

# The Mortgage Relief Kit



## **Introduction:**

For home owners who no longer wish to or no longer can keep their home and find they cannot sell due to owing more than the home is currently worth, the best solution may be a short sale.

## **Selling your home - the Short Sale**

A short sale in real estate occurs when the outstanding obligations (loans) and cost of selling are greater than what the property can be sold for. Short sales are a way for a home owner to avoid foreclosure and still be able to pay off their loan(s) by settling with their lender(s). However, the terms under which a lender approves a short sale depend on the borrower's circumstances as well as the lender's specific guidelines. The ideal candidate for a short sale is one where:

1. The payment is delinquent or could be in the foreseeable future. Many lenders will not work with home owners who are successfully making their loan payments. It is best to check with your lender on their specific policy.
2. Have a qualifying hardship. Examples that qualify are divorce, loss of a job, medical bills, reduction in pay, etc ...
3. Have no major assets (401Ks or IRAs are typically an exception unless sizable). Lenders who see home owners with large bank accounts or assets may, in some cases, require the borrower to financially contribute to settle a portion of the debt in a short sale.

Like most guidelines, these criteria are in constant flux and depend on your particular circumstances. Please feel free to contact us to discuss your unique situation.

Should you elect to proceed with a short sale, we have included the Gatos Group forms in this package that will need to be completed prior to putting your home on the market. Additionally, some lenders have customized packages that will need to be completed as well. Please contact us so that we may get your particular lender's forms to you.

## **Short sale vs. loan modification**

Here is a quick check-list of some things to consider when deciding whether to loan modify or short sale your home:

<b>Consider a short sale if....</b>	<b>Consider a loan modification if ...</b>
Unemployed or significant reduction in income.	Employed.
No longer want the home.	No major change in income.
Loans greatly exceed value of the home (most home owners owe 50% more than the current value of their home).	Wants to keep the home.
Have failed at loan modification.	Only need the loan's interest rate or term altered (i.e. do not need principal reduction - banks are not generally doing principal reductions)

## **General Benefits of a Short Sale vs. Foreclosure:**

The benefits of doing a short sale are both immediate and long term:

### **Short term Benefits:**



- Less damage to credit (which may impact a variety of things such as the ability to secure a rental home, retain credit cards at lower rates; obtain financing for cars).
- Lower tax liability (if any) due to typically higher payout to lender.
- Clearing employment background checks.
- Retention of employment.
- Stigma of foreclosure is avoided.
- Predictable move (rather than unpredictable eviction).
- Possible relocation incentives (some lenders, some programs).

### **Long term Benefits:**

- Quicker recovery of credit.
- Possibility of being able to apply for a mortgage in as little as 1 year, vs. 7 years for a foreclosure.

While many traumatized home owners find it hard to imagine owning a home again, the truth is most will. The more quickly a home owner can recover and re-enter the housing market, the higher the likelihood of obtaining a home at today's lowered values.

### **Foreclosure**

Too many people falsely believe that the easiest way to dispose of a home is through foreclosure. What few realize is that depending on their loan(s) they can potentially be sued after foreclosure by their lender for the deficiency. Loans such as home equity lines are a personal debt and therefore are not automatically extinguished by foreclosure.

The anti-deficiency laws are complex and have some gray areas. If your loans fall under a gray zone, we suggest legal counsel to explore your best options.



### **Legal Counsel**

If you do not have an attorney, we recommend the following real estate law firms:  
Please discuss any retainer fees they may charge.

Law Office of Harry P. Kotseas, P.C. 94 Highland Street, Worcester, MA 01609  
Tel: (774) 670-4889

Law offices of Scott Wrenn, PC. 1C Swanson Rd, Auburn, MA 01501  
Tel: (774) 321-6200

If you cannot afford a consultation with a real estate attorney, Try the LEGAL ASSISTANCE CORPORATION OF CENTRAL MASSACHUSETTS

405 Main Street, 4th Floor  
Worcester, MA 01608 Tel: (508) 752-3718 Fax: (508) 752-5918  
or check out their website at <http://www.usdoj.gov/eoir/probono/freelglchtMA.htm>

Be aware that these attorneys may not specialize in real estate law. Additionally, the determining factor in picking an attorney for short sales work should be knowledge-experience with short sales. This isn't something we personally would recommend for someone "dabbling"...

