

# NATIONAL TITLE CO.

EXPLORING THE SHORT SALE OPTION



THE EDGE

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## What Is a Short Sale?

A short sale is the process by which homeowners can sell their home and the sales proceeds do not fully pay off the existing loan(s) and the lender(s) accepts a discounted payoff to satisfy the loan.

This is accomplished by providing proper documentation to the lender(s) to convince them to reduce the payoff balance to allow the sale. If the sale is approved, the home can be sold for a price lower than the total debt on the property without the seller having to come up with immediate cash to cover the shortfall. The mortgage is either fully or partially satisfied and any foreclosure process stops.

## Why would a mortgage company agree to accept a Short Sale?

There are several reasons why a mortgage company would approve a Short Sale.

**Legal Concerns** Mortgage lenders have come under legal pressure to work with borrowers to equitably resolve situations where borrowers are unable to meet their mortgage obligation, particularly when the borrower makes an effort to arrive at a compromise solution.

**Wall Street is Watching** Mortgage lenders rely heavily on their ability to package and sell bundles of loans on the secondary mortgage market. They need to sell these bundles of loans in order to put the funds back to work by loaning the money again and collect loan fees along the way. If mortgages perform poorly after they are sold it could impact the lender's ability to sell their loans on the secondary market. A successful Short Sale gets the loan payoff resolved quickly.

**Asset Management Expenses** If a lender acquires a property through foreclosure, the property will be

managed until it is repaired and resold. It is expensive to manage real property assets – homes spread though the region, the state and possibly even the nation. Keeping properties maintained, keeping utilities on, making repairs and the administrative costs attached to these activities are all costs the lender would prefer to avoid.

A successful Short Sale eliminates most of these costs.

**Reserve Requirement** – Delinquent and non-performing loans place another burden on mortgage lenders. For all delinquent and non-performing loans lenders must set aside funds in reserve to deal with potential losses. These funds cannot be put to work generating new loan fees until the bad loans are resolved. A successful Short Sale lets the lender put more money to work.

## Can I simply deed my property to someone else and avoid the hassle?

Deeding your property to someone without paying off the loan is nearly always a bad idea. The lender still



considers you primarily responsible for payment on the loan. If loan payments do not get paid, or if the lender ultimately forecloses, this will still show on YOUR credit.

Do not deed your property to someone else without consulting with an attorney.

## What sort of hardship would my lender consider legitimate?

Generally, so long as the hardship is real and the mortgage company believes the loan is likely to become delinquent as a result, the Short Sale request will be processed by the Loss Mitigation Department. The key to getting the Loss Mitigation Department to accept a hardship is to submit a strong hardship letter. Below is a list of “hardships” that are common and frequently accepted by mortgage lenders.

- Family illness or injury
- Job loss or significant income loss
- Divorce or domestic partnership dissolved
- Death of Spouse
- Adjustment in mortgage payment or unforeseen increase in living expenses

## I am concerned about my credit. How will a Short Sale affect my credit?

The big key here is to avoid foreclosure. Short Sales will affect your credit rating, especially if you miss your mortgage payments during the process. But, by nearly any measure, a foreclosure is the most damaging event your credit status can encounter – worse than bankruptcy.

## Can I be considered for a Short Sale if my loan payments are current?

Yes, however the required financial documentation must be submitted along with a detailed hardship letter explaining the inability to continue to maintain your loan payments and reason behind the Short Sale request.

## Why Work with a Real Estate Professional

Getting a Short Sale approved by the lender is a complicated, multi-step process.

This requires a high level of patience, persistence and most importantly, experience.

The Lender realizes that it is in their best interest as well as the borrowers to have the Short Sale file packaged correctly from the very beginning, by a Real Estate Professional that

does not have a conflict of interest.

You get professional representation at NO COST TO YOU! The lender pays the Real Estate

commission along with most of the other sales costs, so that professional representation is FREE to you.

