

Over Encumbered Property “The Short Sale”

Changing Market Conditions Bring New
Challenges for the Utah
Real Estate Professional

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Director of Risk Management

5.21.2009



“Change is Inevitable Growth is Optional”

Seize the opportunity
be the best that you can be

Did You Ever Think You Would Be
Attending a 3 Hour Short Sale
Seminar

In Your Market Area?



A Market Niche Not For Everyone

C O L D W E L L
B A N K E R

- Success is on the horizon
- Grow your book of business
- Provide much needed assistance to homeowners
- Work with Buyers who might not otherwise be able to enjoy the benefit of homeownership
- Serving a high purpose
- Accept the challenge, be prepared to win
- Be at the top of your game

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If you only remember 3 things

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Negotiation 101

The Trust Factor



Lose the Low Level Clerk
Mentality

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What Is A Short Sale?

*“A TRANSACTION WHERE NOTHING IS CERTAIN BUT
FOR THE UNCERTAINTY”*

“Upside Down”



“Short Payoff”

C O L D W E L L
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Occurs when lien holder(s) agrees to accept a payoff less than borrower’s debt

With an agreement to absorb other costs of sale

Seller expectations: Release of lien vs. full discharge or forgiveness of debt

Lender may elect to cooperate

To save expense and time of foreclosure / hedge against declining value / a business decision

Protocol may vary

Treatment of additional offers / Process and procedures

Documentation required from borrower

Request Short Sale package from lien holder (or check website)

Provide lien holder with all required information / complete packaging avoids delays

Lien holder likely wants “ready/willing/able buyer” before serious negotiations begin

(Wells Fargo Home Mortgage is one exception to this rule)

Talk to Lender at time of listing to assess willingness to cooperate / participate in a Short Sale

Accept a file, hardship explanation / application, and listing agreement

Ask: “ Has lien holder established a reserve or strike price ?”

Be prepared with detailed CMA or BPO (format), standing inventory analysis, and area market trends

“ Arms length Buyer ” and “listing agent” – Buyer Eligibility Certification

Disclose agent relationships


Seasoned listing

Borrower sells the property using entire proceeds payoff debt (exceptions)

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Cast of Characters Act I

C O L D W E L L
B A N K E R

- **Borrower / Seller**
 - As title holder
 - Evaluates options / elects a short sale
 - Retains full authority to accept, counter or reject offers
- **Lien holder**
 - Lender(s) that hold note(s) on the property / Investor
 - Senior lien holder is in first position
 - Junior lien holders are “behind” the senior in 2nd or 3rd position
 - Mortgage Insurance Carrier (MI)
- **Real estate licensee (listing side)** 
 - Qualifies the listing to the extent possible, by evaluating liens vs. value prior to listing (County Tax Parcel Search)
 - **3 questions:** Retain or liquidate? Forgiveness of debt / release of lien? Funds to move?
 - **Asks questions** regarding bankruptcy, (Chapter 7/13) other liens, such as mechanics liens, possible prepayment penalties, delinquent property taxes, HOA liens, and IRS or State Tax liens
 - **Obtains authorization for PR at time of listing**
 - Advises Seller of options / Refers to legal and tax advisors
 - Includes Short Sale Disclosure
 - Discloses short sale status in MLS subject to local / regional MLS rules
 - Incorporates Short Sale Addendum To Real Estate Purchase Contract to achieve an understanding of the process / establish condition of approval
 - Includes Secondary Backup Contract as applicable

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Cast of Characters – Act II

C O L D W E L L
B A N K E R

- **Buyer**
 - With full knowledge of status
 - Opts to purchase a property that is over encumbered
 - Understands the process and is prepared for the delays and difficulties
- **Real estate licensee (buyer side)**
 - To the extent possible, researches liens **prior to** generating Contract to Buy and Sell Real Estate (County Tax Parcel Search)
 - Contacts listing agent to acquire additional information
 - Counsels Buyer on process
 - Includes Short Sale Disclosure
 - Includes Short Sale Addendum to Real Estate Purchase Contract
 - Includes Secondary Backup Contract as applicable

“Short Payoff”

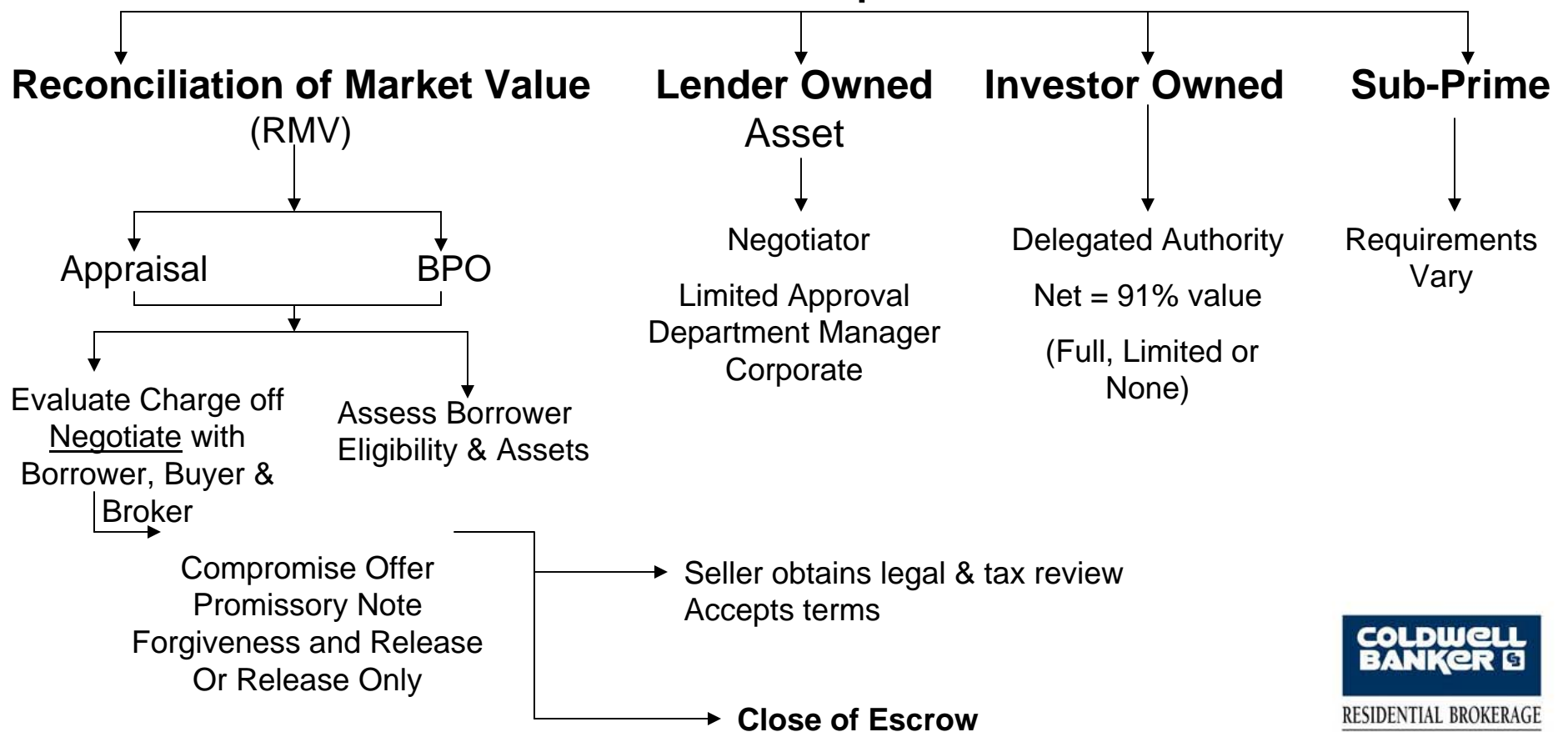
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Why does it take so long?

- Lien holder *expects* a complete package at the onset
- Incomplete packages result in delays at best and may lead to termination of negotiations
 - Estimated HUD 1
 - Borrower Hardship Explanation
- First line negotiator may have limited approval powers to approve write off
 - If write off is greater than approval authority of negotiator file moves up to department manager
 - Or if necessary up to the corporate level

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Lien Holder / Servicing Agent Loss Mitigation Negotiator “work up”



And The Investor Is:

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- Q. How does a REALTOR® or borrower determine whether a loan is owned or guaranteed by FannieMae or FreddieMac?
- A. Both FannieMae and FreddieMac have established toll-free telephone numbers and web access to make this information available.

FannieMae Resource Center: 1-800-7Fannie or 1-800-732-6643 or inquire on line at

www.fanniemae.com/homepath/homeaffordable.jhtml

FreddieMac Resource Center: 1-800-FREDDIE or 1-800-373-3343 or inquire on line at


www.freddiemac.com/corporate/buyown/english/avoiding_foreclosure/avoiding_foreclosure_form.html

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How Did It Happen?

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A Word on Adjustable Rate Mortgages



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The Perfect Storm

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- **Over zealous construction**
- **Rising monthly mortgage payments**
 - » Due to rate increases on ARMs
 - » Initial “teaser” period has expired
 - » Borrower cannot afford the increased payment
- **100% (or more) financing**
- ***Negative amortization loans “The Option ARM”***
- **Stated income loans**
- **Draining equity**
- **Declining property values**
- **Inflated appraisals**
- **Lender fraud**
- **Predatory lending**
- **Seller forced to sell due to change in personal circumstances**
 - » Loss of employment / transfer
 - » Death /Illness / Divorce

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Looking For a Way Out or An Opportunity



Working with the Buyer

“Reality isn’t the way you wish things to be, nor the way they appear to be, but the way they actually are.”

Robert J. Ringer

Manage Expectations

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Because nobody likes surprises!