The information provided herein should not be construed as legal advice. Our goal, as always, simply remains to help our clients through this challenging market.

**If you have legal questions, we advise obtaining counsel before pursuing this path.**

### **Mortgage Debt Relief Act**

Any forgiven debt on a mortgage, whether forgiven through foreclosure or forgiven through a short sale, will result in the issuance of a 1099 (a 1099C for cancellation of debt on a foreclosure or a 1099A for abandonment of debt on a foreclosure). However the Mortgage Debt Relief Act passed in 2007, offers some relief of taxation for primary residents. For specifics on this program which ends in 2012, please consult your CPA or tax accountant. Also, the IRS website addresses this issue in depth. Go to : <http://www.irs.gov/> and do a keyword search on Mortgage Debt Relief Act.

### **Why sellers choose the Gatos Group**

Most companies charge large upfront fees to agree to take on a short sale. We are one of the few who do not. We are paid by the lender, and only if we are successful in negotiating a resolution. While it is understandable that other companies are trying to offset the large volume of additional work and effort to handle a short sale by charging these fees, we simply believe it is not in the best interest of the consumer. Nor do we believe a fee should be charged when no one can guarantee the terms of the approval. Beware of companies who charge upfront fees or make unrealistic promises.

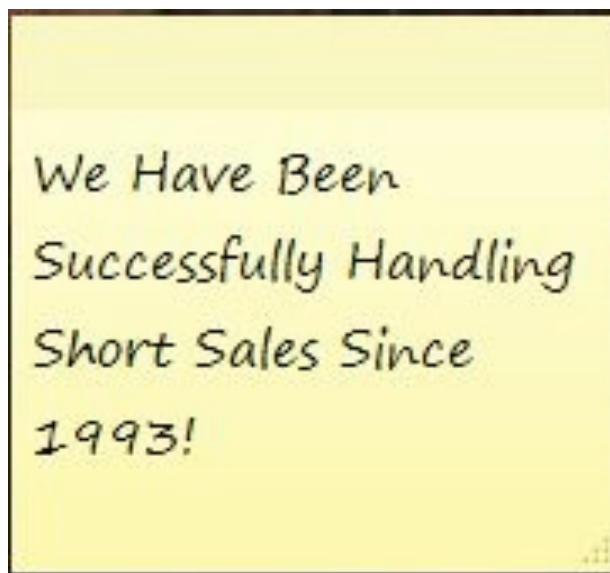
Additionally, some agents have not handled short sale transactions before and may simply lack the knowledge or systems to process them. Make sure any agent you hire has the experience to help guide you through the labyrinth of short sales.

For more answers to commonly asked questions, please review our FAQ section. The information provided should not be construed as legal or tax advice. Our goal, as always, simply remains to help our clients through this challenging market.

By electing to do a short sale rather than simply foreclose, you will not only help protect your ability to purchase a future home, you will have taken the high road in trying times. We thank you for your part in protecting neighborhoods and values.

The Gatos Group  
Keller Williams Realty  
508-365-3581

We have Been Successfully  
Handling Short Sales Since 1993!



## Frequently Asked Questions

### Q- What is a short sale?

A- A short sale in real estate occurs when the outstanding obligations (loans) and cost of selling are greater than what the property can be sold for. Short sales are a way for home owners to avoid foreclosure on their homes and still be able to pay off their loan by settling with their lender.



