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Key Transactional Concerns in Today's Challenging Real Estate Environment

"Broker Issues and Short Sales"

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Short Sales Generally

A short sale, "short payoff" or a "pre-foreclosure sale" is an alternative to foreclosure. A short sale is defined as a sale where the deed holder lacks sufficient equity in the property and personal liquid assets to pay off the mortgage(s), other liens and selling expenses in order to provide clear title to the purchaser.

A short sale is essentially a regular transaction for the sale of property in which the lender calls the shots. The anatomy of a short sale typically looks like this:

-the seller learns he owes more on the mortgage than the house will bring on the market,

-the seller seeks approval from lender to sell for less than the outstanding mortgage principal,

-the lender approves the concept of selling short,

-the seller negotiates a purchase agreement with the buyer contingent on lender approval and submits to lender,

-the lender rejects, accepts or counters the purchase agreement,

-if an agreement is reached, the property is sold.

A short sale is heavily one-sided because the lender makes all of the decisions regarding price, commissions, and which purchase agreements to accept. The lender often reserves the right to entertain additional offers and backup offers all the way up to the date of closing. This makes the short sale transaction uncertain until closing.

Short Sales Create Significant Delays in the Contract Negotiations

Lenders do not give pre-approval for short sales. Before a short sale is even considered, the seller bears the burden of demonstrating to the lender that she is in a hardship situation given her assets and liabilities and the principal amount due on the mortgage. If the seller has other liquid assets such as stocks, a high salary, or savings accounts, then the lender is less likely to let the seller use the short sale as a vehicle to sell the home. Many lenders will not consider a short sale until the seller is already behind and delinquent in her payments. For many sellers who wish to avoid the ultimate black mark of a foreclosure on their credit report, the idea of having to miss a few mortgage payments in order to be considered for a short sale is difficult to swallow.

What may be the most difficult part of a short sale, after getting a human voice on the phone, is actually making contact with the decision maker at the lender who will be negotiating, accepting, and rejecting offers. Lenders also have the power to counter the offers made by potential buyers thereby further slowing down the negotiations process. A lender will try to negotiate the best price it can to reduce its loss.

Lenders are often slow in deciding if they will agree to a short sale and then if they will approve purchase agreements. Therefore, the buyer and seller of the home are both left waiting for lender approvals. The delay on the lender's side is not a result of malice or ill will towards the sellers. Lenders were not prepared for the onslaught of short sales which rose steeply in the past 18 months. Furthermore, it behooves lenders not to jump at the first offer, to wait and see if a better offer comes along, and to avoid enabling fraudulent short sale schemes by "rubber stamping" deals.

Lenders dictate the fees which they will pay and the amount of commission, regardless of the custom and practice of the locality. This will frequently shift some closing fees to the buyer and reduce the brokers' commissions. The lender is favored in these transactions because it determines the purchase price, seller's concessions, and terms between the buyer and seller. Lenders may limit or prohibit terms that often grease the skids for a home sale: assistance with down payments, assistance with closing costs, and the agreement to make repairs. While technically the lender and the broker must come to an agreement to amend the listing agreement to reduce the broker's commission, because the lender controls whether the property will be sold, the broker has little leverage. The lender may also attempt to reduce the co-op commission of the buyer's agent. Concerns regarding the co-op broker's commission result in many brokers' unwillingness to show short sale properties.

One of the trickiest areas for broker liability is setting the contingency dates when the negotiations process for a fully executed purchase agreement can take anywhere from two weeks to 60 days to complete. Inspection and contingency dates in the purchase agreement need to be drafted to accommodate the long time lags while awaiting lender approvals. A termination option allowing the buyer a way out of the contract should be included for a buyer who becomes trapped waiting for lender approval. During the approval time period the property can still go into foreclosure, which is frustrating for the seller who is obviously trying to sell the property without being foreclosed on.

Another potential area for broker and seller liability is seller acceptance of multiple offers contingent upon bank approval. The acceptance of multiple contingent offers can be done if properly disclosed, but it is more susceptible to litigation and licensing complaints. Another area fraught with the potential for litigation is the expenditure of due diligence costs by a buyer if the lender does not approve the sale or accepts a competing buyer's higher offer. Buyers do not want to spend money on inspections and closing-related costs only to have the rug ripped out from underneath them by a unwilling bank or higher offer.

While it may vary from state to state, there are three instances in which short sale procedures should stop immediately and the broker should remove herself/himself from the listing: bankruptcy, judicial foreclosure, or notice of a sheriff's sale.