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Risks vs. Rewards

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- **Buyer Reward**
 - Purchase a home at a price otherwise not obtainable
 - Buyer right to terminate the Contract prior to third party approval deadline or approval
 - With written notice
 - Earnest money deposit released to Buyer with no further authorization required
- **Buyer Risk**
 - Transaction may not be approved
 - Buyer obligations under REPC conditioned on third party approval
 - Lender may look for a committed or performing buyer
 - Loan lock expires / value down
 - Time lost can mean missed opportunities
 - Treatment of additional offers by Seller
 - Seller may accept subsequent back up contracts from other buyers *prior to* short sale acceptance
 - Earnest Money Deposit
 - Limit amount if possible to Small Claims (\$7,500.00)
 - Earnest money deposit may be increased after short sale approval
 - Buyer may be asked (but is not required) to absorb costs of sale
 - Junior lien holder
 - HOA delinquencies
 - Title and escrow
 - Repairs
 - Incompetent representation

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Working with the Seller

“Knowing how to make stepping stones
out of our stumbling blocks is the secret of
success”

Orison Swett Marden

Manage Expectations

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Remember? Nobody likes surprises!



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Risks vs. Rewards

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- **Seller Reward**
 - More dignified alternative / more timely closure
 - Avoid stigma of foreclosure / bankruptcy
 - Fannie Mae guidelines recently altered
 - 2 year limit for reestablishing credit
- **Seller Risk**
 - Tax consequences
 - Forgiveness or cancellation of debt / typically taxed as ordinary income
 - Capital gains / continuing liability for note
 - Credit status reporting
 - Lender obligation to make report fairly
 - FICO score / length of time on record
 - Foreclosure process continues
 - Mortgage fraud investigation may ensue
 - Legal and tax advice
 - May refer to non-profit foundations
 - www.hud.gov www.fha.gov
 - [www.hopenow.com/loan services / servicer directory.php](http://www.hopenow.com/loan_services/service_directory.php)
 - Incompetent representation

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Borrower / Lien Holder Options

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Loan Workout

Modify terms

Forgive portion of debt / principal reduction

Decrease interest rate

Delay Trustee Sale

Re-finance (FHA) www.fha.com

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=CA>.

Deed in Lieu of Foreclosure

After default borrower voluntarily delivers deed to lender who accepts conveyance as full satisfaction of debt

Short Sale

Lien holder allows sale for less than remaining mortgage, accepts proceeds as full payment

Typically some level of hardship is required

Bankruptcy

Cannot compel lender to take less than amount owed

Foreclosure delayed – requires stay from bankruptcy jurisdiction

Foreclosure

Trustee Sale

Judicial

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Tax and Other Consequences

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A Seller must understand that if a Lien Holder accepts less than full payment seller may incur federal and state tax liability. Lien Holder will file all required 1099 Forms with Internal Revenue Service (“IRS”)

Federal Tax - Debt relief Bill signed on December 20, 2007

Funds used to purchase , construct or improve a primary residence (refinance only up to the amount of the old mortgage principal, just before the refinancing if used to improve primary residence)

www.irs.gov (form 982)

Debts discharged after January 1, 2007 and prior to January 1, 2013

One million (single) 2 million (married)

Capital gains obligation unaffected by both Federal and State debt relief laws

Borrower must be advised to seek advice from *tax consultant / lawyer regarding all tax consequences including State Tax*

- A licensee **must not** give assurances to seller
- Use confirming letters to document referral to tax and legal advisors

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Are there other exemptions from the taxation of cancellation of debt income?

There are four other circumstances where the taxpayer can obtain relief from taxation on cancellation/forgiveness of debt income:

- (1) *The taxpayer is insolvent (the taxpayer's debts exceed their assets, but the cancellation of debt is forgiven only to the extent of the insolvency);
- (2) The debt is discharged as part of a bankruptcy proceeding;
- (3) The debt discharged is qualified farm indebtedness; or
- (4) The debt discharged is qualified business indebtedness.

***Taxpayers should be advised to speak with their own tax and legal advisors to determine if they meet the insolvency exemption**

FREQUENTLY ASKED QUESTIONS

SHORT SALES: THE LONG AND SHORT OF IT

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•What is a short sale?

A short sale is a sales transaction in which the seller's lender agrees to accept a payoff of less than the balance due on the loan. In addition to absorbing any loss on the loan, the lender in most cases agrees to pay the costs of the sale.

•How long does the average short sale take?

It can take anywhere from 28 days to six months or longer once the lender receives a signed offer from both the buyer and seller. The process frequently moves slowly. Currently, many lenders are working to revamp their system to speed up the procedure.

•If a short sale transaction can take up to six months, why do they call it a “short sale”?

Clearly an oxymoron! Or look at it this way: the value is “shorter” than the loan amount.

The truth is a short sale has multiple phases that may affect the transaction time frame. Depending on market trends, price positioning, and other factors, it can take up to 180 days or more for a property to sell. Once the negotiations are complete, the short sale proposal is sent to the lender who will evaluate it from a financial perspective. In addition, the homeowner must establish eligibility for the short sale by providing supporting documentation such as, W-2 forms, bank statements, tax returns, and other financial documents. Understandably, this process takes time!

•How do I determine if I’m eligible for a short sale?

Homeowners ought to be aware of their options before considering a short sale. Other alternatives include: loan modification / refinance, deed in lieu of foreclosure, foreclosure, and bankruptcy. Non-profit counselors are available to advise homeowners on the advantages and disadvantages of each of the foregoing options. A directory of counselors may be obtained at www.hud.gov

•Why would a lender agree to a short sale?

There are various reasons why a lender may agree to a short sale. Foreclosures take time, and as we all know, time is money. The expense to the lender is a significant factor. Foreclosure costs may include: internal fees and expenses, eviction, repairs and maintenance of the property, security, as well as Home Owners Association (HOA) dues and utilities. These factors, combined with the federal and state government's push to halt foreclosures, make it easy to see why a short sale may be in the lender's best interest.

•Is a short sale still an option if foreclosure has already taken place on my home?

No. Once the lender has completed the foreclosure process, a short sale is no longer an option. For that reason, it is vital that homeowners understand the importance of early communication with the lender. Don't wait until it is too late. Speak to your lender, and let him or her know that you are having financial or other difficulties. If you want to retain ownership of your home, you may be able to work with your lender to explore alternatives to foreclosure.

•I have a second mortgage on my home. Does this make me ineligible for a short sale?

In many cases, a short sale can be achieved on properties with multiple loans. Depending on the amount of the loss to the junior lien holder (second trust deed), a short sale may be possible under certain circumstances. Proposals and requests for short sale consideration should be submitted to all lenders at the onset.

•Once I have an offer on my home, what happens next?

Your REALTOR® will assist you in negotiating the best price and terms. Once the negotiations are complete, the offer and all supporting documentation should be packaged and submitted to the lender's loss mitigation department. Follow-ups and ongoing communications are significant components of a successful short sale.

•Will I have to pay capital gains taxes if I sell a property as a short sale?

A short sale has no bearing on the calculation of capital gains taxes. However, there are other tax liabilities that must be evaluated. Seek the advice of tax and legal advisors before agreeing to a short sale. For additional information, you may visit www.irs.org to learn more about taxation of short sales.

•Will a short sale affect my credit?

Yes. Your tax advisor will be able to address your specific situation.

•I would like to buy a short sale. Where do I start?

Choose a REALTOR® who has the ability to recognize a short sale property and who possesses the ability to work through any difficulties that may arise during the buying process. Be prepared for a bumpy road. If your REALTOR® is knowledgeable, he or she will help you manage your expectations.

•When buying a short sale, do I have to pay all of the escrow fees?

The allocation of costs is a negotiable item in any real estate transaction. Typically, the buyer and seller each pay their own fees. In short sales, lenders may request that certain fees be paid by the buyer, as a condition of the lender's approval. Some of these costs may include: funds owed to junior lien holders, closing costs, delinquent property taxes, and Home Owners Association Dues. Expect the unexpected and work with a REALTOR® who is familiar with short sales and is able to walk you through the process prior to preparing an offer to purchase.

How is Coldwell Banker Residential Brokerage simplifying and streamlining the short sale process?

Coldwell Banker Residential Brokerage has been working diligently on a multi-faceted program to educate its managers and sales associates regarding the intricacies of the short sale. In response to the unprecedented challenges today's homeowners face, the company has developed a unique short sale package that allows Coldwell Banker sales associates to deliver comprehensive proposals to lenders, thereby increasing the likelihood of a successful and swift transaction.

Note: When the amount of the loan and other costs of the sale exceed the current market value of the property, struggling homeowners have a number of alternatives to consider, including loan modification / refinance, deed in lieu of foreclosure, foreclosure, bankruptcy and short sale. Any homeowner considering a short sale should consult with legal and tax advisors. A directory of non-profit counselors is available at www.hud.gov

Working with Sellers

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- **Start the process early do not wait for default**
 - Never advise borrower to cease making payments
- **Research property status at onset**
 - Ask questions
 - Discuss other debts and obligations tied to the property including delinquent property taxes and HOA dues, mechanics liens, judgments and/or prepayment penalties
 - Is the loan a portfolio or investor loan / who is the investor?
 - Assess lien holder willingness to participate in or cooperate with a short sale
 - Thorough evaluation of comparables
 - Market trends in area / region
- **Refer seller to CPA / Accountant / Lawyer – EARLY AND OFTEN!**
 - *“Kathy’s rule of three”*
 - At time of listing
 - Before accepting Purchase Agreement
 - Prior to accepting lien holder offer of compromise
- **Price the property fairly and negotiate terms fully**
 - Exhaust the counter offer process
 - Demonstrate value
 - To lender and seller/borrower
- **Agent may not rebate any funds to Seller or to junior lien holder without knowledge and consent of senior lien holder**
 - Buyer may not agree to pay any Seller indebtedness without senior lien holder approval
 - All funds are to be accounted for in HUD 1

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Credit Effects on Borrower Vary

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A foreclosure, short sale or bankruptcy are said to remain on credit report for 7 yrs.