## How does the Mortgage Forgiveness Debt Relief Act of 2007 work?

Prior to passage of this law, for any debt that was forgiven in a Short Sale or Foreclosure the homeowner would receive a 1099 and would have to report this forgiven (or cancelled) debt as income. This still holds true for those individuals who do not qualify for the exceptions of this act. From January 1, 2007 to January 1, 2010, the act eliminates the phantom tax on debt



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cancellation in mortgage discharge.

Debt must have been debt incurred to acquire a principal residence

Cancelled debt up to \$2 million is eligible

Sets forth rules for determining the allowable amount of exclusion for taxpayers with non-qualifying indebtedness and taxpayers who are insolvent.

Debt from a second (non acquisition) mortgage or HELOC is not eligible

Cancelled debt from investment properties and second homes is not eligible

see further collection as fruitless. In most cases, a short sale will get the lender more money than a foreclosure. The bank also has the right to pursue a deficiency judgment in a foreclosure. When considering all consequences, a short sale is almost always better than a foreclosure.

If you have further questions about the Short Sale and Tax consequences, you should discuss the matter with a qualified accountant or attorney.

## What about Tax Consequences?

If you do not qualify for the above exclusions, the IRS defines the amount you are 'short' as having been 'cancelled'. It is also required for the lender that allows this debt cancellation to issue you a 1099 for this amount and you are required to claim this amount as income.

If a property is foreclosed on, this is also debt cancellation and the default amount can also be treated the same way. In most cases the amount of default with a foreclosure will be much greater than with a short sale. This is one of many reasons why avoiding foreclosure is most likely the better option.

## Will the Lender pursue a deficiency judgment against me?

In some cases, lenders also pursue a deficiency judgment against borrowers and attempt to collect the amount that was short. This does require a separate action to be filed in court causing the mortgage company to incur further expense. The mortgage company is acutely aware of your inability to pay and often



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## Alternatives to Foreclosure

If you are facing foreclosure, there are options. Approach the situation from a financial standpoint, not an emotional one. Analyze which option may best move you toward resolving your financial difficulty. Remember, *time is of the essence*. Think through your situation and make a decision. Then, take immediate action before it's too late.

## Ten Options When Facing Foreclosure

**Do Nothing** - This all but guarantees losing your home at foreclosure auction. Loan applications generally ask if the applicant has ever been foreclosed upon. Credit reports also disclose this damaging information for at least seven years.

**Payoff/Refinance** - Completely paying off the entire loan amount plus any default amount and fees, typically through a refinance of the debt. New debt is at a normally higher interest rate and there may be a prepayment penalty because of the recent default. With this option, there should be equity in the home.

**Reinstatement** - Paying the entire default amount plus interest, attorney fees, late fees, taxes, missed payments and fees.

**Loan Modification** – Utilizing the existing mortgage company to refinance the debt or extend the terms of the loan. This may allow the homeowner to catch up at a more affordable level.

To qualify, you must prove to the lender you have fixed the problem that caused the late payment.

**Forbearance/Mediation** – The lender may be able to arrange a repayment plan based on the homeowner's financial situation. The lender may even be able to provide a temporary payment reduction or suspension of payments. Information will be required from

the lender to show that you are able to meet the new payment plan requirements.

**Partial Claim** – A loan from the lender for a 2nd loan to include back payments, costs and fees.

**Deed in Lieu of Foreclosure** – Give the property back to the bank instead of the bank foreclosing. Banks generally require the home be well maintained, all mortgage payments and taxes must be current. Most loan applications ask if this has ever happened.

**Bankruptcy** – This option can liquidate debt or allow more time. I can refer you to a qualified bankruptcy attorney.

Chapter 7 (Liquidation) To completely settle personal debt.

Chapter 13 (Wage Earner Plan) Payments are made toward a plan to pay off debts in 3-5 years.

Chapter 11 (Business Reorganization) A business debt solution.

