

HOMEOWNER OPTIONS GUIDE

KEY REASONS FOR PROPERTY OWNERS TO DO A SHORT SALE:

- to minimize the potential damage to their credit that a foreclosure or bankruptcy might cause
- to maintain control of the sale of their home including the timing and the buyers
- to lessen the emotional stress caused by foreclosure or bankruptcy including the possibility of eviction



Dear Seller,

Thank you for giving me the opportunity to guide you through your options.

Please be assured you will receive my very best service incorporating all my experience and training to make a committed effort to have this process understandable, hassle free and a pleasure for all involved.

The information in this handbook will educate and assist you with the following:

- Distressed Properties with Equity
- Understanding the Short Sale process
- Foreclosure vs. Short Sale
- Federal programs to assist you in the Short Sale process
- Documentation needed to accomplish Short Sale
- The importance of obtaining legal and tax advice
- Approximately what costs are involved

I look forward to working with you during your entire transaction and welcome any questions you may have after reading this information.

Sincerely,



"The information provided is not and does not represent a tax, law, or consulting company, and is not giving any tax or legal advise. We recommend that you consult with a licensed attorney or certified public accountant."

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IMPORTANT NOTICE: Colorado Escrow & Title is not associated with the government, and our services are not subject to approval by the government or lenders. Even if you accept our services, your lender may not agree to change your loan. **If you stop paying your mortgage, you could lose your home and damage your credit rating.**

COLORADO FORECLOSURE HOTLINE

A short sale is a real estate transaction in which the sales price is insufficient to pay the loan(s) encumbering the property in addition to the costs of the sale and the seller is unable to pay the difference. A short sale involves numerous issues as well as legal and financial risks. *This Advisory is designed to address some of these issues and risks, but does not purport to be comprehensive.*

BEFORE PROCEEDING WITH A SHORT SALE

Understand a Lender's Options upon Loan Default

There are many types of loans that are secured by real property. These may be purchase loans, refinanced loans, home-equity loans, or one of the various other types of loans. The type of loan and type of property will determine what remedies a lender may have if the homeowner fails to make the agreed upon payments. The available remedies, the homeowner's overall current or potential future financial strength, the lender's cost in acquiring the loan and any shared loss or similar agreement if the loan was acquired by purchase or merger, are some of the many factors that the lender may consider in deciding how to proceed when a loan is in default.

Be Aware of Predatory "Rescue" Scams and Short Sale Fraud

Homeowners worried about foreclosure may be susceptible to predatory "rescue" scams which may cost you money with no results, result in the loss of your home entirely, or involve you in a fraudulent scheme. For more information, go to:

<https://www.fanniemae.com/content/news/mortgage-fraud-news-0709.pdf>

"Red Flags" of fraudulent schemes include:

- Guarantees to stop the foreclosure
- Large upfront fees
- Instructions not to contact the lender
- Transfer of title or lease of the property
- The proposed buyer is an LLC
- Requests that the homeowner execute a power of attorney
- The proposed buyer, at the buyer's sole expense, retains a third party to negotiate the short sale for the seller's benefit

Contact a Free HUD-Approved Housing Counselor or Contact Your Lender Directly

- Contact a HUD-approved housing counseling agency online at www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=CO or call (800) 569-4287 or TDD (800) 877-8339 for advice on your options.
- For additional HUD resources: http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure
- Contact the Neighborhood Assistance Corporation of America at: www.naca.com/
- Contact the lender directly. To find the lender's contact information, check the loan billing statement, or coupon book. Ask for the lender's home retention department, loss mitigation department, (or other department that handles negotiation of loans in default), explain the situation and find out if the lender is willing to discuss options.



Utilize Free Services Available to Colorado Residents

- **Contact the Colorado Foreclosure Helpline** at 1-877-601-4673 (toll free) or visit <http://coloradoforeclosurehotline.org/Home.aspx>

Obtain Legal Advice

An attorney can advise you about your options and legal liability.

- To find out if you are eligible for free or low cost legal assistance, contact a legal aid organization in your county or one of the organizations listed at <http://www.cobar.org/>
- Contact the Lawyer Referral Service in your county where you can consult with an attorney for a small fee for a half-hour consultation. **Pro Bono Project:** Metro Volunteer Lawyers. To apply for services, contact Colorado Legal Services at 303- 837-1313
- Attorneys who are State Bar Real Estate Law Certified Specialists can be located at: <http://www.cobar.org/Find-A-Lawyer>

Obtain Tax Advice

- For Mortgage Forgiveness Debt Relief Act and Debt Cancellation tax information, go to: <https://www.congress.gov/bill/115th-congress/senate-bill/122/text>
- Attorneys who are State Bar Tax Law Certified Specialists can be located at: <http://www.cobar.org/Find-A-Lawyer>

Be Aware of the Consequences of Committing “Waste”

Damaging the property or removing fixtures such as sinks, toilets, cabinets, air conditioners, and water heaters may result in liability to the lender for “waste.” In other words, the lender may be able to sue you for damages if you have physically abused, damaged or destroyed any part of the property.

OPTIONS OTHER THAN A SHORT SALE

Consider All Options

A short sale may not be your best course of action. Consider all your options before making a decision.

Loan Workout

- **Reinstatement:** Paying the total amount owed by a specific date in exchange for the lender agreeing not to foreclose.
- **Forbearance:** An agreement to reduce or suspend payments for a short period of time.
- **Repayment Plan:** An agreement to resume making monthly payments with a portion of the past due payments each month until they are caught up.
- **Claim Advance/Partial Claim:** If the loan is insured, a homeowner may qualify for an interest-free loan from the mortgage guarantor to bring the account current.

