What You Should Know About "Short Sales"

1. **What is a "Short Sale"?**
   A Short Sale is a transaction in which a lender agrees to allow a property to be sold and to accept an amount less than (short of) what it is owed.

2. **When is a Short Sale generally attempted?**
   When someone is desperate. A homeowner needs to sell, but owes more on the loan (or loans) than the house is worth. This may be because:
   a. the market is depressed and the value of the home is less;
   b. or the owners have taken out a 2nd mortgage for more than it's worth;
   c. or they started with a 100% loan and there has been no appreciation;
   d. or some combination of such circumstances.

3. **What are the benefits of a Short Sale?**
   a. The home can be sold when it could not be sold under normal circumstances.
   b. The owners may not have the money to bring to closing for closing costs or the shortfall between amount owed and the sale price of the house. It may be a way out of a hole.
   c. It is preferable to a foreclosure.

4. **What are the problems associated with a Short Sale?**
   a. The lender(s) might not agree to accept a short sale and let the house be sold. They don't have to agree to it, and the sale could fail to close.
   b. The lender(s) might release the lien and let the sale close, but they don't have to release the owner from liability for the shortfall. The owners could remain liable for the full amount of what the lender(s) lost.
   c. When the lender(s) release the owners from liability and agree in writing to not attempt to collect the debt, the owners could still be liable for taxes on the shortfall, since the IRS deems it to be a "forgiven debt", and therefore counts it as income.
   d. There is no guaranteed time limit for the lender(s) to accept a Short Sale. Buyers and Sellers both may be tied up for months waiting for the lender to answer the request for a Short Sale, and then the answer may be "No". In the meantime, the owners still have to pay house payments and other expenses.
   e. The owners' credit rating <u>will</u> be damaged. A Short Sale may or may not be seen by future lenders as something as bad as a foreclosure, but it will be damaging regardless.
   f. If the owners keep making their payments, the lender may not be motivated to grant a Short Sale.
   g. If the owners don't keep making their payments, the lender will likely require a complete financial statement before they consider whether to grant a Short Sale. Not enough assets or income? A Short Sale is possible; and possibly with a release of liability.
      Enough assets and income to either make the payments or pay off the short sale? A Short Sale is less likely; and if granted, it will probably not be with a release of liability. The lender could require the owner to make a payment of some cash, sign a new promissory note, continue to owe the unpaid portion of the note, or other remedies.
   h. If the owners don't keep making their payments, the lender could just foreclose on the property. This is especially true if there is a 1st and 2nd mortgage and the 2nd mortgage lender believes they will net more money by letting the first go to foreclosure and then exercising their right to redeem after the foreclosure sale is completed. It means they would acquire the property and have to sell it, but that might net them more than agreeing to a Short Sale.

5. **If I'm thinking about asking my lender for a Short Sale, what steps should I take?** This is a good question to ask, because it acknowledges that you are responsible for your loan and for obtaining a Short Sale, and you cannot just list your home and let your Realtor® take care of this part of the transaction. They can help, but here is what you must do:
    a. Talk with your lender(s). Determine if a Short Sale is feasible, and what they will require of you.
    b. Call the Foreclosure Prevention Hotline at 1-877-601-4673 or the HUD Housing Counseling and referral line at 1-800-569-4287 to determine your options.
    c. Talk with a Real Estate Attorney (not just any attorney that you know) to determine your liabilities.
    d. Talk with a CPA, financial planner, or tax attorney about the tax liabilities of "forgiven debt".
    e. Talk with a Realtor® who has experience with Short Sales to get an idea of what is involved in selling a home with the involvement of a Short Sale.
    f. Get a copy of the "Short Sale Addendum" from your Realtor® or the Colorado Real Estate Commission (CREC) so you can know what the CREC requires to be disclosed to both buyer and seller. Especially note that Section 3.2 says, "Seller acknowledges that it is the responsibility of Seller to investigate these alternative methods of resolution with Seller's legal, accounting or financial advisors and with Lien Holder [lender] and it is not the responsibility of any real estate broker to undertake any investigation of other options that may be available to Seller."
    g. Ask yourself, "Is there any way for me to avoid a Short Sale or a foreclosure? It may be that you could find a way to make up the shortfall by borrowing from a family member, selling some asset, or some other method discovered in this process. If there is any way you can bring the necessary funds to closing on your own, rather than owe them after a Short Sale assisted closing, do it. It will save a lot of brain damage, hassle, and save your credit rating as well.

       Think if it this way: if you had a shortfall of $20,000 for example, and you could either bring the money to closing and then pay it off as if you had bought a new car, or go through a short sale and then still owe that $20,000, wouldn't you rather do it in the way that after the $20,000 was paid off you would still have decent credit?

If you have further questions, feel free to call.

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Call me if someone you know is thinking about moving. I'll be honored to help them.