

SELLER FREQUENTLY ASKED QUESTIONS REGARDING SHORT SALES

HOW DO I KNOW IF I AM ELIGIBLE FOR A SHORT SALE?

Your short sale eligibility is based on a number of determining factors including, but not limited to your reason for having to sell, your financial situation, and your specific lender's requirements. Your eligibility for potential short sale approval will be analyzed during your consultation.

CAN ANY PROPERTY BE SOLD IN A SHORT SALE?

In most cases, the answer is yes. Whether it is your primary residence, a second home, or an investment property, a short sale can be approvable depending on your specific lender requirements and short sale guidelines.

WHY WOULD A LENDER AGREE TO A SHORT SALE?

Not only are most lenders agreeing to a reasonable short sale offerings, they are encouraging their defaulting buyers to consider and/or pursue a short sale. They agree to the short sale so they do not have to foreclose on the property. There is much higher costs to a lender to go through the foreclosure process, acquire and maintain the property, and then resell it for a statistically 20% to 40% lower price than the typical short sale approvable offer.

DO I HAVE ANY COSTS IN DOING A SHORT SALE?

Your lender will typically pay all reasonable real estate commissions, title services and settlement fees, attorney negotiation fees, as well as real estate taxes due at the time of closing. A seller commonly has only the cost of minor recording fees, water bills, or other small costs necessary to clear the title. It is also common for a seller to have zero expenses in a short sale closing.

WHY DO I NEED AN ATTORNEY IN THE SHORT SALE PROCESS? I KNOW SOMEONE THAT JUST HAD THEIR REAL ESTATE BROKER HANDLE THE SHORT SALE.

A real estate broker or agent can communicate with your lender regarding the value of the property and the buyer's offer. They cannot, however, within the scope of their real estate license, provide advice regarding which course of action is best for you. There are many decisions you may need to make throughout the process in which you will want and/or need legal counsel. For your legal protection, it is imperative that you have an attorney review documentation you provide to the lender as well as interpret any legal documents the lender requires you to sign including, but not limited to, the Arm's Length Affidavit and the Short Sale Approval Letter. It is possible in some short sales that, even after lender approval, it may not be in the seller's best interests to close on the transaction. You want someone advocating for only you. Your attorney represents only your best interests in the transaction. Most real estate professionals understand their limitations in advice they can or cannot provide and recommend their short sale sellers obtain good legal counsel and representation.

WILL MY LENDER ACCEPT THE SHORT SALE AMOUNT AS “PAYMENT IN FULL” ON MY LOAN?

Maybe. Most first mortgage lenders will “waive the deficiency balance” as terms of the short sale approval. In those cases, the remainder of the debt is forgiven after successful closing of the short sale transaction. In some short sales, the lender will only waive the deficiency if the seller contributes some funds to the lender’s loss as part of the terms of the approval letter. In rare cases, the lender may approve the short sale for release of mortgage lien only and not release the seller from the debt. In those cases, because of Minnesota’s foreclosure statutes, the seller may choose not to close on the short sale and simply let the lender take the property back. This is another reason why legal representation and legal counsel is so important for short sale sellers.

WILL I OWE INCOME TAXES ON THE FORGIVEN DEBT?

It depends. Through both short sale or foreclosure, it is likely your lender will provide you with a 1099C that could be potentially taxable income. If a seller is insolvent at the time the debt is forgiven, they will not owe tax on the 1099 income. It is important that you consult your personal tax professional to see where and how any current tax laws apply to your specific situation.

CAN A SHORT SALE BE ACCOMPLISHED IF WE HAVE FILED BANKRUPTCY?

If the bankruptcy is Chapter 7, the homeowner must wait until it is discharged before short sale offer can be considered by their lender. Despite the fact that a short sale should be negotiable during a Chapter 13 bankruptcy plan, in practice the lenders have exhibited a refusal to cooperate in those negotiations. After discharge of either, the short sale tends to be easier to get approved, due to the homeowner being released of the debt obligation through the bankruptcy.

