A GUIDE TO SHORT SALES

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What is a Short Sale?

A short sale is the process by which a lender allows the borrower to sell the property to a third party for less than the total amount due on a mortgage. Lenders are motivated to agree to a short sale when they have analyzed the situation and are convinced that the losses related to a short sale are less than those that will occur during foreclosure. The decelerating housing market makes short sales a good option for the majority of home owners facing the potential of foreclosure. Borrowers who can demonstrate hardship that has significantly impacted their ability to make their mortgage payments, who have few or no assets and whose mortgage debt exceeds the value of the property are the best candidates

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

There are actually several reasons why a mortgage company would approve a Short Sale, including the following:

Legal Concerns — Mortgage lenders have come under legal pressure to work with borrowers to equitably resolve situations where borrowers are unable to meet their mortgagee 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.

What sort of hardship would my lender consider legitimate?

Generally, so long as the hardship is real and the mortgage company believes the loan 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 split of domestic partners
- 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 Realtor®

- 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, 2012, the act eliminates the phantom tax on debt 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

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 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.****

Why Short Sales

When homeowners can't make their mortgage payments, lenders don't want to foreclose, and real estate agents are having difficulty finding clients, short sales can be the ultimate win-win solution.

Short Sales Benefit Homeowners

Serious financial problems are typically due to unpredictable, uncontrollable events (divorce, health problems, death, job loss, etc,). Adding the trauma of foreclosure to an already stressful life situation can create an enormous burden for the homeowner. The foreclosure process is long and painful—it is embarrassing and demoralizing, and, because it destroys credit for seven to ten years, it offers a much bleaker picture of the future for that homeowner.

Although the end result of a short sale is the same as a foreclosure (the borrower is going to lose their home), the short sale process is a great deal less traumatic than the foreclosure process.

Short sales offer the homeowner a greater level of control and the ability to maintain dignity and privacy while getting out from under the weight of debt. Borrowers who go through a short sale can also begin planning optimistically for the future because the damage to a borrower's credit will be minimized.

These types of losses are also viewed more favorably by lenders and business associates in the future because the borrower responsibly worked out an agreement with the lender and did not simply walk away from his or her creditor.

Short sales Benefit Lenders

The foreclosure process costs lenders an average of 20-30 percent more than a short sale. In a short sale, the lender recognizes that a loss on a loan is likely and is motivated to decrease those losses as much as possible.

Because the management and sale of the property remains in the hands of the borrower, a short sale decreases the time a lender must spend '°managing" a problematic loan in their portfolio. It also eliminates all costs associated with the legal foreclosure process, maintenance, refurbishment, marketing, and re-selling the property after the foreclosure Source: Short Sales From A to Z Presented by The Five Star Institute

Short sales are usually finalized at a faster rate than foreclosures so underperforming loans can be removed from the lenders books with greater expediency.

The lender is looked upon more favorably by the public when it is perceived as having worked with the borrower to prevent a foreclosure rather than having forced a resident out of their home.

Short Sales Benefit Agents

In a real estate market overloaded with homes for sale and decreasing home values, it can be tough to make a living as a real estate agent. The number of non-foreclosure properties has dwindled significantly and there are fewer and fewer homeowners willing to put their homes on the market. Expertise with short sales allows agents to enter a niche market that is accelerating during a down market.

Short sales can also improve career fulfillment—brokers who help sellers complete a short sale are truly helping that troubled borrower avoid financial devastation. That kind of gratitude can lead to increased leads and future referrals.

Short Sales Benefit the Community

In most short sale situations, the homeowner remains in the home until it is sold. This not only decreases the number of vacant homes in a neighborhood, but the property also continues to receive regular maintenance, such as lawn care. Short sales are recorded as regular sales—not as foreclosures; potential buyers in the neighborhood who are analyzing local data are more likely to consider the properties nearby. Houses sold through short sales also tend to be less discounted than houses sold at foreclosure. All of this helps to keep the nearby property values steady and decrease the impact of foreclosure on the community. The county and homeowner associations (HOAs) also benefit as the homeowner continues to pay taxes and HOA dues during occupancy.

