

What an "Arms Length Transaction" REALLY means

Question: I want to know if I can short sale my home and have my friend (parents, boss, ex) buy it at the lower price so I can get a new loan for a lot less and then live there and/or buy it back later?

Answer: Let's address the elephant in the room. Does this question come up? Yes people talk about and ask about this situation all the time. It is difficult for some to swallow when their neighbor buys a home right next door at half or a third of the price they paid. Even if they can afford the payments, some people feel they should have the option to turn the current economic situation around to their advantage.

OK fair question, BUT...the way we got into this situation was a lot of mortgage FRAUD...No income or documentation required loans, and on and on. SO to say the lender that is agreeing to accept a short sale on a property has "seen the light" and has criteria is a step in the right direction BACK...for the economy, for the lenders and for trust in the system. Some would say too little too late, however, we are where we are. But I digress, let's answer your question.

When you think about trying to have the seller stay in the home as a tenant, buy it back from a family member who might be able to afford the short sale reduced price, etc, it might seem benign enough to you. There is likely to be a form in the final paperwork, required to be signed by buyer, seller and agents that is called "Affidavit of Arms Length Transaction".

What does it mean "Arms Length Transaction"? Here is the language...taken from a transaction and a requirement of closing. In bold are comments as you read through it to clarify the intent.

Affidavit of "ARMS LENGTH TRANSACTION"

All parties to this contract hereby affirm that this is an "Arms length transaction".

No party to this contract is a family member, business associate, or shares a business interest **(really no friend, relative, acquaintance, spouse, grandparent, brother in law, adoptive anyone. It means NO one you know!)** with the mortgagee **(you, seller, homeowner, anyone whose name is on the loan)**. Further, there are no hidden terms or special understandings between the buyer or seller or their agents or Mortgagee. **(Like money, kickbacks, gifts and/or arrangements to move back in or stay in the property in any capacity including putting your kids names on the lease.)**

The buyers and sellers nor their Agents have any agreements written or implied **(spoken or hinted, a wink or a promise)** that will allow the Seller to remain in the property as renters **(you MUST move, your whole family must move, you must move everything and not move back, EVER)** or regain ownership of said property **(you cannot buy it back later from whomever purchases it, go on title and/or live there EVER)**, at any time after execution of this short sale transaction. None of the parties shall receive any proceeds from this transaction except the sales commission. **(BUYERS cannot receive credits, kickbacks or any funds from any party to the transaction unless written in as part of the contract, and approved by the short sale**

lender in their condition letter. SELLERS cannot receive credits, kickbacks or any funds, gifts, gift cards, or ANY funds from any party to the transaction unless approved by the lender in writing as part of the contract and short sale lender condition letter. NO MATTER WHAT.)

You will then be asked to SIGN and AFFIRM this "Arms Length Transaction" Affidavit. Putting your name on it says that you understand and agree that you are acting in good faith and do not intend to do any of the things that it states you will not do. SO, don't...

Anything outside of this agreement is considered lender fraud. It is not worth it. If you have a legitimate short sale and your lender has approved a kinder, gentler solution to minimize impact to your family and your credit, it's time to move on. There is life after a short sale (or foreclosure) and a clean break and moving forward is in order for your well being, your family and for those of us whose tax dollars are going to bail out the lending institutions and make up some of these losses.