

ADAMS & ASSOCIATES, P.A.

THE COMPLETE SHORT SALE
SEMINAR GUIDE



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THE SHORT SALE TEAM



ATTORNEY RICHARD J. ADAMS

As Lead Counsel in the firm's Bankruptcy and Real Estate department, Richard has filed thousands of bankruptcy cases and has helped many people file for relief under the U.S. Bankruptcy Code. Richard has also coordinated many real estate closings in the issuance of title insurance and

provides services in general civil litigation, including insurance disputes and other types of general, commercial and contract litigation. Richard's present practice provides services to his clients in Florida, in both State and Federal Courts. Most important to you, Richard has successfully closed hundreds of short sale transactions.



**We can help you
REACH
Your Goal!**



ATTORNEY LYDIA C. QUESADA

Lydia C. Quesada is a double alumni from the University of Miami, having graduated magna cum laude from the University of Miami School of Law in 1999 where she was a member of the Inter-American Law Review, and having received her B.A. with high honors from the University of

Miami in 1995 with a double major in Criminology and Psychology. She is eligible to practice in all Florida state courts, in the U. S. District Court for the Southern District of Florida, and in the Bankruptcy Court for the Southern District of Florida. Lydia currently heads the Short Sale Department at Adams & Associates, P.A. and handles all of the firm's bankruptcy litigation.

What is a Short Sale?

A short sale in real estate occurs when the outstanding loans and liens against the property, after closing costs are paid, are greater than the proceeds from the sale of a home, and the lender agrees to accept this lower payoff amount. This occurs only when a home seller qualifies for a short sale through proving a hardship, and the lender agrees to this lower payoff amount.

Please note that Florida is a recourse state. This means that the lender can still pursue the seller for the deficiency balance remaining after a short sale unless the deficiency balance remaining on the note is forgiven. Short sale approval letters are very tricky. Lenders sometimes make it look like the deficiency is waived when in fact it is not waived. This is where the advice of an attorney is critical.

In a short sale, the **BANK** or **MORTGAGE** lender agrees to discount a loan balance because of an economic or financial hardship on the part of the borrower. Hardship means different things to different lenders. Every short sale case turns on its own set of facts. It is important for real estate agents to understand that a short sale lender should only be given financial information to consider for hardship purposes from the person who signed the Note. Just because both spouses signed the mortgage, it does not mean that both signed the Note and that both are therefore liable for the debt. Also, just because there are several names that appear on title to a property, it does not mean that all title holders are liable for the debt. Only the person(s) that signed the Note is (are) liable to the bank for the debt, and therefore only that person(s) financials are relevant for consideration by a short sale lender.

In a short sale, the home owner/debtor sells the mortgaged property for less than the outstanding balance of the loan, and turns over the proceeds of the sale to the lender. Neither side is "doing the other a favor;" a short sale is simply the most

economical solution to a problem. Banks will incur a smaller financial loss than would result from foreclosure or continued non-payment. The average loss to the bank on a sub-prime loan that goes to foreclosure is 85%, whereas the average loss to the bank that accepts a short sale is 15%.

Borrowers are able to mitigate damage to their **CREDIT HISTORY**, and extinguish the deficiency balance of their mortgage debt where the bank has provided so in the short sale approval letter.

What's Going on in the Lender's Mind?

- A bank wants to know they are receiving fair market value for the property. In evaluating an offer, a bank will order an Appraisal, Broker Price Opinion (abbreviated B.P.O.), or Broker Opinion of Value (abbreviated B.O.V.).
- Listing the property at its fair market value based on non-distressed comparables is very important. Lenders request to see a copy of the listing agreement and MLS sheet as part of their short sale underwriting process. They look very closely at the MLS to see how the property is being offered for sale.
- Lenders want to receive the highest price possible for the property. In evaluating the contract price, the B.P.O. agents are only allowed to compare non-distressed properties to the property being sold as a short sale. Of course, that results in the lenders issuing counter-offers demanding a higher price to the proposed contract purchase price.
- Your chances of successfully challenging the lender's valuation is much higher when the lender sees that you have listed the property for sale at the highest price possible using non-distressed comparables. If the offer comes in lower than the list price, the lender will have an easier time adjusting their

expectations and understanding that it is the market that determines the price and not their expectations.