Viewed from a wider perspective, short sales lower the number of foreclosures, which may help lessen the downturn of the housing market and improve the U.S. economy. Additionally, borrowers who are foreclosed on are unable to obtain credit for many years following a foreclosure, which decreases their buying power and ability to put money back into the economy. Because a short sale has a less dramatic impact on a borrower's credit, he or she will be able to continue as a consumer, helping the economy grow.

Who is involved in a short sale?

Taken in part from: Short Sales From A to Z Presented by The Five Star Institute

Borrower and Lender

The borrower and the lender are the only direct players who are absolutely mandatory to the short sale process. For a short sale to occur there must be a borrower who cannot pay the mortgage and a lender who agrees to a short payoff as a way to recoup costs on that property.

New Buyer

Although all successful short sales require a new buyer for the property, the new buyer is not typically directly involved in the short sale process Unfortunately, as foreclosures have increased and short sales become a more popular option for borrowers who cannot make their payments, short sales have been marked by some promoters as a "get rich quick" scheme.

Some real estate investors have resorted to approaching troubled borrowers directly to encourage them to pursue a short sale. In some of these situations, the potential buyer will offer to work with the lender on the short sale. Although legally, these tactics are utilized as a way in which to purchase a property for less than it would typically be marketed, but are not necessarily in the best interest of the borrower or the lender.

Seller's Real Estate Agent

According to me National Association of Realtors ("Profile of Home Buyers and Sellers," 2007), 85 percent of homes sold in the United States are sold with the aid of a real estate agent. A real estate agent has specialized expertise to market a home effectively based on its particular attributes and will likely be able to find, a buyer more quickly than an owner could on his/her own.

The benefits of using a real estate agent to sell a short sale property include:

- Speed: The speed with which a property sells is particularly important in a short sale because both the borrower and the lender are motivated to be out from under mounting debt as quickly as possible.
- Legitimacy: lenders may look more favorably on a short sale for a property that is formally listed with an agent because it may demonstrate to them that the seller is motivated to sell the home and has not simply posted a sign in the yard or put an advertisement in the newspaper.

- Pricing: Agents who have experience with short sales will be better equipped to list the property at a price that will attract a buyer, but will also be close enough to fair market value price to justify a short sale to the lender.

- Lender Negotiations: Assuming the agent has strong experience in working with short sales, he or she may be an excellent person to negotiate with the lender regarding the short sale. Lenders are likely to prefer to work with a licensed real estate professional. Licensed agents have agreed to a code of ethics, carry Errors and Omissions (E/O) insurance, are interested in maintaining their licensure status, and are therefore unlikely to engage in activities that would defraud the lender or the borrower.

- Valuation: An agent might also meet with the lenders representative at the house when the valuation is being completed to provide information that will help the appraisal professional more accurately value the home.

- Buyer Qualification: An experienced agent will confirm that a potential buyer is qualified to purchase the property before submitting the contract to the bank.

The assistance of a real estate agent to sell the property during a short sale can greatly facilitate and expedite the process. However because homeowners have the option of putting a property on the market as a FSBO (for-sale by owner), a real estate agent is not always involved in the selling of the property. Although a FSBO may create a better sense of control for a homeowner, the emotions that a homeowner may have about selling the property may interfere with the process. A FSBO also puts the responsibility of marketing, showing, and negotiating the sale squarely on the homeowner, who may not have experience in the real estate market.

Some sellers are under the impression that selling a property themselves will save them money. This is a common myth the lender allows the realtor's commissions to be deducted from the amount paid to the lender; homeowners do not directly pay these commissions.

Buyer's Agent

Similar to individuals who are selling a property, individuals who are buying a short sale property have the option of working with a real estate agent. The benefits of using a real estate agent to purchase a short sale property include.

- Buying Power: an agent should be able to help a buyer assess how much he or she can afford when purchasing at property, can help facilitate financing options, and may be able to refer the buyer to particularly qualified lenders.

