Chapter 12

Closing and Post Services

Objectives:

To be able to understand and do the following:

- Know what post-closing services are available
- Make loan modifications
- Know the requirements of a hardship letter
- Work with loss mitigation departments.
- Know how a short sale works
- Know how to market Real Estate Owned (REOs) properties
- Write an effective REO resume
- Know where to find REOs

Terms:

- Broker Price Opinions (BPO)
- Days on Market (DOM)
- Deed in Lieu of Foreclosure
- Forbearance
- Hardship Letter
- Loan Modification Agreements
- Loss Mitigation Departments
- Post-Closing Services
- Real Estate Owned (REOs)
- Short Sale
- Special Mortgage Forbearance Agreements

Post-Closing Services

There is a huge need for real estate agents and loan officers to provide post-closing services. **Post-closing services** are services provided by lenders, real estate agents, and attorneys after the property is purchased. Post-closing services can be very lucrative for real estate agents and loan officers who are willing to learn and train in such services. The post-closing services are divided into three main areas.

Three Types of Post-Closing Services

1. In **Pre-foreclosure,** lenders have programs which help homeowners keep their homes. Since homeowners are not transferring title but changing the status of the loan, most states require agents to have a mortgage license to work in forbearance, repayment plans, and loan modifications. Below are three pre-foreclosure programs:

   - Forbearance
   - Repayment Plan
   - Loan Modification

2. In **Foreclosure** status, lenders have programs for homeowners to leave their home, but still avoid foreclosure. In this case, the title will transfer, so a real estate agent or attorney is required. Below are four foreclosure programs:

   - Trustee sale
   - Deed in lieu of foreclosure
   - Mortgage Assumption
   - Short sale

3. In **Post-foreclosure,** the property is foreclosed and the lender, investors, or mortgage insurance company, purchase the property at auction. The property now belongs to the lender, investors, or mortgage insurance company. This is known as **real estate owned (REO).**

   - Real estate owned (REOs) by banks

Pre-Foreclosure Services

Pre-Foreclosure

Forbearance. Banks and other lenders have special departments called Loss Mitigation Departments to help consumers with plans to repay any late payments and to avoid future late payments. Most often consumers are unaware of these special departments that are set up to help homeowners avoid foreclosure. All lenders have Loss Mitigation departments; the goal of these special departments is to avoid losing money caused by foreclosing.

A **special mortgage forbearance** agreement is an agreement between a lender and a mortgagor (homeowner) that contains a plan to reinstate the mortgagor and not to foreclose.

One of Fannie Mae's goals is to let borrowers know that foreclosures and short sales are preventable. Fannie Mae estimates that in over half of all foreclosures, borrowers fail to communicate with the lender/servicer, thus failing to use their options. Fannie Mae provides its servicing agents with a wide range of workout solutions and incentive fees for servicing agents who assist borrowers. What real estate agents can do for past clients is to be available in times of hardship and be able to offer guidance on housing financial matters. On Forbearance or Workout Agreements, since lenders are reluctant to pay real estate agents any type of commission and usually homeowners don't have it, some real estate agents are hesitant to help and would rather wait for the sale to assist. Agents should give all clients the same respect, whether past or present. A truly professional agent continues to treat their past buyers as present clients. Past buyers should be treated as clients. In this case, the reward is good will and further referrals. Think of it this way: if your real estate agent was available for you and did all he/she was capable of doing to find solutions to help you save your home, wouldn't you recommend that person to all your friends?

Workout Plans to Help the Homeowner Keep their Home

A **Temporary Forbearance** is a special mortgage forbearance agreement that will normally allow the mortgagor to delay monthly mortgage payments. The minimum time is usually four months, and the maximum can be up to eighteen months. Under a temporary forbearance, the homeowner is expected to continue with his/her monthly payment even after the forbearance agreement is over and at the same time, catch up with all past due amounts. Therefore, the payments can actually double because the catch up payments are added to the normal payments. A temporary forbearance is not a good option for most homeowners, but again, it depends on the hardship. Under a temporary forbearance, government-sponsored enterprises (GSEs) are usually notified, but approval is not required. **Government-sponsored enterprises** are federal corporations that are privately owned, such as Fannie Mae and Freddie Mac. Each lender has the right to decide which type of agreement is best for the overall situation.