WILL MY LENDER APPROVE A SHORT SALE IF THE PROPERTY IS IN FORECLOSURE?

The foreclosure status of the property may or may not affect your ability to be considered for short sale. The entire foreclosure process has many steps. When a homeowner has defaulted on their mortgage, a lender likely will eventually turn the loan over to an attorney for foreclosure proceedings at which time the foreclosing attorney will contact you informing you of your rights to bring the mortgage current. If you are unable to do so, the attorney will then schedule a sheriff sale. Minnesota has a six month redemption period in which you can redeem the property after the sheriff sale has occurred. Most lenders (servicers and/or investors) will consider a short sale offer during the redemption period. If approved, the short sale must close prior to the expiration date of the redemption period. Some lenders (servicers or investors) are not willing to consider a short sale during the redemption period. It is vitally important that the homeowner call their lender on their first mortgage to see if short sale can be considered in the redemption period if property is in foreclosure.

WHAT IF A SHERIFF SALE HAS BEEN SCHEDULED? CAN WE GET THAT POSTPONED?

In some cases, a lender will postpone the sheriff sale so the short sale process can continue. However, if they are not willing to do so, a homeowner has the right to postpone the sheriff sale themselves. If the property is homesteaded, you can postpone the sheriff sale for five months by filing certain documents with the county offices and foreclosing attorney. This must be done at least fifteen days prior to the date sheriff sale is scheduled. By postponing the sheriff sale yourself for five months, the redemption period is decreased from six months to five weeks. That postponement can make the difference of getting the short sale approved or not.

WHAT ARE MY ALTERNATIVES TO A SHORT SALE?

A short sale may be your best option for curing your current mortgage problems. However, the alternatives available to you depend on your most important needs and goals as well as your financial situation. Alternatives to short sale are limited if you are in serious default and have an inability to bring the mortgage current. A loan modification reducing your monthly payment may allow you to stay in your home. In some loan modifications, missed payments are added to the principal balance. If you are in serious default and have an inability to make up the missed payments, then the only option to short sale is likely losing the property to foreclosure or pursuing a “deed in lieu of foreclosure” with your lender. Other alternatives available are to stay in the home if you are able to become current and stay current on mortgage payments, rent the property in hopes the rents obtained will cover the mortgage payment, or sell the property and bring enough cash to closing to cover the mortgage debt(s).

WHAT ARE THE BENEFITS OF SHORT SALE VS JUST “WALKING AWAY” AND LETTING THE LENDER FORECLOSE?

As everything else, benefits and consequences of either can be “case by case.” Each homeowner has to decide what is best for them specifically. Commonly homeowners choose short sale over foreclosure for the following reasons: credit restoration timelines; an ability to come to a settlement with junior lien holders (ie: 2nd mortgages); no foreclosure on public record limiting credit availability or employment opportunities; avoiding the embarrassment of signs in the windows, public notifications of foreclosure, and sheriff’s sale of the property; the ethical decision to “do the right thing.” Today, many lenders are offering relocation assistance funds of \$3,000 to \$10,000 to sellers at the short sale closing. See the blog on this sight or details of those programs to see if you may be eligible.

WHAT IS MEANT BY “ARM’S LENGTH” TRANSACTION?

Most short sale lenders require that all parties to the transaction (ie: sellers, buyers, and agents) sign an affidavit warranting that the transaction is “arm’s length.” The specific lender’s definition of “arm’s length” can vary lender to lender and is detailed in the affidavit. In most cases, the lender’s definition of an “arm’s length” transaction is that the buyer and seller do not have any familial or previous business relationship. They also usually require that the seller cannot remain in the property, not as a tenant, nor future owner. In other words, a friend could not buy your home on a short sale and then either rent it back to you or sell it back to you. The affidavit commonly requires that the buyer’s agent also has no familial or prior business relationship with the seller.

I AM CURRENT ON MY PAYMENTS, BUT SIMPLY OWE MORE THAN THE HOUSE IS WORTH. CAN I DO A SHORT SALE AND STAY CURRENT ON MY MORTGAGE PAYMENTS TO PROTECT MY CREDIT?