- Property Research: An Agent will have access to a multitude of potential properties that meet the buyer's criteria.

- Objective Information About the Property: A buyer's agent will have specific knowledge of the local real estate market and can help accurately evaluate properties of interest to the buyer

- Paperwork: an agent facilitates completion of all documentation necessary from initial proposal through closing.

- Support and Advice: An agent who is familiar with short sales will be a wealth of information to buyers in terms of what to expect when submitting an offer on a short Sale (i.e. despite a solid offer and a qualified buyer, the lender may not agree to a short pay).

Short Sale Processors

A short sale company or attorney specializes in submitting and negotiating short sale packages with lenders. The benefits of working with a short sale company or attorney include:

• Expertise: Unlike real estate agents who work with many different homeowners and their situations, a short sale company focuses exclusively on short sales. The sheer number of short sales completed means that a short sale company will be intimately familiar with any possible borrower situation and lender's requirements. In addition to these benefits, hiring an attorney to handle your short sale will provide you with professional legal advice and representation.

• Stronger Marketing Power: When a real estate agent and a short sale company or attorney work together for the borrower, each is doing what they do best. The short sale company or attorney is negotiating with the lender while the real estate agent is freed up to sell the house as quickly and efficiently as possible.

• Lender Relationships and Knowledge: Short sale companies and attorneys have experience knowing what each lender is looking for and can anticipate and circumvent last minute lender-specific issues. Although the short sale company or attorney has no control over the lenders' decision, they are able to establish relationships within the lender's ranks and can often work directly with a negotiator to increase the speed at which the decision is made.

• Legitimacy: Lenders prefer working with professionals who have experience in short sales. The lender is not looking to "save" the borrower or to sell the property to the best person; the lender is focused solely on negotiating an agreement that will save it money. Working with a short sale expert or attorney allows the lender to avoid the borrowers emotions and save time by working with someone who knows the ropes.

• Negotiation Experience: Short sale experts and attorneys have the patience and motivation to continue submitting potential offers and negotiating a short sale long after many real estate agents may have given up. These professionals are motivated to close the short sale and know that it will take time.

PROCESSING CHECKLIST

Property Address:____

Lender #1: ____________________________ Lender #2: _____________________________

Loan #: _______________________________ Loan #: ______________________________

Contact Email: _________________________ Contact Email: _________________________

Payments Current? Yes___ No___

Has NOD been filed? Yes___ No___ Has NOD been filed? Yes___ No___

IF SECOND MORTGAGE APPLIES, THE DOLLAR AMOUNT YOU WOULD LIKE ON THEHUD 1: $_____________

Probate? Yes___ No___ Name of Attorney ___________________________

Bankruptcy? Yes___ No___ Trustee ____________________________________

Title in Trust? Yes___ No___ Submit Full copy of Trust Agreement

Title in LLC.? Yes___ No___ Submit Full copy of Corporate Docs

Divorce? Yes___ No___ Submit Divorce Decree

Name of Spouse if not on Title: ____

Is there a LID/SID? Yes___ No___

Is there a CIC Association? Yes___ No___

Is there a CIC Assessment? Yes___ No___

Association Name (Master): ____

Association Mgmt Co. (Master) Name: ___________________ Tel: ________________

Dues (Master): $______ Monthly: $________ Qtrly: $_______ Annually: $______

Association Name (Sub): ____

Association Mgmt Co. (Sub) Name: ___________________ Tel: ________________

Dues (Sub): $______ Monthly: $________ Qtrly: $_______ Annually: $______

Are CIC Payments Current? Yes___ No___

Any CIC Litigations? Yes___ No___

Is Seller(s) a US Citizen(s)? Yes___ No___

If no, is the owner a resident alien? Yes___ No___

AGENT INFORMATION

Listing Agent Commission: ___________ Selling Agent Commission: _____________

Transaction Fee: ________________ Transaction Fee: __________________

Is there a negotiator and/or Attorney's Office working this transaction?

