



New York Underwriting Bulletin

From: Michael Kelly, New York State Counsel

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Name: Short Sales

The current economic climate has seen an increase in the number of short sales, and these transactions can pose a significant risk if title claims. The following are some guidelines to aid you in insuring these transactions.

1. It is almost impossible to reach the lender, lenders attorney, or lender's short sale team the day of the closing, so everything must be cleared prior to closing. Confirmation that the conditions are met must come from the lender, not the lender's attorney.
2. You must obtain a copy of the short sale letter well in advance of the closing. The letter must be clear, unambiguous, and final, stating that if the terms of the letter are complied with and the HUD-1 matches the approved, for, the transaction is complete and cannot be rejected. If the letter is from a servicer rather than the actual lender, obtain proof of the servicer's authority to negotiate the short sale. Every condition of the short sale letter must be strictly complied with.
3. You must obtain a copy of the approved HUD-1 prior to closing, and review to make sure all the charges are listed and correct. All junior liens must be paid, and the payoffs must be shown on the HUD-1. Prior to the closing date verify adjustments with the buyer and seller. No adjustments can be made the day of the closing. Run a continuation the day prior to the closing to make sure there are no new liens.
4. All parties must be present at the closing. Powers of attorney will not be permitted. The short selling lender will require an affidavit as to the bona fide nature of the transaction at closing that must be signed in person. Obtain a copy of this executed affidavit.

5. We require proof that the parties to the transaction are not related and the transaction is a bona fide, arms-length transaction. An affidavit to that effect, signed by all buyers and sellers, must be obtained at closing.

6. Obtain written authorization from all buyers and sellers to enable both the closing agent and WFG National Title Insurance Company to deal with the paid off lender post closing.

Every short sale is different and has its unique problems. If you have any doubts or questions as to the procedures outline above, do not hesitate to contact underwriting counsel.

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