



## SHORT SALES – A BRIEF SUMMARY (For Sellers)

1 *The following Summary is intended to briefly address some of the practical and legal issues that can arise in a Short Sale*  
2 *transaction. This Summary is not intended to be a complete explanation of Short Sales, does not constitute legal advice,*  
3 *and should not be relied upon in lieu of securing competent legal, tax and consumer credit advice.*

4 **1. DEFINITION.** The term “Short Sale” is used to refer to those real estate transactions in which the agreed-upon purchase price  
5 is insufficient to pay off all of the secured debt on the property (such as mortgages, trust deeds, state/federal income taxes, liens,  
6 property taxes or other local assessments) including the costs of closing, such as escrow and recording fees, title insurance  
7 premiums, real estate commissions, etc. If the seller is in bankruptcy, a trustee for the seller’s creditors will take control of the sale.  
8 In most Short Sales, the seller must secure an agreement from one or more third-party creditors to accept from the closing  
9 proceeds something less than the remaining amount of the debt due them. In other words, the debt is “shorted” or reduced. The  
10 one thing common to all Short Sales is that the final decision on price and terms of the transaction, as well as the identity of the  
11 ultimate buyer, will be in the control of third parties, usually creditors, whose consent to the transaction is required in order for the  
12 seller to convey clear title to a buyer.

13 **2. CONSIDERATION OF OTHER ALTERNATIVES.** A Short Sale transaction is only one alternative, among many, that sellers  
14 have when a home is facing foreclosure or a sale is hindered because the existing indebtedness exceeds its market value. Before  
15 agreeing to a Short Sale, sellers need to explore all other options. For example, there may be private parties, such as family  
16 members who may be willing to provide interim financial assistance. The seller’s current lender may have a workout program that  
17 is available. There may be other lender programs a seller could qualify for, such as Hope Now, a collective alliance of large banks,  
18 counselors and other industry organizations formed for the purpose of preventing foreclosure and keeping homeowners in their  
19 homes. (<http://hopenow.us/>) There are also government insured loan programs such as FHA Secure and Project Lifeline that may  
20 be available. (<http://neighborhoodassistance.com>) Additionally, there may be certain legal alternatives worth exploring, such as  
21 giving the home back to the existing lender through a deed in lieu of foreclosure, or simply permitting the lender to file a  
22 foreclosure. Bankruptcy (Chapters 7 or 13) may be appropriate for the seller. While a real estate broker may be helpful in  
23 directing the seller to one or more *sources* of information, they should not be relied upon for legal, lending or credit advice. For  
24 such advice, sellers should consult an expert, such as a lawyer, mortgagebroker, lender, or credit or consumer counseling expert.

25 **3. TRANSACTION CONTINGENT ON THIRD-PARTY CREDITOR CONSENT.** Since a Short Sale requires approval from one or  
26 more creditors who are not parties to the pending real estate sale transaction, the seller’s agreement to sell must be made subject  
27 to (or “contingent upon”) third-party consent. This generally means that if the seller is unable to secure the necessary consent (for  
28 example, because the creditor refuses to give consent or it cannot be obtained by the closing date), the transaction fails and all  
29 earnest money is to be promptly refunded to the buyer.

30 **4. TRANSACTIONAL CHANGES REQUIRED BY THIRD-PARTY CREDITORS.** In Short Sales it is not unusual for a creditor  
31 whose consent is sought to insist that other creditors who would be paid from the closing also share some of the cost. They may  
32 also insist that the sale price be increased, or require removal of provisions for the seller to pay certain repairs, etc. Some creditors  
33 may require an appraisal or independent broker’s price opinion (“BPO”) of the property before making any decision. Thus, in Short  
34 Sale transactions, seller and buyer must be prepared for delays resulting from changes to the price, terms and conditions agreed  
35 upon in the original transaction, responses from third-party creditors, as well as other events outside of the seller’s and buyer’s  
36 control.

37 **5. BUYER DUE DILIGENCE CONTINGENCIES.** In Short Sale transactions, the deadlines for completion of buyer contingencies  
38 may need to be suspended pending third-party creditor consent. However, if consent is slow in coming and the buyer wishes to  
39 proceed anyway, buyers must understand that there is a risk they could expend their funds only to later learn that the necessary  
40 creditor’s consent to the Short Sale cannot be obtained. Normally, buyers have no recourse for recovery of these expenditures.

41 **6. ADDITIONAL OFFERS.** Since most third-party creditors will want to secure the highest and best offer for the property, they  
42 may insist that it remain on the market, notwithstanding a pending transaction. As a result, a creditor may withhold final consent  
43 until they have had an opportunity to compare one offer with other potential offers that may come in the future. In some Short  
44 Sales, a creditor may refuse to give consent to a pending transaction because they want the seller to accept another offer, or  
45 potential offer, with a better price or terms. As a result, the entire Short Sale process may involve a significant risk of delay or  
46 failure.

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47 **7. USE OF EXPERTS.** Short Sale transactions can be complicated and time consuming. They raise important issues, including  
48 income tax implications, liability issues for unpaid mortgage indebtedness, credit rating issues, bankruptcy issues, legal issues, and  
49 a range of others. Your real estate broker is not an expert in these areas. **Sellers are strongly encouraged to secure**  
50 **additional competent professional advice before entering into a Short Sale transaction.**

51 Listing Firm \_\_\_\_\_ Listing Licensee \_\_\_\_\_

52 **ACKNOWLEDGEMENT OF RECEIPT**

53 **The undersigned acknowledge that they have read and understand this Summary,**

54 Seller \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

55 Seller \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

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Principal Broker's Initials \_\_\_\_\_  
Date \_\_\_\_\_

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