### Q- Do I qualify for a short sale?

A- Lenders vary in their requirements. Your first step should always be to contact your lender. However, most lenders require the following:

1. Your payment is delinquent or is about to be. Most lenders will not work with home owners who are successfully making or can continue to make their loan payments. Each lender's policy is different, so if in doubt, check with your lender. Some will permit a short sale with no delinquency.
2. You have a qualifying hardship. Examples that qualify are divorce, loss of a job, medical bills, excessive travel time to a job, etc.
3. You have no other major assets. Lenders who see home owners with large bank accounts or assets are less likely to cooperate on a short sale. Retirement funds are not typically considered as an asset unless sizable.

### Q- Do I have to be delinquent to do a short sale?

A- No. But as lenders vary in their requirements you should contact your lender and find out their policy. Unfortunately, most lenders are less willing to settle if the loan is current without a cash contribution or promissory note.

### Q- How long does it take to do a short sale?

A- There are several stages to the Short Sale process which can be lengthy. The typical sale takes 5-7 months from start to finish.

Here are the stages of a short sale:

1. The first stage requires the home owner to gather all the documentation that your bank will require. This stage shouldn't take longer than a few days. Please review the section on short sale paperwork for the required documentation. Some banks require that their unique forms be used as well. Please contact us so we may provide to you your bank's forms.
2. Once you have all your paperwork completed, stage two is simply contacting us to schedule an appointment to see your home, complete the listing and place your home for sale.
3. The third stage involves aggressively marketing your home and producing a ready, willing, and able buyer. This stage can take as little as a few days or as long as a few months. We will closely track the activity of your sale and make the necessary pricing adjustments to attract a buyer.
4. The fourth stage is the actual presentation of the offer to your bank. This is where our expertise and experience in negotiating Short Sales takes place. The negotiation and approval process can take anywhere from 30 to 120 days. Numerous phone calls, emails, and faxes are required between the lenders and our team (on average 60-90). If we are dealing with a single lender rather than multiple lenders, it is easier (although not necessarily faster) to obtain the approval.
5. The fifth and last stage to the Short Sale process is the period of time between Short Sale approval from the bank and the buyer closing on the home. Although the Short Sale addendum states the close will occur 30 days after bank approval, be aware that the banks typically push for a 2-3 week close. When possible we encourage all parties to accommodate the bank on this issue.

## Frequently Asked Questions

### **Q- How do I begin a short sale?**

A- First we recommend you get legal counsel and tax advice. If you are current on your payments, we suggest you check with your lender to determine if you must be delinquent to qualify for a short sale. Next, fully complete your paperwork as provided in this package and contact our office. We will take it from there.



### **Q- What if I don't have any money to pay the Realtor commissions?**

A- In a Short Sale transaction you, as the seller, do not have to pay the Realtor commissions or the closing costs. The bank covers these costs. Please note there is a possible exception - the banks may not pay for any unpaid HOA or Condo fees.

### **Q- Do you charge an upfront fee for taking my short sale?**

A- No. Some real estate agents or companies charge an upfront processing or retainer fee from the seller before beginning a short sale. Your attorney may charge for a retainer fee. We are one of the few that do not.

### **Q- Do I have to pay my HOA or Condo fees?**

A- We strongly recommend that you do. HOA fees are an owner's personal obligation. If they are not paid, it can result in credit damage, lawsuits, or other collection efforts. Also, Fannie Mae backed loans (as well as some other lenders) will not pay for unpaid HOA fees on a short sale. A few lenders will, but they are in the minority. This can inhibit the closing of a short sale unless one of the parties (seller or buyer) can pay off the debt at close.

### **Q- Are there any tax ramifications to a Short Sale?**

A- When you complete a short sale, you will receive a 1099-C which stands for Cancellation of debt. On a foreclosure you will receive a 1099 A which stands for Abandonment of secured property. The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence for their original mortgage amount. Debt forgiven through short selling as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief. This provision applies to debt forgiven in calendar years 2007 through 2012. Up to \$2 million of forgiven debt is eligible for this exclusion (\$1 million if married filing separately). For more information go directly to the IRS website at [www.IRS.gov](http://www.IRS.gov) and do a keyword search of Mortgage Debt Relief Act to view their FAQ on the subject.