Release vs. Satisfaction, Non-recourse Loans, and Credit Scores

In short sales, many brokers are confused about whether the release of the lien forgives the deficiency debt. The release of lien alone does not forgive the debt. A satisfaction must also be filed to extinguish the debt. Subject to anti-deficiency statutes, the lender may still pursue a deficiency judgment against the seller if the lender waives the lien without a satisfaction.

If a loan is non-recourse, then it is secured only by the property, and the lender cannot seek any deficiency from the seller. On the other hand, a recourse loan permits the lender to seek a deficiency judgment from the short seller's personal assets for its losses of principal and expenses. Examples of recourse loans include refinance loans and HELOCs that weren't obtained to purchase the property.

Some states, such as California, have anti-deficiency judgment statutes which relieve the seller from indebtedness for the portion of the mortgage which is not recovered in foreclosure. The statute applies to loans for the purchase of property which is owner occupied (not to second mortgages and HELOCs). When a seller is seeking permission for a short sale in states which have anti-deficiency statutes, some lenders may require a personal guarantee from the seller that the seller will remain personally liable for the deficiency. In such a situation, a foreclosure may be more advantageous to the seller than a short sale in which the lender requires the seller to sign a promissory note for the deficiency. One outcome is universally certain, whether it is a foreclosure or a short sale, the transaction is going to have a negative effect on the seller's credit.

Tax Consequences

The Mortgage Forgiveness Debt Relief Act of 2007, signed on December 20, 2007, provides a tax break to homeowners whose mortgage debt is forgiven. The Act includes second mortgages for home equity loans. Under preexisting law, the debt forgiven by a lender, such as in a short sale, was generally taxable to the borrower as debt-discharged income. The Mortgage Forgiveness Debt Relief Act of 2007 forgives the payment of federal income tax on debt forgiven for a loan secured by a qualified principal residence, up to $2,000,000.00 for a married couple. This tax relief applies to debts discharged between January 1, 2007 and December 31, 2012. An insolvent debtor under this Act is one who immediately before the debt is discharged has liabilities far exceeding the fair market value of his assets. The Act only applies to cancelled debt used to build, buy, substantially improve the debtor's principal residence or to refinance debt incurred for those purposes. If a home is refinanced, then the home qualifies for the exclusion, but only up to the extent that the principal balance of the prior mortgage immediately before the refinancing would have qualified. Therefore, refinancing for additional monies beyond the principal balance of the old mortgage will not be forgiven.

Benefits to the Lender

You may ask why a lender would agree to a short sale. The savings can be huge when the lender avoids attorney's fees, a judicial foreclosure, and the hassles of statutory or equitable redemption. The property does not sit vacant and deteriorate, further reducing the value of the asset. Even if the lender can obtain a deficiency judgment, if the seller is already in financial straits, the lender can't squeeze blood from a turnip. Most importantly, the lender trades a slow moving or greatly depreciated asset for liquidity.

<u>This document contains disclosures that may work for Brokers in various states. These documents will not work in their entirety in California and in states where deficiency actions are not allowed. These forms are intended to give the legal practitioner ideas for information that may be useful for their Broker clients. However, the content will have to be compared to the laws of each individual state.</u>

<u>SHORT- SALE FORMS FOR BROKERS</u>

<u>Language for the contract addendum</u>

This Purchase Agreement is contingent upon acceptance and approval by the Seller and the Buyer of the contingencies and terms below.

A "Short Sale" occurs when a lender agrees to accept less than the amount owed to payoff a loan as an alternative to foreclosure.

I. <u>Approval of the Lender</u>:

1. This contract is contingent upon the following terms:

(a) the Seller's lender(s)and/or other lien holder(s) (collectively "Lender") approval of the purchase price, terms of the Purchase Agreement, and the HUD-l Settlement Statement;
(b) the Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness;
(c) the Lender's agreement to pay all Seller related closing costs reflected in the Purchase Agreement and estimated HUD-1 Settlement Statement, including prorated closing costs, i.e. taxes, interest insurance, etc., which may exceed the amount indicated in the estimated HUD-1 "Seller Total Settlement Charges";
(d) the Lender's satisfaction and release of the mortgage(s) and/or other lien(s) upon receipt of discounted payoff amounts with no contribution or funds out-of-pocket by Sellers at close of escrow;
(e) the Lender's agreement to stop any potential foreclosure actions upon short sale approval for 60 days from date of Lender's written approval or until the Purchase Agreement is terminated in writing by the Buyer or Seller; and
(f) the Lender's agreement to rescind the notice of default and report to credit agencies that debts were "paid as agreed" or "paid as negotiated" upon close of escrow.

