

Frequently asked questions about Short Sales

What is A Short Sale? A short sale is a negotiated offer with a lender (your mortgage company) in which the lender agrees to accept less than the full amount owed for all of the mortgages on your home. The process is initiated with an offer to purchase your home. This offer is typically obtained by retaining the services of a real estate professional. The offer is accepted by you on a contingent basis (subject to the lender approving the proposed short sale and the borrower's approval of all terms and conditions). The offer is then packaged together with specific financial information required by the lender and submitted to the lender for their approval. The proceeds of the sale go to the lender to satisfy the obligations of the note. In many instances, the lender will accept the proceeds as payment in full for the entire amount of money owed by the borrower/seller.

What rights does the lender have if there is no agreement between the lender and the borrower regarding a short sale? The lender can foreclose on their security interest in the property (the mortgage) and have the property sold at a sheriff's sale. The amount owed on the mortgage note (including any unpaid past due interest) less the amount paid for the property at sheriff's sale is the deficiency. State of Michigan law allows a party (the lender in this case) 6 years in which to file a lawsuit based upon a breach of contract claim. Generally speaking, the lender will be able to obtain a Judgment against the borrower for the full amount of the deficiency plus any additional costs incurred by the lender as a result of the lawsuit. The Judgment will be enforceable for 10 years. The Judgment maybe renewed by the lender for an additional 10 years.

Is a short sale the right choice for me? The short sale process has been in use for many years, but has only recently become a popular option for borrowers and lenders to resolve situations in which the borrower has encountered a hardship. Every borrower's circumstances are unique and there are many factors to consider when determining if a short sale is the best option for you. Our responsibility to the client is to advise you of the best solution to help you deal with the financial situation you are facing; in some cases the short sale may not be the best option. Other alternatives include a loan modification, a deed in lieu, allowing the house to go into foreclosure or bankruptcy. Some factors to consider:

Your motivation for staying in your current home; or You can no longer afford to stay in your home due to economic hardship and wish to sell instead of facing a foreclosure; or You must relocate and owe more on your mortgage note than the home is currently worth; or You've had your home listed for what you owe for an extended period of time and have been unsuccessful in selling

How long does a short sale take?

The short sale negotiation process can be quite lengthy. It can take up to several months to get approval from the lender. Lenders only agree to a short sale if it is requested, submitted and properly negotiated.

Can I stay in the home? Yes, you can stay in the home, even if someone makes an offer on the house immediately.

Are there any tax consequences?

Any debt that is forgiven by your lender is treated as income by the Internal Revenue Service. In 2007, The Mortgage Forgiveness Debt Relief Act and Debt Cancellation was passed. This allows homeowners to short sell their primary residences and not pay taxes on the first 1 million dollars of debt forgiven with no tax consequences. We can provide you with guidance, **but be sure to consult your tax professional for more information. If you wish to read more on the Debt Forgiveness Relief Act and Debt Cancellation, please visit the IRS.gov website.**

What is the difference between short selling and foreclose?

A foreclosure will have a devastating effect on your credit score and prevent you from obtaining any type of financing for several years. The foreclosure does not eliminate the homeowner's liability for the difference between what is owed to the lender and what the property sells for at sheriff's sale. The lender can assign and pursue a money Judgment against the homeowner for any deficiency. Foreclosure also involves a public announcement. A short sale will affect personal credit, but not nearly as severely as a foreclosure. With a short sale, credit will be affected for approximately 24 months; the seller should be able to purchase another home after this period of time. For clients with excellent credit, they may be eligible to purchase a home immediately after short selling their current residence. We will pressure your lender to let you walk away free and clear, without any money Judgments being issued against you. Additionally, a short sale can be handled very discreetly.

What is a deficiency?

A deficiency is the amount of principal and interest owed to the lender less any amounts received as part of a short sale or sheriff's sale.

What does release or mortgage mean?