Investors need to be aware that this Act covers principal residences only. However, whether foreclosing or short selling, the tax issue will need to be addressed by the investor. Generally you should try to minimize the loss to the lender in order to minimize the taxable amount. That is best accomplished by a short sale. As always, we recommend that you seek professional tax advice before any decision to begin a short sale or before foreclosure.

## Frequently Asked Questions

### **Q- Are there any credit ramifications to a Short Sale?**

A - This question is difficult to answer as a variety of factors compose a credit score. Here is what we can tell you, the initial damage to your credit comes in the form of late payments. If you go 30+ days behind on your mortgage payment, your bank has the right to report that to all of the credit bureau s. If reported, late payments do have a direct affect on your credit. After going through a Short Sale or a Foreclosure, most people have 30, 60, and 90+ day late payments reporting on their credit report.

When the actual Short Sale is completed, banks have different methods of reporting a short sale. Most will reflect that your account was paid for less than the full amount. Some lenders will reflect on your credit report account settled. We do not know how each individual lender will report it. This is simply the most common language used. If your home were to go to Foreclosure you would most often see the bank report Foreclosure on your credit report.



Credit experts will agree that neither a Short Sale nor Foreclosure is favorable to your credit or credit score, however, the impact of a Foreclosure is much worse. We strongly advise you to work with a Credit and Credit Scoring Expert for more specifics

on this topic, and ways in which to improve your credit after the Short Sale is complete.

### **Q- Why do banks agree to a Short Sale?**

A- Generally banks have found that it is more cost effective to do a Short Sale rather than foreclose on a home. Banks are not interested in owning real estate. While banks do take a loss on a Short Sale, foreclosing on a home can cost the bank 10%-20%.

### **Q- I am behind on my payments. How long until the bank forecloses?**

A- It varies. Most notes (the I.O.U. that you signed when you took out the loan) give the bank the right to file a notice of default as soon as you are 30 days behind on your mortgage. While they have this right, most lenders do not file for a trustee's sale (the legal process to foreclose) until you are 90 days or more delinquent. From the date of filing for a trustee's sale , there is a 91 day period between filing and the actual foreclosure sale or trustee sale. Therefore it often six months or more from the first missed payment until foreclosure. We can often postpone the trustee sale if we are mid-negotiation on a short sale contract.

### **Q- When should I start the short sale process?**

A- The sooner the better. Once you can no longer pay the monthly mortgage amount or see that you soon will not be able to and if you do not wish to pursue any other lender remedies (loan modification, etc.) begin immediately. The more quickly you act, the better the odds for a successful short sale.

### **Q- I am thinking of filing bankruptcy or doing a loan modification in addition to trying to short sale my home. Is that a problem?**

A- Yes as either of these will halt a short sale. Loan modifications should be done before a short sale, especially if you wish to keep the home. If the loan modification fails or does not resolve your ability to retain the home, then you should begin a short sale immediately thereafter.

If you are filing bankruptcy, you should receive legal counsel on whether to do that before or after completing a short sale. Most attorneys recommend doing the short sale prior to the bankruptcy. However, circumstances may vary. Even if you file bankruptcy, you still have not resolved the ownership issue, merely the debt. The home will still need to be sold through a short sale or disposed of through foreclosure. As no lender will process a short sale if you file for bankruptcy during the short sale process, we cannot take a short sale client who is in the midst of bankruptcy or plans to file during the short sale process.

## Frequently Asked Questions

### **Q- Do all short sales get approved?**

A- We cannot guarantee that we can close every short sale. Anyone who promises that is misleading you. Sometimes the banks will demand an unreasonable cash settlement from the borrower, have inflated ideas about market value, or will not halt a trustee's sale. Every loan has potentially three entities that must approve the short sale: the servicer, the investor, and the mortgage insurance company. Any one of them can dictate terms.

### **Q- Can the lender pursue me for the amount forgiven?**

A- This is a very complex question, and one best answered by a real estate attorney familiar with Massachusetts Laws and Statutes. Massachusetts is what is known as a Non-Judgment Deficiency state. Generally, this means that the lender cannot pursue for a deficiency judgment on loans taken out to purchase a property.