Company Name: ____ Fee: $____________

How the Nevada Mandatory Mediation Program Affects Short Sales Directly

CREATING THE PROGRAM

Assembly Bill 149 was passed by the Nevada Legislature during the 2009 session and signed by Governor Jim Gibbons. Its purpose was to address the foreclosure crisis head-on and to help keep Nevada families in their homes.

This 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 – or Notice of Breach filed on or after July 1, 2009. To qualify for the mediation program, a property must be a homeowner's primary residence and located in Nevada.

WHAT YOU NEED TO KNOW ABOUT FORECLOSURE MEDIATION

Mediation is an alternative method to help parties resolve disputes by agreement with the help of trained mediators. Mediating a foreclosure action has its advantages. It is fast, inexpensive, and offers a flexibility that more formal processes do not.

Home foreclosures impact both the homeowner and the lender. Homeowners do not want to lose their homes and mortgage lenders do not want to be in the real estate business. Both sides may benefit through foreclosure mediations.

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.

If you have the ability to meet the other party half way, everyone may benefit.

- Can you, as a homeowner, make your mortgage payments if your home loan is modified?
- Can you, as a lender in today's real estate market, modify a loan to the extent that the homeowner can 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 help of a trained 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 that a homeowner 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.

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 their $200 portion prior to the mediation.

A lawyer is not required to be present with you in the mediation process, but each side is welcome to 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)

SHORT SALE REQUIREMENTS LIST

- ☐ LISTING AGREEMENT
- ☐ HARDSHIP LETTER
- ☐ FINANCIAL WORKSHEET
- ☐ COPIES OF 2 MOST RECENT PAY STUBS
- ☐ COPIES OF 2 MOST RECENT BANK STATEMENTS
- ☐ COPIES OF 2 MOST CURRENT IRS TAX RETURNS
- ☐ SELLER INFORMATION FORM
- ☐ THIRD PARTY AUTHORIZATION FORM
- ☐ MLS SHEET
- ☐ COPY OF MOST RECENT HOMEOWNERS ASSOCIATION BILL(S) (IF YOU DO NOT HAVE THIS THE SELLER INFORMATION FORM WILL SATISY THIS REQUIREMENT)
- ☐ FORWARD CONTRACT ONCE YOU RECEIVE AN OFFER

HARDSHIP LETTER GUIDELINES

Remember to state the following items in your HAND WRITTEN hardship letter:

1. **Hardships** - What are your hardships (current and past)? For example unemployed, car accident, medical problems (personal or family), etc. Go into a little detail about each hardship. The following are the most important messages to get across to the Lender:

    a. Why you will not be able to be current again on your loan.

    b. We do not have enough income to make these payments.

    c. We are leaving the property.

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

3. **Any signed exemptions of documents** - If you do not have bank statements, pay stubs or tax returns, you will need to explain the reason in more detail in your letter- as to "why" you can not provide those documents. (I.e. I've been unemployed for 6 months and have not been able to find work) Note- realize that if you don't have tax returns, then the bank will ask for Extension. So, if you don't have Extension either, explain why in this letter. (i.e. "I haven't worked in over 2 years and so I haven't 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).

4. **Bankruptcy** - You could also mention "I don't want to have to file bankruptcy"

SAMPLE HARDSHIP LETTER GUIDELINES

Date

RE: Address – Loan #______________

To Whom It May Concern:

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 (loss of job, illness, accident, death or disability of a wage earner- describe in detail what your hardship is)

In spite of my current financial difficulties, I expect that it will only get (better/worse). I am not in a position to continue making my mortgage payments. This was not at all what I intended but I have come to the conclusion that this is my only option.

Your help and consideration in this matter are very much appreciated.

{Signature}

{Printed Name}

Remember, YOU must handwrite your own Hardship Letter to the Lender(s)*

SAMPLE HARDSHIP LETTER GUIDELINES

RE: Address – Loan #_______________

To Whom It May Concern:

This letter is a request for a short sale (letter can also be for a loan workout, depending on the situation you are in) of my home located at {ADDRESS, CITY, STATE, ZIP}.

