

# FORECLOSURE & SHORT SALE GUIDE



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# Foreclosure & Short Sale Guide



## Foreclosure Guide

When a borrower stops making mortgage payments to the lender, the loan is in “default.” The lender may then initiate a legal proceeding to sell the property to satisfy the debt. This is called foreclosure, and each step of the procedure is subject to state and federal law.

This booklet explains many of the terms, time lines and procedures involved in the foreclosure process in Arizona, California and Nevada. However, borrowers, as well as potential buyers and sellers of foreclosed properties, are encouraged to consult legal counsel and a tax advisor. Foreclosure is a serious legal situation that can have a lasting effect upon credit, taxes and many other personal matters.

### **We appreciate the opportunity to serve you.**

*Most matters pertaining directly to foreclosure are set out in detail by State Law. This information is a general guideline only, and consumers are urged to consult legal counsel regarding their rights and responsibilities under state and federal law.*

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## Foreclosure in a Nutshell

A foreclosure begins when the lender on a piece of real property has not received a mortgage payment within a specified amount of time (possibly 3-4 months). The lender will then take steps to recover the money owed, and failing that, "take back" the property. The entire foreclosure process is specified by state and federal law, so the exact timelines and steps required may differ from state to state.

## Foreclosure Terms

Parties to the foreclosure process have their own terminology. It is helpful to remember:

**Borrower** = Trustor

**Lender** = Beneficiary

**Trustee** = Third party who will act upon instructions from the beneficiary. This is often a title company or neutral party. Check your state for specific trustee requirements.

Other terms used to describe parts of the foreclosure process are included in the Glossary at the end of this booklet.



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## Types of Foreclosure

Arizona, California and Nevada permit two types of foreclosure proceedings. This booklet mainly discusses the **non-judicial foreclosure** because it is the most common. Non-judicial means that the process is administered without court supervision, which greatly streamlines the foreclosure timeline while still protecting the rights of the lender and the borrower.

Non-judicial foreclosures are enabled through the **Deed of Trust**, which contains a power of sale clause. The Deed of Trust is signed by the borrower at the time the loan is given. The **power of sale clause** may identify the trustee, plus the timeline and other terms of any foreclosure actions that might take place. The lender must proceed according to the strict procedures and timeline of notifications and waiting periods, then may take back the home and sell it to recoup the debt. By electing the non-judicial procedure, the lender agrees that the sale of the home will completely fulfill all obligations of the debt.

**Judicial foreclosure** is a more complicated, expensive and time-consuming route toward the same end. The lender files for foreclosure in court and then records a notice of the pending lawsuit (*lis pendens*). After service of the lawsuit upon the parties named as defendants, those parties have an opportunity to answer. There will be a trial and at the conclusion of the trial the judgment for foreclosure will be issued. Then the judicial sale process begins. The auction proceeds are used to reduce the debt and pay off penalties, costs and attorney fees, but in specific situations, the lender may also ask for a **deficiency judgment** against the borrower, which means that if the auction did not cover the amount owed plus all the associated costs, then the lender can pursue the borrower for the additional amount. Sometimes a judicial foreclosure allows a **right of redemption** period in which the borrower is allowed to buy the property back from the successful bidder, often up to one year following the sale (six months in Arizona). In Nevada, however, there is no redemption period; after the auction, it is over.

Whether the lender chooses to foreclose under non-judicial or judicial proceedings, in most states it is an "either-or" situation in which only one action may be taken for the recovery of any debt or enforcement of any right secured by a mortgage or other lien upon real estate.

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## Steps to a Foreclosure

Greatly simplified, the non-judicial foreclosure process consists of three general steps.

**STEP ONE** - First "Notice" is Filed (i.e., Notice of Default or Notice of Sale)

**STEP TWO** - Sale Date Set

**STEP THREE** - Sale or Auction is Held

**Step One:** If the lender does not receive loan payments as specified in the deed of trust, it may file a document with the county recorder in which the property is located. The exact document varies by state, but may be a Notice of Default (NOD) or Notice of Sale. The notice must then be mailed to all parties with a recorded interest in the property (or with a recorded notice requiring said notice) via certified or registered mail or both. The borrower is given a specified time frame in which to bring the loan current.

- Some real estate agents specialize in assisting borrowers at this stage of the transaction. A sale of the property may be arranged through which the lender will receive the full amount owed on the loan and the foreclosure does not proceed.
- Some lenders will also allow a "short sale" (see the Short Sales section of this booklet), where the lender agrees to accept less than the full amount of the debt. Again, a sale of the property and receipt by the lender of a pre-agreed amount will settle the loan and the foreclosure will not proceed.

**Step Two:** The lender or trustee sets a date of sale and notifies all the parties, including other lien holders, and state and federal taxing agencies. The sale notice must be posted and published for a specified period of time before the sale.

