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SHORT SALES

By: Roger H. Miller III

There has been a lot of buzz lately about "short sales." What is a short sale you might ask? A short sale is a sale of real property for less than the amount owed under the mortgage on the property. Because the sale is for less than the mortgage balance, the mortgage-holder must consent to the sale.

Why would a lender consent to a short sale? Several reasons. For instance, if the borrower is not making the payments under the mortgage. Also, many homeowners simply cannot afford their mortgage payments due to adjustment of interest rates, job loss, or a variety of other factors. The property may no longer be worth what is owed under the mortgage and the borrower may not have any other assets that could be used to satisfy the mortgage. Lastly, the alternatives, such as foreclosure, can be more costly to the lender than consenting to the short sale.

What should a borrower do if he or she will not be able to continue to make the mortgage payments? First, contact the lender early, such as before going into default or soon thereafter. Find out what information the lender requires to consider a short sale or other foreclosure alternatives such as a deed in lieu of foreclosure, or restructuring of the loan. If the borrower wants any other third parties to be able to communicate with the lender, then the borrower should submit the lender's specific authorization form, or should send a signed, notarized letter, referencing the loan number and identifying the third party. Examples of items that lenders frequently require are: a personal financial statement showing any other assets that the borrower may own; a bona fide offer or contract for the purchase of the property; and, an appraisal or comparative market analysis.

A lender may require a borrower to pay the lender amounts in excess of the sale proceeds, or may require the borrower to execute an unsecured promissory note. If the lender forgives any unpaid mortgage balance, then the borrower will be issued a 1099 in the amount of the forgiven debt, which may be taxable as income to the borrower.
A lender may place certain other conditions on the sale such as a reduction in the real estate brokers' commissions or other sale related expenses.

Ultimately, a lender must believe that a short sale is in its financial best interest. A study found that the cost to a lender associated with foreclosure averages about $58,000 for taxes, insurance, maintenance, etc., and, on average, the lender owns the property for 18 months. In the current market, a lender should seriously consider a short sale if the offer is reasonable and there is no equity in the property.

Getting a short sale approved by a lender can be a time-consuming and frustrating process as the borrower navigates through a matrix of voice automated systems and customer service representatives working in a myriad of departments. That is why it is essential that borrowers start early and find out exactly what their lender needs to evaluate the proposed short sale.

If you have questions or concerns regarding a short sale, you should contact a local real estate attorney.

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