Short Sales

An Introduction

Rory B. Weiner, Esq.

Tampa
601 Bayshore Boulevard, Suite 150
Tampa, Florida 33606
813-681-3300
rweiner@roryweiner.com

Brandon
671 W. Lumsden Road
Brandon, FL 33511

What Is A Short Sale?

A “short sale,” also called a “pre-foreclosure sale,” is the sale of a home for a price less than the amount owed on the loan. For example, Tom owes $200,000 on his home loan and he gets a contract for sale for $125,000; if the lender accepts this price, then the lender receives less than, or an amount “short” of full loan amount. In this way, Tom sells his house and avoids foreclosure. However, Tom may owe the balance on the note. In some instances, the loan balance is forgiven and in other instances the lender will negotiate with the borrower for an reduced payoff.

When A Short Sale Is The Right Choice

This depends on the seller’s goals. If the goal is to remain in the home then a short sale is not a good option. If you wish to remove yourself from a bad financial situation with the least amount of damage to your credit, then most likely the answer is “Yes.” Banks are increasingly willing to work with borrowers faced with a financial hardship and accept a discounted payoff on the loan. If a seller is faced with a financial hardship and he is in default on his home loan, then the bank would prefer to settle the matter with as short sale as opposed to receiving title of the property through foreclosure. This solution is also good for the lender since the lender makes more money by accepting a short sale than by taking title to the property by foreclose. If the lender takes the title by foreclosure, then it is responsible for real estate taxes, insurance, maintenance and marketing the home for sale.

Costs and Fees Associated With A Short Sale.

In most cases, the seller pays little to nothing out of pocket. If your lender approves the short sale, it will pay realtor commissions, settlement fees, unpaid taxes, title insurance and in some cases repair expenses. However, lenders detest paying homeowner association fees. Always advise a seller to keep up with HOA payments. To protect the seller, the sales contract should include the following clause. "Seller’s agreement to sell is subject to approval by existing lender of a Short Sale at no cost to Seller. Seller shall not be required to deposit funds to close." Remember, lenders approve Short Sales and accept the resulting losses in an effort to avoid bigger losses through foreclosure.

How To Start A Short Sale.

A potential seller should speak with a real estate attorney or a real estate agent that is experienced in the short sales process. The very first step is to get your home listed by a real estate agent as a short sale and secure the best contract price possible. Then you will forward the contract to your lender for a short sale approval. You will also submit to the lender your current financial information and a financial hardship letter as part of the approval process. The approval process can take up to 60-90 days. The attached flow chart includes a time line and a list of documents to submit.

Don’t Deed Property to a Complete Stranger to Avoid the Hassles.

The deed to the property is the proof of title or ownership. Transferring the ownership of the seller’s property to someone else does not discharge the obligation to pay off the loan. The lender can still foreclose on the property and take the title from the person to whom you transferred it. In addition, the lender can still seek a deficiency judgment against the seller for the amount you owe on the debt. In addition, if you deed your property to someone else, you give up control of the property since you will no longer be the owner. Please be wary of anyone or any company that asks you to deed the property to them. Do not deed your property to anyone unless you have consulted with a real estate attorney.

Types of Hardships Lenders Consider

What hardships are acceptable vary from bank to bank. Generally, if the financial hardship is real and the bank believes the loan is delinquent as a result of no fault of your own, the bank's loss mitigation department will approve the short sale. Therefore, it is vital for the seller to submit a strong hardship letter by including specific details of his or her situation. Canned or boilerplate letters of hardship may not work. The hardship letter sets the tone for the entire file. Here are a list of "hardships" that banks frequently accept.

- Family illness or injury
- Illness or injury in the extended family – particularly if it forces relocation
- Job relocation when the property is equity deficient
- Job loss or significant income loss
- Small business downturn
- Divorce or split of domestic partners
- Adjustment in mortgage payment or unforeseen increase in living expenses

If There Is No Default, Then A Short Sale Is Unlikely.

Generally, banks will not consider a short sale unless you are in default of your loan. If you anticipate being in default, some banks will accept the paperwork to begin your file.

Two Loans are not Too Many

A seller can do a short sale if he or she has two loans (e.g., a first and an equity loan). However, if your loans are with different banks, each bank will have to approve the short sale. For example, if you have a first mortgage with Bank of America and a second with Chase, it is equally important to submit all the necessary approval paperwork to Chase as it is to Bank of America. Generally, the second mortgage will agree to the short sale even though it is getting a fraction of what you owe it. Nevertheless, you must still get the second mortgage's approval.

Short Sales Adversely Affect Credit Scores But Less than Foreclosures.

The key here is to avoid losing your home to foreclosure, which can adversely affect your credit score as much as 250 points. By nearly any measure, a completed foreclosure is the most damaging event to your credit status - worse than bankruptcy, according to some banks. In the course of getting your short sale approved you may miss your mortgage payments or a bank may begin a foreclosure action against you; both events will adversely affect your credit to some extent. However, by avoiding losing your home to foreclosure and retiring the debt by a short sale, you will likely be able to resume normal borrowing (car loans, credit cards, consumer goods and such) relatively quickly

The Deed in Lieu of Foreclosure Option.

A deed in lieu is the process where you offer and the banks accepts the title of your home up front prior to and instead of making the bank go through the complete foreclosure process. However, banks rarely agree to these unless you have been unsuccessful in short selling your home for a few months and there is no more than one lien on the property.

Short Sales Can Be Completed Even after a Foreclosure Complaint is Filed

Many short sales are in foreclosure. Once a foreclosure begins, on average it takes six months or more for the bank to finish the process and receive the title. This allows the homeowner time to short sell the property. Once sold, the bank will dismiss the foreclosure complaint and cancel the lis pendens. If a seller is served a foreclosure complaint, he or she should speak with a real estate attorney immediately to discuss her options.