**Step Three:** The trustee's sale or auction is held at the steps of the county courthouse, or other designated public location in the county where the property is located. Bidders are generally required to submit certified funds (cashier's check or money order) in the full amount that they are willing to bid (exception

in the State of Arizona where the winning bidder is required to submit a non-refundable deposit in the amount of \$10,000.00 with the remainder of funds due by 5:00 P.M. the next business day). Past due taxes or other senior liens become the responsibility of the winning bidder. If the minimum bid is not met, the property will revert back to the lender and becomes an REO (Real Estate Owned) and can then be purchased directly from the lender.

*Some agents specialize in selling these REO properties. They establish a relationship with the lender providing an important service, which in turn can generate a consistently full pipeline of business for the agent.*

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## Non-Judicial Foreclosure Timeline for Arizona

CALENDAR	ACTION
Delinquency Period 40-120 Days	Trustor (borrower) fails to make payments on a note secured by Deed of Trust. Several special notices may be sent to the borrower by the lender (Beneficiary). Beneficiary requests the trustee to file a Notice of Sale.
Day 1 (At Least 3 Months Before Sale Date)	Notice of Sale filed with county recorder. Copies mailed to appropriate parties. Foreclosure process has begun.
4 Weeks and 10 Days Before Sale	Notice of Sale published in adjudicated newspaper once a week for 4 weeks.
After 3 months	Trustee sets sale date and time.
25 Days Before Sale	Notice of Sale must be sent to IRS, if applicable.
20 Days Before Sale	Notice of Sale posted at property and at county courthouse.
No Later Than 10 Days Before Sale	Last publishing of Notice of Sale.
Day Before Sale	Last date for reinstatement.
Sale Date	Trustee's Sale is held. Property is sold to the highest bidder. Trustee's deed is given to buyer. Sale can be postponed by announcement at originally scheduled sale.

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## Avoiding Foreclosure: Tips for Consumers

### Free Counseling

For borrowers, foreclosure is a very serious legal procedure which can often be avoided. Housing counseling agencies sponsored by the United States Government offer valuable resources to help you discover special borrower programs. Most of these services are free of charge. Contact the US Department of Housing and Urban Development (HUD) at (800) 569-4287 or visit the department's website at [www.hud.gov](http://www.hud.gov) for more information.

### What to Ask the Lender

If you, or someone you know, cannot meet the mortgage payment, HUD recommends that any letters from the lender be answered immediately with an explanation of the circumstances. Many lenders offer assistance, but only for those who stay in the home and do not abandon it. For example, the lender may have a special **forbearance** program to rearrange payments, or even reduce or suspend them for a period of time. The lender may also **refinance** the debt or extend the term of the loan to make the payments lower.

Those with FHA loans may also qualify for a "**partial claim**" payment. This program provides a one-time payment from the FHA Insurance fund to bring the mortgage current. If the loan meets certain criteria, the lender can file a partial claim. The borrower must sign a Promissory Note and a lien for the amount of the partial claim will be placed against the property. The interest-free amount is due and payable when the first mortgage is paid off or when the property is sold.

### Scams

Unfortunately, there are those who prey upon people in financial difficulty. Most likely, anything that sounds too good to be true probably is. To avoid scams it is important for the borrower to:

- • Check with a lawyer or the mortgage company before entering into any transaction involving the property.
- • Remember that the loan must be paid even if the deed is signed over to someone else. The lender must formally release the mortgage debt.
- • Make sure all promises are made in writing.
- • Not sign anything with blanks to be filled in later.
- • Read and understand all documents before signing.

### Taxes

In addition to the damage it can do to a borrower's credit rating, foreclosure can also cause major tax consequences. Most people assume that a foreclosure will automatically "cancel" taxes, but this is usually

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not true. That is why it is important to involve a tax attorney or advisor in all considerations of foreclosure and alternatives to foreclosure.

Loans against personal property, such as a bank loan or seller carry-back loan to purchase an owner-occupied residence, are called "**non-recourse**" loans. Various state laws protect borrowers from personal liability on a purchase mortgage for the home they occupy. Under these types of "non-recourse" loans, the tax liability is the outstanding amount of the loan, or sales price if higher.

A greatly simplified example: The borrower owes \$100,000 on the home he lives in. Even if it is foreclosed upon or given as **deed-in-lieu of foreclosure** back to the lender, or the lender accepts a **short sale** payoff, the borrower is still taxed as if the property had sold for \$100,000.

If the loan is a "**recourse**" loan, i.e. the borrower is personally liable if the property is sold for less than the amount owed to the lender, then the borrower has both personal liability and tax consequences. To obtain a personal judgment against the borrower, the lender must instigate a judicial foreclosure. The borrower would be relieved of personal liability if the lender proceeds with a Trustee's Sale (or non-judicial foreclosure) on the property.

Again, a foreclosure, deed-in-lieu of foreclosure or short sale all involve a tax obligation which is computed as if the property were sold for its value or, in certain cases, if the debt exceeds the property's value.

## Your Real Estate Agent is There to Help

Another possibility is a **pre-foreclosure sale** or even a **short sale** of the property, which avoids the foreclosure process. Some lenders also allow a **deed-in-lieu of foreclosure** in which the borrower signs the house over to the lender to avoid the foreclosure. This may not be as damaging to the credit rating as a foreclosure, but lenders only consider this option if a pre-foreclosure sale is not possible. A real estate agent can help with these types of sales to avoid foreclosure.



