PHIL SEAVER,
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present
The Latest on Short Sales:
“What You & Your Clients NEED to Know!”

1. Basics & Terminology

- A. Instruments
- B. Parties
- C. Points of Concern

A. Instruments

- i. Security Agreements
- ii. Lienholder and Junior Lienholder
- iii. Mortgage and Second Mortgage
- iv. Promissory Note
- v. Deed

i. Security Agreements

- Security Interest - is a property interest created by agreement or by operation of law over assets to secure the performance of an obligation.
- A Security Agreement is any agreement creating a Security Interest.

ii. Lienholder and Junior Lienholder

- Lienholder – is the holder of a form of a security interest. Again this can be by operation of law or by agreement.
- Junior Lienholder – when multiple parties have security interests, priority is established. A Junior Lienholder has an inferior (junior) position for collection of its security interest.

iii. Mortgage and Second Mortgage

- Mortgage – is a conveyance or contract that pledges real or personal property as security for the performance of an obligation, usually the payment of a debt.
- Second Mortgage – is a junior mortgage (i.e. has second position in priority)
- Mortgagor – the party pledging his or her real or personal property as security.

iv. Promissory Note

- Promissory Note - also referred to as a note payable in accounting, is a contract detailing the terms of a promise by one party (the maker) to pay a sum of money to the other (the payee). The obligation may arise from the repayment of a loan or from another form of debt.

v. Deed

- Deed – A deed is a legal instrument used to grant a right.
- TYPES OF DEEDS
  - Warranty; Special or Limited Warranty Deeds; Sheriff Sale Deed ;Quitclaim Deed, Deed in Lieu of Foreclosure
    - The grantor may give a general warranty of title against any claims, or the warranty may be limited only to claims which occurred after the grantor obtained the real estate.

B. Parties

- i. Servicer
- ii. Investor
- iii. Underwriter
- iv. Loss Mitigation Department
- v. Negotiator
- vi. Asset Recovery Department
- vii. Legal/Attorney

i. Servicer/ Service Department

- A loan servicer is a public or private entity that handles the following tasks:
- Collecting, monitoring and reporting loan payments
- Handling property tax
- Handling insurance escrows
- Foreclosing defaulted loans
- Handling late payments and other delinquencies
- Remitting payments
- A loan servicer may also assist in loan origination

ii. Investor

- For our purposes an Investor is the purchaser or guarantor of Mortgage Backed Securities on the Secondary Mortgage Market.
- Typically – FNMA, GNMA, SallieMae, Freddie Mac, BNY, MERS.

iii. Underwriters

- Underwriting refers to the process that a large financial service provider (bank, insurer, investment house) uses to assess the eligibility of a customer to receive their products (equity capital, insurance, mortgage or credit). The Underwriters double check each potential borrower's credentials against guidelines provided (usually by the Investor).

iv. Loss Mitigation Department

- Loss Mitigation - is used to describe a third party helping a homeowner, a division within a bank that mitigates the loss of the bank, or a Loss Mitigation firm that handles the process of negotiation between a homeowner and the homeowner's lender. This Department should be considered as a representative of the Servicer.

iv. Loss Mitigation Department - Continued

- A Loan Workout Department can either be sub-unit of Loss Mitigation or it may be its own unique Department.
- Loan Workout Departments handle – Loan Modifications, Special Forbearances, Short-refinances.

v. Negotiators

- These are the representatives for the Investors. They are like default – underwriters.
- They are generally working within guidelines imposed by the investor.

vi. Asset Recovery Department

- Post –Sherriff Sale, if the investor or servicer bids in at the auction.
- This is sometimes a sub-unit of Loss Mitigation and sometimes its own department.

vii. Legal/Attorney

- Your client may receive notices from counsels for any of the above described parties. Knowing who the counsel represents and how they impact any potential future transaction will help you expedite the deals.

