



S O U T H L A N D R E G I O N A L
A S S O C I A T I O N O F R E A L T O R S , I N C .

SHORT SALE GUIDELINES **(These are merely guidelines, not rules)**

DEFINITION

SHORT SALE:

In situations where the purchase price is less than the outstanding loans and liens against a property, the Seller or Seller's agent may be able to negotiate with the “**short sale lender(s)**”, hereinafter referred to as **lender**, for a reduced payoff of the loan (short sale). In a typical short sale situation, the lender agrees to accept less than the balance owing on the outstanding loan(s) and the lender agrees to pay the closing costs associated with the transaction, including real estate commissions. Generally, the lender will not permit the Seller to receive any proceeds from such sale. However, the lender may offer the Seller financial incentives for transitional assistance. Under current law, the lender may not require the Seller, as a condition of the short sale approval, to pay any sums in addition to the proceeds of the sale.

RECOMMENDED PROCEDURES

LISTING BROKER: (when taking listing)

- 1.** Prior to representing a Seller, request and review a property profile to determine the extent of the liens and encumbrances secured by the property. The grant deed establishes ownership but determining the parties on the note is equally useful in a short sale. Be alert to any deed transfers or title changes that may have occurred over the past several years. Watch for Notice of Default (“NOD”) and Trustee Sale Notice (s) not only at the time you secure the listing but throughout the transaction.
- 2.** Prior to taking the listing, advise seller, in writing, that there are alternatives to a short sale and to seek the advice of their tax, financial, and legal advisors regarding such alternatives and any and all consequences regarding same. It is highly recommended that you review the CAR form **Short Sale Information and Advisory** with your Seller and have them sign said form prior to signing the listing agreement.
- 3.** Discuss with Seller his/her hardship situation and possible lender requirements for a short sale. Review list of documents Seller will need to provide to lender.
- 4.** At the time of taking the listing and, if possible, prior to submission to MLS, contact all lenders requesting their available guidelines or requirements for a short sale.
- 5.** Listing should be placed in MLS as soon as practicable and marketed to the general public to obtain the best offer possible for the Seller.

6. Follow the MLS rules for disclosure of Short Sale by filling in the appropriate field on the MLS input form. If the listing is not a short sale originally, but due to subsequent price reductions becomes a short sale, remember to go back into the MLS and fill in the appropriate field to indicate a short sale.

7. Section 7.18.2 of the MLS Rules and Regulations of the Southland Regional Association of Realtors states: “**Lender Approval Listings:** Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as “short sale” listings) is for the amount published therein unless the listing broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission offered for items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.”

SELLING BROKER/AGENT:

1. Contact listing broker to ascertain the status of the listing and other relevant information such as: the existence of other offers; whether the Seller’s hardship has been verified; whether the lender has preapproved the price; the existence of any additional liens on property; whether the Seller has filed for bankruptcy; whether the Seller is in default on payments; and whether the listing broker has begun communications with the lender regarding the short sale.

2. Prior to writing an offer, request and review a property profile to determine the extent of the liens and encumbrances secured by the property. Watch for Notice of Default (NOD”) and Trustee Sale Notice (s) not only at the time of the offer, but throughout the transaction.

3. Prepare Buyer for the process, including, but not limited to, the issues of protracted time frames for lender response and closing or escrow; treatment of other offers; potential costs to buyer; arms length requirements.

4. Be certain that the buyer is aware that lender is under no obligation to agree to a short sale.

5. Use the CAR Short Sale Addendum and submit this form filled out along with the Purchase Agreement. (The listing broker should make sure that this form is included with the offer. If not, this form should be made part of a counter offer from the seller back to the buyer.)

GENERAL GUIDELINES

REPORTING SALE:

The listing broker is required to report a sale within 48 hours of mutual written acceptance of Seller and Buyer. Since the lender has not agreed to the sale yet, it is suggested that the sale be reported as Back up or pending sale.

DISPOSITION OF DEPOSIT AND OPENING OF ESCROW:

The initial deposit should be handled pursuant to Paragraph 3 of the CAR Short Sale Addendum. The Buyer and Seller must agree whether the deposit will be delivered to escrow within 3 business days after Seller delivers to Buyer Short Sale Lenders' Consent or delivered to escrow within 3 business days of the acceptance between Buyer and Seller.

Whether or not escrow is opened upon Buyer and Seller acceptance (prior to lender approval) is a matter to be decided between Buyer and Seller. Paragraph 2 of the Short Sale Addendum deals with this issue. Typically escrow would be opened if paragraph 3 of the Short Sale addendum has item 3 (ii) checked indicating that the initial deposit will be delivered to escrow within 3 days of acceptance of the offer, rather than after Short Sale Lender approval.

SUBSEQUENT OFFERS:

Once the Seller signs off the Buyer's offer, the offer is delivered to the lender for lender's approval. The question arises as to what to do with subsequent offers written AFTER Seller has signed off but BEFORE the lender has agreed. In the first instance, the listing broker is clearly required to present all offers to the Seller. With regard to submitting subsequent offers to the lender, Paragraph 6 of the CAR Short Sale Addendum spells out how this should be handled. The listing agent should check with the lender to determine the lender requirements in this regard.

CAR has a great deal of reference material dealing with Short Sales including the article entitled *Short Sale Tips for Realtors*. This article and other short sale information can be found at www.car.org.

Each individual Short Sale is unique and the above guidelines may not apply in all situations.

The Seller is strongly advised to seek the advice of the appropriate professionals (Real estate attorney, tax and financial advisor) to determine the ramifications of proceeding with a short sale.