

Title Tips - "Short Sales"

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Question: My client is requesting title insurance on a "short sale". What does that mean and are there any special considerations to be taken into account?

Answer: A "short sale" describes the situation where the consideration for the sale of a piece of real property is less than the amount necessary to pay off mortgages/liens. Typically, all lienholders agree to take less than full payment to release the property from their lien.

While insuring a title coming through a "short sale" may be accomplished, it must be done with extreme caution and care.

First: All mortgagees and other lienholders must provide a written statement of the amount of the proceeds required to be paid to them in order for them to release their lien. If those payoff amounts exceed the anticipated proceeds from the sale, it cannot be completed. It is not up to the title or settlement officer to negotiate these amounts, and in fact, it is inappropriate for them to do so. It is up to the seller and his/her legal advisor to address these issues.

Please note that just because a mortgagee is willing to accept less does not mean that any other lienholder will do likewise. Nor does it mean that other lienholders must also take less. A "short sale" is totally voluntary on the part of lienholders. If they do not all agree to take less, or if the sum of payoff amounts exceeds the proceeds, the transaction cannot close.

Second: The terms of each payoff letter must be complied with literally. If the letter requires submission of a HUD-1 in advance, that must happen; likewise, if the instructions say that the seller may not receive any payment of proceeds, that must be complied with. If the settlement officer finds that they will be unable to comply with any of the instructions, they must not allow the transaction to close until they are in receipt of written instructions with which they are able to completely comply.

Third: Beware of "flips" and "foreclosure rescues". If the pending transaction also appears to involve a flip or a foreclosure rescue, it is unlikely that we will be willing to insure it. You may not do so without first obtaining the approval of a member of our underwriting staff.

Please feel free to contact our Underwriting staff if you have any questions.

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