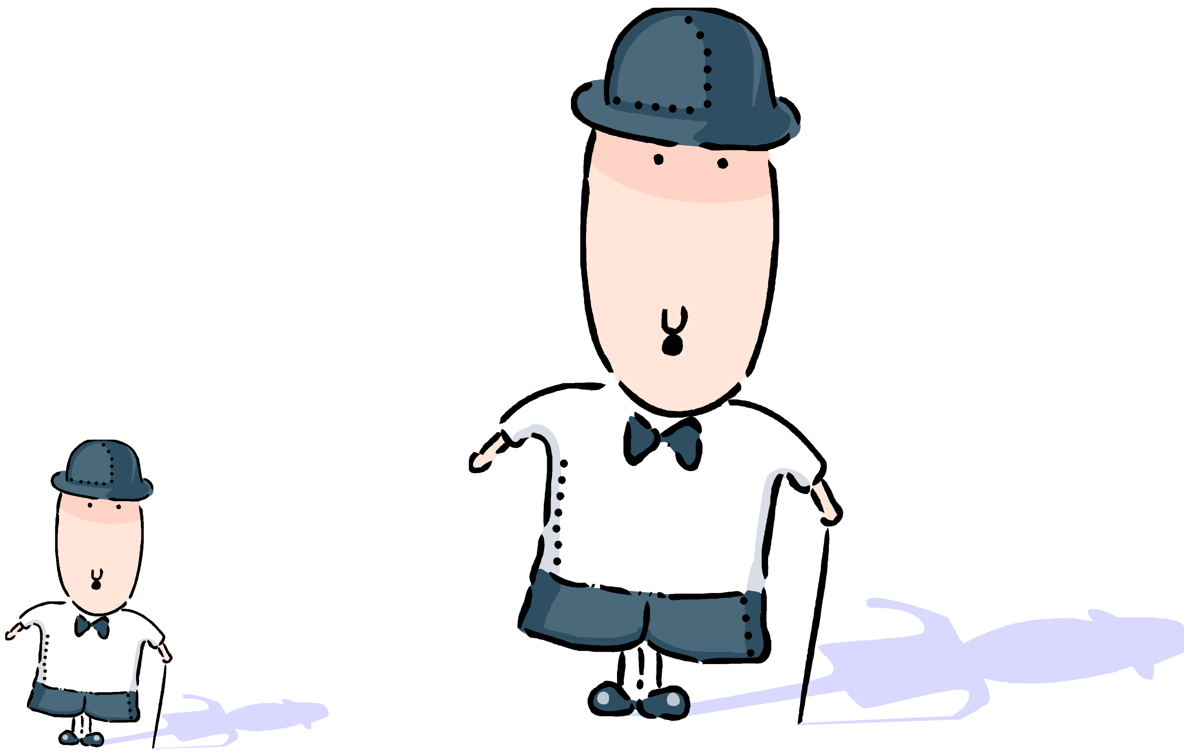
SHORT SALES

A REAL LIFE DRAMA



By: Kenneth B. Schwartz

DISCLAIMER

This work provides a generalized discussion as to various matters in connection with the sale of residential real estate within the State of New York, particularly as to sales where the net closing proceeds after selling expenses, are less than all liens. Your situation may differ from the fact patterns discussed in this book and if it does, the costs and legal implications could differ. Always consult with your legal adviser if you have questions or concerns.

We based this work upon our interpretation of governing laws, and lender policies in the State of New York as they presently exist. Laws, the interpretation of laws and lender policies are always subject to change. The discussion in this book may or may not reflect governing laws, interpretations of laws or lender policies as of the date you read it.

Dated: September 3, 2007

Library of Congress Card Number: Pending

First Printing: September 2007

Additional copies of this book are available by mail. Send $12.95 to:

Kenneth B. Schwartz, Esq.
555 Westbury Avenue
Carle Place, N.Y. 11514
516-333-7020

Printed in the U.S.A. by
X Treme Mortgage Publishing
555 Westbury Avenue
Carle Place, N.Y. 11514

PREFACE

Back again. Back for another stab at something that deeply affects our center of the universe as to residential real estate and all those adjustable rate and sub prime mortgages that threaten to topple the very fabric of life as we know it. Can you sell if your payoffs are greater than what you're selling for. That's our question. It's a real problem to many. An issue to all. It threatens the lifeblood of several big time lenders who've ambled along with rose colored glasses not giving much thought to those adjustable rates and the ultimate day of reckoning. Well, guess what? It's here. It's here now.

It's something that Mr. Ben and all those genius' in charge will need to address if we're to have any hope of ever figuring out a way to stop the foreclosures and stop the mess. And so, here's my contribution to get your deal underway today, not tomorrow, not next month. Not when the Fed finally breaks down and decides to really put its foot down. Today.

And now my dedication. I'd like to dedicate this book to my dear grandmother whose guidance and foresight brought me to where I am today and wherever that might take me.

As always, please give me a call and let me know what you think. Good, bad or indifferent. I'd appreciate hearing from you.