C. Points of Concern –

- 1. Fair Isaac Corporation – FICO SCORES
- 2. Credit Reports – TransUnion, Equifax, and Experian
- 3. Deficiency Judgments
- 4. Taxes – 1099 c – Debt Forgiveness Act of 07
- 5. Bankruptcy/ Insolvency

SCORE v. REPORT

- myFICO.com – There isn't a way to report a "short sale" within the algorithm. So not matter if the debt is paid in full, settled, or it is a foreclosure the immediate impact to the credit score is the same!!!
- The Credit Score can rebound within 24 months.
- Multiple Credit Events are WORSE for the Score than a single event regarding a single debt.
- The Credit Report may show negative credit actions for 10 years.
- Whether or not a Borrower will get conventional rates and terms is LENDER SPECIFIC!

SCORE v. REPORT continued

- The Underwriting guidelines of Investors continue to change.
- To qualify for a new mortgage:
  - **Sean Balcom**

Mortgage Foreclosure

Judicial Foreclosure - As with all other legal actions, all parties must be notified of the foreclosure, it can be costly, and concludes with a judgment/order that can include monetary damages.

By Advertisement – This is inexpensive and relatively fast, but does not end with a judgment/order.

Deficiency Judgment

- A deficiency judgment is a judgment against a debtor, defendant or borrower whose foreclosure sale did not produce sufficient funds to pay the mortgage in full.
- If there was a foreclosure by advertisement, a Lender may sue to get a Deficiency Judgment, or may simply sell the debt, or may write off the debt, or may execute a combination of both.

Debt Forgiveness and Taxes

- Will receive an IRS form 1099 showing other income **IF** the debt is forgiven.
- If the debt is NOT forgiven, then the debt may be sold to collection agencies and the client may be asked to settle the debt. To the extent that the debt is finally settled for less than the full balance there will be a potential tax liability.

Debt Forgiveness Act of 2007

- If there was Forgiveness
- If the forgiveness was on a debt secured by a principal residence
- If all the debt forgiven was used on the purchase or improvement of the property
- Then that debt forgiveness will not be subject to income tax.

Debt Forgiveness Act of 2007 continued

- What to pay attention to:
  - (1) If the borrower took out money to pay off other debts (i.e. credit cards, vehicles, etc) then they will still get taxed to the extent of that money spent.
  - (2) If the debt isn’t actually forgiven within the 3 years effectiveness of the Act then your client will not be able to avoid the income tax.

Bankruptcy/ Insolvency

- Cash flow insolvency - unable to pay debts as they fall due;
- Balance sheet insolvency - having negative net assets: liabilities exceed assets.
- Through insolvency one can avoid income tax liability for forgiveness of debt.
- The things to note about Bankruptcy:
  - A Bankruptcy can discharge a judgment. It may not discharge a tax liability.
  - If filed prior to the Sheriff Sale on your clients property then there is an Automatic Stay (stops the foreclosure) placed on the proceedings – this can extend your listing!
  - a “Plan” can help your client save their home, and/or vehicles.
  - a successful Plan is on their credit history only the same amount of time as a foreclosure.

2. Practice

- A. Listing
- B. Loss Mitigation
- C. Negotiation

A. Listing Strategy

i. Listing Protection –
   i. For your commission
   ii. Client Disclosure Form/ Release of liability
   iii. Deed in Lieu
ii. Timing * You have to make sure you have all communication from the Lender to your client!
   i. Notice of Default
   ii. Notice of Foreclosure
   iii. Sheriff Sale
   iv. Redemption Period
iii. Price Reductions

Client Disclosure Form

- Agents are not Attorneys and should consult one
- Client’s FICO scores will go down
- Client’s ability to borrow will be effected
- Existing Credit lines may be lost
- The Clients may be sued
- The Clients may have tax liabilities created
- There may be options for Clients to keep their homes

Timing

- Notice of Default → 30 days
  - Good time for a special forbearance
- Notice of Foreclosure → 30 days
  - Deed in Lieu of Foreclosure, need an offer usually to get Sale Adjourned or set aside
- Sheriff Sale → Lender could bid in less you need to know from the title company to know how much your client may have to pay.
- Redemption Period – 6 months for properties under 3 acres – 1 year for most others.