I had been working for {COMPANY NAME} for the last tens years when in October, work began to slow down. {COMPANY} started to cut back on my hours, which eventually caused me to start falling behind on my bills. I earnestly tried to look for other work, but did not have any success with it. This February, I was laid off, making it
impossible for me to keep up on my mortgage.

All of the bills kept piling up and I had no way to take care of them. I did find some temporary jobs that kept me afloat for a little while. I have just recently found another job, but the pay is substantially less than what I was making at {COMPANY NAME}.

Since I have fallen so far behind, there is no way for me to continue the payments. I am expecting that the house will get sold, and thus, would be able to avoid foreclosure and pay back as much as possible. It would also help me save my credit.

Thank you for reviewing my request.

Sincerely,
{YOUR SIGNATURE}
{YOUR NAME PRINTED}

Remember, YOU must handwrite your own Hardship Letter to the Lender(s)

POSSIBLE FORECLOSURE ALTERNATIVES

You may be facing foreclosure... so what are your options?!? Try to look at the situation more from a financial standpoint rather than an emotional standpoint. This way you can more successfully analyze which option might best suit your needs and desires to move you toward resolving your financial difficulty. One very important thing to remember: Time is of the essence. It's time to think through your situation and make a decision. Then, take action right away so you have enough time to complete the solution you choose.

Ten options when facing Foreclosure

1. **Do Nothing** - If a homeowner does nothing, they most likely will lose their home at foreclosure auction. Loan applications generally ask if the applicant has ever been foreclosed upon. Credit reports also disclose this damaging information. Not the best option.

2. **Payoff/Refinance** - Completely paying off the entire loan amount plus any default amount and fees. Usually this is accomplished 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.

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

4. **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.

5. **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.

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

7. **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.

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

--**Chapter 7** (Liquidation) To completely settle personal debt.
--**Chapter 13** (Wage Eaner Plan) Payments are made toward a plan to pay off debts in 3-5 years.
--**Chapter 11** (Business Reorganization) A business debt solution.

9. **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, might be negotiated with your lender by your Real Estate Professional if what is owed is MORE than the property's value.

10. **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.

Debt Forgiveness Tax Consequences & Credit Ramifications

HOW DEBT FORGIVNESS WORKS

With a short sale, the lender has three possible ways to handle the deficiency balance, which is the portion of the mortgage debt not covered by the sale of the home. First, the lender can attempt to collect the deficiency balance from the seller after the property has closed. Second, the lender may require the seller to sign an unsecured promissory note for the deficiency balance as a condition of agreeing to the short sale. If the new note is for less than the balance of the original debt, the difference would be considered canceled, or forgiven, debt. Third, the lender may agree to cancel the entire deficiency balance.

On the surface, option three would seem to be the best alternative for a seller. However, the IRS considers any canceled mortgage debt ordinary income, and therefore is subject to taxation. In addition, because the IRS requires the lender to file a 1099-C form stating the amount of the canceled debt, there will be a record of the exact amount of the debt that was cancelled. A seller will also receive a copy of the 1099-C to use in tiling income taxes. The seller's home state would also consider the cancelled debt as ordinary income.

EXCEPTIONS TO THE RULE

The IRS does recognize situations in which cancellation of debt will not result in tax liability for the seller.
A seller may avoid tax liability:

- When the borrower receives a bankruptcy discharge and the deficiency was included in the bankruptcy.

- When the borrower is insolvent at the time of the cancellation of the debt. Insolvency would occur when a borrowers liabilities exceed assets. Note that seller would have to prove this insolvency to the IRS when filing a tax return.

- When the debt was secured by a non-recourse loan. Under a non-recourse loan, the lender does not have the legal right to collect a deficiency judgment from any assets of the debtor not pledged to secure the loan. While most home mortgages do not fall into this category, purchase money loans on a person's residence are non-recourse in some states. Until October Nevada was a full recourse state regardless of property type or purposes for which debt was incurred. Effective October all new purchase money loans made by financial institutions for properties continuously owner occupied are nonrecourse.