As with most short sale related questions, the answer is “it depends.” Some mortgage investors such as HUD (FHA or VA loans) require that the homeowner has a financial hardship and is in default before they will approve a short sale to close. Some investors, such as Fannie Mae and Freddie Mac have requirements that the seller is either already in default or that the seller’s financial situation proves that default is “imminent.” Most people without financial hardship cannot prove that default is imminent and cannot be considered for short sale unless they are in default on their mortgage payments. Default requirements are case by case based on your specific mortgage investor guidelines and requirements.

I HAVE TWO MORTGAGES ON THE PROPERTY. WHY WOULDN'T I JUST WALK AWAY FROM THOSE DEBTS, AND LET THEM FORECLOSE?

According to Minnesota statute, if a lender forecloses via advertisement, they give up the right to pursue the homeowner for the outstanding debt. However, it is only the foreclosing mortgage that has given up that right. Any mortgages that did not foreclose, lose their mortgage lien rights at the end of the redemption period, but still have their collection rights under the promissory note that was signed at the time the mortgage was acquired. Therefore, the homeowner is still responsible for the full balance to any mortgages that did not foreclose. Even if you have two mortgages with the same lender, you would still owe the full balance on any that did not foreclose. A short sale provides you with the opportunity to negotiate a settlement with any junior mortgages. Those settlements can be as generous as full waiver of deficiency balance at no out of pocket expense to the short sale seller. Some require some payment from the seller for release of the balance of the debt. And, in some cases, a junior mortgage will simply release the lien in the context of the short sale and work out a settlement with the homeowner after the short sale closes. In many cases, an approved short sale can help the homeowner avoid bankruptcy that may have been their only remedy to that debt without the short sale.

I HAVE HEARD THAT LENDERS USUALLY REQUIRE THAT A SHORT SALE SELLER PROVE THEY HAVE A "HARDSHIP." WHAT DOES THAT MEAN?

A hardship defined by most lenders is the term for a financial situation that the seller has found themselves in that either forces the sale of the "underwater" property or has caused the seller to be unable to continue to make the mortgage payments. Lender's list of acceptable hardship reasons include, but are not limited to: job loss, income loss, excessive credit card debt, medical bills, divorce, job transfer, death of a wage earner, mortgage payments increasing due to adjustable rates, etc.

WHAT STEPS SHOULD WE TAKE TO PURSUE A SHORT SALE?

1. Call 763-450-1639 to schedule your no charge attorney consultation to find out if the short sale is your best option. Complete the Pre-Consultation Questionnaire and email to shortsaledocs@mzlaw.us or fax to 763-447-6458.
2. Choose a great real estate agent. Selecting someone with experience and education in short sales is very important. Short sales are marketed differently, and when done properly, can move quickly.
3. Complete your short sale package and provide to the law firm at time of listing.
4. Submit the deal to the bank. We will handle this part. Once you sign a purchase agreement, we will submit the offer along with all supporting documents to your lender(s) for short sale approval and negotiate the short sale to the best possible outcome for you.

BUYER FREQUENTLY ASKED QUESTIONS REGARDING SHORT SALES

ARE SHORT SALE PROPERTIES A “GOOD DEAL?”

Short sales get approved only if buyer’s offer is at or very near fair market value as determined by appraisal or broker price opinion done by seller’s lender. Therefore, short sales are only approved and closed at today’s value.

WHY WOULD I WANT TO MAKE AN OFFER ON A SHORT SALE VS A BANK OWNED PROPERTY?

Either type of bank mitigated sale will still require fair market price from buyer. The benefit to buyer of a short sale vs bank owned property is likely condition of the property and required condition disclosures by the current seller. If a bank owns the property, it may have sat vacant for an extended period of time and the bank does not have to disclose any known or unknown material facts regarding the property. Purchasing a bank owned property is definitely “buyer beware.”

WHEN CAN I EXPECT TO HEAR IF MY OFFER ON A SHORT SALE IS APPROVED?