**Sale** – If the property has equity (money left over after all the loans and monetary encumbrances are paid). The homeowner may sell the home without lender approval through a conventional home sale. On the other hand a short sale, also known as a pre-foreclosure sale, can be negotiated with your lender by your Real Estate Professional if what is owed is MORE than the property's value.

**Short Sale** – A situation in which a lender will accept less than what is owed on the property as pay-off of the loan obligation.

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# HAFA PROGRAMS

EXPLORING THE SHORT SALE OPTION

|   | US Treasury   | Fannie Mae  | Freddie Mac   |
|---|---|---|---|
| <b>Mandatory Effective Date</b>                                       | April 5, 2010   | August 1, 2010  | August 1, 2010  |
| <b>Borrower consideration for HAFA Eligibility</b>                    | Anytime in pre-foreclosure or foreclosure process. Borrower must be delinquent or default is reasonably foreseeable.  | Not within 60 days of a scheduled foreclosure sale without Fannie Mae's written prior consent. Borrower must be in default or in imminent risk of default.  | Anytime in pre-foreclosure or foreclosure process. However, Borrower must be more than 60 days delinquent on mortgage payments to be eligible.  |
| <b>Minimum Acceptable Net Proceeds (MANP)</b>                         | Either list price or MANP is specified in SSA at option of servicer. This permits disclosure of MANP at servicer's discretion.  | <ol style="list-style-type: none"> <li>1. Servicer cannot disclose MANP to seller, buyer, or real estate agent.</li> <li>2. Only the list price is specified in Fannie Mae SSA Form 184.</li> </ol>   | <ol style="list-style-type: none"> <li>1. Servicer cannot disclose MANP to the seller, buyer or RE agents. However SSA Form 1135 specify either list price or MANP.</li> <li>2. Calculated by taking the BPO value minus:               <ol style="list-style-type: none"> <li>A) Percentage of the transaction costs (6% commission and 3% closing)</li> <li>B) \$6,000 payable to subordinate lien holders.</li> <li>C) \$3,000 relocation assistance to borrower.</li> </ol> </li> </ol> |
| <b>Servicer requirements after Shortsale Approval (SSA) is signed</b> | Servicer cannot ask listing agent to make adjustments to list price for first 120 day marketing period.   | Servicer must: <ol style="list-style-type: none"> <li>1. Review and approve listing agent's marketing plan for the property.</li> <li>2. Obtain monthly feedback from listing agent, including marketing update.</li> <li>3. Obtain monthly geographical comparables from listing agent to determine if local market conditions have changed.</li> <li>4. Instruct agent to make adjustments to list price</li> </ol> | For SSA marketing period to be extended, the servicer must submit a recommendation for extension no less than 15 calendar days prior to expiration of current SSA Term.   |
| <b>Real Estate Commissions</b>  | Commission not to exceed 6%, but percentage can be lower if specified in the SSA. If an offer is submitted on the Alternative RASS form, the commission is set at 6%. | Servicer cannot require commission to be reduced to less than 6% of sales price.  | Allowable brokerage commissions are up to 6% of sale price. Servicer cannot require reduction in commissions below commission stated in the listing agreement subject to 6% maximum.  |

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# FORECLOSURE vs. SHORT SALE