Ken Schwartz

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Chapter One

Take Your Breadth Away

It didn’t grow and blossom like you wanted so the tide’s rolling in with sudsy water bounc’n up and down with the level getting higher and higher no matter how the drain opens or closes or if that gooky stuff forms a big slime ball and nothing goes down. Buckets don’t work. Out of your hands. Or the subway’s jam packed with layers and layers of smelly overcoats pushing and shoving, all in a losing battle for that one glimmer of open space, a crack, crevice, some narrow passage to move yet another few lengths as the loudspeaker crackles in an incomprehensible little babble that goes in and out for a message you’d like to hear, but you can’t, you won’t even try. Go with the flow and do your best. Keep plug’n. You’ll get there. You know you will.

It’s never easy when you’re two heads shorter than everyone else, with all that stale air hang’n around and no way to jerk your head back and struggle for that extra special gasp, a refreshing moment, one fleeting chance for an in the nose and out the mouth reprieve, a shallow tryst from all that’s muggy and smelly.

“Excuse me, excuse me, excuse me,” yet nobody hears or cares. Tough paying the price when everyone towers on top, but you’ve got a way out and you’ll make it work because that’s your way – you always do.

Sell. You’ll sell, lick your wounds and on to the next one. House under water – mortgage exceeds value. But all’s OK.

Doesn’t make sense to hold on - if the property’s not growing and you can’t keep up. Time to go for the gusto and punt and you say punt, better safe than sorry. Let’s get out and sell, sell-sell-sell, move on to something more affordable or just rent and put aside whatever you can till the market picks up and it makes sense to crimp and save while your property spins out of control with all that equity hovering overhead. And it will, eventually it will, but no more waiting. Blue skies. Blue skies and clear sailing awaits.

So what’s a short sale you ask and how can you make it happen. Easy to define. A bit less easy to do but not to worry – we’ll guide you every step of the way like you’re on some computer game with the walls caving in – and as one wall goes down another opens and yet another opportunity for escape till they all close in again. And then one more time. Always an escape, an escape hatch. Steady as she goes – you'll find it.

Short Sale Defined

Short Sale means you owe more than your property's worth. When you add up all your mortgages and all that's tied into your property as liens, that total comes out to something more than what you can sell the property for, net of selling expenses, so, to get your sale done you'll need to pare down what's due, what all your creditors demand to release their positions on your property. And that takes negotiations, some know how, a little patience and lots of let me speak to so and so's and lots of faxes, phone tags and tell me what you need's.

Just think what it means to clean the slate and walk away with no lingering headaches from your lender, almost like you never bought the place. Sure it wasn't the greatest move you ever made, buying this place and signing that mortgage, but who knew, who knew that extra dollar wouldn't happen or that all buyers would take a break and then come back, pounds lighter with pennies on the dollar hoping for a sweetheart deal, a deal nobody would consider in yesterday's market when you bought, but a deal, a deal in today's market, a deal you don't really want because it's not even close to your real price, but a deal. A deal that gets it sold. A deal that takes you off the hook. A deal you'll take to your lender as your golden opportunity to get rid of the place and give them something close to what they're demanding, but a notch short of the mark. A deal that makes sense, makes sense from a business standpoint. Sure they'll kick and scream about lawsuits and foreclosures and all that crap about good credit and good credit making good citizens, how those with good credit go to heaven and all the other folks with late payments, well, they'll burn for eternity with all the others not having the good character to pay on time. But put that aside. Forget it.

Most Lenders Will Look at Any Reasonable Proposal

Your lender will look at any reasonable proposal for getting their loan substantially paid off and then they'll do a smell test, they'll test the waters to see if they're better off taking the property in foreclosure and selling it, selling it perhaps one-two-three years out when the dust finally settles from a foreclosure and their professionals grab whatever they can grab. Or, if they're better off resolving the whole mess today in a sale that's here and now, on the table and ready to go.

So what do they want to see, you ask. And how much will they want or how little will they take – or what will they walk away from? All good questions.

Lenders Request Written Proposals and Signed Contracts of Sale

First off, most first mortgage lenders will want your written proposal and a signed contract of sale, before they'll even consider you. No lender will negotiate against itself based upon suggestions of a sales price or proposals that may or may not come about. Next step after you've got some basic interest – they'll need to know specifics about who's getting paid off, who's taking a loss aside from them and who's sharing in the proceeds of sale. Misery likes company. No lender wants to hear that they're the only one taking a haircut and everyone else involved in the property will get paid dollar for dollar and then some. Are there other folks holding liens on the property like second mortgagees and if so, what are they getting and how will that compare to the overall balance being due to them. OK to give them something, just enough as an incentive for the sale go forward. But not OK to pay them one hundred cents on the dollar. Similarly, are the real estate brokers and attorneys getting rich off the closing, or, are they being reasonable – nothing too exorbitant. Nothing that hints of cash going back to the borrower by way of over inflated fees to the brokers or attorneys. No lender wants to take a hit in the interest of letting a distressed property go, when their borrowers will walk away with oodles of cash, cash they receive directly or cash they receive indirectly from the professionals because they talked them into channeling their monies as a clearinghouse.

Some Liens Always Get Paid Dollar for Dollar

Some folks holding liens will always get paid exactly what's due with interest and whatever else goes along when payments aren't made on time. Real estate taxes or municipal water charges for instance, they'll always get paid one hundred percent without any discount. Don't even think about negotiating your bills with the Receiver of Taxes – not going to happen. And your lender won't expect it.

