

## SHORT SALE SUMMARY FOR BUYERS

The following Short Sale Summary for Buyers (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 the seller is in bankruptcy, a trustee for the seller’s creditors will take control of the sale. In most Short Sales, the 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 the seller to convey clear title to a buyer.

**2. 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, the seller’s agreement to sell must be made subject to, or “contingent upon,” third-party consent. This generally means that if the 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 Buyer.

**3. 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 the 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, the seller and Buyer must be prepared for delays resulting from changes to the price, terms, and

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conditions agreed upon in the original transaction, responses from third-party creditors, as well as other events outside of the seller's and Buyer's control.

**4. 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 and Buyer wishes to proceed anyway, Buyer must understand 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 the recovery of these expenditures.

**5. 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 some Short Sales, a creditor may refuse to give consent to a pending transaction because they want the 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.

**6. USE OF EXPERTS:** Short Sale transactions can be complicated and time-consuming. They raise important issues, especially for sellers, including income tax implications, liability issues for unpaid mortgage indebtedness, credit rating issues, bankruptcy, and other legal issues, all of which can affect the ultimate success of the transaction. Buyer's Agent is not an expert in these areas. Buyers are strongly encouraged to secure additional competent professional advice before entering a Short Sale transaction.

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

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

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