

# FORECLOSURE ALTERNATIVES

You may be facing foreclosure, so what are your options? Try to look at the situation more from a financial standpoint rather than an emotional standpoint. This way you can more successfully analyze which option might best suit your needs and desires to move you toward resolving your financial difficulty. One very important thing to remember: Time is of the essence! It's time to think through your situation and make a decision. Then take action right away so you have enough time to complete the solution you choose.

## TEN OPTIONS WHEN FACING FORECLOSURE

1. **DO NOTHING** – If a homeowner does nothing, they most likely will lose their home at foreclosure auction. Credit reports disclose this damaging information. Loan applications generally ask if the applicant has even been foreclosed upon.
2. **PAYOFF/REFINANCE** – Completely paying off the entire loan amount plus any default amount and fees. Usually this is accomplished through a refinance of the debt. New debt is normally at a higher interest rate and there may be a prepayment penalty. With this option, there should be equity in the home.
3. **REINSTATEMENT** – Paying the entire default amount plus interest, attorney fees, late fees, taxes, missed payments and fees.
4. **LOAN MODIFICATION** – Utilizing the existing mortgage company to refinance the debt or extend or modify the terms of the loan. To qualify, you must prove to the lender you have fixed the problem that caused the late payment.
5. **FORBEARANCE/MEDIATION** – The lender may be able to arrange a repayment plan based on the homeowner's financial situation. The lender may even be able to provide a temporary payment reduction or suspension of payments. Information will be required from the lender to show that you are able to meet the new payment plan requirements.
6. **PARTIAL CLAIM** – A loan from the lender for a 2nd loan to include back payments, costs and fees.
7. **DEED IN LIEU OF FORECLOSURE** – Give the property back to the bank instead of the bank foreclosing. Banks generally require the home be well maintained, all mortgage payments and taxes must be current. Banks must approve this option. Most loan applications ask if this has ever happened.
8. **BANKRUPTCY** – This option can liquidate debt and/or allow more time. Speak with a qualified Bankruptcy attorney.
  - Chapter 7: (Liquidation) To completely settle personal debt.
  - Chapter 13: (Wage Earner Plan) Payments are made toward a plan to pay off debts in 3-years.
  - Chapter 11: (Business Re-Organization) A business debt solution.
9. **SALE** – If the property has equity (money left over after all the loans and monetary encumbrances are paid), the homeowner may sell the home without lender approval through a conventional home sale.
10. **SHORT SALE** – Also known as a pre-foreclosure sale, a short sale can be negotiated with your lender by a Real Estate Professional if what is owed is more than the property's value. The lender can agree to accept less than what is owed on the property as pay-off of the loan obligation.

# FAQ ABOUT SHORT SALE

## 1. WHAT IS A SHORT SALE?

A short sale is the process by which homeowners can sell their home and the sales proceeds do not fully pay off the existing loans(s) and the lender(s) accepts a discounted payoff to satisfy the loan.

This is accomplished by providing proper documentation to the lender(s) to convince them to reduce the payoff balance to allow the sale. If the sale is approved, the home can be sold for a price lower than the total debt on the property without the seller having to come up with immediate cash to cover the shortfall. The mortgage is either fully or partially satisfied and any foreclosure process stops.

## 2. WHY WOULD A MORTGAGE COMPANY AGREE TO ACCEPT A SHORT SALE?

There are actually several reasons why a mortgage company would approve a Short Sale, including the following:

**Legal Concerns:** Mortgage lenders have come under legal pressure to work with borrowers to equitably resolve situations where borrowers are unable to meet their mortgage obligation, particularly when the borrower makes an effort to arrive at a compromise solution.

**Wall Street is Watching:** Mortgage lenders rely heavily on their ability to package and sell bundles of loans on the secondary mortgage market. They need to sell these bundles of loans in order to put the funds back to work by loaning the money again and collect loan fees along the way. If mortgages perform poorly after they are sold it could impact the lender's ability to sell their loans on the secondary market. A successful Short Sale gets the loan payoff resolved quickly.

**Asset Management Expenses:** If a lender acquires a property through foreclosure, the property will be managed until it is repaired and resold. It is expensive to manage real property assets. Keeping properties maintained, keeping utilities on, making repairs and the administrative costs attached to these activities are all costs the lender would prefer to avoid. A successful Short Sale eliminates most of these costs.

**Reserve Requirements:** Delinquent and non-performing loans place another burden on mortgage lenders. For all delinquent and non-performing loans lenders must set aside funds in reserve to deal with potential losses. These funds cannot be put to work generating new loan fees until the bad loans are resolved. A successful Short Sale lets the lender put more money to work.

