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SORTING OUT SHORT SALES:

USING PRELIMINARY TITLE SEARCHES TO DECIDE WHEN TO TAKE LISTINGS OR MAKE OFFERS ON SHORT-SALE PROPERTIES

With so many sellers owing more on their mortgage loans than their properties are worth, and with buyers looking for good deals on distressed properties, most Realtors® find themselves facing short-sale situations—either from short-sale sellers looking to sign a listing agreement with them, or from buyers looking to make an offer on a short-sale property. But, as Realtors® who have handled them know, short sales require a great deal more time and effort than regular listings, and they ultimately depend on the sellers' lender(s) approving the deal – a decision lenders generally make only after weeks or months of work by Realtors®.

So, in a market full of potential short sales, being able to identify – up front – those short sales that have the greatest chance of gaining lender approval can be crucial. Below, we describe how you can use preliminary, up-front title searches as a sorting tool to identify the most promising short-sale properties, while avoiding those with little chance of success.

HOW UP-FRONT TITLE SEARCHES CAN HELP:

Knowing certain facts about a short-sale property up front can help Realtors® choose which short sales are most likely to be successful. For example:

- *Just how “upside-down” are the sellers?* No one can predict what a lender will do with a given loan. In general, though, the *greater* the difference between what the sellers owe and what the property is worth, the *lower* the likelihood that the deal will close.
- *Are there multiple mortgages?* If sellers will be able to offer second-mortgage lenders very little or no money, these lenders will have little incentive to approve the sale.
- *If there are multiple mortgages, who are the lenders?* It may be easier for sellers to obtain approval on multiple mortgages if only one lender holds both. However, at very large lenders, first mortgage loans and equity line loans are originated by different divisions,

which must meet separate profit goals that often do not take into account the lender's overall profitability. This structure sometimes causes these divisions to fight over the short-sale proceeds and to disapprove the short sale if any one division does not receive a large enough share of those proceeds.

- *Are there other liens against the property?* Even if there is only one mortgage, sellers may have other liens that will have to be paid out of the sales proceeds as well—e.g., judgments against one or more of the sellers, construction claims of lien, tax liens, etc.

Performing a basic title search in the land records of the county where the property is located can help answer these questions. Realtors® can then decide, early on, which short-sale sellers to sign listing agreements with, and which short-sale listings to show their prospective buyers.

USING ONLINE LAND RECORDS:

Full title searches are complex, and real estate attorneys and other title agents rely on special databases and title plants to get a complete picture of a property's title. To perform a preliminary title search for a short-sale property, however, Realtors® can turn to the public land records that most counties make available online.

For instance, in Manatee County, all land records filed after 1978 are available on the Manatee County Clerk of Court's website, www.manateeclerk.com.¹ This site allows Realtors® to do a basic title search, using the sellers' names, for any mortgages, judgments, and other lien documents recorded against the property. Specific instructions for using the Clerk's website and tips on the type of information to look for are set out in the attached "Using the Clerk of Court's Website" flyer.

In addition, the Manatee County Property Appraiser's website, www.manateepao.com, can provide you with information to make your search easier and also more complete.² This site may be particularly helpful when: (A) you have only an address for your property and need to find the sellers' correct names for your search; (B) you have only your sellers' names, which are fairly common, and you need the property's legal description and the date the sellers purchased it so you can limit your Clerk search to documents recorded after that time and ignore references to similar names if they do not refer to the correct property; or (C) you want to be sure that you have the names of *all* sellers (and you do need all of them) for your search. Specific instructions and tips for using the Property Appraiser's site for this purpose are set out in the attached "Using the Property Appraiser's Website" flyer.

¹ The Sarasota Clerk of Court's website is www.sarasotaclerk.com.

² The Sarasota Property Appraiser's website is www.sarasotaproperty.net.