Repayment Plan

The homeowner makes monthly payments under forbearance or the repayment plan, which includes past due amounts, or the homeowner can elect to pay the past due amount in a lump sum.

Loan Modification

The best type of agreement for a long-term hardship is a loan modification. **Loan Modification Agreements** can change the entire term and conditions of the loan, such as reducing the interest rate or changing the type of loan from an ARM to a fixed rate loan, or from a 30-year mortgage to a 40-year mortgage. Whether the modification is for one year or 30 years depends on the hardship and investors. Borrowers can add any late payments, interest, and attorney fees to the principal balance on this type of plan. Whether real estate fees can be added to the principal depends on the investors, though usually, they cannot be. Some non-prime lenders and all prime lenders require that homeowners are at least three months late before the servicing company can start any modification to the original loan agreement.

Since this type of agreement is not transferring title, the forbearance or loan modification agreement does not require settlement or closing at a title company. The lender prepares the new loan documents, and the lender agrees not to add additional closing costs to the consumer.

Before there is any kind of forbearance agreement or loan modification, however, the mortgagor must prove hardship status. The lender or investors who have the loan will require the following items:

- A hardship letter
- Appraisal
- Check stubs
- Bank statements
- Tax returns
- List of assets
- A detailed list of monthly expenses
- A credit report

Hardship Letter

The **hardship letter** must explain the nature of the hardship, whether the situation is temporary or long-term, and the desire to keep the home. The final agreement must be approved by its investors and all interested parties. For example, if the loan belongs to Freddie Mac, then the agreement must meet lender, mortgage insurance, and Freddie Mac's guidelines.

If the property has mortgage insurance, then the investor/lenders are encouraged to assist the homeowner or lose the possibility of insurance coverage. Mortgage insurance policy expects lenders to try at least three workout programs before they agree to pay.

Loss Mitigation Departments

The Loss Mitigation/Asset Management Department is designed to minimize losses for investors. If the loan is without mortgage insurance coverage, then the investors decide the best arrangement for the company. For example, if the loan balance is $210,000 and the present sales value of the property is only $176,000, plus 9 to 10% in closing costs, $2,000 in attorney's fees and monthly upkeep, and insurance payments that account for another 1%, the investors stand to lose upward of $60,000 on the loan. In this case, the investors are more motivated to work out an agreement for the mortgagor to keep his/her home.

Mortgage License

Beware that many states have licensing requirements for any kind of loan modification service. There is considerable discussion among the state regulators regarding the necessity for licensure of loss mitigation providers, loan modification consultants, or foreclosure consultants (herein known as "loss mitigation providers"). For example, in Texas, there is no such ambiguity: any activity that meets the definition of a mortgage loan as defined in the Mortgage Broker License Act Regulation, Texas Administrative Code, Title 7, Chapter 80, does require a license unless exempt under the Mortgage Broker License Act, *Finance Code* Chapter 156.202:

> 80.2(5) "Mortgage Loan" means any indebtedness secured by a lien against, or **security interest** in, one-to-four family residential **real property** when the property is intended to be occupied for residential purposes whether or not the property is acquired for investment purposes or acquired for owner occupancy. It includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan that is secured by a structure that is suitable for occupancy as a one-to-four family residence but is used for a commercial purpose, such as a professional office, beauty salon, or other non-residential use and is not used as a residence.

Before investing your time in loan modification, check your state licensing requirements.

Foreclosure Services

Workouts Plans for Homeowners to Leave their Home but Still Avoid Foreclosure

When a forbearance repayment plan or loan modification agreement does not work, or the homeowner decides he no longer wants the property, there are still options to avoid a costly foreclosure and to leave the property owners with minimal credit damage. Fannie Mae has a program that will pay homeowners up to $5,000 if the homeowner cooperates and does not damage the property.

