STUDENT MANUAL

Short Sales & Foreclosures Resource

Official Certification Course

What Real Estate Professionals Need to Know

NATIONAL ASSOCIATION OF REALTORS®
OFFICIAL CERTIFICATION

SFR®
SHORT SALES & FORECLOSURE RESOURCE

National Association of REALTORS®
Short Sales and Foreclosure Resource (SFR) Certification
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Acknowledgments

The Real Estate Buyer's Agent Council (REBAC) expresses gratitude and appreciation to the following individuals for their subject matter and industry expertise, input and feedback, and commitment to providing the best education to today's real estate professionals:

- **Fredrick Buehler**
  MRP, RSPS, SFR®
  Sewell, New Jersey
- **Edward A. Bugos**
  ABR®, SFR®
  Mentor, Ohio
- **Dominic Cardone**
  GREEN, SFR®, SRES®
  Media, Pennsylvania
- **Lori Cox**
  ABR®, e-PRO, GREEN, SFR®, SRES®
  Richmond, Texas
- **Anthony Lamacchia**
  ABR®, C2EX, SFR®
  Waltham, Massachusetts
- **Lynn Madison**
  ABR®, ABRM, GRI, SFR®, SRES®
  Schaumburg, Illinois

Introduction

Welcome

We are about to embark on a trip into the fascinating and nuanced world of short sales and foreclosures. During this course, we will focus on building your skill set and knowledge on various topics, including short sale proceedings, foreclosures, and the role of the buyer's agent when dealing with such tasks. At the completion of the course, you will be prepared to effectively tackle a short sale or foreclosure from contract through close! Let's get started!

What You Will Learn

The content of today's class is divided into five modules with the objectives outlined below.

Module 1: Distressed Property Overview

- Understand the impact the 2008 housing crisis and COVID-19 pandemic has had on distressed buyers.
- Learn the terms used in distressed property transactions.
- Differentiate between the two types of loan instruments and how each one affects the foreclosure timeline.

Module 2:
Short Sales: The Listing Agent's Role

- Learn about the role and listing agent responsibilities when assisting distressed borrowers/sellers in navigating short sales.
- Analyze the options available to distressed borrowers/sellers, including refinancing, lender workout, selling and cash on closing, short sale, deed in lieu of foreclosure, and foreclosure.
- Understand the implications a short sale may have on buyer's credit and their ability to purchase another home.

Module 3:
Taking the Short-Sale Listing

- **Evaluate the steps in taking a short sale listing including:**
  - Analyze all the debts/liens attached to the property and determine if there is any equity.
  - Verify if borrower/seller has a valid financial hardship.
  - Evaluate if there is adequate time to complete a short sale.
  - Determine ownership of the loan.
- Ascertain the type of short sale process and what documentation will be required.
- Understand how to handle commissions and other closings costs in a short sale.

Module 4:
The Buyer's Agent's Role with Short-Sale and REO Transactions

- Analyze the fundamentals of the REO business, including REO lifecycle and the existing opportunities for real estate professionals.
- Discuss how the buyer's representatives can educate clients on short sale and REO transactions.
- Overview of how to create an offer on a short sale property.

Module 5:
Short Sales from Contract to Closing

- Reiterate the importance of using the servicer prescribed method for submittal of short sale contracts.
- Differentiate the cash contributions, incentives, and subordinate liens allowed by various servicers when completing a short sale.
- Identify the problems associated with short sale failure and learn how to solve them.

NAR's Short Sales and Foreclosure Resource Certification

Today's class is qualifying education for the Short Sales and Foreclosure Resource (SFR®) certification from the National Association of REALTORS® (NAR), the only distressed property brokerage certification for real estate professionals recognized and endorsed by NAR:

Steps for Earning the SFR® Certification

- Be a member in good standing with the NAR
- Complete this course and pass the exam (if required for CE)
- Complete the online certification application
    - For the application, visit www.realtorsfr.org/get-certified

The application requires you to provide your National REALTOR® Database System ID. If you don't know your ID, contact NAR's Info Central at 800-874-6500.

Info Central Customer Support Specialists are available 8 a.m. to 6 p.m. Central Standard Time (CST), Monday through Friday. There is a one-time SFR® application processing fee of $175.

Benefits

Earning NAR's SFR® certification offers a number of benefits:

- Access to SFR® logo and marketing materials
- Differentiation as an SFR® at Realtor.com and at NAR.realtor
- Online networking with your peers

In addition, this course is an approved elective for the Accredited Buyer's Representative (ABR®) designation. To learn about this program and the benefits it offers, visit www.REBAC.net.

About This Course

This course is specifically designed to show how the real estate professional can serve as a resource for sellers and buyers in the brokerage of distressed properties. Real estate professionals play an invaluable role in helping homeowners and home buyers navigate these transactions and, as a result, real estate professionals can help contribute to the real estate recovery in their markets.

A Note To Participants About Activities and Class Procedures

This course incorporates a variety of activities designed to involve students, such as work group assignments, exercises, and discussions. Students are strongly encouraged to ask questions and engage in class discussions and group exercises.

Icebreaker Activity: Two Degrees of Separation

Think of something you've wanted to learn for some time that you haven't found the time to complete. It can be work related, such as getting a new certificate or license, or an extracurricular activity, such as surfing or baking.

Stand up, walk around the room and find someone who can help you in your quest to learn something new. It can either be someone who can help you directly, or someone who can point you in the right direction.

Don't be afraid to meet your neighbors! After all, we are all only separated by two degrees.

Distressed Property Overview

Module 1 Learning Objectives:

After learning the material in Module 1, you should be able to:

- Understand the impact the 2008 housing crisis has had on distressed buyers.
- Identify the terms used in short sale transactions.
- Differentiate between the two types of loan instruments and recognize how each one affects the foreclosure timeline.

Many Borrowers/Sellers Still Underwater

Although U.S. homeowners gained an average of nearly $13,000 in equity between 2016 and 2017, the housing market is still being impacted by the 2008 housing crisis and more recently, the COVID-19 pandemic. Today, 2.8 million borrowers owe more than their homes are worth. This number is down from 3.6 million homeowners experiencing negative equity, as measured in the second quarter of 2016.[1] In some states with long foreclosure timelines, we still see properties with loans from 2008–2010 still in the foreclosure process. Many homeowners hang on in distress for years, struggling with jobs, health, and increasing age until the stress that began

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1 Core Logic. "CoreLogic Reports 2.8 Million Residential Properties with a Mortgage Still in Negative Equity." Core Logic, https://investor.corelogic.com/pressreleases/corelogic-reports-28-million-residential-properties-mortgage-still-negative-equity

in 2008 finally forces a sale. Many people are still struggling to pay the debts they accumulated in the crisis. Bad credit from 2008 made recovery slower for those who were severely affected. Despite a recovery and expansion of housing markets around the country, many borrowers are still underwater.

The final impact of the COVID-19 pandemic is yet to be seen, but unlike the 2008 housing crisis, banks are taking unprecedented measures to ensure homeowners can stay in their homes. This includes measures like deferment of mortgage payments for a period of time, waiving late fees on loan products or even lowering interest rates.[2] Fortunately, and likely because of the housing crisis, the housing market is considerably more stable which should prevent an entire upheaval of the market.

Banks Are Suspending Foreclosures During the Coronavirus Crisis

Another relief measure that some major banks have already announced is suspension of foreclosure activity.

If these homeowners need to sell, they may need to sell short, which underscores the ongoing demand for real estate professionals who know how to successfully navigate short-sale transactions.

Defining Short Sales

If you've worked a short-sale transaction, either on the list or buy side, you likely know that the terminology can get confusing. What exactly makes a short sale? Short sale properties are those that are available for sale because of financial hardship on the part of the current or previous owner. They are generally referred to as short sales.

Activity: What is a Short Sale?

How would you define a short sale? Feel free to share your responses with the class.

2 Andrew Pieto, Forbes.com. "Banks That Are Suspending Foreclosures During Coronavirus Crisis." https://www.forbes.com/sites/andrewdepietro/2020/03/31/banks-suspending-foreclo-sures-covid-19/#750debf22220

Short Sale

A short sale occurs when:

1. A homeowner sells their home.
2. The proceeds of the sale are not sufficient to pay off the mortgage liens.
3. The seller does not have the funds to bring to closing. A successful short sale transaction includes ALL lien holders accepting less than what is owed to them. There may be instances when one of the lienholders must accept a short sale, i.e., if there are multiple mortgages on the property and the first one can be paid in full.

REO

Real Estate Owned, or REO for short, describes property that the bank comes to own because the borrower defaulted or could not financially afford to remain in the property and efforts to sell the property, either at the short sale stage or at the foreclosure sale, were unsuccessful.

Additional Terms

- **Loan Servicer**
  The servicer is typically the company to which borrowers make their mortgage payments. The servicer may—or may not—be the company that owns the loan. The servicer is also commonly (and sometimes incorrectly) referred to as the lender—the seller's mortgage company.

ATTEMPT to avoid getting bogged down with the list

- **Investor**
  The investor is the party/entity that currently owns the note and mortgage or deed of trust. The investor has the final approval on any short sale.
- **Borrower**
  In distressed property transactions, the borrower is the property owner/seller. The borrower is not the buyer. The term *borrower* is used by the investor/servicer to reference the party who is their borrower.
- **Purchaser**
  The purchaser is the buyer who has entered into a purchase agreement with the existing short-sale seller.

- **GSEs**

  The acronym GSEs refers to government-sponsored enterprises, which include the Federal National Mortgage Association (Fannie Mae or FNMA) and Federal Home Mortgage Corporation (Freddie Mac or FHLMC). GSEs were created to ensure there would be affordable mortgages available to homebuyers. They establish a secondary market to package mortgages and sell them as mortgage-backed securities. They are under the jurisdiction of the Federal Housing Finance Agency (FHFA).

- **Mortgage**

  A mortgage is the instrument that creates the lien. The real estate itself is the asset used as the collateral or security for the mortgage. If the loan is not paid as agreed, the investor has the right to seize the asset (the real estate). It is the mortgage that puts the lien on the property.

- **Mortgage Note**

  The mortgage note, often referred to as "Promissory Note," is the agreement to pay the mortgage. The terms of the repayment are spelled out in the note. It is the note that makes the borrower personally responsible for payment.

- **Deed of Trust/Trust Deed**

  In some states, rather than using a note and a mortgage, real estate is sold using a deed of trust or a trust deed. In these states the legal title of the property is held by a trustee who holds it as security for the loan until the loan is paid. If the loan is not paid as agreed, the title to the property is already being held by a trustee and the process of the investor obtaining the asset (the property) is much simpler and quicker.

- **Deed in Lieu of Foreclosure**

  In some situations, rather than foreclosing on a borrower who is in distress, an investor/lender may allow the borrower to surrender the deed to the property voluntarily in exchange for a release of the note and mortgage. If the seller owes more money than the property is worth, is unable to make payments, and is likely to lose the property in foreclosure in the near future, offering to trade the property to the lender in exchange for the cancellation of the note might make sense. This approach is more likely to be successful in states with very long foreclosure timelines. The lender can obtain the property much sooner and may feel that the mitigation of loss is worth the cancellation of the note. Like workouts, this is a contract negotiation, and should be undertaken only after consulting with an attorney.[3] This process is rare, and difficult to accomplish. If there are multiple liens or judgements on the property, the deed in lieu of foreclosure will not be approved.

3 NAR. "Short Sale Workflow." https://www.nar.realtor/legal/risk-management/the-short-sale-workflow

- **Loan Modification**
  A loan modification is a permanent change in one or more of the terms of a borrower's loan, allowing the loan to be reinstated and resulting in a more affordable payment. Agents are not responsible for negotiating the loan modification.

- **Notice of Default (NOD)**
  The NOD is an official notice from the servicer to the borrower that the borrower has defaulted on the mortgage. It typically gives the homeowner 90 days to pay off the most recent bill.[4] The NOD formally begins the foreclosure process. The NOD also outlines the reinstatement period.

- **Notice of Sale**
  If, after receiving the notice of default (NOD), the borrower does not or is unable to reinstate the loan, a notice of sale is recorded. The notice of sale explains when and where the foreclosure sale will be held.

- **Foreclosure Sale**
  A foreclosure sale entails sale of a property, commonly through an auction, in order to satisfy an unpaid obligation. Depending upon state laws, this is done either under the authority of the court (judicial) or through a trustee sale (non-judicial).

- **Foreclosure**
  Foreclosure is a legal process by which a defaulted borrower is deprived of his or her interest in the mortgaged property. Technically speaking, the only "foreclosure" sale is the one that occurs at the sheriff's sale or other legal process that transfers ownership from the borrower to a new buyer or the investor. A property owner is in pre-foreclosure when they default on their mortgage.

- **Judgment Lien**
  When someone is sued in court and loses the case, the prevailing party will get a judgment. That party may then file a judgment lien, a lien that attaches to real estate owned by the losing party. Once a judgment lien is placed on a parcel of real estate, the lien acts as an assurance that the individual sued will pay the amount owed to the creditor. In most cases, a judgment lien remains on title to the property until a decision is made to sell or refinance the house. Then, when the house is sold or refinanced, the lien will be paid off. Once the judgment lien is paid, a release or satisfaction of judgment is recorded in the land records, which clears the title to the property.[5]

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4 NAR. "Buying a Foreclosed Home: How a Foreclosure Sale Works." https://www.realtor.com/advice/buy/what-does-buying-a-foreclosed-home-entail

5 NOLO. "What Happens to Judgment Liens During Foreclosure." https://www.nolo.com/legal-encyclopedia/what-happens-judgment-liens-during-foreclosure.html

- **Priority of Lien**
  Generally, the priority of a judgment lien is determined by its recording date. The priority of liens determines who gets paid first after a foreclosure. Sometimes the recording date doesn't matter though; for example, judgment liens are always junior to property tax liens.[6] The laws surrounding priority of liens will vary from state to state.

- **TRID**
  The TILA RESPA Integrated Disclosure Rule, also known as the "Know Before You Owe" initiative, was created by the Consumer Financial Protection Bureau (CFPB) to help consumers shop for and understand mortgages. It replaced four disclosure forms with two new ones, the Loan Estimate and the Closing Disclosure. It also gives consumers three business days to review their Closing Disclosure and ask questions before closing.

- **HAMP**
  The Home Affordable Modification Program (HAMP) is a U.S. Treasury loan modification program that allows borrowers to modify their current loans to help them stay out of default. The borrowers must be employed and have the ability to repay the newly constructed loan payments. Depending upon the homeowners' financial situation, some modifications are done on a temporary basis and many on a trial basis before they become permanent modifications.

- **HARP**
  The Home Affordable Refinance Program (HARP) is a U.S. Treasury loan refinance program designed for homeowners who are struggling to make their payments, are not behind with their payments, and have been unable to refinance their mortgage because their property value has declined. This is a refinance program that requires a full underwriting and loan process. This program is now obsolete, but you should have a general awareness of the program in case a client asks you about it.

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6 NOLO. "What Happens to Judgment Liens During Foreclosure." https://www.nolo.com/legal-encyclopedia/what-happens-judgment-liens-during-foreclosure.html

Activity: Reinstatement Period vs. Redemption Period

Some real estate professionals who specialize in the brokerage of distressed property report that the term *reinstatement period* is used interchangeably with the term *redemption period*. So what's the difference, if any? The difference in meaning is acute.

- **Take one minute to write down your interpretation of the difference between the reinstatement period and redemption period.**
- **If you are comfortable, share your findings with the class.**

Reinstatement Period vs. Redemption Period: Which is Which?

The reinstatement period is the time specified in the NOD in which the borrower can make all their outstanding payments along with any late fees or expenses incurred by the servicer, bring their account current, and no longer be in default. The length of the reinstatement period can vary by state.

In contrast, the redemption period is typically the time after the foreclosure sale that allows the owner the ability to redeem the property. In many states, redemption requires that the owner pay the sales price, interest, and other costs.

Please note:

- The redemption period varies widely from state to state and is defined differently from state to state. Some states allow no redemption period; others allow up to a year or longer. Some only allow the right of redemption if the property is taken by the bank, but not if it is purchased by another party.
- Some states allow the borrower to redeem the property by paying only the missed payments along with any accrued late charges and penalties; however, many states require the borrower to pay the loan balance in full.

STATE-SPECIFIC ISSUE

In my state, the redemption requirements are:

Foreclosure Timeline

For defaulted borrowers who are unable to work out an arrangement with their lender to keep their house or who can't sell their house short (we'll discuss all available options for distressed borrowers in the next module), foreclosure is the inevitable next step. How long does it take to foreclose on a house? Depending on the instrument the borrower used to secure his or her loan as well as on state laws and lender/investor protocol, foreclosure proceedings can occur quickly, as in Georgia where the process can take as few as 90 days. In other states, like New York, foreclosure proceedings can take more than 400 days.

Non-Judicial

- If the instrument is a deed of trust, a non-judicial foreclosure typically is used to execute the foreclosure proceedings.
- Non-judicial foreclosures generally take less time to complete than judicial foreclosures because the borrower pre-authorizes the sale of the home in the loan document, which orders foreclosure upon default.

Judicial

- If the instrument is a mortgage, a judicial foreclosure or court-ordered action typically is used to execute the foreclosure proceedings.
- In a judicial foreclosure, the lender/investor obtains the right to foreclose by filing and winning a lawsuit.

To help you visualize the differences between non-judicial and judicial foreclosure proceedings, see Figure 1.1.