SOME IMPORTANT CONSIDERATIONS:

We hope that performing this sort of preliminary title search will help you avoid some of the frustrations of listing and showing short-sale properties, but when using this process you should remember these important points:

- This sort of search is *not a guarantee* and *will not* give you the complete picture regarding title. Your sellers and buyers should not expect you to act like attorneys or paralegals in performing your search or evaluating the results, and ***you should never use your search to give an opinion on the status of a property's title or of the sellers' mortgage.*** Instead, this search is designed to help *you*, as Realtors®, decide which short-sale properties have the better probability of obtaining lender approval for closing, so that you can use your time listing and showing short-sale properties more efficiently.
- When you find mortgages on the property, you should consider:
 - A search will bring up all mortgages given by a seller after 1978, so you will have to determine which mortgages affect your particular property (see the attached flyers for more information on reviewing and limiting your search results). Also, you may be able to eliminate some of the mortgages by reviewing your search for subsequent satisfactions.
 - Lenders sometimes fail to file satisfactions, or they may take a long time to do so. If you see a new “second” mortgage with a loan amount similar to that of the first but recorded some time later, be aware that the “second” may actually be a refinance, and that the “first” may already have been paid off.
 - The recorded mortgage shows only the original principal balance of the loan. Particularly where you have an older mortgage, the current balance may be significantly lower.
 - For lines of credit, the recorded mortgage shows only the amount of credit *available* to the seller. The account may be fully drawn, or not drawn at all. (If the sellers never used the line of credit, they may even have forgotten that they have it.) You will need to ask the seller for the balance currently owed. Otherwise, in these times, the best guess is probably that the line is fully drawn.
- When looking at judgments, construction claims of lien, tax liens, and other lien documents, consider the following:
 - Not all such documents successfully create liens against real property. Whether a particular document *is* a lien is a complex determination that involves considering the date and contents of the document, whether it is a certified copy, whether the seller is married, and whether the property is the seller's homestead. You are welcome to ask us whether a particular document will be a lien on the seller's property.
 - When you limit your search to documents recorded after the sellers purchased the property, there is the possibility that documents recorded before that purchase could exist as liens, as well. This is unlikely, however, as the sellers' lender would probably have required any such liens to be satisfied at the time the sellers purchased.
- Remember that documents can sometimes be indexed improperly on the Clerk's website. By looking for documents by seller's name only, a Clerk's search is not as thorough as the

search a real estate attorney or other title agent performs, which reviews documents not only by seller's name but also by legal description.

- Finally, only you can decide when a particular listing is worth pursuing. When deciding whether to take a short sale listing, your decision might be influenced by many other factors besides the legal ones described here. For instance, is the seller willing to list the property at a price low enough to sell it in the current challenging market? Does the property have unique or special features? What is the property's condition? Are there tenants on the property, and are they opposed to a sale? Does the seller expect you to market the property aggressively, or will you simply be able to list it and put up a lockbox?

If you have any questions about a particular document or a particular property, *please call one of our real estate attorneys—Garret Barnes, Adron Walker, Bob Hoonhout, Jeff Goethe, or Jennifer LaRocco—at 741-8224 for an individual analysis.*

Again, *the review process described here is not designed to take the place of a full title search* once a contract is in place. What it should do is help *you*, as Realtors®, to get an idea of how likely a successful short sale is for a particular property. We hope that it will be a tool for you to use in getting the most out of this challenging short-sale market by helping you to decide: (1) when to take a listing for a particular short-sale property, and (2) how to advise your buyers on when to make an offer on a short-sale property and when to move on.

If you have any questions about using up-front title searches, or short sales in general, please do not hesitate to call us at 741-8224.

