



## Understanding Short Sales

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CINCINNATI AREA BOARD OF REALTORS®, INC.

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advice. For real estate advice, consult a REALTOR®.



This form is provided by \_\_\_\_\_ (REALTOR® Firm). The following is an explanation regarding some of the practical and legal issues involved in Short Sales. **THIS FORM IS FOR YOUR INFORMATION ONLY.**

- The Short-Sale Defined.** The term "Short Sale" is used in the real estate industry to describe a situation where the debt owing against a property is greater than the fair market value of the property. In other words, the owner cannot sell the property unless the creditor(s) ("Third Parties") agree to accept a payment that is less, or short, of the amount(s) actually owed to the Third Parties. The Third Parties are usually mortgage lenders, mortgage insurers, bankruptcy trustees, and federal, state and local taxing authorities (such as IRS or State Tax Commission).
- No Binding Contract Without Third Party Approval.** A Short Sale requires the written approval of the Third Parties. Consequently, the owner of the property, and any interested buyer, are advised that even if they reach an agreement between themselves for the purchase and sale of the property, that agreement will not be binding until the Third Parties approve the terms of the Short Sale. A proposed Short Sale may require that the seller provide a list of the Third Parties having an interest in the Real Estate. If the seller wishes to keep that information confidential during the approval process, the provision should be deleted in the proposal. The interested buyer may insist on such information to determine the complexity of reaching an agreement between the seller, buyer and Third Parties. Earnest Money may not be required until all parties have reached an agreement on the terms of the Short Sale.
- Third Party Rejection or Changes to Proposed Short Sale.** Based upon the obvious financial loss, Third Parties will often reject a proposed Short Sale. If however, the Third Parties do not reject the proposed Short Sale, they will usually send to the owner of list of requested changes to the proposed purchase contract. Some of the changes may affect the owner and others may affect the interested buyer. For example, the Third Parties may require that the property be sold in "as-is" condition. Also, the Third Parties will often not permit the owner to pay for any of the buyer's closing costs, repairs, etc. The owner and the interested buyer are not obligated to accept any of the changes requested by the Third Parties - in which case, there will be no Short Sale. If, however, the owner, the interested buyer, and the Third Parties reach a written agreement with each other, the Short Sale transaction may proceed to closing. Please note that if the property is in foreclosure during the pendency of the Short Sale, action may be necessary by the seller to redeem the property to complete the Short Sale.
- Delays in Response from the Third Parties.** Most purchase contracts for Short Sales impose a deadline for written approval by the Third Parties. Communication between the Listing and Selling agents should take place to determine the status of any action previously taken to facilitate a Short Sale and a practical approval deadline. It should be noted, however, that the Third Parties rarely meet that deadline. **THE OWNER AND THE INTERESTED BUYER SHOULD BE PREPARED FOR SIGNIFICANT DELAYS IN RECEIVING ANY RESPONSE FROM THE THIRD PARTIES.** Written extensions to the deadline should be obtained, if necessary. Otherwise, the proposed Short Sale may be deemed null and void.
- Right of Third Parties to Encourage Additional Offers.** As a condition of considering any proposed Short Sale, the Third Parties will usually require that the owner keep the property on the market, even after the owner and the interested buyer have agreed to the terms of a proposed purchase contract. Because the Third Parties are being asked to accept payment that is less than what is owed to them, they want to obtain the highest possible price for the property. Therefore, it is to their advantage to require the owner to keep the property on the market and to promptly submit to the Third Parties any additional purchase offers that the owner may receive from other interested buyers. **THE OWNER AND THE INTERESTED BUYER SHOULD UNDERSTAND THAT THE THIRD PARTIES MAY NOT RESPOND TO A PROPOSED SHORT SALE TRANSACTION UNTIL THEY HAVE HAD AN OPPORTUNITY TO COMPARE THAT OFFER WITH OTHER PURCHASE OFFERS. THAT PROCESS MAY ALSO RESULT IN SIGNIFICANT DELAYS FOR ALL PARTIES.**
- Right of Seller or Buyer to Cancel.** As provided in paragraph 5 above, the owner will usually be required by the Third Parties to continue to market the property even after the owner and the interested buyer have entered into a purchase agreement. Based upon that requirement, the owner and the interested buyer are also advised that until the owner, the interested buyer, and the Third Parties reach a written agreement, the seller or the interested buyer may cancel the proposed Short Sale transaction for any reason, or for no reason, by providing written notice to the other party.
- Legal and Tax Advice.** **THIS FORM IS FOR YOUR INFORMATION ONLY AND DOES NOT PROVIDE ANY LEGAL OR TAX ADVICE REGARDING SHORT SALES. YOU ARE ADVISED TO OBTAIN ADVICE FROM A LEGAL AND/OR TAX PROFESSIONAL ON THE ADVISABILITY OF ANY SHORT SALE.**

### ACKNOWLEDGEMENT OF RECEIPT

The undersigned acknowledge that they have read and understand this document.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_