It is unlikely that lien holder could be persuaded to report short sale as “paid in full” most likely the short sale will be reported as “settled” for less than full (charge off)

*While unlikely the characterization of the short payoff **may** be negotiable*

*A short sale/payoff while likely to reflect poorly on one’s credit **may** vary slightly from REO*

<https://www.efanniemae.com/sf/guides/ssg/2008annlenltr.jsp?referrer=frpromo>

Click and scroll down to June 25, 2008 announcement

Short Sale = reestablish credit 2 years from completion of the action

Foreclosure = reestablish credit 5 years from completion of the action (3-7 extenuating circumstances)

Deed in Lieu = reestablish credit 4 years from date deed in lieu executed (2-7 extenuating circumstances)

***REFER CLIENT TO TAX ADVISOR FOR ADVICE**

In cases where the Lien holder requires an unsecured “note” from the borrower or transfers debt to another property a favorable credit reporting may be possible but varies case by case

DO NOT make promises or assurances to borrower

DO NOT advise borrower/seller to cease making payments

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Which is better for an owner facing a distress sale: a foreclosure, a deed in lieu of foreclosure or a short sale?

Any of these situations will impact the owner's credit negatively. Additionally, the owner may have a significantly different tax liability depending on the disposition of the property.

*This is a question that the owner needs to ***discuss with their own tax and legal advisors.***

The Real Estate Licensee

*We must realize that the rewards of true success
are well worth the effort. The highway to success
is a toll road*

Risks vs. Rewards

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- **Licensee Reward**
 - Opportunity to assist Sellers in need
 - Afford Buyers with the advantage of homeownership
- **Licensee Risk**
 - Failure to recognize short sale prior to contract
 - Preliminary title report (PR) authorization at time of listing
 - Failure to refer to tax and legal advisors & document file
 - Failure to disclose options & document file
 - Effort vs. likelihood of compensation
 - Reduction in compensation
 - Exclusive Buyer Broker Agreement(s)
 - Don't negotiate \$ at time of listing / March 1, 2009 policy FannieMae prevents broker compensation reductions as condition of approval of short sale
 - Failure to use required language in MLS / Careful review of MLS format for disclosing short sales ("BAC")
 - Loss of other business
 - Work in tandem / refer in house / designated team
 - Pricing below market value
 - Failure to exhaust negotiations
 - Impact of property values
 - Lien holder "trust factor"
 - Incompetent agent on the other side

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Avoid Referrals to Outside Negotiators

Loss of company & agent revenue

Negligent referral

Licensed

Reputable and knowledgeable

Professional liability insurance

Right forms

Third party transfers

“The Negotiators”



Red Flag Alert

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Working with the Lender

It's the constant and determined effort
that breaks down all resistance, sweeps
away all obstacles

Claude M. Bristol

Junior Lien Holder(s) Mortgage Insurance (MI)

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- **Begin negotiations with secondary lien holder(s) and MI Carrier early**
 - Can take as long or longer than senior
 - Do not delay contact
 - Second, Home Equity, Home Improvement
 - Mortgage Insurance
- **Submit package to junior lien holder(s) simultaneously**
 - Provide both senior and junior(s) complete package at onset
 - Junior may be offered pennies on the dollar
 - Some may hold out for 10% with a reservation of rights to proceed against borrower for any deficiency
- **Senior lien holders may have preset agreements**
 - For example a set amount of \$3,000.00
 - Or a range; predicated on balance owed \$1,000.00-\$5,000.00

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Lien Holder Viewpoint

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- Lien holder(s) ***are not required*** to accept a short payoff
- ***Vacation, rental, commercial & multi unit*** properties ***may*** qualify for short sale approval
- Financial hardship / delinquent payments **may not** be required
- ***Transfer of debt*** to other property / “Promissory note” / “soft or personal note”
- There must be an **economic incentive** to negotiate with borrower
- If lien holder forecloses, they are responsible for **numerous expenses**, such as *eviction, loss prevention, security, maintenance, repairs, insurance, H.O.A. fees, utilities, cost of sale, internal fees, expenses, reserves and loss of income as well as delays due to*
- *Utah allows fines imposed by municipalities that can lead to investigation for code compliance*
- Borrower may file Bankruptcy
- ***Increased inventory*** leads to more ***days on market***
- ***More days*** on market means ***lower sales price***

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Why Should Nadine Choose Your File?

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Real Estate Owned (REO) vs. Short Sale

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- ***REO properties may take longer or be harder to sell***
 - Market conditions; standing inventory
- **Be prepared:**
 - Comparables that were once offered as short sales; failed and subsequently sold for less as an REO
 - Days on market analysis / unsold inventory declining value %
 - REO impact on overall values, include graph or pie chart showing REO, Short Sale, all others
 - Impact of federal regulations aimed at halting foreclosures
 - Timing
 - Work outs / exploration of options
 - Fines / Tenant rights
 - **Stigmatized**
 - Disrepair / emotional reactions
 - Rehab / vanilla & sterile / raises Buyer suspicion
 - **Buyer pool shrinks**
 - Unfavorable Buyer terms in offer/counter/addenda
 - Often refuses to provide certain disclosures
- Lender will evaluate **financial advantage** in accepting a short sale vs. completing the foreclosure process and reselling the property
 - *“Nadine, the short sale proposal that you are considering is best and quickest way to mitigate loss and hedge against declining values.”*
 - *Getting to the person in charge*

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But I Want the Person in Charge..... Persuading Nadine!

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Los Angeles Business from bizjournals - December 22, 2009
<https://www.bizjournals.com/losangeles/stories/2009/12/22/shelb.html>



Los Angeles tops Fortune list for worst real estate markets

Los Angeles Business from bizjournals

The Los Angeles area topped *Fortune* magazine's list of the nation's 10 worst real estate markets for 2009.

Los Angeles-area home values, which had a median price of \$375,340 in 2008, are projected to drop by 24.9 percent in 2009 and drop an additional 3.1 percent in 2010, according to the magazine.

Riverside came in third on the list, with a median price of \$256,540, with a projected drop of 23.3 percent in 2009 and a 4.8 drop in 2010.

Santa Ana-Anaheim was sixth on the list, with a median of \$539,810 in 2008, with a projected drop of 22 percent in 2009 and 3.5 percent in 2010.

Overall, eight of *Fortune*'s 10 worst markets are in California.

Rounding out the top 10 are Stockton (2), Miami-Miami Beach (4), Sacramento (5), Fremo (7), San Diego (8), Bakersfield (9) and Washington, D.C., (10).

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Eight of the 10 worst real-estate markets in 2009 are located in California, according to *Fortune* magazine.
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FORTUNE

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10 worst real-estate markets for 2009

5. Sacramento

5 of 10 [Back](#) [Next](#)

2008 median house price: \$225,140
 2009 projected change: -22.2%
 2010 projected change: 2.3%

State Capitol building in Sacramento

High jobless rates and low population growth are helping burst the capital city's inflated housing market. Prices are expected to fall another 22% in 2009, after tumbling 34% in 2008.

NEXT: Santa Ana-Anaheim

Record drop for Silicon Valley home prices pushes median below \$500K
 Santa Clara County's median home price plunged below \$500,000 last month for the first time in more than five years, as more home buyers scooped up bargain-priced foreclosure properties, and largely avoided high-priced neighborhoods.
Mortgage rates at 37-year low
Search home sales, foreclosures

CONTRA COSTA TIMES
 ContraCostaTimes.com

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Tuesday, December 23, 2008 Walnut Creek, CA Now 47°F High 47°F Low 38°F 5-day forecast Get weather for: city or zip

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Median price for Bay Area homes down 44 percent from year ago

By Eve Mitchell
 STAFF WRITER
 Updated: 12/18/2008 10:03:13 PM PST

The median price for a Bay Area home stood at \$350,000 in November, a 44.4 percent decline from November 2007, but the volume of home sales was 12.3 percent higher compared with a year ago, according to a report released Thursday by MDA DataQuick.

Although the report shows a slowing of year-to-year sales volume compared with previous months, sales of existing homes that were in foreclosure in the past 12 months are still driving the market, the report found.

In all, about 5,756 new and existing single-family houses and condominiums changed hands in November, a 24.4 percent drop from October sales but 12.3 percent higher than November 2007.

Last month, 47.6 percent of existing homes sold in the Bay Area had been foreclosed on at some time during the

More

- Latest local home sale prices, foreclosure database
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November Santa Clara County foreclosures rise 39 percent from October

By Sue McAllister
 Mercury News
 Posted: 12/16/2008 12:14:34 PM PST

After two months of declines, foreclosures in Santa Clara County resumed climbing in November, rising 39 percent from October.

A total of 507 properties were foreclosed upon in the county last month, up from 364 in October, according to ForeclosureRadar, a Discovery Bay company. Last month's foreclosures were up 114 percent from 237 in November 2007.

The company reported 853 foreclosures in the county in August — the highest so far this year — and 647 in September.

Notices of default also rose from October, but are still down sharply from earlier this year. In Santa Clara County, lenders filed 589 such notices, which are the first since the foreclosure process resumed last year.