To get information on the length of foreclosure proceedings in your state, please consider the following websites:

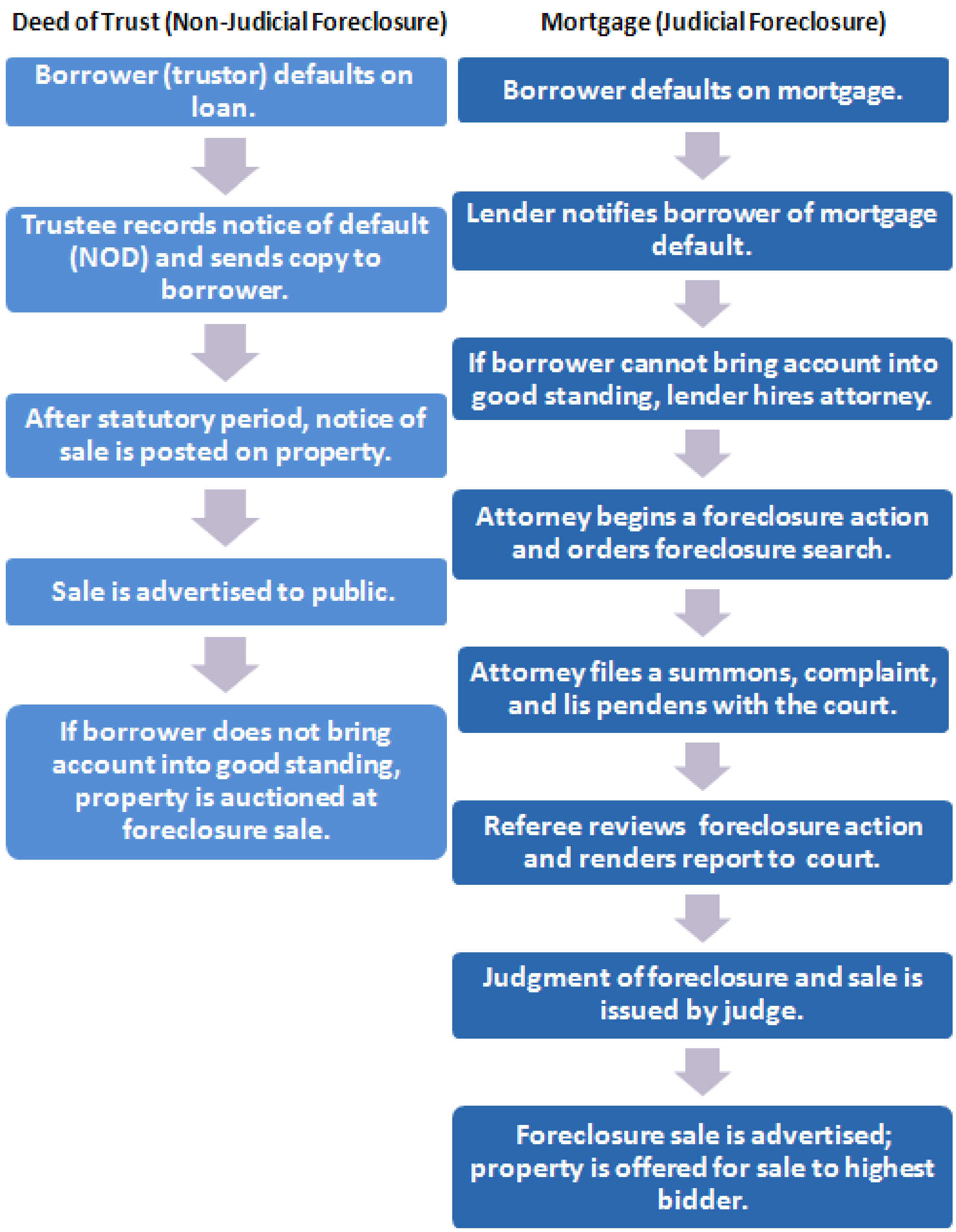
- www.foreclosurelaws.org
- www.realtytrac.com

Be sure to cross-reference all foreclosure information found on the Internet against your individual state laws.

STATE-SPECIFIC ISSUE

In my state, the foreclosure timeline is ______ days.

Figure 1.1: Foreclosure Process for Deed of Trust vs. Mortgage



Short Sales—The Listing Agent's Role

Module 2 Learning Objectives

After learning the material in Module 2, you should be able to:

- Discuss the role and the responsibilities the listing agent has when assisting distressed borrowers/sellers in navigating short sales.
- Analyze options available to distressed borrowers/sellers, including refinancing, lender workout, selling and cash on closing, short sale, deed in lieu of foreclosure, and foreclosure.
- Articulate to the buyer the implications a short sale may have on their credit and their ability to purchase another home.

What Should You Do?

In the previous module we examined key terms used in the brokerage of distressed property. In this module, let's apply the key terms to an actual scenario and define your role in the transaction as a listing agent. Before we do that, let's take a few minutes to discuss what your role as an agent is.

Activity: Your Role As a Short Sale Agent

Take a few minutes and jot down your thoughts around your role as an agent handling short sales.

- **What is your job as an agent handling a short sale?**
- **What steps should you complete for your client?**
- **What kind of advice should you provide them?**
- **What kind of advice should you refrain from providing?**

Does the Following Scenario Sound Familiar?

Jim and Nancy, buyers you represented in 2006 in the purchase of their home, contact you in a panic. Jim lost his job three months ago. Although they're getting by on household expenses with Nancy's income, Jim and Nancy are struggling to make their monthly mortgage payments. Because sales are picking up in their neighborhood, they want you to list their home as a short sale in the MLS so that they can "unload it quickly and move on."

As their trusted real estate professional, should you:

- Rush to get this property listed?
- Advise them to stop making their mortgage payments?
- Try to broker a deal with their lender to reduce their monthly mortgage payment so that Jim and Nancy can keep the house?

The answer is NO for all of the above. As a real estate professional and REALTOR® who is a short sales and foreclosure resource (SFR®), your role is to serve as a resource for your clients—whether they are selling or buying—and recommend tax, legal, and other professionals as needed.

A primary responsibility for listing agents working with distressed borrowers/sellers is to inform them of their options (see Figure 2.1). Recommending financial and legal advisement would be appropriate when necessary to assist the property owner in determining the best solution to their financial distress. Again, it would not be appropriate to advise the property owner to stop making their mortgage payments. To help you determine what options may be available, the listing agent should complete a CMA.

Figure 2.1: Available Options for Distressed Borrowers

LET'S REVIEW EACH OPTION IN FURTHER DETAIL.

1. **Refinance**

   The Home Affordable Modification Program (HAMP), which offers a number of programs in an effort to attract more eligible borrowers. Information on HAMP can be found at MakingHomeAffordable.gov.

2. **Do a Lender Workout**

   In forbearance, the lender spreads the back payments, fees, penalties, etc., over a fixed number of upcoming payments to allow the borrower to catch up.

   With loan modifications, lenders will often work with the borrower to help them keep the home by reducing or rolling back interest rates, forgiving back payments, or adding them to the loan amount or possibly recasting the entire loan into a fixed rate that wraps all the fees into the new loan.

   CAUTION: Lender workouts are NOT transactions where real estate professionals may act as agents on behalf of their clients. In most states, doing so could be considered practicing law without a license.

3. **Sell and Bring Cash to Closing**

   Some borrowers may have the financial ability to pay off the debt. They may choose to do this rather than do a short sale and affect their credit and ability to purchase again.

4. **Offer the Lender a Deed in Lieu of Foreclosure**

   As explained in Module 1, this is a situation where the borrower offers the property to the lender in exchange for the cancellation of the note. This is more likely to work in states where there is a long foreclosure timeline. The lender will be able to get the property much sooner, which lessens the probability of the property being in disrepair as well as lessens the lender's expenses. Like the workout, a deed in lieu of foreclosure should be done by borrowers and/or their attorneys.

5. Attempt a Short Sale

There may be an opportunity for the borrower to put the property on the market and try to sell it to at least partially pay the lender what is owed.

6. Do Nothing—Go to Foreclosure

If, after all options have been explained and explored by the homeowners, their decision is to do nothing and allow the property to go to foreclosure, real estate professionals will no longer be involved.

STATE-SPECIFIC RESOURCES

Some real estate licensing authorities and/or REALTOR® state associations have developed short-sale resources to facilitate the disclosure of available options for distressed homeowners. For example, the Arizona Association of REALTORS® and the Arizona Department of Real Estate have developed a six-page advisory:

- https://www.aaronline.com/wp-content/uploads/2016/04/Short-Sale-Seller-Advisory_04Apr2016.pdf

Activity: Short-Sale Considerations

If borrowers believe that a short sale is their best option, are the following options True or False?

1. **Short-sale approval by the investor(s) is not guaranteed even though the borrower/seller and buyer agree to the terms in a purchase contract.** — True / False

2. **Short sales require borrowers/sellers to complete and submit minimal paperwork.** — True / False

3. **Borrowers/sellers do not have to have valid financial hardship in order to approve a short sale. They can apply for strategic default.** — True / False

4. **Short sales may take a longer time to close, compared to non–short-sale transactions.** — True / False

5. **A foreclosure will be postponed while attempting to complete a short sale.** — True / False

6. **If there are junior lienholders (for example, a second mortgage or home equity line of credit) and if they do not agree to the short sale, the short sale will fail even if the first lienholder approves it.** **True** **False**

7. **If the borrower/seller has assets such as cash, savings, money market funds, or marketable stocks or bonds (excluding retirement accounts), the servicer may ask the borrower to make a cash contribution toward the short sale.** **True** **False**

8. **If the short sale closes and the borrower's/seller's loan was a recourse loan, the borrower/seller may be responsible for repaying the deficiency.** **True** **False**

9. **If the debt is forgiven, the borrower does not have to pay taxes on the forgiven debt.** **True** **False**

10. **If the short sale closes, the borrower's/seller's credit score will be impacted.** **True** **False**

11. **If the short sale closes, the borrower/seller can get financing immediately to purchase a new home.** **True** **False**

Recourse Loans and Borrower Liability for Deficiencies

In short sales as well as foreclosures, whether the loan is recourse or non-recourse has an impact on the borrower/seller.

- In a recourse loan, the borrower/seller retains personal liability for any deficiency after a short sale or foreclosure. The lender reserves their right to pursue the personal assets of the borrower by obtaining a court ordered deficiency judgment. In other words, the lender releases the mortgage but not the note.
- In a non-recourse loan, the lender may be limited to whatever funds are available from its security interest in the property itself and may not be able force the borrower/seller to repay any deficiency.

Each state has its own recourse debt laws; in some states, a loan can be either recourse or non-recourse, depending on factors such as whether it was a purchase-money loan or a refinance.

Each non-recourse state has its own anti-deficiency statutes that prohibit lenders from seeking judgments. In some states non-recourse laws apply only to purchase-money loans (i.e., original home loans that are used to purchase property). Almost all home equity lines of credit (HELOCs) and home equity loans are considered recourse loans and lenders may sue borrowers to recoup their losses.

Listing agents should have knowledge of the recourse laws in their state and counsel the borrower/seller to speak with their accountant or attorney about the specific issues surrounding their situation.

Forgiven Debt

Under the Mortgage Forgiveness Debt Relief Act of 2007, borrowers/sellers who sold their homes in a short sale were not required to treat the forgiven debt as taxable income.[7] A law enacted in 2007 provided temporary relief to troubled borrowers when some portion of mortgage debt is forgiven and the mortgage covers the borrower's principal residence. That relief has expired and been extended several times. On December 17, 2019, the House of Representatives passed a spending package funding the federal government for fiscal year 2020, which extended this provision, making it retroactive to the beginning of 2018, and through the end of 2020.[8]

Credit Implications

Borrowers/sellers who are pursuing a short sale may want to know how a short sale or foreclosure will affect their credit score. The answer is that impossible to specify the exact number of points by which a short sale or foreclosure will lower their credit score. Missed mortgage payments have more of an impact on a borrower's credit than accomplishing the short sale.

Credit-scoring algorithms are complex and take into consideration a number of factors, including, but not limited to, the following:

- Payment history
- Amount of debt compared to credit limits
- Length of credit history
- Number of credit inquiries
- Number of credit accounts
- Types of credit accounts

In addition, when calculating an individual's credit score, agencies compare the above information to the loan repayment history of consumers with similar profiles.

7 National Mortgage News. "Realtors Push for Renewal of Tax Relief on Forgiven Housing Debt." https://www.nationalmortgagenews.com/news/realtors-push-for-renewal-of-tax-relief-on-forgiven-housing-debt

8 NAR. "Mortgage Debt Cancellation Relief." https://www.nar.realtor/mortgage-debt-cancellation-relief

STATE-SPECIFIC ISSUE

In my state, the recourse debt laws are:

Waiting Period to Finance the Purchase of Another Home

If you're the listing agent and your borrower/seller client is pursuing a short sale, your client may want to know how long they need to wait before they can finance the purchase of another home. The answer depends on a number of factors. The following list shows the current waiting times for different types of mortgages. Please note that this information is subject to change and you should always keep yourself up-to-date on any changes made by the GSEs, FHA, VA, or individual lenders/investors.

FANNIE MAE [9]

- **Foreclosure:**
  7 years from completion date
- **Short Sale/Deed-in-Lieu:**
  4 years
- **Chapter 7 Bankruptcy:**
  4 years from discharge or dismissal date
- **Chapter 13 Bankruptcy:**
  2 years from discharge, 4 years from dismissal

9 Fannie Mae. "Fact Sheet." https://singlefamily.fanniemae.com/media/18236/display#:~:text=To%20be%20eligible%20for%20a,lieu%20(DIL)%20of%20foreclosure

FREDDIE MAC [10]

- **Foreclosure:**
  7 years from completion date
- **Short Sale/Deed-in-Lieu:**
  4 years
- **Chapter 7 Bankruptcy:**
  4 years from discharge or dismissal date
- **Chapter 13 Bankruptcy:**
  2 years from discharge date, 4 years from dismissal

FHA [11]

- **Foreclosure:**
  3 years from completion date
- **Short sale/Deed-in-Lieu:**
  1 year with conditions
- **Chapter 7 Bankruptcy:**
  2 years from discharge date
- **Chapter 13 Bankruptcy:**
  with a full 1 year of payout*

VA [12]

- **Foreclosure:**
  2 years from discharge date
- **Short Sale/Deed-in-Lieu:**
  No specific waiting period
- **Chapter 7 Bankruptcy:**
  2 years from discharge date
- **Chapter 13 Bankruptcy:**
  with a full 1 year of payout*

10 Freddie Mac. "Caution Reminder." http://www.freddiemac.com/learn/pdfs/uw/caution_remind.pdf.

11 FHA. "FHA Credit Requirements." https://www.fha.com/fha_requirements_credit.

12 United States Veterans Affairs. "VA Busts Four Home Buying Myths that Hurt Veteran Homebuyers." https://www.blogs.va.gov/VAntage/19931/va-busts-four-home-loan-myths-that-hurt-veteran-homebuyers/.

USDA/RURAL [13]

- **Foreclosure:**
  3 years from completion date
- **Short Sale/Deed-in-Lieu:**
  3 years from completion date
- **Chapter 7 Bankruptcy:**
  3 years from discharge date
- **Chapter 13 Bankruptcy:**
  with a full 1 year of payout*

***With satisfactory payment history, borrowers can ask permission from the courts to enter into a new mortgage.**

13 USDA Loan. "How to Get a USDA Mortgage after Bankruptcy." https://www.usdaloans.com/articles/usda-loans-bankruptcy-and-foreclosure/

Taking the Short-Sale Listing

Module 3 Learning Objectives

After learning the material in Module 3, you should be able to:

- Evaluate the steps in taking a short sale listing including:
  - Analyze all the debts/liens attached to the property and determine if there is any equity.
  - Verify if borrower/seller has a valid financial hardship.
  - Evaluate if there is adequate time to complete a short sale.
  - Determine ownership of the loan.
- Ascertain the type of short sale process and what documentation will be required.
- Understand how to handle commissions and other closings costs in a short sale.

Activity: Taking the Short Sell

It is likely many of you have already completed a short sale. Before we dive into the particulars of how to work through short sale listings, let's see what you already know.

- **Select a partner and take 10 minutes to complete the worksheet by filling in any information you already know on the short sale process.**

Once you are finished, feel free to share your findings with the class as we work through the material.

What qualifies as a financial hardship?

Why should you determine if there is PMI on the mortgage?

How do you verify if a borrower has a financial hardship?

When will Fannie Mae and Freddie Mac streamline a short sale?

Who is eligible for the FHA Standard PFS?

When will the VA consider a compromise sale?

What is short sale fraud? What are a few examples of this type of fraud?

Verify the Payoff Amount and Estimate Equity

Distressed borrowers/sellers may be reluctant to volunteer any information about their financial position. It is critical that you have an accurate assessment of what their equity position is or isn't.

Additionally, there are times where borrowers/sellers have no idea of the costs involved in the sale of the property and they may think they have enough equity but they do not. It is important for you to verify with the servicer what their payoff is to accurately estimate the borrower's/seller's costs. If the property is in a homeowners' association, listing agents must verify whether the borrower/seller is current with their association fees or what may be owed.

When you do an estimate of equity for your borrowers/sellers, there may be situations where borrowers/sellers may choose to bring cash to the closing to avoid the ramifications of doing a short sale. If this is the borrower's/seller's choice, caution should be taken to ensure the borrower/seller will bring all the funds to the closing. In most states, there are no lien rights for unpaid brokerage fees on a residential sale. A borrower/seller could have enough money to cause the transaction to close (bring enough to pay off mortgages and other expenses of the sale) and not have sufficient funds to pay brokerage fees. The transaction would still close and the listing office would owe whatever compensation was published in the MLS to the selling office. A brokerage should have a company policy on how to ensure funds will be at closing in these situations.

It is important that the listing agent have a frank conversation with the borrower/seller about all liens on the property as well as a discussion about available assets as a condition of short-sale approval may require the borrower/seller to contribute some cash at closing. Consider using the Seller Counseling Pre-Listing Worksheet and the Seller's Equity Calculation Worksheet on the following pages.