Loan Modification

The lender may agree to change the terms of the original loan to make the payments more affordable. For example, missed payments can be added to the existing loan balance, the interest rate may be modified or the loan term extended. Loan modification resources include:

- Making Homes Affordable www.makinghomeaffordable.gov
- National Foreclosure Mitigation Counseling Program:
- [http://www.neighborworks.org/Homes-Finances/Foreclosure/Foreclosure-Counseling-\(NFMC](http://www.neighborworks.org/Homes-Finances/Foreclosure/Foreclosure-Counseling-(NFMC)
- Homeownership Preservation Foundation: <http://www.neighborworks.org/Homes-Finances/Foreclosure>



Refinance

If the lender will not agree to a loan workout or modification, the homeowner may be able to refinance the loan with another lender. The HOPE for Homeowners Program will refinance mortgages for homeowners that can afford a new loan insured by HUD's Federal Housing Administration. Learn more at

https://www.fha.com/hope_for_homeowners

Deed-in-Lieu of Foreclosure

The lender may allow a homeowner to "give back" the property. This option may not be available if there are other liens recorded against the property. Review the HUD requirements at

<https://portal.hud.gov/hudportal/documents/huddoc?id=14-15ml.pdf>

Work Out Sale

The lender may allow a specific amount of time for the home to be sold and the loan to be paid off. The lender may also allow a buyer to assume the loan to purchase the property even if the loan is non-assumable.

Bankruptcy

If you are considering bankruptcy as an option, consult with an attorney that specializes in bankruptcy cases:

<http://www.cobar.org/Find-A-Lawyer>

Foreclosure

Allowing the lender to foreclose is another option. The counselors at the Colorado Foreclosure Help Line can explain the foreclosure process, call: 1-877-601-4673. Ultimately, only you and your attorney can decide if foreclosure is the best option for you. Attorneys who are State Bar Real Estate Law Certified Specialists can be located at <http://www.cobar.org/> Ask your attorney about the possibility of a deficiency lawsuit after foreclosure. Also, seek professional tax advice about the consequences of a foreclosure and review the IRS information at <https://www.irs.gov/publications/p4681/ch02.html>



*The first step to preparing a home for sale is to
let go of your emotional attachment to it.
Don't look back — look to the future.*

Distressed Properties with Equity

In some cases, homes that are in the foreclosure process have equity.

What does equity mean?

Equity is defined as excess funds over above those funds necessary to cover the existing lien(s), real estate closing costs, and fees paid to real estate professionals.

Examples of closing costs would be:

- Title insurance fees
- Real estate closing fees
- Owner's policy
- OEC (Owner's extended coverage) endorsement
- Property taxes
- HOA status and transfer fees
- Commissions
- Water/sewer/waste water

Equity does NOT necessarily mean that the home is worth more than what is owed.

Example: home is worth \$100,000, existing loan is \$95,000

\$95,000 - existing loan

\$6,000 - 6% commissions

\$1,500 - title charges

+\$500 - HOA transfer

\$103,000 TOTAL (no equity)

How do I know if I have equity?

There are several tools that can be used to determine equity in a property. Most of them stem from determining the fair market value of the property. Some of these include:

- Current comparable sales - recent sale on a similar property in a similar geographic area
- Automated property evaluations - usually online programs that analyze properties and estimate value
- Real Estate professionals - this is the most thorough way they evaluate properties to similar properties that have recently sold in a specific geographic area

What makes value?

Three basic considerations:

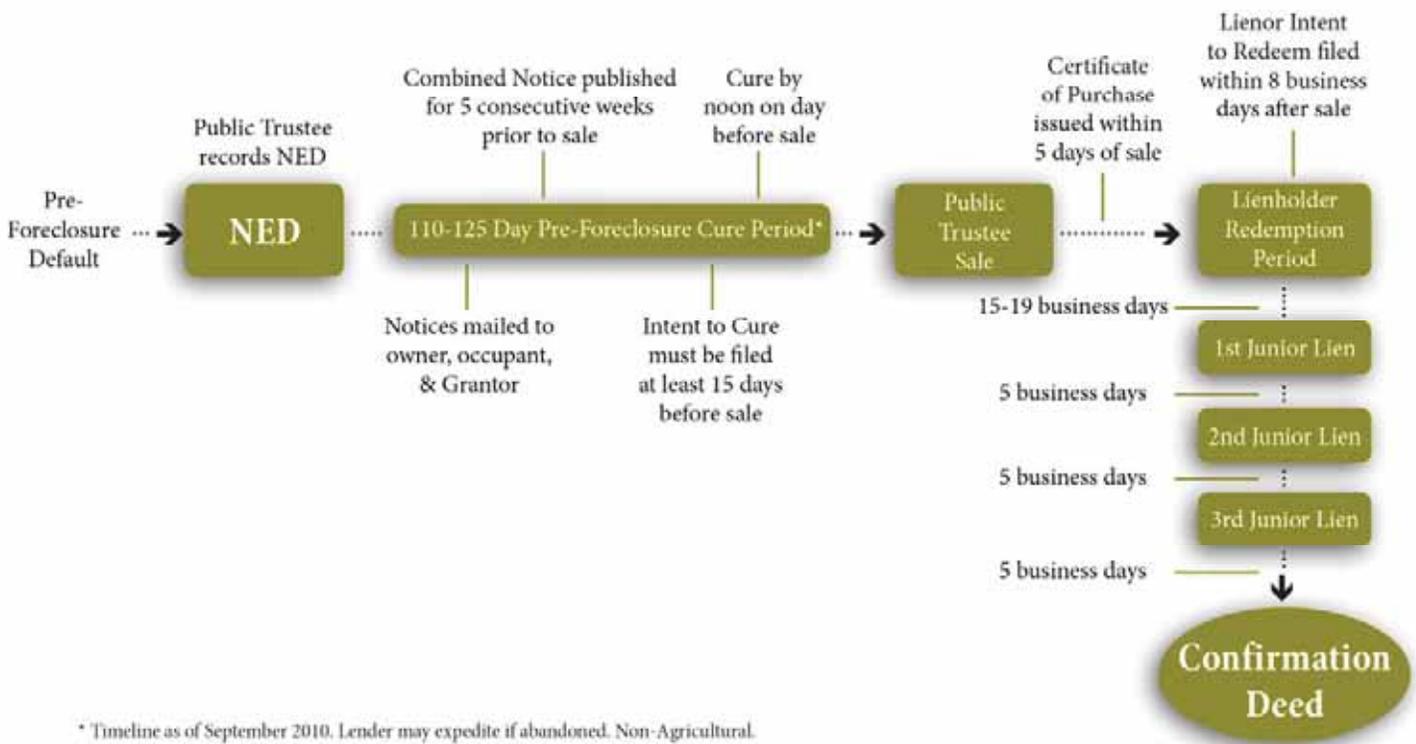
- Condition of the property - i.e. needs repairs or fresh upgrades
- Location of the property - i.e. close to amenities or near major roads
- Features - i.e. in a neighborhood with walking trails/tennis courts, granite upgrades etc