Sincerely,

Garret T. Barnes

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SORTING OUT SHORT SALES

USING THE MANATEE COUNTY CLERK OF COURT'S WEBSITE:¹

1. Go to www.manateeclerk.com.
 - **Tip:** Remember, if you have only a property address, a common seller name, or a seller owning several properties, start by using the Property Appraiser's website to obtain the exact names of all the sellers, differentiating middle initials (if any), the date the sellers purchased the property, and the property's correct address and legal description. (See the Property Appraiser search handout for tips on using this site.)
2. Select the "Official Land Records" box on the left-hand side of the screen.
3. Click on the link to acknowledge the Clerk's disclaimer and enter the site.
4. Type your seller's name into the "Party Name / Business" box. Then click "Search."
 - **Tip:** You should limit your search by date to those documents recorded after the seller purchased the property. Date limits will be especially helpful where your seller has a common name, or your search produces many results. **Caution:** When you limit your search to documents recorded after the sellers purchased the property, there is the possibility that documents recorded before that purchase could exist as liens, as well. This is unlikely, however, because the sellers' lender would probably have required such liens to be satisfied at the time the sellers purchased.
 - **Tip:** You should be aware that documents are indexed based on the exact way a name appears within the document. So, for example, if your seller's first name is James, but you think he may have judgments recorded against "Jim," you will have to search both names. If your seller's last name is not too common, you may wish to search by last name alone, or, at most, include only the seller's last name and first initial.
5. *Now you are ready for your primary purpose—reviewing your search results for mortgages, judgments, claims of lien, tax liens, and other documents that may create liens on the sellers' title and will give you an indication of how much the sellers owe on the property.* (You may wish to print out the results page so you will have a hard copy on which to make notes.)
 - **Tip:** Search results will be sorted alphabetically, with more recent documents listed first.
 - **Tip:** The results column labeled "Type" gives you the abbreviation for the type of document each entry is. If you hold your cursor above the "Type" designation for a particular entry, a box will appear that tells you what that abbreviation represents. While the Clerk uses a

variety of abbreviations, some of the most common types that create liens (or affect existing liens) are:

- o “MTG”—indicates a mortgage;
 - o “SAT” and “PR”—indicate satisfactions and partial releases (terminations) of mortgage;
 - o “ASG”—indicates an assignment, including assignments (transfers in ownership) of mortgages;

 - o “MOD”—indicates a modification, including modifications of mortgage;
 - o “JUD” and “CCJ”—indicate judgments and certified copies of judgments;
 - o “LP”—indicates a lis pendens, which tells you that litigation (such as a foreclosure) is pending against the property;
 - o “LN”—indicates a lien, including federal tax liens, claims of lien, and others.
- **Tip:** Other types you may see—which do not create liens but which you may see frequently in your search results—are:
 - o “D”—indicates a deed;
 - o “AFF”—indicates an affidavit;
 - o “EAS”—indicates an easement; and
 - o “NOC”—indicates a notice of commencement. (*Note:* A notice of commencement, by itself, does not create a lien on real property. A notice that is less than one year old, however, tells you that construction is being done on the property, which may later give rise to a construction lien.)

 - **Tip:** If your seller owns more than one property or has a common name, you may find that your search returns a large number of documents, including multiple mortgages under the seller’s name or similar names. **To help you sort through multiple search results, use the results column labeled “Legal Description.”** This column will tell you which property or prior recorded document a particular search result refers to.
 - o To get a quick legal description for your property, visit the Property Appraiser’s website. (See Step 8 in the Property Appraiser search handout for more information on finding the Property Appraiser’s “Short Legal Description.”)
 - o If the “Legal” column contains a reference such as “OR 1791 PG 6504,” this is describing the Official Records Book and Page location of a prior document that the current document is modifying or referencing. To decide if the current document affects your property, look at the results columns labeled “Book” and “Page”—which show each document’s Book and Page location in the County’s Official Records—to locate the original document and review *its* “Legal” column.

 - **Tip:** When looking at satisfactions, modifications, or assignments of mortgage, the “Legal” column should reference the Official Records Book and Page of the original mortgage. This is a quick way to eliminate from your search mortgages that have been satisfied. (Be sure to distinguish this from the “Book” and “Page” columns that show where the satisfaction itself is located.)

 - **Tip:** A document will occasionally be indexed more than once under a particular seller’s name. For example, if a seller holds property in a trust, his name may be indexed individually and again as trustee. If two documents appear to be the same, look at the columns labeled “Book” and “Page.” If multiple search results have the same Book and Page, they are all the same document, and you can eliminate any repeated references.