Mortgage Assumption

Another option is to check with the lender/investor to see if he/she is willing to waive the due-on-sale clause. From 2008 to 2011, because of the slow economy, property values were dropping at a historical rate. Many lenders considered waiving the due-on-sale clause to qualified borrowers. Real estate agents could earn a commission on such transactions because there was an actual transfer of property ownership.

Deed in Lieu of Foreclosure

Deed in Lieu of Foreclosure is the last option before an actual foreclosure. **Deed in Lieu of Foreclosure** occurs when the homeowner voluntarily conveys the property to either the lender or the mortgage insurance company. The lender contacts a real estate firm to market the property for sale as a REO (real estate owned). In this way, the lender hopes to receive the property sooner and in better condition. Lenders usually require the property to be on the market for sale for 2 to 4 months without a reasonable offer before they accept the property. Lenders prefer that homeowners try every option before they agree to a Deed in Lieu of Foreclosure.

Short Sale

Short sale agreements are another way real estate agents can help their clients avoid bankruptcy or foreclosure. A **short sale** happens when the lender agrees to sell the property for less than the amount owed. The proceeds from the sale of real estate are insufficient to satisfy the liens on the property. The lien holder forgives the homeowner of the remaining debt. In this type of arrangement, the homeowner provides evidence of financial hardship. The forgiveness of debt can be considered income. The homeowner will receive a 1099A (Forgiveness of Housing Sales Debt) or 1099C (Cancellation of Debt). See Mortgage Forgiveness Debt Relief Act of 2007 below to check if your client will be affected by the 2007 Forgiveness Act.

Mortgage Forgiveness Debt Relief Act ***(from the IRS website: www.irs.gov)***

What is the Mortgage Forgiveness Debt Relief Act of 2007?

The Mortgage Forgiveness Debt Relief Act of 2007 was enacted on December 20, 2007.
Generally, the Act allows exclusion of income realized as a result of modification of the terms of the mortgage or foreclosure on your principal residence.

What does that mean?

Usually, debt that is forgiven or cancelled by a lender must be included as income on your tax return and is taxable. The Mortgage Forgiveness Debt Relief Act of 2007 allows you to exclude certain cancelled debt on your principal residence from income.

Does the Mortgage Forgiveness Debt Relief Act of 2007 apply to all forgiven or cancelled debts?

No, the Act applies only to forgiven or cancelled debt used to buy, build or substantially improve your principal residence or to refinance debt incurred for those purposes.

What about refinanced homes?

Debt used to refinance your home qualifies for this exclusion, but only up to the extent that the principal balance o the old mortgage, immediately before the refinancing, would have qualified.

Does this provision apply for the 2007 tax year only?

It applies to qualified debt forgiven in 2007, 2008 or 2009.

If the forgiven debt is excluded from income, do I have to report it on my tax return?

Yes. The amount of debt forgiven must be reported on Form 982, and the Form 982 must be attached to your tax return.

Do I have to complete the entire Form 982?

Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Adjustment), is use for other purposes in addition to reporting the exclusion of forgiveness of qualified principal residence indebtedness. If you are using the form only to report the exclusion of forgiveness of qualified principal residence indebtedness as the result of foreclosure on your principal residence, you only need to complete lines 1e and 2. you kept ownership of your home and modification of the terms of your mortgage resulted in the forgiveness c qualified principal residence indebtedness, complete lines 1e, 2, and 10b. Attach Form 982 to your tax return.

Where can I get this form?

You can download the form at IRS.gov, or call 1-800-829-3676. If you call to order, please allow 7-10 days for delivery.

How do I know or find out how much was forgiven?

Your lender should send a Form 1099-C, Cancellation of Debt, by February 2, 2011.
The amount of debt forgiven or cancelled will be shown in box 2. If this debt is all qualified principal residence indebtedness, the amount shown in box 2 will generally be the amount that you enter on lines 2 and 10b, if applicable, on Form 982.

Can I exclude debt forgiven on my second home, credit card, or car loans?