If it is determined that your property has equity, you have additional options or remedies to foreclosure such as:

Refinance - If the lender will not agree to a loan workout or modification, the homeowner may be able to refinance the loan with another lender. The HOPE for Homeowners Program will refinance mortgages for homeowners that can afford a new loan insured by HUD's Federal Housing Administration. Learn more at https://www.makinghomeaffordable.gov/get-answers/pages/get-answers-how-to-find-housing-counselor.aspx?clid=CJno6crm1c8CFYeEfgodo_gPrg



Foreclosure Timeline for Colorado Notices of Election and Demand (NED)



* Timeline as of September 2010. Lender may expedite if abandoned. Non-Agricultural.



SHORT SALE CONSIDERATIONS

If you decide to pursue a short sale, consider taking the following actions.

Contact a Qualified Real Estate Professional

Interview several real estate professionals and ask about their experience in short sales, the number of short sale transactions that they have handled, and their education and training in short sales.

- Find a REALTOR® at <http://coloradorealtors.com/>

Investigate Documentation and Eligibility

Documentation and eligibility criteria for short sales vary depending on specific lender and investor guidelines. Generally, you must prove that you are financially incapable of paying the loan and the lender is convinced that it will fare better by agreeing to a sale for less than the outstanding loan amount than foreclosing.

Determine the Amount Owed on the Property

All debt and costs must be factored in before determining whether a short sale is feasible. Consider the delinquent loan, home equity loan or other loans recorded against the property, past due homeowner's association fees, unpaid property taxes and the costs of a sale, such as closing costs, escrow fees and brokerage commissions. If you have more than one loan on the property, be aware that a short sale will generally require the approval of all lenders.

Determine the Estimated Fair Market Value of the Property

You must prove to the lender that the home is worth less than the unpaid loan balance. Consult a real estate professional or an appraiser for assistance in estimating the value of the property.

Consult Legal Counsel

The importance of competent legal counsel to help you determine whether a short sale is the best option and to advise you during the short sale process cannot be over emphasized. See the legal resources listed on the previous page or visit www.cobar.org

Understand that a Short Sale May not Discharge the Debt

Even if a lender agrees to a short sale, the lender, the VA, or the FHA may not agree to forgive the debt entirely and may require you to pay the difference as a personal obligation. This outstanding personal obligation could result in a subsequent collection action. For example, a lender may accept the short sale purchase price to "release the lien" on the property as opposed to agreeing to accept the purchase price as "full and final settlement of the debt" on the property. Therefore, be certain of the terms of any short sale before making a decision, consult an attorney regarding whether the lender is entitled to pursue a deficiency judgment and obtain any debt forgiveness agreements with the lender in writing.

Obtain Tax Advice

A short sale in which the debt is forgiven is a relief of debt and may be treated as income for tax purposes.

SHORT SALE CONSIDERATIONS

The Mortgage Forgiveness Debt Tax Relief Act created a limited exemption to allow homeowners to pay no taxes on debt forgiveness; however, only cancelled debt used to buy, build or improve a principal residence or refinance debt incurred for those purposes qualifies for this tax exemption. For more information on tax consequences of debt relief, seek professional tax advice and go to:

<https://www.congress.gov/bill/115th-congress/senate-bill/122/text>

Be Aware of the Impact on Your Credit score

The impact of a short sale on your credit score depends upon a variety of factors, including late or missed payments. A short sale may appear on your credit report as “pre-foreclosure redemption,” “paid in full for less than full balance” or other similar term.

Understand That There May Be a Waiting Period Before You Can Buy Another Home

Your ability to qualify for a loan to purchase another home after a short sale will likely be impacted by a short sale and there may be a waiting period before you can purchase another home.



FORECLOSURE VS. SHORT SALE

Homeowner Consequences

ISSUE	FORECLOSURE	SUCCESSFUL SHORT SALE
Future Loan — Primary Residence <i>(3/1/2011)</i>	A homeowner who loses a home to Foreclosure is ineligible for a Fannie Mae / Freddie Mac backed mortgage for a period of 5 to 7 years .	A homeowner who successfully negotiates and closes a Short Sale will be eligible for a FHA mortgage after only 3 years .
Future Conventional Loan — Non Primary <i>(3/1/2011)</i> <i>*Minimum 20% down payment required.</i>	An investor who allows a property to go to Foreclosure is ineligible for a mortgage for a period of 7 years and must have re-established their credit to good standings.	An investor who successfully negotiates and closes a Short Sale will be eligible for a Freddie Mac backed investment mortgage after only 5 years and must have re-established their credit to good standings.
Future loan with any Mortgage company	On any future 1003 applications, a prospective borrower will have to answer YES to question C in Section VIII of the standard 1003 that asks “Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years?” this will affect future rates.	There is no similar declaration or question regarding a Short Sale.
Credit Score	Score may be lowered anywhere from 250 to over 300 points. Typically will affect score for over 3 years .	Mortgage will be reported as paid or negotiated. This will lower the score as little as 50 points if all other payments are being made. A Short Sale's affect can be a brief 12 to 18 months . Mortgage non-payment affects credit separate from Short Sale.
Credit History	Foreclosure will remain as a public record on a person's credit history for 10 years or more .	Short Sale is not reported on a credit history. There is no specific reporting item for 'short sale'. The loan is typically reported 'paid in full, settled.'