- If the property is in bad condition, please include color photos and a certified contractor's estimate with the offer.

- A bank will accept less than fair market value where the property has problems that will affect its marketability as an R.E.O. For example, are all improvements done to code? Therefore, it is important for the listing agent to disclose all issues that will affect marketability of the property on the listing.

- CAVEAT 1: Often a lender will order a B.P.O. from a person unfamiliar with your market and/or area. Realtors should be present when the B.P.O. is done and present the evaluator with comparables and market area details. If the evaluator is from out of the area, the listing agent and/or seller may turn them away.

- CAVEAT 2: B.P.O. values are only good for 90 days. This can be a sword, or it can be a shield. If your short sale passes the valuation stage in that the lender agrees that the contract reflects the property's fair market value and the closing deadline provided for in the short sale approval letter needs to be extended, the lender will order another B.P.O. if the new proposed closing date is more than 90 days from the date that the B.P.O. was conducted. In this market where prices are rising, the new B.P.O. will very likely result in a higher B.P.O. value which, in turn, will result in the lender demanding a higher price for the property to reflect the changed market conditions. If the buyer will not increase their offer, the deal will likely fall apart and the property will need to be placed back on the market at the lender's new agreed price. If, on the other hand, the lender has counter-offered the buyer's purchase price to a value that exceeds that which any buyer is willing to pay, the B.P.O. will expire in

90 days and the lender will have to order another one from a different B.P.O. agent that will likely result in a more realistic price.

Banks Want to “Net” as Much as Possible on the Transaction

- Lenders are most interested in what they will “net” on the transaction.
- Therefore, the two most important documents are the offer contract and HUD-1.
- The short sale lender’s proceeds from the sale are reduced by the charges on the seller’s side of the HUD-1.
- Lenders require that the HUD-1 settlement statement be submitted with the offer contract and they look at the charges on the seller’s side of the HUD-1 very carefully to see what charges are reducing their net. Lenders analyze the deal based those charges.
- Therefore, the charges on the seller’s side of the HUD-1 must be accurate. For example, charges for delinquent HOA dues must be prorated as accurately as possible. It is important for real estate agents to understand that HOA estoppels are not ordered until the short sale is approved. If the amount on the estoppel differs substantially from the amount that the lender approved on the HUD-1, the entire transaction can be put in peril. Any actual charges that cannot be settled for a lower amount, that further reduce the lender’s net, and that will not be covered by the buyer, seller, title agent, brokers, etc. will have to be negotiated again directly with the short sale lender. This process will add a minimum of 4-6 weeks to the processing time and may result

in a denial by the lender to cover the additional closing costs.

- The example above also applies to other closing costs on the seller's side of the HUD-1 like payoffs to junior lien holders, judgment and tax lien payoffs, etc.

- **Important Note:** A first lien holder will generally not pay more than \$6,000.00 to a junior lien holder. Therefore, multiple levels of approvals and conditions are very common with short sales. Junior lien-holders such as second mortgages, H.E.L.O.C. lenders, may need to approve the short sale.

- **Important Note:** A first lien holder will generally not pay more than 6 months delinquent H.O.A. dues and special assessment liens. Thus, the H.O.A. dues will need to be negotiated for successful short sale to take place.

- **Important Note:** First lien holders generally will not pay tax lien holders and judgment liens in full, if at all. Frequent objectors to short sales include tax lien holders (income, estate or corporate franchise tax – as opposed to real property taxes, which have priority even when unrecorded) and mechanic's lien holders. It is possible for junior lien holders to prevent the short sale. If the lender required **MORTGAGE INSURANCE** on the loan, the insurer will likely also be party to negotiations as they may be asked to pay out a claim to offset the lender's loss in the short sale.

- Not surprisingly, short sale deals have a high failure rate and often do not close in time to prevent foreclosure when they are not handled by a knowledgeable and experienced professional.