## 3. CAN I SIMPLY DEED MY PROPERTY TO SOMEONE ELSE AND AVOID THE HASSLE?

The lender still considers you primarily responsible for payment on the loan. If loan payments do not get paid, or if the lender ultimately forecloses, this will still show on YOUR credit. Do not deed your property to someone else without consulting with an attorney.

#### **4. WHAT SORT OF HARDSHIP WOULD MY LENDER CONSIDER LEGITIMATE?**

Generally, so long as the hardship is real and the mortgage company believes the loan is likely to become delinquent as a result, the Short Sale request will be processed by the Loss Mitigation Department. The key to getting the Loss Mitigation Department to accept a hardship is to submit a strong hardship letter. Below is a list of “hardships” that are common and frequently accepted by mortgage lenders.

- Family illness or injury
- Job loss or significant income loss
- Divorce or split of domestic partners
- Death of Spouse
- Adjustment in mortgage payment or unforeseen increase in living expenses.

#### **5. I AM CONCERNED ABOUT MY CREDIT. HOW WILL A SHORT SALE AFFECT MY CREDIT?**

The big key here is to avoid foreclosure. Short Sales will affect your credit rating especially if you miss your mortgage payments during the process. But, by nearly any measure, a foreclosure is the most damaging event your credit status can encounter.

#### **6. CAN I BE CONSIDERED FOR A SHORT SALE IF MY LOAN PAYMENTS ARE CURRENT?**

Yes, however the required financial documentation must be submitted along with a detailed hardship letter explaining the inability to continue to maintain your loan payments and reason behind the Short Sale request.

#### **7. WHY WORK WITH A REALTOR?**

Getting a Short Sale approved by the lender is a complicated, multi-step process. This requires a high level of patience, persistence and most importantly, experience. The Lender realizes that it is in their best interest as well as the borrowers to have the Short Sale file packaged correctly from the very beginning, by a Real Estate professional that does not have a conflict of interest.

You get professional representation at LITTLE OR NO COST TO YOU! The lender pays the Real Estate commission along with most of the other sales costs, so that professional representation is FREE to you.

#### **8. WHAT ABOUT TAX CONSEQUENCES?**

If you do not qualify for the above exclusions, the IRS defines the amount you are “short” as having been “cancelled”. It is also required for the lender that allows this debt cancellation to issue you a 1099 for this amount and you are required to claim this amount as income.

If a property is foreclosed on, this is also debt cancellation and the default amount can also be treated the same way. In most cases the amount of default with a foreclosure will be much greater than with a short sale. This is one of many reasons why avoiding foreclosure is most likely the better option.

#### **9. WILL THE LENDER PURSUE A DEFICIENCY JUDGMENT AGAINST ME?**

In some cases, lenders also pursue a deficiency judgment against borrowers and attempt to collect the

amount that was short. This does require a separate action to be filed in court causing the mortgage company to incur further expense. The mortgage company is acutely aware of your inability to pay and often see further collection as fruitless. In most cases, a short sale will get the lender more money than a foreclosure. The bank also has the right to pursue a deficiency judgment in a foreclosure. When considering all consequences, a short sale is almost always a better option than a foreclosure.

#### **10. WHAT ARE QUALIFICATIONS FOR A SHORT SALE?**

Consider the following to determine whether you may qualify for a short sale. If you cannot answer yes to all four requirements, you may not qualify for a short sale.

##### **The Home's Market Value Has Dropped.**

Hard comparable sales must substantiate that the property value is less than the unpaid mortgage balance. This unpaid balance may include a prepayment penalty.

##### **The Mortgage is in or near Default Status.**

In the past, banks would not consider a short sale if the payments were current, but that is no longer the case. Realizing that other factors contribute to a potential default, many banks are now willing to consider a short pay off.

##### **The Seller Has Fallen on Hard Times.**

The Seller must submit a letter of hardship explaining why the Seller cannot pay the full loan amount, and why the Seller has, or will, stop making the monthly payments.

##### **Examples of hardship are:**

- Adjusting Rates
- Unemployment
- Divorce
- Medical emergency / sudden illness
- Bankruptcy
- Death
- Decrease in income

##### **The Seller Has No Assets**

The bank may request a copy of the Seller's tax returns and financial statement. If the bank discovers assets, the bank may not grant the short sale because the Seller has the ability to pay the shorted difference. Sellers with assets may still be granted a short sale but could be required to pay back the shortfall.

For example, if the Seller has savings, owns other real estate, stocks, bonds or even IRA accounts, the bank will most likely determine that the Seller has assets: however, the bank may discount the deficiency. In a Short Sale, the Seller cannot make a profit.

