

President's Message

By HMLS President Susan Bowers

Short sales and the complex transactions they create are topics reverberating throughout the real estate industry. Limited experience on the part of real estate professionals and lenders, as well as an absence of a uniform process for short sales, has added to the complexity. It's a topic that was discussed at length at the National Association of REALTORS® Mid-year meetings in May and here at Heartland MLS and KCRAR in July.

A KCRAR Short Sales Task Force met July 1 and was chaired by KCRAR President Chris Collins. As a member of the Task Force, we sought to define the challenges and brainstorm possible solutions or remedies. We agreed that we could all use more education on the topic, so look for classes, articles and online content about negotiating short sales. Look for pointers in the KCRAR newsletters about working with buyers, sellers and lenders. We may also establish volunteer mentoring resources. Watch for announcements as plans take shape!

As short sales were becoming more common in 2008, HMLS established a **Policy on Short Sales**. And last month your Board of Directors reviewed our Policy and decided to add new verbiage defining short sales.

The existing Policy (Section 5.1 in the Rules & Regulations) is this:

- Participants must disclose potential short sales when reasonably known to the listing Participants. When disclosed, Participants may, at their discretion, advise other Participants whether and how any reduction in the gross commission established in the listing agreement, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating Participants.

The additional language just added defines a short sale as:

- a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies.

When the HMLS Board of Directors approved the Policy above, the Directors also stipulated that this notification must be placed in the **Showing Agent Info field** on MLS listings. Later a policy was added allowing placement of further references to a short sale in other Remarks fields at the discretion of the listing agent, but **only after first placing notice of a short sale in the Showing Agent Info field**.

As with all of the data, it's important that all Participants and Subscribers follow a uniform process. Here are points for all of us to remember and adhere to:

1. Short sales and potential short sales must be disclosed on the MLS property listing data, when known.
2. Listing agents may advise other agents that there may be a change in the commission offered because it is subject to lender approval.
3. Notification of a short sale or possible short sale must be displayed in the Showing Agent Info field. Here are examples of wording that could be used:
 - a. *“Short Sale,” “This is a potential short sale” or “This is a short sale and all offers are subject to lender approval.”* (This last sentence puts everyone on notice of the short sale and also reminds them that the lender must approve all offers, including the compensation/commission.)
4. Additional wording related to a short sale may be placed in the other Remarks or Directions fields, but must be in compliance with other HMLS guidelines for Remarks/Directions wording placement. For example, no reference may be made to any commission or compensation except in the Showing Agent Info field.
5. HMLS has included references to a “short sale” on the non-compliant data list (Guidelines for Remarks & Directions Fields) and failure to include the short sale notification in the Showing Agent Info field is subject to fines as stated in Section 7.3 of the rules.
6. Short sale approval by a lender usually does not occur within three business days; however, HMLS does require that the listing be placed in a contract status within three business days of acceptance signatures by the buyers and sellers, per advice from legal counsel. So remember that when the contract is signed by the buyer and the seller, the listing should be changed in HMLS from “Active” to either “Pending” or “Show for Backups.”

The industry is continuing to work out processes and improve our services for negotiating short sales. As this issue of Realeyes was being produced, the Obama Administration was due to release short sales guidelines and standard forms through the Making Home Affordable Short Sales Program. For more information, go to http://www.realtor.org/realtors/basics_short_sales and watch for more information on this topic from HMLS, KCRAR and NAR.

Have a great month!