2. If the total Sellers costs/disbursements/payoffs/fees, adjustments etc. exceed the price under the contract, then the Buyer(s) may void the contract without penalty, unless Seller voluntarily agrees to bring funds to closing in an amount that is sufficient to offset any deficiency owed by Seller at settlement.

3. Seller will not receive any proceeds at close of escrow.

4. Property to remain Active in MLS and will go pending upon acceptance of all lenders and lienholders. Until acceptance by Lender, Buyers and Sellers, Broker may submit additional offer to the Lender with approval of the Seller.

5. Lender has the right to sell this mortgage note which will not effect this contracted agreement.

6. This contract shall be subject to Lender’s short sale approval letter/condition(s) and its amendments or changes made thereto including any changes, or modifications made up to the time of closing or settlement. If those conditions cannot or will not be met, and/or the Seller refuses to sign their acceptance of the conditions, then either party may void this contract without penalty.

II. <u>Additional Short-Sale Contract Termination Provisions</u>

1. If Seller does not deliver written notice to Buyer that Lender has approved the purchase price and contract terms within 45 days from date of offer, either party may thereafter cancel the contract by delivering written notice to the other.

2. Closing must take place within 90 days from the date of offer, unless otherwise extended by the Buyer and Seller in writing.

3. Seller reserves the right to cancel this transaction upon any denial of short sale request from any Lender in regards to this transaction.

4. If the Seller files for Bankruptcy or the property goes to "sheriff's sale" before title is closed, then the contract shall be considered null and void without penalty to either party.

III. <u>Time periods</u>: (check one)

(   ) All time periods and all time sensitive contingencies, shall commence from the date Seller delivers written notice to Buyer that the contract has been approved by the lender and acceptance by the Seller of their terms and conditions.

(   ) All time periods under the contract shall commence from the effective date under the contract. Buyer and Seller agree to extend the closing date in the contract, not to exceed 30 days if the lender requires additional time to complete the short sale transaction.

IV. Acknowledgement and Agreements by Buyer:

Buyer acknowledges that the Lender is not a party to the contract, and therefore is not obligated to approve the contract or to effectuate a short sale involving the contract after approving the contract and its terms. Buyer further acknowledges that Seller is not liable for delays caused by Lender or costs and expenses incurred by Buyer under the contract if Lender does not approve the short sale or does not complete the short sale after Lender approves. In the event of escrow cancellation due to the actions of the Lender that will not allow a closing transfer or transfer of ownership to the Buyer, the Buyer will have no additional liabilities for cost involved going forward in the short sale. Buyer is responsible for the expenses of all inspections and due diligence, even if inspections required reactivating utilities. Buyer may not seek reimbursement for any expenses if the Lender does not approve the sale.

Buyer must remove all contingencies ____ days after acceptance of Purchase Contract by all lenders and lienholders.

If the Lender provides a closing date, that date is firm. Any extension from that date will require that the Buyer pay any additional pro-rated expenses and fees due to the extension

V. No liability to Parties and Brokers:

While the Buyer and Seller agree to make good faith efforts to close on or before the contract date, there shall be no liability to either party, the Brokers, the Real Estate Brokerage companies, the Qualifying Brokers, or their attorneys or agents, should title fail to close by said date or at any time thereafter. In addition to releases contained in the Purchase Agreement, Seller and Buyer will release, defend, indemnify, and hold harmless all Brokers, the Real Estate Brokerage companies, and the Qualifying Brokers, for any failure to close the transaction arising from or related to the short sale, from any liability concerning the sale of the property, and from the actions of the Brokers in attempting to negotiate the short sale.

______________________________	______________________
Seller	Date
______________________________	______________________
Seller	Date
______________________________	______________________
Buyer	Date
______________________________	______________________
Buyer	Date

What is a Short Sale?

WHAT IS A SHORT SALE? A "Short Sale" or "negotiated settlement" or "short pay" occurs when a lender agrees to accept less than the amount owed to payoff a loan as an alternative to foreclosure. If the property is worth less than the amount owed on the loan, then even if the Lender foreclosed and takes back the property, they know they are going to take a loss. We may be able to convince a lender that they will "do better" if they take less than what is owed now rather than taking the property back by foreclosure and trying to sell it later.

