

SHORT SALE Q & A

Q. What is a “short sale”?

A. A “short sale” is where a seller’s mortgage balance is greater than the fair market value of the property. The seller wishes to sell the property, so he asks the lender to accept a payoff in an amount less than the actual balance of the loan. If the lender does accept a lower payoff., the sale can go through with clear title to the buyer.

Q. Does a lender require any special documentation from a seller in order to approve a short sale?

A. That varies from lender to lender. Most lenders require at least the following: A signed contract with a buyer, the seller’s tax returns for the last two years, a detailed financial statement from the seller showing his assets and liabilities, recent pay stubs, and a hardship letter.

Q. Is a lender required to approve a short sale?

A. No. There is nothing in the loan documents or in the Florida Statutes which require the lender to accept a short sale.

Q. Does it matter if the property is homesteaded?

A. Not to a lender, but it may make a difference to the IRS. More on that below.

Q. Will the lender require the seller to sign a separate promissory note for the difference between the actual loan amount and the lower payoff amount that the lender has agreed to accept?

A. Some lenders are requiring this. It depends on the lender.

Q. Even if the lender does not request the seller to sign a separate promissory note, can it still “go after” the seller later for the difference in some sort of non foreclosure suit?

A. Legally, the lender probably could. While that rarely occurs in actuality, to avoid that possibility, the seller in a short sale should always try to get something in writing from the lender in which the lender agrees not to later sue the seller for the difference.

Q. If a seller is negotiating a short sale with a lender, and the seller is behind on his payments, will the lender automatically suspend foreclosure proceedings?

A. Not necessarily. While it would seem that a lender would suspend any foreclosure efforts while a short sale is pending, many lenders have poor communication between their left hand and right hand, and so it is very important to stay in close communication with the lender during the pendency of the short sale to make sure that they suspend the

foreclosure action until the matter is resolved. Of course, if the short sale goes through, the lender will dismiss any pending foreclosure action prior to closing.

Q. Will the seller's credit score be negatively impacted by a short sale?

A. Yes, it will be, but credit scoring is a complex matter. The short sale will generally appear as "loan settled for less than the amount owed", or some similar verbiage. The seller's credit score could possibly be lowered as much as it would be in a foreclosure.

Q. What if a tenant is occupying the premises? Do they have to vacate in the event of a short sale?

A. In this respect, short sales are not different than standard sales. If there is a tenant in the premises, the new buyer has to honor the lease.

Q. Are there any special contract forms I should use for a short sale contract?

A. Yes. Many licensees have developed their own special forms and addenda to be used in a short sale. Two good forms produced by the Florida Association of REALTORS® are the "Short Sale Addendum to Exclusive Right of Sale Listing Agreement" (ERSA-1), for the listing agreement and the "Short Sale Addendum to Purchase and Sale Agreement" (SSA-2) for the sales contract. On the Association's member website www.swflrealtors.com, two additional forms are available: "Short Sale Addendum to Exclusive Right of Sale Listing Agreement" and the "Short Sale Addendum to Purchase and Sale Contract"

Q. Should the seller and buyer consult an attorney or an accountant with respect to a short sale?

A. There are many legal and tax implications of a short sale, particularly for the seller. For example, the seller may face a large "cancellation of debt" tax bill from the IRS on a short sale, except on a homesteaded property. It is recommended that the seller and buyer consult the appropriate legal and tax professionals if they have questions.

Q. Can the seller sign more than one contract with more than one buyer, and submit all of the contracts to his lender, with the lender agreeing to only one? A. It depends on the seller's lender. Some lenders require the seller to solicit as many contracts as possible, with each contract being contingent upon the seller's lender approval. Then the seller's lender approves only one of those contracts, and hopefully the deal then closes. Other lenders tell the seller to sign only the best contract, and send only that one best contract to them for approval.

Q. So who is the “seller” on a short sale? Is it the seller of record, or the lender?

A. The seller of record is the “seller”. Keep in mind the seller of record remains the “seller” until he either signs a deed conveying the property to someone else, or until a lender forecloses and is given a certificate of title by the clerk or court.

Q. Can a seller still do a short sale if there are two loans (a 1st and a 2nd mortgage?).

A. Yes, but only if both lenders approve of the short sale.

Q. How should a short sale be listed in the MLS?

A. A short sale entered into the MLS must state in the first line of the property remarks field: “This is a short sale subject to existing lender’s approval which could result in delays.” If this remark is in the first line of “remarks”, the listing must also be marked “short sale yes”.

Q. When does the status of a short sale listing need to be changed?

A. The status of a short sale listing requiring third party approval must be changed from the status “active” to the status “active contingent short sale” within 24 hours of the time the contract was signed by the buyer or the seller, whichever was later.