

**Table of Contents.....**

**Paragraph 1: What is a Short Sale**

**Paragraph 2: Why would the lender agree to Short Sale**

**Paragraph 3: Why would a homeowner agree to Short Sale**

**Paragraph 4: What are the details of the Short Sale process**

**Paragraph 5: What are some drawbacks to Short Sales**

**Paragraph 6: In closing**

## **What is a Short Sale?**

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In a Short Sale the Servicer (the lender) allows the borrower (the homeowner) to list and sell the mortgaged property with the understanding that the net proceeds from the sale may be less than the total amount due on the mortgage. *Per HAMP Supplemental Directive 09-09 released 11-30-2009*

## **Why would the lender agree to a Short Sale?**

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Foreclosure is expensive and lengthy! It is estimated that a Foreclosure can cost the lender approximately 50% of the value of the home. On the other hand, a Short Sale is estimated to cost the lender approximately 25% of the value of the home. A Short Sale can recoup the bank approximately 75% of the home's value where as a Foreclosure is only 50%. It's more financially advantageous for the bank to proceed with Short Sale vs. Foreclosure in most situations.

Lack of Property Preservation is another reason a bank would be willing to Short Sale. During a Short Sale, the homeowner is allowed to reside in the home and in return, the bank expects the homeowner to maintain the property. Maintaining the property's condition helps keep the value up and in return potentially can help in obtaining a higher price therefore, allowing the bank to walk away with less of a loss otherwise.

Vandalism and damage is a huge concern for banks. Any damage done to the home simply reduces its value and in return causes an even greater loss the bank will walk away with. Keep in mind, even though the bank knows it is going to take a loss, it wants to do all it can to reduce that loss as much as possible. With a Short Sale, it's much less likely that the home will ever be vandalized or damaged and therefore, at the very least maintains its current fair market value.

Homeowner's insurance is another cost the bank does not want to take on. When the homeowner is allowed to stay in the home during a Short Sale, the bank requires you to keep homeowners insurance active, regardless if you can pay any amount towards your monthly mortgage bill. In many situations, the bank would much rather the homeowner reduce their insurance deductible as low as possible and pay the insurance premium even if it means they won't have enough to pay the monthly mortgage bill. Obviously, this is done in case any loss or damage done to the home that can be filed as a claim. The bank prefers you to keep your insurance paid because it protects the home and if something catastrophic ever did happen, the bank would potentially get paid back in full for the amount owed.

Compared to Foreclosure, the Short Sale generally provides a better outcome for the lender and the investor than Foreclosure does.

## **Why would a homeowner agree to Short Sale?**

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A homeowner agrees to participate in a Short Sale because of Hardship or in other words, Foreclosure is imminent and the homeowner has no other choice. Many lenders and Investors won't consider cooperating with a Short Sale unless the homeowner is in a imminent Foreclosure situation. Lenders typically require the homeowner to write a letter outlining in detail the Hardship that has fallen upon the homeowner that prevents the homeowner from being able to make their monthly mortgage payment. As a part of the Short Sale Package to the lender, the Hardship letter is one of the most important pieces. Unfortunately, many people don't spend enough time telling the story of their situation and in return, many banks consider their hardship

## Homeowner's Guide to Short Sales Saturday, December 12, 2009

as illegitimate and therefore, don't cooperate with the Short Sale. When writing this letter, be sure to explain your hardship in detail and make sure it's truly a Hardship.

Avoiding the stigma of Foreclosure is another reason many homeowners would prefer to Short Sale vs. Foreclosure. Let's face it nobody wants a Foreclosure on their credit report or in their public record. Many people are forced to face this tough time because they have lost a job and when they go looking for another job, having a Foreclosure on your credit report could stigmatize you and make it less likely you will get the interview. To take the stigma argument further, keep in mind, foreclosures are advertised in your local papers. Don't forget, a foreclosure is sold at public auction and as a part of that auction your address will appear in the advertisement as one of those properties going up on the block. It's embarrassing and heart wrenching and something I can't imagine anybody wants to go through.

For many homeowners, being able to save money while they are waiting for the Short Sale to complete is the single most important reason to agree to Short Sale. Once the bank agrees to Short Sale, they are certain you can't make your monthly mortgage payment. This is because you have provided them with a complete Short Sale package proving that you have a legitimate hardship and you simply can't make that monthly payment. During the Short Sale, many banks don't expect you to make a payment however; they do expect you to maintain the home, protect the home and make it available for showings. This way homeowners can keep more of their income, and have money to vacate the property and get their families on a better financial footing after closing.

Lastly but, no less important, a Short Sale allows a homeowner to purchase their next home in 2 years whereas, a Foreclosure it's 5-7. As long as you can meet the Fannie Mae credit and down payment requirements, a home purchase is possible much sooner than Foreclosure or Bankruptcy.