Seller Counseling Pre-Listing Worksheet

Seller's Name: ______________________________

Address of Property: ______________________________

Date of Preparation: ______________________________

1. **Do you have a mortgage on the property?** ❑ Yes ❑ No
   - More than one? ❑ Yes ❑ No
   - First Mortgage: $ ______________ Lender ______________
   - Type: ❑ FHA ❑ VA ❑ FNMA ❑ Other __________
   - Do you have private mortgage insurance (PMI)? ❑ Yes ❑ No

     With whom? ______________________________
   - Second Mortgage $ ______________ Lender ______________
   - HELOC Balance Owed $______________ Lender______________
2. **Are you current on all loan payments?** ❑ Yes ❑ No
   - If no, when was the date of the last payment? ______________
   - What is the situation that caused you to miss or will cause you to miss your payments? ______________________________
3. **Have you spoken with anyone at the lender/lien holder's office?**

   ❑ Yes ❑ No
   - Whom? ______________ What department? ______________
   - What was discussed? ______________________________
4. **Are you current on your condo or homeowners' association (HOA) payments?**

   ❑ Yes ❑ No ❑ Not applicable
   - If no, when was the date of the last payment? ______________
   - Association name and contact info: ______________________
5. **Are your real estate taxes escrowed?** ❑ Yes ❑ No
   - If not, are they current? ❑ Yes ❑ No

6. Is there any legal action pending related to this property of which you are aware?

❑ Yes ❑ No

- What notices have you received?________________________________
- Do you have a pending foreclosure sale date? ❑ Yes ❑ No

  If yes, what is the date? ____
- Bankruptcy: Have you filed or do you intend to file for bankruptcy?

  ❑ Yes ❑ No

7. Are there any other liens that could affect the sale? ❑Yes ❑No

❑ Homeowners' association liens__________________________________

❑ IRS tax liens ____

❑ Mechanics' liens ____

❑ Other liens ____

8. Are there any bills for municipal services that are unpaid? (water, sewer, etc.)

❑ Yes ❑ No

9. Who is on title? ____

Seller____ **Date**____________________

Seller____ **Date**____________________

By signing above, we are stating that this information is true and accurate to the best of our knowledge as of this date. We agree to keep our agent informed if any of the above information changes.

*****This material is taken from the SFR® One-Sheet Member Benefits, and is just one of many tools available to SFR® certificate holders. To learn more, visit realtorsfr.org.**

Seller's Equity Calculation Worksheet

Estimated sales price (or offering price)	$	______________
Mortgage balance—primary loan	$	______________
Second mortgage/HELOC	$	______________
Interest on mortgage	$	______________
Title policy	$	______________
Title expense	$	______________
Attorney fees	$	______________
Survey	$	______________
Transfer taxes—state/county	$	______________
Transfer taxes—local	$	______________
Tax pro-rations	$	______________
Marketing fee	$	______________
Assessments	$	______________
Seller concessions	$	______________
Home warranty	$	______________
Inspections: well, septic, termite, etc.	$	______________
Mitigation: radon, mold, etc.	$	______________
Other	$	______________
Total estimated expenses	$	______________
Estimated net equity to seller --or--	$	______________
Estimated funds needed to close	$	______________

This is not a closing statement. This is intended to give the seller an estimate of what the expenses could be in a typical real estate transaction. The broker and/or agent cannot be responsible for miscalculations resulting from changes in fees, differences in mortgage balances or escrow balances, changes in taxes or any other items that may affect the accuracy of this estimate. **This is a good-faith estimate and all figures should be reconfirmed with your attorney and possibly your lender.**

****This material is taken from the SFR® One-Sheet Member Benefits, and is just one of many tools available to SFR® certificate holders. To learn more, visit realtorsfr.org.**

Borrower's/Seller's Willingness to Submit All Information and Documents

One of the critical elements in doing a successful short sale is the borrower's/seller's willingness to submit to the lender all required information and documents. Getting this information at the time of listing the property shows the borrower's/seller's willingness to cooperate and do their part.

Requiring that borrowers/sellers provide adequate information to indicate they are willing to do their part prior to taking the listing and then giving them a deadline by which any remaining documentation must be furnished to you represent a way to accomplish the timeliness of marketing the property while at the same time ensuring you have a cooperative client. The Document Checklist on the next page can be used in assisting you in gathering the required information from your borrower/seller. Real estate professionals are encouraged to consult with their broker/counsel before obtaining the borrower's/seller's financial information in advance of entering into a listing agreement.

Short-Sale Fraud

According to a member of Freddie Mac's Fraud Investigation Unit, short-sale fraud is "any misrepresentation or deliberate omission of fact that would induce the lender, investor or insurer to agree to the terms of a short sale that it would not approve had all facts been known."

Examples of potential short-sale fraud may include:

- Valuation manipulation
- Less than an "arm's-length" transaction
- Pocket listings
- Abuse of the "pending" status in the MLS
- Short-sale flipping
- Strategic default
- The borrower/seller causing harm to the property by trashing the property. Often the term used for this is creating "waste."

Reporting Potential Fraud:

- Call 1-800-2-FANNIE (1-800-232-6643)
- Or complete the Suspected Fraud Submission Form at: https://fims.secure.force.com/MortgageFraudReport

Seller's Short-Sale Document Checklist

This is the information that is typically requested by most lenders when approving a short sale. Your lender's requirements may vary; however, this information needs to be ready when we get a contract. Lenders will want the most recent documents. As we move through the marketing and closing process, please provide us with updated documentation.

		Date Provided	Date Updated
❑	Current mortgage statement		
❑	Recent tax bill		
❑	HOA statement (if applicable)		
❑	Seller's financial information—FNMA 710 form		
❑	Seller's hardship letter		
❑	Supporting financial information		

❑ **Paystubs or P & L if self-employed** (Last two most recent/all borrowers)

❑ **Tax Returns** (Previous two years/entire return/signed)

❑ **IRS Form 4506T** (Request for copy of tax return)

❑ **Bank Statements** (All accounts/most recent two months/all pages)

❑ **Credit Card Statements** (All accounts/most recent two months/all pages

SUPPORTING HARDSHIP INFORMATION

		Date Provided	Date Updated
❑	HOA liens		
❑	Medical bills		
❑	Disability statements		
❑	Unemployment benefits or status		
❑	Divorce decree		

*****This material is taken from the SFR® One-Sheet Member Benefits, and is just one of many tools available to SFR® certificate holders. To learn more, visit realtorsfr.org.**

Obtain a Preliminary Title Report

Obtaining a preliminary title report should show what types of liens are on the property that need to be cleared prior to closing such as:

- Second mortgages
- HELOCs, municipal liens
- Homeowners' association liens
- IRS or state tax liens
- Local property tax liens
- Mechanics' liens

Note that ordering a preliminary title is a requirement for a VA compromise sale.

Be certain to access any sources that can help you determine any liens or encumbrances on the property. This might be done through public records or your MLS system if it is connected to a database that has this information. If your MLS participates in Realtors Property Resource, RPR® is a valuable tool for determining liens and encumbrances.

If there are multiple liens on the property, it can make it more difficult to complete the short sale. All investors must agree to the transaction and if just one of them says "no," the entire transaction will fail.

In lien priority, when a property sells in a short sale, the first lien holder gets paid before the second lien holder gets a penny. Most first lien holders will allocate some of the money from the transaction to be paid to the second lien holder. The problem is that often it is not enough to satisfy the lien holder in the second position.

Although it seems that if the same servicer has both mortgages it would be easy to get the bank to agree, it is common for first and second liens serviced by the same bank to be controlled by different investors who have different negotiating positions.

If the seller has an IRS tax lien, it will take time to get it released. All the IRS will do is release the lien on the property to allow it to sell. The IRS not release the judgment against the seller. Your seller will need ample time (often six to eight weeks) and may need their attorneys' involvement to accomplish this.

Determine Whether or Not There Is a Valid Financial Hardship

Before you determine if the borrower/seller has a valid financial hardship, you must determine whether there is equity in the home. You would rely on the seller net sheet and title search to calculate equity. Normal listings could become potential short sales if price reductions over the time of the listing turn the seller's estimated net proceeds into a negative number.

Whether the borrower/seller has missed payments or not, having a valid financial hardship is a requirement for lien holders to accept less than what is owed on a property. Many real estate professionals have made the mistake of taking a listing and marketing it as a short sale only to find out later that the investor will not approve the transaction due to the borrower/seller not having a valid financial hardship (see Figure 3.1). Specific language may be needed in the multiple listing and should not violate the agency relationship. Additionally, the lender should be contacted for the short sale package.

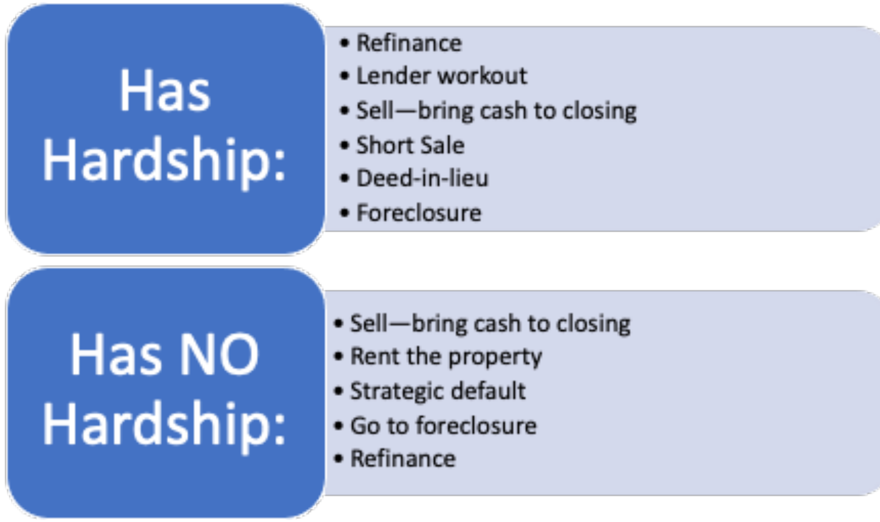
Note that retirement assets are exempt from consideration in short sales. Sellers do not have to disclose retirement assets and they will not be used to later calculate potential cash contributions.

Without a valid financial hardship, the borrower's/seller's options are limited (see Figure 3.2).

Figure 3.1: Defining Financial Hardship

What it IS	What it IS NOT
✔ Unemployment	✘ Loss of equity
✔ Loss of hours	✘ Wanting to re-size
✔ Under-employed	✘ Increased family size
✔ 50+ mile job relocation	✘ Excessive discretionary spending
✔ Business failure	
✔ Illness and medical costs	
✔ Health insurance increases	
✔ Divorce or death of spouse	
✔ Increase in mortgage payment	
✔ Natural disasters	

Figure 3.2: Hardship and Homeowners' Options



Isn't Strategic Default an Option?

Some borrowers believe that walking away from the financial mortgage obligations without a valid financial hardship is in their best financial interest long term. Strategic default is a term used to describe the situation when borrowers choose not to make their mortgage payments even though they are financially able to do so. If borrowers/sellers indicate that they are considering a strategic default, real estate professionals should NOT become involved in the transaction. As stated in the previous module, real estate professionals should NOT counsel borrowers to stop making payments on their mortgage.

Walking away from one's mortgage and debt obligation and allowing the home to go to foreclosure may have serious consequences for the defaulted borrower's credit and the potential for a deficiency judgment, depending on the state where the borrower resides, as well as the real estate values of neighboring homes.

Determine Who Owns the Loan(s)

Determining the investor that owns the loan (or investors if there is more than one loan) is important because the investor establishes how the servicer will process the short sale. Depending on the investor, the short-sale process may be very orderly. With some investors, however, the short-sale process may be incredibly undefined and tricky for listing agents and borrowers/sellers to navigate. For example, on some short sales, the short-sale approval process doesn't begin until the seller has a contract on the property. You can research the owner of the loan by visiting the Mers Servicer ID webpage at https://www.mers-servicerid.org/sis. In addition, the borrower can call their servicer and ask who owns their mortgage.

Note that the investor's servicer may have processed a previous short sale one way does not mean the next short sale will be handled the same way; it all depends on the investor and the guidelines the investor has set into place to process the short sale.

Don't Forget to Contact the Private Mortgage Insurance (PMI) Company

It is important to determine if there is PMI on the loan at the time of taking the listing to factor in the time it will take to obtain the PMI company's approval of the short sale. Some of the lenders/investors have delegated authority from the PMI companies to proceed with the short sale. Just as each servicer has its own process and time frame for short sales, so do PMI companies. Therefore, the listing agent must determine with the servicer what their arrangements are with the PMI company. The original loan documents will show if there was PMI at the time of the purchase. If there was not and the original down payment was less than 20%, the listing agent should ask the servicer if there is MI since the investor/lender could have taken out the insurance.

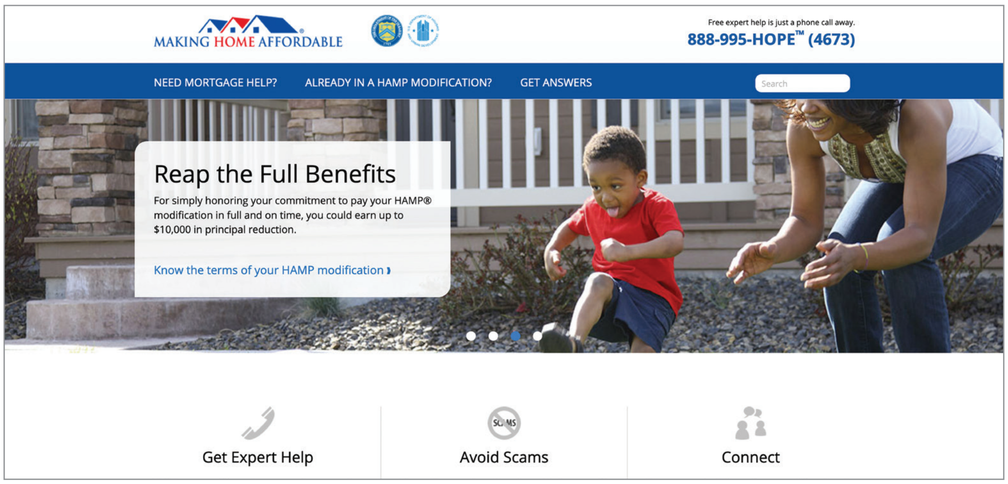
In a recourse state, the PMI company has the ability to pursue a deficiency for the amount that is 20% of the loan amount less the down payment. Let's use the following as an example: the borrower's loan amount is $200,000. The borrower puts down $10,000 (or 5%). The PMI is for the difference between the down payment ($10,000) and the 20% down ($40,000), which is $30,000. If the borrower sells the property short, the lien holder will file an insurance claim with the PMI company for $30,000.

In this example, listing agents should alert borrowers/sellers to obtain a release of deficiency from the PMI company at the time of seeking approval of the short sale.

Use MakingHomeAffordable.gov to See If the Loan Is Owned by Fannie Mae or Freddie Mac

MakingHomeAffordable.gov is a useful government website for determining if a borrower's loan was purchased by Fannie Mae or Freddie Mac. (This website also provides contact information for more than 100 mortgage companies participating in HAMP.)

Figure 3.3: MakingHomeAffordable.gov



BEFORE INPUTTING DATA AT MAKINGHOMEAFFORDABLE.GOV, OBTAIN A COPY OF THE BORROWER'S LAST MORTGAGE STATEMENT TO VERIFY:

1. The exact names of the borrowers as they appear on their mortgage statement.
2. The exact address of the property as it appears on their mortgage statement.
3. The last four digits of the borrower's social security number.

Next, go to www.MakingHomeAffordable.gov and select GET ANSWERS and then HOW DO I? Then choose "Find Out Who Owns My Mortgage." From there, follow the links for more information.

Although we will be covering the steps involved in doing a short sale following the Fannie Mae and Freddie Mac guidelines, most large lenders and many mid-sized and small lenders follow the same procedures. If you find the loan is not owned by either Fannie Mae or Freddie Mac, the listing agent or the borrower/seller will need to contact the servicer to determine how to proceed with the short sale. Each type of short sale is handled differently, and who the investor/owner of the loan is will determine how the transaction will proceed.

Have the Borrower/Seller Sign an Authorization to Release Information Form

As part of the initial paperwork that needs to be completed, be sure to ask the borrower/seller to sign an authorization to release information form, which is usually found on the servicer's website. The servicer cannot discuss the borrower's loan with you without this signed release. If a release form is not available at the servicer's website, please see the appendix.

Determine Whether or Not There Is Adequate Time to Complete a Short Sale

Prior to taking the listing you should determine whether or not you have enough time to get the short sale done. Verifying with the borrower/seller whether a notice of default (NOD) has been issued and/or a foreclosure sale date has been set will give you the time parameters you need to effectively meet the needs of the borrower/seller client. As discussed earlier, foreclosure timelines vary from state to state. There is no hard-and-fast rule as to how much time is enough time. The listing agent should discuss with the servicer how they will handle the foreclosure timeline while the property is on the market.

Contact the Servicer/Investor and Request or Download All the Forms

The names of the required forms may vary. For example, with loans owned by Fannie Mae and Freddie Mac, the required forms can be found in the Borrower Response Package. With VA loans, the required form is the Compromise Sale Agreement Application.

Verify the Borrower's/Seller's Financial Hardship

Verifying the borrower's/seller's financial hardship is a critical step in listing a short-sale property. The Freddie Mac Form 710 is an excellent tool for communicating financial hardship to your borrower/seller. Even if the servicer does not use the Form 710, the information the homeowner will have to submit is virtually the same for all short sales.

