

# ***SHORT SALES FREQUENTLY ASKED QUESTIONS***

## **Can the Seller receive any proceeds from the sale?**

No. Generally the Lender will not allow the Seller to walk away with any money.

## **The Seller is current on all home loan payments. Is the Seller eligible for a short sale?**

Lenders usually will not entertain a Short Sale request if the payments are current, though some exceptions may exist.

## **Will the Seller be required to pay any money into the closing?**

It is possible that the Lender will require the Seller or another party to the transaction to pay fees or costs above what the Lender is willing to absorb.

## **What fees will the Seller's Lender pay to close the short sale?**

The Lender will generally pay normal Seller closing costs only. Customary title and escrow fees, pre-approved Real Estate commissions, normal HOA transfer and disclosure fees, documentary costs, taxes and recording fees are usually approved. Additional repair and maintenance costs, delinquent HOA fees, judgments or liens will require specific approval. Real Estate commissions may be reduced by the Lender regardless of the amount stated in the Listing Agreement.

## **When will a Short Sale close?**

Only when all of the following conditions have been met may the sale close:

1. Seller's Lender has approved the contract in writing and stipulated an amount for their reduced payoff.
2. Buyer's Lender has fully approved the new loan and has funded the loan amount to the escrow in "Good Funds".
3. All requirements listed in the Commitment for Title Insurance have been satisfied or removed.
4. Any additional funds necessary to pay all costs, fees and obligations have been paid into the escrow in "Good Funds" by the Buyer, Seller or other applicable party.

## **How long does the Lender have to approve the Short Sale Contract?**

There is no limit to how long the Lender may take and there is no way to know in advance how long the approval process may take. Each Lender has its' own process. Approval can occur in as little as two weeks, but can take 6 to 12 weeks or more.

## **Is the Lender required to participate in the Short Sale?**

No. The Lender has absolute discretion as to its' approval of the Short sale.

## **Why is the Short Sale contract subject to the Lender's approval when the Buyer and Seller have agreed to the sale.**

The Seller's Lender is being asked to take less than they are owed in return for releasing their loan. The sales price and costs in the transaction will affect the amount that remains for the loan payoff, so the Lender actually becomes another principal in the transaction.

## **What happens if the Lender does not approve the Short Sale?**

Often the Lender will stipulate an amount for the loan payoff that they will accept. In that event, the Buyer, Seller and other interested parties may choose to contribute more money in order to make the sale work. If the Lender rejects the Contract outright then the parties can always agree to increase the purchase price and re-submit the offer to the Lender.

## **When the Lender is reviewing a Short Sale contract for approval, is the Trustee Sale automatically postponed?**

No. The Trustee Sale can be held on schedule even if there is a contract under consideration.

## **Will the Trustee Sale be postponed once the Short Sale Contract is approved?**

Not automatically. You should inquire about this and specifically request the Sale be postponed if needed.

## **Is the Buyer still entitled to buy the property under the Short Sale Contract once the Trustee Sale is Held?**

No. The Lender is not bound to the Short Sale Contract if the property is conveyed at Trustee Sale.

# Continued.....

## **How can I get the Lender to approve the Short Sale Contract?**

There is no way to pressure the Lender into approval, however, by knowing exactly what the Lender requires and making complete and timely submission of all the Lender's requirements, you greatly improve your chances.

## **When should I contact the Lender about a potential Short Sale?**

When, or even before, the property is listed for sale the Seller or Seller's Agent should contact the Lender's Loss Mitigation Dept and request a "Short Sale Package", or a list of all the Lender's Short Sale requirements. Some Lender's require that a contract be in place before they will send a package, but the earlier the contact, the better.

## **What happens when the Seller's Lender has approved the contract?**

Once written approval has been obtained from Seller's Lender, they will usually stipulate a time by which the escrow must close. The Buyer should be ready to close as soon as possible. This means that Buyer's Lender will need to expedite the new loan processing, appraisal and approval. Buyer should expedite all necessary inspections and arrange to have good funds needed to close.

## **What happens if the Buyer can't close within the time frame stipulated by the Seller's Lender.**

If the escrow has not closed in time to satisfy Seller's Lender then a new written authorization to close will be required. Since the Lender's time requirement is often based upon the net loan proceeds they will receive, it is often necessary for the Lender to obtain new approval for any additional costs incurred by the delay. This approval can take time and is not automatic.

## **The property has a 1<sup>st</sup> loan and a 2<sup>nd</sup> loan. What does that mean in a short sale?**

Both loans will need to be released, therefore both Lenders need to approve the Short Sale.

## **The Seller's Lender is requiring the Seller to sign an agreement or authorization before closing the Short Sale. What should the Seller do?**

Some agreements may bind the Seller to repay any forgiven debt. Any party in a short sale should obtain professional legal counsel if they have any questions regarding the transaction or required documents. The Real Estate Agents and the Escrow Officer can't give any legal advice.

## **I have heard that the IRS will forgive any tax obligation resulting from any forgiven debt from the Short Sale.**

This may or may not be the case and depends on a number of factors. NEVER make any assumption regarding taxes. All parties should obtain professional financial advice regarding the transaction. The Real Estate Agents and the Escrow Officer can't give any legal or tax advice.

## **Is it true that after that sale closes, the Seller will not owe anything to the Lender(s)?**

This will be determined by the Lenders, and Sellers should satisfy themselves that they are comfortable with the Lender's Short Sale Terms.

## **Can the Escrow Officer negotiate with the Lender to get the Contract approved?**

No. The Escrow Officer is the neutral third party and can not act as the Seller's agent in dealing with the Lender. The Escrow Officer can act as an intermediary for the parties, and facilitate the transaction by passing on communications and documents. The Escrow Officer has no ability to require any action or enforce any compliance by any party in the transaction.

## **How much time should be allowed for closing a Short Sale?**

A general rule of thumb is to allow at least 90 days from Buyer and Seller's Contract acceptance. You may consider adding a provision that the sale can close earlier if the Lenders approval is obtained.