Distressed Property Institute, LLC
800-482-0355 | www.cdpenow.com

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FORECLOSURE VS. SHORT SALE

Homeowner Consequences

ISSUE	FORECLOSURE	SUCCESSFUL SHORT SALE
Security Clearances	Foreclosure is the most challenging issue against a security clearance outside of a conviction of a serious misdemeanor or felony. If a client has a foreclosure and is a police officer, in the military, in the CIA, Security, or any other position that requires a security clearance, in almost all cases, clearance will be revoked and position will be terminated.	A Short Sale on its own does not challenge most security systems.
Current Employment	Employers have the right and are actively checking the credit regularly of all employees who are in sensitive positions. A Foreclosure in many cases is grounds for immediate reassignment or termination.	A Short Sale is not reported on a credit report and is therefore not a challenge to employment.
Future Employment	Many employers are requiring credit checks on all job applicants. A foreclosure is one of the most detrimental credit items an applicant can have and in most cases, will challenge employment.	A Short Sale is not reported on a credit report and is therefore not a challenge to employment.
Deficiency Judgment	In 100% of Foreclosures (except in those states where there is no deficiency) the bank has the right to pursue a deficiency judgment.	In some successful Short Sales, it is possible to convince the lender to give up the right to pursue a deficiency judgment against the homeowner.
Deficiency Judgment (amount)	In a Foreclosure, the home will have to go through an REO process if it does not sell at auction. In most cases, this will result in a lower sales price and longer time to sell in a declining market. This will result in a higher possible deficiency judgment.	In a property managed Short Sale, the home is sold at a price that should be close to market value and in almost all cases, will be better than an REO sale resulting in a lower deficiency.

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MORTGAGE FORGIVENESS DEBT TAX RELIEF ACT

Under federal law, a creditor is required to file a form 1099-C whenever it forgives or cancels a loan balance greater than \$600. This may create a tax liability for the debtor because the canceled debt is considered "income" for tax purposes.

However, the Mortgage Forgiveness Debt Tax Relief Act provides tax relief for some mortgage loans forgiven in 2007 through 2018. The Mortgage Forgiveness Debt Relief Act is an extension of the Mortgage Forgiveness Debt Relief Act, and allows taxpayers to exclude income from the discharge of debt on their principal residence.

What is the Mortgage Forgiveness Debt Tax Relief Act?

Generally, the Act allows exclusion of income realized as a result of modification of the terms of the mortgage, or foreclosure on your principal residence.

What does that mean?

Usually, debt that is forgiven or cancelled by a lender must be included as income on your tax return and is taxable. The Mortgage Forgiveness Debt Tax Relief Act allows you to exclude certain cancelled debt on your principal residence from income.

Does the Mortgage Forgiveness Debt Tax Relief Act apply to all forgiven or cancelled debts?

No, the Act applies only to forgiven or cancelled debt used to buy, build or substantially improve your principal residence, or to refinance debt incurred for those purposes.

The most common situations when cancellation of debt income is not taxable involve:

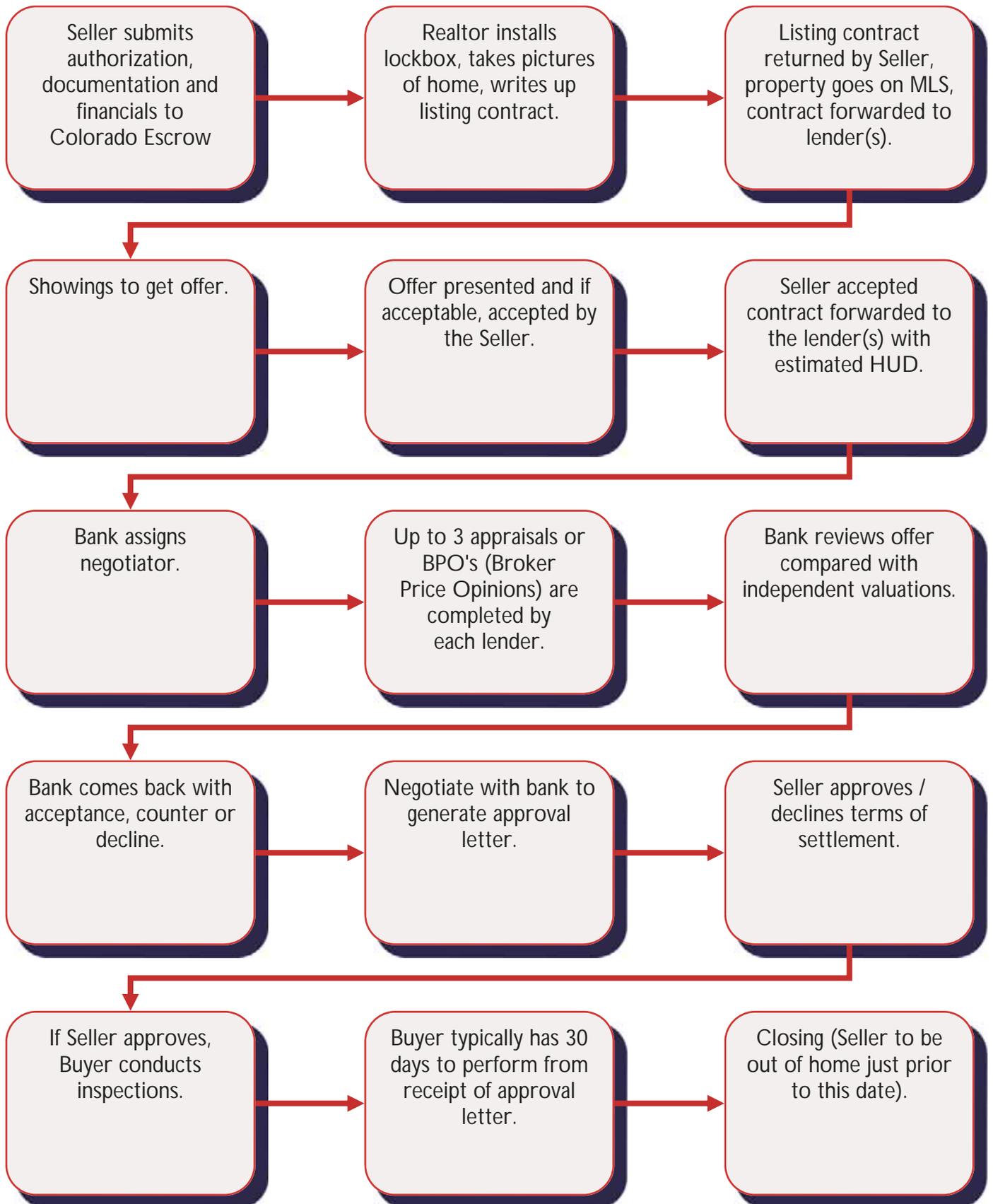
- **Qualified principal residence indebtedness:** This is the exception created by the Mortgage Debt Tax Relief Act and applies to most homeowners.
- **Bankruptcy:** Debts discharged through bankruptcy are not considered taxable income.
- **Insolvency:** If you are insolvent when the debt is cancelled, some or all of the cancelled debt may not be taxable to you. You are insolvent when your total debts are more than the fair market value of your total assets.
- **Certain farm debts:** If you incurred the debt directly in operation of a farm, more than half your income from the prior three years was from farming, and the loan was owed to a person or agency regularly engaged in lending, your cancelled debt is generally not considered taxable income.
- **Non-recourse loans:** A non-recourse loan is a loan for which the lender's only remedy in case of default is to repossess the property being financed or used as collateral. That is, the lender cannot pursue you personally in case of default. Forgiveness of a non-recourse loan resulting from a foreclosure does not result in cancellation of debt income. However, it may result in other tax consequences.

