

Short Sales...

Are you ready?

SAMPLE

Short Sales

What is a short sale?

A short sale occurs when the seller owes more on their mortgages than the current market value of their property. Once the seller receives an acceptable offer from a ready; willing and able buyer, negotiations and concessions must be made so that the lender will accept a sale at current market value as payment in full for the loan. Sometimes the homeowner in this situation may have the mortgage debt forgiven.

The need for a short sale often begins with a loan default. The lender or creditors may be willing to allow the property to be sold for less than the amount owed on the mortgage and accept that short amount as full payment of the debt.

There often is a tremendous amount of stress involved in these transactions because:

1. The seller usually is in default of the mortgage and is unable to make the payments.
2. The seller may have received pre-foreclosure notices or is in foreclosure.
3. There may not be enough time to complete the short sale before the foreclosure date.
4. The buyer may cancel the sale prior to acceptance of terms by the lender.
5. A second mortgage holder may refuse to cooperate in a short sale.
6. The lender may encourage back up offers that exceed original accepted offer.
7. Seller may have no cash for repairs of the property.
8. Lender may not accept buyer's offer that was accepted by the seller and may counter it.
9. Seller may want cash out at closing.
10. Seller may not have the debt forgiven and may cancel the sale.

The lenders loss mitigation departments are not staffed to service the large number of homeowners who are in financial trouble with their home loans. They receive thousands of requests and must review each package individually. There are numerous forms to be completed and if the package is not in order, it may be place at the bottom of the stack. As a buyer, do not be surprised if you do not receive a response for up to four months!

I have attached sample forms we use for sellers when you list a property and for buyers when you submit an offer.

Seller Notes

Seller is hereby noticed that Broker is not qualified to provide financial, legal, or tax advice regarding a short sale transaction. Therefore, the Seller is advised to obtain professional tax advice and consult independent legal counsel immediately regarding the tax implications and advisability of entering into a short sale agreement.

Sellers must disclose to buyers that they anticipate a short sale situation.
They must inform the Realtor of any and all liens on their property.
A short sale may adversely affect the sellers credit.

Seller will need to provide the lender(s) with:
Hardship letter explaining why they can no longer make payments
Authorization letter for Realtor or professional negotiator to speak with lender
Financial analysis form
Tax returns, pay stubs, bank statements
Other items may be required by your lender

A contract submitted for short sale approval will not automatically stop a foreclosure sale.
A foreclosure sale may be postponed by the lender upon acceptance of a short sale agreement, but a postponement is not automatic.
A foreclosure may be reinstated after a postponement without further notice to the seller.

Not all Sellers will qualify for a short sale approval



Long Realty Company

SHORT SALE ADDENDUM TO LISTING CONTRACT



The printed portion of this contract has been approved by the ARIZONA ASSOCIATION OF REALTORS® ("AAR") This is intended to be a binding contract. No representation is made as to the legal validity or adequacy of any provision or the tax consequences thereof. If you desire legal, tax or other professional advice, consult your attorney, tax advisor, insurance agent or professional consultant.

- 1. SELLER: _____
- 2. BROKER: _____
- 3. PREMISES: _____
- 4. DATE: _____

5. Seller acknowledges that Broker is not qualified to provide financial, legal, or tax advice regarding a short sale transaction. Therefore, the Seller is advised to obtain professional tax advice and consult independent legal counsel immediately regarding the tax implications and advisability of entering into a short sale agreement.

8. _____
(SELLER INITIALS)

9. **SHORT-SALE DEFINED:** The term "short sale" is used to describe a sale in a situation where there is more debt owing against a property than the property's value. In a loan default situation, (pre-foreclosure) the creditor(s) may be willing to agree to allow the property to be sold for less than the loan amount and/or accept less than (or "short") the amount owed as payment in full. **Seller acknowledges that there may be disadvantages to a short sale.**

13. **CREDIT AND CREDITOR CONSIDERATIONS:** A short sale may adversely affect the Seller's credit score. Further, even if the creditor(s) agrees to a short sale, the creditor(s) may not agree to forgive the debt entirely, and may require the Seller to pay the difference as a personal obligation. If the loan is guaranteed by the FHA or VA, these entities may also require payment of the difference. **Seller is advised to be certain of the terms of any short sale before making a decision, and obtain any debt forgiveness agreement in writing.**

18. **TAX CONSIDERATIONS:** A short sale in which a portion of the debt is forgiven is considered a relief of debt and may be treated as income for tax purposes. A creditor who forgives a debt must submit a 1099 form to the IRS indicating the amount of the debt that has been forgiven.

21. **DETERMINING THE AMOUNT OWED:** Seller agrees to disclose all liens encumbering the Premises and to cooperate with Broker(s), escrow company, and creditor(s) to determine the amount of debt owed on the property, including but not limited to, purchase money loans, home equity loans, homeowner's association fees, property taxes and other tax liens.