Other liens are not so clear-cut like income taxes due Internal Revenue Service or New York State, or judgments where the judgment creditor's a private company or individual. Can you negotiate with those folks and pay something less to get your property sold. Maybe yes, probably yes – always better to get something than nothing but it takes some negotiating.

Releases of Lien Can Allow Your Sale to Proceed While the Unpaid Balance Survives

Quite often, folks may agree to release liens and let you sell your property as long as you agree to either provide substitute collateral like a lien on another property, or your personal promise to pay in a promissory note over time. First mortgage lenders or private parties may proceed along these lines. Internal Revenue Service or New York State may say, OK, we'll release the lien on your house for some stipulated sum like a flat five thousand, but your assessment remains so you'll still need to pay whatever else remains due.

Let's say you're at your wits end after going back and forth with the first mortgage lender and everyone else holding liens and you're still short another five thousand or ten thousand dollars. Just another five or ten grand to make it work but nobody will budge. No place else to cut. Buyer refuses to pay another ten cents. What then? Any other way to make the deal happen? Sure.

CEMA's Can Enhance Net Sales Proceeds

Let's talk CEMA's. Short for "consolidation, extension, modification agreements." It's a way for your buyer to save mortgage tax on his new mortgage if you arrange for an assignment of seller's mortgage and the buyer's mortgage lender changes it around to whatever mortgage program the buyer bargains for. The savings can amount to several thousand dollars particularly in New York City where the mortgage tax rate for borrowers will amount to a tad less than two percent of principal. To make a troubled deal work, consider a CEMA to save the borrower all or some of his mortgage tax and then consider using those savings to cover whatever remaining sums are needed for creditors. You may say, why would a buyer take his mortgage tax savings and pay the seller's debts? Well, good question and yep, we've got just the answer.

Buyers buy in a short sale normally because they're getting a good deal, a price significantly discounted to reflect the aggravation and uncertainty of dealing with a seller who can't close without some negotiations and small miracles. Sometimes these deals come with a few hurdles, sometimes more. If your buyer's got another hurdle to jump that doesn't cost, then he'll likely say, no big deal and that's exactly what he'll do. Get his mortgage done with a CEMA and throw several thousand more into the pot so he can get his deal closed at a price that's still heavily discounted. And the final result – buyer gets what he wants – your property at a great price.

Or, say your buyer doesn't know it's a short sale and you're going to contract on a wing and prayer that all your creditors will cut deals. Don't despair. CEMA's can still enhance your sales proceeds. Just make sure you've got a provision in the sales contract that requires your buyer to close his mortgage with a CEMA and for all the net savings to trickle down between buyer and seller – hopefully more seller than buyer.

Sounds like we're headed in the right direction? Great, let's move on to specifics.

Chapter Two

Seller's Mindset - A Window of Opportunity

Not a whole lot that's good when your lender's calling, calling and calling, and you know you'll never come up with the several thousand it takes to bring your mortgage current. You've heard about foreclosure but you're not sure how it works. You know that foreclosure means legal proceedings and attorney fees and that's not what you're looking for. You've also heard about bankruptcy but that's not really you, you're not looking to spend the time and expense it takes to delay the inevitable or to fight for something you can't afford anyway.

So let's talk alternatives. What to do.

You can hold on and resist till the market gets better and your property goes up. Then you'll get your price, pay your debts and walk away with money in your pocket. Think positively and who knows, maybe next spring. Maybe not.

Forbearance Agreements to Reinstate Mortgage

Holding on will mean contacting your lender and cutting a deal for the lender to take something less than what's actually due and deferring the balance over time. Most lenders will try and work with you providing you're honest and up front and things are not too far out of control, like twenty four months in arrears and you're on the eve of a foreclosure sale. If you're talking two or four months in arrears, then it's probably realistic to try and work out a "forbearance agreement." That'll give you a chance to pay over time and the lender will forbear from bringing or continuing to prosecute a foreclosure proceeding as long as you pay as promised. If you don't, all bets are off and they'll go forward.

To get a forbearance agreement going, lenders will require financial info and some downpayment to prime the pump in a gesture of good faith that you're making some major changes to turn things around.

Let's say you're not enchanted by the idea of a forbearance agreement, bankruptcy's not in the offing, you're not playing lotto and you're not anticipating any big time improvements in your finances, at least in the short term - then it sounds like you're primed for a short sale.

Five Easy Steps for a Short Sale

To get things moving, five easy steps:

1. Organize Your Debts. Get organized. Get all your bills in order and try to log your info onto a computer program like MS Money or Quickbooks so you can figure out what's due and who gets what. It's one thing to say you owe a bunch of creditors, it's another to say who you owe and how much and it's still another to say which creditors have a lien on your house, or security in your house and which ones are unsecured or have no collateral or interest in your house. Get your finger on the pulse and keep it there. Put all your papers in files so you can give the lender what it wants to see as questions come in, not five days later, not two weeks later when you get around to it. Keep the momentum going and let your lender know it's the most burning issue on your agenda. Don't give up till it's done.

2. List All Your Liens. Make a list of all those creditors with liens on your house and how much you owe. That includes your first mortgage lender, your second mortgage lender, any other subordinate mortgage lenders, unpaid real estate taxes, unpaid utility charges being a lien like municipal water, Internal Revenue Service, New York state and any private judgment creditors like the oil company that sued you last year.