These exceptions are discussed in detail in IRS Publication 4881.

What about refinanced homes?

Debt used to refinance your home qualifies for this exclusion, but only up to the extent that the principal balance of the old mortgage, immediately before the refinancing, would have qualified.

SHORT SALE PROCESS



SHORT SALE FREQUENTLY ASKED QUESTIONS

Can the seller receive any proceeds from the sale?

No, generally the lender will not allow the seller to walk away with any money.

The seller is current on all home loan payments. Is the seller eligible for a short sale?

More and more lenders are approving short sales on current mortgages. Freddie Mac requires 60-day delinquency. Ask your Realtor for more details on your specific lender.

Will the seller be required to pay any money into the closing?

It is possible that the lender will require the seller or another party to the transaction to pay fees or costs above what the lender is willing to absorb.

What fees will the seller's lender pay to close the short sale?

The lender will generally pay normal seller closing costs only. Customary title and escrow fees, pre-approved Real Estate commissions, normal HOA transfer and disclosure fees, documentary costs, taxes and recording fees are usually approved. Additional repair and maintenance costs, delinquent HOA fees, judgments or liens will require specific approval and may not be covered. The seller should prepare for this.

When will a short sale close?

Only when all of the following conditions have been met may the sale close:

- 1. Seller's lender has approved the contract in writing and stipulated an amount for the reduced payoff.*
- 2. Buyer's lender has fully approved the new loan and has funded the loan amount to the escrow in "Good Funds".*
- 3. All requirements listed in the Commitment for Title Insurance have been satisfied or removed.*
- 4. Any additional funds necessary to pay all costs, fees and obligations have been paid into the escrow in "Good Funds" by the buyer, seller or other applicable party.*

How long does the lender have to approve the short sale contract?

There is no limit to how long the lender may take and there is no way to know in advance how long the approval process may take. Each lender has their own process. Approval can occur in as little as two weeks, but averages about three months, sometimes longer.

Is the lender required to participate in the short sale?

No. The lender has absolute discretion as to an approval of the short sale.

Why is the short sale contract subject to the lender's approval when the buyer and seller have agreed to the sale?

The seller's lender is being asked to take less than they are owed in return for releasing the property to sell. The sales price and costs in the transaction will affect the amount that remains for the loan payoff, so the lender actually becomes another principal in the transaction.

What happens if the lender does not approve the short sale?

Often the lender will stipulate an amount for the loan payoff that they will accept. In that event, the buyer, seller and other interested parties may choose to contribute more money in order to make the sale work. If the lender rejects the contract outright, then the parties can always agree to increase the purchase price and re-submit the offer to the lender.

SHORT SALE FREQUENTLY ASKED QUESTIONS

When the lender is reviewing a short sale contract for approval, is the Foreclosure Sale automatically postponed?

No. The Foreclosure Sale can be held on schedule even if there is a contract under consideration. Lenders are more aggressive in taking back properties today. Don't wait to list your property to sell if you stopped paying your mortgage.

Will the trustee sale be postponed once the short sale contract is approved?

Not automatically. You should inquire about this and specifically request the sale be postponed if needed.

Is the buyer still entitled to buy the property under the short sale contract once the trustee sale is held?

No. The lender is not bound to the short sale contract if the property is conveyed at trustee sale.

How can I get the lender to approve the short sale contract?

There is no way to pressure the lender into approval, however, by knowing exactly what the lender requires and making complete and timely submission of all the lender's requirements, you greatly improve your chances.

What happens when the seller's lender has approved the contract?

Once written approval has been obtained from seller's lender, they will usually stipulate a time by which the escrow must close. The buyer should be ready to close as soon as possible. This means that buyer's lender will need to expedite the new loan processing, appraisal and approval. Buyer should expedite all necessary inspections and arrange to have good funds to close. A typical timeframe to close is 30 days. The seller should be packing throughout the short sale process.