Not under this provision. Only cancelled debt used to buy, build or improve your principal residence, or refinance debt incurred for those purposes qualifies for this exclusion.

If part of the forgiven debt doesn't qualify for exclusion from income under this provision, is it possible that it may qualify for exclusion under a different provision?

Yes, the forgiven debt may qualify under the "insolvency" exclusion. Normally, a taxpayer is not required to include forgiven debts in income to the extent that the taxpayer is insolvent. A taxpayer is insolvent when his or her total liabilities exceed his or her total assets. The forgiven debt may also qualify for exclusion if the debt was discharged in a Title 11 bankruptcy proceeding or if the debt is qualified farm indebtedness or qualified real property business indebtedness. If you believe you qualify for any of these exceptions, see the instructions for Form 982.

Is there a limit on the amount of forgiven qualified principal residence indebtedness that can be excluded from income?

There is no dollar limit if the principal balance of the loan was less than $2 million ($1 million if Married Filing Separately for the tax year) at the time the loan was forgiven. If the balance was greater, see the instructions to Form 982.

Investors, lenders, and mortgage insurance companies must all agree to a short sale. The homeowner writes a hardship letter to the lender. If the lender agrees to the request, either the lender or the homeowner requests that a real estate agent sell the property, at a loss, to the lender. The property is sold, and the debt to the lender is forgiven. Before the lender grants the request, lenders look at the following circumstances before deciding to grant a hardship case:

- Unemployment
- Type of employment
- Divorce
- Bankruptcy
- Medical illness
- Death
- Property value/balance owed

If the homeowner has any type of large assets, the lender is unlikely to grant a short sale. Large assets are an indicator to the lender that the homeowner has the ability to pay off the difference. Sometimes, the lender will enter into an agreement to pay the difference and to be repaid by the homeowner over a short term. The final short sale agreement will depend on the homeowner's circumstances and investor's guidelines. Examples of assets are as follows:

- Bank funds
- 401(k)/retirement
- Stocks and bonds

- IRAs
- Real estate
- Two or more automobiles
- Business assets

In a short sale where real estate agents are involved, the fiduciary relationship is still between the seller and the real estate broker, not between the seller and the lender.

Short Sale Package

Lenders require several documents, before they will preapprove a short sale, which are:

Short Sale Documents

1. Hardship letter currently dated and signed.
2. Letter of Authorization for 3rd party
3. BPO (Broker Price Opinion**)/**RMV (Real Market Value)
4. Listing Agreement
5. Dodd-Frank Certification (certification that the agent has not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction: (a) felony larceny, theft, fraud, or forgery, (b) money laundering or (c) tax evasion)
1. IRS form 4506T for two most recent tax years or
2. 2 most recent year tax returns and W-2s, all pages, signed and dated.
3. 2 most recent months of pay stubs, alternative income verification.
4. 6 most recent months of all bank statements, all accounts, all pages.

If you have a buyer, you will need to include:

5. Purchase and Sale Agreement
6. Buyer Prequalification/Preapproval letter
7. Preliminary HUD-1 settlement statement

Many times there are two lenders, such as in an 80/20 combo loan; in this case you will need to provide the same documents to both lenders.

Finding Short Sale Properties

Finding short sales are much the same as finding listings. You must advertise for them. Lenders will often select the real estate agent. In this case, you must send your resume to lenders and mortgage insurance company's Loss Mitigation departments or asset management companies.

Post Foreclosure Services

Real Estate Owned

Real Estate Owned (REOs) are properties lenders have purchased from the homeowner, that are being listed for sale by real estate agents. The lender may require the property to be maintained and repaired. Refunds for agent's repairs may take up to 60 days. The best way to gain short sale listings is from lenders, investors, mortgage insurance companies, credit unions, real estate investment trusts, or asset management companies (middlemen for the investors/lenders). These departments and companies want results. Below are the three items all investors expect from real estate agents:

1. That you completely understand how REOs work.
2. That you are able to sell the property.
3. That you get the highest and best price in the shortest amount of time with the least amount of liability.

