

PERSISTENCY PAYS OFF ON SHORT SALES!!

by Tom DiGiacomo

I would like to start off by saying that anything is possible if you believe that there is a common solution that benefits all parties involved. My name is Tom DiGiacomo, Realtor for Century 21 Select Real Estate, Inc. I have been in many phases of Real Estate since 1975 and have always believed that creativity is an important concept in this business as well as many others. It is important as a consumer to understand what a Short Sale actually is and what can and has transpired in the industry dealing with banks.

A Short Sale can occur when an owner of a home has a loan or loans on their home that, when added together exceed the market value of their home. For example, the owner could have two loans on the property that total \$350,000 and the actual market value of the home in today's market might be \$250,000. Therefore, there is a deficit of \$100,000 that needs to be negotiated. The owner is requesting the bank to absorb the \$100,000 and will try to sell the home at the best price possible. This now leads us into determining what the market value of a home is, especially in today's volatile market. I actually feel that no one can determine what the true value is of any home. Value is determined by what a Seller is willing to accept from a buyer. The consumer needs to understand that a "Short Sale" has nothing to do with the time it will take to close the deal. I write this article to tell you exactly what happened to a Short Sale that I have been working on since May, 2008. I have been through five buyers and have had the Trustee Sale postponed five times. A Trustee Sale is when the bank sends the deficient mortgage to the courthouse for foreclosure. It then becomes a Bank Owned Property commonly known as a REO Foreclosure. At the end, everyone loses including the bank as to what their process will be in trying to sell it again at even lesser values and worse conditions.

Now that we have an understanding of the terms, I would like to mention the process so you can have an understanding of how things were in 2008 when all this started and where we might be today. I stress the word **might** because we still do not have an understanding of what the banks might be doing to help get us through this time so we can go back to somewhat of a normal market. In 2008 the banks were honestly not working with us and there was something going on behind closed doors that we will never understand. The banks felt that maybe they could do better in recuperating their losses by foreclosing on the homeowner. Maybe the government was subsidizing their losses, but short sales were not happening. Let's take my 2008 Short Sale as an example. I listed the home and within a week I had seven offers ranging from \$270,000-\$285,000.

Offer Number One:

The highest offer was submitted to both the first and second banks that had the loans on the property. Now, to start this process, there are a series of documents that the homeowner must provide to the banks in order to qualify for the short sale. Among these documents are two years tax returns, recent work pay stubs, two months of bank statements, a financial statement listing all their assets and liabilities as well as a hardship letter. In this case my clients had a three-

month-old baby girl and a five-year-old girl. The husband just lost his job working for a bank that suddenly closed their doors like many banks started to do. Did this family have a hardship? You bet they did.

The process was started and everything was submitted. I kept calling the banks weekly to get an update. After all the documentation was submitted, I was instructed not to call for a minimum of thirty days. So here we were waiting and hoping we could get this closed quickly as the market was declining daily. Why the banks could not see this coming is beyond me. The banks on the other hand were trying to adjust to this fast changing process and also trying to find ways of saving money. That was interesting to try to figure out. Our first understanding of the bank process was that they were hiring realtors to determine a value to that property. Now remember that just prior to this, many people obtained their Real Estate license because they saw the fast easy money that could be made. Now these realtors were submitting their resumes to get on this fast train leading into dark tunnels. The Realtors worked out deals with the banks to do what they called a BPO (Brokers Price Opinion). This was done in lieu of a full appraisal that is done by a certified appraiser. The cost to the bank was approximately \$100.00 instead of approximately \$400.00. This all sounded good but unfortunately the Realtors that did these BPO's were setting values much higher than the offers that were coming in. Consequently, as much as we tried to explain the market, the banks were not accepting these offers so the homes were going into foreclosure. In my case I was persistent and requested that the bank pay for a certified appraisal. When all was said and done, six to eight months later, I received an approval letter from the bank. I then went back to the Buyer's Agent with the great news only to find out that the buyer found another home. The other six plus offers all felt that the approved value was too high and did not want to meet the bank's value.

