

Considering a Short Sale?

There are two types of Realtors today. Those who understand the emotional and financial complexities of a short sale... and those who don't.

At The Smith Group, we have successfully completed 57 transactions in the last 12 months. We have a team of 8 professionals working on your behalf to mitigate your potential losses and make your next move as simple as possible.

If you or someone you know is considering a short sale, call us for a free confidential one-hour consultation at 949.678.1070.

In today's economy, who you work with matters.

Short Sale FAQ's

What is a short sale?

A short sale occurs when the market value of a property is less than the outstanding balance on the mortgage. The lender(s) agree to accept less than what is owed on the property in order to avoid a possible foreclosure situation. Upon approval from the lender, the seller is able to walk from the property limiting their potential credit damage and tax liability. You should note that short sales may not be for everyone, call or read on to see if it is a viable option for you.

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1. IS A SHORT SALE RIGHT FOR EVERYONE?

NO! There are too many agents, especially here in Orange County, that make it sound like anybody can do one, with very minimal credit consequences, the bank will give you a full release of your debt and you can happily move one and buy your next home in two years. The bottom line is that these agents make it sound like it this to attract more business. This is NOT a one size fits all solution. Every person's situation has to be assessed by a professional during a consultation. So please read the answers to these questions and when you are ready call Tim Smith 949.678.1070 (personal cell), where he will give you a FREE, NO OBLIGATION 1 hour phone consultation to determine what solution is best for you, and what your likely outcome will be. Thank you for reading...

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2. What are the CREDIT benefits or doing a short-sale vs. foreclosure?

There are two parts and scenarios that need to be considered for this answer. Let's start with how it will be reported to the credit bureaus. While in cases, short sale and foreclosure, the delinquent mortgage will negatively affect their credit rating, at least short sellers will have type of verbiage

stating that they worked out a deal with their lender. Such terms reported by lender are “debt settled for less than what was owed”, “debt settled”, “debt settled with agreement” or some other similar verbiage dependent on each lender. A short sale can possibly be less damaging to your credit point wise and there are cases where the damage was as little as 50-100 points, compared to a foreclosure which mortgage and credit experts say that, after bankruptcy, having a foreclosure on your credit report is the worst result and will possibly reduce your credit score by over 300-400 points.

The next situation that plays out as to your credit damage is whether you are late on your payments or not. Once you stop making payments lenders will report you 30, 60, 90 days late all the way out to 150 days late which all contributes to the degradation of your credit. If you have two loans then the damage can be even greater. People who are late on their payments will suffer much more severe credit damage than those who never miss a payment and do a short sale. And YES you can do a short sale even if you are not behind on payments. (See below)

People who successfully complete a short sale may also qualify for a mortgage at a reasonable interest rate in as little as 24 months. So, if buying a home is a future goal, then a short sale is the better option for many families. Fannie Mae and Freddie Mac have recently changed their guidelines (August 2008) stating if you have a short sale on your record you may be able to buy another home in 24 months with financing that is ultimately going to be backed by them. While if you have a foreclosure on your record you will have to wait 5-7 years with financing backed by Fannie or Freddie.

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3. Are there TAX consequences of doing a short sale vs. foreclosure?

Every situation is different for each person, so it is important to consult with a tax professional, CPA, tax attorney or someone who is qualified to make this determination for you. But here is some information to get you started, after which you should confer with a CPA to see if any of this applies to you. When you do a short sale or a foreclosure the lender is allowed to write off the loss and pass it on to you as income in the form of a 1099-C. The IRS considers this income for you and is taxable. For example, you borrowed \$200,000 to purchase a home, but only were able to repay \$150,000 in the short sale, you will receive a 1099-C for that \$50,000 and possibly taxed on that according to your tax bracket.

Federal Taxes: The Home Mortgage Forgiveness Debt Relief Act of 2007 states if the property is your primary residence and the debt discharged was from your original “purchase money” loan, and then you will not have to pay the taxes for that amount. Further, if you did refinance and used the money to only improve your home, then you may be eligible for exclusion of the taxes as well. This act has been extended until the end of 2012. Find up to date information on this exemption and its rules at the IRS website.

If you refinanced your home and pulled the money out for other expenses or it is not your primary residence, then it is possible that you may have to pay the taxes unless you are eligible for “insolvency.”

The IRS does not require you to pay taxes on the loss the lender takes in a short sale if, at the time of the short sale, you are insolvent. Insolvency means your debts (including your mortgage) exceed the value of all your assets. In other words, if, at the time of the short sale, your debt is greater than your assets, then you are insolvent. Ask your tax advisor if you are eligible for the Debt Relief Act qualifications or are eligible for “insolvency” and filing the IRS Form 982.