6. Once you have identified the relevant mortgages (or other liens), you will want to examine them to determine the *amount* of the liens on the sellers' property. To view a particular document, click on the document icon in the left-hand column next to the document you wish to view.
7. A screen will appear displaying the first page of the document in .pdf format. If there is more than one page, click on the "View All Pages" button.
8. To print a document, click on the printer icon in the gray bar directly above the document. (Do not use your web browser's print feature.)
9. Review the document to determine the amount of the lien it creates.
 - *Tip:* When reviewing a mortgage, check its *original principal balance* (to verify how much the seller originally owed) and *legal description* (to verify that the mortgage affects your seller's property).
10. Click the "Back to List" button to return to your search results and view any other relevant documents.
11. Click on the "Back to Search" button to repeat these steps for every seller. *Remember*, a judgment or lien against any one seller *may* be a lien against the entire property, so do not rely on a search of just one name.

¹ The Sarasota Clerk of Court's website is www.sarasotaclerk.com.



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USING THE MANATEE COUNTY PROPERTY APPRAISER'S WEBSITE: ¹

1. Go to www.manateepao.com.
2. Click the "Property Search" tab at the top of the screen.
3. Click the "Agree" button to accept the Property Appraiser's disclaimer and enter the site.
4. You can search by: (a) owner name (if known); (b) property address; or (c) account number (the same as the parcel or tax identification number). Click the light-blue tab above the blank information boxes to select the way you would like to search, enter the information as instructed, and click "Search."
5. The site will list all properties matching your search (note: a property may be listed more than once if you search by address or account number, because the site will display one result for each owner). Click on the property that interests you.
6. At the top of the page, you will see the property's parcel identification number, *property address*, and the name of *one* of the sellers.
7. Scroll down to the bottom of the page to the area labeled "Owners." A small yellow box on the right-hand side will tell you if the property has multiple owners (e.g. 1 of 2; 1 of 3, etc.). If there is more than one, click on the small blue arrow to the right of the box until you have seen all the owners' names.
 - ***Tip for listing brokers:*** This process helps you identify all the owners who will need to sign your listing agreement.
 - ***Tip for transactional/buyer's brokers:*** This helps you to identify all the owners who will need to sign your buyer's contract.
8. Next, on the same page, look at the "Short Legal Description" above the "Owners" and "ID Subblock" sections. This should provide you with enough of the property's legal description to compare to the search results from your Clerk search so you can eliminate other properties the seller may own.²
9. From the boxes on the upper left-hand side of the screen, select "Sales." This page shows you the date (also the price and recording location) of the last deed. This information will allow you to limit your Clerk search to documents recorded after the seller purchased the property.³

- **Tip:** If the “Grantor” and “Grantee” names listed for the sale are the same, or the sales price is nominal, this last transaction probably does not reflect when the sellers originally purchased the property (e.g. it may be a conveyance into a trust or LLC, as part of a divorce, etc.). In these cases, use the small blue arrow in the upper right-hand corner to look at previous sales. Keep going back through the sales until you find the sale where the sellers *first* appeared as owners (that is, as “Grantees”) and paid a reasonable purchase price.

Additional Information:

- ¹ The Sarasota Property Appraiser’s website is www.sarasotaproperty.net. You should note that, while Sarasota County’s Property Appraiser’s website contains much of the same information as Manatee County’s, it is structured differently. This handout describes Manatee County only.
- ² **Warning:** The Property Appraiser’s website also has a page called “Full Legal.” You should be aware, however, that even this “Full Legal” page generally contains abbreviations and even omissions (e.g., it may not list the Section, Township, and Range in which a non-platted property is located). So, if you are relying on either the “Short Legal Description” mentioned in Step 8 or the “Full Legal” page to provide the legal description for your sales contract, use caution. (Also, see Note 3, below, for information on how to obtain the full legal description.)
- ³ If you would like to have the property’s full, unabbreviated legal description for your sales contract, you can use the recording information from the “Sales” page to do a “Book-Page” search with the Clerk.
 - On the Clerk’s website, follow Steps 1–4 from the Clerk search handout.
 - In Step 5, select “Book-Page Search” instead of “Name Search.”
 - Enter the Book and Page information from the Property Appraiser’s Sales page, and click “Submit.”
 - Use Steps 9–11 to view and print the sellers’ deed.