That depends on a number of factors including but not limited to number of mortgages on the property, whether or not there is a Mortgage Insurance Company and/or underlying investor that has to approve the short sale and also the timelines it takes for a specific servicer, MI company, or investor to complete their normal approval process. Each can be different based on their staff available in the short sale department, work load for each employee, and total number of short sales they are working on. Almost all short sale offers are considered on a “first in, first out” basis. That being said, with most servicers today, the average short sale takes 8-12 weeks to get approved once the offer has been submitted to the seller’s lender. To see the step by step short sale approval process.

WHAT ARE THE CHANCES MY SHORT SALE OFFER WILL BE APPROVED BY THE SELLER’S LENDER?

If your offer is at fair market value and whoever is negotiating the deal for the seller is experienced and knowledgeable in their process, you have a better than 90% chance that your short sale will get approved. You just have to be patient and let the process run its course. Stop looking at other properties, you have committed to a binding contract with this seller according to the terms of your purchase agreement.

WHEN SHOULD I PROVIDE THE EARNEST MONEY?

Provide the agreed upon earnest money to be deposited at the time the purchase agreement is accepted by the seller. The deposit of earnest money guarantees that you have a binding contract with the seller. If you do, only your offer will be submitted to seller’s lender and that offer stands until it is approved or declined by the seller’s lender or time periods in the purchase agreement run out. Any other offers received by the seller would be considered “back up offers” and would not be submitted to seller’s lender until your offer had run its course. Without deposited earnest money, your contract with the seller may not be binding. Seller could entertain other offers and, if superior to yours, present the better offer to their lender at which time, you would be out of the deal all because you didn’t provide the earnest money at time of the purchase agreement.

WHEN SHOULD I HAVE THE HOUSING INSPECTION DONE?

As the buyer, it is decidedly in your best interests to do the inspection at the time of the purchase agreement and not wait until after the short sale has been approved. The benefits to you are two fold. The obvious benefit is if, as a result of the inspection, you no longer want the property, you aren't wasting 2-3 months of your time to find out this is not the property for you. The most important benefit to you for doing the inspection at the time of the purchase agreement applies if you still want the house after the known inspection results. It is critical that you know the condition of the property at the time the offer is made so your offered price is based on that known condition. If, as a result of the inspection, you need to lower your offered price, you can do so prior to the offer being submitted to seller's lender. If you wait until after the short sale is approved to have the inspection done, it is too late to adjust the price. The lender will not allow for price adjustments after the short sale is approved. Have the inspection completed prior to the offer being submitted to seller's lender to determine the value of the property based on its condition and the maximum price you are willing to pay for that property.

REALTOR FREQUENTLY ASKED QUESTIONS REGARDING SHORT SALES

WHY SHOULD I INVOLVE AN ATTORNEY IN MY SHORT SALE BUSINESS?

Most simply, your seller will have questions that you are not allowed to answer within the scope of your license.

WHAT ARE THE BENEFITS TO THE AGENT WHEN SELLER IS REPRESENTED BY THE LAW FIRM IN THE SHORT SALE NEGOTIATIONS?

Besides success rates, the most important reasons for an agent to hand off the short sale negotiations to seasoned professionals is that Markve and Zweifel Law Firm transfers both the time commitment and the legal liability of the negotiations from the listing agent to the attorneys. Experience in problem solving of complex short sale negotiations can often make the difference of approval, closing, and earning a commission or not. When you have the aid of professionals that have successfully negotiated over 2,000 short sales, the likelihood of successful approval and closing increases exponentially. You can use your valuable time bringing in new business while the law firm is completing your short sales.

AT WHAT PRICE SHOULD I LIST THE PROPERTY? SHOULD SELLER'S MORTGAGE AMOUNT BE A DETERMINING FACTOR?

Regardless of what is owed against the property, it is important that you list the property at fair market value as determined by you through your Comparative Market Analysis. Then, if lack of activity or lack of buyer interest warrants, you reduce the price in small increments until you get an offer, just like you would do in a traditional short sale. Remember, every day your seller is in default, their credit drops further and they are closer to foreclosure. Your seller is trusting you to get this done as quickly as possible.