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## Buying Foreclosed Property

Bookstores are full of books purporting to help people “buy foreclosed properties at discounted prices.” An equal number of websites promise bargains in hot markets, or promote “lists of properties in foreclosure” for a fee. In reality, there are good buys for those who are willing to work at it, but the process of locating properties and working through the legal and emotional entanglements is not for the faint hearted.

For those hoping to find a true bargain in real estate by purchasing a foreclosed home at auction, there are some important points to keep in mind.

## Finding Properties to Purchase

- Statistics have often shown that a very low percentage of recorded NODs/Trustee Sales result in the owner actually losing the home to foreclosure. Consequently, there are plenty of agents and professional foreclosure specialists seeking the same properties.
- NOD/Notice of Trustee Sale lists are available from information service providers or in adjudicated newspapers where they must be published before a sale can take place. Prepare to spend several hours a week doing research of public records and act fast.
- Ask your professional sphere of influence (such as mortgage brokers, attorneys, insurance agents, tax specialists, and accountants) to keep an eye out for possible foreclosure situations.
- Run ads that may attract the eye of people who must get out from under a home loan, such as “I buy houses.”
- Search the newspapers. Look for classified ads that say “must sell,” “vacant,” “motivated,” or “lost job.”
- Watch for HUD auctions, but don’t expect to be the only one in line.



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## Other Tips from the Experts

- If you want to negotiate a pre-foreclosure sale, remember that property owners who fall behind in their mortgage payments are frequently unable to properly maintain the home, and phones and electricity may be shut off.
- Properties sold at foreclosure sales and auctions are sold "as is," and must be repaired, often at considerable cost, before they can be resold on the market.
- Potential buyers of auction properties may not have the opportunity to inspect the property before purchase.
- Foreclosure properties may also be encumbered by tax and other liens, which become the responsibility of the owner after a foreclosure sale. It is likely that these homes cannot be covered by title insurance, so research, research, research is the key to uncovering the secrets of a foreclosed property before purchase.

The safest bet for those new to the process is finding REO properties (properties that have been taken back by the lender). They have been cleared of liens and taxes, and any tenants have already moved on. Most large lenders have departments who deal with this type of property.



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## Understanding Short Sales

Borrowers who are facing foreclosure may ask the lender to accept a discounted payoff on their loan. This is called a "short sale" or "short payoff.". It allows the borrower to avoid a foreclosure action, and may offer the lender an expedited and less costly resolution of the situation.

Historical trends tell us that the number of short sales has increased when changing markets soften home prices and leave homeowners with a higher mortgage interest rate or loan balance. For the consumer, negotiating a short sale with the lender may seem a daunting task, particularly at a stressful time when foreclosure looms. A short sale allows the borrower to maintain a better overall credit record than with a foreclosure. It also allows time for the homeowner to relocate on a more convenient timetable instead of facing eviction and possibly a deficiency judgment down the road. A short sale may impact the borrower's tax situation, so a tax advisor should be consulted.

Most lenders have specific criteria to consider a short sale that relate to the borrower's ability to repay the debt. Some lenders will consider a short sale only if the borrower can produce evidence of hardship. A property that is distressed or requires extensive repairs may also qualify. If the lender were to foreclose on this type of property, it would have to pay for all the repairs necessary to sell the property. A short sale may represent a more cost-effective way to pay off the loan.

For agents, assisting a homeowner with a short sale means not only a commission but the satisfaction that comes from helping someone out of a tough spot. The benefit to the borrower is that the agent can help negotiate with the lender and field offers from potential buyers as well as collect the documentation that goes with such a sale.

The tips on the following pages review many of the aspects of a short sale, but consumers are urged to consult their attorney, HUD homeowner counseling center, tax professional, and other appropriate professional agencies for assistance.



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## Determining Short Sale Price

For the owner or agent, selling a short sale property is much like selling any other home—with a few extra steps thrown in for good measure. Remember that state law also governs the activities of those who act on behalf of property owners who are facing foreclosure, so an in-depth working knowledge of the process is essential. Here is a handy checklist to help sort through the details.

- Ask for details of the loan by sending a loan information request letter signed by all sellers
- Order a preliminary report/title commitment from Lawyers Title

### Estimate a purchase price by:

- Calculating current outstanding balances on all Deeds of Trust
- Checking for other lien holders and negotiate for a reduced payoff
- Accepting that commission may be reduced if there are insufficient funds
- Reviewing all other liens and judgments
- Comparing the market value to the amount needed by the seller
- Seeking the right price to make a quick sale

### Negotiate a purchase price with the lender, including:

- Commission
- Repair costs
- Other fees including creative financing options

### Factor in other closing costs that may be required such as:

- Escrow
- Title insurance
- Recording fees

### After you have established the sales price:

- Advise the seller (in writing) to consult a tax professional and ask the seller to acknowledge in writing for your file
- Note Notice of Default (NOD), foreclosure pending and terms to be approved by the lender on MLS or other listing services
- Order inspections and obtain comparables for the appraiser
- Disclose, disclose, disclose to any potential buyers
- Submit all offers to the lender along with the buyer's pre-qualification letter