Real Estate

- Sign up for our real estate e-mail newsletter
- Search local home prices, foreclosures databases
- Search database of underwater ZIP codes

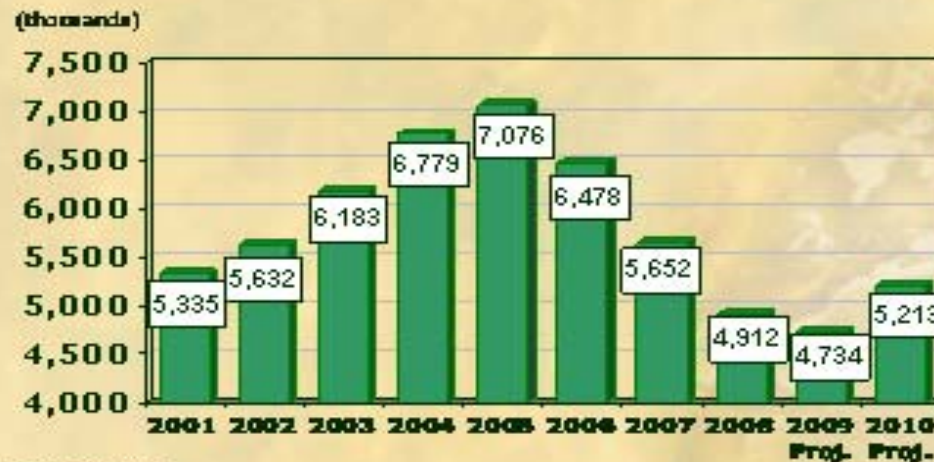
Related Stories

Dec 16:
 Fed cuts rate to historic low

Dec 16:

Market Overview

Historical & Projected Sales of Existing Homes



Source: FannieMae

LEADING COMPANIES + LEADING REAL ESTATE



Months Supply of Inventory



Source: NAR

LEADING COMPANIES • LEADING REAL ESTATE



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RESIDENTIAL BROKERAGE

Take Aim

Prepare/Position/Package



Obama Administration Short Sale Plan May 14, 2009

C O L D W E L L
B A N K E R

Obama Administration Announces Financial Incentives and Uniform Process for Short Sales

Responding to the call of the National Association of REALTORS®, on May 14, 2009, the Obama Administration announced incentives and uniform procedures for short sales under its new Foreclosure Alternatives Program (FAP). For borrowers who do not qualify to have their loans modified on a permanent basis under the Making Home Affordable Loan Modification Program, the servicer may consider a short sale or, if that is not successful, a deed-in-lieu of foreclosure.

Borrowers (Homeowners). Borrowers/homeowners qualify under the FAP if they meet minimum eligibility requirements for the Home Affordable Modification program but don't qualify for a modification or do not successfully complete the three month trial period. Before proceeding with a foreclosure, servicers must determine if a short sale is appropriate.

Incentives. Incentives include: (1) \$1,000 for servicers for successful completion of a short sale or deed-in-lieu of foreclosure; (2) \$1,500 for borrowers/homeowners to help with relocation expenses; and (3) up to \$1,000 toward the cost of paying junior lien holders to release their liens (one dollar from the government for every \$2 paid by the investors to the second lien holders).

Standardized Documents. The program will include streamlined and standardized documents, including a Short Sale Agreement and an Offer Acceptance Letter. The goal is to minimize complexity and increase use of the short sale option.

Continued...

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Obama Administration Short Sale Plan May 14, 2009

C O L D W E L L
B A N K E R

Obama Administration Announces Financial Incentives and Uniform Process for Short Sales

Property Valuation by Appraisal or BPO. Servicers will independently establish both property value and minimum acceptable net return, in accordance with investor requirements. The price may be determined based on an appraisal or one or more broker price opinions (BPOs), issued no more than 120 days before the date of the short sale agreement.

Timeline. In the Short Sale Agreement, servicers must give borrowers/homeowners at least 90 days to market and sell the property, or up to one year, depending on market conditions. Property must be listed with a licensed real estate professional with experience in the neighborhood. No foreclosure may take place during the marketing period (at least 90 days) specified in the Short Sale Agreement.

Commissions. The Short Sale Agreement must specify the reasonable and customary real estate commissions and costs that may be deducted from the sales price. The servicer must agree not to negotiate a lower commission after an offer has been received.

No Borrower Fees. Servicers may not charge fees to borrowers/homeowners for participating in the FAP.

Program Expiration. The program is in effect through 2012.

DIL Option. Servicers have the option to require the borrower/homeowner to agree to deed the property to the servicer in exchange for a release from the debt if the property does not sell within the time allowed in the Short Sale Agreement (plus any extensions).

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Best Practice is a Complete Package

C O L D W E L L
B A N K E R

Standard Fax/E cover sheet

Table of contents

Agent letter to lien holder(s)

Borrower authorization

Estimated HUD 1 prepared and certified by escrow officer

Synopsis of offer

Market activity report

Buyer proof of funds, pre-approval letter & credit worthiness

Current lien holder may request ***“Buyer to apply for financing with current lien holder subject to terms and conditions acceptable to buyer”***

Listing agreement and comparables - Broker Price Opinion - REO/Short Sales/Non-distressed, Expired/Off- market) include charts and graphs

Newspaper articles regarding local / regional market conditions / photographs

Insert loan number on each page of every document

Courtesy, consideration & respect

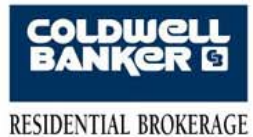
Overworked / understaffed / no vested interest in the outcome

Bottom of the stack (hundreds of files per desk)

Neat and concisely prepared information

“How can I help” attitude


Be prepared for “NO” – keep on going



The Branded Package

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- Short Sale “On the Go”
 - Listing (seller) package
 - Sale (buyer) package
- Submit complete file
 - Utilize templates and forms
 - Orderly presentation of documents
 - Consistent look for Coldwell Banker Residential Brokerage
 - Exceed expectations
- Failure to do so results in delays
 - Undermines confidence in competency
 - Negotiators are too busy to deal with “piece meal” submissions

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The Branded Package

COLDWELL
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- Short Sale “On the Go”
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Listing Short Sale Package

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SHORT SALE – REPRESENTING THE SELLER Guidelines and Overview for Agents

The short sale proposal submitted to the lender must be prepared and packaged professionally to assist the lender in making an informed decision. The following procedures should be adhered to when submitting an offer:

- Submit a complete proposal to lien holder(s)
- Provide an orderly presentation of documents as set forth below
- Include the borrower name, loan number and property address in the top right hand corner of each document
- Negotiate the offer to obtain the best price and terms prior to submitting the documentation to the lender

Preparing a well organized, professional package will ease the process for lien holder review and facilitate response time.

Note to Agent: This Guideline and Overview is intended to identify documents and forms that will be useful to lien holder(s) in facilitating short sale proposals. Nothing in the Guideline and Overview relieves the Agent(s) of the responsibility to maintain a complete file pursuant to the required check list of documents, disclosures and forms required by Coldwell Banker Residential Brokerage for this type of transaction.

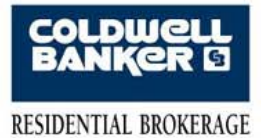
The following identifies the documentation that should be included with every short sale proposal:

- Fax Cover – Prepare one for each lien holder (editable PDF included in this packet)
Please note, each page contained in fax contents should include the borrower's name and loan number
- Agent Letter to Lien Holder (editable Word document)
- Table of Contents (editable PDF included in this packet)
Recommended order of documentation
- Borrower Authorization (editable PDF included in this packet)
- Borrower Hardship Explanation (normally provided by lender or lender's website)
- Borrower Financial Statement (normally provided by lender or lender's website) and Supporting Financial Documentation
- HUD-1
- Synopsis of Offer to Purchase (editable PDF included in this packet)
- Real Estate Purchase Contract (REPC)
- Short Sale Addendum to Real Estate Purchase Contract
- Short Sale Disclosure
- Secondary Back Up Contract for Short Sale Addendum to Real Estate Purchase Contract
- Counter Offer(s) (if applicable)
- Buyer Credit Information
- Buyer Verification of Funds
- Listing Contract
- Price Reduction History and Supporting Documentation; such as an MLS print-out (if applicable)
- Current one page "Agent" Multiple Listing System (MLS) summary print-out
- Broker Price Opinion (BPO) (if applicable)
- Comparative Market Analysis (CMA) (if applicable)
- Market Activity Report (editable PDF included in this packet)
- Property Brochure
- Copies of Advertisement(s)
- Photographs (if applicable)
- Documentation supporting local market trends or statistics (if applicable)
- Property Inspection Report(s) (if applicable)
- Lien Holder's Response to Short Sale Proposal (Fax Cover Sheet)

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UT Listing 121.09 / Page 1 of 9

Page 1 Guidelines and Overview



Listing Short Sale Package

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PRESERVING THE AMERICAN DREAM Useful Websites for Homeowners

For over one hundred years Coldwell Banker has been committed to assisting our clients realize their dream of homeownership. We are equally dedicated to helping existing homeowners preserve that dream.

To that end we are pleased to provide a list of useful links to government and community based nonprofit organization websites which include information on foreclosure prevention, loan modification, no cost HUD approved counseling services and other important information.

HUD Housing Counseling and Referral Hotline
800.569.4287

U.S. Department of Housing and Urban Development
<http://www.hud.gov>

**U.S. Department of Housing and Urban Development
Guide to Avoiding Foreclosure**
<http://www.hud.gov/foreclosure/index.cfm>
*Talk to a counselor

Federal Housing Administration
<http://www.fha.gov>

Hope Now
<http://www.hopenow.com>

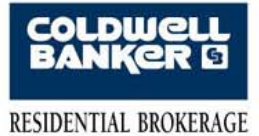
Internal Revenue Service
<http://www.irs.gov>
Search for: Mortgage Debt Relief Bill
Click on: Home Foreclosure Debt Cancellation

When the amount of liens and other costs of sale exceed the current market value of the property there are a number of options to consider. Those options include, loan modification, foreclosure, deed in lieu of foreclosure, short sale and bankruptcy. **Before you make a final decision as to which option is best for you, please consult with your legal and tax advisors.**

Please contact us if you have any questions or desire additional information.

