



Short Sale Informational Guide

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PROPERTY EXPERT®

Disclaimer: Coldwell Banker Wardley Real Estate, all agents and employees do NOT have legal training and cannot advise you on the legal aspects of a short sale or foreclosure. In addition, we are not certified public accountants and can't advise you on credit or tax consequences of a short sale or foreclosure. Any statements made should not be taken as legal advice, but simply the sharing of experiences. We suggest you consult with professionals in each field prior to, in the duration of, and at the completion of the short sale process.

What is a "SHORT SALE"

Homeowners who have defaulted (missed) on their mortgage payments often attempt to sell their property in order to avoid foreclosure. A sale of a home for less than what the Owner still owes on the mortgage is considered a "Short Sale".

The mortgage lender must ultimately "approve" a short sale, allowing a buyer to purchase the home for less than the mortgage balance. This stage of the default is considered the "pre-foreclosure" stage.

The Seller's net proceeds must be "zero", there can be no monies returned or received by the sellers.

The Commissions paid to the Broker/Agents are fees included in the mortgage lenders negotiations. This means the approved short sale includes the commissions, escrow and closing fees.

Title Liens. The lender may not approve and pay for liens on the property such as home owner association (HOA) dues and late fees or sewer and trash. This should be discussed upfront and at time of the listing. It is most important that you keep the HOA and utility payments current. These associations have the ability to foreclose just as quickly as a mortgage lender. It's also not uncommon for these fees to grow to thousands in late and legal fees. You want to avoid creating additional financial obstacles to a short sale success.

Home Owner Association, Sellers Package. This is a package of documents specific to the common interest community your property is in. They include the rules, restrictions, bylaws, budget, etc. The law requires every seller must provide this to the new buyer within a timeframe of the contract to purchase. The seller must pay for these documents and the cost can range from \$100 to \$250.

Utilities. The sellers will be required to have the water, power and gas turned on for inspections by the buyer, usually 30 to 45 days. These utilities should remain on until the final walk through by the buyer(s). Sometimes negotiable with the perspective buyer, you should discuss this with your Agent at the time of listing.

Deficiency Judgment. The lender may release owners from any further liability in connection with the loan called a "deficiency judgment". Be sure to discuss this further with your Agent and prior to the Lender's Approval of the Short Sale.

Taxable Debt Income. You may be issued a Tax form 1099 for the difference between the mortgage balance and the amount from the short sale as taxable debt income. The federal legislation called the "Mortgage Forgiveness Debt Relief Act of 2007, effective January 1, 2008, allows exclusion for principle residence and debts discharged in bankruptcy. See IRS Tax Publication 4681 for further details.

First, learn about loan modifications. Call your Lender to see what your options may be.

Second, consult with experts, qualified Short Sale Real Estate Attorneys and Realtor®.

Third, prepare yourself for a long selling process.

Short Sale vs. Foreclosure

What's the Difference?

Issue	Short Sale	Foreclosure
Credit Impact	80-100 Points	250 Points
Time before you can obtain another mortgage loan	2 Years	5 Years if it was a primary residence otherwise 7 Years.
Cost Involved	Varies. Most cost absorbed by Lender	Varies. Real cost associated with attorney fees.
Additional Financial Impact	Usually zero unless other cost imposed by Lender	Negative Impact of Credit
Deficiency Judgment	Possible and may be negotiated away	Possible, plus the cost of the foreclosure
IRS Consequences	<u>Debt Relief Forgiveness Act</u> protects primary residence owners	Possible
Time Frame Involved	90 to 120 Days	Varies and up to 2 years
Costs	Loss of principle on the loan including commission, closing cost and any liens, etc.	Legal fees of foreclosure action, maintenance fees, loss principle value and lower resale values
Downside	Seller may stop making payments. May not sell.	Vacant property, increase crime, insurance risks and unknown sale time.
Upside	Lender is able to write off the loss and move on	Very Little. Lender recovers the property.

Qualifications of a “Short Sale”

The “Short Sale” approval is dependent on a buyer making an offer to purchase. You the homeowner must meet the mortgage lenders qualifications for this “Short Sale”. Following are four requirements.

- 1. THE PROPERTY VALUES HAVE DECREASED**
- 2. THE MORTGAGE IS IN OR NEAR DEFAULT STATUS**
- 3. THE SELLER HAS FALLEN ON HARD TIMES, SUCH AS....**

- mortgage adjustment
- Loss of job
- Business failure
- Damage to property
- Death of Spouse
- Death of family member
- Severe illness
- Divorce
- Separation
- Relocation
- Military Service
- Insurance or Tax increase
- Reduced income
- Too much debt
- Inheritance – leaving unpaid bills of the deceased
- Incarceration

- 4. THE SELLER HAS NO ASSETS**

The Short Sale Package Submission

Some mortgage companies or lenders request the short sale documents at the time the listing is taken while others after a contract to purchase is accepted. We will submit all information including the authorization to speak on your behalf when the mortgage lender will allow the submission.

Here are the main items we will need (although you may be asked for additional documents).

- Hardship Letter. Please see the sample provided. The content should explain in your own words the events leading to your current situation and why you're unable to meet your obligations now.
- Financial Worksheet. Please see the form provided. If your mortgage company or lender specific worksheet was not provided be sure to keep a copy as some may request their own worksheet, or want to go over this with you verbally.
- Two most recent bank statements for all checking accounts for all borrowers.
- Two most recent bank statements for all savings accounts for all borrowers.
- 2 most recent pay stubs for all borrowers.
- Income tax returns for the past two years for all borrowers.

