

SHORT SALES

FLIPS

THAT MAY

BE A JOY

Working with investors who want to snap up short sales to flip them? Get the facts first. BY SYLVIA GOLDEN NORRIS

**I**n today's market, it's not uncommon to become involved with investors who want to use a flip to make a profit. These transactions are not bad or illegal, but they do require you to be aware of the special circumstances these transactions entail.

**Here's a brief list of short sale flip information you should keep in mind when working with investors.**

### **1. Check Ownership**

The seller's name on the contract should be the name in the tax rolls, in the deed and in the property appraiser's records. Because flips are often set up with the use of a land or family trust, you'll see the sales contract in the name of the land trust and the title in the name of the seller.

Real estate professionals should get a copy of the document that shows who is the legal owner. Sometimes there is a lapse between the time the document is executed and when it's reflected in the public records. The trustee of the land or family trust is often the investor, with the seller having a beneficial interest. Don't be shy about asking for a copy of the document showing ownership, to include the deed into the land/family trust.

Remember the MLS requires you to be able to show you have the owner's consent to list the property. This initial step is important if you're working with the end buyer or if you have the listing. Your job is to ask when the trust was established and why.

This is the time to make sure you get consent from the seller and the investor to disclose the flip to any and all lenders involved and the end buyer.

### **2. Contract Language**

If you're the selling/cooperating agent for the end buyer, watch out for certain language in the sales contract or any addenda. The trigger language might include, for example, "the investor will take title to the property just prior to closing" or "a simultaneous closing will take place or there is no deal." These provisions should alert

you to a short sale flip. Some lenders for your end buyer will not fund this deal because the investor has not had title to the property for a sufficient period.

If you're the listing agent, and if the sales contract being used is unfamiliar to you, insist that the seller have it reviewed by legal counsel. Many investors require the seller to use their version of the Short Sale As-Is contract, which includes language that is not in the seller's best interest and is geared to the investor's interest with little or no risk.

Further, short sale approval letters will likely contain the conditions under which the seller's lender will forgive the loan.

Lenders now are stating that if there's fraud in the transaction, the loan forgiveness is waived and the note and mortgage are in full force and effect. This is a very good reason to make sure lenders know what the deal is on both ends.

### **3. Loan Issues**

How long has title been in the seller's name? Because lenders require the seller to have had title for a certain minimum period (in some cases, 30, 90 or 180 days) if they are to make a loan to the end buyer, your end buyer will appreciate knowing how to spot this issue. Also, if you fail to bring this to your buyer's attention and the loan is given, your end buyer may find that an unfavorable title exception has been put into the owner's policy.

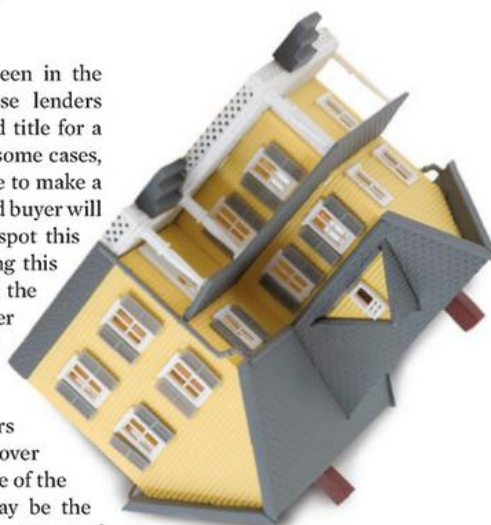
Finally, if your end buyers pay for inspections and discover they can't get the loan because of the seller's true identity, you may be the person they look to for reimbursement of

#### **AT A GLANCE**

Watch out for certain trigger language in a short sale transaction contract.

Disclose a flip to all parties to the transaction.

When property is being flipped, the transaction must be arm's length to avoid legal and ethical issues.





these costs. Be sure to ask how long the investor has owned the property.

**4. Assignment/Option**  
Does the deal involve an assignment? If so, for a buyer to qualify for an FHA loan, the seller must be the owner of record and may not be someone who has an assignment. This means that if the name of the legal record owner doesn't match exactly in the public records and the tax records, no loan will be issued. An option contract will not meet this standard either.

**5. Title Issues**  
Title companies and their underwriters are now requiring full disclosure to be made in writing and received by the underwriter for title issuance to the end buyer. These written acknowledgments must be received from both the forgiving lender and the end buyer's lender. Regardless of your role in the transaction, make sure you have the consent of all parties to disclose the flip and other lender-required information, which can be easily addressed in an addendum to each of the sales contracts.

**6. MLS Rules and the Code of Ethics**  
Not all MLSs allow participants to enter an assignment of contract or an option contract into the database. Failure to comply with the rules may result in a fine. MLSs require you to show documentation stating that you have the owner's consent to list the property. Remember that even if the property is not listed in the MLS, you still must abide by the Code of Ethics and represent a true picture of the transaction.

**7. Be Aware of Conflicts**  
If an investor offers to buy an interest in a property you have listed, remember that you have an obligation to the owner/seller and that you're still required to bring all offers that you receive to the record title owner/seller, unless the listing agreement or the seller advises you differently.

**"If the investor gives you any compensation, you have to reflect it on the HUD-1 Settlement Statement or disbursement statement. Remember—if it's not in writing, it does not exist."**

— Attorney Sylvia Golden Norris



To avoid any conflicts of interest regarding the amount the lender accepts and what is being represented to the lender as a fair market price, do not provide the Broker Price Opinion (BPO) to the lender and take the listing for the investor.

Your obligation under the Code of Ethics is to treat all parties honestly and fairly—and this includes lenders.

Full disclosure is the key to avoiding any issues with the seller, the investor, the end buyer, the lenders and the title underwriters involved.

Many mortgages contain a due-on-sale clause, so make sure that you, as the listing agent, encourage your seller to retain an attorney who is independent and not affiliated with any foreclosure rescue company or investor.

If you're the original listing agent for the seller, and you're asked by the investor to find an end buyer, you're likely placing yourself in a conflict situation.

**8. Referrals**  
If the property owner/seller also holds a Florida real estate license, you should not give back to or share any part of the commission with that owner/principal nor should you agree to pay the owner a referral fee, unless it is disclosed on the HUD-1 Settlement Statement.

**9. Commissions**  
You may be compensated by more than one person in a transaction, but only if you disclose it in writing. If the investor gives you any compensation, you have to reflect it on the HUD-1 Settlement Statement or disbursement statement. Remember—if it's not in writing, it does not exist.

**10. Keet It Arms Length**  
Not all flips are problematic or suspect. However, flips are being used by some as a means to profit at the expense of an owner who does not fully understand all the potential traps in this type of transaction. Many lenders now require the seller, the buyer and the real estate professional to execute either an affidavit or similar document confirming that the representations made to the lender are true and that there is no flip, or that the price agreed upon is the true price and that there are no side deals. This request may come from either the forgiving lender or the loaning lender or both. To avoid a problem down the road, get written consent from the seller, the investor and the end buyer that allows you to fully disclose the true nature of the transaction.

If you disclose, without consent, information that a party deemed confidential, you will have violated the Code of Ethics. While you have no legal obligation to sign these affidavits or confirmations, some lenders will not close without these documents being executed by the real estate professional. If you sign this type of document, make certain that it's an arm's-length transaction and that everything has been disclosed. If you sign an affidavit and it turns out that you misrepresented the transaction to the lender, most errors and omissions insurance policies will not cover you for fraud.

Short sales can be difficult to navigate, especially when investors are involved. Use this article as a guide to closing a successful and ethical sale. 🏠

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