allowing your buyer to sign any document referencing that obligation as part of the purchase agreement.

SUMMARY FOR BUYER'S AGENT

- **Make sure buyer understands the process, is committed to the transaction, and is willing to wait for the process to run its course.**
- **If buyer is not willing to offer fair market value for the property, don't waste buyer's, seller's or your time by submitting a low ball offer on a short sale as it will not be approvable.**
- **Don't ask for items or fees in the purchase agreement that seller and/or their lender cannot or will not pay.**
- **Deposit earnest money and remove inspection contingency before offer is submitted to seller's lender.**
- **Remind buyer they are in a legally binding contract as the short sale goes through the approval process. Stop showing them other properties.**
- **Keep buyer updated at least weekly through the process.**
- **Benefit from successful closing and future referrals.**

SUMMARY FOR SELLER'S AGENT

- **Make sure seller understands the process, is committed to the transaction, and is willing to wait for the process to run its course.**
- **If buyer is not willing to offer fair market value for the property, don't waste buyer's, seller's or your time by submitting a low ball offer on a short sale as it will not be approvable. Counter offer to market value.**
- **Don't allow buyer to ask for items or fees in the purchase agreement that seller and/or their lender cannot or will not pay.**
- **Require deposited earnest money and remove inspection contingency before offer is submitted to seller's lender.**
- **Keep buyer's agent updated at least weekly through the process.**
- **Benefit from successful closing and future referrals.**