

# Getting Help With A Short Sale

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## Getting Help With A Short Sale

It happened to all kinds of good people. Without warning, they found the value of their property had deteriorated. They needed to sell the house but the mortgage was more than the property value. Job loss, underemployment, sickness and other hardships depleted their reserves. They found themselves in the middle of the worst financial storm in the history of our country. A short sale is the answer. The mortgage lender agrees to take less for the mortgage so the house can be sold.

A short sale is a significant transaction. When handled successfully, it can solve a huge problem for you and your lender. It can also be an opportunity for your listing agent, the buyer and the buyer's agent. If handled incorrectly, it can have a negative affect on your buyer, your listing agent and your lender.

Short sales are time hogs. The time required to communicate with your lender is enormous. Keeping the short sale on track requires patience, tenacity, consistency and a system. Our system makes it difficult for lenders to avoid 'doing the right thing' for you.

## Helping Sellers

For many people with a hardship, a short sale is a good way to resolve a difficult problem when faced with an upside down mortgage and a need to sell. A short sale allows you to sell a property for less than you owe. It is a way to:

- sell a property
- not pay the full balance of the mortgage
- avoid foreclosure
- not have a trailing deficiency judgment
- have the mortgage report 'paid as agreed' on credit reports

Short sales are available to property owners for their primary residence, for second homes and for owners of rental properties.

## Using All Available Options

As a Florida correspondent lender, we are licensed to negotiate mortgages. Generally, our company is already a correspondent lender with the seller's lender. This relationship makes it easier for us to communicate effectively with your lender. Negotiating effectively means using all the appropriate options which are available to you and found in:

- Freddie Mac Loss Mitigation Guidelines
- Fannie Mae Loss Mitigation Guidelines
- RESPA Section 6
- Fair Debt Collections Practices Act

Recognizing your hardship as one of the nine regulatory hardships is a powerful tool requiring lenders to respond quickly. A regulatory hardship combined with a 'qualified written request' means:

- The lender must respond in 20 business days
- The seller's file gets faster focus

Loss Mitigation Guidelines require lenders to engage in meaningful loss mitigation activity before initiating a foreclosure. Generally, guidelines require foreclosure be initiated only when all loss mitigation options have been exhausted and the borrower does not want to remain in the home. For a lender to not engage in meaningful loss mitigation is for the lender to participate in an unfair trade practice.

Aside from relieving you from the time to maintain contact with lenders you can count on our support to let you know:

- the mortgage and property will qualify for a short sale
- the mortgage restrictions for the short sale
- our estimate of the 'lender's bottom line' for the short sale

## **Our Fee**

Our fee is in two parts. An initial \$500 application fee plus 1% mortgage brokerage fee. The fees are fully defined in a Mortgage Modification Fee Agreement that is Florida Statue 494 compliant.

### **Application Fee**

The application fee is due only after we have communicated with your Lender and know you, the mortgage and the property will qualify for a short sale. The \$500 application fee is not refundable.

### **Mortgage Brokerage Fee**

The mortgage brokerage fee is 1% of the existing mortgage. It is payable at closing. Your lender will pay our fee. A purchase contract addendum will require your Lender to pay our fee at closing.

There is a process and procedure for modifying a mortgage. The process varies slightly from lender to lender. In general, 50% of mortgages follow Fannie Mae or Freddie Mac loss mitigation guidelines. Knowing the loss mitigation guidelines is a significant part of the process. A short sale is a form of loan modification because the lender is being asked to modify your loan with a lower balance so the house can be sold.

## **Our Short Sale Process**

### **Step 1 Determine available options**

Getting your lender to communicate and negotiate with us is the first step. Your authorization will allow the lender to communicate with us. It will let us get the name of the investor for your mortgage and the available loss mitigation options. Once we know your lender is open to a short sale we will help you prepare a loan modification application. Generally, it takes 2 to 4 business days from the day we fax your authorization to your lenders before your lender can communicate with us about your mortgage.

### **Step 2 Prepare Application and Submit Application**

The non-refundable \$500 loan modification application fee is due only when your Lender confirms they are open to a short sale for your mortgage. At that point we will begin helping you

to prepare a loan modification application. It generally takes 20 business days from the time a Lender receives a complete application to assign your application to a negotiator for review.

### **Application Preparation**

An application must meet both regulatory requirements and lender loss mitigation guidelines. The guidelines vary from lender to lender and for individual mortgages. Lenders modify mortgages on a case by case basis and we will assist you in preparing a:

- detailed personal financial statement.
- hardship letter
- arms length sale certification
- short sale request
- seller's estimate of value

### **Application Submission**

Once your application has been prepared, it will be sent to your lender. Every page on the application will be identified with your loan number and name. Two important tasks remain after the application package has been sent to your lender.

### **Confirm receipt of the application**

Lenders often lose or misplace documentation. Follow up calls are made to the Lender requesting verification they have received the documentation and have included the documentation in their file. Missing documentation is resubmitted and reconfirmed. Often, several calls must be made until we get confirmation your documentation was received.

### **Verify completeness**

As loan modifications are approved on a case by case basis we will confirm the completeness of the application with your Lender. Should additional documentation be required, we will help assemble it, transmit it and verify it has been received.

### **Transaction log**

Every interaction with the lender is logged into our system. A detailed record of the date, time and contact person is maintained for application. The log prevents your lender from fostering misinformation while allowing us to enforce the lender's commitments. It prevents lost time from conflicting directives and information by individual lender employees.

