

The Short Sale Fake Listing Fiasco

How To Avoid A Colossal Waste
Of Your Time And Money

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Buyer Beware -- Not Everything That's Listed Is Really For Sale

Most of our clients reach us through the Internet, and enjoy the convenience of being able to shop online for homes. It lets them see what's available and compare prices in different areas so they can get a really good idea of the market. We love this approach, which is why we were one of the first Realtors® in this area to provide registration-free MLS search to our buyers.

With the rising number of foreclosures in recent years, however, we've started to have a real problem with a type of listing that Virginia Real Estate Broker Frank Llosa calls a "Fake Listing" – the Short Sale. I agree with Frank that that's just what they are. Indeed, a few weeks before finding Frank's [article on Fake Listings](#), I published the article, [Short Sales are Neither Short Nor Sales](#).

Why do we say short sales are fake listings? Quite simply, a real listing is one where a qualified buyer can expect that if they made a full priced offer with no other buyers bidding, they would be able to close escrow and own the home.

Reasonable as it is, this expectation simply doesn't hold water on a Short Sale. In Arlington, Virginia, for example, Frank Llosa documented that only 5% of short sale listings successfully sold. As we'll see below for one local market, traditional sales outsell short sales by four to one even though they're much, much more expensive. (But the good news is that bank foreclosures are listed cheaper than both and sell like crazy!)

If you can't write a full priced offer on a listing and get your offer accepted with no competition, that's a fake listing.

What Is A Short Sale?

A short sale is a listing where 1) the proceeds from the sale is less than the value of the loans on the property, and 2) the seller can't bring in

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the difference to close, so they're asking one or more lenders to approve the sale and accept a reduced payoff.

For example:

\$350,000 Amount seller owes to lender(s)
\$279,000 Proceeds from sale

\$71,000 Amount lender is asked to write off.

Why would the lender agree to such a write-off? Well, in principle the idea is that the lender will lose less by taking a reduced payoff now compared to how much it will cost them to foreclose on the property and sell it that way.

That Sounds Great – A Lot Of Them Should Sell, Right?

Wrong.

To give you an idea about how poorly short sales sell, let's take one of our local areas that has a lot of listings, Elk Grove, and do a quick case study based on active homes available in early May of 2008 versus those that sold in April.

Active Listings as of May 7, 2008

Type of Listing	Available Homes	Average List Price Per Square Foot	List Price as Percentage of Non-Distressed
Short Sale	568	\$142.37	64.9%
Bank Owned	289	\$138.09	62.9%
Non-Distressed	324	\$219.42	100.0%

As you can see, bank owned properties (also known as foreclosures, REOs, or "bank repos") listed for slightly less than short sales, but both fell in the range of 62%-65% of the price that non-distressed homes were selling

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for. (By non-distressed, we mean a regular sale where the owner owns the home outright or owes little enough so they can pay off the loans).

Based on the numbers above, for example, a 2000 square foot home might list for \$438,840 as a non-distressed sale, \$276,180 as a bank owned property, or \$284,740 as a short sale. Short sales are discounted almost as much as foreclosures, and there are almost twice as many short sales available as bank owned properties.

Based on price and availability, we would expect the number one seller the month before to have been either short sales or bank owned properties, and the number three seller to be non-distressed sales, right?

Let's look at what we actually find for April.

Listings that Sold in April, 2008

Type of Listing	Number that Sold in April	Percentage of May Inventory that Sold in April
Short Sale	25	4.4%
Bank Owned	177	61.2%
Non-Distressed	56	17.3%

Though we expected short sales to do well based on the discount and the number available, look at what we actually find. Look at the percentage column (on the far right) for short sales and non-distressed sales. The result is startling! **Even though short sale list prices are only 64.9% of non-distressed sales, non-distressed sales outsell short sales by almost four to one!** (4.4% versus 17.3%).

Clearly this is not a question of price, because short sales are discounted heavily. Nor is it a question of availability, since there are almost twice as many short sale listings as REOs.

