The New York Times

THE ROLLER-COASTER RIDE CALLED A SHORT SALE

By Vivian S. Toy | July 23, 2010

WITH property values down by as much as 30 percent in New York City, some homeowners who bought at the height of the market are finding themselves underwater and are being forced to sell their homes in short sales.

In the months after the Lehman Brothers crash, most of the short-sale action was in the boroughs outside of Manhattan and in the suburbs. This year, however, short sales appear to be picking up in Manhattan, real estate and mortgage brokers say.

A recent search of sales listings found almost 20 advertised short sales, and that did not include short sales disguised with euphemistic terms like “owner must sell.” The advertised short sales range from a $250,000 two-bedroom on the Upper East Side to a $2 million three-bedroom designed by Philippe Starck in the financial district. They include town houses, co-ops, condops and condos.

And the number of short sales, in which a home sells for less than the amount owed on the mortgage, will most likely continue to grow. The number of lis pendens filings — a first step in the foreclosure process for houses and condos — doubled in 2009 in Manhattan, to 724 from 334 in 2008; this year, 382 had been filed by the end of June, according to the Furman Center for Real Estate and Urban Policy of New York University.

“Short sales are happening and they’re all over the map,” said Melissa Cohn, the president of the Manhattan Mortgage Company. “We’re seeing multimillion-dollar foreclosures and short sales that no one ever anticipated in New York City.”

Jonathan J. Miller, the president of the appraisal firm Miller Samuel and a market analyst, said that 2010 might well be dubbed the Year of the Short Sale nationally. “A short sale is going to be the only way for many people who bought at the peak and who are now underwater to move on with their lives if they have to relocate or downsize,” he said.

Short sales are a gentler alternative to foreclosure for both sellers and lenders. “Compared to a foreclosure, a short sale generally allows an easier transition for the borrower, less impact on their credit history, and larger net proceeds to the loan’s owner,” said Tom Kelly, a spokesman for JPMorgan Chase, adding that Chase encourages borrowers who are unable to keep their homes to consider short sales.

Some advertised short sales seem like bargains, but most are priced just a little under market — low enough to generate interest from buyers, but not too low to raise objections from lenders.

(continued on back)

Short sales, however, are not for the faint-hearted. While there is a possibility for a good price, there is also a good chance that the deal will not go through. Many cooks are involved in this stew. The buyer must negotiate the price with both the seller and the seller's lender. At the same time, the seller must negotiate with the lender on the terms for forgiving the amount still owed on the mortgage. Meanwhile the bank is negotiating fees for lawyers and brokers. The process can take six to nine months.

For Sharay Hayes, who owns a four-story town house on Strivers Row in Harlem, a short sale may be the only way to avoid bankruptcy. Mr. Hayes inherited a share of the house, where he has lived since he was 3, from his grandfather in 2001. Over the years, he took out several mortgages to buy out six relatives and to restore the house's 19th-century grandeur while renovating it with 21st-century finishes and luxuries like a steam room and a whirlpool tub.

Until late last year, he kept up with payments on the $1.8 million he owes on the house. But his "entire portfolio of income earning was in real estate," he said, namely rental properties in Ohio. Those investments went south when the auto plant that employed most of his tenants was shuttered about a year ago; he also is on the verge of losing these properties.

"That's another nightmare I'm trying to wake up from," Mr. Hayes said.

He has had his Harlem home on and off the market since 2006 for as much as $2.9 million, but with the recession, houses in the immediate area now are selling for closer to $1 million. His current broker, Gordon Sokich, the president of Luxor Homes and Investment Realty, an agency that specializes in distressed property sales, advised him to put it on the market for $850,000.

The low price prompted a bidding war and the house is now in contract for $975,000. Mr. Sokich said he expected the bank to counter with a higher price. "We don't know what the bank's bottom line is," he said. He added that because Mr. Hayes has several liens on the house, the first lien is probably the only one that will be repaid in full.

"Once I conceded that I was going to lose my home," Mr. Hayes said, "I felt like every day I was in the bedroom with my shades drawn, hoping it would go away." But the prospect of a short sale "buys me some time."

Because lenders can always sue after a short sale for what is still owed on a mortgage, sellers are advised to ask their lenders to waive the right to sue. But even with a waiver, lenders will often try to make up some of what is owed, either by seeking a cash payment at the closing or a promissory note. Any amount that is forgiven can be considered income by the Internal Revenue Service.

"The seller generally walks away with nothing," said John Bradbury, a Manhattan lawyer who has taught seminars on short sales to real estate agents. "but they get out from under a mortgage they can no longer afford."

Short sales often take months because many mortgages are owned by multiple investors, each of whom must agree to the process. Banks, too, are overwhelmed by foreclosure filings and applications for loan modifications. In addition, banks are not about to broadcast how much of a loss they're willing to take in a short sale.

"There's no 1-800 number that you can call to find out what a bank will take," Mr. Bradbury said. "It's all done on a case-by-case basis, which is what lends itself to the painfully long process."

