



WHAT IS A “SHORT SALE,” AND HOW WILL IT HELP ME?

You may be one of many local homeowners owning a home or rental property which has declined in market value to such an extent that the current market value is much less than your mortgage debt on the property. You are “under water,” or “upside down.”

We can help. Let us explain how.

The price collapse in the housing market caused by the bursting of the speculative bubble that grew from easy money, loose lending practices, overbuilding, and years of rampant speculation is causing homeowners like you, lenders, and mortgage insurers to suffer billions of dollars in losses.

The lenders themselves, and the “lender / insurer of last resort”—Uncle Sam, are now cutting their losses.

Among other efforts aimed at reducing losses, “Short Sales” are being encouraged.

Perhaps you should cut your losses too!

You may benefit from **restructuring your situation by doing a short sale**. Frankly, on both individual and national levels, recognition of the negative equity and matching indebtedness to fair market value is part of what’s needed to rationalize the credit and housing markets.

Foreclosure is a disaster for everyone, homeowner and lender alike. **There is no sense going to foreclosure when your property could be sold.** Even if you are not facing foreclosure, but are holding too much debt relative to the decreased value of a property, it makes sense for you to restructure out of the precarious situation.

You may benefit from taking immediate and sensible action to keep your situation from deteriorating to an unmanageable level. You don’t want that. Your lender does not want that to happen. It is far more costly for all concerned when you’ve reached a point where you are financially unable to meet your obligations.

Most folks think that they cannot sell a property on which they owe more than the property would fetch at sale. That is not true. You can, and perhaps should, sell the property.

The term **“Short Sale”** means a sale where the debt owing against a property combined with the costs of its sale exceeds the property’s market value. Upon sale, the lender accepts net proceeds of sale as full and final settlement of the mortgage, and releases its lien. The amount of debt in excess of proceeds from sale is called the “Deficiency.” So, if you paid \$400,000 and sell the property for \$300,000, the deficiency accepted by the lender is \$100,000.

Another type of Short Sale is called a “Short Payoff.” In a Short Payoff, the lender accepts proceeds of sale, and releases its lien, but the Homeowner pays some or all of the Deficiency under lenient terms and goes forward with a greatly reduced and modified debt.

When the necessity for doing a Short Sale has been precipitated by a “Hardship,” such as death, job loss, divorce, relocation, medical problems, etc. and you are financially unable to pay the “Deficiency,” your lender generally forgives or “cancels” this remaining debt not satisfied by the sale. These days the lender generally agrees whether it’s a genuine hardship or not.

It is a business decision. Your lender looks carefully at your financial position. If your situation has become dire, you are months behind, have little or no money or assets, and no immediate likelihood of a change for the better, the lender has little to gain by asking you to pay the deficiency. Again, if you are far underwater, the lender knows at some point you will probably stop making the payments anyway. So, even if you can make the payments, the lender will agree to a short sale.

When you do have assets and income, but still need to restructure for simple prudence sake—where YOU are making a business decision, the lender is may ask you to pay some or all of the deficiency. But, if this is the case, the terms for doing so will be very lenient, and you’ll have a much smaller debt going forward. (You get a write off versus the debt, too—see your Tax Adviser.)

Some homeowners who wish to do Short Sales are very sensitive about their personal credit. They may be Federal Agents, work for Government Contractors, have Security Clearances, or for whatever reason wish to maintain pristine credit.

A Short Payoff has no negative impact on one’s credit file.

An important consideration in a Short Sale is whether your mortgage is "recourse" or "non-recourse." Most mortgages used to purchase a residence are non-recourse, secured only by the home.

But mortgages from refinancing a previous mortgage, most second mortgages, and Home Equity Lines (HELOCs) are usually recourse. If a debt is "recourse," you are personally liable for the debt. If the debt is "non-recourse," the debt is only secured by the property, and you are not personally liable for the balance.

Whether debt is recourse or non-recourse, the decision a lender makes in pursuing payment is always a business decision based on the circumstances of the case. The lender will allow sale of the house. And the lender will make a decision about how to handle the Deficiency.

Short Sales do close. It takes longer than a normal real estate sale because the lender must examine the borrower's financial position, assure that the property (its collateral) is being sold at fair market value, and account internally to its Management, its Investors, Mortgage Insurers, and Regulators. Additionally, with the market collapse, the case load handled by the lender's personnel—its "Loss Mitigators," is quite large.

In doing a short sale, when the debt is cancelled, the cancelled amount becomes ordinary income to you. But, under the "The Mortgage Forgiveness Debt Relief Act of 2007" homeowners who do short sales owe NO taxes for the sale is of a personal residence.

If you're an investor, you'll likely not pay taxes if your debts exceed your assets and you are therefore "technically insolvent." If you've realized a loss on the property, you may also be entitled to deduct it under "Code Section 1231." (We're Realtors, not Tax Advisers, so see your Tax Professional on these questions.)