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## Short Sale Documents

**For those who will negotiate with a lender to begin a short sale, the first step is to determine the equity position of the homeowner. Be prepared with this information:**

- Is the seller in bankruptcy? (The court and bankruptcy trustee must agree to the sale)
- Current loan balance, type of loan, interest rate, impound account information, and other loan details
- Past due payments
- Has a Notice of Default (NOD) or Notice of Trustee's Sale been recorded?
- Other liens, judgments and taxes

**To begin discussions with the lender's Loss Mitigation Department (which may also be called the Foreclosure, Short Sale, Loan Modification or Reinstatement Department), have these documents handy:**

- If agent, "Authorization to Release Information" signed by borrower
- Hardship letter from the homeowner explaining why mortgage payments are not being made
- Copies of borrower's most recent bank statement, pay stubs, income tax statements (usually two most recent of each statement are required)
- Broker Price Opinion (BPO) letter
- Net sheet showing all expenses and what the lender will net at close of escrow
- Preliminary report/title commitment from the Lawyers Title company
- Listing Agreement
- Marketing plan for the home

**After written confirmation of the lender's acceptance has been received, these items will be required:**

- Signed copy of complete sales contract
- Copy of buyer's loan application
- Copy of buyer's deposit and receipt from escrow
- Updated HUD/settlement statement
- Updated preliminary report/title commitment, if applicable

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## Short Sale Tips

### Tips for Working with the Lender on a Short Sale

- • Each lender will have its own set of rules, so be sure to talk with the appropriate department for its list of requirements.
- • Inquire about the time frames for all processing, and send everything requested as soon as possible.
- • Be aware of the foreclosure date and ask for a postponement if possible.
- • Discuss the benefits of a short sale with the lender.
- • Confirm everything in writing.
- • Collect all the contact information (including physical address and/or delivery options) of the appropriate person or department at the bank or lending institution.



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## How Lawyers Title Can Help

### Property Information and Title Services

- Contact your local Lawyers Title representative for Property Profiles and general individual property tax information.
- Notices of Default and/or Notices of Trustee's Sale are recorded with each county recorder and are part of the public record. Many Lawyers Title operations can access these lists for those real estate professionals who wish to work with pre-foreclosure or short sale properties.
- Lawyers Title's friendly and helpful team represents the parties to the transaction with attention to today's privacy laws and requirements.

### Short Sale Escrows

Your Lawyers Title team is in place to assist you through a short sale escrow. There are some special requirements, so be sure to discuss the transaction thoroughly with your Lawyers Title escrow officer when the order is opened.

- When you open your escrow with Lawyers Title, be sure to advise your officer that the property is a potential short sale. The preliminary report/title commitment will show all vested owners of the property and all recorded liens. The seller will also be asked to complete a Statement of Information (also known as an "SI" or an "S of I") which will help determine any outstanding judgments.
- Demands for payoff on the existing loan should be requested after the seller has negotiated with the lender.
- Demands on other existing liens, judgments or tax liens should be requested after the seller has negotiated with the other creditors.
- Once the existing lender approves the HUD proposal, no changes can be made unless the escrow officer receives written confirmation from the lender.

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## Glossary of Foreclosure Terms

**Absolute Auction:** Auction with no minimum bid amount. The highest bidder wins.

**Abstract (of title):** A history of all transactions shown in the public records affecting a particular tract of land.

**Acceleration Clause:** A provision in a promissory note that specifies conditions under which the lender may advance the time when the entire debt which is secured by the mortgage becomes due.

**Adjustable Rate Mortgage (ARM):** Mortgage loans under which the interest rate is periodically adjusted, in accordance with some market indicator, to more closely coincide with the current rates.

**Affidavit:** A written statement made under oath before a notary public or other judicial officer.

**Agreement:** A legally binding contract made between two or more persons.

**Appraisal:** A report from an independent third party detailing the estimated value of real estate.

**Balloon Note/Balloon Payment:** A promissory note with amortization payments scheduled for a long term, usually 30 years, but maturing in a shorter term, often five to seven years. It requires a substantial final balloon payment for the remaining principal.

**Bankruptcy:** A federal court proceeding under the United States Bankruptcy laws where an insolvent debtor either has its estate liquidated and debt discharged, or is allowed to reorganize its affairs under the protection of the bankruptcy court.

**Beneficiary:** A person or entity that is legally entitled by a will, trust or insurance policy to receive money or property.

**Chain of Title:** The history of successive ownership and transfer in the title to a tract of land.

**Clear Title:** Real property ownership free of liens, defects and encumbrances or claims.

**Closing (also called Settlement):** The completion of a real estate transfer, where the title passes from seller to buyer or a mortgage lien is given to secure debt.

**Closing Costs:** Expenses involved in closing a real estate transaction over and above the price of the land.

**Clouded Title:** A land title having an irregularity, possible claim or encumbrance that, if valid, would adversely affect or impair it.