EXPLORING THE SHORT SALE OPTION

| Issue                                      | Foreclosure   | Successful Short Sale  |
|--|---|--|
| Future Fannie Mae Loan - Primary Residence | A homeowner who loses a home to foreclosure is ineligible for a Fannie Mae-backed mortgage for a period of 5 years.   | A homeowner who successfully negotiates and closes a short sale will be eligible for a Fannie Mae-backed mortgage after only 2 years.  |
| Future Fannie Mae Loan - Non-Primary       | An investor who allows a property to go to foreclosure is ineligible for a Fannie Mae-backed investment mortgage for a period of 7 years.   | An investor who successfully negotiates and closes a short sale will be eligible for a Fannie Mae-backed investment mortgage after only 2 years.   |
| Future Loan with any Mortgage Company      | On any future application, a prospective borrower will have to answer "YES" to question C in Section VIII of the standard 1003 form that asks "Have you had a property foreclosed upon or given title or deed in lieu thereof in the last 7 years?" This will affect future rates.  | There is no similar declaration or question regarding a short sale.  |
| Credit Score                               | Score may be lowered anywhere from 250 to more than 300 points. Typically will affect a credit score for over 3 years.  | Only late payments on mortgage will show, and after sale, mortgage is normally reported as "paid as agreed", "paid as negotiated", or "settled". This can lower the score as little as 50 points if all other payments are being made. A short sale's effect can be as brief as 12 to 18 months. |
| Credit History                             | Foreclosure will remain as a public record permanently, and on a person's credit history for 10 years or more.  | A short sale is not reported on a credit history. There is no specific reporting item for "short sale". The loan is typically reported "paid in full, settled".  |
| Security Clearance                         | Foreclosure is the most challenging issue against a security clearance outside a serious misdemeanor or felony conviction. If a client has a foreclosure and is a police officer, in the military, in the CIA, security, or any other position that requires a security clearance, in almost all cases clearance will be revoked and position will be terminated. | On its own, a short sale does not challenge most security clearances.  |
| Current Employment                         | Employers have the right and are actively checking in the credit of all employees who are in sensitive positions. In many cases, a foreclosure is reason for immediate reassignment or termination.   | A short sale is not reported on a credit report and is therefore not a challenge to employment.  |
| Future Employment                          | Many employers are requiring credit checks on all job applicants. A foreclosure is one of the most detrimental credit items an applicant can have and in most cases will challenge employment.  | A short sale is not reported on a credit report and is therefore not a challenge to future employment.   |
| Deficiency Judgment                        | In 100% of foreclosures (except in those states where there is no deficiency), the bank has the right to pursue a deficiency judgment.  | In some successful short sales, it is possible to convince the lender to give up the right to pursue a deficiency judgment against the homeowner.  |
| Deficiency Judgment (amount)               | In a foreclosure, the home will have to go through an REO process if it does not sell at auction. In most cases this will result in a lower sales price and longer time to sale in a declining market. This will result in a higher possible deficiency judgment.   | In a properly managed short sale, the home is sold at a price that should be close to market value, and in almost all cases will be better than an REO sale resulting in a lower deficiency.   |

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filed taxes nor extensions”, or “I haven’t filed my tax returns for the past 2 years and I failed to file extensions as well”).

**Bankruptcy** — Also state “I do not want to have to file bankruptcy”

## How to Write a Hardship Letter

A hardship letter is nothing more than you sitting down and elaborating on your situation, in detail. I know in the beginning it may seem like a difficult thing to do, but just sit down and begin writing the story. After you get started, it isn’t as difficult as you think. Here are some guidelines that you can use.

You must explain why you have gotten behind and why you cannot afford your payments. You must be very specific as to the dates of the Hardship.

## Hardship Letter Guidelines

**Hardships** — State your current and past hardships such as unemployment, car accident, medical problems (personal or family), etc.

Provide brief details about each hardship that affect your inability to repay the loan.

1. Include why you will not be able to be current again on your loan.
2. State that you do not have enough income to make the payments.
3. State that you are leaving the property.

**Your Assets** — Explain that you have no assets with which to continue paying.



May 5, 13

RE:  
[PROPERTY ADDRESS]

LOAN #xxx-xxxxxxxx-xxxx

Dear [Lender Name],

I have been unable to make my payments on my house, and I am now facing foreclosure.

My inability to keep up with the monthly payments is the result of [describe your hardship in detail such as loss of job, illness, accident, death or disability].

I am not in a position to continue making my mortgage payments.