Short Sales are precipitated by hardship. "Hardship" is an event or series of events that are generally beyond your control and that resulted in a reduction in your income and/or increase in your expenses or these days from a gross decrease in the value of the property.

From the lender's point of view, it is not simply that the property's market value has declined. Typical hardships are job loss or transfer, decline in income from employment or self-employment because of market changes, medical problems, divorce, death, etc. The lender wants an explanation of what happened. This is referred to as a "Hardship Letter." It should be a basic narration of the facts. Brevity is the soul of candor and wisdom. The Loss Mitigators reading these files are busy and overloaded, so simplicity and brevity in all matters are critical to your success.

MARKETING:

If you choose to do a Short Sale, here's what you do. First, formally list the property with me at Evergreen Realty by signing a listing agreement.

We will price your home based on analysis of recently completed Sales of Comparable Properties in your neighborhood. Pricing will reflect the fact that your property is a "Distress Sale." It's being sold "Short" on the mortgage. It is aggressive liquidation at just below true "Fair Market Value" for sale within thirty days. Your property must compete with other distress sales like foreclosures on basis of price, even though it may be in much better condition.

That better condition makes your property very attractive, even though your buyer must wait much longer to close. Buyers want “Move-in Ready” property. It is also better if you move out. Vacant properties are easier to sell. And you can offer “Pre-settlement Occupancy” to your buyer as an added inducement to wait out the longer closing period.

COSTS:

Our exclusive right to sell listing agreement addresses how much the sales commission will be and the standard part states that you will be obligated to pay us a commission in the event we are successful in bringing about the sale of your home.

However, in your situation you will also have a “Short Sale Addendum” that further modifies our agreement. The Short Sale Addendum is necessitated because the amount owed on the property exceeds the “net” amount that we can reasonably expect to generate after the payment of all closing costs and sales commissions.

You won’t receive any money from the sale. You owe more than the property is worth, so you cannot pay commissions. You are not responsible for any costs connected with the sale of the property.

In order to secure an accepted offer, we must send in a Short Sale package to the lender. This will include authorization to discuss your loan, financial worksheet, recent pay stubs, tax returns, bank statements and the like. These documents are crucial to the transaction, so sellers must be willing to cooperate in providing them.

Any contract offers will be submitted to you for your approval and upon your approval they will be submitted to your lender. Your lender must approve the total transaction, including all sales commissions and other closing costs to be paid. The Buyer is bringing money to the closing table to buy your property. All costs are paid from those funds. There may be instances when our total commission as approved by your lender is less than originally stated in the listing agreement. In such an instance, we will not hold you responsible for any difference.

“Your lender must approve the total transaction, including all sales commissions and other closing costs to be paid.” Although you are the “Seller,” because of the circumstances surrounding a Short Sale, the lender typically pays all costs. If you’re seriously behind on HOA dues, or Property Taxes and you have the means, the lender will expect you to pay those. All liens against the property must be cleared. If you lack the means, the lender will pay everything. So the “Costs” of doing a Short Sale are minimal. (The costs of NOT doing one might be enormous!)

We list the property with the local M.L.S. (Multiple Listing Service) insuring that your property has fair exposure to all potential buyers/investors. That listing contains phrases such as “Subject to Potential Short Sale” and “Subject to Third Party (Your Bank) Approval.” Such required phraseology makes it clear that the loan is being settled for less than is owed, and that a longer settlement period is warranted.

Any sales contract / purchase agreement entered into must state that the purchase price is contingent upon lender’s written approval (“Third Party Approval”) of a short sale if there will not be sufficient funds to pay the lien on the secured property in full. This is required by our regulations and local rules.

NEGOTIATION WITH YOUR LENDER:

If your mortgage is in default, collection activities, including foreclosure proceedings will most likely continue until you receive an offer and we submit your “Short Sale Package” to the lender. We often stop foreclosure by submitting an offer with your package. But, we need time. It’s very difficult at the last moment to stop foreclosure.

Time is of the utmost essence in handling all aspects of communication and



documentation.

Diane Butler—“The Select REO & Short Sale Specialist,” retains Direct Access as a Professional Negotiator to work directly with the lenders. Direct Access has Professional expertise in all aspects of Real Estate Transaction Document Management, and negotiation with Lenders, Servicers, Asset Managers and the like.

Negotiating a Short Sale is an art requiring utmost patience. With all due respect, the lenders are for good reasons and bad ones, very bureaucratic. They do not return calls or respond to faxes in a timely manner. They are insistent, even in the direst circumstances, upon use of their forms and procedures, even when it is clearly not in their best interest, or yours. They lose files. Their personnel turn over frequently. Sometimes you start completely over.