H.A.F.A., HOUSE BILL 87, AND THE IMPLICATIONS OF THE EXPIRATION OF THE M.D.R.A. The Laws Affecting Short Sales

- H.A.F.A. (Home Affordable Foreclosure Alternative)
- HOUSE BILL 87
- M.D.R.A. (Mortgage Debt Relief Act) – NOW EXPIRED
BUT DON'T LET THAT WORRY YOU!!!!

HAF A

- BE CAREFUL WITH HAF A. CLOSING COSTS ARE HIGHER AND IT ADDS PROCESSING TIME TO THE FILE.
- In 2009, the Treasury Department introduced the HAF A (Home Affordable Foreclosure Alternative) program to provide a viable option for homeowners who are unable to keep their homes through the existing Home Affordable Modification Program (HAMP). The HAF A program took effect on April 5, 2010 and to take advantage of the program, the short sale closing must take place before October 1, 2014.

Monetary HAF A incentives:

- Under HAF A, the borrower may qualify for a HAF A relocation incentive of up to \$3,000.00 if the borrower is occupying the home up until the date of closing. The purpose behind the incentive is to help the borrower with moving costs.
- Caveat: Lenders hire management companies to inspect and secure their mortgaged collateral, i.e. the property sought to be short sold. Many homeowners will move during the short sale process. The management companies report

back to the lenders that the properties are now vacant, and, as a consequence, the lenders take away the \$3,000.00 relocation incentive. Therefore, if a borrower does not want to lose their incentive they must continue to occupy the property until closing.

- If the property is an investment property that is occupied by a tenant as provided in the short sale application, the tenant receives the \$3,000.00 relocation incentive at closing. The reason behind this policy change was to incentivize tenants to vacate the properties, and not to cause approved short sale transactions approved under the HAFA program to fall apart.

Guaranteed Waiver of Deficiency:

- Borrowers who get approved under the HAFA program are fully released from future liability for the first mortgage debt.
- Homeowners must be fully released by the lender(s) and any mortgage insurer(s) from future liability for all mortgage debt. No cash contribution, promissory note, or deficiency judgment is allowed.
- A lien holder may not require the real estate agent to agree to a lower commission as a condition for releasing its lien or releasing the borrower from personal liability.

HAFA is available for homeowners who:

1. do not qualify for a trial mortgage modification under the Making Home Affordable Program;
2. do not successfully complete the trial period for their modification;
3. miss at least two consecutive payments during their modification period;
4. request a short sale even though they have never applied

for a loan modification as long as they can document a financial hardship;

5. originated their mortgage loan before Jan. 1, 2009;
6. are delinquent on their mortgage loan payments or who can document a reasonably foreseeable default;
7. do not owe more than \$729,750 (higher limits for 2- to 4-unit dwellings) as the current unpaid principal balance; or
8. are natural persons and not corporations, partnerships, or other business entities.

Arms Length Requirement

The sale of the property must be an “arm’s length” transaction between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise. It is important for real estate agents to understand that a landlord/tenant relationship between the buyer and seller is a business relationship, such that if the purchaser in a short sale is the tenant, the lender may refuse to process the file under HAFA.

Important: The seller may not list the property with anyone with whom they are related or have a close personal or business relationship, nor may the buyer be represented by such a person. A real estate professional may not list or purchase the property using his or her brokerage.

CAVEAT: Even if a homeowner meets these threshold requirements, the servicer must consider the particular circumstances and mortgage investor policies. Not everyone will qualify.

Please save yourself a lot of trouble by not guaranteeing a homeowner that they will qualify for HAFA and receive a relocation incentive.

HOUSE BILL 87 a/k/a THE SPEEDY FORECLOSURE ACT

The Fair Foreclosure Act, or HB 87, became law on the date it was signed (June 7), although most of the provisions took effect on July 1, 2013.

HB 87 has 7 major components. Some are good for homeowners/borrowers, but most are bad for this group. While the law is mostly bad for homeowners, it is great for real estate agents.

- Foreclosures prosecuted by lenders under the new law make it through the legal process must quicker resulting in foreclosure sale dates as early as 3 months into the foreclosure process.
- This means that homeowners will not be able to delay listing their properties for short sale for several years while they ride out the foreclosure process and live on the property without making a mortgage payment or collecting rent on properties for which they are not making mortgage payments.