24. **OBTAINING CREDITOR APPROVAL:** Obtaining creditor(s) approval of a short sale involves documentation similar to that required for the original loan application. The Seller must generally establish that the Seller is financially incapable of paying the loan(s). The Seller agrees to promptly submit to creditor(s) all requested documentation, including W-2 forms from employers, bank statements, tax returns, "hardship letter" (stating the reason the creditor(s) should consider granting a short sale) and other requested financial documents outlining income and debt. The Seller acknowledges that it may take weeks or months to obtain creditor(s) approval of a short sale. Seller(s) agrees to grant creditor(s) permission to communicate directly with Broker(s).

31. **OTHER OPTIONS:** Seller is advised to explore options with creditors other than a short sale, such as loan modification, revised repayment plan, refinance or entry into a lender(s) loan mitigation program, if available.
33. Seller agrees to notify Broker if Seller decides to pursue other options.

34. SELLER SIGNATURE _____ MO/D/YR _____

35. FIRM NAME (BROKER) _____ MO/D/YR _____

Initials: _____ / _____
SELLER SELLER



Initials: _____ / _____
BROKER BROKER

Buyer Notes

In Arizona, the short sale addendum is attached to the purchase contract.

The short sale addendum gives notice that the debt on the property is greater than the purchase price. The contract is contingent upon the seller and their lenders agreeing to sell the property for less than the loan amounts. Notice is given the buyer near the top of the addendum that it may take **weeks or months** to obtain the lender's approval for the short sale.

The Seller is encouraged to accept back up offers and submit those to the lender for consideration. The lender may require the seller to sell the property only to the holder of the contract with terms and conditions most acceptable to the **lender**.

The offer is not considered accepted until the buyer receives a written Short Sale Agreement Notice accepted by the lender.

All time periods begin upon the date of the delivery of the Short Sale Agreement Notice.

The buyer may unilaterally cancel the contract at any time before receipt of a Short Sale Agreement Notice.

What this means to you:

Even though the seller may have accepted your offer, the contract is not valid until the lender accepts the offer and gives you a written Short Sale Agreement Notice.

You may have been waiting for weeks for an answer and another offer with better terms may be submitted to the seller and lender.

You may continue to look at other properties in case this offer is not accepted by the lender. You may cancel this contract for any reason before it is accepted by the lender, including if you find a property you like better.

The lender may give you a counter offer even if the seller accepted your original terms.

You may not hear of any progress for weeks at a time.

The Realtors have no control over the lenders loss mitigations department. The lenders are overworked and overwhelmed by the number of files they must work with daily. I have heard that is not uncommon for loss mitigations employees to handle over 300 files at a time. That means they may have 300 calls per day from agents, negotiators and sellers. Understand that this is a long process and the lender wants to be assured that you are willing to wait for their approval. Many short sales do cancel because a buyer gets frustrated with the wait or finds another property. The lender hopes to have a patient buyer on the contract who understands the long process involved.



Long Realty Company

SHORT SALE ADDENDUM

TO THE RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

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- 1. SELLER: _____
- 2. BUYER: _____
- 3. PREMISES: _____
- 4. DATE: _____

5. The following additional terms and conditions are hereby included as part of the Contract between Seller and Buyer for the above
 6. referenced Premises. Delivery of all notices and documentation shall be deemed delivered and received when sent as required
 7. by Section 8m of the Contract.

8. **CONTINGENT UPON ACCEPTABLE SHORT SALE AGREEMENT**

- 9. Buyer and Seller acknowledge that there is more debt owing against the Premises than the purchase price. Therefore, this
 10. Contract is contingent upon an agreement between the Seller and Seller's creditor(s), acceptable to both, to sell the Premises
 11. for less than the loan amount(s) ("short sale"). Buyer and Seller acknowledge that it may take weeks or months to obtain
 12. creditor(s) approval of a short sale.
- 13. Nothing shall limit a Seller from accepting subsequent offers from subsequent buyer(s) and submitting the back-up contract(s) to
 14. Seller's creditor(s) for consideration. All parties understand and agree that Seller's creditor(s) may elect to allow the Seller to sell
 15. the Premises only to the holder of the Contract with terms and conditions most acceptable to creditor(s).

16. **DOCUMENTATION TO CREDITOR(S)**

- 17. Seller shall submit to creditor(s) a copy of this Contract, including this and other Addenda, and any other documentation required
 18. by the creditor(s) for approval of this sale within five (5) days after Contract acceptance. Seller agrees to diligently work to obtain
 19. short sale approval and will promptly provide the creditor(s) with all additional documentation required, including an appraisal, at
 20. Seller's expense, if required. Seller instructs creditor(s) to provide approval status updates to Broker(s) and Buyer upon request.