**Contract of Sale:** Agreement by one person to buy and another person to sell a specified parcel of land at a specified price.

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**Conveyance:** The transfer of title or property from one person to another.

**Deed:** An instrument for conveying real estate.

**Deed of Trust:** A form of security instrument for mortgage loans.

**Default:** A failure to meet legal or contractual obligations.

**Deficiency Judgment:** When the proceeds from a foreclosure sale are less than the amount due on the debt.

**Encumbrance:** Any interest, right, lien or liability attached to a parcel of land (such as unpaid taxes or an unsatisfied mortgage) that constitutes or represents a burden upon the property.

**Equity:** The market value of real property, less the amount of existing liens.

**Escrow:** Closing a real estate transaction when all required documents and funds are in place with a third party for processing and disbursement.

**Execute:** To sign a legal instrument. A deed is said to be executed when it is signed, sealed, witnessed and delivered.

**Federally-Insured Loan:** A mortgage loan that originates in a federally-insured government program like the Federal Housing Authority (FHA).

**Foreclosure:** A legal proceeding following a default by a borrower in which real estate secured by a mortgage of deed of trust is sold to satisfy the underlying debt.

**Instrument:** A written document.

**Judgment:** The decision of a court regarding the rights of parties in an action.

**Junior Mortgage:** A mortgage lower in lien priority than another. For example, a second mortgage or home equity line.

**Lawsuit:** A dispute between two or more parties that has been filed in the court system by one of them.

**Lien:** A monetary charge imposed on a property, usually arising from some debt or obligation.

**Lis Pendens:** A recorded legal notice that there is litigation pending relating to the land, and a warning that anyone obtaining an interest subsequent to the date of the notice by be bound by the judgment.

**Market Value:** The average of the highest price that a buyer would pay and lowest price a seller would accept.

**Mortgage:** A conditioned pledge of property to a creditor as security for the payment of a debt.

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**Note (also called a Promissory Note):** A written promise to pay a sum of money, usually at a specified interest rate, at a stated time to a named payee.

**Power of Attorney:** A written instrument by which one person, the principal, authorizes another, the attorney-in-fact, to act on his or her behalf.

**Principal:** A sum of money owed as a debt on which interest is payable.

**Public Records:** Records which by law disclose constructive notice of matters relating to the land.

**Real Estate (also called Real Property):** Land and anything permanently affixed to the land such as buildings, fences, and those things attached to the buildings, such as plumbing and heating fixtures, or other such items that would be personal property if not attached.

**Recording:** The noting in a public office of the details of a legal document, such as a deed or mortgage, affecting the title to real estate.

**Redemption:** The right of the owner in some states to reclaim title to property if he or she pays the debt to the mortgagee within a stipulated time after foreclosure.

**Release:** To relieve from debt or security or abandon a right, such as release of a mortgage lien from a part or all of the land mortgaged.

**RESPA:** The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) that, together with Regulation X promulgated pursuant to the Act, regulates real estate transfers involving a "federally-related mortgage loan" by requiring, among other things, certain disclosures to borrowers.

**Satisfaction:** An instrument releasing the lien of a mortgage.

**Senior Lien or Mortgage:** If there is more than one lien on land, those liens are ranked by priority. A senior lien or mortgage is entitled to be paid first in foreclosure or bankruptcy, before a junior lien.

**Tenant:** One who has right of possession of land by any kind of title.

**Title Defect:** Any possible or patent claim or right outstanding in a chain of title that is adverse to the claim of ownership.

**Title Insurance Policy:** A contract of title insurance under which the insurer, in keeping with the terms of the policy, agrees to indemnify the insured against loss arising from claims against the insured interest.

**Trustee:** Person or entity who is given the legal authority to manage money or property on behalf of somebody else. In a foreclosure action, this is often the title company.

**Trustor:** A person who creates a trust by transferring property to a trustee.





**ALL FORMS in this book are for  
SAMPLE PURPOSES ONLY.**

Please check with <http://www.aaronline.com/> or the appropriate government agency website for the most up to date forms.



**The Short Sale Seller Advisory is a resource for Real Estate Consumers  
 Provided by the Arizona Association of REALTORS®**

*A short sale is a real estate transaction in which the sales price is insufficient to pay the loan(s) encumbering the property in addition to the costs of sale and the seller is unable to pay the difference. A short sale involves numerous issues as well as legal and financial risks. This Advisory is designed to address some of these issues and risks, but does not purport to be comprehensive.*

**BEFORE PROCEEDING WITH A SHORT SALE**

**1 Understand a Lender’s Options upon Loan Default**

There are many types of loans that are secured by real property. These may be purchase loans, refinanced loans, home-equity loans, or one of the various other types of loans. The type of loan and type of property will determine what remedies a lender may have if the homeowner fails to make the agreed upon payments. The available remedies, the homeowner’s overall current or potential future financial strength, the lender’s cost in acquiring the loan and any shared-loss or similar agreement if the loan was acquired by purchase or merger, are some of the many factors that the lender may consider in deciding how to proceed when a loan is in default. For an overview of these issues, go to [www.aaronline.com/AZR/Dec/09LoanDefaults.aspx](http://www.aaronline.com/AZR/Dec/09LoanDefaults.aspx)