HOW LONG WILL IT TAKE? The Short Sale negotiation process is a lengthy one. It may take several weeks or more likely several months to get an approval. Many Lenders have several layers of bureaucracy, insurers, and investors that we will have to maneuver through in order to get a Short Sale approved. So it is important to be patient during this long process.

WHAT IF I HAVE OTHER LIENS? You agree to disclose to your Real Estate Broker all liens and/or judgments, on subject property both recorded and/or unrecorded. These can have a significant impact on the ability to sell your house. In the event you have personal liens filed or recorded against you which prohibit a transfer or sale of the subject Real Estate, you agree to pay for these liens. In the event of a foreclosure these liens may transfer and stay with you.

BUT MY HOUSE IS GOING TO FORECLOSURE, WILL I HAVE ENOUGH TIME? Maybe, maybe not. Just starting a Short Sale will <u>not</u> automatically stop a foreclosure. However, many times we can convince a Lender to stop the foreclosure to let us attempt to negotiate the Short Sale. So, while there is no guarantee, it does not hurt to try. Seller will hold Brokers, their Brokerage Firm, and the Qualifying Brokers, agents and assigns harmless, release, and indemnify them of any liability in the event they are unable to sell the property prior to the Sheriff's Sale Date.

ARE THERE ALTERNATIVES TO FORECLOSURE OR SHORT SALE? If you want to try to keep your home, you should also consult with a bankruptcy attorney about possible options through bankruptcy proceedings. I cannot give you legal advice.

CAN I KEEP TRYING TO FIND A WAY TO KEEP MY HOUSE? You are free to continue to pursue other alternatives to cure the default of this property, such as refinancing or securing personal loans during the course of this agreement. Should the default be cured by you prior to the opening of a purchase escrow, this contact will become void upon your notification to me.

CAN I STAY IN THE HOUSE? The key word in "Short Sale" is <u>sale</u>. The purpose of a Short Sale is to get the property sold. So you will be moving. This is not a program that can stop a foreclosure and allow you to keep the house indefinitely. It will be easier to sell the house if it is vacant, so you should make plans to move as soon as possible. You are urged to find alternative housing prior to any short sale or foreclosure, because delinquent payments, short sale or foreclosure will have a negative impact on your credit rating.

WHAT ABOUT MY CREDIT RATING? Short sales or foreclosures will have negative effects on your credit rating which may make it difficult for you to qualify to rent an apartment or house. If you want to know the different negative effect effects of the various actions, you must consult a credit professional.

HOW DO I KNOW THIS WILL WORK? You don't. We cannot, have not, and will not make any promises to you that this will work. Once you missed a payment, the Lender is in charge and can proceed to foreclosure if they want to. But we know they do not want to, and we can present alternatives to the Lender that they often want to accept rather than foreclose. NO PROMISES are being made as to whether or not the Lender will accept a Short Sale – they may or may not.

WILL I GET ANY MONEY FROM THE SALE? NO. A universal requirement of Lenders in granting a Short Sale is that the borrower will not get any proceeds from the sale of the property. The Lender is going to take a loss on your loan – they are not going to let you get any money.

WHAT HAPPENS IF THIS DOESN'T WORK? Your home will likely go to foreclosure. A Short Sale is something we try after you have exhausted other options.

WHAT IS A "RELEASE"? A Lender may offer to "release" its security interest against the property in exchange for less than the total amount of the note. A release will allow the property to be sold without paying off the obligation of the note. However, the note is <u>not satisfied</u>. A*dvantages:* This successful Short Sale will allow the property to be sold and thus avoid a foreclosure. *Disadvantages:* The remaining debt on the property (sometimes called a "deficiency") still exists. You are still personally liable for the note – in other words – you still owe the money for principal, interest and fees. *Reality:* A Lender is more likely to pursue the deficiency if you have other significant assets. If you don't try a Short Sale and the property goes to foreclosure, you will most likely have a deficiency anyway.

WHAT IS A SATISFACTION? A Lender may agree to accept less than it is owed as complete and total satisfaction of the note and release its lien against the property. *Advantage:* Your note and obligation to the Lender are satisfied for less than you owe. When the property is sold, the debt is paid off completely. *Disadvantage:* You may have some tax consequences that you should discuss with your tax advisor due to the fact that the lender is making money you owe disappear, and the IRS considers that to be a gain to you. You should consult a tax advisor as soon as possible. I cannot give you tax advice. Sometimes our negotiations are successful in obtaining a satisfaction. Sometimes all we can get is a release.