What happens if the buyer cannot close within the time frame stipulated by the seller's lender?

If the escrow has not closed in time to satisfy seller's lender then a new written authorization to close will be required. Since the lender's time requirement is often based upon the net loan proceeds they will receive, it is often necessary for the lender to obtain new approval for any additional costs incurred by the delay. This approval can take time and is not automatic.

The property has a 1st loan and a 2nd loan. What does that mean in a short sale?

Both loans will need to be released, therefore both lenders need to approve the short sale. Timing is crucial and can be challenging.

The seller's lender is requiring the seller to sign an agreement or authorization before closing the short sale. What should the seller do?

Some agreements may bind the seller to repay any forgiven debt. Any party in a short sale should obtain professional legal counsel if they have any questions regarding the transaction or required documents. The Real Estate Agents and the Escrow Officer cannot give any legal or tax advice.

I have heard that the IRS will forgive any tax obligation resulting from any forgiven debt from the short sale.

*This may or may not be the case and depends on a number of factors. **NEVER** make any assumption regarding taxes. All parties should obtain professional financial advice regarding the transaction. The Real Estate Agents and the Escrow Officer cannot give any legal or tax advice.*

Is it true that after that sale closes, the seller will not owe anything to the lender(s)?

This will be determined by the lenders, and sellers should satisfy themselves that they are comfortable with the lender's short sale terms.



FIVE SHORT SALE MYTHS

A short sale can be an excellent solution for homeowners who must sell and owe more on their home than it's worth. Unfortunately, a number of myths about short sales have developed, and it is important to understand the reality of this process should you find it meets your current needs.



Myth #1 — The Bank Would Rather Foreclose than Bother with a Short Sale

This is one of the most common misconceptions. The reality is that banks do not want to foreclose on your property because the foreclosure process is incredibly costly. Banks, investors, and even the federal government have all publicly stated that if a person is qualified or a short sale, the deal needs to be considered. Overwhelmingly, banks receive more on their investment through a short sale than a foreclosure.

Myth #2 — You Must be Behind on your Mortgage to Negotiate a Short Sale

While this may have previously been the case, today lenders are looking for verifiable hardship, monthly cash flow shortfall, or pending shortfall and insolvency. If you meet these three requirements and believe that you soon may be unable to afford your mortgage, act immediately. Any delay could limit your options. Do not wait until the countdown clock to foreclosure has started and you have even less time left.

Myth #3 — There is Not Enough Time to Negotiate a Short Sale Before My Foreclosure

This is a myth that probably hurts homeowners the most. Many do not realize foreclosure is a process, and there is time to make decisions that may result in better outcomes. The foreclosing party, in most cases a lender, can stall a foreclosure up to the final day of the process. Today, many lenders will stall a foreclosure with a legitimate contract. For real estate professionals who understand foreclosures and short sales, there is time available until the foreclosure process is complete.

Myth #4 — Listing My Home as a Short Sale is an Embarrassment

It is understandable to have reservations about letting the world know that you owe more on your home than it is worth. However, according to recent estimates, one out of five homeowners in the U.S. is in the same situation. You are to be congratulated for admitting you need help, taking action, and finding a professional who can work with you toward a solution. With recent estimates showing 40-60% of U.S. sales will be short sales or foreclosures, you are not alone.

Myth #5 — Short Sales are Impossible and Never Get Approved

This is a complete falsehood. Are short sales more difficult to execute? Yes. Do you, as a homeowner, need to learn about a new process? Yes. Are they impossible? Absolutely not.

OBTAIN LEGAL ADVICE

An attorney can advise you about your options and legal liability.

- To find out if you are eligible for free or low cost legal assistance, contact a legal aid organization in your county or one of the organizations listed at <http://www.cobar.org/>
- Contact the Lawyer Referral Service in your county where you can consult with an attorney for a small fee for a half-hour consultation. **Pro Bono Project:** Metro Volunteer Lawyers. To apply for services, contact Colorado Legal Services at 303- 837-1313
- Attorneys who are State Bar Real Estate Law Certified Specialists can be located at: <http://www.cobar.org/Find-A-Lawyer>

TAX ATTORNEYS / CPAS SPECIALIZING IN SHORT SALES

There are several issues that a seller should know about. For example, there could be tax ramifications of receiving a credit from the bank to allow the short sale and sellers could also be subject a deficiency judgment.

- For Mortgage Forgiveness Debt Tax Relief Act and Debt Cancellation tax information, go to: <https://www.congress.gov/bill/115th-congress/senate-bill/122/text>
- Attorneys who are State Bar Tax Law Certified Specialists can be located at: <http://www.cobar.org/Find-A-Lawyer>



WHY DO I NEED A REALTOR WITH SHORT SALE EXPERIENCE?

Lenders find it difficult to work directly with the homeowner because they are already “on the hook” for the amount they owe. Why negotiate when they don’t have to! Also, short sales can be difficult and are definitely time consuming. They require a lot of negotiating skills as well as patience, your Realtor will handle things every step of the way.

Due to the complexities involved, it is best to retain the services of a short sale specialist. Negotiating short sale real estate transactions can be complicated and confusing; particularly when buyers are unfamiliar with legal contracts and real estate jargon.

WHAT DOCUMENTS ARE NEEDED FOR A SHORT SALE PACKAGE?

Most lenders require the following documentation. All lender required documentation must be provided in order to open a case with the lender. You may be required to update these forms and others throughout the process.