REO Resume

Most lenders require your name to appear on their approved vendor list before they send you business. To be on the lender/asset management list of approved agencies you will need an effective resume. Some lenders will require an electronic posting of your resume and others will prefer a hard copy. Below are items to include when preparing an effective REO package:

- Your name and contact information
- W-9
- Proof of your E&O insurance policy
- Copy of General Liability Declarations
- A copy of your real estate license
- A resume having "REO" in the headline.

Other items to include are:

- What REO training, experience, or designations you have.
- Your sales volume and the amount of time it took to sell each home, aka, Days on Market (DOM).
- What maintenance and repair services you offer.
- What areas you service (zip codes, and cities).
- What special expertise you have, such as financial background, certification as an FHA broker, or being a licensed and bonded contractor.

Packaging Yourself as an REO Expert

Packaging yourself is very important. You should have the following:

- A marketing brochure with your Unique Selling Proposition, "Your REO Expert."
- An Internet address or email that reads for example, REOyourname.com.
- A Letterhead that reads "$10 Million in Sales."
- A background in computer technology, since most lenders will communicate by website.

Broker Price Opinions (BPO)

Asset management companies will need to know the property value in order to determine the price at which the property should sell. They will either call an appraiser or ask a real estate agent to determine the value. When they solicit a real estate agent's opinion of value, it is called a **Broker Price Opinion (BPO)**. BPO reports pay from $50 to $200 dollars each. One of the best ways to gain REOs is by offering to do BPOs. Accepting BPO assignments is a good way to get to know the asset management people (or have "*one foot in the door*").

How to Find REOs

Every lender has a Loss Mitigation department or will use an asset management company; however, many are out-of-state. Try calling local banks, credit unions, and mortgage insurance companies for information on their Loss Mitigation departments. If you have the money, you can join any of the many REO training centers and acquire a complete list of all Loss Mitigation departments in the United States. Or you can search for REO conventions. First, find the contact person. You can do this by calling or sending letters to departments asking for the right contact person. Next, send your resume to all of the Loss Mitigation departments or Asset Management companies. Be sure to ask for their stacking order sheets. While most stacking order sheets are similar, it's best to have each sheet exactly the way they want it. You can search MLS properties that are REOs and try a tax search for the investors.

Keeping REOs

Like regular clients, you must constantly contact your REOs. For example, for every closing, send flowers, and Thank You cards. Like buyers and sellers, REOs are people who will forget you as soon as you forget them. Be careful to complete your paperwork and keep your contact person updated on REO properties.

Conclusion

From reading the text you will find that a career in real estate can be exciting and rewarding, but offers many challenges.

Many decisions will be made throughout the course of your career. Some of the first decisions that you will make are whether to work full-time or part-time, whether to work as an agent only or become a broker, whether to generalize or specialize (working with buyers and sellers or working with buyers only or sellers only). You will have to decide whether or not to take all the training courses necessary to keep up with the exciting and rewarding field of real estate.

This ever-changing, ever-growing field allows the freedom for independent employment, which means, bottom-line, unrestricted, unlimited income. This freedom also allows for a more independent time schedule. However, that does not mean that you will not put in your time. Success in real estate requires much hard and intelligent planning and work. You will work long hours, weekends, sometimes at night, sometimes on holidays. Building a successful business demands your dedication.

Building your business is a process; you cannot simply start listing and selling instantly. Your business is built on the foundation you lay. This foundation requires many stages of preparation. First, you must create a workable, but affordable marketing plan. Get business cards and learn how to use the latest computer technology. Next, you will have to make contacts. Do not allow fear or shyness to interfere with your meeting people; they are, after all, your business. Tell everyone you come into contact with about your business and do not hesitate to ask for referrals. Once you have made contacts, create a dependable database; keep adding to it and keep it updated. Always be prepared: hand out business cards, talk with people, and be ready to answer questions. Be ready to overcome objections – know your scripts. Set realistic goals; without them, you will not have a clear and focused plan for building your business and achieving your success. You will need to learn real estate procedures, such as: staging a house and holding an Open House. Also, you will have to understand such procedures as real estate finance and post-closing services. These are some of the steps/stages you must take in order to build your business' foundation and to attain success.