The nuts and bolts of the new law are as follows:

1. It reduces the Statute of Limitations on deficiencies created by mortgage foreclosure and deed-in-lieu of foreclosure from 5 years to 1 year (ambiguity still exists whether this reduction in the Statute of Limitations applies to short sales as well).
2. It imposes strict requirements on mortgage servicers and mortgage holders where the original promissory note has been lost, destroyed or stolen resulting in a benefit to the homeowner in that the lender must have the chain of title of the note properly documented.

3. It makes mortgage foreclosure judgments almost impossible to overturn in that a homeowner that contests a foreclosure will almost never get the property back after it has been sold in foreclosure sale.

4. It highlights the ability of the mortgagee/lender to pursue an expedited foreclosure process involving a “show cause” order from the court. The judge will sign an Order to Show Cause usually contemporaneously with the filing of the foreclosure complaint requiring the borrower/home owner to come to the court on a specified date and time to show cause as to why a foreclosure judgment should not be entered with a sale date. If the homeowner does not show up to court for the show cause hearing, a foreclosure sale date will be scheduled.

5. It allows second mortgage or lien holders (i.e., condominium and homeowner associations) the right to speed up the bank’s foreclosure action. Second mortgage lien holders and homeowners associations no longer have to sit and wait for the bank to finish the foreclosure process. They can now request orders to show cause to move the cases forward very quickly to a sale date.

6. It allows the lender to collect monthly payments during the pending foreclosure from the homeowner, unless the property constitutes the homeowner’s primary residence. Therefore, a homeowner will not have any incentive to refuse to list their property for short sale to keep collecting rents through the short sale process.

Thus, seize the opportunity to take advantage of the distressed real estate market. Educate borrowers on the effects of the new law and get them to immediately list their properties for short sale either before they are served with foreclosure papers or immediately thereafter.

MDRA – The Mortgage Debt Relief Act of 2007

This law is now expired but don't let it deter you from taking short sale listings.

Generally speaking, if you owe a debt to someone else and they cancel or forgive that debt, the canceled amount may be taxable. The Mortgage Debt Relief Act of 2007 was enacted to provide an incentive to homeowners to sell their primary residence in a short sale so as to avoid further losses to banks and prevent even more financial economic disaster. The Act allowed taxpayers to exclude income from the discharge of debt on their principal residence in most cases. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualified for the relief.

Even though the Act is no longer in effect, under the IRS code, canceled debt is not taxable if the homeowner is insolvent on the date of closing. Insolvency is determined by a balance sheet test. Does the short seller have more debts than assets on the date of closing? You are insolvent when your total debts are more than the fair market value of your total assets. If the homeowner can show insolvency, the accountant will attach IRS Form 982 to the tax return to avoid the tax liability. Most short sellers are insolvent such that they would never have owed taxes on the forgiven debt regardless of the Mortgage Debt Relief Act. Regardless, all short sellers should seek the advice of a tax professional before deciding to short sell their property.

Debts discharged in bankruptcy are never taxable. Therefore, if the homeowner filed bankruptcy and received a discharge of their debts before they completed the short sale, there is no tax liability. The bankruptcy exception also applies if a homeowner files for bankruptcy after a short sale is completed because they need to discharge all of their

debts and obtain a fresh start.

Don't let homeowners tell you they would rather lose their property in foreclosure than deal with the potential tax implications of selling their property in a short sale and receiving a 1099. When lenders foreclose on properties they often send homeowners a 1099 anyway if they decide to write off the balance of the loan. Thus, the tax implication would need to be dealt with regardless.

THE SHORT SALE PROCESS

Adams & Associates, P.A. processes and negotiates short sales with the purpose of helping homeowners who are struggling with their mortgage payments. We provide the homeowner with the information, guidance, and the actual painstaking work that is required to facilitate the short sale of the property. The service is provided at no cost to the homeowner and frees up the real estate agent's time by allowing the agent to market and sell real estate rather than spend countless hours on the telephone or in front of the computer processing the short sale. The service is also free of charge to the real estate agent. All that we ask is that Title Partners of Florida, Inc. be named in the contract as the closing agent.