1. **Letter of Authorization for Agent or Broker:** Names the agent as authorized representative in order to communicate and negotiate with the Lender on Borrower's behalf. Must be signed by all Borrowers.
2. **Mortgage Statement(s)** – Most recent
3. **Completed Tax Returns and W-2's:** Provide at least the last two years of Federal income tax returns (all schedules.)
4. **IRS Request for Transcript of Tax return Form 4506-T:** The borrower will need to disclose enough information to demonstrate that a financial hardship exists. The Lender has the right to require extensive financial information.
5. **Financial Borrower Form 1126:** The borrower will need to disclose enough information to demonstrate that a financial hardship exists. The Lender has the right to require extensive financial information.
6. **Bank Statements (2):** Lender will want to see two months of Bank activity. Statements for all non-retirement accounts should be included. Updated statements will be requested throughout the process.
7. **Hardship Letter:** Borrower should explain why they need relief from the mortgage. The letter should detail any job loss, illness, relocation or other circumstances that caused the inability to continue the scheduled payments.
8. **Verification of Income:**
W2 Employees ~ 2 most recent and consecutive pay stubs
Self Employed ~ Year-to-date P&L Statements
9. **HOA Information:** Most recent statement

After Seller Package is Completed:

10. **Listing Agreement:** Lender will require a fully executed Listing Agreement
11. **Comparative Market Analysis (CMA):** Lender will require a Market Analysis or other justification of the estimated value of the property. Include recent, valid comparables within close proximity.
12. **Purchase Contract:** A complete, readable, fully executed copy of the entire agreement. Be sure to include all counter offers and addendums.

** Each lender may have their own proprietary forms and the same information may have to be submitted several times.*

The Information Contained Within This Document Is Deemed Reliable But Not Guaranteed. Seeking Professional Advice Is Always Recommended



WHAT COSTS ARE INVOLVED?

Commissions – All commissions are normally paid for by the Homeowner selling the property. In the case of a short sale, we are asking the bank to pay for all commissions as is relates to the sale of the property. Please recognize that in addition to the shortage that we are asking the bank to write off, they are actually incurring these costs when approving your short sale. Take this into consideration if there are any requests for a Seller contribution (see below) in that this will significantly be less than these costs. Typical commission to sell Real Estate is 6% of the purchase price.

Closing costs – All Seller's closing costs are requested to be paid for by the bank. These may include but may not be limited to Seller's transfer fees, Seller's title and escrow fees, Seller's title insurance costs, Seller's signing fees, Seller's conveyance fees, etc. Most banks are not paying back taxes or back HOA costs, make sure you are current on these items. If you are not, prepare yourself for possibly having to cover these costs at close. These are not future expenses, rather expenses that you incurred while still owning the home. Please see separate section on HOA fees below.

Concessions – Many times a Buyer will ask for closing cost assistance. Although the contract reads that it is a Seller contribution, it is for the bank to pay. Please do not be alarmed to think that you will have to come out of pocket on this. If the bank for some reason denies, it is just denied and it will not default to you to pay.

Homeowners Association – Please note that the HOAs do not have to follow the same laws that govern mortgage companies, they can and will in fact, file judgments against the Seller for the amount due plus penalties, fines and liens (it could be in the thousands). In the event there is not enough money to pay these off through the sale of your property, you will be asked to bring this money to closing. The best way to avoid these costs is to stay current with the HOA, a minimal expense compared the opposition. If the property does not go into foreclosure, any lien for unpaid fees recorded by an HOA will be eliminated as a result of the foreclosure sale. See A.R.S. § 33-811. However, the homeowner will be personally liable for any unpaid fees incurred until the date of the foreclosure. It is recommended that you stay current on your HOA fees throughout the process.

Property Taxes – Any back property taxes are the responsibility of the Seller. In some cases, we may be able to ask the bank for some assistance but as of late, most banks will not cover this.

Original Purchase Loans – Most primary residence borrowers that can prove a hardship will not be asked to make a contribution to the sale of the property unless the bank determines that the Seller has excess funds readily available. This is determined on a case by case basis and has everything to do with the hardship and amount of money in the Seller's bank accounts.

HELOC/Lines of Credit – Most HELOC and Lines of Credit also come with a personal guarantee which means that even if the property goes to foreclosure, the lending institution has the right to continue to collect and pursue a judgment. During a short sale, a Seller can expect to be offered a 'settlement' for a short sale approval. The settlement of these accounts may include but are not limited to:

- Cash contribution of \$5,000-50% of total note
- Promissory note of up to 50% of the original note
- A release of lien, but not a release of debt

IMPORTANT NOTICE: Colorado Escrow & Title is not associated with the government, and our services are not subject to approval by the government or lenders. Even if you accept our complimentary service, your lender may not agree to change your loan. **If you stop paying your mortgage, you could lose your home and damage your credit rating.**

WHAT COSTS ARE INVOLVED?

Refinanced Loans – Most refinanced loans, especially where equity was pulled out, will be similar to those of a HELOC/Line of Credit with the exception of the personal loan guarantee.

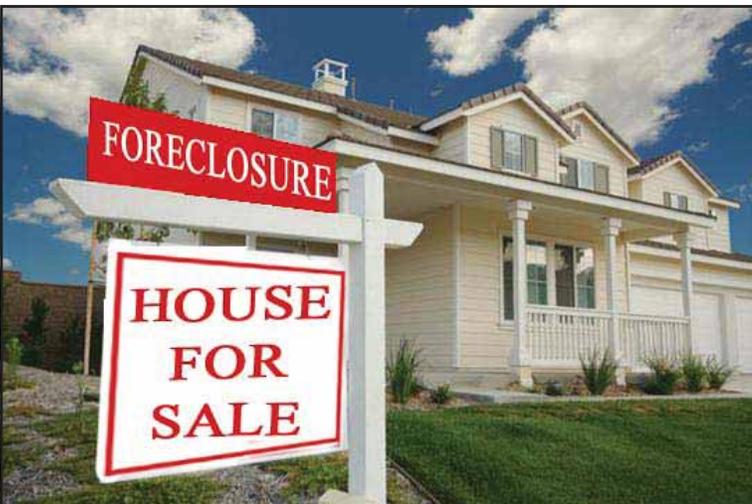
Non-owner Occupied Properties – It is imperative for Sellers to check with an attorney and/CPA as there are tax consequences associated with a non-owner occupied property whether it is a successful short sale or foreclosure. Most non-owner occupied properties are a bit more difficult to prove hardship, know that chances of having to make a contribution at close of escrow are increased, and almost always required.