The next step was to re-list the home at a lower value since the market had declined. I had been given the approval from the Sellers to do whatever it took to get the home sold. Just about this time the U.S. Government put into effect an approved ruling that if a homeowner was to Short Sale their home versus foreclosure, they would be allowed to purchase another primary home in approximately two years, providing they kept their credit in good standing. This is what loan officers call "compensating factors." The home was re-listed again at a lower value. Within days, I again had received multiple offers.

Offer Number Two:

The highest and best offer was immediately submitted to both banks that had loans on the property. I was at that time up against my first Trustee Sale date that the first had set. After numerous calls to the Loss Litigation Department of the first loan Bank and countless hours waiting to be connected, I was able to have the Trustee Sale date postponed due to a justifiable offer, in their possession, to be reviewed. Now, another reason why this process takes awhile is that this new offer, with a new buyer had to go back to the first phase of the bank's three-phase process. As much as I tried and pleaded to just proceed with a bank approval, I was not successful. Honestly the answers I was given by the bank did not make sense. Months go by again and it turns out that after three months the bank requested all documents to be updated.

This meant a new appraisal had to be done as well as the Sellers providing all updated financial statements. Again we get to the point of the bank approving the second offer after proceeding through the other two phases. I was again happy to get to this point. The telephone call was made to the Buyer's agent and a day or so later I found out that this buyer had found another home and cancelled the contract.

Offer Number Three:

I immediately went to all the backup offers. One was an offer I had personally written from a buyer that I had showed the home to. My buyer was still waiting so I told the bank the news and we submitted the offer, which was the same value and terms of the preceding offer. After waiting weeks for the assigned negotiator to respond to me, I learned that I was sent back to phase one of the bank's processes. Again with no understanding of why. The Trustee Sale was again set for a certain date and since I had another justifiable offer based on the current appraisal, I was able to have the sale date postponed. There is a saying that "the third time is the charm." Here I was at step one, but within the three-month process, so that a new appraisal was not needed, nor was updated financials from the Sellers. Once again we were again waiting for this offer to be assigned to a new negotiator. After weekly calls, the offer was assigned to a phase one negotiator. Their job is to make sure all the documentation, including updated financials and appraisal, are in order. Approximately two months later the file was assigned to a Phase Two Negotiator. You can imagine the calls I needed to make to my client to keep them still interested. Unfortunately, week after week the story never changed and was completely out of my control. The Phase Two Negotiator's main job is to make sure that this and any transaction is not considered Arms Length. A new term that means their is/was no interest or knowledge that an agent or any party involved might have/had to knowledge of the history to the transaction. Now this is another government ruling or guideline that banks have to be accountable for. What exactly they investigate is a question they could never answer. Another month or two go by and the file is finally assigned to the Phase Three Negotiator that gives us our approval letter. In this case, the approval letter stated that the value or sales price was to be another five thousand dollars. Are you with me? We had the same identical offer as the last and we had an approval for five thousand dollars less than now. I asked the bank but they said, "Take it or leave it." Frustration was beside my clients and me. Nothing was making sense after numerous calls to speak to supervisors, etc. stating that the real estate market was still declining. The buyer declined and once again I was back at square one. And once again, I re-listed the property at an even lower value then before just to get offers as quickly as possible. Once again I received five plus offers in just a few days. And, once again, there was another Trustee Sale Date set.

Offer Number Four:

Here it is and away we go. This buyer was interesting because he first called me and asked to view the home. I was at the point of doing whatever it took, so I met the buyer at the property. When a buyer calls and asks to view a home, a Realtor usually asks if the buyer is working with another Realtor just out of respect for our colleagues. I failed to ask that question so I showed him the house and explained all what had happened in the past. After about an hour in the home

this buyer told me that he liked it and that I would be receiving an offer from his Realtor. I said that I was receiving multiple offers so if you were going to have your Realtor write the offer, please expedite it. I did get the offer and it was the highest and best. Being persistent as I was and these were the words coming from these negotiators at the banks, the offer was submitted and the waiting game was on. Now we were past our three months so again we needed a new appraisal and again updated financial documentation from my sellers. Don't forget about that Trustee Sale date. Again I was able to get the trustee sale postponed for the fourth time. Approximately two months later and after numerous calls, the file is assigned to a Phase One Negotiator-not phase two or three. The new appraisal was done and all documentation was in to move it to phase two. At phase two, another month or two went by and we get the offer to the Phase Three Negotiator. At this point, I was getting to know these negotiators on a first name basis. At phase three, I received my approval letter but also the last postponed Trustee Sale Date was upon me. Again, I was able to get the Phase Three Negotiator to postpone the sale date.