### **What Are The Details of The Short Sale Process?**

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The most important detail is not to do a Short Sale alone. It's a very complicated process, requires a lot of documentation and must be driven by a knowledgeable and competent Realtor. So, don't try to go it alone, get yourself a Realtor but, be very careful because many self titled "Short Sale Experts" are out there and they have very little experience if any at all. **DO NOT ASSUME A HIGHLY EXPERIENCED REALTOR IS HIGHLY EXPERIENCED IN SHORT SALES!** Granted, Short Sales are nothing new however, it was only the recent 4-6 years when Short Sales have come into their own. In fact, many people surmise that Short Sales won't even reach their pinnacle till 2010 – 2012. My point is, you must make sure the Realtor you're working with is knowledgeable about Short Sales because, a in-experienced Realtor can cause your deal to fall through and you will end up going into Foreclosure.

Once you have found yourself a knowledgeable Realtor, now it's time to get your home on the market and your Short Sale package together to send to the Servicer (lender). A Short Sale Expert will have a check list of items for you to provide to the Short Sale Package. You must provide each and everything on that list otherwise, your Short Sale request may not be accepted and you might find yourself in Foreclosure. **DO NOT DELAY!** Time is not your friend when it comes to these Short Sale packages. A Servicer will not consider your Short Sale or postpone your Foreclosure till this package is complete. Many Servicers are working 2-6 months of back logs so, if you are 4 weeks out from your Foreclosure Sale date and just now getting your Short Sale package together, it becomes a race against the clock and sadly, many people don't make it. They may get the package submitted before the Foreclosure sale date however, the bank didn't get

Homeowner's Guide to Short Sales  
Saturday, December 12, 2009

everything they needed in the fax or, they found a document with an unreadable signature or, your spouse forgot to sign a document or, it just takes the bank 10-15 days to upload your documents to their system or, the Foreclosure attorney changes email boxes without alerting the servicer and emails to postpone were going to the abyss of the internet or, ...blah, blah, blah, blah. The harsh reality is, 1 minor mistake or omission in your Short Sale package is enough to stop the whole process, force you to start over and the whole time, your Foreclosure sale date looms only weeks away. Once again, DO NOT DELAY IN PUTTING YOUR SHORT SALE PACKAGE TOGETHER, TIME IS NOT YOUR FRIEND! Another way to make my point is, if you know foreclosure is imminent because your Hardship is long term, do not wait for the Foreclosure notice before you consider a Short Sale, by then, it may be too late!

During the same time you are gathering documentation for your Short Sale package, the Realtor should be working towards settling your junior liens. I know this may seem a bit strange considering you don't even know how much any offers you receive will be and in return, you aren't going to know how much the primary lien holder is willing to walk away with however, these negotiations can and must be settled before the Short Sale package is submitted because all cost, including junior lien holder settlements must be accounted for on the Preliminary HUD-1 submitted to the servicer as a part of your package. Once again, how I specifically handle this is proprietary and I won't be sharing those in this document but, it is regularly done and will have to be done before your servicer will approve a Short Sale.

Once the home is listed and the Short Sale package has been accepted and verified by the bank, you will hopefully have multiple offers by this time. I won't divulge my pricing or marketing strategy here; it's proprietary however I will say that you should have an accepted offer on the table to the bank before the first 30 days. If not, you may want to reconsider the Realtor you are working with. Simply said, a Short Sale property isn't priced or marketed like a retail property and if the agent you're working with thinks otherwise, he could end up causing the Foreclosure because of his lack of understanding of the process and expectations.

Now, send the executed offer to the bank for consideration. Some agents make a huge mistake and wait to send the Short Sale package in with their offer, this is a terrible blunder. It is true, some banks will not consider the Short Sale till the offer is submitted however, some banks will make an additional effort to work with the homeowner if they know the homeowner is actively trying to sell. I have seen banks stop all collection efforts the moment they receive a complete Short Sale package. So, even though they may not postpone the Foreclosure, at least they stop those harassing calls and letters, most of the time. I can't think of any good reason to not send in the Short Sale package the moment it's complete, it just doesn't make sense not to.

All Short Sales require the bank approval so, it's important that your knowledgeable Realtor clearly state the process in an additional addendum and relay those expectations and processes to the buyer and buyer's agent. Unfortunately, many times this doesn't happen and, many buyer's end up backing out of the deal simply because they believe it's taking too long to get an answer back from the bank. These types of situations are very common and, can cause the seller to go into Foreclosure at no fault of their own but at the fault of the inexperienced Realtor. Once again, the process and procedures I use to handle these issues are proprietary and are what makes me stand out as a true Short Sale Expert so, I won't go into details here on how I avoid this situation all together but, just know, it can be avoided successfully if handled correctly.

Once the bank agrees to the offer, they will typically require closing to take place no later than 45 days after the day they agree to the offer. At this time, you have a binding agreement and everyone should now proceed with fulfilling the terms of the agreement. By this time, your title

## Homeowner's Guide to Short Sales Saturday, December 12, 2009

agent should be actively participating and your Realtor should be following up regularly and driving the process, ensuring things are completed on time, if not ahead of schedule.