WHAT COMMISSIONS CAN I EXPECT TO EARN ON A SHORT SALE? DO LENDERS TRY TO REDUCE COMMISSIONS?

Different investors have set commission rates they will allow to be paid from their sale proceeds and, in most cases, that percentage is not negotiable. On any government mortgages, (ie: FHA, VA, or conventional with FNMA or Freddie Mac) you will receive 6% commission. Those government backed mortgages comprise approximately 80% of all home mortgages in the US. The other 20% of home mortgages are either portfolio loans or have private investors. In those cases, there is a possibility that the maximum commission allowed by that investor's guidelines is 5% and not negotiable.

SHOULD SELLER REQUIRE DEPOSITED EARNEST MONEY AT TIME OF PURCHASE AGREEMENT?

Seller should not accept a short sale offer from a buyer unwilling to deposit earnest money. Once offer has been sent to seller's lender, showings all but cease. It is critical to seller's interests that earnest money be deposited to prove buyer is earnest. Deposited earnest money also prohibits buyer from walking away from the transaction without notification given to seller via the cancellation of purchase agreement.

WHEN SHOULD THE HOUSING INSPECTION BE COMPLETED?

It is in both buyer's and seller's best interests for inspection to be done prior offer being submitted to seller's lender. Benefit to the seller is that we find out immediately if buyer is going to cancel the purchase agreement due to unfavorable inspection results saving seller critical market time. It is in buyer's best interests to do inspection at time of purchase agreement so they know the condition of the property and adjust their offered price accordingly, if necessary, due to unfavorable inspection results. If buyer waits for short sale to be approved, then does inspection and wants to lower their offer, it is too late. Seller's lender will not lower their approved price based on inspection results acquired after the short sale has been approved. Seller should require inspection to be completed before offer is submitted to their lender.

WHY DOES IT TAKE SO MANY WEEKS FOR SELLER'S LENDER TO APPROVE BUYER'S OFFER?

The reason is simply that the lender is not only approving buyer's offer. The buyer's offer is the last thing they examine. Through several reports ordered and analyzed by seller's lender, the negotiator must first examine seller's financial situation to see if they will approve a short sale for this seller and under what terms they will approve it. Seller's lender also examines the title work on the subject property to make sure the transaction is closeable if they continue with the short sale approval process. They order tax returns from the IRS and credit reports on the seller to verify that financial information provided by the seller is factual. An appraisal or broker price opinion is ordered and analyzed so seller's lender knows the value of the property. Lastly, they determine if buyer's offer is acceptable based on their value. Once all that is completed, the file then commonly gets forwarded to Mortgage Insurance Company (if applicable) for approval, and lastly to the investor for final approval. With most mortgage servicers today, that process takes 8-12 weeks for seller's lender to complete.

CAN A SHORT SALE BE ACCOMPLISHED IN THE REDEMPTION PERIOD?

As with many questions relating to short sales, the answer is “it depends.” Some mortgage servicers and investors will not work with short sales in the redemption period. It is important for listing agent to know which servicers and investors will or will not consider a short sale in the redemption period before they waste their time and money listing a property for short sale after sheriff sale has occurred. Currently, VA mortgages cannot be considered for short sale after the sheriff sale has occurred and FHA or Freddie Mac conventionals can only be approved for short sale in certain situations if sheriff sale is imminent or has already occurred. Agent should consult our law firm before listing a short sale property in the redemption period.

WHAT IF A SHERIFF SALE HAS BEEN SCHEDULED? HOW CAN WE GET THAT POSTPONED?

In some cases, a lender will postpone the sheriff sale so the short sale process can continue. However, if the lender is not willing to do so, a homeowner has the right to postpone the sheriff sale themselves. If the property is homesteaded, the homeowner can postpone the sheriff sale for five months by filing certain documents with the county offices and foreclosing attorney. This must be done at least fifteen days prior to the date sheriff sale is scheduled. When the homeowner postpones the sheriff sale, the redemption period is decreased from six months to five weeks. That five month postponement can make the difference of getting the short sale approved or not.