However, refinancing the loan or taking cash out from a refinance complicate these issues. The law is not clear in Massachusetts whether a refinanced purchase money loan is subject to the deficiency statutes. Also, the lender could choose to sue on the note rather than foreclose. Additionally, banks and private mortgage insurance companies may establish policies that are in conflict with our statutes because not all states have these types of statutes.

Be aware that most Home Equity Lines of Credit (HELOC) are not just secured to your home, they are also personally backed by you. What this means is that foreclosure will not eliminate this debt.

It is our belief that home owners will be dealing with their HELOC lender either before foreclosure (a short sale) or after (foreclosure) and that in most cases they are better served to negotiate a settlement with them through a short sale. However, we are not attorneys, nor is it our intention to provide legal advice. Please consult a qualified attorney to discuss the path best for you prior to beginning a short sale.



### **Q- Can the lender ask me to sign a note or pay cash to settle the debt?**

A- Yes. They can ask, but asking does not compel the owner to agree. They may ask even on owner occupied purchase money loans, due to bank or Private Mortgage Insurance policies which are in conflict with Massachusetts statutes. In some instances (i.e. those loans that do not have anti-deficiency protection such as HELOCs) it would be better to settle the debt than to gamble on being pursued for a deficiency judgment. This is the scenario that we encourage you to explore with legal counsel before beginning this processes. It is advisable to have counsel review any Agreement Notice from the bank.

### **Q- Can I sell my home to a relative?**

A- Probably not. Most lenders will ask all parties to sign an Affidavit of Arm's Length Transaction . This generally states that the parties cannot be a family member, business associate, or share a business interest.

### **Q- I haven't filed taxes for last year. Can I still do a short sale?**

A- Yes. Understand that the more missing pieces, the tougher the approval process. But we have included waivers for any documentation that is unavailable. We will submit the waiver in place of the required paperwork. This should not be used as a substitute however, for any available documentation. The more fully we provide documentation, the quicker the process and the greater the likelihood that the short sale will be approved.

### **Q- What are the most common mistakes on a short sale?**

A- Waiting too long to start the process, failing to obtain legal counsel when needed, not supplying us with a complete package, and filing bankruptcy or electing to loan modify in the middle of a short sale.

## ***Testimonials ...***

I am writing this letter in full support of my realtor Jim Gatos. I decided in March of 2009 to put my house on the market and at that period I was under water in regards to the value of the house so it was decided that a short sale would be needed to be completed. Jim was able to help find a buyer for the property within a few weeks.

Jim was able to help me get all information together for the mortgage company to help make the process as speedy as possible. Unfortunately my mortgage company did not have the urgency that either Jim or myself had and the process dragged into the winter months. At which point in time there was a problem with the heating in my house and severe water damage occurred. Jim did not get angry even though the buyer he had found backed out at this time instead he put the house back on the market and was able to find another buyer in a short period of time.

Finally my house closed in May of 2010 completing a 14 month process of jumping numerous hurdles. Without Jim I can honestly say that I don't believe that the process would have ever been completed. Other people would have found a buyer and possible a 2<sup>nd</sup> buyer but I can't imagine many people who would have been willing to help myself through all the issues that occurred. If anyone has any doubts about using Jim please don't hesitate about using him. I hope to use him in the future with an easier process.

**Kevin Meserve**

To Jim Gatos!

My wife and I would like to thank you for helping us out of and doing TWO short sales! We were having problems due to economic changes in our lives and when it became obvious that we were going to have to either let our properties go into foreclosure, file bankruptcy, or do a short sale, We did not hesitate to call you and we are glad we did!

You are a PRO, Jim! You handled everything from the beginning, through the negotiations with the banks, and coordination with the attorneys and everyone involved! Thank you from the bottom of our hearts for a job done excellent! We would not hesitate to refer you, as I have already done so.

Thank you

**Fredo and Manoucheka Ignace**