#### **11. WHAT ARE THE STEPS OF A SHORT SALE?**

Sometimes, to avoid going through the costs of foreclosure, a bank will sanction a short sale by allowing a Buyer to purchase the home for less than the mortgage balance while the home is in pre-foreclosure stage. Pre-foreclosure state is the first of the three stages of the foreclosures. Here are the basic steps to a short sale:

- Seller signs a listing agreement with a real estate agent subject to selling as a short sale with third-party approval
- Buyer makes an offer for less than the amount of the mortgage
- Seller accepts Buyer's purchase offer
- Seller provides lender with documentation necessary to process short sale request
- Short Sale Approval letter issued by the lender
- Buyer and Seller close transaction when Buyer delivers funds and sellers delivers deed in accordance with the short sale approval letter.

**12. WHAT ARE THE POSSIBLE CONSEQUENCES OF A SHORT SALE TRANSACTION?**

- Tax Consequences
- Blemished Credit Report
- Future Financing hurdles

**The information provided is for informational purposes only. Prior to entering into any Short Sale, you should discuss the matter with a qualified accountant and/or attorney regarding your options and the consequences of each.**

# BASIC STEPS OF FORECLOSURE

The foreclosure process begins when a borrower defaults on their mortgage/loan payments and the lender either records a Notice of Default or files a judicial foreclosure action. The lender must then take certain steps according to specific timelines, which vary by state law, to complete the entire foreclosure process over a series of several months. There are three basic parties to the non-judicial foreclosure process:

**Borrower = Trustor**

**Lender = Beneficiary**

**Trustee = 3rd Party acting on behalf of beneficiary (This will often be a title company or neutral party. Some states have specific trustee requirements.)**

## **In very general terms, there are three basic steps to the foreclosure process:**

1. Notice of Default is recorded in the county in which the property is located. A copy of this Notice is sent by certified mail to the borrower within 10 business days of recording. The borrower has 90 days from the date of recordation to "cure" (fix) the default. (In some states, this notice may be referred to as the
2. "Notice of Sale" and timelines may vary).
3. Notice of Trustee Sale is recorded next if the borrower fails to cure the default within this 90 day period. This Notice states that the lender or trustee will sell the property at auction in a designated number of days. This Notice is also sent certified mail to the borrower, published weekly in a newspaper of general circulation in the county of sale for three consecutive weeks prior to the sale date, and is also posted on the property as well as in a public place (usually at the county courthouse).
4. Trustee Sale or Public Auction is held at the time and place designated in the Notice of Trustee Sale, and conducted by the lender's representative. The successful bidder must pay immediately with cash or cashier's checks in the full amount of the bid. The successful bidder receives a trustee's deed on completion of the sale. The lender usually bids in the amount of the balance due plus costs. If no one else bids, the property reverts to the lender and is known as an REO (Real Estate Owned) and can then be purchased directly from the lender.

Some agents specialize in selling REO properties. They become extremely knowledgeable in the process and establish a relationship with the lender.

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# Foreclosure vs. Short Sale

