

## SHORT SALE INFORMATION SHEET

**1. What is a short sale?** A short sale, otherwise known as a short payoff or a pre-foreclosure sale, is a transaction in which a lender agrees to accept less than it is owed in order to permit a sale of the property which secures the lender's loan.

**2. Who is a candidate for a short sale?** There are many factors that go into eligibility for short sale. The basic short sale eligibility investigation starts when the balance of your mortgage, plus any outstanding taxes, water bills, broker's commission, and other closing costs, exceed the value of your home. Your lawyer will guide you through the process of determining whether a short sale of your property will work and whether it will be beneficial to you.

**3. Do I need to be in foreclosure or behind on my payments to attempt a short sale?** Not necessarily. A homeowner can be up to date on their payments and yet still owe more than the value of their property due to dropping home values.

**4. Will I still owe money after the short sale is completed?** Because a home loan consists of a mortgage, which secures the loan with a lien on the house and a promissory note, which secures a loan with the homeowner's personal pledge, it is possible for a bank to release the lien on your house to allow it to be sold, **without releasing the note**. In this situation, the homeowner might be expected by the bank to continue to pay the balance of the loan **even though they no longer own the home**. Your lawyer negotiating the removal of the requirement of a continuing personal obligation is **the most important component of your short sale**.

**5. Are there tax consequences from a short sale?** Banks consider any amount that they agree not to take as "forgiven debt", and issue a 1099 to the homeowner for the amount of the forgiven debt. The IRS treats forgiven debt as taxable income, and expects you to pay tax on the forgiven amount. In effect, homeowners were trading a mortgage problem for a tax problem. In the last few days of 2007, a Federal law was passed called the Mortgage Relief Act. The part of this law relevant to this issue stated that forgiven debt on a principal residence mortgage, up to \$2 million, is **no longer taxable**. As a result, a successful short sale with debt forgiveness can be a total solution to a family's house related financial problems.

**6. What if I have more than one mortgage or a mortgage and an equity loan on my home?** A short sale can still be accomplished with multiple loans on a property, but is significantly more complicated. Because the first mortgage is a first lien on the house and the value of the house usually covers the amount of the first mortgage in a two mortgage situation, often the first lien holder expects to get paid in full and let the second lien holder "take the hit" on the short sale. Your lawyer can negotiate with both lien holders to have them share the loss and release both of the liens from the property and from you.

**7. What gets paid in a short sale?** In a short sale, your mortgages, equity lines, equity loans, second mortgages, and any other loans secured by your home get paid. Also, your real estate broker's commission, real estate taxes, water bills, and common area charges, if any, will get paid as part of the short sale. These are debts that need to be paid in order for you to deliver clear title to the purchaser, and are thus "allowed" by the bank. Credit card bills, non-governmental utility bills, and other personal loans and debts are not paid from your short sale proceeds.

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**8. How does a short sale help me?** When a mortgage goes into default, the borrowers' credit is affected negatively. When a mortgage goes into foreclosure, not only is the borrowers' credit affected even more significantly, but the amount of the loan owed actually goes up. By the terms of most mortgage loans, lenders can add their foreclosure attorneys' fees, as well as court and collection costs to the principal balance owed. Additionally, most mortgage loans have default interest rates that allow the interest rate to be increased to as much as 21% to 24% when the default is declared. By the time the bank completes the foreclosure and sells your home, they are owed significantly more than the mortgage balance at the time of the last payment.

When the bank sells the home, they have little motivation to sell for anything more than a minimal price that they can get quickly. The difference between the foreclosure judgment and the amount they sell the home for becomes an **excess judgement filed personally against the homeowner**. This judgment gets filed with the court and runs at 9% interest per year until it is paid. Banks have the right to continue to collect this judgement through all avenues, including income executions, bank account freezes, and liens on tax refunds.

**In a short sale, on the other hand, there is no excess judgement unless you agree to one, your credit does not take the additional hit of a foreclosure judgement against you, and there are no continuing collections efforts. This allows you to begin rebuilding your credit and assets so that you can own a home again, and to not have to worry about your mortgage problem chasing you into the future.**

**9. What do I do now?** This information sheet is a very basic summary of what a short sale is. There are a great number of factors that go into whether a short sale is available to you, and whether it is the right thing for you personally, financially, and legally. The first step is to consult a real estate attorney who has knowledge of, and direct experience with, the negotiation and closing of short sales. There are many potential traps and pitfalls in the short sale process. Sellers who are unsuccessful in their short sale can wind up not only with foreclosures and excess judgments, but claims from buyers and other parties involved in the short sale transaction, if the short sale was not properly disclosed or prosecuted. Having an attorney on your side can help prevent these adverse consequences in an already difficult situation. Most attorneys experienced in this field will offer an initial free consultation to determine your eligibility for a short sale and to outline the process for you.

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