State Taxes: The state of California conformed to the federal tax exemption (Home Mortgage Forgiveness Debt Relief Act of 2007) with its own senate bill 1055 for the year 2008, but has not yet for the tax year of 2009. Ask your tax advisor if you qualify for an exemption of the state taxes for a short sale. There may be taxes imposed for a short sale to the CA tax franchise board.

It is important to understand tax implications can apply whether you do a short sale, deed in lieu or a foreclosure.

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4. Can My Lender Come After Me For the Difference?

There are two types of loans in CA. That is "non-recourse" and "recourse". A "non-recourse" loan is one you obtained to initially purchase the home. If you go through a non-judicial foreclosure process with a "non-recourse" loan the bank will not be able to come after you for the difference. If you do a short sale with a "non-recourse" loan, some attorneys feel you should be protected and not have to worry about the bank coming after you. Other attorneys feel that the CA Civil Code of Procedure does not address the short sale issue and does not protect "non-recourse" loans, only a foreclosure does. The bottom line is there is no precedent set in court and no lender has challenged it that I know of, yet. It is important to have an attorney explain to you the CA Civil Code of Procedures 580b, 580 d, and 726, as we cannot give legal advice.

If you have done any type of refinancing or obtained any cash out financing or have a Home Equity Line of Credit taken out after the date of purchase, then these are considered "recourse" loans and the ability is there for a bank to come after you for the difference if you go through a short sale. Unless you receive a short sale approval letter specifically stating that they will not pursue a deficiency judgment or some other verbiage of that sort. Every lender issues a completely different approval letter with different verbiage, so it is important to review your approval letter when it is issued, and we have attorneys on retainer to help you review your approval letter so that you full understand whether the verbiage and whether or not the lender will come after you. It is also our goal to always get you a full release from any liability from your bank when obtaining a short sale approval, and we have an excellent success rate of approval letters.

The ultimate goal of a short sale, however, is to get a full release in an approval letter which will absolve you from having to pay back any deficiency.

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5. Will Bank of America (Countrywide) Come After Me For the Difference?

Currently Bank of America (Countrywide) does NOT issue approval letters stating that they WILL NOT pursue for the difference. They will issue an approval letter stating that BAC and its investors as well as Mortgage insurance carriers reserve the right to pursue for the remainder of the balance. This is simply an issue that we have not been able to get around. The only instance being we have seen this done is where our client has hired attorneys to litigate and negotiate with top level executives and Bank of America's legal department to get a letter separately issued directly to the home seller that they will NOT pursue the homeowner for the deficiency. We can facilitate putting the home on the market, receiving an offer, presenting it to Bank of American to accept in order to sell the home but it will NOT absolve you from having to pay back any of the difference. If you would like to hire an attorney to litigate with Bank of America to negotiate their release of a deficiency or talk about your other options you are free to do so at your own costs and we will be happy to work with them.

It is our understanding that after the short sale is completed, Bank of America's recovery department to contact you about a trying to make arrangements to cover the difference. If you are unable to make any payments towards recovery they will then "charge off" the account and issue you a 1099-C, for whatever loss that is sustained by the bank.

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6. Why Would I Do a Short Sale if I Could Not Get an Approval Letter Removing the Deficiency Balance?

If you are worried about a lender coming after you or your financial future, you may not want to. But some home owners are willing to accept an approval letter with a without a deficiency removal for the following reasons:

- * To stop the payoff clock and stop incurring future or larger deficiency, or payoff.
- * To avoid a foreclosure on their credit.
- * To settle the deficiency issue at a later date.
- * To try and do the most responsible thing and get the bank the highest price possible for the home.
- * To avoid any attorneys or additional fees out of pocket to dispose of the home.
- * They simply will take their chances and file for Bankruptcy if the lender does try to collect.
- * They simply will take their chances that the lender will not come to collect and "write off" the loss instead.

While any or none of these reasons may apply to you, it is important to understand every home owner has different levels of comfort and risk tolerance, personal goals, and opinion on the matter. You will always have the chance to review your approval letter with an attorney before selling your home and you can cancel your listing at any time prior to entering into an escrow with a buyer without any fees paid to us.

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7. What is the Difference Between a 2nd Mortgage and a Home Equity Line of Credit (HELOC)?

A true "closed ended" second mortgage is one that is usually used to typically purchase the home and used as additional financing. While some seconds are not always used at purchase, in either event they are loans that are only secured by the property and may be wiped out if a first forecloses and there is not enough equity to pay them anything.

A HELOC is completely different in that, while it does include a lien on a property, it is still a line a credit that can stay open even if the lien is wiped out in a foreclosure. Many inexperienced agents do not understand this, and HELOC's need special attention in order to do a successful short sale with full release for the borrower. Be sure to question where you short sale agent understands the difference between these two types of loans.