## **Step 3 Getting the lender to focus on the file**

Lenders are overwhelmed with short sale and loan modification requests. Lenders are dealing with almost 8,000 foreclosures a day. The total number of requests for loan modifications is much higher. Many loss mitigation departments have to deal with more than 10,000 fax messages a day. Getting the lender to focus on your specific file is a vital part of the short sale process. Two techniques to get your lender to focus on your file are the Qualified Written Request and a forensic audit of the mortgage.

### **Qualified Written Request**

The Real Estate Settlement Procedures Act provides for a privileged communication between you and your lender. It requires the lender to respond within 20 days of the receipt of your request. Used in conjunction with a regulatory hardship, a qualified written request can:

- Force the lender to accept an application for a short sale
- Force the lender to focus on a short sale application
- Suspend, delay or stop foreclosure activity
- Suspend the requirement of the seller to make mortgage payments

### **Forensic Audit**

Often, there are TILA and RESPA violations in your closing documents. Making the lender aware of the violations helps to create focus for a short sale application.

### **Step 4 Short Sale Application Acceptance**

The next step in the process is to get the Lender to accept the application for a short sale. Depending on the loss mitigation guidelines for the mortgage, gaining acceptance generally also requires either:

- Listing agreement
- Valid purchase agreement

It mostly takes up to 20 business days from the time the application is accepted for review for the Lender to decide if a seller and mortgage qualify for a short sale. Often, with the acceptance of a short sale application, a lender is required to suspend foreclosure activities. This removes the threat of foreclosure and allows the realtor adequate time to find you a buyer and close the sale.

### **Preliminary HUD1 Settlement Statement**

A preliminary HUD1 Settlement Statement is prepared and submitted along with each valid offer.

### **Short Sale Contract Addenda**

With each offer, the Listing Agent is given a contract addendum to help protect you from a deficiency judgment. Protecting you from a deficiency judgment is a big part of the short sale process. The addendum is an agreement between the buyer and you to make the contract contingent on the Lender agreeing not to seek a deficiency judgment. It can help you avoid a deficiency judgment from the Lender. The addendum also includes a provision to help you get the Lender to report the mortgage to the credit bureaus as “paid as agreed”. This is a more positive method of reporting the transaction and can help you repair your credit.

### **Step 5 Property Value**

Determining property value has always been an integral part of the mortgage process. Most lenders use a BPO, broker price opinion, to determine property value. Your lender will order a BPO when a valid offer is presented for the property. We will coordinate scheduling the BPO inspection with your listing agent.

### **Competitive BPO**

In a short sale, the lender's objective is to get the highest possible value for the property. The lender's estimate of value will usually be higher than your or listing agent's estimate of value. A competitive BPO is a useful tool for negotiating property value with a lender.

The loss mitigation process requires a fair market estimate of value for a property. Freddie Mac, Fannie Mae, Federal Trade Commission regulations require the lender to determine fair market value for property when a borrower is seeking a short sale to resolve a mortgage default. Using a competitive BPO is a valid and useful technique to negotiate property value and close the sale.

## **Step 6      The Close**

Everyone knows 'its not over 'til its over'. Expect our support to continue until the sale closes. Lenders are plagued with confusion and mismanagement even at the close. Count on our help to be certain the lender payoff and the final HUD1 are consistent with prior agreement and understanding.

### **Payoff Verification**

Hidden, new and additional lender fees sometimes find their way to a payoff. Making certain the payoff is consistent with the commitment the lender has given us protects you and the listing agent.

### **HUD1 Review**

The final HUD1 will be prepared by the title company and not us. Reviewing the HUD1 before closing will make certain you and the listing agent are protected at the close.

## **Communicating with Lenders**

### **Lender Correspondence**

It is important to respond to all correspondence received from your Lender. Before responding, please allow us to review the correspondence. A timely response prohibits the lender from categorizing the seller as uncooperative. It also establishes the seller as a willing and cooperative borrower entitled to every consideration available within Loss Mitigation Guidelines.

### **Lender Telephone Calls**

Communicating with your Lender is important. An open line of communication will require their cooperation. As in any negotiation process, the best results are achieved when using a single point of contact. We suggest the seller accept all calls from the Lender. When asked for information about the application, income, expenses or any aspect of the mortgage, refer the Lender to us. Accepting telephone calls establishes the seller as a willing and cooperative borrower entitled to every consideration available within Loss Mitigation Guidelines.

### **Right of Offset**

Generally, a bank may take money from your deposit account to make a payment on a separate debt that you owe to the bank, such as a mortgage loan, if you are not paying that loan on time. The bank may take funds from one account to settle a debt in another account if both accounts are with the same bank. This is called the right of offset. In some situations, the bank can

exercise the right of offset without letting a customer know in advance that it is going to do it. They have a right of offset from the following accounts:

- any account in your name,
- a joint account with you as a joint owner
- an account in someone else's name where you are 'authorized to sign checks' on the account.

When accepting a mortgage, a customer enters into a contract with a financial institution. This contract may give the institution the "right to offset" the mortgage debt from the customer's bank account. If your bank withdrew funds from your account without your consent to pay an overdue mortgage payment, you should look at your mortgage agreement and the mortgage note to see if it includes a "right-to-offset" clause. You should also talk to your branch manager or service centre for information about your financial institution's right-to-offset policy.

### **Preventing a 'Right of Offset'**

Your lender cannot exercise a right of offset if your bank account is with a completely different financial institution. For example, if you have a mortgage with Bank of America there is no "right of offset" for Bank of America when your checking and savings accounts are with a local bank not owned by Bank of America.



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