If all is working correctly, 3-5 days before closing you should have a copy of the pre-final HUD-1. This will be a break down of all the money and where it's going. You should look this over very carefully and make sure everything is correct. A day or 2 before closing you should also receive a final approval to participate from your Servicer, if you haven't received it already. This will outline to you the details of the banks agreement to close this Short Sale and it will break down if they consider the debt paid in full, fully satisfied. The day you close is the day you will exchange keys so, it's important to be completely out before you sign on the dotted line.

### **What Are Some Draw Backs to Short Sales?**

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The single biggest complaint I hear from sellers is that the banks wants so much documentation. Unfortunately, this is true.....they do want a lot of information from you. The documentation gathering process can be time consuming, frustrating and irritating but, without it, the bank will not consider your Short Sale request.

Waiting is another chief complaint from sellers. Because of housing bubble burst, many Servicers are literally working 2-5 month back logs so, it can take 6-9 months to close a Short Sale. During this time, sellers get anxious and want to move on with their lives however, they are committed to occupying the home, maintaining utilities, insuring the home and protecting it from damage while this process is going on so, you can't up and leave while the Short Sale is under consideration. Be prepared to wait it out.

Potential tax liabilities are another chief complaint I hear. I am not a tax professional, in fact I hire my taxes out to a family member to do so, I am in no position to offer tax advice however, from my experience with Short Sales I do have some disclosures you need to know about. First off, the remaining debt that was Short the balance you owe can be considered as taxable income in some situations. For many Short Sale participants, they will fall under The Mortgage Debt Forgiveness Relief Act of 2008 where that debt is forgiven and not taxable however, certain requirements must be met to qualify to participate under this Act so, it's imperative you have an honest conversation with a tax professional before you decide to embark upon a Short Sale so you don't end up with a large tax liability at the end of the year.

Short Sales do have legal consequences as well. Some will find themselves on the wrong side of a Deficiency Judgment after they have completed a Short Sale. As I am not a tax professional, I am not an attorney so I can't and won't provide legal advice. I will tell you that it is wise on your part to have a conversation with an attorney about Short Selling and the potential consequences of a Deficiency Judgment against you. I can tell you, if the servicer agree to write off your forgiven debt and issues the tax liability, you won't be open to a Deficiency Judgment because the Mortgage Debt Forgiveness Act "forgives" the debt and it's considered Fully Satisfied. It's also illegal for the bank to write off the debt on their taxes and then try to come after you for it. In other words, the optimal situation is that the bank issues you a 1099 and you claim the debt under the Mortgage Debt Forgiveness Relief Act, so you can walk away completely.

Promissory Notes have been a recent phenomenon but, more common now than ever. These Promissory Notes are offered up to the seller; at the last minute, typically the day of closing, by the servicer as a contingency before they move forward with closing. Basically they are unsecured promises to pay back the debt owed from the seller to the Servicer in order for the

## Homeowner's Guide to Short Sales Saturday, December 12, 2009

Servicer to agree to close the sale. It's a hard handed tactic and CAN BE AVOIDED. I will not go into detail as to how I avoid these situations, once again that is proprietary to my business however, a knowledgeable agent can nip this in the bud early on and not have to worry about it ever again. Even if it did come up the day of closing, a knowledgeable Realtor will have his t's crossed and I's dotted and be able to get out of the request with no problems.

In this day, we hear a lot about how important Credit is and yes, a Short Sale has a negative impact on your Credit and that is another draw back to the Short Sale. Keep in mind, it's not as negative an impact as Foreclosure or Bankruptcy hence, you will be able to get a Fannie Mae loan in 2 years if you have built back up your credit and have the necessary down payment where as, a Foreclosure or Bankruptcy will prevent you from getting a home loan for 5-7 years. Don't forget, not only does the Short Sale it's self have a negative impact on your credit but, the months of non-payments before the Short Sale does as well. You can expect to take a 30-60 point hit for each month you miss a payment once the bank starts to report the missed payment to the credit bureau's which typically happens at month 2 or 3.

### **In closing**

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Short Sales are not for everyone. They should only be considered when Foreclosure has been determined as imminent by the Servicer. Short Sales are Foreclosure Avoidance Tools and therefore aren't a homeowners first consideration when they are in Default.

Servicers will do all they can to avoid Foreclosure so, it's important for you, as a homeowner, to contact your Servicer and work with them in saving your home.

If you believe you want to learn more about Short Sales or if you have additional questions, please feel free to contact me directly at 615-424-0961 or my email at [JGonzalez@RealTracs.com](mailto:JGonzalez@RealTracs.com). You can also find me on line at [www.JesseGonzalezRealEstate.com](http://www.JesseGonzalezRealEstate.com)