3. Figure Out Your Total Payoffs. Total up all the liens on your house and let's call that your "Total Payoffs."

4. Hire a Real Estate Broker. Hire a real estate broker and figure out a realistic selling price for your house. Make sure the broker's qualified and knowledgeable for your specific area and lock into a commission rate that doesn't exceed the market. Your lender won't agree to an inflated commission. Take the projected selling price, less commissions and expenses of sale and call that your "Net Sales Proceeds."

5. Figure Out the Shortfall. Compare Net Sales Proceeds to Total Payoffs and see if you've got enough to pay everything off. If not, you've got a potential short sale and it's time to hire an attorney and get moving.

Chapter Three

Short Sale Proposals

Let's start with a pen and paper and a few moments of quiet reflection with your conservative side who's always practical and never crosses a street while the light's yellow or red, that part of you who won't even think about stepping off the curb till you see "walk" in unmistakable green.

Drafting Your Short Sale Proposal

You'll need three columns starting on the left. First, list the names of all creditors for debts that are tied into the house. Then, we'll set up two columns to the right, one for the total amount they're demanding – their wish for what's due and a second column for how much you think they'll accept. It's the second column that'll need your conservative side, at least to start out.

Remember, negotiating something down will bring a few factors into play, a few factors going beyond what's right or wrong. Take second mortgage lenders for example.

What's right for second mortgagees would mean paying them all their principal and all their interest and all their late charges and whatever, unless you can figure out some legal reason for challenging their right to collect like a violation of federal law or using some glaring oversight in their promissory note which they've overlooked for years and years till you came along and read every word. If you made a face and said no way, you're right, absolutely right. We're talk'n conservative, not pie in the sky. In all likelihood you're not about to overturn the promissory note and turn the lender on its side with some ingenious theory of unconscionable wrongdoing which nobody spotted before today. But that doesn't mean you can't negotiate the debt down.

Negotiating Your Debts Brings
Several Factors Into Play

Here's what often separates those who are skilled from those who lack the appropriate know how or resources to get the job done:

1. Ability to Pay – It's a matter of saying you can't get blood from a stone. One hundred dollars can go only so far, so take it or leave it. Creditors will say one thing if someone just won lotto and they've got five mil in the bank, but their tune will change if a balance sheet shows debts upon debts and no hope of dollar one anytime soon.

2. Time and Expense of Litigation – Creditors can threaten all they want with whatever arsenal's at their disposal for a legal attack having all kinds of horrific consequences, but in the final analysis it's all a question of money. How much will the creditor get from litigation and how much from a settlement today. If we're talk'n mortgage debt, attorney fees and expenses are almost always limited by the courts to something less than what's being demanded. Creditors may get stuck paying the balance.

And don't forget the time value of money. Creditors will also consider the time value of waiting a year or two to collect something more than what you're proposing today.

3. Likelihood of Success – Litigate all you want and the courts will agree or maybe not. Some things are pretty well accepted so you wouldn't even think of second guessing, like stated interest on a loan at, say, six percent. No problem with that and most would agree, the likelihood of success in litigation would hover around one hundred percent. But what about all the extra's. What about default rates at thirty percent or all the add on's that creditors like to charge such as costs of collection, penalties, attorney fees to attorneys and non-attorneys or stuff that's not specifically mentioned in a writing that you signed. Can creditors collect those as well? Maybe yes or maybe no. Creditors will often drop or compromise the fluffy stuff if and when they're faced with providing an actual breakdown of the amounts or a possible challenge by someone who knows. Sometimes, complaints to government regulators can do wonders if fines, penalties or licensing issues come into play. Big companies will often brush off a pesky lawsuit by having an in house attorney overwhelm you in papers and demands that are beyond your resources, but licensing issues often have a way of leveling the playing field since regulators normally know the issues and they'll call the shots if something's out of whack.

4. Property Value – Your lender will do an appraisal to see if you're selling at something close to market value or if you're letting the property go for a little nothing. Once everyone's satisfied that you're in the right hemisphere, then it's a matter of grade school arithmetic to figure out the numbers. As a general rule, everyone knows there's no deal unless the first mortgagee gets what the first mortgagee gets. But the story doesn't end there. The first mortgagee will often give in because it knows that a sale can't take place unless the borrowers can deliver clear title, title free of all liens including liens from subordinate mortgagees, tax authorities or private creditors like the oil company. So

where does all this take us? Well, first mortgage lenders will often take a haircut if it's a matter of sprinkling some money among other lienholders for the sale to go forward. They won't allow dollar for dollar payoffs if they're taking a hit but they'll often allow something, just enough to get the liens released.

5. Release of Lien and Promissory Notes to Pay Shortfall – Creditors may often agree to release their lien but leave their overall claim in effect, less whatever they receive from the sale. What does that mean to you? It means your sale can go forward but you'll continue to owe whatever doesn't get paid. You can look at this a few ways. First, it's not exactly what you want but it's a start, maybe a meaningful start. Second, many creditors may never go after you for the balance, at least as a practical matter. Third, if the remaining balance isn't secured by another property, then a second level of negotiations can still take place afterwards. So, if more money comes your way and you can settle for a lump sum, then by all means, get it squared away later on, when the money's there.