B. Loss Mitigation

i. Pre-Offer

Financial Statement	Listing Agreement
Last 2 W-2s	Last 2 Tax Returns
Last 2 Bank Statements	Letter of Explanation
Hardship Letter	-Declination of Value

ii. Post-Offer

HUD Estimated Statement

Purchase Agreement

Market Analysis

Loss Mitigation

- Short Refinances & Loan Modifications:
- **Sean Balcom**

C. Negotiation of a Short Sale

i. With the Buyer/ Buyer's Agent
ii. With the Lender

i. With the Buyer/ Buyer’s Agent

- Addendum –
  - Inspection before submitting to the bank
  - Seller and Lender Approval
  - Make sure everyone knows how long it will take – Generally if all terms are acceptable and never change 45-60 days. If there are any counter offers the process can take 90-120 days
  - Closing Date - shall be the earlier of 10 days after all of the lienholder’s give final approval or [date]. If final approval from all lienholders is not received by [date]… then at Buyers option…
  - Subject to release of any previously signed effective purchase agreements
  - Get all documents SIGNED!

ii. With the Lender

- a. Getting an Acceptable Offer
- b. Getting it done ASAP

a. Submitting an Acceptable Offer

- Guidelines
- FNMA - 90 % Purchase Price to Value (PPTV)
- Freddie Mac – 82% Net to Value (NTV)
- Loan to Value (LTV) – usually in loan originations, modifications, & short refinances.

a. Submitting an Acceptable Offer continued

EX:

Countrywide 1st Mortgage = $300,000.00

Countrywide 2nd Mortgage = $100,000.00

Current Fair Market Value - FMV (appraised value) = $275,000.00

General Acceptability Range $247,500-$275,000

- There may be two Investors that one Lender represents. Do not assume that because both Loans are with one Lender that the two departments are communicating or working together to approve your short sale!

a. Submitting an Acceptable Offer continued

- EX: Offer received at $220,000.
  - This could be an acceptable deal to your client…
  - Your client makes fair money, has a decent credit score, but no more cash.
  - submit to the Lender for approval they may accept, counter the buyer, or they may accept subject to the Seller satisfying terms.

a. Submitting an Acceptable Offer continued

- EX:
  - Bank Counters at $230,000 and accepts subject to the second receiving $1000 out of proceeds.
  - The Second Accepts $1000 subject to Seller paying $5000 in cash and signing a $10,000 promissory note at 0% interest over 5 years.
  - Your client counters the second at $1000 + the promissory note and you have a successful short sale negotiation!

a. Submitting an Acceptable Offer continued

- The Second Accepts $1000 subject to Seller paying $5000 in additional cash and signing a $10,000 promissory note at 0% interest over 5 years.

a. Submitting an Acceptable Offer continued

- Your client counters the second at $2000 (out of proceeds provided by the first) + a $5000 promissory note
- The first and second agree to those terms and send you payoff letters and you have a successful short sale negotiation!

b. Getting It Done ASAP

- Fax all at once – every time you send something send it all and index it on the coversheet.
- Even if there isn't going to be much paid to a lienholder give themall the information and give it to them early.
- PLACE LOAN NUMBER ON EVERY PAGE OF EVERYTHING SEND DURING THE WHOLE PROCESS
- Check every three business days once the offer is submitted.
- Know when the last BPO/Appraisal was Done

b. Getting It Done ASAP continued

- Remind the Negotiator of issues in Foreclosure timing (don’t try to strong arm them regarding transaction timing).
- Be tough regarding terms! They will tell you we will not accept 6% commissions, hold your ground! Let them know you aren’t willing to negotiate at that stage and you will have evidence of how long they have had the HUD to object to that issue if it was one.
- Follow up each progressive call with the Lender with an e-mail/fax confirming what was said.
- Submit HUD1 Settlement Statements as soon as you are able.