- You can view a sample form here: https://guide.freddiemac.com/app/guide/form/710.

Note that the listing agent should discuss with their borrower/seller what the borrower/seller will allow to be disclosed to the buyer relative to their financial hardship. Often, the listing agent will make page 2 of the Form 710 available to the buyer for this purpose. A diligent buyer's agent should be determining whether the seller has a verifiable financial hardship since history has shown that many short sales have failed due to the borrower/seller not have a hardship.

Fannie Mae and Freddie Mac Streamlined Short Sale

Fannie Mae and Freddie Mac will allow a streamlined short sale if the borrower/seller is more than 90 days' delinquent, their mortgage is not secured by an investment property, and either (1) their FICO score is 620 or less or (2) their debt has been discharged due to Chapter 7 bankruptcy. With the streamlined process, the borrower/seller will not have to provide additional documents to prove a valid financial hardship, however, the borrower/seller will still need to complete the Form 710. If the borrower/seller does not meet the streamlined criteria, the short sale will be processed with additional paperwork requirements of the Form 710. Note that submitting the Form 710 prior to having a contract on the short-sale listing begins the pre-approval process for Fannie and Freddie Mac. The pre-approval process will be either streamlined or standardized, depending on the borrower's/seller's current financial situation.

For Fannie Mae and Freddie Mac streamlined short sales, borrowers/sellers are not required to be delinquent. At a minimum, they must be at risk of imminent default, which is defined by Fannie Mae as a loan that is not yet in default and where there is a very high probability of being in default soon. This option is available on owner-occupied housing only.

EXAMPLES OF IMMINENT DANGER OF DEFAULT COULD BE:

- Other payments are being missed, but mortgage payments are current.
- All accounts are in good standing, but credit cards are maxed out due to living expenses.
- Hardship requirements on the Form 710 are met.
- Borrowers savings are being depleted to pay mortgage.

Non-GSE Traditional Short Sale

The required paperwork to verify financial hardship will vary, depending on the servicer. If you cannot download the paperwork required from the servicer's website, you can begin the discussion of financial hardship using the Form 710. The information is very similar and can be easily transferred to the servicer's form from the 710.

FHA Streamlined Pre-Foreclosure Sale (PFS)

Principal residences, second homes, and investment properties are potentially eligible for FHA's Streamlined Preforeclosure Sale (PFS) program, which does not require verification of financial hardship, provided that borrowers/sellers meet all program requirements. Note that such properties may be vacant but cannot be condemned.

FOR NON-OWNER-OCCUPANTS (BORROWERS/SELLERS WHO DO NOT OCCUPY THE HOME):

- The borrower/seller is 90 days or more delinquent on their FHA-insured loan as of the date of the initiation of the short sale (the servicer's review) ***and…***
- The borrower/seller has a credit score of 620 or below.

FOR OWNER-OCCUPANTS (BORROWERS/SELLERS WHO OCCUPY THE HOME):

- The borrower/seller is 90 days or more delinquent on their FHA-insured loan as of the date of the servicer's review.
- The borrower/seller has a credit score of 620 or below; and
- Except for military service members with permanent change of station (PCS) orders who meet the requirements for an FHA Streamlined PFS, owner-occupant borrowers/sellers must have been reviewed for loss mitigation home retention options. Servicers may only offer a FHA Streamlined PFS or deed-in-lieu of foreclosure to owner-occupant borrowers/sellers when one or more of the following conditions have also been met:
    - The borrower/seller has defaulted on a trial payment plan within the last six months.
    - The borrower/seller has defaulted on an FHA-HAMP or standard (rate-and-term) modification within the last two years.

- The borrower/seller has been deemed ineligible for a permanent home-retention option.
- The borrower/seller received a special forbearance but did not otherwise qualify for a permanent home-retention option by the end of the forbearance period.

FHA Standard PFS

- Only owner-occupied properties are eligible for the standard pre-foreclosure sale, no “walk-a ways” or investment properties.
- Exceptions: when it is verifiable that the need to vacate was related to the cause of default (job loss, transfer, divorce, death), and the subject property was not purchased as rental investment, or used as a rental for more than 18 months.
- The servicer must verify the borrower’s/seller’s monthly net income and monthly expenses in order to calculate the Deficit Income Test (DIT).
- The borrower/seller must provide documentation substantiating a reduction in income or an increase in living expense, and documentation that verifies the borrower’s/seller’s need to vacate the property (if applicable).

FOR OWNER-OCCUPANTS FACING IMMINENT DEFAULT:

- Owner-occupant borrowers/sellers may be considered for an FHA Standard PFS if they are current or less than 30 days past due on the mortgage obligation and can clearly demonstrate that they are at risk of imminent default due to one or more hardships.
- When approving a borrower/seller for an FHA Standard PFS based on the borrower’s/seller’s imminent default, the servicer’s servicing file must include evidence of the borrower’s/seller’s imminent default hardship and evidence that the DIT results in a negative value.

VA Compromise Sale

VA WILL CONSIDER A COMPROMISE SALE WHEN ONE OF THE FOLLOWING FINANCIAL HARDSHIPS EXISTS:

- Veteran/seller experiences employer or financial situations that requires him/her to relocate
- Decrease in income
- Major medical expense
- Death of a principal wage earner, spouse, or family member

The seller/borrower must first obtain a sales contract in order to be considered for the program. Again, for the purpose of verifying the borrower's/seller's financial hardship, listing agents can start with Freddie Mac Form 710.

After Verifying the Financial Hardship, Ask the Borrower/Seller to Write a Hardship Letter

Regardless of whether the servicer uses the Form 710 or something similar, they will almost always require a hardship letter be submitted. The goal of the hardship letter is to have the borrower/seller explain their situation. Note that borrowers/sellers should not say that they "wish we could keep the house." (This could trigger the servicer to try to do a loan modification and delay the short-sale process.) The hardship letter should communicate three key points:

1. I'm sorry.
2. Here are my circumstances (such as job loss, medical issues, divorce, health issues, damage to the property not covered by insurance).
3. I have exhausted all of my options and the only next step is letting the property go to foreclosure.

See Figure 3.4 for a sample hardship letter, which should be kept to one page. It should be clear, concise, easy to read, and verifiable.

Figure 3.4: Sample Borrower's/Seller's Hardship Letter

To Whom It May Concern:

This is a very difficult thing to write. I have always been able to pay my debts in the past and am truly sorry that I cannot do so now.

I lost my job as a manager for a large home improvement company. I have been unemployed for six months. I have been receiving unemployment benefits. However, my unemployment check replaces about one quarter of my previous income. My wife is a stay-at-home mom responsible for our four children. We have both been looking for employment. We have exhausted our savings. Our credit cards are maxed out and we are in the process of filing for divorce.

We can no longer afford to make the $1,800 monthly mortgage payment on our home. We are currently five months behind and see no way to make up the $9,000 in back payments. Our real estate taxes are also due and we have no way to pay those either.

We have agreed to sell our property for $375,000. It has been on the market for over 60 days and this is the only offer we have received. We want to avoid a foreclosure sale that will further damage our credit. We respectfully request that you consider this offer and work with our agent to negotiate a short-sale transaction.

We have exhausted all of our options and the only next step is letting the property go to foreclosure.

Sincerely,
Daniel and Sandy Smith

Complete Initial Listing Paperwork

- Borrowers/sellers should sign a listing agreement; a short-sales disclosure form; a listing agreement addendum, if one is available from either your association or your broker; and an authorization to release information form (as outlined earlier) that allows you to speak directly with the servicer as the listing agent.
- Borrowers/sellers are required to complete the federal lead-based paint disclosure on residential properties built prior to 1978 as well as any additional state-specific mandated disclosures that are required.
- Do not rely on the mortgage servicer to tell you if there is enough time before foreclosure. The servicer will not give you reliable information. You need to know your own local/state foreclosure timelines. You may need to contact the law firm who is retained by the servicer. They might give you a useful answer.
- The steps involved in taking the listing and the information required by the servicer at the time of listing will depend on the type of short sale you are doing. Some servicers require paperwork prior to listing, some require that you put the property on the market and adjust the price if needed, and others will not initiate the short-sale process until there is a contract on the property.

Seller's Short-Sale Listing Addendum

1. Authorization to Disclose

❐ Seller authorizes Broker to market the Property as a short sale or possible pre-foreclosure property in the MLS and other advertising media, to contact representatives and employees of the lien holder(s) to discuss the terms and status of Seller's loan(s) and facilitate a short sale, and to share such information with prospective buyers and their agents.

2. Disclaimer

❐ Seller may not receive any net proceeds without lender approval at closing and may owe additional monies at closing and/or thereafter.

❐ Seller further acknowledges that forgiveness of debt by lien holder(s) may result in taxable income to Seller. Because a short sale may result in special tax consequences, seller is advised to consult with a professional tax and/or financial advisor regarding the tax and other financial implications of entering into a short-sale transaction. Seller further acknowledges a short sale may negatively impact Seller's credit rating.

❐ Seller acknowledges that Broker has advised Seller that alternatives to a short sale may be available, including, but not limited to, a lender workout, refinancing, filing bankruptcy, the payment of any shortage by seller in cash from any source, negotiating a deed in lieu of foreclosure, or allowing a foreclosure to proceed.

❐ Involvement in a short sale may not preclude foreclosure proceedings. Absent a separate agreement, a lien holder is not bound to accept less than the amount owed to it by Seller. Seller acknowledges that Broker makes no guarantees regarding the ability to secure either a short sale or the outcome of any negotiations with a lien holder.

3. Information and Cooperation

❒ Seller agrees to provide Broker and lien holder(s) any information necessary to approve the short sale. The following information must be provided to broker no later than ________________________.

- Authorization letter(s)
- Bills/expense statements
- Hardship letter
- Pay stubs, W2s
- Tax returns
- 710 form

❒ Seller agrees to remain diligent to the short-sale process and will keep Broker informed of all communications relevant to short sale, including, but not limited to, all correspondence from lender(s), taxing bodies, courts, etc.

4. Price Reductions

❒ If no sale has transpired, the listing price of the property will be reduced to reflect the current market conditions on:

Date: _______________________

Seller ___________________________________ **Date** _________________

Seller ___________________________________ **Date** _________________

*****This material is taken from the SFR® One-Sheet Member Benefits, and is just one of many tools available to SFR® certificate holders. To learn more, visit realtorsfr.org.**

Follow Servicer Protocol in Completing Additional Documentation

Fannie Mae Standardized Short Sale

At the time of taking the listing, listing agents should submit a completed Borrower Response Package to the servicer. The Borrower Response Package consists of:

- Completed Mortgage Assistance Application (Form 710)
- Income documentation as outlined in Form 710 based on income type
- Hardship documentation as outlined in Form 710 based on hardship type
- Short Form Request for Individual Tax Return Transcript (IRS Form 4506T-EZ) or a Request for Transcript of Tax Return (IRS Form 4506-T) signed by the borrower

With a Fannie Mae Standardized Short Sale, the servicer will be involved in setting the price for the short sale. With Fannie Mae Standardized Short Sales, you may be putting the property on the market at its fair market value before receiving the price from the servicer. The borrower/seller does have the option, however, of waiting until the servicer has responded with a price before putting the property on the market. If the borrower/seller chooses to wait, listing agents should:

- Ensure that the seller has sufficient time prior to any forced sale to wait to market the property.

Steps in the Listing Process

1. Contact the servicer or visit https://www.homepathforshortsales.com and select "Request List Price Guidance."
2. List the property at the low end of the fair market value determined by your comparative market analysis (CMA) as "Active" in the MLS.

Contesting a Value Assigned by the Servicer or Fannie Mae

If you believe that the recommended list price Fannie Mae has given is inaccurate, you will need to contest the value. Before you submit an inquiry about an active short sale to Fannie Mae, make sure you have all the information you need:

- Your name, phone number, and e-mail address
- Real estate brokerage name
- Borrower's/seller's property address
- Loan number(s) (servicer and/or Fannie Mae's)
- Servicer name
- Signed Borrower Authorization Form (authorization to release financial information)
- Property foreclosure sale date (if known)
- Your point of contact at the mortgage servicer as well as the contact's phone number and e-mail address
- Gross offer amount, if you have an offer
- List significant value-related issues (e.g., the property has a septic system, foundation problems, and/or defective drywall)
- Your recommended value
- 3–6 comparable properties sold within the last six months with listing history and agent comments—traditionally the servicer does not want short sales or foreclosures to be used
- **Any additional documents from this list to support the case:**
    - Borrower's/seller's appraisal
    - CMA report with comp photos, descriptions, and listing history
    - Inspection report with color photos of repairs
    - Contractor estimate(s) with color photos

BORROWER RESPONSE PACKAGE WITH SHORT-SALE OFFER

If you have a borrower/seller who has not made initial application with Fannie Mae for a preapproval (i.e., submitted the Form 710), you may submit a Borrower Response Package with the short-sale offer.

Freddie Mac Standardized Short Sale

The steps in the Freddie Mac Standardized Short Sale listing process are very similar to the Fannie Mae process with the exception of setting a list price. Freddie Mac is not involved in setting the price. It is up the listing agent to prepare a CMA and discuss list price with the borrower/seller. Once the servicer receives the short-sale contract, a valuation will be obtained electronically by the servicer. The valuation will include the Freddie Mac minimum net proceeds amount. If the proceeds of a sale meet or exceed the Freddie Mac minimum net proceeds amount, the servicer will be able to approve the short-sale contract price and proceed with the transaction.

Non-GSE Traditional Short Sale

The steps in the Non-GSE Short Sale are the same as the Fannie Mae/Freddie Mac process. Additionally, if the lender/servicer does not get involved in setting the price at the time of listing, one of the listing agent's primary goals is to price the property so the seller receives an offer from a qualified buyer with a realistic chance of closing. Some agents advertise short sales at unbelievably low prices with the hope that a buyer will be enticed to submit an offer. Other agents set the list price too high to attract an offer. Still others list the property at what the seller needs rather than what the property is worth. The proper price should be fair market value. Fair market value is the price a buyer will pay and a seller will accept for a property under reasonable and ordinary conditions. This definition assumes an arm's-length transaction; meaning that the buyer and seller are not related to one another and neither is under any pressure to complete the transaction. However, when under pressure, such as the need to immediately relocate, either the buyer or seller may entertain a price that differs substantially from what would be considered otherwise.

FHA Pre-Foreclosure Sale (PFS)

1. The borrower/seller must submit the Request for Pre-Foreclosure Sale and Affidavit to the lender or servicer. The lender or servicer will also require financials and other documents to allow them to approve the borrower/seller for a short sale.
2. The borrower will receive an Approval to Participate form, which will state the price the home is to be listed for as well as the net amount that will be acceptable for approval of the short sale.
3. The investor delays foreclosure to allow for the pursuit of the short sale for four months from the date of the Approval to Participate letter.
4. The borrower/seller can list the property at any time during the process. They do not need to wait for the Approval to Participate to be issued.
5. The property must be listed by a licensed real estate broker, in a local MLS if one is available for that area, and the broker cannot be related to the seller.

VA Compromise Sale

VA does not require any paperwork prior to the time a contract is accepted on the property. However, it does have requirements for doing a short sale:

- The property must be sold for fair market value.
- The closing costs must be reasonable and customary.
- The compromise sale must be less costly for the government than foreclosure.
- There must be a financial hardship on the part of the seller.
- On loans that originated on or before December 31, 1989, the lender must be willing to write off any debt above the max guaranty.
- There must be no second liens or other liens (unless the amount is insignificant).
- In situations where there are second liens or other liens, the seller can request that the lien holder consider releasing the lien and converting the loan to a personal loan.

Commission Concerns

Offer of Compensation

As in all real estate transactions, the commissions a brokerage company charges and the amount of compensation a listing office chooses to offer cooperating brokers is a business decision made by each firm, independent of each other. Although sellers are responsible for the compensation that has been agreed to in the listing agreement, investors that approve short sales are not legally responsible for payment of any commission.

If your MLS requires that listing brokers disclose a short sale or potential short sale in the MLS, the listing broker may also choose to explain to other MLS participants how any reduction in the gross commission, required by the investor as a condition of approving the sale, will be apportioned between listing and cooperating participants. As a reminder: The seller's permission is required prior to disclosure in the MLS of the potential short sale—regardless of your MLS requirement for disclosure.

Regardless of the type of short sale (traditional non-GSE, FHA, etc.), it is difficult for listing brokers to be 100% assured of the compensation they will receive as a result of closing a short-sale transaction. If not disclosed properly, the listing broker could be responsible for compensation offered in the MLS regardless of whether it is collected from the investor or servicer.

MLS RULES & REGULATIONS: SHORT-SALE COMPENSATION

Section 1 Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of an Association of Realtors® (Policy Statement 7.23)

Note 2: Multiple listing services, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction. (Amended 5/10)

Note 3: Multiple listing services must give participants the ability to disclose to other participants any potential for a short sale. As used in MLS rules, short sales are defined as a transaction where title transfers, where the sales price is insufficient to pay the total of all liens and costs of sale, and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require participants to disclose short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they may, as a matter of local discretion, be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between the listing and cooperating participants. Where participants are permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between the listing and cooperating participants, multiple listing services may, as a matter of local discretion, require listing participants to disclose to cooperating participants in writing the total reduction in the gross commission and the amount by which the compensation payable to the cooperating broker will be reduced within hours of receipt of notification from the lender. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers. (Amended 5/10)

Source: National Association of REALTORS®, Handbook on Multiple Listing Policy, 2021. Available at: https://www.nar.realtor/handbook-on-multiple-listing-policy.

None of the following information is intended to indicate any price fixing on the part of the National Association of REALTORS®, any of the GSEs, or lenders. It is their individual policies that are stated. This is not an attempt on anyone's part to indicate all commissions charged sellers are standard or customary.

