



The Fund

Real Estate tip sheet

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‘Short sale’ transactions take long time to develop *Secondary liens, proof of hardship add to negotiating frustrations*

By Charles J. Kovaleski

The “short sale” is one antidote to the foreclosure pandemic sweeping Florida and other parts of the country’s residential real estate market. But some consumers just can’t swallow the financial remedy because it takes so long to get the required ingredients.

That’s led to a pilot program by mortgage giant Fannie Mae created to speed up short sales. The 90-day pilot is open for some properties in the central and southwest Florida counties of Charlotte, Hillsborough, Lake, Manatee, Orange, Osceola, Pasco, Polk, Sarasota, Seminole and Volusia counties. More than 300 homes have been pre-approved by Fannie Mae for short sales, with the goal of trimming transaction wait time from months to weeks, hopefully even days.

The average time it took for real estate professionals to hear back from lenders on a short sale hit more than 8 weeks in November - double the time from a year earlier, according to research firm Campbell Communications.

“Fannie Mae’s goal is to make the short-sale process as fast as possible for homeowners in financial distress,” in order to ensure a “graceful exit strategy for homeowners,” said Kevin Brungardt, Fannie Mae’s vice president for servicing management.

In real estate, a short sales happens when real estate property is exchanged for a price that is less than is owed on the mortgage.

The national housing shakeout, fueled by the collapse of the subprime mortgage market, has caused home values to rapidly decline since the end of 2006. Homes purchased for \$300,000 now may fetch only \$180,000, meaning today’s sellers are financially underwater. A sale at today’s prices won’t pay off the mortgage, not to mention other closing costs such as real estate commissions, recording fees, title charges and escrow fees.

That scenario typically led to foreclosure until the recent push for short sales. For homeowners, the tactic means a method to avoid foreclosure. For buyers, the transaction means buying the American dream at deep discount.

A short sale is a complex transaction that takes skilled work among real estate professionals, including brokers, lenders and attorneys. Some transactions encounter delays, however, when banks hold up the process. That leads to sales contracts that expire and frustrated consumers who abandon the short sale. Other would-be sales get snagged simply due to the steady drumbeat of foreclosures that have swept the state and overwhelmed the mortgage industry, which is operating at less than capacity after several months of layoffs.

How do consumers most efficiently navigate the short sales maze? A few tips to consider:

Consult with a real estate attorney: The short sales transaction requires documentation beyond the conventional home sale to bind all of the parties – the seller, buyer and lender. Other documents for a successfully transaction include a fully executed contract, including short sale addendum, exclusive listing agreement from the Realtor and financial qualification letter or commitment for the buyer. Your real estate attorney can advise you on what paperwork is needed to avoid delay.

Understand the lender's perspective: The original lender is looking for the best compensation for a loan that has gone bad. The lender will continue with foreclosure until a short sale closing takes place. The lender's incentive for avoiding foreclosure is that the process is expensive and time-consuming, with some outcomes taking up to a year. A short sale helps the bank avoid this expense. In simplest terms, the lender evaluates: Will more money be made accepting the short sale offer or moving to foreclosure?

Look out for secondary liens: These can add time, especially if the property that interests you has multiple liens; negotiating loans with more than one lender can complicate a deal and delay the transaction. The primary lien holder needs to approve all payments to subordinate lien holders. Often there's no option for the seller to negotiate with lien holders or to reject their demands for payment of a loan in full under terms set by the lender. A potential fix for the listing agreement addendum and short sale contract addendum is to include language that opens up the ability of the Seller to make good faith negotiations with the Lenders for the terms of the release of the lien on the real estate, without a penalty or payment obligation to the broker if the negotiations fail. Check with your real estate attorney for details.

Proving seller hardship: Qualifying for a short sales means the homeowner not only must prove through a comparable market analysis that home value has dropped, but also must demonstrate through a hardship letter why the mortgage loan cannot be paid in full upon sale of the property. A job loss, divorce, death or sudden medical emergency are hardship contributors that lenders will look for. Anything less may fail to qualify for short sale status. Also know that seller will net zero consideration from the transaction, inclusive of any escrows or advance deposits or refunds.

Charles J. Kovalski is president of Attorneys' Title Insurance Fund, Inc., (The Fund) the leading title insurer in Florida and the sixth largest title insurance company in the country. Acknowledged as the Florida residential real estate expert, The Fund has been in business for more than 50 years and supports a network of more than 6,000 attorney agents statewide who practice real estate law. The Fund, based in Orlando, Fla., underwrites more than 300,000 title insurance policies for owners and lenders in Florida every year. For more information, visit myrealestatestory.com