## Homeowner Consequences

ISSUE	Foreclosure	Successful Short Sale
<b>Future Fannie Mae Loan Primary Residence</b>	A homeowner who loses a home to foreclosure is ineligible for a Fannie Mae backed mortgage for a period of 5 years	A homeowner who successfully negotiates and closes a short sale will be eligible for a Fannie Mae backed mortgage after only 2 years.
<b>Future Fannie Mae Loan Non-Primary</b>	An investor who allows a property to foreclosure is ineligible for a Fannie Mae backed mortgage for a period of 7 years.	An investor who successfully negotiates and closes a short sale will be eligible for a Fannie Mae backed mortgage after only 4 years.
<b>Future Loan with any Mortgage Company</b>	On any future application, a prospective borrower will have to answer "Yes" to question C in section VIII of the standard 1003 form that asks "Have you had a property foreclosed upon or given title or deed in lieu thereof in the last 7 years? This will affect future rates	There is no similar declaration or question regarding a short sale
<b>Credit Score</b>	Score may be lowered anywhere from 350 to more than 300 points. Typically will affect a credit score for over 3 years.	Only late payments on a mortgage will show, and after short sale, mortgage is normally reported as "paid as agreed", "paid as negotiated" or "settled". This can lower the score as little as 50 points if all other payments are being made. A short sale's effect can be as brief as 12 to 18 months
<b>Credit History</b>	Foreclosure will remain as a public record permanently, and on a person's credit report for 10 years or more.	A short sale is not reported on a credit history. There is no specific reporting item for "Short Sale". The loan is typically reported "paid in full, settled"
<b>Security Clearance</b>	Foreclosure is the most challenging issue against a security clearance outside a serious misdemeanor or felony conviction. If a client has a foreclosure and is a police officer, in the military, in the CIA, security, or any other position that requires a security clearance, in almost all cases clearance will be revoked and position will be terminated.	On its own, a short sale does not challenge most security clearances.
<b>Current Employment</b>	Employers have the right and are actively checking in the credit of all employees who are in sensitive positions. In many cases, a foreclosure is reason for immediate reassignment or termination.	A short sale is not reported on a credit report and is therefore not a challenge to employment
<b>Future Employment</b>	Many employers are requiring credit checks on all job applicants. A foreclosure is one of the most detrimental credit items an applicant can have and in most cases will challenge employment.	A short sale is not reported on a credit report and is therefore not a challenge to future employment
<b>Deficiency Judgment</b>	In 100% of foreclosures (except in those states where there is no deficiency), the bank has the right to pursue a deficiency judgment.	In some successful short sales, it is possible to convince the lender to give up the right to pursue a deficiency judgment against the homeowner
<b>Deficiency Judgment (Amount)</b>	In a foreclosure, the home will have to go through an REO process if it does not sell at auction. In most cases this will result in a lower sales price and longer time to sale in a declining market. This will result in a higher possible deficiency judgment.	In a properly managed short sale, the home is sold at a price that should be close to market value, and in almost all cases will be better than an REO sale resulting in a lower deficiency.

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# SHORT SALE DOCUMENT CHECKLIST

Lenders will require the borrower to submit the below documentation for review in order to initiate the short sale process.

1. 3rd Party Authorization
2. Hardship Letter (Signed & Dated)
3. Financial Statement
4. 30 days of Pay Stubs
5. Self Employed - Profit & Loss
6. 3 Months of Bank Statements (ALL Pages, ALL Accounts)
7. 4506-T Tax Form
8. 2010 Tax Return w/ all schedules & W2's
9. 2011 Tax Return w/all schedules & W2's
10. 2012 Tax Return w/all schedules & W2's
11. Listing Agreement (No digital signatures)
12. Purchase Agreement (No digital signatures)
13. Buyers Pre-Qualification Letter (dated within last 30 days)
14. Buyers Proof of Funds (Actual bank statement dated within last 30 days)

# HARDSHIP LETTER GUIDELINES

1. **Hardships** – What are your hardships (current and past). Examples: unemployment, car accident, medical problems (personal or family related), Divorce, Death, Active Military. Go into a little detail about each hardship but make it short and to the point. The following are the most important messages to convey to the Bank:
  - Why you will not be able bring your loan payments current.
  - You do not have enough income to make these payments any longer.
  - You are leaving the property.
2. **Your Assets** – Explain that you have no assets with which to continue paying.
3. **Any Signed Exemptions of Documents** – If you do not have bank statements, pay stubs or tax returns, you will need to explain “why” you cannot provide these documents (i.e. “I’ve been unemployed for 6 months and have not been able to find work”) Realize that if you don’t have tax returns, then the bank will ask for Extension Filings. So, if you don’t have Extension Filings either, explain why in the hardship letter (i.e. “I haven’t filed my tax returns for the past 2 years and I failed to file extensions as well) In addition to the letters, you will need to complete a “Lack of Evidence” Document.
4. **Bankruptcy** – You could also mention “I don’t want to have to file bankruptcy.”

# SAMPLE 3RD PARTY AUTHORIZATION

Date \_\_\_\_\_

Property Address \_\_\_\_\_

Seller(s) \_\_\_\_\_

\_\_\_\_\_

1st Mortgage Company \_\_\_\_\_ Loan # \_\_\_\_\_

2nd Mortgage Company \_\_\_\_\_ Loan # \_\_\_\_\_

To Whom It May Concern:

Please accept this as authorization to discuss any matters pertaining to the above reference loan(s) with my Real Estate Agent, My Escrow Officer, and or any employee at Ticor Title of Nevada, Inc. This authorization, includes, but is not limited to; obtaining and verifying any and all mortgage loan information, payoff, arrearage, short sale status and reinstatement amounts as well as financial history.

The information obtained is to be used for the purpose of facilitating the resolution of my foreclosure. By execution hereon, I acknowledge that I have made the choice to proceed with a short sale for the above referenced loan(s).

\_\_\_\_\_  
Seller Printed Name

\_\_\_\_\_  
Seller Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller Printed Name

\_\_\_\_\_  
Seller Signature

\_\_\_\_\_  
Date



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