Fannie Mae and Freddie Mac Short-Sale programs provide that servicers will pay a commission as contracted in the listing agreement, up to 6 percent of the final sale price.

- When a real estate licensee is a party in a short sale, the transaction is not at arm's length, so the licensee may not receive commissions.
- Real estate licensees may not have any side deals (including "gifts") to receive a commission indirectly.
- A broker or agent may only earn a commission if the represented party is unrelated and unaffiliated.

In addition to these guidelines, many experienced short-sale agents and brokers have indicated that it is virtually impossible for a listing agent who also represents the buyer in the transaction to obtain both a listing and selling side of the compensation from the lender or servicer. However, lenders and servicers will generally allow both sides if two agents from the same brokerage are involved in the transaction. It is important that you make the servicer aware of the two agent/same brokerage situation if it occurs.

Attorney Fees

Borrowers/sellers who are in mortgage default or facing foreclosure may argue that they cannot afford to pay them. Real estate professionals should note:

- Attorneys who work with distressed borrowers/sellers may take into consideration their current financial constraints and allow for ways to navigate the process with little or perhaps no attorney fees upfront. In most cases, reasonable attorney fees can be included in the cost to close the short sale. Each short-sale program and/or servicer has their own guidelines.
- It is prudent for the borrower/seller to hire an attorney as legal issues often arise in a short-sale transaction and real estate professionals cannot advise the borrowers/sellers
- If the seller is expecting to pay attorney fees on the closing sheet, that cost will have to be approved/allowed by the short sale servicer according to the investor's protocols. The servicers may allow attorney fees that are typical in each marketplace. But, if attorney fees are not normally included in seller closing costs in your market, they will not be allowed to be paid on the closing sheet. Listing agents should know what fees are customary and likely to be allowed.

CHOOSING THE RIGHT ATTORNEY: INTERVIEW QUESTIONS

Many attorneys represent distressed owners in the sale of their homes; however, not all have the knowledge, experience and ability to help their clients complete a short sale successfully.

Below are questions you may want to ask an attorney prior to hiring him or her to represent you in your short-sale transaction.

- How many short sellers have you represented?
- How many of those short sales resulted in a closed transaction?
- What is your fee?
- Do you charge billable hours or flat fee?
- What will I owe you if my short sale is not successful?

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The Buyer's Agent's Role with Short-Sale and REO Transactions

Module 4 Learning Objectives

After learning the material in Module 4, you should be able to:

- Analyze the fundamentals of the REO business, including REO lifecycle and the existing opportunities for real estate professionals.
- Discuss how the buyer's representatives can educate clients on short sale and REO transactions.
- Know how to create an offer on a short sale property.

The REO Business

What Is an REO Property?

REO stands for real estate owned. It is the term that lenders—bank and government—use to describe property that they come to own because a borrower can't keep up with mortgage payments. When a lender reclaims a home and wipes out any money due on the mortgage, it offers the property for sale as an REO. The property is usually sold as-is, even if it needs repairs.

How does a property go from a family home or place of business to a bank-owned asset? As the following diagram illustrates, the most common path begins with a default on mortgage payments leading to foreclosure.

Who Owns and Buys REO Properties?

Government Sponsored Enterprises (GSEs) own millions of REO properties. Other government entities—such as HUD, the VA, the USDA, and the Department of Treasury/IRS—also own real estate as a result of loan defaults, unpaid taxes, or criminal activity. Small and large banks own portfolios of real estate as a result of mortgage defaults. In particular, three big banks—Bank of America, Chase, and Wells Fargo—own large portfolios of REO properties.

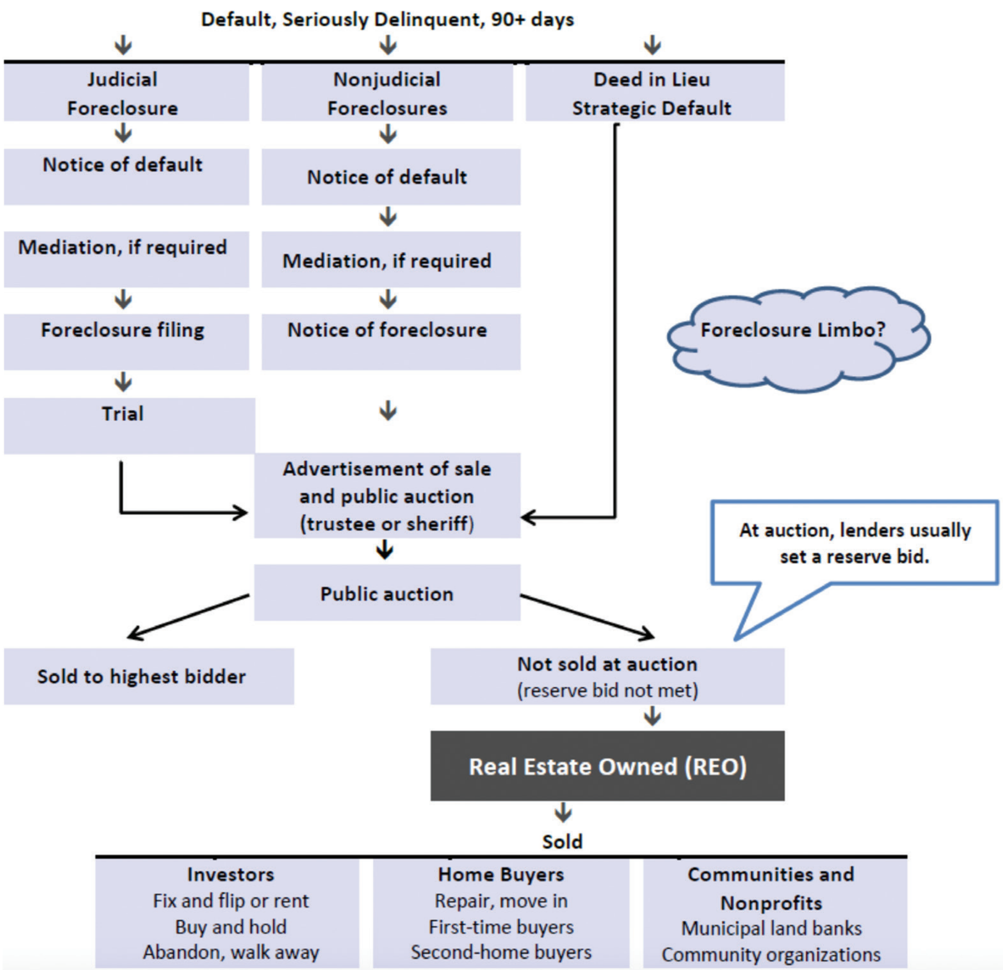
Now, let's take a look at the other side of the transaction—the REO buyer. There are three types of REO buyers:

1. **Investors:**
   Investors buy and hold REOs in hopes of future value appreciation, fix and rent them for an income stream, or fix them and flip them in hope of making a profit.

2. **Home Buyers:**
   Discounted property prices offer opportunities for first-time and repeat home buyers and second-home buyers, too.

3. **Communities and Nonprofits:**
   Community groups and nonprofit organizations may purchase REO properties and fix them up to put in a new owner or sell as a fundraising opportunity. In fact, some nonprofits now have real estate licensees on staff to handle the property investments.

Figure 4.1: REO Lifecycle



Opportunities for Real Estate Professionals

Considering the number of properties that must be recycled into the housing stock, the REO market is likely to be with us for years to come, particularly in the hardest hit areas. But is the REO business a good fit for you personally and professionally?

Activity: Are REOs for You?

In pairs of two, take 10 minutes to compare your knowledge of REOs, and discuss REO properties vs. traditional properties.

- What are some similarities between the two and what are the stark differences?
- Based on these findings, are REO listings a good fit for you?

If you are comfortable, share your findings with the class.

If you decide to make REOs part of your real estate business, it is essential to understand that REO transactions follow different time frames, procedures, and sequences compared to traditional transactions. (See Figure 4.2 for a comparison of traditional and REO transactions.) For example, the REO listing comes to an agent by assignment from the asset manager; no listing presentation involved. REOs are an as-is/where-is, bottom-line business. Successful asset managers are very detail and deadline oriented, and they expect the same of their listing agents.

Be prepared to roll up your sleeves and get dirty. If you are squeamish about dirt and disorder, working in the REO market may be a struggle. You will encounter some properties in very poor condition: dirty, moldy, trash filled, stripped of wiring and pipes, or vandalized. You must have the fortitude to go into difficult situations and troubled neighborhoods or come face-to-face with distressed and/or angry homeowners. REO agents need to be confident in what they are doing but not confrontational. Be respectful and acknowledge homeowners' hardship, but stay focused on your responsibilities. And if a situation feels unsafe, leave and call for help—law enforcement or your teammate.

REO service activities can easily cross the line between sales and property management. Before you start working in the REO market, do the following:

- Check with your state's real estate licensing authority to make sure your license covers all the activities you'll be performing on behalf of asset managers.
- Make sure your firm's errors and omissions and other insurance policies like personal liability and workmen's compensation adequately cover your REO activities.
- You'll need a start-up capital fund. Asset managers will expect your firm to advance payments for expenses like utility hookups, minor ($300–$500) repairs, and required point-of-sale inspections. Be prepared to wait up to 60 days for reimbursement after you submit the claim. How much capital will you need? Experienced REO professionals advise a start-up fund of about $5,000 or $1,500 per property.
- Consider whether the REO business is a good match with your broker's business strategy, value proposition, and management systems. Without the support of your broker, sales team, and back office, you could struggle to succeed.

Figure 4.2: Traditional Versus REO Transactions

Traditional Transaction	REO Transaction
Seller	**Seller**
▸ Homeowner or investor ▸ Wants right price, favorable terms, timely closing	▸ Lender represented by asset management company ▸ Wants quick sale, bottom-line price, loss mitigation
Listing	**Listing**
▸ Listing presentation to sellers	▸ Assignment from asset manager
Occupancy	**Occupancy**
▸ Seller vacates the property on/before closing ▸ Rental leases may transfer to the new owner or terminate	▸ Foreclosure limbo, former owner/ tenants continue to live in property, eviction or cash for keys ▸ Vacant or abandoned
Property Condition	**Property Condition**
▸ Sale-ready condition ▸ Upgrades to enhance curb appeal and value ▸ Cash or credit at closing for repairs	▸ As-is, where-is ▸ At risk for vandalism and damage ▸ Possible price reduction to offset repair costs
Showing	**Showing**
▸ Staged and styled for appealing to buyers	▸ Trash-out, broom-swept clean
Contingencies	**Contingencies**
▸ Negotiable between seller and buyer ▸ Property inspection, sale of current home, mortgage approval, final walkthough	▸ As-is, where-is ▸ Property inspection ▸ Final walkthrough
Offers	**Offers**
▸ Sales contract exchanged between seller and buyer ▸ Buyer offers earnest money ▸ Seller can accept, reject, counteroffer ▸ Seller signs final contract to accept	▸ Sales contract and proof of funds or pre-approval ▸ Seller can accept, reject, counter, ask for highest and best, subject to upper management approval ▸ Asset manager sends counter addendum to accept
Negotiations	**Negotiations**
▸ Price, terms, closing date, contingencies ▸ Win-win for buyer and seller	▸ Price and closing date ▸ Bargain for buyer, bottom-line for seller

Traditional Transaction	REO Transaction
Disclosures	**Disclosures**
▸ Government-mandated disclosures ▸ Seller's disclosure	▸ Government-mandated disclosures ▸ No seller's disclosure, defects found in previous inspections must be disclosed
Closing	**Closing**
▸ Negotiable; seller may agree to extend ▸ Buyer can specify title company	▸ Firm closing date ▸ Per diem charged for late closing ▸ Seller specifies title company

Practitioner Perspective

Edward A. Bugos
"The REO Doctor"
Coldwell Banker Hunter Realty
Willoughby Hills, Ohio

Persistence, Tenacity, Follow-Up Skills

In order to make it in this business, I think the agent needs to have a certain soundness of mind, persistence, tenacity, and a strong constitution. In some properties, just the sight of the conditions could turn you off. If you're not one to take good orders or follow instructions, you want to do it yourself, or you think you have a better way, working with asset managers might not be for you. Good communication skills, computer skills, and follow-up skills—these are what you need in order to make this business work.

Courage and Empathy

When you go out to do an occupancy check, what is on the other side of the door is probably fear. But many times people have said to me, "We've been waiting for someone to contact us and you are the first one who talks to us as a person. We've had people come to our door and threaten us. Why are you being so nice?" I'll say, "There's no reason not to be nice. What's happening to you and your family is a horrible situation. I'm sorry for your hardship." The seller wants them out of the house, but I have to give them the respect and dignity they deserve and let them make a dignified exit. If you don't know what it's like to lose everything you own, don't say "I know what you're going through," because you really don't.

You Have to Make It Happen

You just can't sit and wait for something to happen in this business. You have to make it happen. Years ago we used to do homebuyers seminars, now we do investor seminars. This is how we actually make the business work for us. We present our portfolio and let investors know what's available. We collect names and e-mail addresses so that when we get a listing that meets an investor's criteria, we get in touch. Our investor seminars also attract home buyers who might be able to purchase the property with a 203(k) rehab loan. So our advertising says "investors and 203(k) buyers welcome."

Work with REO Buyers

When agents ask how to get involved, I say that it might not be involvement as the listing agent, but as a buyer's agent. Working the buy side usually won't get you the contacts with asset managers. But the agents I know who are strictly buyer's agents for REOs like it that way.

Building Your Network

Asset managers need to know their listing agents better than the properties, because, with responsibility for a few hundred properties, the asset manager can't possibly keep tabs on the details of every property. Depending on the size of the territory and number of properties, an asset manager will probably maintain a go-to network of 12–15 real estate agents on whom they can rely. In contrast, in active markets, real estate professionals need to cultivate working relationships with the asset managers at the companies that do most of the REO business in the market area. That handful of (3–5) asset manager contacts will be the source for most of your REO business.

REO conferences, such as those sponsored by The Five Star Institute (www.TheFiveStar.com) and REOMAC (www.reomac.com), provide a place for outsource companies, asset managers, and real estate professionals to meet face-to-face and make network contacts. Attending a conference means an investment of time and money, but for some real estate professionals the payoff is worth it in terms of education and contacts. Additionally, social media, i.e., LinkedIn, Facebook, etc., are great networking resources.

Many of the major asset management companies, including the GSEs, enable online registration for real estate agents. Fill out the application and attach a résumé if possible.

Some of the major asset management companies that provide REO outsource services for major lenders and the GSEs include:

- 24 Asset Management
- Atlas REO
- Advent REO
- First Preston Management
- Keystone Asset Management
- Old Republic Default Management Services

Educating the Buyer Client

In Modules 2 and 3, we concentrated on the list side of the short-sale transaction—the role and responsibilities of the listing agent and how agents should take a short-sale listing. What are the buyer's agent's responsibilities in short-sale transactions? And what if the buyer client is interested in an REO property and not a short sale? Since the purchase of short sales and REOs are subject to different constraints, not all buyers are good candidates for both types of distressed transactions. Buyer's representatives should counsel their clients on the differences (Figure 4.3) between these types of transactions during their initial needs assessment. A counseling session not only sets parameters but also closes the potential gap between buyers' perceptions and market realities. In addition to talking about needs, wants, price, and location parameters, buyers need to be realistic and understand what they could be getting into.

Whether the buyer is considering a short sale or REO property, these transactions share the following:

- Buyers must understand the process and realize they are not in control.
- Buyers must be willing to get pre-approved.
- Properties are sold as-is.
- Lenders/servicers will not approve an offer to purchase that contains a home-sale contingency.
- It can be difficult to get closing costs covered or cash back for the buyer.
- Buyers must be well-aware and well-informed of the timeline, as they do not have control over the process.

- When making an offer, remind buyers that an offer below market value, that is not supported by comps, will not be approved.
- The seller must understand that the buyer and buyer's agent have little control or influence over the short sale review/approval process. They must decide to trust the seller, listing agent, or whoever the primary contact is for the short sale processing.

The worksheets and checklists in Module Two may be used in addition to any standard buyer qualification worksheet currently used.

Figure 4.3: How Short Sale and REO Transactions Differ

	Short Sale	REO
Closing Date	▸ Buyer must be flexible with the closing date.	▸ Banks want to close quickly.
Forms	▸ Standard local contract is used.	▸ Addenda will be added to the standard contract.
Disclosures	▸ All required seller disclosure forms are given.	▸ Minimal disclosure forms are provided. In some cases, state laws may exempt the bank from having to provide any disclosures. In other situations, the bank may require that the REO buyer waive his or her right to receive the disclosures.
Preference for Cash Buyers	▸ Cash buyers not necessarily given preference over buyers with financing.	▸ Cash buyers often given preference over buyers with financing.
Arm's-Length Transaction	▸ The buyer cannot be related to the seller.	

Buyer Counseling Worksheet

1. **Do you have a time frame within which you need to purchase or within which you need to move?**

   ____

2. **Will you need to sell your home to buy a new one?**

   ❑Yes ❑No

3. **Have you spoken with a lender (if you will need a loan)?**

   ❑Yes ❑No

   - With which lender? ________________________________
   - Are you pre-approved for a loan? ❑Yes ❑No
     If so, how much? ________________________________
   - Do you have a written loan commitment? ❑Yes ❑No
     If so, what type of loan? ____________________________

4. **Would you consider purchasing a property that is...**

   - A Short Sale? ❑Yes ❑No
   - Foreclosure (at auction)? ❑Yes ❑No
   - REO (bank owned)? ❑Yes ❑No

5. **Buyer Representation Agreement**

   - Exclusive agreement signed ❑Yes ❑No
   - Non-exclusive agreement signed ❑Yes ❑No
   - Other ❑Yes ❑No

6. **Do you have an attorney with whom you work?** ❑Yes ❑No

   - If yes, what is his/her name? __________________________
   - Contact information: ________________________________

Buyer(s) acknowledges review of the above items.