HOW CAN I HELP? The Lender will require a review of a financial package that usually includes: two months' bank statements, two months' pay stubs, two years IRS tax returns and other information. The leading cause of delay and even denial of our offer to the Lender is caused by the Seller failing to deliver these items in a timely manner. To help us succeed, please find as much of this information as you can right now and complete the attached "Financial Worksheet" – this will help us work faster and increase our success.

WHAT WILL THE PUBLIC KNOW ABOUT MY FINANCIAL DISTRESS? We will advertise the property using, but not limited to, the phrases "In Default" "In Foreclosure" "Submit All Offers" "Seller Desperate" "Subject to Short Pay" "Subject to Restrictions" and "Seller highly motivated". This will help us to generate offers quickly. We will also disclose to the Buyer the amount of the loans and liens on the Property so that the Buyer can evaluate whether the Buyer wants to proceed with an offer on your property.

Acknowledged this _________ day of _____________, 200__.

SELLER:	BUYER:
______________________________	______________________________
Print Name:____________________	Print Name:____________________
______________________________	______________________________
Print Name:____________________	Print Name:____________________

Commission Stipulation Addendum

The parties hereto acknowledge and agree that the current debts on the property exceed its value and that this Purchase Agreement is specifically contingent upon Seller's Lender approval of a reduced payoff "Short Sale". In the event that a Short Sale at the Purchase Price is not approved by Lender, this Agreement shall be null and void and no Real Estate Commission shall be earned or due.

In the event the Lender approves a Short Sale, Real Estate Brokers acknowledge and agree that any commission paid for this transaction must be approved by the Lender as part of the Short Sale negotiation. Some Lenders approve full commission as set forth in listing agreements, while others limit the payment of real estate commission. Since this transaction is contingent upon the Lender's approval of a Short Sale, it is therefore impossible to determine the amount of real estate commission that a Lender will approve.

If Buyer is represented by a Real Estate Broker, Buyer's Broker agrees to accept 50% of the total broker commission and NMGRT agreed to by the Lender. This Stipulation supersedes and nullifies any previous representations or agreements regarding the amount of commission to be paid to the Brokers. Brokers further agree that they will not seek any additional funds from the Seller or Buyer as compensation for their services.

Seller: ________________________________ Date: ________________

Buyer: ________________________________ Date: ________________

Real Estate Agent for Seller:

____ Date: ________________

Real Estate Agent for Buyer:

____ Date: ________________

Qualifying Broker for Real Estate Agent for Seller:

____ Date: ________________

Qualifying Broker for Real Estate Agent for Buyer:

____ Date: ________________

AUTHORIZATION

Date: ________________

Lender of Record:

____

____

Re: Loan Number: ____________________________

Property Address: ____________________________

____

____

Social Security No: ___________________________

____

You hereby have my express permission to discuss any and all information regarding the above referenced loan secured by the above referenced property on my behalf with the personnel and staff of ______________ ______ who represents me/us in the sale of our property referenced above including but not limited to the name of the investor and investors loan number, mortgage insurance company and their appropriate reference / file number.

Neither ______________________, it's brokers nor agents have made any guarantees or promises as to the outcome of my/our agreement with the Sellers and are acting solely as real estate brokers and in no way have ownership or title to the above mentioned property.

Seller / Owner: _________________ Seller / Owner: ____________________

ADDENDUM TO THE LISTING AGREEMENT

Seller represents that the sales price and present market value of the Property are less than the outstanding principal loan balance(s), back interest and/or penalties. Seller acknowledges that in the event of a "Short Pay" or "Discounted Payoff," all transactions will be contingent upon the lenders and/or any lienholder's (collectively "Lender")written agreement to discount the payoff allowing all closing costs to be paid and to cooperate with the sale of the Property.

Seller agrees to cooperate with the Broker and agrees to the following terms for the good and valuable consideration of the Broker's efforts to sell the overly indebted property identified in the Listing Agreement, as per date of execution by all parties:

1. In the event of a "Short Pay" or "Discounted Payoff," you will receive no money from the sale of your home, and your Lender may sue you personally for any deficiency owed on your loans, interest, and expenses, even after closing.