This was not what I intended but I have concluded that a short sale may be my only option. Your help and consideration in this matter are very much appreciated. I look forward to your prompt response.

Sincerely,

[Print Name]



## Foreclosure Fast Facts

- Typical Nevada Foreclosure Time Frame: Approximately 120 days.
- Judicial Foreclosure Available? : Yes.
- Non-Judicial Foreclosure Available? : Yes.
- Types of Security Instruments Utilized: Mortgage and Deed of Trust.
- Right of Redemption Period Following Foreclosure?: Yes, in a judicial foreclosure only.



Nevada foreclosure laws provide for both judicial and non-judicial foreclosures in the event that a borrower defaults on the obligations contained within a mortgage or deed of trust. Most foreclosures within Nevada are of the non-judicial variety and are conducted by a trustee at the direction of the lender pursuant to a power of sale contained within a deed of trust.

However, if the mortgage or deed of trust does not include such a power of sale clause or similar stipulation, a lender must seek a judicial foreclosure; requiring the lender to file suit against the defaulted borrower in court to obtain

an Order of Sale and a Decree of Foreclosure. In such cases, the court has the option of awarding a right of redemption in favor of the defaulted borrower for period of up to one year depending upon various circumstances.

Non-judicial foreclosures in Nevada must be conducted in strict accordance with the terms and conditions as set forth in the power of sale clause and governing statutes.

## Overview of the Nevada's Non-Judicial Foreclosure Process

1. Upon a default of the borrower's obligations under the terms of a Deed of Trust, the lender (or the trustee at the direction of lender) must execute a Notice of Default and Election to Sell. This Notice must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust.

Notice must be:

- a.) recorded in the public records of the County in which the real property is situate;
- b.) sent via certified or registered mail to the borrower and to the current property owner at their addresses, if known; otherwise to the address of the property; and
- c.) sent via certified or registered mail to each holder of a subordinate recorded lien against or a recorded interest in the subject property within 10 days of the recording and mailing described above.

Prior Nevada law provided that either the borrower or the holder of a subordinate recorded lien or interest had a period of 35 days to cure the deficiency (typically requiring the repayment of all back payments, trustee's fees and allowable

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expenses) and reinstate the Deed of Trust following the recordation and mailing of the Notice of Default and Election to Sell. However, for defaults recorded on or after July 1, 2009 (in the case of owner-occupied housing), the period for reinstatement has been extended until 5 days prior to the date of the foreclosure sale.

2. After the expiration of a 3 month period following the recordation and mailing of the Notice of Default and Election to Sell, the Trustee shall execute a Notice of Trustee's Sale, which shall set forth the time and place of the sale.

The Notice of Trustee's Sale must be:

- a.) recorded in the public records of the County in which the real property is situate;
- b.) sent via personal service or certified or registered mail to the original borrower, the current property owner at their addresses, if known; otherwise to the address of the property; and (at least 20 days prior to the sale) to

each holder of a subordinate recorded lien against or a recorded interest in the subject property;

- c.) posted for 20 successive days in 3 public places of the township or city where the property is situated; and
- d.) published 3 times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the

county where the property is situated. (*NRS 107.080 and 107.090*)

3. The Trustee's Sale of the subject property must be made at the exact time, date and location set forth in the Notice of Trustee's Sale and must be in the form of an auction to the highest bidder. The sale may be postponed by oral proclamation up to 3 times, after which any subsequent sale

must be made by after a new notice as described in paragraph 2. If no bids are received for the full amount due under the deed of trust, the foreclosing lender may purchase the subject property by credit bid. The successful purchaser will be entitled to receive a Trustee's Deed Upon Sale.