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8. Can I do Short Sale with a Home Equity Line of Credit (HELOC) as a 2nd Mortgage?

Yes, you can still do a short sale if you have a 2nd HELOC, however it can be more difficult depending on your lender. It is important to understand that HELOCs are a completely different type of loan, and the lender can allow you to do the short sale and release the lien on the property, but still leave the entire account open and thus you still owing the entire balance due. HELOC's are like credit cards with a lien on a property. If the lien is released from the property, it doesn't always mean the line of

credit is closed. MANY inexperienced short agents do not understand this. A new trend that is happening as well is that the bank can sell the bad HELOC loan on the secondary "debt collection" market for a higher price (10%-20% of note value) than what the lender in first position is willing to pay (1%-3% of loan value). Because of this many HELOC lenders have become extremely more aggressive in requiring a 10%-30% payout from borrowers to allow a borrower full release from these loans. Banks such as Chase, CitiMortgage, and National City have been the most aggressive so far requiring at least a 10% payout, and I am sure many more will plan to follow suit.

If the HELOC lender wants a 10%-30% payout to allow a short sale with FULL SATISFACTION, and the first is not willing to come up to that amount and other remedies cannot be found, it is possible that you as the borrower to cover the difference if you are looking for a short sale with FULL SATISFACTION, by bringing money to the table and/or signing a promissory note under certain terms.

After a consultation we will be able to talk to you about your goals and likely scenario outcome. You will also not be obligated to commit to anything until you understand the terms the lender is requiring. If you do not agree to what you lender requires then you can cancel your listing at anytime without any fees paid and not go through with the short sale!

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9. Will the Short Sale cost me anything?

Our real estate fees will cost you absolutely nothing. Our fees of negotiating your short sale and getting your home sold will be paid out of your lenders pocket. We typically can negotiate to have any past mortgage payments to be eliminated, and negotiate to have the lender pay for all the costs associated with selling the home. Also any past property taxes and possibly any past HOA dues outstanding, allowing you to have to pay nothing out of pocket. We have even negotiated to have the lender pay for repairs on the home as well as buyers closing costs, but it is subject to each lender and their guidelines. There have been recent changes however from some lenders in what they will and will not pay for, and one of the most costly is past HOA dues. Each situation is completely dependent on which lender you have and your personal scenario. Be sure to get your free consultation to find out what your lender will and will not pay for.

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10. Do I Qualify for a Short Sale?

In order to be eligible for a short sale and have us represent you we must be able to prove to the lender that you are a victim of a "hardship" and therefore unable to continue making payments on your mortgage. A hardship situation is one that is the result of some extenuating circumstance that forces the borrower into a position where they can no longer afford their mortgage payments. While every situation is different, some frequent examples of hardship include:

- * Unemployment or loss of primary income source
- * Inability to work due to health crisis
- * Mounting medical expenses
- * Employment relocation
- * Failure of business
- * Bankruptcy
- * Death of spouse or significant other

* Divorce or separation

* Incarceration

It is best though to get a free consultation to see if you would qualify.

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11. Do I Have to Stop Making Payments on My Mortgage in order to do a Short Sale?

Not Always. Just because you called your particular lender and they told you that you could not do a short sale unless you miss some payments, don't believe it to be true. These people who answer the phones at these mortgage companies are low level personnel who do not care about your credit. Every borrower's situation is different and a short sale can be done while staying current on your mortgage payments. We have successfully closed many short sales where the borrower never missed a payment. However, we are seeing more and more investors (owners of loans) deny short sale requests, due to the fact that there have not been any missed payments. Fannie Mae, FHA, and some other investors are starting to claim this once again. The important thing to note is that if you are able to afford your payments, you should continue making them until we devise a plan for you based on your goals and objectives. Many times in short sales you need to gather further information from the lenders to determine what they want and are willing to do, before voluntarily missing any payments. If you have a true hardship and simply cannot afford your payments, well then there is no need to worry. Be sure to call for a consultation before to decide to miss any payments if you don't have to.

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12. Should I File For Bankruptcy?

At this point in the market there are many attorneys who are advising clients to file bankruptcy in any situation and charging very high fees. For some this may be the correct solution. However, it is important to understand that going through a bankruptcy, whichever kind you choose (Chapter 7 or Chapter 13), will not allow you to keep your home unless you bring your mortgage current. While you may be able to stay in your home while the bankruptcy is taking place (could take 6-10 months), it also "freezes" the home from being able to be sold or do a short sale. You should speak with a competent bankruptcy attorney and decide if you want to sell your home before filing or when the filing is completed. If you need a reference to a bankruptcy attorney we can provide one for you, as we do not dispense legal advice.

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13. When should I begin the short sale process?