- When the tax liability from the cancellation of debt on an investment property can be offset against other business liabilities and expenses. This exception does not apply to properties occupied as a residence by the mortgagor.

- Cancelled debt on a primary residence that is used to purchase or improve the property, will not be taxed through the year 2012.

In many short sales, a seller would be able to qualify under the first two of these exemptions, especially since it was almost certainly necessary to show financial hardship in order to convince the lender to agree to a short sale. However, it is the seller's responsibility to notify the IRS why the amount in the 1099-C should not be counted as ordinary income. Otherwise, the IRS will consider the forgiven debt as income and penalize the seller for unpaid taxes.

What do you need to know?

To ensure that you don't run afoul of the IRS, and that you understand the potential liability — after a short sale closes, it is recommended that an attorney and a tax professional be consulted.

Credit Ramifications

If the borrower is in default, his or her credit has already been negatively impacted. Additionally, when a short sale is reported to the credit rating agencies, the lender may report it in a variety of ways (loan paid in full versus settled/deficiency). Depending on the label, it may impact future credit in different ways. Remind borrowers that while credit may be bruised for a few years after a short sale; a foreclosure is likely to lead to a decade of damaged credit.

Foreclosure Law in Nevada

- Typical Nevada Foreclosure Time Frame: 120 days
- Non-Judicial Forecllosure Available?: Yes
- Jusdicial Foreclosure Available?: Yes
- Types of Security Instruments Utilized: Morrgage and Deed of Trust
- Right of Redemption Period Following Goreclosure?: Yes, in a Judiial foreclosure, only one year.

Nevada foreclosure laws provide for both judicial (i.e. court ordered) 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.

The following is an 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. Said 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.

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

- Typical Nevada Foreclosure Time Frame: 120 Days
- Non-Judicial Foreclosure Available?: Yes
- 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 one year.

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 at 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, above. 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 lienholders.
(NRS 107.080)

(This information is deemed accurate, however, the reader is encouraged to seek the advise of counsel regarding individual circumstances).

Short Sale Clauses

FOR THE BUYER

The due diligence time shall begin the day after the buyer receives written notice from the lender that the lender has approved the short sale.

Seller hereby agrees to provide buyer written, email or fax confirmation that buyer's offer has been presented to the lender. Seller agrees the conformation shall reference buyer's name and date of offer. Said conformation shall be provided to buyer within seven days of offer acceptance.

Due diligence: Buyer's due diligence and all time lines outlined in this agreement shall not begin to run until the day the buyer has received written notice of short sale approval from the lender.

FOR THE SELLER

This sale is contingent upon lender approval of a short sale and final approval by seller of the lender's approval and conditions.

Due diligence: Buyer is solely responsible for any and all costs incurred as a result of buyer's desire to purchase this property including all costs incurred during the due diligence process.

Unilateral Escrow Extension: Lender approval may prevent or delay a timely close of escrow. In the event an escrow extension is necessary for the purpose of obtaining lender approval, Buyer agrees to grant seller one unilateral escrow extension. Said extension shall not be longer than 30 days.

In the event Seller requires an escrow extension, Seller shall provide Buyer written notice with escrow to be extended to a date certain. However, in no event shall the close of escrow be later than one day prior to the scheduled foreclosure sale. Buyer agrees to cooperate by signing an addendum that will memorialize the new close of escrow date. Buyer acknowledges that if this transaction does not close prior to the foreclosure. trustee sale date, the property will be sold. Seller shall have no further obligations under this contract.

Disclaimer
The information contained in this book is only intended to serve as a guide in the various transactions to which the information is applicable.

No representation is made as to the legal validity of the information or the adequacy of it in any specific transaction. The information contained herein should be used only after consultation with real estate agents/ brokers, lenders, and tax professionals.