The approval letter was for a closing date in approximately thirty days that would give enough time for the buyers to do any inspections that they were entitled to do per the real estate purchase agreement. Real Estate changes daily and with the latest changes in lending we are being told to put forty five days to close a transaction in our contracts because of new guidelines that loan institutions had to deal with. Besides doing whole house inspections, termite inspections, etc., there is an appraisal that needs to be done to justify the value of the home the buyer is purchasing. This is usually done through the Buyer's loan company. When at this point in time, which is typically a seventeen-day period per the purchase agreement, the buyers need to determine what they would like to do first, a whole house inspection or an appraisal. Each would be a cost factor to the buyers in the value range of approximately \$400.00. In this case, the buyers chose to do a whole house inspection first. After the inspection was done the buyers opted to cancel their offer. Just prior to receiving that information, I had to again get the bank that had the second loan on the property to approve this offer knowing that they still would receive the three thousand dollars from the bank in first position. I did receive their approval again so that was in place for the second to release their lien on the property once the Title Company had received their instructions to disburse the \$3,000 when the transaction was recorded by the County Recorder.

Offer Number Five:

Back on the market for the fifth time and again I received multiple offers. This time one offer presented was higher than the last offer that was approved by the bank. I had sent that to the Phase Three Negotiator and pleaded to have this just approved based on everything being better for the bank than the last offer. The Phase Three Negotiator did agree that all was better but he had to have supervisor's approval to keep this on his desk and not send it back to Phase one or two. My response was that the offer had to go back to the Phase Two Negotiator whom I had worked with on other files in the past. I asked if he could push this through and back to phase three as soon as possible. His e-mail comment to me was that the bank has a "***Three Strikes You're Out Rule***" but since he knew of me, he would approve this and send it to the Phase Three Negotiator as soon as possible. Needless to say, I was taken by this ruling. I felt

compelled to respond via e-mail (e-mail is the only means of communication) to let him know that I was the one mowing the lawns at the property, as well as replacing fence boards, picking up newspapers, etc.. I asked him “whom does he think I am working for?” Well yes the Seller but when it comes to the maintenance of the home, I am working for the banks. The Sellers had moved out approximately two years earlier. Neighbors were calling me to clean up the outside. Well that letter did make sense to him. I also had mentioned that I wish there were a forum where we as Realtors could express our frustrations and see how we could all work together as a team. When this market started to crumble, as a Realtor we could not understand the logic of many of these banks not taking the highest offer that we were given and closing the deal in 30-45 days as a Short Sale. We did know that the banks, in many cases, did not know what to do so many homes went to Foreclosure. The domino effect just escalated. I wish I could say that it will be over soon but no one knows what tomorrow will bring. Eventually the offer went to the Phase Three Negotiator.

I was anxiously waiting for that approval letter which finally came from buyer number five. Are you sitting down? The approval letter was given to me on approximately September 18, 2009 and stated that the offer must close by October 4, 2009 and the fifth Trustee Sale date was scheduled for October 5th, 2009. Counting the days you will see that is it approximately 17 days for a buyer to go through all their inspections and loan process. Well I think you can see that this was an impossible task for that Buyer. I proceeded to contact the bank that had the second lien to get their approval again as quickly as possible. After days of trying to connect with the attorney representing the bank that had the second lien, I received my call. The attorney said that the file was sent to another attorney because I could not close the previous offer in the time frame they had requested. In so many words, it was another three strikes and you’re out rule and I was given the new attorney’s name and telephone number. I contacted the new attorney. This was a new case just given to him. After explaining the previous offers and the circumstances he was willing to go to bat and get the bank to approve the same three thousand that was approved four previous times. Waiting for this to happen, which I thought would be an easy case, I was asked by the bank in second position to provide all the updated financial statements like current pay stubs and bank account statements. Since this was a different attorney, he was not given the documents from the previous attorney. That was understandable but then again frustration on my part because it seemed like no one wanted to help each other. My thoughts on this were that the first attorney was hired to try to recoup some of the losses for the bank and the bank was their client. So why she closed the file and passed it on to another attorney was something that did not make sense. Are you getting the understanding that much of this, in every transaction, does not make much sense?

