

Short Sale Issues for Purchasers

By: Gregory Braun, *Partner*

Short sales can be the most frustrating of all residential transactions. The main complaint is the long delays in getting approvals. If the factors below are present in your short sale, please let your attorney know so they can be dealt with ahead of time, although most issues will not be readily apparent. Because the seller is usually in distressed financial condition, obtaining relief against them after the closing is almost impossible. Also, you will be responsible for taking the property on a "as is" basis because of the agreement the buyer and seller sign with the seller's bank at closing, known as the Arm's Length Agreement. Please note the following special delays / risks associated with short sales:

- Unknown time for approval by sellers lender or rejection of the contract

Items that make it unlikely that the Seller will get approved:

More than one loan requiring short sale approval

Mechanics liens or other judgments against Seller clouding the title

No true hardship being claimed by Seller or Seller still making payments

Inexperienced or overwhelmed person negotiating with Seller's bank

Seller going through divorce or bankruptcy during the process

Home lost to the judicial court foreclosure process

- Uncollected assessments leading to lockout (eviction) by the association
- Utility shut off or winterization preventing completion of bank appraisal
- Poor property condition or Real Property Disclosure showing defects complicating loan underwriting process for Buyer
- Purchaser not qualifying for a loan because of their financial situation, property condition or condominium association issue
- Seller taking appliances or fixtures during the pendency of the short sale process
- Seller failing to maintain the property during the pendency of the short sale process
- Seller's tenant failing to leave prior to the closing
- Short sale lender requiring Purchaser cash contributions paid to the lender
- Short sale lender making a counter offer above the purchase price to Buyer (valuation issues)
- Seller rejecting the short sale offer because it requires cash contributions or deficiency judgment
- Failure of the Seller to cooperate with the process or changing their minds

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