

Short sales

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In a short sale, the lender agrees to discharge its mortgage for less than the amount owed. The seller makes a request to his lender to accept a loan payoff amount for his loan that is less than the amount due under the terms of the lender's note. The seller must demonstrate financial hardship in order for the short sale to be approved by the lender. The approval process can take months, so the buyer must be prepared to wait for as long as the approval process takes.

If structured properly, the short sale is a win-win-win situation. The seller is able to sell his property and move on, thereby avoiding foreclosure and possibly avoiding bankruptcy. The buyer acquires a property at a good price. The lender gets paid a substantial part of the loan without having to go through the significant expense and trouble of foreclosing, and without having to manage, rehabilitate, lease or sell the property.

As the short sale is not a foreclosure, junior liens will not be wiped out, and the buyer should always obtain an owner's title insurance policy.

There have been problems with short sales where the Short Sale transaction is not at arm's length. It is important that there be full disclosure to the lender to make certain the lender does not cry foul and revoke its estoppel letter approval. For this reason, everything should be disclosed to the lender, and the lender's estoppel letter approval should not be revocable either before or after the closing.

The paperwork in a short sale should include a "short sale addendum" to the offer and to the purchase and sale agreement.

The short sale is a good way to sell property in a down market. With the right disclosures and paperwork, it can work for the seller, the buyer, and the lender.

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