This is how the process works...

Our website contains all the documents/information the listing real estate agent and the homeowner need.

- The real estate agent should take the package available on our website (www.richardadamslaw.com) to the listing appointment or direct the homeowner to our website to download the package. We also have lender-specific packages available on our website if necessary.

- Once we receive the package, we will underwrite it within 48 hours before sending it to the Lender to make sure that the hardship is stated correctly and that the entire file makes financial sense to the lender's investors.
- We will then assign the file to one of our internal processors who will take care of submitting, processing and negotiating the file with the lender.
- The seller, real estate agent, buyer, and buyer's agent will receive weekly e-mail updates from the assigned processor letting everyone know the week's activity on the file. Please note that we do not share any private information, financial data, or contents of the short sale package with the buyer or buyer's real estate agent. We fully respect the seller's privacy.
- The assigned processor, as well as the attorney assigned to the short sale, is also available by cell phone.

THE 5 COMPONENTS OF A SHORT SALE

1.KNOWING THE SELLER

- *Does your seller have a hardship?* That is the main question. Hardship means different things to different lenders. Every short sale case turns on its own set of facts. It is important for real estate agents to understand that a short sale lender should only be given financial information to consider for hardship purposes from the person who signed the Note. Just because both spouses signed the mortgage, it does not mean that both signed the Note and that both are therefore liable for the debt. Also, just because there are several names that appear on title

to a property, it does not mean that all title holders are liable for the debt. Only the person(s) that signed the Note is (are) liable to the bank for the debt, and therefore only that person(s) financials are relevant for consideration by a short sale lender. We will assist your seller in analyzing your seller's hardship situation.

- *The hardship letter and financial package should convey the following:*

- Describe reason for hardship.
- Medical crisis, bills, etc.
- Job loss of borrower, spouse or others who help with household expenses.
- Business change, loss, etc.
- Marital status such as divorce, separation, etc.
- Family situation involving dependants (health issues, increased expenses, etc.)
- Tell the client's story as to why they are unable to make payments and use specific dates, dollar amounts and supporting documentation if possible.
- How much money you lost and when, how much income you used to make vs. what you make now
- Illustrate how borrower is insolvent, close to insolvent, or why they are otherwise unable to make payments.
- Expenses greater than income.
- Liabilities greater than assets.

- *Does your seller have assets that may disqualify him/her from a short sale or may result in a counter-offer from the bank?* For example, did your seller make any large purchases that would appear on his/her credit report after the date the seller defaulted on his/her mortgage payments. We will assist your seller in arriving at this conclusion or preparing him/her for all possible outcomes.

- *How many mortgage liens are on the property?* Don't take your seller's word for it. Ask the seller if they have an equity

line, line of credit, etc. It is very important to have the correct information regarding mortgages because we have to negotiate with every mortgage lien holder in order to have a proper approval.

- *Do they have any judgment liens?* Judgment liens are a cloud on title, regardless of whether the seller filed a bankruptcy and discharged the debt in the past. There are steps that we need to take to clear judgment liens off of title for a homestead process. The process takes a minimum of 45 days so having information about possible judgment liens up front is critical to preserve a short sale transaction. If the property is an investment property, the judgment lien will need to be negotiated with the judgment lien holder and the settlement must be countered to the buyer.

- *Have they been sued to collect any debts?* The answer to this question will help us determine if there are any possible judgment liens against the property that must be dealt with as per the above.

- *Have they done repairs/improvements without permits?* Answering this question will help us determine if there could be any municipal code violations against the property and/or if the property can only be sold to a cash buyer

- *Are they aware of any municipal code violations?*

- *Are they in foreclosure?* Don't take their word for it. Ask them when was the last time they paid their mortgage. If they say that they haven't paid in over 6 months please do a foreclosure docket search as instructed herein or call us and we will check the foreclosure status for you. If the foreclosure case is very advanced or if there is already a foreclosure sale date, we will need have to approach the transaction differently.