6. Threat of Foreclosure Sale – Ironically, perhaps your best argument for a short sale will lie in your first mortgagee's right to foreclose on the property. From the first mortgagee's standpoint, foreclosures take time and they're never worth it. Lenders go through great pains to avoid foreclosures and they're always a losing proposition. They take time, often two to three years and even more. And they cost, often more than what the courts will award or what lenders will end up collecting.

From the standpoint of everyone aside from your first mortgage lender, so called subordinate interests, they're often terrified of foreclosures because a foreclosure can mean no money after the first mortgagee gets paid, and then their lien goes puff. Gone. Wiped out. No more. So all those folks will ask a hard question that's got nothing to do with you or anything right or wrong. Will a foreclosure wipe them out? Will the first mortgagee's debt with all the add on's and all the interest that accrues or will accrue until sale – will all that wipe them out? If the answer's yes, then they'll release their lien for almost anything of value.

7. Bankruptcy – Nobody wants a bankruptcy proceeding. Nobody but nobody except a debtor sometimes, and the attorneys and folks in the Bankruptcy Court who make a living from bankruptcies. Bankruptcies cost. They're pretty expensive from the standpoint of professional fees for everyone involved, including the debtor and all his creditors. And bankruptcies can often result in consequences that are both favorable and unfavorable to a debtor. At the unfavorable end, a bankruptcy can result in an immediate sale of a debtor's property on terms he's not happy with. On the favorable side, a bankruptcy can often result in a reduction or elimination of debts.

When we're talk'n Bankruptcy it's important to separate those debts that are secured by your property from those we call unsecured or personal obligations only, without any collateral to back them up. So called discharges in bankruptcy which forever prevent creditors from proceeding against a debtor – that usually applies to unsecured creditors only. Secured obligations will usually remain secured by one's property regardless of a discharge in bankruptcy, at least to the extent of a property's value.

Everyone will try and work with you to avoid a bankruptcy. That's guaranteed.

At some point your lender and everyone else will finally break down and say fine, we've got a deal and you've got a certain number of days to close. First mortgage lenders will typically require a Federal HUD-1 Settlement Statement at closing so they can review the numbers and make sure that everything's being done as promised. They'll likely require other things as well, like a stipulated minimum sum and maybe a promissory note from their borrower to cover all monies not being paid. All the other folks having a lien will similarly impose conditions like a minimum payment and receipt as of a given date, perhaps a copy of the HUD-1 Statement and maybe a promissory note for the balance not being paid. And then you'll close.

Chapter Four

The Short Sale Contract

You'll need a signed contract before proposing a short sale to your lender since most won't deal with anything specific until they've got a signed contract and something to actually consider. Anything short of a signed contract will amount to a request for something that may or may not happen and it would put your lender in the position of having to show its cards before playing them, to say how much it'll shave off the payoff without making you push for a higher sales price. So, for that reason you'll likely not make any headway with your lender until you get a contract signed.

From seller's viewpoint, it's best to say nothing to buyers about a short payoff until the contract's signed and even then, no reason to spill the beans unless you need the buyer's cooperation. No buyer wants to hear that a deal may or may not close depending upon how well your negotiations go or that a closing will only happen if the seller's successful in a knock down, drag out fight with one or more of its creditors that may take another ninety days to resolve. Buyers want to lock into a purchase and closing date so they've got a place to live and they won't find themselves wasting lots of time and money in terms of attorney fees, bank fees and title costs for a situation that's dubious at best. The buyer can potentially find himself tying up his downpayment for months and months while his seller tries to cut deals and the buyer stays virtually paralyzed because he's got no choice but to sit and wait, to see if things work out. In fact, a buyer's horror show can get even more horrible if the seller ends up in bankruptcy and the buyer's got to hire an attorney to get his downpayment back, or worse yet, he finds himself entwined in the seller's bankruptcy with a court order directing him to close, to close perhaps several months after the time he agreed upon, after his mortgage commitment or interest rate lock in expires. And if the buyer's tied up, he can't exactly turn and go to contract on another property without a downpayment or without knowing if the sale will eventually happen and he'll get stuck buying two properties. Unfortunately then, that leaves the buyer sitting on his hands.

You may say, what happens if the seller can't get everything in order and he eventually returns the downpayment. What then? Doesn't the buyer have a claim for damages? No doubt the answer's yes but it's a technical right only, since a lawsuit against someone in financial distress won't produce any money, just more headaches.

From a buyer's standpoint, you can protect yourself against a short payoff or force your seller into disclosing his financial distress. To do this, it's wise to include a clause in your contract saying the seller can satisfy all liens from the net proceeds of sale or from other monies in his possession. That should guarantee that no negotiations with creditors are necessary to close. But let's say your buyer finds out and he's inclined to go forward anyway, after you give him the news. What then? What if the buyer comes back and says he'd still like to buy but now he wants a discount for all the time and trouble he anticipates from all those negotiations between seller and his creditors. Should you give up the buyer? Move on to someone else?

It depends upon the market. The fact that you're doing a short sale likely means that you've had trouble finding a qualified buyer for the right price so you'll probably do headstands to keep your buyer. It depends upon the overall offer. The fact that your buyer knows about the short sale won't necessarily make it impossible or more difficult to close. It just means you'll probably need to drop the price and agree to keep your buyer in the loop and possibly even agree to cut the cord and return his downpayment by a date certain if a closing doesn't happen or if the seller sends up in bankruptcy.