CAN A SHORT SALE BE ACCOMPLISHED IF SELLER HAS FILED BANKRUPTCY?

If the bankruptcy is Chapter 7, the seller must wait until it is discharged before short sale offer can be considered by their lender. Despite the fact that a short sale should be negotiable during a Chapter 13 bankruptcy plan, in practice the lenders have exhibited a refusal to cooperate in those negotiations. After discharge of either, the short sale tends to be easier to get approved, due to the homeowner being released of the debt obligation through the bankruptcy.

SOME PEOPLE I KNOW DON'T WANT THEIR HOUSE ANYMORE AND WANT TO BUY ANOTHER. THEY ARE “UPSIDE DOWN” ON THE MORTGAGE. SHOULD THEY BUY FIRST AND THEN SHORT SALE THE EXISTING HOME?

Refer them to a short sale attorney to discuss the potential consequences of that action. If a homeowner buys another home with the intention of short selling the current home, it is possible that short sale may be denied, or only be approved with significant seller contribution to the lender’s loss. They have just proven to the new lender that they can afford both mortgages, now they have to prove to the old lender that they cannot afford both payments. Pretty difficult. If a homeowner buys a new home, and then cannot get a short sale approved on the old home, foreclosure becomes their only option. Their lender can also foreclose by legal action leaving the borrower responsible for the debt. It is important that they have all the information and consider all possible consequences to make informed decisions.

A LOAN OFFICER TOLD MY CLIENT THAT IF THEY STAY CURRENT ON THEIR MORTGAGE PAYMENTS DURING THE SHORT SALE, THEY CAN GET A NEW MORTGAGE AND BUY AGAIN RIGHT AWAY. CAN THIS ACTUALLY WORK?

As with most short sale related questions, the answer is “it depends.” Some mortgage investors such as HUD (FHA or VA loans) require that the homeowner has a financial hardship and is in default before they will approve a short sale to close. Some investors, such as Fannie Mae and Freddie Mac have requirements that the seller is either already in default or that the seller’s financial situation proves that default is “imminent.” Most people without financial hardship cannot prove that default is imminent and cannot be considered for short sale unless they are in default on their mortgage payments. Default requirements are case by case based on your specific mortgage investor guidelines and requirements.

SHOULD MY SELLER ACCEPT ANY OFFER ON THE PROPERTY AND LET THE BANK DECIDE IF IT IS ACCEPTABLE FOR SHORT SALE?

A seller should not accept a “low ball” offer on their short sale property. Remember it takes weeks for their lender to get far enough into the approval process to examine the buyer’s offer. If the buyer’s offer is not at or very near fair market value as determined by lenders Broker Price Opinion (BPO) or appraisal, the offer will be countered. If this buyer is not willing to come up to the countered price, you will have a cancellation. Better to counter to fair market value at the time of purchase agreement so buyer cancels now rather than 6-8 weeks from now. Again, waiting for bank to counter this low ball offer wastes too much of your seller’s valuable market time.

IN TODAY’S MORTGAGE ENVIRONMENT, WHAT PERCENTAGE OF SHORT SALES CAN I EXPECT TO CLOSE?

If buyer’s offer is at or very near fair market value, inspection is done at time of purchase agreement and you keep buyer’s agent informed of the progress so buyer stays in the deal, you will likely get approvals and close on over 90% of your short sales.

HOW DO I GET TEAMED UP WITH MARKVE AND ZWEIFEL LAW FIRM IN THE SHORT SALE PART OF MY BUSINESS?

Contact Wendy Haisley, Program Coordinator, at 763-450-1639 or wendy@mzlaw.us. You will be required to attend a “new agent” introductory class on short sales as soon as possible. From then on, your time commitment to your short sale listings will not be much more than your traditional listings. You list and sell them, and the law firm does the rest.