What's happening in Elk Grove to real estate agents and their buyers overall is the same thing my agents and I have experienced with our buyers,

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time and again. Buyers write up offers on short sales, and they don't close. The overwhelming majority of short sales fail to close, and the vast majority of short sale offers never even make it to the stage of lender approval.

So short sales are not just "fake listings" in principle because they require third party approval, they're fake in reality as well because that approval is so seldom forthcoming.

Why Don't Short Sales Sell?

Imagine a banker foreclosing on people. Did you picture in your mind a damsel tied to railroad tracks and a guy in a black hat twirling his moustache?

That's just about right.

The Lender's Stake in a Short Sale

Frank Llosa brilliantly documents two games that lenders will play when asked to accept a short sale.

- **Game #1 – Drag Your Feet and Continue Making Money**
Tell the owner that you'll accept their short sale, as long as they keep making payments. This way you continue to get paid whatever the mortgage was or whatever you allow the buyer to negotiate. The longer you drag your feet, the longer you get paid.
- **Game #2 – Drag Your Feet, Continue Making Money, and Foreclose Anyway**
Another reason the lender may not want to accept a short sale is that if there is Private Mortgage Insurance on the loan, they'll be able to get the loan paid off if they foreclose. Expecting the bank to "cut its losses" only works if it's not the case that they can have the loss covered in full if they foreclose and have to cover the loss themselves if they don't.

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While we're on the subject of foreclosing anyway, don't think the fact that you (as the buyer of the home) are in contract with the seller will deter the bank from foreclosing. We even had one buyer who got to the end and had a loan ready to fund, (and yes, this buyer had paid for home inspections and an appraisal out of pocket) when at the last minute the bank decided they'd foreclose anyway.

Buying a Fake Listing? Then You'll Need A Fake Agreement.

Do you feel uncomfortable with short sales yet? Take a look at the following language from the California Association of Realtors® Short Sale Addendum:

“Buyer, Seller, and Brokers do not have any control over whether Short-Sale Lenders will consent to a short sale, **or any act, omission, or decision by any Short-Sale Lender in the short-sale process.**” In the next paragraph on buyer and seller costs, this addendum goes on: “Such costs will be the sole responsibility of the party incurring them, if Short-Sale Lenders do not consent to the transaction **or either party cancels pursuant to this agreement.**” [My emphasis both times].

Nice, huh? You are on the hook for your costs if either party cancels “pursuant to this agreement”, but you just got done “agreeing” that nobody who has anything to do with the agreement can control what the bank's going to do.

More About Lenders

Even if they don't play the games we talked about above, think about the position the lender is in, and you'll realize that lenders are not chomping at the bit to make your short sale work.

In the long run, the threat of foreclosure is the main stick that lenders wield. It keeps everyone from doing a short sale when they get in trouble or

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just want to move and can't afford it. (It's not called a MORT-gage for nothing). Making the short sale process easy and convenient flies directly in the face of the lender's overall financial interest.

In the short term, if they have short sales and foreclosures on the books, the bank is paying the taxes and other carrying costs on the foreclosures, while the seller is still paying those costs on short sales. To be sure, maybe in many cases the seller isn't keeping up on these payments either – but at least in this case the costs are deferred to the future. Foreclosures are bleeding bank funds now, so it stands to reason the bank will spend most of its resources on those.

Not only is a foreclosure a present liability and a short sale a future liability, but there's still a chance that the lender won't end up owning the home on a short sale. The only reason a bank will accept a short sale is that the bank is convinced that the buyer will go through the whole foreclosure process if they don't and the bank will lose. Documenting this means spending further resources, but there's a cheaper way to find out who'll cure the default and who won't. Send everything to foreclosure and only take a bath on the sellers who don't cure the default. No wonder that we met with one major lender who told us that their policy was simply not to do short sales and go forward with the foreclosure process.

If Short Sales Are This Bad, Why Do Agents List Them?

There are several reasons that listing agents accept short sales, even though the success rate for such listings is dismal at best.

- **Altruism**

Listing agents naturally want to help sellers if they can. Even though the number of short sales that get approved and close escrow is dismally low, sellers who need to do a short sale may in some cases receive some benefit from the sale in the unlikely event that they're successful. It's hard to say no when a seller is in trouble and asks

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you for help.