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UT Listing 121.09 / Page 2 of 9

Page 2 Preserving the American Dream Useful Websites for Homeowners



Listing Short Sale Package

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SHORT SALE
Supporting Documentation

FAX COVER SHEET

Borrower(s): _____
Loan Number: _____
Subject Property Address: _____

City, State, Zip Code: _____

Total Pages Included (including cover sheet): _____
Date Submitted: _____

Submitted To:

Lien Holder: _____
Lien Holder Address: _____
Lien Holder City, State and Zip Code: _____
Contact: _____
Phone: _____ Fax: _____
E-mail: _____

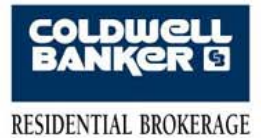
Submitted By:

Agent: _____
Company: Coldwell Banker Residential Brokerage
Office Address: _____
Office City, State and Zip Code: _____
Direct Line: _____ Cellular Phone: _____
Fax: _____ E-mail: _____

Comments:

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Page 3 Fax Cover Sheet to Lender



Listing Short Sale Package

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Agent Name
Coldwell Banker Residential Brokerage
Office Address
Office City, UT Office Zip

Lien Holder Name
Lien Holder Address
Lien Holder City, Lien Holder State, Lien Holder Zip
Attention: Loss Mitigation Contact

Date:

Dear _____,

Enclosed please find an offer to purchase the property located at (subject property address) (Loan # XXXXXXXXX). In addition, I have enclosed statistical market data to support this offer. This information is submitted in the spirit of cooperation with the intent to fully inform (Lien Holder(s)) as to current market conditions affecting the value of the subject property. The seller is not willing to repay or assume any continuing liability for any portion of the deficiency that may be realized as a result of this short sale transaction. The buyers are well qualified and able to close on this transaction within (___days) of a written agreement from (Lien Holder(s)). Points to consider while evaluating this offer include:

- Enter information supporting the value of accepting the short sale vs. foreclosure. For example a comparable that may have been listed as a short sale, was not approved and ultimately sold as a REO for less than the short sale would have realized
- Statistical information (for example foreclosures up % values down %, establish declining value % for unsold inventory)
- Be certain your statistics are accurate and truthful, earning the trust and confidence of the lien holder is a critical component of our success in these transaction

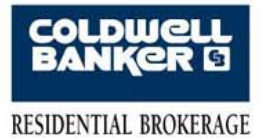
Real estate market conditions continue to depreciate in (subject property city). In addition, foreclosure presents numerous monetary risks to (Lien Holder(s)) including but not limited to: eviction, loss prevention/security while property remains vacant, allowable fines imposed by municipalities, maintenance, repairs, insurance, Homeowners Association dues, utilities, cost of sale, internal fees, expenses and reserves required under federal banking regulations. Based on the dynamics of the market place in and around (subject property city) the Short Sale offer currently under consideration is the best and quickest way for (Lien Holder(s)) to mitigate loss and hedge against declining values.

Thank you for your consideration,

(Agent Name)
(Phone number)
(Email Address)

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UT Listing 521.09 / Page 4 of 9

Page 4 Cover Letter to Lender (Separate Word Document)



Listing Short Sale Package

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SHORT SALE Table of Contents

Borrower(s): _____
Loan Number: _____
Subject Property Address: _____

City, State, Zip Code: _____

The documents checked below are included in this short sale proposal:

- Borrower Authorization
- Borrower Hardship Explanation
- Borrower Financial Statement and Supporting Financial Documentation
- HUD-1
- Synopsis of Offer to Purchase
 - Real Estate Purchase Contract (REPC)
 - Short Sale Addendum to Real Estate Purchase Contract
 - Short Sale Disclosure
 - Secondary Back Up Contract for Short Sale Addendum to Real Estate Purchase Contract
- Counter Offer(s) (if applicable)
- Buyer Credit Information
- Buyer Verification of Funds
- Listing Contract
- Short Sale Addendum to Listing Contract Agreement
- Price Reduction History and Documentation (if applicable)
- Current one page "Agent" Multiple Listing System (MLS) summary print-out
- Broker Price Opinion (BPO) (if applicable)
- Comparative Market Analysis (CMA) (if applicable)
- Market Activity Report
- Property Brochure
- Copies of Advertisement(s)
- Photographs (if applicable)
- Documentation supporting local market trends or statistics (if applicable)
 - Property Inspection Report(s) (if applicable)
- Lien Holder's Response to Short Sale Proposal (Fax Cover Sheet)
- Other: _____
- Other: _____
- Other: _____
- Other: _____
- Other: _____

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UT Listing 121.09 / Page 3 of 9

Page 5 Table of Contents

**COLDWELL
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Listing Short Sale Package

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SHORT SALE Borrower Authorization

Borrower(s): _____
Loan Number: _____
Subject Property Address: _____

City, State, Zip Code: _____

Date: _____
Senior Lien Holder: _____ Junior Lien Holder: _____
Attention: _____ Attention: _____
Loan Number: _____ Loan Number: _____
Address: _____ Address: _____
City, State, Zip Code: _____ City, State, Zip Code: _____

As the lien holder or servicing agent of the above-referenced loan, please consider the following action:

- APPROVE A SHORT SALE** - property has been sold **subject to lien holder's approval**, however, sales proceeds are inadequate to pay off the above referenced loan in full.
- PRE-APPROVE A SHORT SALE** - property has not been sold, but projected sales proceeds may not be adequate to pay off the above-referenced loan in full.
- IF CHECKED BY THE SELLER** - Seller is not willing to repay or assume any continuing liability for any portion of the deficiency that may be realized as a result of this short sale transaction.

Supporting documents including an estimated HUD-1 are attached for your review.

You are hereby authorized to communicate directly with my real estate agent regarding approval of a short sale transaction.

Agent Contact Information:

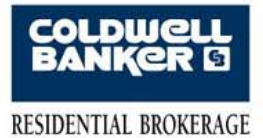
Agent: _____
Company: Coldwell Banker Residential Brokerage
Office Address: _____
Office City, State and Zip Code: _____
Direct Line: _____ Cellular Phone: _____
Fax: _____ E-mail Address: _____

Your prompt attention is greatly appreciated. Thank you in advance for your consideration.
Sincerely,

Borrower Signature _____ Date _____ Borrower Signature _____ Date _____
Borrower Name (please print) _____ Borrower Name (please print) _____

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UT Listing 5.31.09 / Page 6 of 9

Page 6 Borrower Authorization



Listing Short Sale Package

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SHORT SALE Synopsis of Offer to Purchase

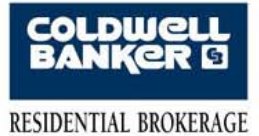


Borrower(s)/Sellers(s): _____
Loan Number: _____
Subject Property Address: _____
City, State, Zip Code: _____

Date of Offer: _____
Buyer: _____ Buyer: _____
Seller: _____ Seller: _____
Earnest Money: _____ Purchase Price: _____
New Loan Amount: _____ Balance of Purchase Price: _____
Special Assessments to be Paid By: Seller Buyer Split Equally Other: _____
Fees/Costs/Payment Obligations: _____
Closing: _____ Calendar Days After Settlement
Possession: Upon Close _____ Hours After Close _____ Days After Close
Confirmation of Agency Disclosure:
Seller's Agent Represents: Seller Both Buyer and Seller as a Limited Agent
Seller's Brokerage Represents: Seller Both Buyer and Seller as a Limited Agent
Buyer's Agent Represents: Seller Both Buyer and Seller as a Limited Agent
Buyer's Brokerage Represents: Seller Both Buyer and Seller as a Limited Agent
Due Diligence:
Buyer's Obligation to Purchase: Is Conditioned Upon Buyer's Due Diligence
 Is Not Conditioned Upon Buyer's Due Diligence
Appraisal Condition:
Buyer's Obligation to Purchase: Is Conditioned Upon Property Appraisal At No Less Than The Purchase Price
 Is Not Conditioned Upon Property Appraisal At No Less Than The Purchase Price
Financing Condition:
Buyer's Obligation to Purchase: Is Conditioned Upon Buyer Obtaining the Loan Referenced in Section 2(b)
 Is Not Conditioned Upon Buyer Obtaining the Loan Referenced in Section 2(b)
Additional Earnest Money Deposit: Buyer Will Deposit Additional Earnest Money
 Buyer Will Not Deposit Additional Earnest Money
Addendums Included: _____
Home Warranty Plan: Will Be Included Will Not Be Included Not to Exceed: _____
Ordered By: Buyer Seller Selected By: Buyer Seller
Paid By: Buyer Seller Other: _____
Contract Deadlines:
Seller Disclosure Date: _____
Due Diligence Date: _____
Financing and Appraisal Date: _____
Settlement Date: _____


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UT Listing 5.21.09 / Page 7 of 9

Page 7 Synopsis of Offer



Listing Short Sale Package

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**SHORT SALE
Market Activity Report**

Borrower(s): _____
Loan Number: _____
Subject Property Address: _____

City, State, Zip Code: _____

The undersigned affirms that the following accurately represents market activity:
On _____ (Date), _____ (Broker) and
_____ (Borrower/Seller) entered into a Residential Listing Contract for the
period from _____ to _____ (Listing period) to market and sell the property known as
_____ (Property) for \$ _____ (Listing price).