**2 Be Aware of Predatory “Rescue” Scams & Short Sale Fraud**

Homeowners worried about foreclosure may be susceptible to predatory “rescue” scams which may cost you money with no results, result in the loss of your home entirely, or involve you in a fraudulent scheme. For more information, go to [www.efanniemae.com/utility/legal/antifraud.jsp](http://www.efanniemae.com/utility/legal/antifraud.jsp) or [www.efanniemae.com/utility/legal/pdf/fraudnews/mortgagefraudnews0709.pdf](http://www.efanniemae.com/utility/legal/pdf/fraudnews/mortgagefraudnews0709.pdf)

“Red Flags” of fraudulent schemes include:

- Guarantees to stop the foreclosure
- Large upfront fees
- Instructions not to contact the lender
- Transfer of title or lease of the property
- The proposed buyer is an LLC
- Requests that the homeowner execute a power of attorney
- The proposed buyer, at the buyer’s sole expense, retains a third party to negotiate the short sale for the seller’s benefit.



SELLER	SELLER

# Short Sale Seller Advisory

## BEFORE PROCEEDING WITH A SHORT SALE (CONTINUED)

### 3 Report suspected scams

- Financial Fraud Enforcement Task Force [www.stopfraud.gov/](http://www.stopfraud.gov/)
- HUD, in partnership with the Loan Modification Scam Prevention Network [www.preventloanscams.org/](http://www.preventloanscams.org/)
- Arizona Department of Financial Institutions at [fraudline@azdfi.gov](mailto:fraudline@azdfi.gov)
- Arizona Attorney General's Office <http://www.azag.gov/consumer/foreclosure/index.html#Complaint>
- NeighborWorks® at [www.loanscamalert.org/default.aspx](http://www.loanscamalert.org/default.aspx)

### 4 Contact a Free HUD-Approved Housing Counselor or Contact Your Lender Directly

- Contact a HUD-approved housing counseling agency online at [www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=AZ](http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=AZ) or call (800) 569-4287 or TDD (800) 877-8339 for advice on your options. For additional HUD resources: [http://portal.hud.gov/portal/page/portal/HUD/topics/avoiding\\_foreclosure](http://portal.hud.gov/portal/page/portal/HUD/topics/avoiding_foreclosure)
- Contact the Neighborhood Assistance Corporation of America at: [www.naca.com/refinance/refinanceTenStep.jsp](http://www.naca.com/refinance/refinanceTenStep.jsp)
- Contact the lender directly. To find the lender's contact information, check the loan billing statement, or coupon book. Ask for the lender's home retention department, loss mitigation department, (or other department that handles negotiation of loans in default); explain the situation and find out if the lender is willing to discuss options.

### 5 Utilize Free Services Available to Arizona Residents

- **Contact the Arizona Foreclosure Helpline** at 1-877-448-1211 (toll-free) or visit [www.housingaz.com/ShowPage.aspx?ID=248](http://www.housingaz.com/ShowPage.aspx?ID=248)
- **Review the Arizona Foreclosure Prevention Task Force Workbook** [www.dbtaz.org/flyers/2009.9.1.State.Task.Force.Wrkbk.pdf](http://www.dbtaz.org/flyers/2009.9.1.State.Task.Force.Wrkbk.pdf). *This book will help you evaluate your options and provide you with tools to take action. Additional resources are available at:*  
[www.azforeclosureprevention.org](http://www.azforeclosureprevention.org)
- **Arizona Department of Housing** <http://www.azhousing.gov/>

### 6 Obtain Legal Advice

- An attorney can advise you about your options and legal liability.
- To find out if you are eligible for free or low cost legal assistance, contact a legal aid organization in your county or one of the organizations listed at [www.azbar.org/LawyersHelpingYou/freelegal.cfm](http://www.azbar.org/LawyersHelpingYou/freelegal.cfm) or [www.azlawhelp.org/housing.cfm](http://www.azlawhelp.org/housing.cfm)
  - Contact the Lawyer Referral Service in your county where you can consult with an attorney for a small fee for a half-hour consultation.  
**Maricopa County:** [www.maricopabar.org/displaycommon.cfm?an=16](http://www.maricopabar.org/displaycommon.cfm?an=16) (602) 257-4200.  
**Pima County:** [www.pimacountybar.org/web/lawyer-referral-service-lrs](http://www.pimacountybar.org/web/lawyer-referral-service-lrs) (520) 623-4625.
  - Attorneys who are State Bar Real Estate Law Certified Specialists can be located at [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm). →

# Short Sale Seller Advisory

## BEFORE PROCEEDING WITH A SHORT SALE (CONTINUED)

### 7

#### Obtain Tax Advice

- For Mortgage Forgiveness Debt Relief Act and Debt Cancellation tax information, go to [www.irs.gov/individuals/article/o,,id=179414,00.html](http://www.irs.gov/individuals/article/o,,id=179414,00.html)
- Attorneys who are State Bar Tax Law Certified Specialists can be located at [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm).

