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TO SHORT SELL OR NOT

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©November 2009

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Why Real Estate Agents Sometimes Recommend Short Sales

- Real estate agents understandably want to obtain listings.
- Real estate agents get paid by the lender to do a short sale.
- Real estate agents do not get paid if the house goes through foreclosure, except if the lender later hires them to sell the house
- Even if the house never sells through a short sale, the real estate agent gets publicity and signage

What Short Sales Do Not Do

- Agents sometimes tell sellers of property that a short sale will protect their credit rating, or that it will not have the same impact as a foreclosure. This is generally not true. A short sale, just like a foreclosure, will directly impact a borrower's credit rating sooner or later, unless the bank has specifically agreed not to report the shortage.
 - It is true that in some cases (generally only for those who in the future will be seeking to obtain relatively low new home loans

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through the VA or Fannie Mae), a short sale might remain as a mark against credit for a shorter time period than a foreclosure. This may not be a major factor justifying short sales in the high-priced Northern California market.

- Short sales do not necessarily carry with them different tax implications than a foreclosure
 - Under legislation signed into law in October 2007, there should be no taxation on an owner-occupied residence in California, or on second homes if there is a non-judicial foreclosure sale.

What Short Sales Can Do

- Short sales can allow a homeowner to avoid the embarrassment of a foreclosure.
- Also, if negotiated up front, a lender might agree not to report a short sale in return for the borrower assisting with a short sale. Generally, it should be in the lender's best interest to go through a short sale rather than have the lender go through a foreclosure and then have to sell the property as a REO property since the property will have less of a stigma. Unfortunately, getting a lender to negotiate up front or getting lenders to commit to anything (even if it might be in their best interests) is problematic, at best.
- If the seller is very friendly with neighbors, a short sale can give the seller and neighbors some ability to pick the new owners of the home.
- Under Fannie Mae guidelines, a seller might be eligible to buy a new home in two years instead of five.
 - Also, Fannie Mae guidelines, issued in August of 2008, say a borrower may immediately buy another home after a short sale if the borrower was never delinquent, complies with its "excessive prior mortgage delinquency policy," and is not obligated to repay the short sale lender, including a deficiency judgment.
- Might be usable if there is a junior lienholder on a non-purchase money recourse second deed of trust, and an agreement can be reached whereby the senior and junior lienholder agree on a division of proceeds, and borrower is absolved of any potential personal liability. In a foreclosure by a senior lienholder, the junior might have claims against the borrower as a sold out creditor.

Potential Benefits of Foreclosure Over Short Sale

- No mortgage or property tax payments. The money can be saved for a future rental.
- No disclosure obligations and potential liability for non-disclosure lawsuit as a seller. Even though the bank is in control, the borrower is the seller and therefore the party who, along with the agents, will face any later claim of non-disclosure.
- The home remains the borrower's until the foreclosure is final and an unlawful detainer judgment and eviction is effectuated, with full rights of occupancy and rights to rent it or do whatever else the borrower wants to do with it (short of creating waste).
 - The minimum amount of time before a foreclosure can occur in California is approximately five months.
 - An unlawful detainer action will generally extend the time before having to vacate for at least an additional 60 days.
 - Many foreclosures, due to the number of problem loans in the pipeline, take well in excess of the minimum five months to foreclosure sale.
 - Some borrowers have remained in their homes for years, paying no mortgage payments or rent.
 - Proactive discussions with the lender (e.g., monthly telephone calls to keep them apprised of your status) can often extend the time in a home.
- No strangers are coming through the house during open houses or showings of the property.
- The seller does not have to keep the home in spotless condition for weeks or months until an offer is received.
- A foreclosure might seem worse on a borrower's credit report, however, there is a major question of whether this should be of paramount concern given: (1) the number of persons who will be facing the same situation; and (2) the fact that future loans may likely be less based on credit reports than on proven ability to pay, i.e. job, bank accounts, credit record since a foreclosure.
- No frustrating negotiations with lenders or lender servicing companies

- No need to provide the lender or its servicing agent with voluminous documents.
- Lenders often give cash for keys even after a foreclosure.