2. You will be required to provide me with all information requested by your Lender to approve a short sale. These documents include, but are not limited to:

    A. Completion of a financial statement which may also include presentation of bank statements or recent pay stubs.
    B. Disclosure of past years tax returns.
    C. Purchase of an appraisal.
    D. Letter as to why the default situation exists: i.e., loss of employment, disability, death, divorce, etc.
    E. Information about your employment and other assets.

3. Seller understands that many lenders have various workout programs that may allow the Seller to keep their home, but the Seller still wishes to list the home for sale with Broker.

4. Seller understands that there are legal and income tax issues when a property is sold "Short Sale." Seller is instructed to contact legal and tax professionals to discuss the issue. Seller acknowledges that Broker is not giving legal or tax advice nor is said Broker liable for any legal, credit, or income tax consequences.

5. As the following items can have a significant affect on negotiations, Sellers agree to disclose to Broker and Buyers all liens and/or judgments, on the Property both recorded and/or unrecorded.

6. In the event Sellers have personal liens filed or recorded against them which prohibit a transfer or sale of the Property, the Sellers agree to pay for these liens. In the event of a foreclosure, these liens may transfer and stay with the Sellers.

7. Brokers make no promises, commitments or warranties as to the outcome or results from any Lender negotiation. Each situation has its own unique factors which prohibit anyone from making any type of commitment or promise of a specific outcome, result or final net proceeds figure.

8. In the event of a "Short Pay" or "Discounted Payoff" the amount of the discount shall include all closing costs and Real Estate Broker's commissions.

9. Seller understands he is presently in foreclosure and are allowing Brokers to sell their real property. Seller understands that Brokers will use their best efforts to secure a Buyer for the property.

10. Seller will hold harmless Brokers, their Real Estate Brokerage Company, and their Qualifying Broker and assigns, and defend, indemnify, and release them of any liability in the event they are unable to sell the property prior to foreclosure and for any activities related to the short sale and negotiations with the lender.

11. Seller authorizes Broker to advertise the property using, but not limited to, the phrases "In Default" "In Foreclosure" "Submit All Offers" "Seller Desperate" "Subject to Short Pay" "Subject to Restrictions."

12. Seller understands that he is free to continue to pursue other alternatives to cure the default of this property, such as refinancing or securing personal loans during the course of this agreement. Should the default be cured by the Seller prior to the opening of a purchase escrow, this contact will become void upon notification of the same by Seller to Broker.

13. Seller further agrees to hold their Broker, their Real Estate Brokerage Company and their Qualifying Broker, and assigns harmless, defend, indemnify, and release them against any loss of real property, personal property and/or money suffered.

14. In consideration for Broker's efforts required by listing a short sale, including negotiations with lenders and the potential of a decreased commission, Seller agrees that Broker may terminate this Listing Agreement at any time. Such termination will not be a breach of any legal or regulatory duty which Broker owes to Seller.

Seller	Date
Seller	Date
Broker	Date

SHORT VERSION (PRETTY BARE BONES)

G **SHORT PAY** (if checked): This Agreement is contingent upon Seller's receipt of written consent from all existing secured lenders and lienholders ("Short Pay Lenders"), no later than 5:00 P.M. on _________________ (date) ("Short Pay Contingency Date"), to reduce their respective loan balances by an amount sufficient to permit the proceeds from the sale of the Property, without additional funds from Seller, to pay the existing balances on loans, real property taxes, brokerage commissions, closing costs, and other monetary obligations the Agreement requires Seller to pay at Close of Escrow (including, but not limited to, escrow charges, title charges, documentary transfer taxes, prorations, retrofit costs and repairs). If Seller fails to give Buyer written notice of all existing Short-Pay Lenders' consent by the Short-Pay Contingency Date, either Seller or Buyer may cancel the Agreement in writing. Seller shall reasonably cooperate with existing Short-Pay Lenders in the short-payoff process. Buyer and Seller understand that Lenders are not obligated to accept a short-payoff and may accept other offers, and that Seller, Buyer and Brokers do not have control over whether Short-Pay Lenders will consent to a short-payoff, or any act, omission, or decision by any Short-Pay Lender in the short-payoff process. Seller is informed that a short-pay may create credit or legal problems or may result in taxable income to Seller. Seller may present to Short-Pay lender any additional offers that are received on the Property. Seller is advised to seek advice from an attorney, certified public accountant or other expert regarding such potential consequences of a short-payoff. Seller may still personally owe a deficiency on any loans if the Lender does not provide Seller with satisfaction of the notes.