### 8

#### Be Aware of the Consequences of Committing “Waste”

Damaging the property or removing fixtures such as sinks, toilets, cabinets, air conditioners, and water heaters may result in liability to the lender for “waste.” In other words, the lender may be able to sue you for damages if you have physically abused, damaged or destroyed any part of the property.

## OPTIONS OTHER THAN SHORT SALE

### CONSIDER ALL OPTIONS

**A SHORT SALE MAY NOT BE YOUR BEST COURSE OF ACTION.  
CONSIDER ALL YOUR OPTIONS BEFORE MAKING A DECISION.**

### 1

#### Loan Workout

- **Reinstatement:**  
Paying the total amount owed by a specific date in exchange for the lender agreeing not to foreclose.
- **Forbearance:**  
An agreement to reduce or suspend payments for a short period of time.
- **Repayment Plan:**  
An agreement to resume making monthly payments with a portion of the past due payments each month until they are caught up.
- **Claim Advance/Partial Claim:**  
If the loan is insured, a homeowner may qualify for an interest-free loan from the mortgage guarantor to bring the account current.

### 2

#### Loan Modification

The lender may agree to change the terms of the original loan to make the payments more affordable. For example, missed payments can be added to the existing loan balance, the interest rate may be modified or the loan term extended. Loan modification resources include:

- **Making Homes Affordable:**  
[www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)
- **National Foreclosure Mitigation Counseling Program:**  
<http://findaforeclosurecounselor.org/network/home.asp>
- **Homeownership Preservation Foundation:**  
[www.995hope.org](http://www.995hope.org)  
1-888-995-HOPE™ Hotline



# Short Sale Seller Advisory

## OPTIONS OTHER THAN SHORT SALE (CONTINUED)

### 3 Refinance

If the lender will not agree to a loan workout or modification, the homeowner may be able to refinance the loan with another lender.

Learn more at [www.makinghomeaffordable.gov/programs/lower-rates/Pages/short-refinance.aspx](http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/short-refinance.aspx)

And [www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx](http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx)

### 4 Deed-in-Lieu of Foreclosure

The lender may allow a homeowner to “give back” the property. This option may not be available if there are other liens recorded against the property. Review the HUD requirements at [www.hud.gov/offices/hsg/sfh/nsc/rep/dilfact.pdf](http://www.hud.gov/offices/hsg/sfh/nsc/rep/dilfact.pdf)

### 5 Work Out Sale

The lender may allow a specific amount of time for the home to be sold and the loan to be paid off. The lender may also allow a buyer to assume the loan to purchase the property even if the loan is non-assumable.

### 6 Bankruptcy

If you are considering bankruptcy as an option, consult with an attorney that specializes in bankruptcy cases: [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm)

Access the Arizona Bankruptcy Court self help information by calling 866-553-0893 or visit [www.azb.uscourts.gov/default.aspx?PID=78#866](http://www.azb.uscourts.gov/default.aspx?PID=78#866)



### 7 Foreclosure

Allowing the lender to foreclose is another option. The counselors at the Arizona Foreclosure Help Line can explain the foreclosure process, call:

**1-877-448-1211**

Ultimately, only you and your attorney can decide if foreclosure is the best option for you. Attorneys who are State Bar Real Estate Law Certified Specialists can be located at:

[www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm)

Ask your attorney about the possibility of a deficiency lawsuit after foreclosure. Assuming all statutory requirements are met, the Arizona anti-deficiency statutes may limit the lender’s remedy to foreclosure, even if the amount due to the lender exceeds the value of the property.

Also, seek professional tax advice about the consequences of a foreclosure and review the IRS information at [www.irs.gov/individuals/article/0,,id=179414,00.html](http://www.irs.gov/individuals/article/0,,id=179414,00.html)



# Short Sale Seller Advisory

## SHORT SALE CONSIDERATIONS

### IF YOU DECIDE TO PURSUE A SHORT SALE, CONSIDER TAKING THE FOLLOWING ACTIONS

#### 1 Contact a Qualified Real Estate Professional

Interview several real estate professionals and ask about their experience in short sales, the number of short sale transactions that they have handled, and their education and training in short sales.

- Review the real estate professional's background and continuing education on the ADRE website at: <http://services.AZRE.gov/publicdatabase>
- Ask if the real estate professional has obtained a short sale certification, such as the Short Sales and Foreclosure Resource Certification ("SFR") [www.realtorsfr.org/](http://www.realtorsfr.org/).
- Find a REALTOR® at [www.aaronline.com/ConsumerAssistance/FindARealtor](http://www.aaronline.com/ConsumerAssistance/FindARealtor)

#### 2 Investigate Documentation and Eligibility

Documentation and eligibility criteria for short sales vary depending on specific lender and investor guidelines. Generally, you must prove that you are financially incapable of paying the loan and the lender is convinced that it will fare better by agreeing to a sale for less than the outstanding loan amount than foreclosing.