The term "release" when used in the context of a short sale effectively translates into "permission". The lender(s) may offer to release its security interest in or rights to the home in exchange for less than the total amount owed on a mortgage note. This means that the lender(s) gives its permission to allow the home to be sold for an amount that will not pay off the total amount owed on the mortgage note. In other words, when the lender grants a "release", it is granting the borrower permission to engage in the short sale process. Please be aware; a granted release does not mean that the amount owed on the mortgage note is satisfied or forgiven. You are still liable for the mortgage note and you still owe whatever amount of your mortgage note that was not satisfied by the proceeds of the short sale of the home. This means that the lender(s) maintains the right to pursue a Judgment against you for the remaining money due on the mortgage note (called a deficiency). **We will pressure your lender to let you walk away free and clear, without any money Judgments being issued against you.**

What is a satisfaction?

A lender may agree to accept less than what is owed as complete and total satisfaction of the mortgage note and release the mortgage against the home. We always asks the lender to acknowledge a full satisfaction of the total amount owed on the mortgage note. The advantages are that the mortgage note and obligation to the lender are satisfied for less than you owe, and when the home is sold, the debt is paid off completely.

How do I know this will work?

You don't. We will not, cannot and have not made any promises that this will work. The mortgage industry is largely unregulated in the arena of short sales, meaning no government entity is requiring or even suggesting to the mortgage industry that they must or should engage in short sales. Therefore, each and every short sale negotiation is unique. Though we cannot and have not guaranteed a successful short sale for your home, it is within our power to prove to your lender that it is in the lender's best interest and therefore the lender should engage in a short sale for your home. What we will promise is to do everything in our power to provide you the best advice when thinking about a short sale. The more educated you are in the process and the more you know what will be expected of you and that you work with us to do those things, the easier the transaction will be!

Do I need to continue to make my mortgage payments?

The short answer is no, but please read further to consider what option is best for your family. There is no fixed amount of time in which the short sale has to be completed. One of the keys to a successful short sale is that there must be a bona fide hardship. You can be current on your mortgage payments even though you are facing a hardship. An example of this would be if you are using your savings/retirement funds/borrowing money from friends and family to make the mortgage payment. Not remaining current on your mortgage payment - The majority of our clients are not current on their mortgage payments. This is mostly due to an inability to make the mortgage payments. The consequences of not staying current include damage to your credit above and beyond the short sale itself (i.e. for late payments) and the risk of the property going into foreclosure which means that there is a limited amount of time in which to complete the short sale.

Do I need to pay my home taxes? Remaining current on your real estate taxes - The County in which the subject home is located can foreclose on home if the home taxes haven't been paid for 3 years. In almost all instances, the lender will pay any past due taxes required to be paid to avoid a tax foreclosure. The lender will pay the taxes because they do not want to lose their security interest (the mortgage) in the property. If you pay your real estate taxes, the lender will not give you credit for these payments when considering a possible short sale.

Not remaining current on your real estate taxes - Any past due real estate taxes must be paid before a home can be sold. In most instances, the lender will permit the use of the gross proceeds of a short sale to pay all past due real estate taxes at the time of the short sale.

Do I need to continue to pay my home owners insurance? In general it is a good idea to maintain your homeowner's insurance policy. Most insurance policies will protect against loss of home, both contents and the structure.

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borrower for the full amount of the deficiency plus any additional costs incurred by the lender as a result of the lawsuit. The Judgment will be enforceable for 10 years. The Judgment maybe renewed by the lender for an additional 10 years.

Can I get another mortgage to purchase another home?

It is possible to qualify for a new loan to purchase a new home after selling your prior home on a short sale. You should consult with a mortgage broker to see if you qualify.

What constitutes a hardship?

