

UNDERSTANDING SHORT SALES

THIS FORM is provided by the Bill Ryan Team with RE/MAX Infinity. The following is an explanation regarding some of the practical and legal issues involved in Short Sales.

1. **SHORT-SALE DEFINED.** The term "Short Sale" is used in the real estate business to describe a situation where there is more debt owing against a property than the property is worth. In other words, the owner can't sell the property unless the creditors ("Third Parties") agree to accept a payment that is less (or "short") of the amounts actually owed to those Third Parties. The Third Parties are usually mortgage lenders, mortgage insurers, bankruptcy trustees, and federal, state and local taxing authorities (such as the IRS or State Tax Commission).
2. **NO BINDING CONTRACT WITHOUT THIRD PARTY APPROVAL.** A Short Sale requires the written approval of the Third Parties. Consequently, the owner of the property, and any interested buyer, are advised that even if they reach an agreement between themselves for the purchase and sale of the property, that agreement will not be binding until the Third Parties approve the terms of the Short Sale.
3. **THIRD PARTY REJECTION OR CHANGES TO PROPOSED SHORT SALE.** Based upon the obvious financial loss, Third Parties will often reject a proposed Short Sale. If however, the Third Parties do not reject the proposed Short Sale, they will usually send to the owner a list of requested changes to the proposed Purchase Contract. Some of those changes will affect the owner, and others may affect the interested buyer. For example, the Third Parties may require that the property be sold in "As-Is" condition. Also the Third Parties will normally not permit the owner to pay for any of the buyer's closing costs, repairs, etc. The owner and the interested buyer are not obligated to accept any of the changes requested by the Third Parties—in which case, there will be no Short Sale. If however, the owner, the interested buyer and the Third Parties reach a written agreement with each other, then, at that point, the Short Sale transaction may proceed to closing.
4. **DELAYS IN RESPONSE FROM THE THIRD PARTIES.** Most purchase contracts for Short Sales impose a deadline for written approval by the Third parties. As a practical matter, the third parties rarely meet that deadline. **THE OWNER AND THE INTERESTED BUYER SHOULD BE PREPARED FOR SIGNIFICANT DELAYS IN RECEIVING ANY RESPONSE FROM THIRD PARTIES.**
5. **RIGHT OF THIRD PARTIES TO ENCOURAGE ADDITIONAL OFFERS.** As a condition of considering any proposed Short Sale, the Third Parties will usually require that the owner keep the property on the market, even after the owner and the interested buyer have agreed to the terms of a proposed purchase contract. As a reminder, the Third Parties want to obtain the highest possible price for the property. Therefore, it is to their advantage to require the owner to keep the property on the market, and to promptly submit to the Third Parties any additional purchase offers that the owner may receive from other interested buyers. **THE OWNER AND THE INTERESTED BUYER SHOULD UNDERSTAND THAT THE THIRD PARTIES MAY NOT EVEN RESPOND TO A PROPOSED SHORT SALE TRANSACTION UNTIL THEY HAVE HAD AN OPPORTUNITY TO COMPARE THAT OFFER WITH OTHER PURCHASE OFFERS. THAT PROCESS MAY ALSO RESULT IN SIGNIFICANT DELAYS FOR ALL PARTIES.**
6. **RIGHT OF BUYER TO CANCEL.** As provided in paragraph 5 above, the owner will usually be required by the Third Parties to continue to market the property even after the owner and the interested buyer have entered into a purchase agreement. Based upon that requirement, the owner and the interested buyer have entered into a purchase agreement. Based upon that requirement, the owner and the interested buyer are also advised that until the owner, the interested buyer, and the Third Parties reach a written agreement, the interested buyer may cancel the proposed short sale transaction for any reason, or for no reason, by providing written notice to the Seller.

For more information about short sales, please contact

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