- *Are they behind on H.O.A. dues?* If yes, how far behind? If the dues are more than 6 months behind there is a risk that the

short sale transaction may fall apart if the association is not willing to settle for the amount that the first mortgage holder is willing to pay and the buyer will not cover the difference. Large outstanding HOA dues are the biggest reason why short sale transactions fall apart. Even when associations are willing to settle and the buyer is willing to make up the difference, the transaction can still fall apart if the buyer's lender does not allow the buyer to pay the difference. Please keep in mind when taking short sale listings that we are very persuasive in convincing an HOA to settle the account for less than the amount owed, but we cannot force them if they are unwilling to settle. Therefore, proper disclosure of pending HOA dues from the outset of the transaction can lead to a higher success rate when the property is being sold for cash and the buyer is aware and willing to pay the difference.

- *Do they owe back taxes to the IRS?* If they owe back taxes there is a very strong possibility that the property is encumbered by an IRS lien. If there is an IRS lien, the seller will have to fill out IRS Form 14135 titled "Application for Certificate of Discharge of Property from Federal Tax Lien". Please note that the IRS routinely removes tax liens in a short sale, but the process can take several months. Therefore, it is imperative that the seller begin the process with the IRS immediately upon receipt of an offer so that the IRS will have enough time to process the request.

2. KNOWING THE BUYER

A. Bring them knowledgeable...

- About the market. Have them prepared to offer fair market value for the property based on non-distressed comparable sales. The days of cheap short sales are over. Banks are requiring top dollar for short sales, especially where the loan is backed by Fannie Mae or Freddie Mac. The short sale lender will only accept less for a property where it has problems that have been documented, and the offer is accompanied by a

certified contractor's estimate and color photos.

- About the short sale process, and its time requirements. The short sale process can take several months. Lenders often require paperwork from buyers with very short turn-around times. It is not uncommon for a short sale lender to request proof of funds the same day they request it or they close out the short sale file.

- About the need to give a substantial deposit. Lenders are aware that inventory is tight and that buyers are placing deposits on several properties. Many negotiators that work for lenders earn a salary plus commission for short sales that lead to successful closings. Therefore, they are more motivated to work on files that have stronger offers supported by larger deposits. Listing agents should stay away from buyers that only want to place a small deposit (\$5K or less) for the property. In these days when inventory is restricted, the agent who has the listing has the gold. Thus, they can demand a strong offer.

- About the need to be patient. Short sales can take several months. Patience is greatly appreciated. We will give the buyer weekly email updates on the status of the file so they know the short sale is being actively processed, but their patience is needed.

B. Bring them with money

- Cash is great, but a financed buyer can be just as good. If the buyer is paying cash, the offer must be accompanied by a proof of funds.

- Make sure to have a pre-approved buyer because when the bank approves the short sale they give 30 days or less to close. If the buyer has not been properly pre-screened and he/she is later denied for financing, many lenders require the short sale process to start from the beginning with a new

buyer. This results in a large waste of time and energy for all.

- Some short sales can only be sold to cash buyers. Educate buyers and buyer's agents about the importance of having cash if they want to buy a property with large HOA arrears or large second mortgage loan balances. Often second mortgage lien holders will demand 10% of the outstanding balance to approve the short sale. First mortgage lien holders generally do not pay more than \$6,000.00 to a mortgage lien holder. Thus, if the second mortgage lien balance is more than \$60,000.00, the property may only be eligible for purchase by a cash buyer.

3. KNOWING THE PROPERTY

- Valuation at market value. Please list the property at its fair market value based on non-distressed comparables. Short sale lenders require the MLS sheet be submitted as part of the short sale package, and they closely monitor how the property is being marketed for sale.

- The effect of the lender's BPO. It is only good for 90 days!!! Once the lender receives a completed short sale package, they will order a BPO (Broker's Price Opinion). The BPO agent will only use non-distressed comparables in arriving at a value. We receive the best results when the listing agent is present when the BPO is being conducted. Please arrange to be present at the BPO or exchange market analysis information with the BPO agent to help avoid a counter-offer from the lender based on an inflated BPO value. Please also share with the BPO agent any information as to the condition of the property that cannot be readily seen and that will support our valuation.

- Do your Comparables. Be prepared to provide us with your comparables analysis if we decide to challenge the lender's BPO valuation.