Chapter Five

Bulletproof Liens

Despite the best of intentions to get a fresh start, there are certain situations where short sales won't work because you'll never talk the lender into accepting anything apart from one hundred cents on the dollar or you'll never get subordinate creditors to bend one iota off their full demand. Here are some examples.

1. Borrower Wants Cash – No lender will drop its payoff to give the borrower more cash. If the equity's there, expect full payment and nothing less.

2. Low Percentage of Loan to Property Value – Say you've got a first mortgage lender with a lien that's fairly low in relation to the property value. Say it's half or something close. And say you need a short payoff because of other liens on the property like a second mortgage or some judgment creditor like Internal Revenue Service or a private party who's got a judgment. In these situations you'll never get the first mortgagee to bend since it's got plenty of security and lots of time to prosecute a foreclosure action to wipe everyone out. Don't waste your time with the first mortgagee. Your efforts are better spent on the subordinate interests since they're the losers if the property goes to foreclosure.

3. Condominium Common Charges – Condominiums will insist upon payment in full since there's a statute that arguably gives them priority over most creditors.

4. Cooperative Maintenance – Don't even think about shortchanging are the coop. They too, come before most creditors.

5. Matrimonial Judgments – You can try to reason with the ex wife over child support or maintenance but it'll probably end in an emotional outburst that's got little to do with the available equity and how to get paid.

6. Nasty Litigants – Negotiations are rough when you're dealing with someone who's hellbent on ruining a borrower regardless of what it takes. It's best in these

situations to use a buffer who can serve as the voice of reason – and even then, don't expect cooperation without a meaningful payment.

7. Real Estate Taxes – Don't count on relief from the tax collector. Not going to happen.

8. Utility Charges – Certain utility charges will become a lien because they're supplied by the municipality. Water, for instance. These charges, like taxes, always get paid dollar for dollar.

Chapter Six

CEMA's to Enhance Closing Proceeds

Let's say you're scrounging for every penny and your buyer knows what's going on. Or, say you're in the pre contract stage and you're trying to formulate a deal to get every drop of closing proceeds on the table since you know it's pretty iffy and you're expecting nothing less than a dogfight to beat you down.

Enter CEMA's. CEMA's can potentially sweeten the pot with another five or ten grand, maybe more.

CEMA's or consolidation, extension, modification agreements can save mortgage tax at the buyer's end to the extent of unpaid principal on the seller's mortgage. Here's how it works.

Seller's lender assigns its mortgage to buyer's lender. Instead of doing just a conventional note and mortgage, as lenders normally do on mortgage loans, a buyer's lender will accept seller's mortgage in an assignment and then modify the terms to whatever buyer agreed upon. If the buyer's borrowing something more, no big deal. Buyer's lender will do the additional paperwork for any gap or excess amount and then slap it all together in a CEMA.

Two Forms of Tax Savings from CEMA's

The overall tax saving comes in two forms, both based upon the unpaid principal of seller's mortgage.

Mortgage Tax Savings

First, the mortgage tax. Take unpaid principal on the seller's mortgage and multiply that times the mortgage tax rate and that gives you the gross savings in mortgage tax. In New York City for example, a borrower's share of the mortgage tax comes out to a hair less than two percent, so in round numbers, assume two percent of seller's unpaid principal as the gross savings.

Transfer Tax Savings

Second, the New York State Transfer Tax. That's typically a seller saving. The State offers a so called "continuing lien deduction" to the extent of unpaid principal on the seller's mortgage. Given a tax rate of .4 percent, the savings will equal .004 times the unpaid principal on seller's mortgage.

So there you have it. Two forms of savings when you assign seller's mortgage to buyer's lender, one as to buyer's Mortgage Tax and two as to seller's State Transfer Tax. And it's pretty significant. Let's take a for instance. Say we've got $500,000 in unpaid principal on seller's mortgage and buyer's getting a mortgage for $550,000. In round numbers we're talk'n $10,000 in gross savings in buyer's Mortgage Tax ($500,000 in unpaid principal times a 2% tax rate) and $2,000 in gross savings on seller's Transfer Tax ($500,000 in unpaid principal times a .004 tax rate). $12,000 in total. Another twelve grand to get your deal done. You still awake? Boo!

But you say, hey wait a second Mr. Attorney – now we're getting formal. That ten grand goes to buyer, not seller, so how does that help? No problem – got it all down to a science.

You can change the course of destiny with one felt swoop of your pen, just another paragraph or two in your sales contract. Words only. If the deal's right for the buyer, then he'll agree to get his mortgage done with a CEMA – all the big lenders do them – and he'll allocate the savings to seller so seller can use the money to pay creditors or for seller's expenses. Pretty easy, huh?