Buyer number five was waiting since January, 2009 for an answer. There were many times that this buyer called me to see if I had any news for him. Now we need to understand that this buyer was represented by another agent and with their agency relationship agreement, I should not be involved with any communications with that buyer unless that buyer calls me. Well, the buyer called me many times and I did my best to let the buyer and his agent know all that I knew. I can sympathize with any buyer waiting months for an answer when you really want a

house. In this case, this buyer showed a great deal of interest. Both agents kept telling them to just wait it out, it will eventually happen. So, I must say that I felt assured that this was going to be the buyer that was going to get this house. The weekend went by after the buyer's agent had received the approval letter and Monday came. I get a call from the buyer's agent who told me that he was trying to contact the buyers all weekend and it was not like them not to respond. That Monday the buyer's agent tells me that the buyers could not wait any longer and decided to go out and purchase a new home at a new home subdivision. He proceeded to tell me that the buyers did that on their own without the representation of their devoted agent who had spent countless hours trying to get this transaction between us together. You can imagine the frustration of this agent in not only losing this transaction between us but also now losing his clients who seemed to be devoted to their agent. Does anyone out there want to become a Realtor? We learn in this business that so many things can happen in a transaction. We can work countless hours and still lose a client. Many Realtors have come to me with similar stories and they need to vent. My response is always the same, "*Don't worry, you lose one and you gain two*". We need to stay positive in this business because things can and do happen and we have no control over them.

Offer Number Six:

Back on the market again waiting for the next buyer. Oh yeah, it is the sixth Trustee Sale and again I receive another offer which was better than the last one that was approved. I knew I was past my strikes so I just did what I could but this time I added a different twist. I needed to show the bank that this new buyer was strong and had the ability to close within thirty days. I asked this new buyer's agent if he could get the buyer to place a large deposit of earnest money showing good faith into escrow right away. The answer was "yes." Within days I had a deposit receipt from the Escrow/Title Company showing the buyers funds deposited. That went to the bank and a demand to postpone the Trustee Sale for the fifth time. That worked so I pleaded again to have this stay in phase three and to just approve this offer and send me another approval letter giving this buyer at least thirty days instead of seventeen days that the previous buyer had. This Negotiator was able to send me a new approval letter within days and we got our thirty days to close. When I saw this action upon the banks part, I knew internally that rules had changed for the better. Now I was contacting this new attorney for the second lien holder and presenting to them the new approval letter and asking for that bank to send me their approval letter to receive the three thousand dollars that they had approved five times before.

To my surprise, the attorney sent me an approval letter stating that the bank now wanted five thousand, five hundred dollars instead of the three thousand dollars before. You can imagine my initial reaction but I took a deep breath. I asked why they wanted more all of a sudden. Remember, if the second lien holder does not approve and sign off their interest, everyone loses and the home is foreclosed on and the second lien holder does not get anything. Is there any logic to this? I haven't found any, nor have any other realtors, buyers, or sellers. The response I received from this attorney was that since the sellers were living in the property for approximately two years, and the sales price was just a little higher than the previous one, they felt that they could squeeze another two thousand five hundred from someone. I replied to the

attorney that if he had read the approval letter, it states that any monies the seller, if they could contribute, would go directly to the first lien holder. But when does a seller have any money if they are doing a Short Sale? Secondly, he had his facts wrong because the sellers had moved out of the home approximately two years prior. I had already explained that I was maintaining the home for the last two years. After careful consideration, the attorney was able to get the second lien holder to go back down to the three thousand dollars previously accepted five times before. Wow, that was work!

The buyers had enough time to do their inspections, appraisal, etc. The sale finally closed, two plus years after the initial starting point of listing the home on the market. Persistence does pay off. But, in this case, if you really want to look at what I, the Listing Realtor, actually received in commission – How About a Negative Two Hundred Dollars An Hour? I have been a full time Realtor for many years. The mindset we need to have is don't think about the money. Think of the Referrals that I will receive from my Sellers. They were with me every step of the process and think highly of my work ethics, which will turn into more referral business. That is really the lifeblood of my business.

Who do you know that I can go the extra mile for?

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