Description of property, area, market conditions and other considerations that influence the value, marketing and
sale of property:

Summary of marketing activities:

Number of Showings by Broker: _____ Number of Showings by Other Brokers: _____
Date of Latest Open House: _____ Total Number of Open Houses: _____
Date of Broker/Agent Tour: _____
Brief Description of Activities: _____

Additional comments: _____

Agent Signature _____ Date _____
Agent Name (please print) _____

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UT Listing 121.09 / Page 8 of 9

Page 8 Market Activity Report


RESIDENTIAL BROKERAGE

Listing Short Sale Package

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SHORT SALE
Lien Holder's Response to Short Sale Proposal

FAX COVER SHEET

Borrower(s): _____
Loan Number: _____
Subject Property Address: _____
City, State, Zip Code: _____
Total Pages Included (including cover sheet): _____
Date Submitted: _____

Submitted To:

Agent: _____
Company: Coldwell Banker Residential Brokerage
Office Address: _____
Office City, State and Zip Code: _____
Direct Line: _____ Cellular Phone: _____
Fax: _____ E-mail: _____

Submitted By:

Lien Holder: _____
Lien Holder Address: _____
Lien Holder City, State and Zip Code: _____
Contact: _____
Phone: _____ Fax: _____
E-mail: _____

Preliminary Approval:

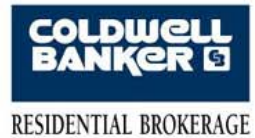
The above referenced lien holder responds to borrower's proposal as follows:

- Agrees in principle to borrower's proposal as submitted
 Agrees in principle to borrower's proposal with the following additions or modifications:

Comments:

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Page 9
Return Fax Cover Sheet
(for Lender)



Listing Checklist

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SHORT SALE - CHECKLIST Representing the Seller

Pre-listing

- Review complete property status report; liens and encumbrances, ownership (verify, notice of default, trustee sale notice)
- Ask seller about other liens, obligations and/or judgments (i.e. Internal Revenue Service, Franchise Tax Board, pre-payment penalties)
- Determine seller's objective; retain the property (loan modification or refinance) or liquidate (short sale, foreclosure)
- Determine seller's intent with respect to a forgiveness of debt vs. a release of lien (or combination thereof)
- Does seller have sufficient funds to move if a short sale is approved?
Lien holder may allow for a moving allowance
- Refer seller to tax and legal advisors, and/or provide HUD approved list of non-profit counseling agencies

Post listing

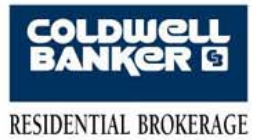
- Research loan(s) with lien holder or servicing agent (for example Countrywide or Washington Mutual servicing a loan wherein FannieMae or FreddieMac is the investor) or is the loan a portfolio loan (for example Countrywide or Washington Mutual owns the loan)
- Identify investor: FannieMae and FreddieMac have websites/hotlines
- Contact lien holder early to discuss strike or reserve price options
- Borrower prepared hardship letter/explanation and financial statement
- Include Short Sale addendum to listing contract
- Include Coldwell Banker Borrower Authorization
- Specific language in MLS regarding lien holder approval of short sale and selling office compensation in confidential remarks

Negotiations and Submission to lien holder or servicing agent

- Include CMA or BPO, photographs and any other data that support pricing
- Insert borrower name and loan number on each page of documents submitted to lien holder
- Establish listing history / price reductions / offers to purchase etc.
- Be certain that contract negotiations between buyer and seller have been exhausted
- Submit complete package to all lien holders at onset
- Document all conversations: date, time, nature of call
- Follow up with lien holder(s), buyer's agent and seller

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LIT Listing 5.31.09



Buyer Short Sale Package

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SHORT SALE - REPRESENTING THE BUYER Guidelines and Overview for Agents

The short sale proposal submitted to the lender must be prepared and packaged professionally to assist the lender in making an informed decision. To facilitate this process, the following procedures should be adhered to when submitting an offer:

- Submit a complete proposal to lien holder(s)
- Provide an orderly presentation of documents as set forth below
- Include the borrower/seller name, loan number (if known) and property address in the top right hand corner of each document
- The final terms and conditions of the offer should be negotiated and accepted by the borrower/seller prior to the listing agent submitting the offer to the lender

Preparing a well organized, professional package will ease the process for lien holder review and facilitate response time.

Note to Agent: This Guideline and Overview is intended to identify documents and forms that will be useful to lien holder(s) in facilitating short sale proposals. Nothing in the Guideline and Overview relieves the Agent(s) of the responsibility to maintain a complete file pursuant to the required check list of documents, disclosures and forms required by Coldwell Banker Residential Brokerage for this type of transaction.

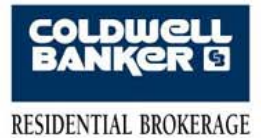
The following identifies the documentation that should be included with every short sale proposal:

- Fax Cover (editable PDF included in this packet)
Please note, each page contained in fax contents should include the borrower's/seller's name and loan number
- Table of Contents (editable PDF included in this packet)
Recommended order of documentation
- Synopsis of Offer to Purchase (editable PDF included in this packet)
- Real Estate Purchase Contract (REPC)
- Short Sale Addendum to Real Estate Purchase Contract
- Short Sale Disclosure
- Secondary Back Up Contract for Short Sale Addendum to Real Estate Purchase Contract
- Buyer Credit Information
- Buyer Verification of Funds
- Comparative Market Analysis (CMA) (if applicable)
- Documentation supporting local market trends or statistics (if applicable)

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UT Buyers 5.21.09 / Page 1 of 4

Page 1 Guidelines and Overview



Buyer Short Sale Package

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SHORT SALE
Supporting Documentation

FAX COVER SHEET

Borrower(s)/Sellers(s): _____
Loan Number (if known): _____
Subject Property Address: _____

City, State, Zip Code: _____

Total Pages Included (including cover sheet): _____
Date Submitted: _____


Submitted To:
Agent: _____
Company: _____
Office Address: _____
Office City, State and Zip Code: _____
Direct Line: _____ Cellular Phone: _____
Fax: _____ E-mail: _____

Submitted By:
Agent: _____
Company: Coldwell Banker Residential Brokerage
Office Address: _____
Office City, State and Zip Code: _____
Direct Line: _____ Cellular Phone: _____
Fax: _____ E-mail: _____

Comments:

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UT Buyers 5.21.09 / Page 2 of 4

Page 2
Fax Cover Sheet to Listing Agent


RESIDENTIAL BROKERAGE

Buyer Short Sale Package

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SHORT SALE Table of Contents

Borrower(s)/Sellers(s): _____
Loan Number (if known): _____
Subject Property Address: _____

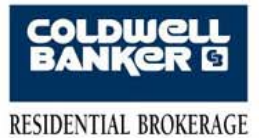
City, State, Zip Code: _____

The documents checked below are included in this short sale proposal:

- Synopsis of Offer to Purchase
 - Real Estate Purchase Contract
 - Short Sale Addendum to Real Estate Purchase Contract
- Buyer Credit Information
- Buyer Verification of Funds
- Comparative Market Analysis (CMA) (if applicable)
- Documentation supporting local market trends or statistics (if applicable)
- Other: _____
- Other: _____
- Other: _____
- Other: _____
- Other: _____

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UT Buyers 5.21.09 / Page 3 of 4

Page 3 Table of Contents



Buyer Short Sale Package

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SHORT SALE
Synopsis of Offer to Purchase

Borrower(s)/Sellers(s): _____
Loan Number: (if known): _____
Subject Property Address: _____
City, State, Zip Code: _____

Date of Offer: _____
Buyer: _____
Seller: _____
Earnest Money: _____ Purchase Price: _____
New Loan Amount: _____ Balance of Purchase Price: _____
Special Assessments to be Paid By: Seller Buyer Split Equally Other: _____
Fees/Costs/Payment Obligations: _____
Closing: _____ Calendar Days After Settlement
Possession: Upon Close _____ Hours After Close _____ Days After Close
Confirmation of Agency Disclosure:
Seller's Agent Represents: Seller Both Buyer and Seller as a Limited Agent
Seller's Brokerage Represents: Seller Both Buyer and Seller as a Limited Agent
Buyer's Agent Represents: Seller Both Buyer and Seller as a Limited Agent
Buyer's Brokerage Represents: Seller Both Buyer and Seller as a Limited Agent
Due Diligence:
Buyer's Obligation to Purchase: Is Conditioned Upon Buyer's Due Diligence
 Is Not Conditioned Upon Buyer's Due Diligence
Appraisal Condition:
Buyer's Obligation to Purchase: Is Conditioned Upon Property Appraisal At No Less Than The Purchase Price
 Is Not Conditioned Upon Property Appraisal At No Less Than The Purchase Price
Financing Condition:
Buyer's Obligation to Purchase: Is Conditioned Upon Buyer Obtaining the Loan Referenced in Section 2(b)
 Is Not Conditioned Upon Buyer Obtaining the Loan Referenced in Section 2(b)
Additional Earnest Money Deposit: Buyer Will Deposit Additional Earnest Money
 Buyer Will Not Deposit Additional Earnest Money
Addendums Included: _____
Home Warranty Plan: Will Be Included Will Not Be Included Not to Exceed: _____
Ordered By: Buyer Seller Selected By: Buyer Seller
Paid By: Buyer Seller Other: _____
Contract Deadlines:
Seller Disclosure Date: _____
Due Diligence Date: _____
Financing and Appraisal Date: _____
Settlement Date: _____

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UT Buyers 5.31.09 / Page 4 of 4

Page 4 Synopsis of the Offer

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Buyer Checklist

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SHORT SALE - CHECKLIST Representing the Buyer

Prior to preparing Purchase Agreement

- Review complete property status report; liens and encumbrances, ownership, notice of default, trustee sale notice
- Ask listing agent about other liens, obligations and/or judgments (i.e. Internal Revenue Service, Franchise Tax Board, pre-payment penalties)
- Ask listing agent if seller is considering loan modification, refinance and bankruptcy
- Ask listing agent if any preliminary negotiations have taken place with lender(s)
- Ask listing agent how subsequent offers will be handled
- Ask listing agent if loan(s) are portfolio (i.e. owned by Countrywide or Washington Mutual etc.) or is Countrywide or Washington Mutual etc. servicing the loan for the investor (i.e. FannieMae or FreddieMac)

During Negotiations

- Use Coldwell Banker Short Sale Package "Representing the Buyer"
- Provide listing agent with CMA data to support the purchase price offered
- Include area information and photographs that support pricing
- Include Short Sale Addendum (Listing Agreement/Purchase Agreement)
- Include buyer pre-approval letter
- Include verification of buyers down payment and closing costs
- Insert borrowers name and loan number, if available, on all pages of every document submitted
- Provide listing agent with a complete package at onset
- Document all conversations: date, time, nature of call
- Follow up with listing agent and buyer on a regular basis

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LIT Buyers 5-31-09

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Forms are on UtahAgents.net

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The screenshot displays the UtahAgents.net website interface. At the top, it shows the date "Today is Thursday - May 21, 2009" and the Coldwell Banker Residential Brokerage logo. A navigation bar includes a search field, "GO", "HOME", and "LOG OFF" buttons. A left sidebar lists various resources: Agent Tools, Marketing, Other Resources, News And Events, Manager Corner, Company Roster, Support, Relocation, Training, and Intranet Admin. The main content area features a "see what's new on UTAHAGENTS.net" banner, a "president's message" with a quote from Andrew Carnegie, a "marketing news" section with links to "New! Notice Signs for you properties", "2008 Awards Ads", "Updated Property Market Materials Package", and "New Listing Presentation", and a "SHORT SALE INFORMATION" section. The "SHORT SALE INFORMATION" section is highlighted with a browser window overlay showing the "SHORT SALE INFORMATION" page, which includes sub-sections for "short sale - representing the seller" and "short sale - representing the buyer". Each sub-section lists documents such as "Guidelines and Overview", "Useful Websites for Homeowners", "Fax Cover Sheet to Lien Holder", "Agent Cover Letter", "Table of Contents", and "Borrow Authorization". At the bottom of the main content area, there are four quick links: "Propel class information", "outgoing referrals contest", "short sale seminar", and "upcoming events".

