

DATE: September 16th, 2008
TO: Escrow Department Personnel
FROM: Kim Dawson & Tena Jones – Escrow Administration

Many of our officers have called and are providing us with information regarding a new type of service from outside, private companies who are assisting sellers and/or their real estate agents in negotiating the terms of a short sale agreement for the sale of their properties.

As with any new procedure, we like to tread cautiously to make sure we are all taking the proper steps and are protecting our customers as well as ourselves as we go forward. We have had our legal counsel review one such written agreement and the issues brought up by that agreement, are outlined for your direction as you go forward when handling these.

1. You need to **have an instruction** or copy of a letter which the short sale company or real estate agent may have, signed by the seller authorizing this short sale negotiator company to negotiate on their behalf directly with the short sale lender.
2. You will still **follow our normal short sale closing process and company policies** which we outlined in our symposium on short sales last year* (May, 2007 – California). It is imperative you are knowledgeable before handling a transaction of this type. Get assistance from your Regional Escrow Manager or State Escrow Administrator if you need help.
3. **Please provide us with a copy of the short sale agreements you are receiving so we can make sure there aren't any additional legal issues we should address.**

Here are some common instructions you may see when they submit their paperwork, and the process we would like you to follow:

**For more information on the processing of short sale transactions, please refer to the Symposium conducted in May of 2007 in California. You may request a copy from your State Escrow Administrator*

“Do not contact the short sale lender, all negotiating must go through us”

We must **ALWAYS** have contact with the short sale lender. You are to make contact and discuss ANY agreement handed you by either the seller or 3rd party negotiator to make sure we have the most recent demand and agreement before you close.

“Our fee to be collected at the close of escrow is \$ _____”

These fees may appear excessive. Any short sale negotiation fee being paid to a 3rd party must be disclosed on the estimated HUD for seller, short pay lender and any NEW lender to see and approve. If the short sale lender or new lender objects to the fees in any way, be very careful and wary of making sudden changes to the way the fees are disclosed and call us to discuss. For example, one new lender objected to the short sale fee to the negotiator because they called it a “Seller Concession” fee (\$9750.00) – discussion ensued to call it something different, all verbal. Taking verbal instructions is dangerous and we would like any changes, corrections, additions to always be in writing. As we know, there are deadlines and you will get the pressure to close – remember, it is NOT YOUR PRESSURE and you should react with a professional, policy driven response – quickly of course and mindful of the customers predicament, but not in a panic mode where you just go in and make changes without written instructions and approval.

“Enclosed is the short sale agreement/demand for payment at close of escrow”

These short sale demands and/or agreements and conditions may be addressed to the seller or the short sale negotiator. Ideally, we like them to be addressed to us, but if they refuse to do that, you must be sure to have extensive and clear notes in your escrow with the exact name(s) of the person(s) that YOU HAVE SPOKEN WITH PERSONALLY representing the short sale lender. This is to ascertain the payoff demand/agreement you have been handed is the one they will accept. We are currently in litigation now with a short sale lender who refused to accept our wire at closing because they said it was not the proper amount they had demanded (here is where they are purporting the demand we had was not the most recent and correct one!)

We know this is a lot of information but hope it will be helpful as you wind your way through these transactions. As we know, this market too shall fade one day, but we are here to help in any way we can to support you all. **Feel free to call at any time with any questions.**

Some Important Tips – Short Sales

- Never do any early release of money in a Short Sale Transactions. Contact your Management for guidance if asked to do a release.

- Not all short sales transactions mean the seller has a Notice of Default filed already. Some sellers obtain a short sale request even when they are current on their payments to their lender

- Always refer customers to legal and tax advisors for assistance. Short sales can have some very serious tax consequences. Do not offer any advice yourself.

- Always ask for a Purchase Agreement Addendum with the “Short Pay” contingency box marked. If they don’t have one, you need to add the contingency language into your escrow instructions.

- Send in the Statement of Information from the seller immediately in order to determine any “general index” liens which may affect your seller and in turn their final proceeds shortage. For “investor” sellers (those sellers who do not reside on the property) review their California and Federal Tax withholding forms immediately as well to determine if withholding is required. There is no exemption from withholding in the case of “little” or “no” equity. This withholding amount would need to be disclosed on your estimates immediately as well.

- Be very careful and aware of the “expiration” date in any short pay agreement or instructions from the short pay lender. If you miss the expiration date, they may completely disregard their agreement to do a short sale. You cannot close with an expired demand or short pay agreement. You must request an extension in writing! Always make sure you have current, updated demands as well – do not close on expired demands.

- Care must be taken with any post closing refunds to insure compliance with the terms of the short sale agreement. Most refunds CANNOT go back to the seller. “Zero” demands must be obtained for any reconveyances handed you for recording on junior liens. DO NOT record any documents without FULL INSTRUCTIONS for their use. Do not assume just because you have a reconveyance or a release that there is no demand. The demand for that lien release or reconveyance may be coming from another department or legal counsel.