Since it is necessary to have a written bona fide Offer to Purchase in order to submit a completed “Short Sale Package” to initiate the Short Sale process, we often submit an Investor Offer right away to expedite the process. Such an offer may be necessary in particular to bring about delay or stoppage of the foreclosure process. Investor Offers are “wholesale” offers. The Investor is hoping to get the lender to sell below market value. This seldom happens. But if it does, your Investor can re-sell to another buyer at a profit.

COMMUNICATIONS:

Our communication with your Lender / Servicer is fully authorized to cover marketing activities for the property and the terms and conditions of the Sales Contract, as well as all aspects of your financial situation. All of your personal financial information is held in strictest confidence except in communication with your Lender. The fact that you are doing a disclosed short sale does make it a matter of public information that you are upside down on your loan. It would be totally unfair to buyers and Buyer Representatives not to give this disclosure. Your understanding and agreement on this point is appreciated.

We are responsible for informing the selling Real Estate Agent and your buyer about how the short sale is progressing. Communication is critical to keeping your buyer in place through the process to a successful closing.

IRS REPORTING:

Any Short Sale will be reported by the Lender to the IRS as may be required by IRS regulations. You must consult with your tax advisor regarding any tax implications of a short sale transaction. We cannot give legal or tax advice.

The “Short Sale Package” (which we’ll submit to your Lender(s) / Servicer) includes all documents typically requested from you as Borrower and from us as the listing Real Estate Agents and your representatives. Frequently, the lender requests the same information, but on their form. The lender also requests “updates” of such items as bank statements and pay stubs month by month.

Required Documents: (Your “checklist”)

1. Signed Authorizations authorizing release of financial information to us as your representatives
2. Complete financial information from you in the form of a financial information form: Income, expenses, assets and liabilities
3. Current Mortgage Statements so we can get account numbers and balances
4. A copy of the first page of your Deed of Trust and Schedule A with complete legal description—an easy way to do this is just have us review your original loan package
5. A written hardship letter from you outlining your financial situation and the

events that caused your financial hardship. If you have additional documentation like Divorce Papers, Medical Bills, Unemployment Vouchers, etc., any supporting evidence—that's great.

6. Your most current two monthly bank statements, all accounts all pages with Bank Logo at time we receive offer on property
7. Your last two paycheck stubs or other thorough evidence of income such as unemployment at time of offer
8. Your two most recent State and Federal tax returns with all schedules
9. Copies of any delinquency notices, Notice of Trustee's Sale, Notice of Default and any other documents that you have received, or will receive from the lender
10. If self-employed—last six months' P&L
11. Most recent detailed statements for any 401k, retirement, or investment accounts. Other real estate holdings if any—location, value, mortgage
12. Copies of all correspondence with Lender / Servicer
13. Evidence of any mechanics liens, tax liens, HOA deficiencies or arrears or any claims whatsoever against the property—we must secure written release of each lien in recordable form from all subordinate lien holders prior to closing

SALE OF THE PROPERTY:

Once we receive an offer, it is sent to you for “ratification,” your signature approving the offer. Any additional offers received are “backup” offers. We put the accepted offer into escrow . The buyer is then free to do his contingency checks: financing, home inspection, appraisal, etc. Additional offers are still welcome. We submit the entire package to your lender(s.)

The lender typically orders a “second opinion” Appraisal or Broker Price Opinion (BPO) in two weeks to thirty days. Once received, they compare it to the sales price to assure that they're receiving a “fair market value” sale. They may counter offer at a higher price. If they do, we now know exactly what they'll accept. If you have several

offers, all are given opportunity to submit their “Highest and Best” offer. Once a price is agreed upon, you and your buyer proceed to settlement. Settlement is generally “mobile,” and since you’re not receiving any money, you will most likely simply endorse paperwork.



IN THE MEANTIME, WHAT SHOULD YOU DO?

Move on with your life. You are restructuring. You are de-leveraging. You are settling a loan and restructuring a debt that was too large—so large that it was ruining you financially. You will no longer be obligated to pay that big mortgage. You could move. You can at least begin to move. (We may get an offer before you have time to move!) You will be in position to reduce your housing costs by a third or one half. (We can find you a rental.)

You can pay down or off the credit cards and other bills. You can get back on your feet. That’s what this all about. This housing market is going to be depressed for several years.

You will have time to recover financially. Your credit will NOT be severely damaged. You will be in position to buy your next home for half what you paid for the home you short sold, if you wish. **You will be eligible for a government-backed mortgage twenty-four months after the close of your short sale.**

You’ll be a much wiser buyer and in a much stronger position.

At that time, it would be our honor and privilege to serve as your “Buyer’s Representatives” in purchasing your next home. You will have emerged a Winner!

It is our privilege to serve you now, and we deeply appreciate the opportunity and your business. Thank you and very best luck!

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