Phil Tesoriero, the owner of Exceptional Homes Real Estate in Farmingdale, N.Y., and the teacher of a certification course on short sales, said he had seen short sales take anywhere from 45 days to 18 months. He has handled scores of short sales in Queens and Long Island, where he estimated there are a few thousand short sale listings.

Finding the right person at a bank to approve a short sale is often the biggest problem. "That person hasn't been born yet," Mr. Tesoriero deadpanned. "If I get the same person on the phone twice, it's a miracle." The best way to deal with that, he said, "is to present a proposal that doesn't require much conversation." And, he added, "that means sending a proposal that makes sense for the bank."

He urged starting with a list price not too far off the market value, providing good comparables to support the price, and not wasting the bank's time by presenting hopelessly lowball offers.

Carol Kaplan, a spokeswoman for the American Bankers Association, said that short sales, like foreclosures and mortgage modifications, had been long processes in recent years, "because of the number of them in the pipeline and the amount of paperwork involved." She said that although banks preferred short sales to foreclosures, "they also want to make sure that there is no other option that would allow the homeowner to repay the loan in full."

Banks generally will not entertain a short sale until a seller has a signed contract and 10 percent down from a prospective buyer. The Obama administration started a program this spring to encourage more short sales by allowing lenders to preapprove a listing price and setting time limits for the approval process. But many people in Manhattan do not qualify for the program, because it excludes anyone who owes more than $729,750 and whose monthly payment exceeds 31 percent of gross income.

It is only when the offer is in hand that the seller submits an application to the bank. This includes a hardship letter documenting why he or she can no longer pay the mortgage — kind of like a co-op board package in reverse, this time to prove lack of resources.

For buyers, uncertainty is the main thing that sets a short sale apart from a regular sale. Because short sales can take months, a buyer seeking a mortgage may need to seek several extensions on a locked-in rate. Lawyers advise buyers to include a contract clause that allows them to pull out of the deal after a specified time period if the bank drags its heels on a decision.

Bill Dakak exercised that option earlier this year on the potential short sale of a studio in an Upper East Side co-op. He had a signed contract for $210,000 on a renovated apartment that had sold in 2005 for $399,000. His broker, Mark Baum, an agent with Prudential Douglas Elliman, said that the bank obtained and then somehow lost an appraisal and questioned the comparables provided by the seller's broker. Weeks turned into months.

Mr. Dakak's contract allowed him to back out after three months, and he did. "You're asking for a response and you get nothing," he said. "I needed to move on, and honestly I walked away from it feeling like the bank wasn't interested in selling."

Mr. Dakak, who works in finance in Miami and was looking for a pied-à-terre, wound up spending $160,000 in the same building, on a studio in need of updating.

Short sales tend to attract "somewhat sophisticated buyers," said Mary Vetri, a senior vice president of Brown Harris Stevens who helped complete a short sale on a one-bedroom condo in a Midtown high-rise in December. She represented the seller, who had bought the place in 2007 for about $850,000, but then lost his job and tried selling it at $899,000. After a year at that price, it was dropped to $739,000.

It sold for $690,000, when similar apartments in the building were listed for about $20,000 more. The buyer, Ms. Vetri said, "didn't need to move right away and he was educated on short sales and involved enough so that we were all focused on getting it accomplished." The sale closed six months after going to contract.

Even when all the paperwork is submitted and various parties work hard to keep a short sale moving, a deal can still unwind after months of waiting.

When former clients came to Robin Lyon-Gardiner, a vice president of Brown Harris Stevens, saying they could no longer afford their two-bedroom condo with an office and a garden on the Upper West Side, she knew it would have to be a short sale. The couple owed close to $1.2 million on the place, but a similar apartment in the building had sold in a short sale for $940,000.

Ms. Lyon-Gardiner priced it at $975,000 last August, setting off two bidding wars. The first ended in a contract for $999,000, but that buyer "got cold feet and walked away," she said. The second contract with different buyers was for $1.1 million.

The broker for the buyers, Carla de Leon, an agent at Halstead Property, had taken a class on short sales. She warned her clients that the process could drag on for months. "I also told them they had to be realistic," she said, "because I had learned that there was only a 60 to 70 percent chance that the deal would even get done." But her clients were game.

For months, the two brokers were in constant contact with each other, the owner's lawyer and the bank. "I never got through to anyone who could tell me anything," Ms. de Leon said, "but I felt it was important to keep trying. Because maybe I might get the one person who would feel sorry for me and try to move it along."

At one point, the bank lost the file and the seller had to resubmit the application. Then, about six months after the contract was signed, the bank finally made a decision.

"After all that — it was so much heartache and so much time — they declined it," Ms. Lyon-Gardiner said. "I never had a listing that so many people wanted and nobody ended up getting."

Ms. de Leon said her buyers, whose deposit was returned, were stunned. "They didn't understand how the bank could sit on it for so long or why the bank wouldn't want the most they could get for the property," she said.

At last word, the owners planned to declare bankruptcy.