Buyer______________________________ **Date**______________

Buyer______________________________ **Date**______________

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Buyer Agent Short-Sale Checklist

1. **Is the buyer pre-approved?**

   ❑Yes ❑No

   ► Copy of pre-approval ❑Yes ❑No

2. **Is the buyer a cash buyer and willing to submit proof of funds?**

   ❑Yes ❑No

   ► Copy of proof of funds ❑Yes ❑No

3. **Is the buyer willing to make reasonable offer?**

   ❑Yes ❑No

4. **Does the buyer have realistic expectations of the time frame?**

   ❑Yes ❑No

5. **Can the buyer be flexible on the closing date?**

   ❑Yes ❑No

6. **Is the buyer willing to proceed with the following prior to short-sale approval?**

   ► Earnest money ❑Yes ❑No

   ► Inspections ❑Yes ❑No

   ► Mortgage application and appraisal fee ❑Yes ❑No

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Disclosures

Considering the hundreds of properties an asset manager may be actively marketing, it isn't possible to know all of the details about a particular REO property. For this reason, asset management companies typically do not provide a seller's disclosure and the property is sold "as-is/where-is." However, known environmental hazards and any material defects found in an earlier inspection (that caused the buyer to cancel the deal) must be disclosed to the next buyer. In addition to federal regulations regarding lead-based paint, state and city regulations may require certain point-of-sale inspections, such as for radon, mold, Chinese drywall, and termites.

Check the remarks in the MLS listing comments for any repairs that need to be done to bring the property up to code or restore it to habitable condition. Additional escrowed funds may be needed to cover the cost of required point-of-sale inspections and correct problems. When point-of-sale inspections uncover issues that need to be corrected, a contractor's line item job estimate will likely be required (at the buyer's expense) as an addendum to the sales contract.

Agents should also check with their state and broker to find out what disclosures are required for their state.

Writing the Short-Sale or REO Offer

Let's say a buyer you are representing has decided on a short-sale property and is ready to make an offer.

- **Prequalify the listing agent, the borrower/seller, and the short-sale property by asking the following:**
    - Has the borrower's/seller's hardship been verified? If yes, by whom?
    - Has the borrower/seller submitted the necessary short-sale documentation to the servicer/investor; for example, if this is a Fannie Mae short sale, has the borrower/seller submitted the Borrower Response Package?
    - Do you have a deadline for lender approval? There is an ending to how long the buyer will wait for approval. Oftentimes listing agents or sellers' lawyers process these and they may be unfamiliar with the process. You need to ensure your buyer does not wait by obtaining a firm approval deadline
    - Has the listing agent received a response from the servicer/investor?
    - If the short sale is a Fannie Mae short sale, has the servicer/investor established the price?

- How many liens are on the property?
- If more than one lien, what are they? IRS tax liens, something else?
- Has a foreclosure sale date been scheduled?
- Are there any other offers on the property?
- Have any other offers been executed and submitted?

- Check in the MLS or with the listing agent for specific instructions on submitting an offer.
- Provide a CMA to the buyer client to ensure that the client can make an informed decision on the price to offer. When creating a CMA, buyer's representatives should include comparable properties that are distressed—short sale, REO.
- Be certain that the buyer's lender understands the buyer is intending to purchase a short sale. The buyer's agent should only refer a buyer to lenders that are familiar with short sales. If the buyer has chosen his or her own lender, a phone call from buyer's agent to the lender would be appropriate.
- Counsel the buyer to have the lender order an appraisal on the property.
- Have written repair estimates, if needed, from licensed contractors.

Buyer's agents also need to educate their buyer clients on the elements of a good offer. Writing an offer on a short-sale property is not like writing an offer on a property that is not distressed. The buyer's representative needs to be aware of what makes a good short-sale offer that has a reasonable chance of being accepted by the seller and approved by the investor.

To communicate what constitutes a well-written short-sale offer to your buyer client, see the next page.

Short-Sale Negotiation Considerations for Buyers

- **Price**
  The price you offer to the seller of a short-sale property should reflect what's termed fair market value. Fair market value is the price a buyer will pay and a seller will accept for a property under reasonable and ordinary conditions. We will provide with a comparative market analysis (CMA) that includes listings of comparable properties that have sold in the last 6 months as well as pending listings so that you can make an informed decision on how much to offer. However, please note that the listing price of the short-sale property may or may not reflect market value. Some short-sale properties are priced extremely aggressively with the goal of creating a bidding war, which may still backfire if the offer accepted by the seller is not approved by the lender.

- **Length of Time for Approval**
  Each lender has its own protocol for approving short sales. We will need to allow a sufficient amount of time in the contract to assure both the seller and the seller's lender that they are not wasting their time with your offer.

- **Earnest Money**
  This deposit at time of contract indicates to the seller that you are acting in good faith and will attempt to satisfy all contingencies within your control within the time frames agreed to in the contract. It also shows the lender that your contract has a reasonable chance of closing.

- **Home Inspection**
  Most short sales are sold "as is." All buyers should complete a home inspection. The purpose of the home inspection is to determine, based upon condition, if the property is acceptable on the terms offered to the seller. You will want to complete a home inspection within a few days following the signing of the contract. You should not wait to complete the home inspection until after the contract is approved because you may possibly waste months in a contract that ends up failing because of property condition. If the inspection report alerts you to defects prior to the seller's lender receiving the contract, you may be able to renegotiate terms with the seller based upon the defects.

- **Mortgage Application**
  Frequently, seller's lenders give limited time to close after approval and if you have not started your mortgage process, you will not be able to meet the required date for closing. Often, buyer's lenders are reluctant to order the appraisal prior to approval by the seller's lender. Although an appraisal will need to be updated if more than six months had passed, many buyers have found that ordering it and possibly paying for an update have saved them money since the appraisal done by their mortgage lender was a major influence on the seller's lender when the seller's lender expected to negotiate a higher sales price than what was offered. This is your decision and you need to instruct your lender on how you want to proceed.

- **Attorney Modification**
  If there is an attorney modification clause in the contract being used you will want your attorney to look over the contract and make modifications within the time frame allotted—starting from the signing of the contract by you and the seller—not from the time the lender approves it. Whatever time frame is agreed to must be provided for both sides, and allowing a seller to get out of the contract after it is approved by the lender puts you in jeopardy. As a reminder, it is important that you choose an attorney who understands the short-sale process.

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Additional considerations for the buyer's agent are listed on the following pages.

Making Offers on Multiple Properties at the Same Time

- Often buyers believe the best strategy in "getting" a short sale is to put offers on several short-sale properties at the same time. If those offers are accepted by the sellers, the buyers have entered into contracts to purchase more than one property. Buyers should be cautioned that this is a risky practice (unless they intend to purchase both properties). If your buyer client insists on pursuing this strategy, seek advice from your managing broker or attorney on best next steps.

Lowball Offers

- Buyers also may be tempted to make a lowball offer on a short-sale property. An exceptionally low offer runs at least two risks if the offer is accepted by the borrower/seller and the contract is sent to the servicer for investor approval:

  1. For some borrowers/sellers, the foreclosure clock will continue to tick away (which may put the borrower/seller in imminent danger of foreclosure) while parties wait for the servicer to review the contract and ultimately not approve it.
  2. Buyers may miss out on other properties that would have been suitable and available while waiting for the servicer's response.

- Remember, it is the duty of both the buyer's agent and seller's agent to protect and promote the interests of their clients. Both agents have a duty to negotiate the best price and terms for their client prior to the contract being submitted to the servicer for approval.

CAN BUYER CLIENTS GET AN REO PROPERTY WITH A LOWBALL OFFER?

The chances are slim. In many markets, REO properties are receiving multiple offers and are selling for list price or above. Buyers should be informed of the market conditions surrounding REO sales prior to making an offer.

Length of Time for Investor Approval and Closing

- The approved short-sale addendum to the sales contract that is used in your marketplace to make the contract subject to investor approval should stipulate how long the buyer will wait for short-sale approval.
- If the time allowed for investor approval is too short, it will weaken the buyer's contract. Note that the time allowed for investor approval will depend upon the type of short sale. For example, you may be able to have 30–60 days' waiting period for approval from Fannie Mae or Freddie Mac. However, for non-GSE short sales, you may need 90–120 days' wait time for approval.

HOW MUCH TIME DO REO PROPERTIES REQUIRE FOR BANK APPROVAL?

This question is misleading since REO properties do not require bank approval after the contract is accepted because, with REO properties, the bank is the seller. Generally, banks prefer quick closings on REO properties. If your buyer client stipulates an extended time to close in the offer to purchase, the bank may make a counter offer.

Earnest Money

- As with any real estate contract, the earnest money on a short sale is due according to the terms of the written agreement.
- Earnest money should be deposited as required by state license law based on the date the contract was signed by the buyer and seller—not based on when the contract is approved by the servicer.
- If the buyer does not want the earnest money deposited before the servicer has approved the contract, the buyer's representative should note that on the contract. Accordingly, the buyer should not tender the earnest money before the date for agreed to for deposit.
- It is important to know your state laws on earnest money or deposits. Some state laws stipulate that there cannot be a valid contract without earnest money. This would, obviously, affect how the offer was written.
- Listing brokers should be wary of accepting personal checks for earnest money too close to the closing date. Many servicers do not allow more than ten days to two weeks for closing after they have approved the short sale. If the check does not clear, there could be problems.
- Without sufficient earnest money, a buyer may not hesitate to walk away from the transaction. The greater the amount of the earnest money, the greater the chance of the buyer being committed to the contract.

DO REO PROPERTIES HAVE SPECIFIC EARNEST MONEY REQUIREMENTS?

Typically the bank will supply the listing agent with an addendum that the buyer will need to sign. See the Appendix for a sample Fannie Mae REO addendum. Banks require that the buyer submit a certified or cashier's check for the required earnest money. Note that this is not a finalized contract at this point. Although the bank will have completed the addendum, it has not signed it yet, and until it does there is no contract.

Home Inspection

- If the contract calls for the home inspection to be done in five business days after the contract has been executed, the five days would start from the time of signing by the buyer and seller—not from the time of lender approval.
- The buyer will have little success negotiating any costs or repairs if the home inspection is completed after the servicer's approval. The servicer's approval is based on a minimum dollar amount to be realized at the closing, and servicers generally do not allow for further negotiations.
- Most often, a short sale is an as-is transaction. The seller doesn't have the money to make the repairs and the servicer is unwilling to make repairs. That stated, the buyer still has the right to know what as-is means and withdraw the offer or reduce the offer based on the home inspection.
- Buyers may end up wasting valuable time on a property that they may not want to purchase as a result of a home inspection that reveals less-than-acceptable defects in the property.
- Although the short-sale approval process takes more time than a non-distressed sale, once approved, the closing date stipulated in the approval letter may not allow the buyer sufficient time to complete a property inspection.

WHEN MAY THE BUYER CLIENT ORDER A HOME INSPECTION IN A REO-PROPERTY TRANSACTION?

Generally, the bank gives the buyer time to do a home inspection as in a non-distressed transaction. Remember that REO property transactions are as-is and unless the inspector found health and safety or code violations, the bank typically does not give credit for repairs.

Mortgage Application and the Appraisal

- The buyer must submit the mortgage application according to the contract as well. There is often a quick turnaround between lender approval of the short sale and the lender's required closing date. The buyer must be ready, willing, and able to meet the specified closing date without asking for more time to get their financing in place.
- Often the buyer's appraisal does not get ordered until the home inspection and possibly attorney modification periods have been satisfied or waived. For this reason, it is essential that enough time be allowed on the contract for the buyers' loan commitment.

IS THE MORTGAGE APPLICATION PROCESS FOR REO-PROPERTY TRANSACTIONS DIFFERENT FROM THE PROCESS FOR NON-DISTRESSED PROPERTY TRANSACTIONS?

No. The bank is the seller; therefore, the mortgage application process flows as it does in a non-distressed transaction.

Contract Acceptance

- Either party could back out without penalty if the offer is not signed.
- There is no contract until the contract and short-sale addendum are signed by the buyer and the borrower/seller.
- Typically, servicers will not accept digital signatures. Best practice is to have the buyers and borrowers/sellers sign in hard copy.
- The fact that the borrower/seller accepts the contract contingent on servicer approval does not guarantee servicer approval. The approval by the servicer is an additional contingency, like a home inspection, mortgage approval, etc., and should be treated as any other contingency.
- The borrower/seller may choose to continue to market the property looking for back-up contracts.

MLS rules and the NAR Code of Ethics require that the listing agent disclose the existence of an accepted contract, including those with unresolved contingencies, to any broker seeking cooperation. Once a short-sale contract has been executed, it should be reported to your MLS as the MLS rules require. Servicers do not require that the property remain on the market after an offer has been accepted. A borrower/seller would not be able to accept another contract unless it was made "subject to release of prior contract," and servicers generally do not want back-up offers submitted.

The NAR Code of Ethics requires that all offers must be presented to the seller all the way to closing. However, it does not require that all offers be presented to the lender.

HOW IS CONTRACT ACCEPTANCE DIFFERENT IN REO PROPERTY TRANSACTIONS?

When an offer has been accepted by the bank, it will create an addendum that the buyer will need to sign. The buyer cannot make any changes to the addendum, and the addendum supersedes the sales contract that was submitted. If no addendum is used, the bank may counter back to the buyer by making significant changes to the contract used.

Once the buyer has signed the addendum and tendered earnest money to the listing office, the bank will sign the addendum and/or contract. The property is not under contract until this final step, and it will not be reported to the MLS as contingent until the bank has signed. Whether the bank continues to consider other offers prior to its signing the addendum is a matter of bank protocol.

REO Financing

Purchasing a home that needs substantial repairs presents a predicament because a bank won't approve a mortgage on a home until repairs are complete, and the repairs can't be accomplished until the purchase closes. The FHA 203(k) mortgage program offers a solution. The program allows a buyer to purchase or refinance a property plus include in the loan the cost of making the repairs and improvements, so there is just one loan and one closing. Two types of FHA 203k renovation loans are available, standard and streamline. The standard loan is typically for more extensive rehab projects, while the streamline loan covers a maximum of $35,000 of repairs. The FHA requires just a 3.5 percent down payment, based on the purchase price and total project cost. The buyer must plan to live in the property he or she is buying.

For detailed information on 203(k) mortgage programs, visit www.hud.gov and search for "rehab a home with HUD's 203(k)."

TRID: The TILA-RESPA Disclosure Rule

In 2015, the Consumer Financial Protection Bureau (CFPB) finalized the Truth in Lending Act (TILA) Real Estate Settlement and Procedures Act (RESPA) Integrated Disclosure rule, or TRID, also known as "Know Before You Owe" mortgage initiative. Because borrowers were struggling to understand the overlapping information and complicated terms in the existing federal mortgage disclosures, TRID consolidated them into two simplified documents:

1. The Loan Estimate, which replaces the Good Faith Estimate document
2. The Closing Disclosure, which replaces the HUD-1 Settlement Statement

The Loan Estimate giver borrowers mortgage details in concise, easy-to-understand language. It must be provided to borrowers within three business days of receipt of their loan application. The Closing Disclosure details mortgage closing costs and other loan details. It must be provided to the borrower at least three business days prior to closing. The listing agent needs to know what closing costs are likely to be approved or denied. Additionally, the listing agent must make sure that the estimate of closing costs includes all costs that can be anticipated at the (future) settlement date. This includes estimates of prorated taxes, utility bills, interest and fees, and any administrative costs. Any costs that are not included in the estimate before approval will likely not be approved at settlement. TRID implemented this three-day waiting period to give consumers time to review their Closing Disclosure and ask questions before closing. Agents should keep this in mind to avoid any delays at closing time.

To best prepare their clients for financing a home, the CFPB recommends that agents take following five steps:

1. Encourage clients to think through their mortgage choices first.
2. After they have found a property, encourage them to apply for Loan Estimates from multiple lenders. Loan Estimates no longer require written documentation.
3. Make sure your clients indicate their intent to proceed.
4. Provide clients with accurate and timely information about the property and transaction.
5. Find out who provides the Closing Disclosure.

Although in the past a settlement agent, attorney, or closing company usually provided the Closing Disclosure Settlement Statements, lenders might deliver the Closing Disclosure directly to your client. The CFPB recommends checking with the lender and with state regulations, as practices can vary.

For more information, consult the CFPB's Real Estate Professional's Guide at www.consumerfinance.gov/policy-compliance/know-you-owe-mortgages/real-estate-professionals/

Short Sales from Contracts to Close

Module 5 Learning Objectives

After learning the material in Module 5, you should be able to:

- Reiterate the importance of using the servicer prescribed method for submittal of short sale contracts.
- Differentiate the cash contributions, incentives, and subordinate liens allowed by various servicers when completing a short sale.
- Identify the problems associated with short sale failure and learn how to solve them.

Follow All Servicer Requirements

Listing agents must submit short-sale contracts exactly as the servicer requires. Many of the servicers use Equator short-sale processing software, and you will be limited to submitting only those documents that Equator accepts.

Equator is a web-based software program that is being used by many of the larger banks servicers to process their short sales. Equator was originally designed to assist REO agents in the submission of offers and now has become the portal of choice for many of the servicers with short sales as well. Equator.com allows anyone to create an account that then allows you to be able to submit offers to the servicers using the system. The benefit of Equator is that it facilitates and expedites the process. The downside of the system is that if it is not used properly, it can actually slow things down.