Chapter Seven

Short Sales in Motion, A Real Life Drama

House gazed into space as he thought about a better time, just a few years back, a time not to long ago after he and Mortgage closed and things took on a flavor of excitement and promise. They had everything going for them, the world at their feet. But as luck would have it, nothing ever stays the same and House began to shrink, first in a way he almost couldn’t see, he didn’t care about. And then one day, one cloudy day in March as the sky grew greyer and greyer and the temps dropped around freezing, Mortgage said to House, “House dear, are you OK – seems like you’re getting smaller and smaller.” Mortgage wanted to hold back, she truly did, but she towered over Mortgage in a way she’d never seen before. She felt a bit uneasy. House seemed pale, a bit sickly perhaps with his paint beginning to peel, his shutters all angled with screws popping around the seems and his roof shingles showing signs of age as they curled around the edges. House couldn’t hold back, honesty’s always best when you care about someone and they care about you. “Mortgage my love, my appraised value’s going down. I’m shrinking and that Ben what’s his name at the Fed refuses to do anything about it. House gave Mortgage that look of confusion like he’s worn and ready to pack it in. Mortgage didn’t know what to say, she towered over House with her adjustable rate getting stronger by the second and all that interest adding pounds and layers, layers of lean muscle mass like steroids out of control.

“House my love, we’re two months behind and what will become of Internal Revenue Service, New York State and that Mastercard judgment? House swallowed hard, it hurt to see Mortgage so concerned but he knew he couldn’t wait. Time to seek help, professional help.

“Hello, let me speak to Real Estate Broker.” House tried to keep the phone steady but it wasn’t easy with all that financial stuff taking its toll, and knowing he wasn’t quite himself.

“House, it’s Real Estate Broker, call me Broker.” Broker’s smooth, real smooth.

“Broker, I’m getting smaller and smaller every time that Ben guy opens his mouth so me and Mortgage got to split, but I don’t know if I can sell for the right price and satisfy her and get rid of IRS, NYS and Mastercard. Need to sell. Can you help me? Tears formed around his attic window and dripped below leaving a small puddle just under the bottom step on his front stoop.

"Sure House, let's take a look. Ahh… here we go – six hundred grand. You're ten percent smaller than last year, twenty percent down from when you bought and things are pretty quiet, but six hundred grand's a pretty real number." Broker tailed off in a sing song like he's riding the scale and it's doe – re – me in reverse.

House paused in quiet reflection as he thought about some book he read last month from What's His Name in Carle Place," some book about "Short Sales" with pictures and sick jokes.

"Good deal Broker – find me a buyer and we'll do it." House wasn't sure where the chips might fall but he needed to do something, he couldn't let it go.

"House rummaged through his copy of Short Sales from What's His Name in Carle Place and he did some quick numbers to figure out what he'd net from a sales price of six hundred grand as Broker suggested. He set up a schedule of folks holding liens, just as What's His Name suggested. First column – creditor name. Second column – amount demanded. Third column – proposed payoff. It felt good, just getting stuff in writing.

Net Sales Price $549,000 (Sale Price of $600,000 less 6 percent broker commission, $36,000, and 2.5 percent in taxes and other costs like attorney fees, $15,000).

Creditor Name	**Amount Demanded**	**Proposed Payoff**
Bank of Insolvency - First Mortgage Lender	$575,000	$532,500
Internal Revenue Service - Income Taxes	25,000	13,000
New York State - Income Taxes	7,500	2,500
Mastercard Judgment	2,500	1,000
Total Proposed Payoffs		$549,000

House felt a quick surge to grab a few dollars for himself but he knew it wouldn't happen, Mortgage wouldn't go for it. He needed to satisfy Mortgage so they could go their own separate ways, move on with their lives.

“Hello What’s His Name.” House knew What’s His Name from the original purchase so he felt at ease, comfortable enough to drop the formalities. “Need to do a Short Sale – Mortgage and me splitting up. Can you help?” House got right to the point, it’s in his blood.

“Sure House, get me all the info on your proposed sales price, Mortgage and anyone having a lien or interest in you. I’ll do some quick numbers. We’ll see what’s possible.” What’s His Name knew how to get things done, what a guy.

House sent all his info to What’s His Name together with his schedule of proposed payoffs. What’s His Name did what he promised and he called all the creditors in House’s schedule to see what’s possible. No problem with IRS, NYS and Mastercard. IRS and NYS said fine, we’ll release our liens but House will still need to come up with the balance afterwards. A little better news with Mastercard. They agreed to accept $1,000 in full satisfaction of what’s due. Bank of Insolvency, well, they said they’d consider any reasonable offer once they had a signed contract of sale.

And then everyone waited. They waited for a buyer. They waited, waited, waited.

And then one day, one bright sunny day in early May as the sun shined brightly and all the birdies sang in perfect harmony, water glistened, tulips bloomed and the sweet smell of spring formed an aroma for all to behold, a call came into Broker. Not just any call, any run of the mill call. Sure the telephone rang like any other time, nothing special about how it rang or the number of times. Broker didn’t give a second thought as he awoke from his mid morning nap, Fed’s got everything under control with all the markets down and lenders scrambling to keep their doors open.

“Hello Broker, it’s Buyer. Ready to buy House for six hundred grand. Don’t need to see it. All set and ready to roll.” Buyer knew nothing about House’s impending break up with Mortgage or his need to cut deals with creditors. All seemed perfect. No issues. No complaints.

What’s His Name drafted his usual contract with one exception, one exception in the mortgage contingency clause, something different that wouldn’t cost Buyer anything out of pocket. Buyer planned on getting a mortgage for $480,000 – 80 percent of the purchase price. What’s His Name included a clause that required Buyer to close his mortgage with a CEMA, a consolidation, extension, modification agreement. And it said that Seller would advance all expenses and the parties would share any net savings in mortgage tax, after all expenses are deducted, fifty fifty. Seller gets one half the net savings and Buyer gets the other half. What’s His Name knew that one half the net savings would enhance House’s net proceeds by $4,000 and his psychic abilities told him that House would need every penny to get his deal closed.