A Trustee's Deed Upon Sale vests ownership of the subject property in the purchaser without equity or right of redemption by the prior owner or by junior lien holders. (*NRS 107.080*)

“

**120 days**

Typical

Foreclosure Time

Frame in Nevada

”



Assembly Bill 149 was passed by the Nevada Legislature to address the foreclosure crisis and help keep families in their homes. The law establishes a **Foreclosure Mediation Program** for owner-occupied residential properties that are subject to foreclosure notices (formally known as a Notice of Default and Election to Sell) filed after July 1, 2009. To qualify, the property must be the homeowner's primary residence and located in Nevada.

## WHAT YOU NEED TO KNOW ABOUT FORECLOSURE MEDIATION

Mediation is an alternative method to resolve disputes by agreement with the help of mediators. Mediation has advantages over the formal foreclosure process. It's fast, inexpensive and allows more flexibility. Foreclosures impact all parties involved and both sides typically benefit by foreclosure mediation.

## WHY SHOULD YOU MEDIATE?

You can play a major role, with the help of a trained mediator, in deciding the outcome of your individual dilemma. Mediation is a give-and-take process in which the parties work to reach a

mutually acceptable resolution to a mutual problem. Resolutions reached through foreclosure mediations are compromises that offer advantages to lenders as well as homeowners.

Can you, the Homeowner, make the mortgage payments if the home loan is modified?

Can the Lender modify the loan enough for the homeowner to perform?

If the answers are YES, the Foreclosure Mediation Program may be able to save another Nevada home.

## WORKING FOR A RESOLUTION

Sometimes the parties will not be able to reach an agreement even with the mediator and the home will be lost to foreclosure. That is a reality in today's economy. But by working together to explore the various options the hope is homeowners can avoid foreclosure and continue living in the home they purchased. If the mediation is successful, the homeowner may also avoid the stigma of foreclosure that can affect a person's ability to obtain credit for years to come. However, if a homeowner does not have the financial ability to make mortgage payments, even if the loan is modified, foreclosure may ultimately result.

## MEDIATION IS QUICK AND EFFICIENT

Proposed Supreme Court rules limit mediations to four hours and require that mediations be conducted within 90 days of a foreclosure notice being filed. Those same rules also require that all

decision makers be present for the mediations. That means, if an agreement is reached, it can be finalized quickly.

*Protecting Your Property After Crisis At Home*

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## **MEDIATION IS COST EFFECTIVE**

Other than the filing fee paid by the lender, the cost of mediation is \$400, shared equally by the homeowner and the lender. Each party must pay prior to the mediation. A lawyer is not required to be present with you during the mediation process, but each side may have an attorney represent them.



## **AT THE CONCLUSION OF THE MEDIATION**

Within 10 days of the mediation, the mediator will prepare the necessary Statement of Agreement or Non-agreement and serve it on the parties. The original will be filed with the Foreclosure Mediation Program Administrator and the mediation will be closed. If there is an agreement, the parties will execute the appropriate documents. If there is no agreement, the parties will be free to pursue other legal remedies.

(Source: Supreme Court of Nevada)

## DO NOT CONTACT ME BY PHONE

Lender: [Lender's Name]

Loan #: [Loan Number]

Property Address: [Your Address]

In accordance with the Fair Lending Law, I/we request that you, my Lender(s), not contact me/us by phone regarding my loan being in default. Further, I/We do not wish to speak to any collection agents about this account. Please make any future communication with me/us in writing.

If you must speak to someone regarding this account, my Real Estate professional with [BROKER], [AGENT] who is assisting me/us in selling my/our home. The information obtained by my/our agent is to be used for the purpose of facilitating the resolution of my/our foreclosure.

Borrower Name \_\_\_\_\_

Social Security Number \_\_\_\_\_

Date of Birth \_\_\_\_\_

### Real Estate Contact Information

Broker/Agent \_\_\_\_\_

Phone \_\_\_\_\_ E-mail \_\_\_\_\_

Borrower Signature \_\_\_\_\_ Date \_\_\_\_\_

Co-Borrower Signature \_\_\_\_\_ Date \_\_\_\_\_