Here are tips to ensure your short sale gets processed properly:

- Follow the instructions exactly as they are spelled out by the servicer. Each servicer has its own process, and its requirements may vary. Although you may have submitted an offer through Equator on a loan serviced by Wells Fargo, that does not mean that the next short sale you submit when serviced through a different entity, for example Bank of America, will be handled in the same way.
- **The information submitted must match exactly the information on the mortgage documents:**
  - The names, addresses of the owners, and the property must be an exact match. For example, don't enter Bill Smith if mortgage documents list the borrower's name as William Smith. Include middle initials if applicable.
  - The address must be exactly as shown. If the documents show Drive, do not submit as Dr.; if it shows West Elm, do not use W. Elm.
- Always use your information, not the borrowers'/sellers' information. For example, when entering the phone number and e-mail address, list your number and e-mail address, not the borrowers'/sellers'. The borrowers/sellers, in many cases, have not responded to the servicer's calls for months and they tend not to respond now.
- **If you can't read what you are submitting, neither can the servicers. Be absolutely sure that what you are transmitting is legible.**
  - Contracts should be computer-generated rather than handwritten whenever possible.
  - Please be sure the scanning and copying equipment you are using gives you a clear, legible image.
- Be specific in the naming of the documents. Different servicers have different names for the documents, e.g., Sales Contract or Purchase Agreement. Be sure to name your documents appropriately.

If the servicer does not use Equator, it is imperative that you determine the process the servicer wants you to follow. Failing to submit all the documents in the proper format will cause unnecessary delays in the approval process.

If a servicer normally uses a fax or general e-mail for submitting documents and the assigned negotiator requests that you use a direct e-mail address, a best practice is to e-mail documents to your negotiator and also e-mail the documents to the general e-mail address or fax it to the number indicated.

There are two reasons for this:

1. The turnover rate for negotiators is extremely high. If you have been e-mailing the negotiator and he or she quits, there is a possibility that all e-mail communications may be inaccessible by the new negotiator.
2. When you e-mail or fax the "general line," there is a department that automatically places it into the file. There is less of a chance for the negotiator saying that he or she didn't receive it.

Contract and the Preliminary Closing Disclosure

The listing agent should provide the servicer with:

- A copy of the purchase contract
- The buyer's pre-approval letter
- A statement that the buyer is not related to the current homeowner

It is critical that the preliminary closing disclosure reflects all costs the investor will incur. The following may be areas of concern:

- Tax prorations
- Seller concessions
- Accurate broker compensation must reflect final contract price
- Unpaid municipal expenses
- Transfer stamps (if required)
- Attorney fees

Make sure that nothing is labeled "bill." In many municipalities when the homeowner is late, it is recorded as a water lien or lawn mowing lien, etc., so be sure you call it a lien, not a bill.

Also, nothing should be labeled as "Prep" or "Preparation," as in "Doc Prep" or "Deed Prep." On the preliminary closing disclosure these fees need to be stated as payable to the name of the person doing the work. These costs are generally the attorney fees.

If the servicer has not previously requested the borrower's/seller's hardship and financial information and no price guidance was given, you will need to submit additional information to the servicer at the time of submission of the offer:

- The borrower's/seller's hardship letter, sometimes referred to as RFD (Reason for Default)
- The borrower's/seller's financial information from the Form 710
- Updated CMA, including marketing history and repair estimate, if needed
- Preliminary closing disclosure showing all expenses
- Completed sales contract

Even if the hardship and financial information was submitted and the price was previously set, you will still need to submit the preliminary closing disclosure with the contract.

What to Highlight in Your CMA

The listing agent should create a comparative market analysis (CMA) using the most current comparable sales. This will be an update of the information you have been supplying to the servicer since you listed the property.

Highlight such data as:

- Average time on market—cumulative market time is critical
- Number of short sales and REO listings in the area
- Price trends
- Recent economic data
- Absorption rate

The absorption rate is the mathematical formula used to establish the relationship between supply and demand in a given market. Used in conjunction with other pricing variables, the absorption rate helps to gauge the time it is likely to take to bring about a sale.

The absorption rate is arrived at by dividing the total number of available properties by the total number of properties sold in the previous month. The resulting number represents the number of months it would take, market conditions being fairly the same, to sell the entire inventory.

When doing the market absorption portion of a CMA for a servicer on a short sale, the servicer may ask for a one-month base, a three-month base, and then a six-month base for comparison, which will indicate pricing trends in a given market. Servicer representatives are not local pricing experts, and they need to understand where pricing is headed in order to make the appropriate decision on a short-sale contract.

As a reminder, the servicer will order one or two broker price opinions (BPOs) after it receives the short-sale submission package from the listing agent. Listing agents should not mislead the servicer as to the fair market value when updating the CMA and providing it to the servicer. If the CMA ends up being too far below the BPOs, the servicer may view the entire short-sale package in a negative light.

Marketing History

Servicers should be presented with a complete history of showings, feedback, price reductions, and advertising—in short, all the marketing efforts that brought about the contract that is being submitted to the servicer. Listing agents need to show servicers that they've done a thorough job of attempting to get the best price possible.

Any MLS printouts from when the property was priced should be included as well. The importance of the CMA and marketing history cannot be overemphasized. The servicer is most likely in another state and will not necessarily understand what is happening in your market. The listing agent's CMA and marketing history are more thorough than a BPO and should include MLS printouts of all property in the area as well as pictures of comparables and on-market properties that are in competition with the subject property.

Repair Estimate for the Property

Providing the servicer with a detailed repair estimate from a reputable (licensed) contractor will assist greatly in getting the short sale accepted. Repair estimates should not be provided by the buyer. Additionally, estimates are more useful when there is also an inspection report. The servicer doesn't want to own property—and especially not property that needs a complete overhaul.

Some servicers have been known to make some repairs. However, they would much rather sell "as is" and have the buyer make the needed repairs. Two offers netting the servicer the same bottom line—one where the buyer will do their own repairs (buying "as is") and one where the servicer is asked to do them—usually result in the "as is" buyer being successful.

Additional Acknowledgments

Many listing agents, and some states, have created standard forms that they require the buyer and the listing agent to sign to be sure everyone understands the short-sale process.

Sample Short-Sale Acknowledgment

LAMACCHIA REALTY INC. SHORT SALE ACKNOWLEDGMENT

This acknowledgment dated _______________ must be read and signed by the Borrower/Seller upon hiring American Distressed Homeowner Services, Inc. (ADHS) and Lamacchia Realty (Broker). It must also be signed by Buyer and Buyer's agent when Buyer submits the Offer to Purchase (the "Offer"). This acknowledgement relates to the potential short sale of the property located at: ____.

Affiliated Business Disclosure & Fee:
All Parties (Borrower/Seller, Buyer, ADHS, brokers and/or real estate salespersons) understand that Lamacchia Companies, Inc. is the parent company of both Lamacchia Realty, Inc. and ADHS. These two companies work together to complete short sales all over New England.

Buyer has agreed to pay ADHS a $2,500 fee for service at closing pursuant to the terms and conditions stated in the separate Fee for Short Sales Services Agreement executed by Buyer(s) ___________________________ and ADHS.

Short Sale Definition:
A short sale occurs when a mortgage company agrees to accept less than it is owed for an outstanding loan.

All Parties understand that this is similar a traditional home sale with a buyer and seller, but it requires the approval of a 3rd party (the lender(s)) to be finalized.

Offers:
The Borrower/Seller will only accept one Offer to Purchase at a time.

Typical Timeline:
Buyer and Buyer's agent agree and acknowledge that ADHS will not have firm dates for, e.g., mortgage contingencies and closing, until the short sale has been approved by the lender(s). Typically, ADHS receives an answer from the lender(s) approximately 30 days after ADHS submits the short sale package. The short sale package is submitted to the lender once the home inspection (if applicable) has been conducted and the Purchase & Sale agreement has been finalized and executed. As such, it is in all Parties' best interests to schedule the home inspection and hire an attorney as soon as Buyer's offer is accepted by Borrower/Seller.

Generally, the timeline for and key terms in offers will be as follows (suggested language in quotations):

- Home inspection conducted within 5-7 days of accepted offer
- Purchase & Sale executed within 7-10 days of accepted offer
- Deposit of $1,000 to accompany offer; deposit of a minimum of 3% of the purchase price to accompany execution of Purchase & Sale
- Mortgage contingency "21 days post lien holder(s) approval of the short sale"
- Closing date "30 days post lien holder(s) approval of the short sale"
- "Buyer to pay Short Sale Services Agreement fee of $2,500 to American Distressed Homeowner Solutions, Inc. at the time of closing, in accordance with Fee For Short Sale Services Agreement executed on ____________________".
- Smoke/Carbon Monoxide Certificate (if applicable; please refer to section below)
- Title V inspection (if applicable; please refer to section below)

Supporting Documents:

The following documents must be submitted with all offers to purchase:

- Updated preapproval or proof of funds
- GFE if requesting a closing cost credit
- Copy of deposit check
- Executed Short Sale Acknowledgment form
- Lead Paint disclosure (if applicable)
- Executed ADHS Fee For Short Sale Services Agreement
- LLC Operating Agreement and Articles of Organization or trust docs if Buyer is an LLC or Trust

Smoke/Carbon Monoxide Certificate: (Check One)

- ❒ **Borrower/Seller** to provide Smoke/Carbon Monoxide Certificate at closing.
- ❒ **Buyer** to obtain Smoke/Carbon Monoxide Certificate **10 days prior to closing**. Buyer acknowledges that it is their responsibility to pay for any and all costs associated with obtaining these certificates. These costs may include, but are not limited to, expenses associated with installation and/or repair of smoke/carbon monoxide detectors and wiring if needed. Therefore, Buyer must conduct their own due diligence in advance of the closing. **This provision must be written into the Offer to Purchase**.

Title V: (Check One)

- ❒ **Borrower/Seller** to perform Title V inspection prior to closing. If the system does not pass inspection, additional negotiations will be necessary. Borrower/Seller is not obligated to replace system or provide a passing Title V certificate.
- ❒ **Buyer** to obtain the Title V inspection at their sole cost. If the system does not pass inspection, additional negotiations will be necessary. Buyer will not be obligated to continue with the sale and Borrower/Seller will not be obligated to replace or provide a passing Title V. **This provision must be written into the Offer to Purchase**.

Lender Negotiation:

ADHS will submit the Offer to Purchase to the lender(s) within 24 hours of the first business day after the home inspection is conducted and Purchase & Sale Agreement is signed. ADHS will continue to follow up with the lender(s) to ensure that the process is proceeding as expected. ADHS has a high success rate, but cannot guarantee approval of the sale. Furthermore, it usually takes **4-8 weeks** to obtain the lender's approval. Occasionally, it may take longer, but that is rare.

Buyer's Agent Commission:

Buyer's Agent commission is **guaranteed** to be **2.5%**. Regardless of the amount of commission approved by the lender, Buyer's Agent's commission will be **2.5%**.

Buyer Information:

Depending on the lender servicing the loan on the Property, ADHS may require additional information from the Buyer in order to submit the requisite short sale paperwork. This additional information usually consists of basic things like name, address, and/or social security number. Buyers should be aware of this possibility and be prepared for it in case it is requested of them.

Arm's Length Agreement:

Buyer **cannot** be related to the Seller in any way. In the event that the Buyer and Borrower/Seller have the same last name, ADHS requires a sworn affidavit from both Borrower/Seller and Buyer attesting that they are not related. Buyer and Buyer's Agent may be required by Borrower/Seller's lender to sign an Arm's Length Agreement at closing.

Ethical Standards:

Lamacchia Realty, Inc. & ADHS and their associates will not participate in any transaction which involves deceptive or fraudulent activity. Lamacchia Realty, Inc. & ADHS make every effort to obtain the highest price possible for their Borrowers/Sellers and hold themselves and all parties to the transaction to the highest of ethical standards. Neither Lamacchia Realty, Inc. nor ADHS will tolerate any deception by or among the parties or other brokers. All agreements relating in any way to the Property must be in writing and must be disclosed to the Listing Agent and the lender(s).

Hold Harmless:

Some lenders are overwhelmed with short sale files and approval may take longer than 8 weeks. Buyer and Buyer's Agent understand Lamacchia Realty, Inc. & ADHS cannot and do **NOT** guarantee lender's approval or make any other guarantees or representations about the lender's response time, reporting, or decision-making. Therefore, Buyer and Buyer's Agent, their heirs, successors and assigns shall hold Lamacchia Realty, Inc. & ADHS, and their respective managers, officers, directors, agents and employees, harmless from any and all claims arising out of a lender's failure to approve, or denial of, a short sale.

By signing below, the Buyer and Buyer's Agent acknowledge that the Buyer and Buyer's Agent have read, understand and agree to the terms and conditions set forth in this Short Sale Acknowledgment. By signing below Borrower/Seller also acknowledges that they have read, understand and agree to all of the terms herein.

Borrower/Seller(s): ____

Borrower/Seller(s): ____

Buyers ____

Buyers: ____

Source:
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Contract Submission and Servicer Approval

Each type of short sale has different parameters for contract submission and approval, what closing costs are acceptable (or not acceptable) as well as response times. You must find out the procedure required by your loan servicer and then follow their directions explicitly.

Fannie Mae and Freddie Mac (Streamlined and Standardized) Short Sale

- Arm's-length transaction.
- **Your submission to the servicer must include:**
    - Fully executed purchase contract
    - Seller net sheet or preliminary closing disclosure
    - Borrower authorization form
    - Listing information, including an MLS sheet showing (1) that the property was on the market a minimum of 5 days (two of which were weekend days) and (2) showing "Active" in the MLS.
- The borrower/seller may not remain in the property as a tenant or later obtain title or ownership of property. However, if there is currently a tenant in the property, they may stay.
- Neither the buyer nor the borrower/seller may receive commissions from the sale of the property.
- All agreements and sales contracts must be disclosed to the servicer.
- All funds that change hands must be reflected on the closing disclosure and approved by the servicer.
- Deed restrictions will prohibit re-selling of the property within 30 days at any price or selling property for greater than 120% of short sale price within 31 to 90 days.

SUBMITTING CONTRACT TO THE SERVICER AND REGISTERING OFFER WITH FANNIE MAE

The listing agent submits the signed contract to the servicer and Fannie Mae now requests that listing agents register accepted offers with Fannie Mae, the investor on the mortgage. Registering the offer with Fannie Mae allows them to proactively work with the mortgage servicer to facilitate faster communications and decisions.

ACCEPTABLE SHORT-SALE CLOSING COSTS

1. Brokerage fees may be up to 6%.
2. Typical and customary local and state transfer taxes and stamps.
3. Title and settlement charges typically paid by the borrower/seller.
4. Wood-destroying pest inspection and treatment, if usual and customary.
5. HOA fees past due, if applicable.
6. Real estate taxes and other assessments, prorated to the date of closing.
7. Seller's attorney fees for settlement services typically provided by the title or escrow company.

UNACCEPTABLE SHORT-SALE CLOSING COSTS

These fees are unacceptable on the "seller side" but may be allowed on the "buyer side" of the closing sheet.

1. Fees paid to a third party by the borrower/seller to negotiate the short sale with the servicer.
2. Real estate sales commission paid to the borrower/seller or purchaser.
3. Buyer's discount points or mortgage loan origination costs.

SERVICER REVIEW OF OFFER AND DECISION

- The servicer must acknowledge the executed contract within 30 days and provide a decision within 60 days.
- The borrower/seller must be evaluated and determined to be eligible for a short sale before the offer can be reviewed (710 or "streamlined").
- The servicer may choose to counter the buyer's offer.

- If the offer meets Fannie Mae's minimum net proceeds, the servicer has the authority to approve the offer. If it is less than the minimum, Fannie Mae must review it.
- Once all information has been reviewed and approved, you will receive a final written decision on your submitted contract from the mortgage servicer. If approved, Fannie Mae will provide the borrower with a deficiency waiver.

SHORT-SALE AFFIDAVIT

The short-sale affidavit is a required form that must be signed and serves as a protection to Fannie Mae and Freddie Mac to pursue any party/parties that create a fraud as a result of participating in the short-sale transaction.

- **View the Fannie Mae Short-Sale Affidavit at:**
  singlefamily.fanniemae.com/media/document/doc/form-191

Non-GSE Traditional Short Sale

Consult with the servicer for its protocol for reviewing and approving short-sale contracts. The rules are the same, except for the following:

- Fannie and Freddie may allow tenants to stay in the property.
- Fannie and Freddie may include deed restrictions to prohibit "flipping".
- FHA Tiered net sales proceeds
- VA Compromise Assumptions

FHA Preforeclosure Sale (PFS)

ACCEPTABLE CLOSING COSTS

- HUD allows all reasonable costs of the sale, including up to 6% sales commission, local/state transfer tax stamp fees, and other customary seller's closing costs.
- HUD allows up to 1% of the buyer's mortgage amount for closing costs to be included in the "Seller's Costs" on the closing disclosure for all transactions that involve a new FHA-insured mortgage.

UNACCEPTABLE CLOSING COSTS

- Repair reimbursements or allowances
- Home warranty fees
- Discount points or loan fees for non-FHA financing
- Lender's title insurance fee

APPRAISAL AT THE TIME OF CONTRACT

The servicer/lender will order a standard as-is FHA appraisal to be completed within ten business days. After the appraisal is received, the file will be reviewed. If it falls in the required parameters, it can be approved by the servicer. If it does not, it may need approval by the investor and/or FHA, which may take more time.

REQUIRED NET SALES PROCEEDS

Tiered net sales proceeds required during the 120-day marketing period are applicable as follows:

- For the first 30 days of marketing, the sales contract must equal a minimum net sale proceeds of 88% of the as-is appraised fair market value.
- During the second 30 days of marketing, the sales contract must equal a minimum net sale proceeds of 86% of the as-is appraised fair market value.
- For the duration of the marketing period, the sales contract must equal a minimum net sale proceeds of 84% of the as-is appraised fair market value.