- **Business Benefit to the Listing Agent**

Most agents meet buyers primarily through their own listings. (Elite Properties is a bit of an exception, since so many buyers find us through our web sites). The traditional approach to a successful real estate career is to have well priced listings, because such listings attract buyers. Having a sign in front of an attractively priced short sale will bring many calls, and there's a benefit to meeting those buyers even if they end up buying another property from you down the street. In other words, from a listing agent's perspective, whether a given listing sells is less important than whether a given listing can generate other business.

To add insult to injury, listing agents know that other buyers and other agents are familiar with how bad short sales are. So in order to tease buyers into viewing their listings, prices are often dropped below anything that's at all reasonable for the area, to a point where there's no chance at all the lender will accept the offer. We know of one case where a Broker Price Opinion (essentially an appraisal on the basis of which the lender will accept or reject the short sale) was done and the home was worth \$350,000. Nevertheless, it was listed at \$330,000, and the agent told us that it was listed that way because she wasn't getting any showings at \$350,000.

Welcome to the world of short sale logic!

How This Works Out for Buyers

Buyers often feel like they should spend some time looking at Short Sales. They're often tempted by the low prices into ignoring the fact that these listings hardly ever close successfully. Sometimes buyers hear about the long closing time (3 months and more to get the offer accepted in many cases, plus another month to close) and feel that they may not be in such a hurry so that may work.

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What buyers often don't realize, however, is that there's a big difference between waiting three months for something good to happen that you know is coming, and waiting three months while having no earthly idea of what's going on with your offer.

So what happens?

Rarely, the best case happens, and a buyer who was interested in a short sale gets their offer approved by the lender and is still interested in the property when it's ready to close four months later. Unfortunately this intermittent reinforcement leads more buyers and sellers to hope that maybe they'll be the next American Idol winner. (Intermittent reinforcement is also the principle behind the lottery and Russian roulette).

The most common case is one we see happen time and time and time again. The buyers who were excited about their offer and thought that they'd be happy to wait end up frustrated as can be, while the unresponsive lender drags his feet for months and months. Most people overestimate their own patience because they haven't met loan workout managers, who are the undisputed masters at testing peoples' patience.

In the worst case, as we point out above, the buyers wait patiently as detailed above. Finally, their offer approved, they go through the inspection process and get their loan ready, but then the lender pulls the rug out at the last minute. So these buyers – who've told their landlords they're leaving -- find their patience rewarded by being out of pocket by about \$800 or \$900 for inspections and appraisals. All dressed up with no place to go.

How Can Buyers Get Listings That Don't Have Short Sales?

Most real estate web sites are fed by the Multiple Listing Service, or MLS. Unfortunately, web site providers don't always give us the option of weeding out the short sales from the general listings.

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Here, however, are three ways that you can filter out the short sales and only get the real listings, those that have a good chance of closing in the face of a reasonable offer.

1) Use our foreclosures only search page:

<http://www.sacramento-home.com/foreclosures/>

The properties listed here include only bank owned foreclosures, and not short sales or non-distressed sales. Bank owned foreclosures are enormously popular, because the low prices are just as real as they are on short sales, but bank foreclosures actually sell and close escrow! (See the table on page 4).

2) Our main search pages do not allow you to exclude Short Sales (unfortunately), but you can test to see if a given listing is a short sale by re-running your search and including only short sales. The advanced options feature of the search page (**see detail, below**) allows you to do this. To search only short sales, check the Short Sale box. As you can see, you can also do a foreclosures only search here by checking the REO box only.

Required:

Fireplace

Horse Property

New Construction

REO

Garage

One Story

Short Sale

Pool

3) Ask your agent. We're always happy to do any custom search for you from the MLS, and we can set up you up for custom email updates excluding the short sales (and using almost any other search parameters you can think of). Just give us a call at (877) 735-5657, and let your agent know that you want to get all the listings (for whatever area, size, etc. you're interested in) except the short sales.

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