- Balances of all Loans and Liens (Equity Lines, H.E.L.O.C., and 2nd Mortgages). The more mortgages a property has and the higher the unpaid principal balances, the larger the chance that the junior lien holders will demand a settlement amount that is higher than what the first lien will pay. In these instances the property should only be marketed to a cash buyer.

- H.O.A. dues. Lately, first lien holders are offering HOA's up to 6 months of assessments to settle the account. Many HOA's require at least 50% of their balance to settle. Therefore, it is imperative at the outset of a short sale transaction that we know exactly how much the seller owes the HOA. The seller can request a statement from the HOA free of charge. However, if any other party requests it they must produce an authorization and an estoppels fee which can be several hundreds of dollars. If the HOA balance consists of more than 6 months of assessments, the buyer must be made aware that they may need to pay the difference between what the first lien will pay and what they HOA will require to settle the account.

- Payment history and status. Is the seller up to date on the mortgage payments? Was the home purchased after 2008 or recently cashed out in a refinance? Most lenders require that the loan be at least 30 days in arrears before they will consider a short sale application. If the loan has PMI (mortgage insurance), most insurers require that the loan be at least 90 days past due. Many lenders will not consider a short sale application of the home was purchased after 2008 or if it was cashed out in the last 3 years.

4. KNOWING THE FORECLOSURE STATUS

- Please be mindful of House Bill 87 (The Speedy Foreclosure Act) discussed in an earlier part of this guide.

- If the foreclosure case is very advanced (a motion for summary judgment is set for hearing or the case has been noticed for trial), the short sale must be addressed differently. The seller would need to immediately list the property for sale and complete the lender(s) package(s). The seller must be willing to either attend the hearing for summary judgment or trial, and request an extended sale date or they must be willing to hire us to do so on their behalf under a separate retainer. The foreclosure process will not stop to allow a short sale to happen. We must be working closely with the seller if the foreclosure sale is very advanced in order to have a chance to have a successful closing.

- Understand the foreclosure dockets. Below are the web addresses for the clerk of courts for Dade, Broward and Palm Beach counties. Only search the county where the property is located.

- <http://www.miami-dadeclerk.com>

- <http://www.browardclerk.org>

- <http://www.mypalmbeachclerk.com>

- Monitor the foreclosure process. We monitor dockets at least once a month to keep track of the progress of the case. Listing agents should also be monitoring the dockets on their short sales.

- Get help in defending your Seller's foreclosure. Especially now with the implementation of House Bill 87, it is important for sellers to hire an attorney to defend the case.

EFFECTS OF A SHORT SALE

- Settlement of the Debt – the debt with the mortgage lender will be completely settled and the seller's credit score will increase as a result.

- Avoiding foreclosure – by doing a short sale the homeowner will avoid the disastrous consequences of a foreclosure. A

foreclosure will result in the homeowner losing title to their property in a forced judicial sale and they are still responsible for the deficiency liability. Thus, many borrowers end up in bankruptcy after the foreclosure to deal with the deficiency liability.

- Reports as settled on credit report – this makes the credit score go up.

- Avoiding bankruptcy to discharge deficiency balance after foreclosure – bankruptcy is usually the only option available to a homeowner that loses their home in foreclosure. The result is a foreclosure and bankruptcy on their credit report. This is very damaging, and can result in damaged credit for up to 10 years.

- Ability to obtain a mortgage in the much more near future - there are lenders that will give a short seller a mortgage loan one year after the short sale closes.

CAVEATS OF A SHORT SALE

Short sale is more difficult when:

- Seller has not experienced a hardship or junior lien holder will not recover anything.

- Seller is upside down, but current on loan with no plans of missing payments.

- If seller is in Chapter 7 or Chapter 13 bankruptcy.

- If original loan was cash-out or recently closed.

- Clouded title with outstanding liens and judgments;

- If seller is less than 30-60 days from foreclosure sale.

- If seller is behind on H.O.A. dues. Stay current of H.O.A. dues.

OBTAINING LISTINGS

- Convince the Seller on the benefits of a short sale.
- Explain to the Seller the consequences of having a foreclosure.
- Short Sale vs. Foreclosure
- Educate the Seller on House Bill 87