Prepare your property for pictures and showings. Please take the time to remove clutter (such as magnets from the fridge, kids' toys, tools in the garage, trash cans in the yard etc.) It's worth spending a day or two to get your house in tip top shape for pictures and showings. It will make all the difference between your house and the foreclosure next door

Selling your property means regular contacts with the mortgage lender. You will receive weekly updates on showings, feedback, marketing efforts, offers and bank communications.

The Process

1. **The Timeline** - The entire process typically takes 90-120 days.
2. **The Offer**- The law requires that we present you with all reasonable offers. You will have the right to accept, counter, or reject all offers. Our goal is to obtain an offer at the fair market value and provide an acceptable sale amount to your mortgage lender.
3. **The Acceptance** - Once we have an accepted offer, all information will be submitted to the mortgage lender. Along with an estimated settlement (HUD) statement with a bottom line proceeds including brokerage fees (commissions), liens and closing costs.
9. **The Escrow** - The buyer through the buyer's agent will open escrow within one (1) business day of your signed acceptance. This is when the buyer's good faith money or earnest money deposit is deposited and held in a bank account assigned to the title company.
10. **Due Diligence** - Due diligence is the process where the buyer is allowed to investigate everything they need to know, in order to make an educated a decision about the condition and whereabouts of the property. The length of due diligence varies and typically 10-15 days. The buyer has the right to withdraw their offer and obtain a refund of earnest money deposit during this period. After the due diligence process is complete, only finance contingencies, or the sellers failure to perform (honor the contract) would entitle them to a refund, unless otherwise agreed upon in the contract.
11. **The Bank Process** - Once the mortgage lender receives the offer and the short sale package, they begin their procedure. They will order standard appraisal and Brokers Price Opinion or (BPO). The lender will then assign these values to a negotiator. The negotiator will then determine if the offer is acceptable. If you have multiple mortgages, this process has to be completed with each lender.
12. **The Decision** – new rules and regulations are put into play everyday. The most common reason for denial is liens. **If you have not paid your HOA dues, you will be unable to pass a free and clear title if they have placed a lien on the property.** We strongly encourage you to keep your HOA dues and take care of any liens attached to the property. If there are additional mortgages, we must get them all to agree. Without their approval, we have no sale. Once the lender(s) approve, they will give us a written approval with terms. You still get to sign off and agree to the lender(s) terms for the sell to go through.
13. **The Closing** – This is when the buyer's funds are deposited and the deed is recorded.

You must vacate the property PRIOR to closing. We suggest you have all utilities scheduled for shut off on the next MONDAY after closing. In the event of a delay or extension to the closing date, you are not in the property without power, gas or water. Please remember to forward your mail to your new address.

Hardship Letter - SAMPLE ONLY

To Whom It May Concern:

From: Your Name - Name of Loan co-signer (if applicable)
Subject: Mortgage - please include mortgage number(s) and bank names
Date: Today's Date

Paragraph #1: Please state the circumstances of your financial hardship and include the following points in this paragraph:

- I tried to sell the house myself and have had no buyers
- I spoke to a Realtor and he said that I would probably have to pay cash at closing since my house is overleveraged
- Reason I went into foreclosure is (please be specific as this will help)

Paragraph #2: *As a result of the above circumstances I do not have the financial resources to make good on the past due balance on the mortgage or make the monthly payments. Also, the house is in need of the following repairs: **LIST REPAIRS** (once again please be specific - putting yourself in the shoes of a very picky buyer helps)*

Since I'm in dire straits, I cannot afford to make the necessary repairs either.

Paragraph #3: *The house is not worth what I currently owe. Hopefully, you can work something out with the person interested in buying my house on the amount that is owed so they can purchase it and help me move on.*

Thank you for your time and I hope we can have this matter resolved soon.

Sincerely,

Signature required
Date required

The Listing Contract

- a) **Duties Owed:** This form states who the licensee (agent) is in this transaction and what duties we owe you as the seller.
- b) **Residential Disclosure Guide:** You keep this guide and simply sign and date the last page for our receipt. These are descriptions of the standard disclosures provided during the listing/sale.
- c) **Listing Agreement:** This is the four page agreement that gives us permission to list your home. We are providing you with a seller's guarantee that states our promises to you as your agent(s). The contract also has room for you to list what personal property is staying (fridge, washer/dryer etc.), whether you allow us to hang a lock box, if we may place a sign etc. Please initial each page and sign and date the final page.
- d) **Addendum to Listing Agreement – Seller opts out.** This allows the seller to opt out on certain options when listing your home on the multiple listing service (MLS).
- e) **Addendum to Listing Agreement - Short sale.** This is a board required form that summarizes the short sale listing legalities.
- f) **Acknowledgement and Consent for Short Sale Process:** This is the required form from the title company that allows them to help in closing the short sale. We work closely with title companies because of their relationships with the mortgage lenders. This allows us to be able to close the sale faster.
- g) **Borrower Authorization and Release:** This form is mandatory for us and the title company to speak with your mortgage lender on your behalf. It must be signed, filled out correctly and completed for **EACH** loan.
- h) **Sellers Real Property Disclosure:** This four page disclosure describes the condition of your property. Please fill it out to the best of your knowledge. Initial each page and sign and date the last page.
- i) **Seller Information Form:** We do not actually send this form anywhere. It is stored in your file and must contain your signature, loan number and mortgage lender's contact information. If you have two loans, please have two forms or list both loans (providing you have room).
- j) **Lock Box** - We will hang a lock box for showings - if permitted. The lockbox provides data to us for following up with agents who show the property. We find a lockbox doubles the showings than a property without one.
- k) **MLS** - Within seven days of obtaining your listing, we will have your property live on the MLS. We encourage you to prepare your home in advance and work with the photographer on scheduling. A professional style ad will be written and 8-12 pictures will be featured. The better the MLS brochures look, the more likely it is that we will receive an offer within our 3 week plan.