



SHORT SALES – A BRIEF SUMMARY (For Sellers)

1 *The following Summary is intended to briefly address some of the practical and legal issues that can arise in a Short Sale*
2 *transaction. This Summary is not intended to be a complete explanation of Short Sales, does not constitute legal advice, and*
3 *should not be relied upon in lieu of securing competent legal, tax and consumer credit advice.*

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

12 **2. CONSIDERATION OF OTHER ALTERNATIVES.** A Short Sale transaction is only one alternative, among many, that sellers have
13 when a home is facing foreclosure or a sale is hindered because the existing indebtedness exceeds its market value. Before agreeing to a
14 Short Sale, sellers need to explore all other options. For example, there may be private parties, such as family members who may be
15 willing to provide interim financial assistance. The seller’s current lender may have a workout program that is available. There may be
16 other lender programs a seller could qualify for, such as Hope Now, a collective alliance of large banks, counselors and other industry
17 organizations formed for the purpose of preventing foreclosure and keeping homeowners in their homes. (<http://hopenow.us/>) There are
18 also government insured loan programs such as FHA Secure and Project Lifeline that may be available.
19 (<http://neighborhoodassistance.com>) Additionally, there may be certain legal alternatives worth exploring, such as giving the home back to
20 the existing lender through a deed in lieu of foreclosure, or simply permitting the lender to file a foreclosure. Bankruptcy (Chapters 7 or 13)
21 may be appropriate for the seller. While a real estate broker may be helpful in directing the seller to one or more *sources* of information,
22 they should not be relied upon for legal, lending or credit advice. For such advice, sellers should consult an expert, such as a lawyer,
23 mortgage broker, lender, or credit or consumer counseling expert.

24 **3. TRANSACTION CONTINGENT ON THIRD-PARTY CREDITOR CONSENT.** Since a Short Sale requires approval from one or more
25 creditors who are not parties to the pending real estate sale transaction, the seller’s agreement to sell must be made subject to (or
26 “contingent upon”) third-party consent. This generally means that if the seller is unable to secure the necessary consent (for example,
27 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
28 be promptly refunded to the buyer.

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

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

39 **6. ADDITIONAL OFFERS.** Since most third-party creditors will want to secure the highest and best offer for the property, they may insist
40 that it remain on the market, notwithstanding a pending transaction. As a result, a creditor may withhold final consent until they have had an
41 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
42 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
43 result, the entire Short Sale process may involve a significant risk of delay or failure.

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44 **7. USE OF EXPERTS.** Short Sale transactions can be complicated and time consuming. They raise important issues, including income
45 tax implications, liability issues for unpaid mortgage indebtedness, credit rating issues, bankruptcy issues, legal issues, and a range of
46 others. Your real estate broker is not an expert in these areas. **Sellers are strongly encouraged to secure additional competent**
47 **professional advice before entering into a Short Sale transaction.**

48 Listing Firm _____ Listing Licensee _____

ACKNOWLEDGEMENT OF RECEIPT

49 **The undersigned acknowledge that they have read and understand this Summary.**

51 Seller _____ Date _____, _____ a.m. _____ p.m. ←

52 Seller _____ Date _____, _____ a.m. _____ p.m. ←

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