Your success will come not only from working hard, being dedicated, using the latest technology, being prepared, and/or possessing knowledge of real estate procedures. Always remember that your success, and more importantly, your reputation will come from your use of strict ethical practices. Make no mistake, your clients and colleagues will judge your character as well as your business by the ethics you incorporate into your life and business dealings. Always use a consistent set of real estate rules, as set forth by your State Real Estate Commission.

Enjoy what you do; your clients will know whether you do or don't. Find and use the absolute and best tools that will help you reach your goals and achieve the success you so "richly" deserve. Use the information, and tools, you have learned from the contents of this book; make it a part of your permanent "Real Estate Reference Book Collection." Reference material will prove useful, because, during the course of your career, you will find yourself looking for new and refreshing ways to do the same old things.

Sincere wishes for the best of success and good fortune.

Exercises for Success – Chapter 12

1. Ask your local bank if they have a loss mitigation department contact person. Get his/her phone number, or email address to start you in the right direction. Let your local bank officer know what you are trying to do; he/she may have suggestions. Pay close attention to the terms bankers use.
2. Most major banks have seminars on preventing foreclosures as well as on how to work with short sales; ask to be on their training list. For this, you will have to contact each bank's central office.
3. Search for loss mitigation/foreclosure/short sale seminars in your area.
4. Find out where public real estate auctions are held.
5. Talk to your broker about what information the office already has on REOs.
6. Search out REO/foreclosure agents in the MLS®
7. Research loss mitigation/foreclosure terms and information on the Internet.

Test 12 - Closing & Post-Services

1. What are the services provided by lenders, real estate agents, and attorneys, after the property is purchased by the homeowner, called?
   A. Post-closing services
   B. Forbearance
   C. Loss mitigation
   D. Short sale

2. Delaying or stopping an action; in mortgage lending it is refraining from taking legal action to recover real property is called
   A. Post-closing services
   B. Forbearance
   C. Short sale
   D. Broker Price Opinions

3. A department designed to avoid losing money caused by foreclosing on properties is called
   A. Broker Price Opinions
   B. Forbearance
   C. Loss mitigation department
   D. Post-closing services

4. An agreement between a lender and a mortgagor that contains a plan to reinstate the mortgagor and to not foreclose is called
   A. Stop Now Program
   B. Broker Price Opinions
   C. Short sale agreement
   D. Special mortgage forbearance agreement

5. A formal agreement to change the terms and conditions of the loan, such as to reduce the interest rate or change the type of loan, is called
   A. Loan modification agreement
   B. Hope Now
   C. Save my Home program
   D. Fannie Mae Gold Star

6. When the lender agrees to sell the property for less than the amount owed, it is called
   A. Long sale agreement
   B. Short sale agreement
   C. Loan modification agreement
   D. Repayment agreement

7. When the homeowner voluntarily conveys the property to either the lender or the mortgage insurance company in exchange for forgiveness of the loan amount, it is called
   A. Grantee Deed
   B. Contract for Deed
   C. Deed in Lieu of Foreclosure
   D. Section 32 mortgage

8. What explains the nature of hardship that determines whether the request is a temporary or long-term agreement?
   A. Section 32 mortgage
   B. Forgiveness of debt
   C. Homeowner’s affidavit
   D. Hardship letter

9. What are GSEs?
   A. Government-sponsored enterprises
   B. Government real estate properties
   C. Guaranteed stock entitlement (VA)
   D. Guaranteed sellers eligibility (FHA)

10. In real estate, what is a BPO?
    A. Banker price opinion
    B. Broker price opinion
    C. Broker pending offer
    D. Broker property owned

11. In real estate, what is an REO?
    A. Government-sponsored enterprise
    B. Real estate opinion
    C. Real estate offer
    D. Real estate owned