21. **TERMS UPON ACCEPTABLE SHORT SALE AGREEMENT**

- 22. **Agreement Notice:** If Seller and Seller's creditors enter into a short sale agreement, the Seller shall immediately deliver
 23. notice to Buyer ("Agreement Notice").
- 24. **Time Periods:** The date of Seller's delivery of the Short Sale Agreement Notice to Buyer shall be deemed the date of Contract
 25. acceptance for purposes of all applicable Contract time periods.
- 26. **Escrow and Earnest Money:** Buyer shall promptly open Escrow and deposit Earnest Money as described in the Contract
 27. upon receipt of Agreement Notice.
- 28. **Loan Costs:** Buyer will be responsible for all Buyers' Loan Costs.
- 29. **Seller Warranties:** Buyer hereby waives Seller's warranties as set forth in Lines 163-166 of Section 5a of the Contract that all list-
 30. ed items shall be in working condition at the earlier of possession or COE. However, Seller warrants and shall maintain and repair
 31. the Premises so that, pursuant to lines 167-168 of the Contract, at the earlier of possession or COE, the Premises, including all
 32. heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning
 33. systems, and heaters, if any), free-standing range/oven, built-in appliances and additional existing personal property included in
 34. the sale, will be in substantially the same condition as on the date of Contract acceptance and all personal property not included
 35. in the sale and all debris will be removed from the Premises.
- 36. **Close of Escrow:** Close of Escrow shall occur thirty (30) days or _____ days after delivery of Agreement Notice.
- 37. **Creditor Requirements:** Buyer and Seller agree to cooperate with Creditor(s) and sign additional Creditor disclosure(s) or
 38. execute additional addendum(s) required by Creditor(s) as a condition of approval of the short sale, provided that Buyer and
 39. Seller incur no additional cost or liability.

40. **BUYER CANCELLATION**

- 41. Buyer may unilaterally cancel this Contract by notice to Seller at any time before receipt of a short sale Agreement Notice from Seller.

Initials: _____ / _____ SELLER SELLER	 ARIZONA ASSOCIATION OF REALTORS® SSARPC 8/08	Initials: _____ / _____ BUYER BUYER
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LEGAL AND TAX ADVICE

- 42. _____
- 43. Seller acknowledges that Broker is not qualified to provide financial, legal, or tax advice regarding a short sale transaction. Therefore, the Seller is advised to obtain professional tax advice and consult independent legal counsel immediately regarding the tax implications and advisability of entering into a short sale agreement.
- 44. _____
- 45. _____

46. _____
(SELLER INITIALS)

UNFULLFILLED CONTINGENCY

- 47. _____
- 48. In the event that Seller and Seller's creditor(s) are unable to reach a short sale agreement acceptable to both, at the sales price contained herein, Seller shall promptly notify Buyer of same, and the Contract shall be deemed cancelled due to the unfulfilled short sale contingency. If applicable, Buyer shall be entitled to a return of any Earnest Money.
- 49. _____
- 50. _____

OTHER TERMS AND CONDITIONS

- 51. _____
- 52. _____
- 53. _____
- 54. _____
- 55. _____
- 56. _____
- 57. _____
- 58. _____
- 59. _____
- 60. _____
- 61. _____
- 62. _____
- 63. _____
- 64. _____
- 65. _____
- 66. _____
- 67. _____
- 68. _____
- 69. _____
- 70. _____
- 71. _____
- 72. _____
- 73. _____
- 74. _____
- 75. _____

- 76. In the event that any provision contained in this Addendum conflicts in whole or in part with any terms contained in the Contract, the provisions of this Addendum shall prevail and the conflicting terms are hereby considered deleted and expressly waived by both Buyer and Seller.
- 77. _____
- 78. _____

79. BUYER SIGNATURE _____ MODA/YR BUYER SIGNATURE _____ MODA/YR

80. SELLER SIGNATURE _____ MODA/YR SELLER SIGNATURE _____ MODA/YR

Initials: _____ / _____ SELLER SELLER	 ARIZONA <small>ASSOCIATION OF</small> REALTORS® SSARPC 8/08	Initials: _____ / _____ BUYER BUYER
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Let's Go!

A large percentage of homes on the market now are listed as possible short sales. If you have the patience and the time frame to participate, you may be able to purchase a home at an ideal price and terms. Lenders are not in the business of real estate. They prefer to work out a compromise if possible to avoid the legal expenses of foreclosure and selling a property.

As a buyer, you need to work with your preferred lender in getting a full approval as quickly as possible. Sometimes the sellers lender will approve a short sale within a few days of the pending foreclosure. You need to be ready to close on short notice.

Unfortunately for everyone, this is a situation of Hurry Up and Wait!
If you have the patience, understand the circumstances and can show you are a strong, sincere buyer, this may be an ideal opportunity for you. I will be here to guide you.

I look forward to working with you!

Nancy Biel Stewart
Long Realty Company
[REDACTED]