What’s His Name immediately faxed a copy of the signed sales contract to Bank of Insolvency and his phone rang seconds later.

“Hello What’s His Name. It’s Bank from Bank of Insolvency. Got good news and bad news – which do you want first?” Bank spoke with complete confidence like he’s a bank and he’ll stay in business no matter how late his Uncle Ben may sleep.

Let’s do the bad news first.” What’s His Name can take it, he’s a rough and tumble bank attorney who’s got it all figured out. Truly a pioneer, a veritable legend in his own mind.

Bank stumbled on his words, tough talking discounts. “Can’t do $532,500 as you request but we’ll go with $536,500. But we’ll let House walk away on a clean break with no lingering promissory notes – that’s the good news.

What’s His Name patted his CEMA handbook and nearly cracked a smile, his special way of saying thanks, a little foam at the mouth and several gentle giggles to mark his sense of appreciation for a job well done. Another notch in his belt.

And so, House and Mortgage got together one last time at the closing as they briefly revisited all their wonderful warm moments and how they’ll both move on, they’ll survive, they’ll go their separate ways because that’s what destiny has in store and then you never know. Maybe one day.

And suddenly a knock a the door. A stranger. A stranger with a minila envelope from Bank of Insolvency and it’s addressed to What’s His Name, What’s His Name from Carle Place with his address neatly typed underneath. House and Mortgage stopped. They paused. All eyes on the stranger and his envelope.

“What’s going on?” House thought. Change in plans? Are we not going to close?

Feeling the anxiety, What’s His Name decided to seize control and put everyone at ease. “Not to worry, it’s just an Assignment of Mortgage to Buyer’s new lender, an assignment that doesn’t terminate Mortgage’s lien but assigns it to Buyer’s new lender.

House stroked his loose tiles and turned to Mortgage. “Mortgage, my precious Mortgage, you’re not leaving me after all.” House and Mortgage embraced. And they lived happily ever after. The end.

Glossary

Bankruptcy – Legal proceedings in the U.S. Bankruptcy Court which provide for the restructuring of financial affairs.

Closing – The final settlement of all terms provided in a Contract of Sale, as for example a real estate purchase where buyer and seller exchange property for money.

Contract of Sale – An agreement which provides for the terms of sale.

First Mortgage – A mortgage that's superior to all other mortgages on a property, if any.

Foreclosure – Legal proceedings for the sale of property to satisfy a mortgage.

HUD-1 Settlement Statement – A statement that federal law requires financial institutions to prepare at real estate purchases to show all monies received and paid at the closing.

Lien – An interest in property for enforcement of a debt.

Mortgage – An interest in real estate which allows for enforcement of a promissory note or bond.

Mortgage Note – Promissory note secured by a mortgage.

Payoff – The amount needed to pay a debt in full or to terminate a lien.

Promissory Note – An agreement which provides for the payment of money.

Release of Lien – A document which provides for the termination of a lien.

Second Mortgage – A mortgage that's subordinate to a first mortgage.

Secured Debt – Debt that's tied into collateral which allows for terms of enforcement.

Short Sale – Sale of real estate where the total liens are greater than the net proceeds of sale.

Subordinate – An inferior position or lien where any right to enforcement will come after all superior positions or liens in a property.

Unsecured Debt – Debt not tied into collateral.

ABOUT THE AUTHOR

The author Kenneth B. Schwartz is a practicing attorney who maintains offices at 555 Westbury Avenue, Carle Place, N.Y. (Tel. 516-333-7020). After becoming a certified public accountant in 1980, Mr. Schwartz earned his JD in Law from St. John's University Law School in 1983, and a Masters in Tax Law from New York University in 1991. Mr. Schwartz now devotes his law practice to the representation of buyers, sellers and lending institutions in connection with real estate closings.

Mr. Schwartz resides on Long Island together with his wife and three children.

Mr. Schwartz's prior publications on the real estate industry include Mortgages to Music, CEMA's, a Tale of Two Mortgages and Cooperatives and Sandcastles in the Sky.

SHORT SALES

A REAL LIFE DRAMA

By: Kenneth B. Schwartz

So your collar's getting a bit tight and it's time to unload that palace you bought two years ago when things were flying high and nobody thought it would ever end. But no one's banging at your door with big money, money that's big enough to get your first and second mortgages squared away - and all that other stuff that built up on your red side of the ledger. Folks like Internal Revenue Service and New York State staked their claims against you. Mastercard got a bit impatient and took a judgment.

You'd like nothing more than to get everyone off your back and get a fresh start. No need for Bankruptcy. It's way too expensive and risky and besides, things are not that imbalanced where a little understanding and a few compromises couldn't do the trick.

So here we are. We've got the answers and they're here for you without all that mumbo jumbo in legal or accounting talk that nobody wants to hear. Give us a few minutes. We'll change your life. And that's a promise.

By: Kenneth B. Schwartz
555 Westbury Avenue
Carle Place, N.Y. 11514
516-333-7020

Published in the U.S.A. by
X Treme Mortgage Publishing
555 Westbury Avenue
Carle Place, N.Y. 11514