SELLER OPTIONS

i. Keep the Property. If the seller is unhappy that the property value is less than the loan balance, but is otherwise under no pressure to sell, keeping the property can be the best solution. Even if there is some short term financial distress, it need not result in loss of the property. Ask if there are family or other resources that can carry the seller through if there is some financial stress. Because of the lack of equity, a refinance may not be possible, but be aware of any special "hardship refinance" programs a particular lender may offer. These change frequently. If the sellers must move, could they rent the property (even at a negative cash flow) and sell it later in a better market?

ii. Sell the Property and Bring Cash to Close Escrow. This might not sound appealing, but it can be a good choice for sellers who are in a financial position to pay a deficiency from other liquid assets. This approach avoids the credit damage that even a successful short sale will cause. An alternative in some circumstances is for the seller to agree to convert any deficiency into a personal note, or a note on another property owned by the seller. REALTORS® should always advise sellers to consult appropriate legal and tax professionals before considering such a note.[2]

iii. Attempt a Workout with the Lender. Lenders are increasingly interested in helping financially distressed homeowners stay in their homes. In some cases, they have been willing to reduce or roll back interest rates, or reduce the allowable payment, to help sellers avoid short sales and foreclosures. It is not generally advisable for the agent to take the lead in representing a property owner in a workout. Workouts are not real estate transactions. They are complex contract modifications, and to date, relatively few homeowners in distress have been able to come to a permanent agreement with their lender. The homeowner should be advised to consult an attorney if this is the option they choose. Note that new laws and emerging policies and procedures by Fannie Mae, Freddie Mac, the VA, the FHA, and private lenders make the workout option more complex, but also present greater opportunities for financially distressed homeowners.

iv. Offer the Lender a "Deed in Lieu of Foreclosure". If the seller owes more money than the property is worth, is unable to make payments, and is likely to lose the property in foreclosure in the near future, offering to trade the property to the lender in exchange for the cancellation of the note might make sense. This approach is more likely to be successful in states with very long foreclosure timelines. The lender can obtain the property much sooner and may feel that the mitigation of loss is worth the cancellation of the note. Like workouts, this is a contract negotiation, and should be undertaken only after consulting with an attorney.

v. Offer the Lender a "Short Sale"[3]. We will discuss the short sale process in greater detail below. Be aware that, on occasion, lenders have "approved" short sales that included personal notes for the deficiency, and unwitting sellers have signed the notes without a full **understanding of the consequences.**

The elements of a successful short sale are generally these:

- **The property is worth less than is owed.**
- **The seller has some hardship that makes it impossible or extremely impractical for the seller to keep the property.**
- **The seller is cooperative and willing to work with a real estate broker to package the short sale.**
- **The lender is contacted and expresses willingness to entertain a short sale.**
- **The property is listed, with appropriate caveats and protections for the seller, properly priced, and effectively marketed.**
- **The lender is presented with an offer, accepted by the seller, along with a completed short sale package and narrative explaining why the short sale is necessary.**
- **The lender approves the offer and escrow closes as usual. No proceeds go to the seller.**

vi. Allow the property to go into foreclosure. Usually this is the worst option. It does the most damage to the seller's credit. There are circumstances, however, in which it might make sense for the seller who has no other resources with which to obtain housing to simply stay in the property as long as possible.