VOLUME 36, NUMBER 3 AUGUST 2013

BRITISH COLUMBIA REAL ESTATE ASSOCIATION

the bulletin

Be Mindful of the "Short Sale"

Article provided by Chris Ferronato, Bull Housser

Sellers often assume that the sale price of their home will be enough to pay out the costs and financial obligations associated with the sale, but that's not always the case, especially in a slow real estate market.

A "short sale" occurs when the amount outstanding under a seller's mortgage, along with other payout obligations and closing costs, is greater than the sale price of the home. REALTORS® acting for sellers should be mindful that, if a sale price is not sufficient to payout all of the associated financial obligations and closing costs, the entire transaction may be in jeopardy.

Generally, the Contract of Purchase and Sale (CPS), together with the standard conveyance process for a residential purchase and sale transaction, obligates the seller to pay the following in full by the completion date:

- outstanding loan amounts secured by mortgages on title to the seller's property,
- pre-payment penalties and discharge fees payable to the seller's lender connected to the payout of any mortgages,
- liens or judgements secured against title to the seller's property,
- the seller's share of property taxes and civic utilities (sewer and water) for the year that the sale takes place, together with any arrears, penalties and interest,
- the seller's share of strata fees for the month in which the sale takes place, together with any arrears, and unpaid special levies and fines, plus any move-out and document fees,
- legal fees, disbursements and applicable sales taxes to close the transaction and attend to the payout and discharge of mortgages and financial encumbrances, and
- commissions and applicable sales tax pursuant to the terms of a listing contract.

If the total amount of the foregoing costs and financial obligations exceed the sale price of the home, then the seller will require other funds to make up the difference, and pay such funds to the seller's lawyer in trust for payout on the completion date. If the seller is unable to do so, then they will be unable to complete the transaction as required under the CPS, and could be sued by the buyer for damages. Additionally, the seller would also still be liable to the listing brokerage for the commission and applicable taxes pursuant to the terms of the listing contract.

The listing REALTOR® can assist the seller in avoiding such detrimental circumstances by discussing the associated closing costs and financial obligations with them before listing the property. This will help avoid a potential short sale by ensuring the seller is aware of the minimum price for which the property must be sold.

Additionally, if the REALTOR® is uncertain whether such minimum price is achievable in the given real estate market, the REALTOR® should advise the seller accordingly. Then the REALTOR® and the seller should discuss whether additional funds are available from other sources, to allow the short sale to proceed. If not, the financial circumstances of the seller would not make listing the property viable under the applicable market conditions.

If the REALTOR® or seller has any uncertainty about the payouts required in connection with a particular sale, monthly statements and/or other records or invoices should be obtained from the appropriate sources (e.g., lender, property tax office, strata management company). Of course, the REALTOR® must keep the seller's financial information in confidence and should inform them accordingly.

While these may be sensitive issues to discuss with the seller, being mindful of a potential short sale may be invaluable in determining the merit of listing a property at a particular time, and for facilitating a smooth and efficient transaction.

INSIDE