UtahAgents.net > Marketing > Other > Short Sale

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Lien Holder Perspective

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- **Lien holder approval of offers**
 - Conditional approval (note / money / fraud provision) or unconditional (full forgiveness)
 - Modification of terms that impact Buyer and/or Seller
 - Written approval
 - Delivered to Buyer and Seller by deadline or the Contract is terminated
- **Lien holder approval vs. seller acceptance**
 - Treatment of subsequent offers ; seller may accept backup offers prior to third party approval
 - May or may not submit to third party for review
 - Why? Because Lender requests / Demonstrate value to Lender /Mitigate borrower and Lender loss
 - Why not? May delay or confuse process
- **Value of property is the central issue**
 - Precise CMA from listing agent
 - Broker Price Opinion from outside broker (BPO) / independent appraisal
 - RMV – Reconciliation of Market Value
- **Broker Commission Negotiations**
 - You can say “NO” / division of compensation per MLS / Broker value proposition
 - The GM delayed action technique “.....I’ll get back to you next month”
- **Success requires patience , communication and skill**
 - With the lien holder, clients and other agent
 - Knowledge of market conditions , attention to detail and negotiation skills

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Washington Mutual

COLDWELL
BANKER



WaMu Cares.

If you're considering selling your home for less than you currently owe on it, answer the questions below as completely and accurately as possible, and we'll try to help streamline the process.*

*If you have a co-borrower, please fill in his or her information, too.

Short Sale Assistance Form

You can type your answers right into this form and fax or mail it in. See the instructions on the next page.

1. To help us locate your loan, please provide your name(s).

Borrower Name _____
Co-borrower Name _____

2. What are your current phone numbers?

() ()
Borrower Home Phone _____ Co-borrower Home Phone _____
() ()
Borrower Work Phone _____ Co-borrower Work Phone _____
() ()
Borrower Mobile Phone _____ Co-borrower Mobile Phone _____

3. Do you have your WaMu loan number?

Yes, it is: _____ No

4. What is the address of your property?

Street Address _____ Apartment Number _____
City _____ State _____ Zip _____

5. Are you (or your co-borrower) living in this property?

Yes No

6. Please enter any additional mailing addresses.

Borrower Street Address _____ Apartment Number _____
City _____ State _____ Zip _____

Co-borrower Street Address _____ Apartment Number _____
City _____ State _____ Zip _____

7. How many people live at your address?

1 2 3 4 5 6 or more

8. How many of the people living at this address are dependents?

0 1 2 3 4 5 6 or more

9. How many cars do you own?

0 1 2 3 4 or more

10. Have you already spoken to a debt counseling service?

Yes No

11. Why are you having trouble with your home loan payments?

Select all that apply:
 Payment amount changed Reduced income Death
 Loss of employment Illness Other

Please explain:

12. Do you have any other loans on the home?

Yes No

13. If you have other loans on the home, approximately how much do you owe on all other loans combined?

14. Who is your real estate agent?

Name _____

Phone _____

Email _____

15. Who else are you authorizing to talk to WaMu as part of this transaction? (e.g., escrow officer, real estate agent's assistant)

Name _____

Phone _____

Email _____

16. Please enter how much you pay for the items below and total them in the last row.

MONTHLY EXPENSES	BORROWER	CO-BORROWER
Other Home Loans, Rent & Liens	\$	\$
Auto Loan(s)	\$	\$
Auto-Insurance & Other Auto Expenses	\$	\$
Credit Cards & Installment Loans	\$	\$
Health Insurance	\$	\$
Medical Expenses	\$	\$
Child Care, Child Support & Alimony	\$	\$
Food	\$	\$
Miscellaneous Spending Money	\$	\$
Utilities (phone, cable, electric, etc.)	\$	\$
Communications (phone, cell phone, Internet)	\$	\$
Other	\$	\$
TOTAL	\$ 0	\$ 0

17. Please enter your income details below and total them in the last row.

MONTHLY INCOME	BORROWER	CO-BORROWER
Net/Take-Home Pay	\$	\$
Other Income (unemployment, child support, etc.)	\$	\$
Other	\$	\$
TOTAL	\$ 0	\$ 0

18. Please enter how much money you have in the assets below and total them in the last row.

ASSET	BORROWER	CO-BORROWER
Checking Account(s)	\$	\$
Savings & Money Market Account(s)	\$	\$
Stocks, Bonds & CDs	\$	\$
Retirement Account(s)	\$	\$
Home Equity	\$	\$
Other Real Estate Equity	\$	\$
Cars (with no loan payments)	\$	\$
Other	\$	\$
TOTAL	\$ 0	\$ 0

I (we) agree that the financial information provided is an accurate statement of my (our) financial status. I (we) understand and acknowledge that any action taken by the lender of my (our) home loan on my (our) behalf will be made in strict reliance on the financial information provided. My (our) signature(s) below grants the holder of my (our) home loan the authority to confirm the information I (we) have disclosed in this financial statement, to verify that it is accurate by ordering a credit report and to contact my (our) real estate agent and/or credit counseling representative (if applicable). By signing below, I (we) advise you that if I (we) should hereafter reinstate my (our) home loan, or pay off my (our) home loan in full, then by doing so and without the necessity of any further action on my (our) part, I (we) hereby expressly withdraw this request for a loan workout. In that event, I (we) hereby direct you to take no further action to process this request for a workout.

I (we) hereby authorize Washington Mutual Bank, as servicer of the above home loan, to share and discuss my (our) non-public private information with the above-named real estate agents, escrow company representatives, title company representative and any other necessary or appropriate parties concerning the sales transaction for the above referenced Property. I (we) further authorize Washington Mutual Bank to release to the above-named individuals originals or copies of any and all documents in Washington Mutual Bank's possession relating to the Loan or Property including, without limitation, copies of my (our) credit-related information, financial statements, tax returns, loan payment history and other loan servicing documents and records (the "Loan Information"). I (we) further agree to indemnify Washington Mutual Bank and to hold it harmless from and against all losses, claims and damages of whatever kind which may arise from the said release of my (our) Loan Information to Recipient(s).

Borrower _____ Date _____ Co-borrower _____ Date _____

Thank you for taking steps to resolve your home loan issues. We'll contact you soon!

WaMu Cares

Short Sale Assistance Checklist

DON'T FORGET! DID YOU...

- Fully complete all questions? **Remember:** If you have a co-borrower, we need his or her information, too.
- Sign and date this form?
- Include copies of your:
 - Bank account statement(s)
 - All pages of your most recent monthly account statements (e.g., checking, savings, money markets, CDs).
 - If you don't have a checking account, submit copies of cash and money order receipts for all paid household bills for the last month.
 - Savings account statement(s)
 - Income history:
 - If you are self-employed—provide a profit and loss statement for the year to date.
 - If you receive regular paychecks—copies of pay stub(s) for the month most recently worked for you and your co-borrower.
 - If you are not employed—provide proof of income (e.g., social security, disability, unemployment, rental, child support, alimony and retirement).
- Note: For rental income, provide copy of rental/lease agreement.
- Sales contract signed by all parties
- Estimate of closing costs (HUD 1, a Statement Settlement provided by your escrow agent, or Good Faith Estimate)
- Letter from Bankruptcy Court (motion to release Bankruptcy, Notice of Dismissal, or Trustee Authorization to sell the property)
- Signed second lien release (if applicable)
- Copy the completed form for yourself?

GREAT!

Now, either fax or mail your information to WaMu.

- Fax: 904-886-1328 or 904-886-1329
- Mail: WaMu Home Ownership Preservation
7255 Baymeadows Way
JAXA2000 Jacksonville, FL 32256

Supporting Documents (Typically required from Borrower/Seller)

- **Lenders asked to consider a short payoff typically request documents from the borrower which include:**
 - **written explanation of the hardship**
 - **three months bank statements**
 - **two years tax returns**
 - **pay check stubs**
 - **P & L (self employed)**
 - **copy of the RPA and TDS**
 - **proof of buyer's ability to complete the purchase**
 - **certified copy of the escrow instructions**
 - **Estimated closing statement (HUD 1) certified by escrow officer**
 - ***May compare original loan application***



SHORT SALE ADDENDUM NO. _____
TO
REAL ESTATE PURCHASE CONTRACT

Participating in a Short Sale may have negative legal or tax consequences. If you desire specific legal or tax advice, consult your attorney or tax advisor.

THIS IS AN ADDENDUM COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, 20____, including all prior addenda and counteroffers, between _____, as Buyer, and _____, as Seller, regarding the Property located at _____ (the "Property"). The terms of this Addendum are hereby incorporated as part of the REPC, and to the extent the terms of this Addendum modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control.

