

# It's the lender's world, we're just living in it.

When it comes to short sales, patience is still the name of the game.

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Throughout this issue you will notice that the theme is largely centered on Short Sales and Foreclosures. If I had a dollar for every call I've received regarding the protocol for Short Sales and Foreclosure auctions I would be a rich man – and that is figuring in the current weak valuation of the dollar versus other currency. Between both consumers and members, the confusion surrounding lender owned property and “soon to be” lender owned property has created quite a maelstrom of discontent.

Without rehashing what you already know, short sales are requests to satisfy a debt to a lender when a third party is willing to purchase the property for an amount “short” of the total owed on the mortgage.

The questions and outright pleas for action regarding the short sale process materialize from almost every area of the potential transaction – be it homeowners who had offers to purchase their distressed properties, investors in a position to acquire property for resale in a better market, or member brokers and agents who are getting into the business of short sale deals. Most of the calls that I have received tend to sound the same alarm: the process, the process, the process, the utter quagmire of processes to get approval, rejection, or no word at all.

Stripping the stress and emotion of getting a deal done, it's hard to begrudge a lender for being reluctant to accept a mortgage settlement offer that is significantly lower than the amount actually owed to the lender. However, that seems to be the im-

pulse for buyers in the marketplace as they try to negotiate a favorable offer with the lender directly. They call with seething anger, wondering why they haven't heard from the bank regarding their offer. They wonder why their agent and/or the lender's agent continue to tell them that they need to increase their offer. Does this constitute a rejection of their offer? Is it ethical? What exactly are the rules that lenders must follow when considering an offer from a buyer in a short sale situation? What are the rights of the homeowner subject to impending foreclosure?

As many of you know, the answers to these questions are neither emotionally nor intellectually satisfying. Navigating a short sale is analogous to building a house of cards in a stiff breeze. If you're representing a buyer than you have to handle the strange dynamic that results when the lender exercises Zen-like patience when considering offers and the buyer panics when the process takes longer than anticipated. It is common enough that, after weeks of verbal back and forth, a price point is reached only to find that the buyer has succumbed to frustration and walked.

Many members place the blame at the feet of the lenders, feeling that lenders are slow to adapt to the speed of the marketplace in dealing with short sale offers. Such a contention may well be true. However, there may also be a sound method behind the perceived madness. The bottom line is that the seller and the lender (as opposed to the Buyer and the agent) are operating from a vulner-

able position of certain loss and hardship. Without sounding overly sympathetic to the lender, the lender is presented with a great deal of the heavy lifting when considering a short sale. It is the lender balancing complex factors in deciding whether to approve a short sale, including:

- Whether the seller deserves a break due to financial hardship brought on by unforeseen circumstances such as layoffs, divorce or illness;
- The cost benefit analysis of whether it would be cheaper to simply repossess the house, make any necessary repairs and sell it through a real estate agent;
- The lender's current inventory of other properties currently in default;
- And whether there are co-signors who can also be liable for the balance owed on the mortgage.

Some of the above factors are quite obvious. However, some of them hinge on the current state of the lending market – and a shot-in-the-dark prospectus of where the market is headed.

From the perspective of a third party looking to buy,



approaching the lender regarding a short sale requires patience, preparation and organization. Without the proper organization on your end or your client's end you can place unwanted attention on any number of the above factors.

For instance, before the lender will even open the door to you, you'll generally need a signed purchase contract and a letter of permission from the seller allowing the bank to discuss the loan with you. You'll also need to make sure that you're talking to the right person. This is a point of increasing frustration because often times the seller isn't clear where their payments (or lack of payments) are even headed. Perhaps it is not the lender at all, but simply a loan servicer with no authority to entertain a short sale.

As many of you likely know, there's usually only one person within a given institution who's empowered to take offers to the governing board or committee for the lender. Whether it's a real estate agent or another figurehead of the lender, searching out this person and establishing communication simply adds time to an already lengthy endurance contest. When you've finally found out who that individual is everything starts to become slightly like the Wizard of Oz. The goings-on behind the walls of the lending institution seem shrouded in mystery. Have they considered the offer? Are they even aware of the offer?

If you've managed to lay the groundwork for making the offer, the lender is automatically going to bring several more obstacles to your offer. As noted above, any shift in bargaining power is likely going to be dictated by the status of the loan. For example, the seller maybe be only a few months in arrears or the auction may be scheduled to occur in one week. In both scenarios, the lender might be looking for a higher offer. With only limited arrears, the lender may seek to work out a new

payment structure with the seller. However, if the lender has lost faith in the seller, as evidenced by a great deal of money in legal fees and preparation for foreclosure, the lender may establish a calculated policy of stockpiling inventory for resale as market turns.

A huge element of the latter strategy is the property itself. Is it more trouble than it's worth? The lender is going to scrutinize each property that it willingly takes back as inventory. A property that needs major work in contrast to one that needs a few small repairs will likely shift bargaining power to the buyer's favor.

Of course, as discussed in other articles in this issue, the lender's position as creditor is another big factor. It is very likely that a seller will be looking to satisfy outstanding debt with more than one lender. As victims of circumstance, lenders in a 2nd and 3rd position are usually much more willing to entertain the discount card than a lender in the 1st position. However, satisfying such debts is a significant obstacle in getting a deal done. By and large, those lenders in subservient positions are looking to dig any recovery out of the crisis as they can – within reason. Facilitating a successful short sale must take into account the interests of all lenders. When the laying the groundwork for making an offer, a failure to understand all of the competing interests can undo plenty of hard work!

At the end of the day the ball still remains in the primary lender's court. As a buyer, or an agent in either capacity, patience continues to be the name of the game. With the many plans for homeowner and marketplace relief being floated by lawmakers at both the state and federal level, there may be dynamic changes in the marketplace in coming months. However, there has been little focus on the short sale process. It is unlikely that much can be done to speed it along other than obvious market factors. Should the economy continue to struggle there are still significant opportunities to facilitate short sales. However, such opportunities require serious resolve and foresight to get the deal done. **MAR**

## Lawmakers pass Loan Officer Registration

### WHAT:

The bills are Senate Bills 826-833 and House Bills 5287-5291.

### CAPSULE SUMMARY:

The bill package, on its way to the Governor for her signature, establishes a registration process for loan officers, requiring them to undergo a criminal background check as a prerequisite for operating as a loan officer in Michigan. An individual seeking to operate as a loan officer must not have a felony or misdemeanor involving embezzlement, forgery or fraud relating to a financial transaction or securities. An individual registrant must also have no other type of felony within the 10-year period preceding the application.

Registration will also require 24 hours of coursework in subject matter relevant to the skills and knowledge necessary to be a mortgage originator. The required coursework will include courses in legal and regulatory compliance, ethics, and fraud prevention. Registrants will also be required to pass a proficiency examination. Even if an individual satisfies the requirements and is registered by OFIS as a Loan Officer, they will still be subject to annual renewal of their registration. Akin to real estate licensees, this renewal will require a continuing education component of six hours approved by the OFIS Commissioner.

### IMPACT:

The new registration requirements should have an immediate and positive impact. The requirements will hopefully filter out the small faction of 'bad actors' from the mortgage origination business. Additionally, it will add greater legitimacy within the profession. **MAR**