VA Compromise Sale

Upon receipt of an acceptable offer, the listing agent and/or the borrower/seller should contact the servicer and advise that they are in the process of submitting a compromise package. This package should contain the following information:

1. The sales contract signed by all parties with a contingency that reads: "This offer is contingent upon approval of a VA compromise sale."
2. Good faith estimate projecting closing costs. This document is usually prepared by the listing agent to facilitate processing (e.g., estimated closing disclosure).
3. Letter to the servicer requesting consideration of a compromise sale.
4. Financial data and supporting documentation.
5. Compromise Sale Agreement Application.

Note the following:

- On loans that originated on or before December 31, 1989, the borrower/seller should be prepared to sign a promissory note at closing agreeing to repay VA for the difference between the sales proceeds and the total debt. This may be waived in order to process the transaction and avoid a foreclosure sale (per state laws or other circumstances).
- A current VA appraisal must be obtained. If the buyer is obtaining a VA loan, the buyer's VA appraisal can be used provided the buyer will agree to the same. Otherwise, the borrower's/seller's servicer will have to complete a VA appraisal.
- Title is reviewed. In situations where there are second liens or other liens, the borrower/seller can request that the lien holder consider releasing the lien and converting it to a personal loan.
- A compromise assumption will not be processed without first receiving a statement from the servicer that they are willing to have their guaranty amount reduced by the amount of the claim payment.
- If it appears a compromise assumption is feasible, the buyer must qualify.
- Should the VA agree to pay the difference between the sales proceeds and the total debt to complete the compromise sale process, the portion of the homeowner's entitlement used to guaranty this loan will remain tied up until the VA is reimbursed in full.

Postponement of Foreclosure Proceedings

The foreclosure process is likely to continue while the property is on the market and while an offer is being reviewed (this is known as Dual Tracking), but most lenders will delay or stop foreclosure proceedings once the short sale is approved. Even when the Servicer informs you that the short sale is approved, and foreclosure is stopped, you must check with your county to make sure the property is not still accidentally included in the upcoming foreclosure sale list.

Occasionally there may be other ways to delay or stop the foreclosure process. It is a good idea to consult an attorney about legal options, which may include bankruptcy, or petitioning the court.

Fannie Mae and Freddie Mac (Streamlined and Standardized) Short Sale

- While the property is on the market and while the transaction is being negotiated, the foreclosure process may move forward.
- The servicer will determine if the foreclosure process should be suspended based upon how much time prior to the foreclosure sale date the package is received. The listing agent or the borrower's/seller's attorney should verify whether the foreclosure sale is being postponed.
- Once the short sale has been approved, the servicer must suspend the foreclosure sale to allow the short sale to close.

Non-GSE Traditional Short Sale

The foreclosure process may move forward while the property is on the market or offer is being negotiated. The timeline could continue even after the short sale has been approved. It is imperative that the listing agent or the seller's attorney work with the servicer to stop the foreclosure clock from reaching the point of a forced sale (foreclosure) to allow the short sale to close.

FHA Pre-Foreclosure Sale (PFS)

Once the borrower has been approved to participate in the PFS program, FHA will allow a postponement of the foreclosure sale for 120 days.

VA Compromise Sale

It is imperative that the listing agent or the borrower's/seller's attorney work with the servicer to stop the foreclosure clock from reaching the point of foreclosure to allow the short sale to close.

Cash Contributions, Incentives, and Subordinate Liens

Some of the short-sale programs have guidelines for assisting the borrowers/sellers with relocation expenses along with caps on what the servicers can require from them as cash contributions.

Note that retirement assets should not be included in calculations of cash contributions. But if the seller shared their retirement assets as part of the financial disclosure, then the lender might request a cash contribution even if they should not be entitled to it. Do not disclose retirement assets if you can avoid it.

Fannie Mae and Freddie Mac (Streamlined and Standardized) Short Sale

CONTRIBUTION REQUIREMENTS

The servicer must not request cash contributions and/or promissory notes where applicable law prohibits a borrower/seller contribution or if a borrower/seller:

- Qualifies for streamlined documentation, or
- Is an active duty military service member of the U.S. armed forces with PCS orders relocating the service member from the subject primary residence purchased by the borrower on or before June 30, 2012.

When the short sale is done under the imminent default standard, the servicer will evaluate the borrower/seller for the capacity to make a cash contribution if triggered by the borrower/seller cash contribution test described in the following section.

- The servicer will evaluate the borrower/seller for the capacity to contribute only if triggered by the borrower/seller cash reserve levels or future debt-to-income ratio tests described in the following section.
- If the servicer concludes that a borrower/seller has the capacity for either a cash and/or promissory note contribution, the servicer must use the guidance described in the next section for setting an initial request. The borrower's/seller's total cash and promissory note contribution must not exceed the total amount of the deficiency.

BORROWER CASH CONTRIBUTION TEST AND FORMULA

The servicer has the ability to ask for cash contributions if assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts) stated on Form 710 are:

- In excess of the greater of $10,000; or
- Six times the contractual monthly mortgage loan payment including principal, interest, and tax and insurance escrows (PITI).

If a borrower/seller has cash reserves of more than $50,000, the servicer will request written approval from Fannie Mae for the contribution amount. If the servicer determines that the borrower has the capacity to make a cash contribution, the servicer must initially request a contribution of 20% of the borrower's cash reserves, not to exceed the deficiency. If the servicer has any thought that the borrower/seller has moved money to another account, e.g., a friend or relative, it will automatically stop the short sale.

PROMISSORY NOTE TEST AND FORMULA

- The servicer will evaluate a borrower/seller for a promissory note if the borrower's/seller's future debt-to-income ratio ("back-end ratio") is less than 55%.
- The borrower's/seller's debt-to-income ratio is based on the borrower's/seller's future housing expense, which is calculated at 75% of the current payment.

RELOCATION INCENTIVE

- Owner-occupant borrowers/sellers who have no financial contribution requirements at closing will receive a $3,000 relocation incentive (unless there are employer or state funded assistance for moving).
- If the borrower/seller is 90+ days' delinquent, no financial contribution will be required (owner occupied, second home or investor) and the borrower/seller will receive $3,000 incentive.

SUBORDINATE LIENS

- Second mortgage payouts cannot exceed $6,000 total.
- If the second mortgage holder accepts payment, the second must release the borrower/seller from liability.
- Subordinate lien holders may not require a contribution from the agent or borrower/seller.

Non-GSE Traditional Short Sale

There are no specific guidelines on cash contributions, borrower relocation incentives, or subordinate liens.

FHA Pre-Foreclosure Sale (PFS)

CASH CONTRIBUTIONS

- Cash reserves include all non-retirement liquid assets available for withdrawal or liquidation from all financial institutions.
- If the borrower/seller has cash reserves greater than $5,000, the borrower/seller will be required to contribute 20% of the total amount exceeding $5,000.

RELOCATION INCENTIVES

- Owner-occupant borrowers/sellers who sell their properties using the PFS option are relieved of their mortgage obligation and are entitled to a consideration of up to $3,000.
- The owner-occupant borrower/seller may elect to apply the entire amount of the $3,000 consideration or a portion of it to resolve junior liens and to offset the sales transaction costs not paid by HUD.
- Only those borrowers/sellers who are not required to make minimum cash reserve contribution are permitted to receive the remaining amount of the $3,000 consideration.

SUBORDINATE LIENS

- All additional liens against the property must be released.
- A lien holder that demands a payment to release its lien must submit a written statement, and an agreement to release the lien if that amount is paid.
- HUD will allow an amount up to $1,500 for the discharge of junior liens.

VA Compromise Sale

VA has no specific guidelines on cash contributions, borrower relocation incentives, or subordinate liens.

Escalation Processes

If you are working a Fannie Mae short sale and you have one of the following issues you will need to escalate the short sale:

1. The offer has been submitted more than 30 days prior and there is no response.
2. A problem arises with a contract and you are in negotiations with the servicer.
3. There is a policy issue with the handling of your short sale.
4. If you need to contest value (if no offers are being received OR there is an accepted agreement and there are value issues).

The escalation process is outlined at: www.homepathforshortsales.com/hpss/escalate.

You will need the same information that was required under "Contesting a Value Assigned by the Servicer or Fannie Mae."

Freddie Mac requires that all servicers dedicate a toll-free number that is published to borrowers/sellers for the purpose of escalation.

For non-GSE traditional short sales, FHA Pre-Foreclosure Sales (PFSs) and VA Compromise Sales, there are unofficial processes in place for escalation of the file to someone who can attempt to resolve the stalemate.

Please note:

- Do not escalate the file prematurely. Work with the negotiator until there is obviously no way to resolve the issue.
- If the escalation is due to pricing, have your comparables, repair estimates, and justification for an increase in price ready prior to escalation.

Escalation can slow down the process. Be sure there are no other alternatives and that your borrower/seller has the time to work through the escalation process.

Servicer Short-Sale Approval Letters

When servicers approve a short sale, they will notify the borrower/seller in writing (see Figures 5.1 and 5.2 for samples). The borrower/seller and his or her finance, tax, and legal professionals should review the approval letter closely both for the terms disclosed and for items not mentioned. The approval letter should also be reviewed for any items requiring clarification.

Figure 5.1: Sample Servicer Approval Letter #1

> Date: July 1, 2017
>
> Dear Borrower:
>
> Servicer A agrees to release its security interests in the above collateral upon receipt of $1,000 in certified funds. This amount is for the release of investor A's security interest only. Please contact your tax advisor regarding any tax ramifications from this transaction.
>
> Servicer A requires that we approve a final settlement statement prior to closing that shows a balance to be paid to Servicer A of no less than $473,285, which will show a real estate commission of no more than $28,397 which is to be included in closing costs not to exceed $52,412.75. Closing shall take place no later than July 10, 2017.

In approval letter #1, note:

- The servicer is releasing security interest only (mortgage).
- There is no mention of releasing the promissory note.
- Clarification is needed to determine if the seller has to pay the deficiency.
- The date of the approval and date of closing.

Figure 5.2: Sample Servicer Approval Letter #2

Dear Borrower:

This letter will serve as Bank C's demand for payment and advises you that Bank C and its investors and/or insurers have agreed to accept a short payoff involving the above-referenced property (the Short Sale transaction). This demand should be used by the closing agent as our formal demand statement. No additional statement will be issued. This approval is exclusive to the offer by the buyer referenced in this letter. The conditions of the approval are as follows:

1. Closing must take place no later than February 5, 2017 or this approval is VOID.
2. The approved buyers are Bob and Carol Smith and the sales price for the property is $260,000.
3. Another buyer cannot be substituted without Bank C's prior written approval.
4. Proceeds to Bank C to be no less than $230,733.51.
5. Total closing costs, including real estate commission, not to exceed $29,266.49. This figure includes $1,000 for second lien and $3,000 for third lien.
6. Termite reports and repairs not to exceed $0.00.
7. Real estate commission not to exceed $13,000.00.
8. This property is being sold in "AS IS" condition. No repairs will be paid for out of the proceeds unless specifically stated otherwise.
9. The sellers will not receive any proceeds from this short sale transaction. If there are any remaining escrow funds or refunds they will not be returned to the seller, they will be sent to Bank C to offset the loss.
10. Bank C or its investors will not pursue a deficiency judgment if the short sale closes on the referenced loan. If the short sale does not close, then the referenced loan secured by the Note and Security Instrument shall remain in full force and effect and we will pursue all remedies under the Note and Security Instrument.

In approval letter #2, note:

- The bank is forgiving the deficiency on this.
- The approval date and closing date.
- Termite issue.

Fannie Mae Deficiency Waiver

It is important that the borrower/seller take responsibility to be certain there is a written waiver of deficiency from the servicer when closing on the short-sale transaction. Although a borrower/seller may be bringing funds to closing to contribute to the investor's bottom line, there still remains a deficiency, and to protect the borrower/seller from receiving a judgment of that deficiency, a written waiver may need to be in place. All of this depends on the recourse debt laws of the state in which the property is located.

Why Short Sales Fail

Historically, short sales were failing primarily because the servicers were not prepared to deal with them. They took too long to respond and did not have enough manpower to process these transactions, nor did they have a desire to do so. Although there is no guarantee that the servicer will approve the short sale, listing agents have a responsibility to create a contract that has a reasonable chance of closing and to monitor the transaction throughout the approval process. In today's market, short sales are failing because agents are not aware of the process and forms needed, and because buyers and sellers lack qualification and do not understand the negotiation considerations. It is imperative that agents take responsibility for the success or failure of short sales to the extent that we have control.

Agent and Servicer Considerations for Short-Sale Failures

AGENT CONSIDERATIONS

- The borrower/seller did not have valid financial hardship.
- The buyer didn't do his or her due diligence.
- The buyer wasn't qualified.
- **The contract did not have reasonable chance of closing. Did the buyer:**
  - Offer fair price?
  - Tender earnest money?
  - Complete inspections?
  - Make mortgage application?
- Improper document submission (Equator).
- Unexpected costs come up at settlement that were not included in estimate prior to approval.
- Unexpected liens/judgments not discovered earlier because title search was not done earlier.
- There was a lack of effective and timely communication with servicer. Good communication is defined as 2/3x per week.
- Did the seller cooperate with document collection/submission, or are they simply refusing to continue with the transaction?
- Did the buyer stop the process because they didn't have accurate timeline expectations?

SERVICER CONSIDERATIONS

- The BPO came in high and the servicer thinks the offer is too low.
- The servicer took too much time and the buyer walked.
- Junior lien holders or PMI refused.

Activity: Overcoming Short Sale Obstacles

Drawing on your experience, choose a partner and take 10 minutes to complete the worksheet by solving common short sale problems.

If you feel comfortable, share your findings with the class.

Junior Lien Holder Says "No"

Short-Sale Package Not Submitted Properly

Offer Too Low

Buyer Not Strong Enough

Inaccurate BPOs

Servicer Took Too Long and Buyer Backed Out

Doesn't Meet Servicer or Investor Criteria

Topics and Trends in Short Sales and Foreclosures

Bonus Module Learning Objectives

- Understand how topics and trends in short sales and foreclosures change the landscape of the industry.
- Identify how events such as the 2008 Housing Market Crisis and the recent COVID-19 global pandemic impact short sales and foreclosures.
- Explore how you plan to adapt your business to respond to trends in the short sales and foreclosures market.

Topics and Trends with Anthony Lamacchia

- Watch the video at bit.ly/SFRTrendsVideo and complete the final exercise.

Activity: Final Reflection

Take a moment to review and answer the following reflection questions.

What are current trends in your market?

How do you plan to realize those trends in your market?

Where will you look to keep yourself up-to-date on the latest trends in order to maintain, build up, or increase your business?

Resources

Sample Authorization to Release Information Form

Date: ___________________ **Loan #:** ____

Borrower: ____

Borrower: ____

Property Address: ____

Seller consents that Lien Holder and its representatives may supply and communicate any loan, financial or other information of Seller, confidential or otherwise, with any of the following information in the transaction and their representatives:

- ❑ **Seller's Attorney or Representative (names):** ________________________
- ❑ **Seller's Broker and Agent (names):** ________________________________

Borrower's Signature: ____

Borrower's Signature: ____

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Freddie Mac Form 710

Visit the link below to view the Freddie Mac Form 710:

- http://www.freddiemac.com/singlefamily/service/docs/form710.pdf

HomePath Online Resources

Visit the link below for real estate professional resources from HomePath:

- www.homepath.com

Websites

Market Statistics

- **Research and Statistics**
  National Association of REALTORS®
  www.nar.realtor/research-and-statistics

- **American Housing Survey**
  U.S. Department of Housing and Urban Development
  www.huduser.gov/portal/datasets/ahs.html

- **Housing and Economic Research**
  Freddie Mac
  www.freddiemac.com/research

- **Foreclosure Trends Report**
  RealtyTrac
  www.realtytrac.com/statsandtrends/foreclosuretrends/

- **National Housing Survey**
  Fannie Mae
  www.fanniemae.com/portal/research-insights/surveys/national-housing-survey.html

- **House Price Index**
  Federal Housing Finance Authority
  https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx

- **Local Area Unemployment Statistics (LAUS)**
  U.S. Dept. of Labor, Bureau of Labor Statistics
  www.bls.gov/lau

- **Housing Trends**
  CoreLogic
  http://www.corelogic.com/about-us/research.aspx#container-HousingTrends

- **OCC Mortgage Metrics Report**
  Office of the Comptroller of the Currency
  https://www.occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/index-mortgage-metrics.html

Market News

- **DSNews**
  www.dsnews.com

- **Mortgage Servicing News**
  www.mortgageservicingnews.com

National Programs

- **Consumer Financial Protection Bureau Know Before You Owe Initiative**
  https://www.consumerfinance.gov/know-before-you-owe/

- **Good Neighbor Next Door Program**
  https://www.hud.gov/program_offices/housing/sfh/reo/goodn/gnndabot

- **Home Affordable Modification Program (HAMP)**
  www.makinghomeaffordable.gov

- **Home Affordable Refinance Program (HARP)**
  www.makinghomeaffordable.gov

- **HomePath® by Fannie Mae**
  www.homepath.com

- **Home Path Short Sales Portal**
  https://www.homepathforshortsales.com

- **HomeSteps® by Freddie Mac**
  www.homesteps.com
- **National Community Stabilization Trust (NCST)**
  www.stabilizationtrust.com
- **Neighborhood Stabilization Program (NSP)**
  https://www.hudexchange.info/programs/nsp/
- **U.S. Department of Housing and Urban Development**
  www.hud.gov