

Short Sale Blueprint

A Guide to the Short Sale Process

Prepared by Short Sale Issues Work Group
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Identify and qualify that you are dealing with a potential short sale situation.

- A short sale is one where title has transferred; where the sales price was insufficient to pay the total of all liens and costs of sale; and where the seller did not bring sufficient liquid assets to the closing to cure all deficiencies.
- A *potential* short sale is one where the listing agent reasonably believes the purchase price may not be enough to cover payment of all liens and costs of sale and the seller is unwilling or unable to bring sufficient liquid assets to the closing.

To determine whether you have a potential short sale situation;

- Determine the liabilities of the seller.
 - Find out the payoff for each loan on the property.
 - Determine the priority of liens (to determine the negotiability of the lien holders).
 - Determine if there are tax or Government-related liens.
 - Their priority is usually Federal, State, then Municipal
 - 2nd or 3rd liens may be willing to accept less than par for the loan.
 - Perform a CMA to establish probable market value for the property.
 - Determine if the homeowner has enough liquid assets to pay the difference.

Discuss the Seller's Options

- Keep the property.
- Attempt a workout with the lender (resetting of payments or forgiveness of arrears).
- Sell the property and bring cash to close escrow.
- Offer the lender a "short sale".
- Offer the lender a "deed in lieu of foreclosure".
- Allow the property to go to foreclosure.

The elements of a successful short sale are generally these:

- The property cannot be sold for an amount sufficient to satisfy all liens, encumbrances, and costs of sale.
- The seller has some hardship that makes it impossible or extremely impractical for the seller to keep the property.
- The seller is cooperative and willing to work with a real estate broker to avoid foreclosure through the short sale process.
- The lender's loss mitigation department is contacted and they are willing to entertain a short sale.
- The property is listed at an appropriate price, with an effective marketing plan which includes protections for the seller and appropriate caveats for cooperating brokers and potential buyers.
- The lender is presented with an acceptable market price offer along with a completed short sale package and narrative, explaining why the short sale is necessary and desirable.
- The lender accepts the offer and the property closes. No proceeds to go to the seller.

If you determine that this is a potential short sale situation

- Have the homeowner sign a letter for each lien holder authorizing them to communicate with you on behalf of the homeowner.
 - Put the name of the lien holder and the loan number on the letter.
 - Specifically list your name and the loan number on the letter.
 - Specifically list your name and the name of your title or escrow officer (if it's not a pending sale yet, then the name of the title company or escrow office that you intend to use.)
- Have your seller gather appropriate documentation (for a short sale package) to be sent to the lien holders which will include:
 - A hardship letter.
 - Financial statement (1003 would suffice)
 - Last two years tax returns, W-2's and/or 1099's if applicable
 - Last two recent pay stubs
 - Last two bank statements (complete, with all pages)

When you market the property

- List the property on the MLS immediately
- Contact the Loss Mitigation Department of the primary lien holder to let them know that the property is being listed.
- During the entire process, keep them informed of the marketing, showings and offers made.
- Disclose in the Realtor® Remarks section that the sale is subject to lien holder approval of a short sale, noting that the commission is possibly subject to third party approval.
- Keep a log of all agents who have shown the property.
- Keep records of all showing activity.
- Keep records of all advertising and marketing materials.
- Reduce price every two weeks or other period acceptable to the lien holder.

Upon receiving an offer to purchase

- Inform the Loss Mitigation Department of the primary lien holder of the offer to purchase.
- Counter the offer at their direction or at full price so that the lender is assured that you are negotiating for the maximum practical sale price.
- Explain to the buyer agent the circumstances of a short sale situation from the perspective of the lender, the need for their approval, and the implications to their compensation.
- Try to get a clean offer with no seller concessions.
- Try to negotiate discounts withal your service providers.
- If your state Association of Realtors® has a Purchase Agreement Addendum, make sure that it contains a clause regarding short sales. If not, the following verbiage is an example of the type of verbiage that would be needed: "This sale is contingent upon all of the seller's lien holders' approval of a short sale. Lien holders may not accept the terms in this contract and have the right to make changes that are acceptable to them including, but not limited to: Buyer closing cost credit, escrow fees, title fees, broker commissions and other transaction fees. If such approval is not granted in writing within 30 days and approved by all parties, then either the buyer or seller may cancel the agreement." *-Note that this language should not be inserted into an agreement without the approval of counsel.*

After acceptance of an offer

- Call the lien holder(s) and notify them of the offer if you have not already received their approval.

- If they have already approved the agreement, provide them with copies of all documentation.
- Request a short sale package if you don't already have one.
 - Get all documentation requested by the lien holder(s) from your seller as noted above.
- Make sure your escrow or title officer is aware of the short sale.
- Have your escrow or title officer priority rush the payoff demands.
- Get an estimated HUD1 as soon as possible, including all payoffs for all liens.
- Once all documentation is gathered, double-check; then triple-check that the entire package is complete and then over-night the package to the proper person at the bank. Be absolutely positive that you are sending it to an individual, not just to the Loss Mitigation Department.

During the transaction

- Have the buyer complete all inspections as if it were a regular transaction, paying close attention to any time frames established in the contract.
- Have the buyer's lender complete the loan package subject to appraisal.
- Keep in constant contact with the buyer's agent and the Loss Mitigation Department of the primary lien holder.
 - Update each of them of your progress
- Follow-up with the lender 5 days after sending your package to confirm receipt.
- Monitor the Trustee Sale or Foreclosure date. Make sure that you have plenty of time to close before that date.
- If the sale date is too close for comfort, call the Loss Mitigation or Foreclosure department and ask for an extension. **DO NOT WAIT UNTIL THE LAST MINUTE TO DO THIS!**

After approval of short sale

- Get the appraisal done quickly.
- Have title or escrow company prepare an updated HUD 1 and compare it to the payoff that the bank is accepting. If there is a discrepancy, you need to address it ASAP.
- Go to closing and complete the transaction!