Most lenders will not consider a short sale unless the seller is/has experienced a hardship. Some hardships are more substantial than others. Hardships can include a decrease in household income (i.e. you no longer are eligible for over time benefits or you have retired), loss of household income, increase in expenses (i.e. for medical reasons, cost of daycare, care for an elderly relative), divorce (including a legal separation, a divorce in process etc.) the need to relocate for a new job, etc. The fact that your house may be worth less than what you owe your lender, DOES NOT CONSTITUTE A HARDSHIP.

Should I be concerned about the listing price for the home?

No. The real estate professional will study the market to determine the value of your home. Remember, the goal is to obtain an offer on your home that a lender will agree to accept. If the real estate professional is unable to obtain an offer, there is no chance of a short sale.

Can I still pursue a short sale if my home has already gone to a sheriff's sale?

Yes (in most instances). Most lenders will consider a short sale even after your house has gone to a sheriff's sale. However, it should be pointed out that most short sales take months to get approved. We will not work on a short sale unless there is a minimum of 120 days left in the redemption period and We have all required documentation (including a Purchase Agreement) no later than 90 days from the expiration of the right of redemption

Should I consider a short sale if I am currently in the process of filing a bankruptcy?

Maybe - the benefits of a short sale would have to be determined on a case by case basis. For more information, see our brochure on consumer bankruptcy.

What are the benefits to the homeowner to do a short sale? A homeowner can be released from most if not all of the obligations associated with their mortgage (the promissory note).

What are the benefits of a short sale to the Lender? A short sale is the next best option for a lender(s) if being paid in full is not possible. The lender(s) doesn't get paid in full, but they do not have to incur the cost of foreclosure, the cost of paying home taxes during the right of redemption period, the cost of upkeep during the right of redemption period, the cost of repairing a home that falls into disrepair during the right of redemption period, the cost of evicting the homeowner after the right of redemption period has expired, the risk that the house maybe worth less after the lender obtains possession of the house via the foreclosure process. A short sale eliminates all of the expenses, time and effort for a lender, associated with a foreclosure.

What is a mortgage note?

A mortgage note (or promissory note or note) is the contract a borrower signs with their lender when they borrow money to purchase a home. The mortgage note contains the terms upon which the loan was made and what is required of the borrower.

What is a Mortgage? A mortgage is the security interest that is required by the lender as part of the consideration for providing the borrower with the loan. The mortgage provides the lender with an interest in your house. This security interest is what gives a lender the right to foreclose on a home if the terms of the note are not being fulfilled

Am I locked into a short sale once I list the home?

NO. When a short sale package is submitted to a lender, it is really an offer to modify the terms of the note. The lender is not required to agree to a short sale. If they agree to a short sale you are still not required to sell the home.

What other alternatives do I have? Deed in lieu - A deed in lieu is when the borrower offers to sign a deed deeding the property to the lender and the bank accepts the deed as partial payment or payment in full. Some lenders will consider a deed in lieu. Any lender considering a deed in lieu will expect the borrower to have attempted a short sale for at least 90 days before they will consider a deed in lieu. In addition, most lenders require that the borrower pay all taxes, any water/sewer bills and any homeowner association dues. This option is not nearly as appealing as a short sale to the lender. The reason is that the lender still has to sell the property and in the meantime they have to maintain the property (taxes, insurance, landscape etc).

Loan Modification - In some situations a loan modification maybe possible. Many lenders will consider a loan modification. A loan modification can include extending the amortization period (i.e. the length of the loan), reducing the interest rate (on temporary or permanent basis) or forbearance agreement.

Bankruptcy - if a borrower is facing multiple debts and does not have the means to repay these debts, they may want to consider bankruptcy.

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If you or someone you know is thinking about a Short Sale I would like to speak directly with you. Don't suffer in silence let me and the Short Sale Division help you. Many homeowners are having great success selling their homes on a Short Sale. I hope after reading this you have a better understanding of the Short Sale process. It is in the best interest of the Sellers and Banks to work together.

Let me see if we can help you. Call me direct at 586-770-2248

Kathy Marsh