Mortgage Insurance (PMI or MI) – Mortgage Insurance can be found on any loans that were taken out with greater than an 80% Loan to Value (LTV). So, if you put down anything less than 20% when you originally purchased the property, chances are great that your loan has PMI. In addition to this, we have seen where loans that were originated at 80%LTV were sold between investors and by the time the new owner owned the note, the value was greater than 80%LTV and thus an independent insurance policy was taken out on the loan and now is part of the transaction. Unfortunately, these insurance companies are still not governed by any agency and thus can pretty much demand whatever settlement they want. It is not uncommon to see them ask for a cash contribution at closing plus a promissory note paid out over a 10-year period of time.

Maintenance of the Property – If you are unable to keep all the utilities on during the time of your listing, make sure you speak with your listing agent prior to the property being put on the market. Even if you are unable to keep the utilities on for the entire duration of the listing, you will need to make arrangements and pay for all the utilities to be in service for the Buyer to complete their inspections once the approval letter is received from the bank. During the term of this sale, Seller agrees to maintain the premises. Seller to take care of any requested maintenance, upkeep or repair items with 48 hours of notice from the listing agent.

Seller's option to not close – The Seller always has the option to cancel the listing contract with no cost to the Seller. The Seller always has the option to decline the settlement as presented by the bank or MI Company at no cost to the Seller. The Seller always has the right to reinstate their status with the various

DID YOU KNOW?



- 1 out of every 200 homes will be foreclosed upon. For a city like Washington, D.C., that translates to 3,000 Washingtonians losing their homes to foreclosure each year.
– *Mortgage Bankers Association*
- Every three months, 250,000 new families enter into foreclosure.
– *Mortgage Bankers Association*
- More than 6 in 10 homeowners delinquent in their mortgage payments are not aware of services that can help individuals having trouble with their mortgage.
– *Freddie Mac/Roper poll of 2,031 U.S. homeowners*

BE PREPARED

BANK CORRESPONDENCE – The bank will continue to contact you through phone calls and mail throughout the process. It is imperative that you keep Colorado Escrow & Title Agency posted as to any letters you receive so they can be addressed. Not accepting or forwarding them may only lead to delays. Please note that most bank systems run significantly behind and may send you letters requesting information they already have. Do not panic, Colorado Escrow & Title will still follow up with them and verify specifics with you. If any actions are needed on your part, you will be promptly notified.



If they do call you, do not be afraid to answer the phone. Simply let them know that you are working on a short sale. That should end the calls.

OTHER CALLERS OR MAILERS – Once the bank has recorded its Notice of Default, this information goes public on many publications and websites. You may be contacted by various companies and individuals offering to 'save' your home, Do not sign anything until you check in with either your Realtor or Colorado Escrow & Title Agency.

*“There is nothing short
about a short sale!*

*Patience is key with
this process.”*

FORECLOSURE NOTICE – Once the bank has recorded its Notice of Default, it will also have a piece of paper posted on your front door or garage. This may happen again just before the date of the sale. This is to ensure that you are aware of the timeline of events.



REALTOR SHOWINGS – Although there are very specific showing instructions in the MLS, be aware that some agents will overlook the details and may show up unannounced. Also be aware that some agents will call to schedule showings and never show up, or show up early or late. You and your home should be ready for showing at all times, because without showings there will not be an offer. Be as flexible as you can.

UTILITIES – If you are unable to keep all the utilities on for the duration of the process, make sure you keep your Realtor informed. Although we will try to get the Buyer to pay for the utilities to be turned on, this may

not be possible and may be the only thing between you and a successful short sale. Make sure you plan for this, put some money aside now.

PATIENCE – There is nothing short about a short sale. Patience is key with this process. You can check in any time, Colorado Escrow & Title will alert you of any major details automatically with a minimum of one email per week. Email is the best method of communication, phone calls are also welcomed at any time.

GLOSSARY

Notice of Election & Demand (NED):

This is an official notice from the Lender that the borrower has defaulted on the mortgage. The NED will be filed by the trustee at the County Recorder's Office in the county in which the property is located.

Pre-Foreclosure:

The period beginning with the initial mortgage default up to when the distressed property is sold at trustee sale or transferred back to the lender. The length of what is considered a pre-foreclosure varies, depending on state laws and the lender.

Reinstatement Period:

The time stipulated by the lender in which the borrower may reinstate the loan; making required payments and bringing one's account into good standing. The loan can be reinstated at anytime prior to the trustee sale.

Notice of Trustee Sale:

The lender will prepare, record and publish (in a legal newspaper once each week for at least 3 weeks) a Notice of Trustee Sale that includes a sale date, time and place for the auction of the property. This notice informs the borrower/owner that the Lender intends on selling the property.

Short Sale:

A real estate transaction in which the seller (1) owes more money on the loan than the sale of the property will net and (2) is unable or unwilling to bring money to closing. The seller may or may not be in pre-foreclosure.

Real Estate Owned (REO):

The status of the property when the trustee sale is not successful and ownership of the property is transferred involuntarily to the lender. At this time, the lender may chose to use a real estate agent to market the property for sale.

BPO:

Broker Price Opinion. This is what the bank orders and pays for to do an independent value assessment of the property.

HUD

HUD a compilation for the banks to show where the money needs to go, paid by whom, and what the total net is to the bank.

PMI or MI

Private Mortgage Insurance or Mortgage Insurance. An insurance policy taken out by a lender that is providing a loan on a property with less than 20% down payment.

SERVICING COMPANY

A company that services the daily maintenance of a mortgage loan. This is the company that you pay your mortgage payments to but may not "own" the loan. They are the party that makes sure the payments get to the owner, or in this case, facilitate the details of the short sale.

INVESTOR

Someone who commits capital in order to gain financial return, the entity that actually owns your mortgage.

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