1. **ACKNOWLEDGMENT OF SHORT SALE.** This transaction is commonly referred to as a "Short Sale" because the Purchase Price for the Property is less, or "short", of the amount(s) owed to individuals/entities that have a financial interest in the Property (the "Third Parties"). Under the terms of the REPC, the Third Parties are being requested to accept less than what is owed to them. Therefore, the REPC is subject to Third Party Approval as defined in Section 2 below. For purposes of this Addendum, the Third Parties may include, without limitation; institutional lenders, mortgage insurers, bankruptcy trustees, federal, state and local tax authorities, and private parties. The Third Parties will be identified on the Commitment for Title Insurance referenced in Section 7 of the REPC.

2. **THIRD PARTY APPROVAL.** Buyer and Seller agree that their respective obligations under the REPC are conditioned upon Third Party Approval as defined in this Section. For purposes of the REPC the term "Third Party Approval" shall mean that Buyer and Seller have received from the applicable Third Parties, written approval of either: (a) the terms and conditions contained in the REPC as originally submitted to the Third Parties; or (b) such other terms and conditions as requested by the Third Parties ("Third Party Modifications") mutually agreed to by Buyer and Seller on a separate addendum. The Third Party Modifications shall not be binding on Buyer or Seller without their mutual written consent, which consent may be withheld by Buyer and/or Seller in their sole discretion.

3. **DELIVERY OF REPC TO THIRD PARTIES.** No later than four (4) calendar days after Acceptance of the REPC by Buyer and Seller (as defined in Section 23 of the REPC) Seller agrees to submit the REPC to the applicable Third Parties, together with any additional documentation required by the Third Parties.

4. **FAILURE TO OBTAIN THIRD PARTY APPROVAL.** Seller and Buyer shall have until _____, 20____ ("Third Party Approval Deadline") to obtain Third Party Approval. If by the Third Party Approval Deadline, Third Party Approval has not been obtained the REPC shall automatically be deemed cancelled whereupon any Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

5. **EARNEST MONEY DEPOSIT.** Buyer agrees to deliver the Earnest Money Deposit to Buyer's Brokerage (check applicable box): as required in the first paragraph on page one of the REPC; no later than four (4) calendar days after Third Party Approval as defined in Section 2 above; or Other (specify) _____

6. **SELLER'S RIGHT TO ACCEPT BACK-UP OFFERS.** Buyer agrees that at any time prior to Third Party Approval as defined in Section 2 above, Seller may: (a) accept additional backup offers for the purchase of the Property ("Backup Contracts"); and (b) based on the requirements of the Third Parties, Seller may or may not submit any such Backup Contracts to the Third Parties for review.

7. **BUYER'S RIGHT TO CANCEL REPC.** In consideration of the rights reserved by Seller under Section 6 above, Seller agrees that at any time prior to the Third Party Approval Deadline or Third Party Approval, whichever occurs first, Buyer may cancel the REPC for any reason, or for no reason, by providing written notice to Seller whereupon any Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.



8. **CONTRACT DEADLINES.** Unless otherwise agreed to as part of the Third Party Approval, Buyer and Seller agree that the Contract Deadlines in Section 24 of the REPC are as follows:

- (a) Seller Disclosure Deadline _____ days after Third Party Approval.
- (b) Due Diligence Deadline _____ days after Third Party Approval.
- (c) Financing & Appraisal Deadline _____ days after Third Party Approval.
- (d) Settlement Deadline _____ days after Third Party Approval.
- (e) Buyer and Seller also agree that if any of the dates referenced in this Section 8 above fall on a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

ALL OTHER TERMS of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. Seller Buyer shall have until ____ A.M P.M. Mountain Time _____, 20____ to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in the ADDENDUM shall lapse.

Buyer Seller Signature Date Time Buyer Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- ACCEPTANCE** of ADDENDUM: Seller Buyer hereby accepts the terms of this ADDENDUM/COUNTER OFFER
- COUNTER OFFER:** Seller Buyer presents as a counteroffer the terms of attached ADDENDUM No. _____
- REJECTION:** Seller Buyer rejects the foregoing ADDENDUM/COUNTER OFFER

Buyer Seller Signature Date Time Buyer Seller Signature Date Time

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Page 2 of 2 Seller's Initials _____ Date _____ Buyer's Initials _____ Date _____

Use the Correct Forms

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Short Sale Addendum to Real Estate Purchase Contract (“REPC”)

- ✓ For use with the Real Estate Purchase Contract
- ✓ Defines a short sale and describes the third parties
- ✓ Defines third party approval process
- ✓ Establishes deadline for delivery REPC to third party and deadline for approval and cancellation rights
- ✓ Treatment of earnest money deposit
- ✓ Seller right to accept back-up offers
- ✓ Buyer unilateral right to cancel prior to third party approval
- ✓ Contract deadlines
- ✓ Time period for acceptance

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Use the Correct Forms

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Short Sale Disclosure

- ✓ For use with both Buyers and Sellers
- ✓ The short sale defined
- ✓ Explanation of third party approval requirement
- ✓ Explains third party modifications as well as the rights of the parties to reject or accept
- ✓ Warns of delays in response time
- ✓ Advise the parties of the right of third parties to require continued marketing and submission of additional offers (in back up position)
- ✓ Buyer right to cancel any time prior to third party approval deadline or approval (which ever occurs first) with refund of earnest money to buyer without further authorization from seller
- ✓ Advises of tax legal consequences with recommendation to consul attorney and/or tax advisor

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Use the Correct Forms

C O L D W E L L
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Secondary “Backup” Contract for short sale addendum to Real Estate Purchase Contract

- ✓ For use as addendum or counter offer to Real Estate Purchase Contract (“REPC”)
- ✓ Buyer acknowledgements”
 - ✓ Short sale and third party approval requirement
 - ✓ Prior acceptance of REPC
 - ✓ Seller right to accept additional Back Up Contracts
 - ✓ Prior REPCA submitted to third party
 - ✓ Seller may or may submit back up contract to third party
 - ✓ Right to modify terms
- ✓ Buyer Right to Cancel
 - ✓ At sole discretion
 - ✓ Written notice
 - ✓ Return of earnest money

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Hot Topics / Red Flags

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Factor in all costs necessary to meet seller obligations:

Brokerage fee

Costs of sale

Junior liens ; equity lines (HELOC), home improvement loans

Property taxes

Judgments

Additional liens

Chasing the market down

Price reductions

Contract negotiations

Post contract negotiations

Red Flags

Negotiating with a seller not on title / Option agreements

Any money or commitment for payment transaction related but outside of closing (not on HUD)

Buyer additional fee agreements

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Tips for Agents in Short Payoff Transactions

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Standard NAR approved language to be included in MLS on all Short Sale listings

- “Selling office compensation is subject to lender approval, any reductions to be shared 50/50”
- MLS may allow and/or require this verbiage in the first line of the broker or confidential comments
- Reporting transaction is subject to local or regional MLS rules

When preparing contracts (listing and sale) be certain time periods such as, expiration dates, dates for contingency removal and close of escrow, do not extend beyond any trustee sale date

- Monitor property status throughout the process
- Notice of Default may not be filed at first delinquency
- REO / Short Sale Departments can't speak for each other
- Any foreclosure sale postponement must be in writing

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Negotiate transaction—”Negotiation 101”

- Listing agent response to rejection of offer
- Credits to Buyer may be acceptable
- Fall out rate after lien holder approval

Begin the Process early

- Give the lien holder time to analyze the proposal
- Season the Listing

Working together the listing and selling agent can achieve success

- If the agent on the other side is uncertain—offer to assist
- Get the job done—make it a win-win
- Keep the buyer in the loop and engaged

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Coldwell Banker Affiliates Can Make a Difference

Title:

Comprehensive property profile prior to listing / purchase agreement
Statement of Information (unsecured liens)
Preliminary Title Report when warranted
Provide support throughout the process via updates

Escrow:

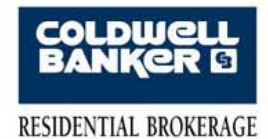
Capable, reputable & reliable
Understands the process
Manage file
Communication to all parties

Mortgage:

Best loan products, longer locks and rate protection
Bona fide pre- approval letter
CB Buyer / OB Buyer
Statement of credit worthiness

Home Warranty

Seller Coverage
Buyer Coverage



Listing Agent Fiduciary Duty to Seller


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- Obtain **highest and best** price possible
- Listing agent **ought not** attempt to negotiate a future listing with the foreclosing lender
- **Utmost loyalty** is owed to the seller/borrower
- Avoid the perception of a **conflict** of interest
- **Confidential** and insightful managing of this delicate matter is a must

What Buyers Need to Know

C O L D W E L L
B A N K E R


- **Dangerous practice**
 - Simultaneous submission of offers on more than one property
 - With the intent to purchase only one
 - Fraught with risk
 - Not a practice Coldwell Banker Residential Brokerage endorses
 - Seek guidance from management
- **Sellers may accept subsequent offers “in Back Up” position**
 - Use appropriate form
- **Buyers may be asked, but are not obligated to, pay fees owed by seller**
 - Junior lien holders
 - HOA liens / delinquencies
 - Other costs of sale
 - Factor this into negotiations
 - Manage the buyer’s expectations!

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Marketing Short Sale Transactions

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B A N K E R

- **Refrain** from making promises as to the outcome
- Be **honest and ethical** in advertising
- Remain mindful of the pitfalls of working with **distressed sellers**
 - **Emotions run high**
- Unscrupulous persons often prey on disadvantaged homeowners and **unsuspecting agents**
- **Solicitation of Homeowners to facilitate “non arms length transactions”**
- Inappropriate referrals may subject an agent to civil liability (i.e. 3rd parties who take title to the property based on false promises of avoidance of liability)

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Be Careful Out There



Questions or comments email



kmehringer@coldwellbanker.com

