

## SHORT SALE SUMMARY FOR SELLERS

The following Short Sale Summary for Sellers (this “Summary”) is intended to briefly address some of the practical and legal issues that may arise in a Short Sale transaction. This Summary is not intended to be a complete explanation of Short Sales, does not constitute legal advice, and should not be relied upon in lieu of securing competent legal, tax, and consumer credit advice.

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

**2. CONSIDERATION OF OTHER ALTERNATIVES:** A Short Sale transaction is only one alternative, among many, that sellers have when a home is facing foreclosure or a sale is hindered because the existing indebtedness exceeds its market value. Before agreeing to a Short Sale, sellers need to explore all other options. For example, there may be private parties, such as family members, who may be willing to provide interim financial assistance. Seller’s current lender may have a workout program that is available. There may be other lender programs Seller could qualify for, such as Hope Now, a collective alliance of large banks, counselors, and other industry organizations formed for the purpose of preventing foreclosure and keeping homeowners in their homes. There are also government-insured loan programs such as FHA Secure and Project Lifeline that may be available. Additionally, there may be certain legal alternatives worth exploring, such as giving the home back to the existing lender through a deed in lieu of foreclosure or simply permitting the lender to file a foreclosure. Bankruptcy (11 U.S.C. §§ 701-784, 1301-1330) may be appropriate for Seller. While a real estate agent may be helpful in directing Seller to one or more sources of information, they should not be relied upon for legal, lending, or credit advice. For such advice,

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Seller should consult an expert, such as a lawyer, mortgage broker, lender, or credit or consumer counseling expert.

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

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

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

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

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**7. USE OF EXPERTS:** Short Sale transactions can be complicated and time-consuming. They raise important issues, including income tax implications, liability issues for unpaid mortgage indebtedness, credit rating issues, bankruptcy issues, legal issues, and a range of others. Seller's Agent is not an expert in these areas. Seller is strongly encouraged to secure additional competent professional advice before entering into a Short Sale transaction.

**8. ACKNOWLEDGMENT:** The undersigned Seller(s) acknowledge they: (a) have read and understand this Summary; and (b) have been provided with a copy for their own files.

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Seller \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print \_\_\_\_\_

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