#### 3 Determine the Amount Owed on the Property

All debt and costs must be factored in before determining whether a short sale is feasible. Consider the delinquent loan, home equity loan or other loans recorded against the property, past due homeowner's association fees, unpaid property taxes and the costs of a sale, such as closing costs, escrow fees and brokerage commissions. If you have more than one loan on the

property, be aware that a short sale will generally require the approval of all lenders.

#### 4 Determine the Estimated Fair Market Value of the Property

You must prove to the lender that the home is worth less than the unpaid loan balance. Consult a real estate professional or an appraiser for assistance in estimating the value of the property.

#### 5 Consult Legal Counsel

The importance of competent legal counsel to help you determine whether a short sale is the best option and to advise you during the short sale process cannot be over emphasized. See the legal resources listed on page 2 or visit [www.azbar.org](http://www.azbar.org).

#### 6 Understand that a Short Sale May not Discharge the Debt

Even if a lender agrees to a short sale, the lender, the VA, or the FHA may not agree to forgive the debt entirely and may require you to pay the difference as a personal obligation. This outstanding personal obligation could result in a subsequent collection action. For example, a lender may accept the short sale purchase price to "release the lien" on the property as opposed to agreeing to accept the purchase price as "full and final settlement of the debt" on the property. Therefore, be certain of the terms of any short sale before making a decision, consult an attorney regarding whether the lender is entitled to pursue a deficiency judgment and obtain any debt forgiveness agreements with the lender in writing.



# Short Sale Seller Advisory

## SHORT SALE CONSIDERATIONS (CONTINUED)

### 7 Obtain Tax Advice

A short sale in which the debt is forgiven is a relief of debt and may be treated as income for tax purposes. The Mortgage Forgiveness Debt Relief Act of 2007 created a limited exemption to allow homeowners to pay no taxes on debt forgiveness; however, only cancelled debt used to buy, build or improve a principal residence or refinance debt incurred for those purposes qualifies for this tax exemption. For more information on the tax consequences of debt relief seek professional tax advice and go to [www.irs.gov/individuals/article/0,,id=179414,00.html](http://www.irs.gov/individuals/article/0,,id=179414,00.html)

### 8 Be Aware of the Impact on Your Credit Score

The impact of a short sale on your credit score depends upon a variety of factors, including late or missed payments. A short sale may appear on your credit report as “pre-foreclosure redemption,” “paid in full for less than full balance” or other similar term.

### 9 Understand That There May Be a Waiting Period Before You Can Buy another Home

Your ability to qualify for a loan to purchase another home after a short sale will likely be impacted by a short sale and there may be a waiting period before you can purchase another home.

### 10 Home Affordable Foreclosure Alternative (HAFA) Program

The HAFA program was designed to give homeowners different alternatives to a foreclosure, which include incentives for completing a short sale. For more information on the options available, visit the HAFA program website

[www.makinghomeaffordable.gov/hafa.html](http://www.makinghomeaffordable.gov/hafa.html)

To find out which option you are eligible for go to [www.makinghomeaffordable.gov/eligibility.html](http://www.makinghomeaffordable.gov/eligibility.html)

To find out if your mortgage servicer participates in the HAFA program go to

[www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx](http://www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx)

**National Association of REALTORS® HAFA brochure:**

[www.realtor.org/wps/wcm/connect/3400520042baa210a512b5d4db880d7c/HAFA+Consumer+Brochure+6.3.10.pdf?MOD=AJPERES&CACHEID=3400520042baa210a512b5d4db880d7c](http://www.realtor.org/wps/wcm/connect/3400520042baa210a512b5d4db880d7c/HAFA+Consumer+Brochure+6.3.10.pdf?MOD=AJPERES&CACHEID=3400520042baa210a512b5d4db880d7c)

**Guidelines and Forms:**

[www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx](http://www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx)

**Fannie Mae's HAFA program:**

[www.efanniemae.com/sf/servicing/hafa/index.jsp](http://www.efanniemae.com/sf/servicing/hafa/index.jsp).

### 11 Review the Arizona Association of REALTORS® (AAR) Short Sale Forms

AAR has developed a Short Sale Addendum to the Listing Agreement, [www.aaronline.com/documents/SSAListing.pdf](http://www.aaronline.com/documents/SSAListing.pdf), and a

Short Sale Addendum to the Residential Resale Real Estate Purchase Contract [www.aaronline.com/legal/forms/sample-pdfs/sample-short-sale-addendum.pdf](http://www.aaronline.com/legal/forms/sample-pdfs/sample-short-sale-addendum.pdf)

to assist in a short sale transaction. Review these contract forms and any other forms you are asked to sign so that you thoroughly understand your rights and obligations.

**For More Information, Visit:**

The Arizona Department of Real Estate website:

[www.azre.gov/](http://www.azre.gov/)

AAR's Consumer Foreclosure Assistance Links:

[www.aaronline.com/documents/ForeclosureLinks.aspx](http://www.aaronline.com/documents/ForeclosureLinks.aspx)