Immediately, foreclosure and short sale situations tend to be extremely time sensitive and consuming for negotiations. The sooner we can begin the negotiations with your lender, the greater the chances of a successful resolution. There is no need to wait until the lender sends you a notice of default or initiates formal foreclosure proceedings against you. Time is of the essence! Please contact us today 949-678-1070 for a free consultation with Tim Smith.

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14. How Long Does a Short Sale Take?

Depends on many different factors, such as who your lender is, how long it takes to get an offer, how many loans you have, if you are behind on payments, and the list goes on. With an inexperienced

agent it could take 6-8 months, with our system, and contacts with each lender we have an average turnaround time of 4 months. Our fastest record of getting a home on the market and an approval is 3 business days, but that is not the case for everyone. Each scenario is different.

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15. Why Would My Lender Agree to a Short Sale?

In most distressed mortgage situations, foreclosure is a last resort for all parties involved. The homeowner and the lender usually want to avoid foreclosure at all costs. That is why a short sale is advantageous to foreclosure and lenders are typically very motivated to pursue a short sale prior to foreclosure.

A short sale gives the lender the ability to cut its losses up front thereby avoiding the expense and time of a foreclosure and potentially greater losses. Lenders want to make loans; they do not want to be in the business of owning and managing real estate. Whether the lender chooses to go through with a foreclosure or agree to a short sale, they are taking a loss either way, but in many cases they would take less of a loss with a short sale and resolve the matter in a comparatively shorter time frame. In nearly every case, a short sale offers a significantly better return on the lender's investment than a foreclosure does.

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16. Should I Do a Loan Modification?

If you would like to try and keep your home, then yes a loan modification would be the first option for you to pursue. If you want out, then a short sale is a better option. There are two ways to do a loan modification, the first is to do it yourself, and the second is with the help of a professional. It's just like selling your home, you can do it yourself, but the chances of success are much greater if you employ the services of a professional.

To do it yourself you will be required to provide a substantial amount of financial information to your lender and the process takes about 2-3 months, and is very much like a short sale, however you are trying to show to your lender that you are not able to make your current payments, but you could afford to make payments on an adjustment on the loan in the form of interest rate reduction or a longer term loan.

If you do use a professional, please be sure to do your research on them first. Many companies are springing up everywhere, and many are not licensed, and do not have the proper Department of Real Estate contracts in place in order to charge you any upfront money. We know many reputable loan modification companies that we can refer you to, and have give you a free consultation.

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17. Will the Bank Reduce My Loan Amount or Principle with a Loan Modification?

We work with many loan modification companies and we have yet to ever see it in writing that this has ever happened. While there have been examples of deferment of interest on portions of loans, we have yet to see IN WRITING an example of this actually happening. Fed Chairman Ben Bernanke has been pleading with banks for the past 2 years for banks to do this, and Barrack Obama has plans to entice banks to do this in order to obtain further TARP funds, but this date we have never seen it. At this time we have only heard of lenders changing interest rates on loan, making the payments interest only for a set time, or increasing the loan term in order to reduce the payments for homeowners, but

bottom line is when you sell the property you will still be responsible for paying back what you owe on the property. For some homeowners a loan modification is right for them if they plan to stay in the home for a longer term and anticipate a return in their equity in time, in order to pay off the lender in full if they ever decide to sell.

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18. Do I Need An Attorney to Do a Short Sale?

UPDATED 9-10-09

In some instances YES! I have been doing short sale since 2007. In the past it was fairly easy to get an approval from a bank stating they would not pursue you for a deficiency. Now it is getting harder than ever. And some banks (Bank of America) have taken the path of saying they are going to come after EVERYONE who does a short sale. While we still can get full release from about 85% of the banks out there, if your ultimate goal is to obtain an approval letter stating that they will not pursue for a deficiency, we will have to work with the attorneys whom we have teamed up with, who specialize in this. Attorneys do cost additional fees, so be sure to talk to me us about this if interested in your initial consultation.

We also recommend conferring with an attorney to review an example of an approval letter from your lender which we can provide. We can also have you speak with one of our attorneys on retainer about your specific approval letter once it is received, so that you understand everything in it and its terms, and then decide if you still want to move forward. If you do not agree to the terms that the lender provides, you can cancel your listing and NOT sell your home. We make sure to not bind you to any contract with any buyer until the approval letters is received from your lender(s), and you give the final approval.

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19. What does your success rate REALLY mean?

When I talk about my success rate, it means the ratio of short sale listings I have taken, to the amount of short sale that have sold before a foreclosure occurred. It is important to understand, that I do NOT take every short sale listing I am presented with. I first screen people to make sure they are informed of all of the implications of doing a short sale, including making sure they have spoken with an accountant or CPA before I take the listing. I also make sure that they are aware of the deficiency issues and refer them to talk with an attorney if they can. We also present them with an example of an approval letter from their lender so they know what to expect. I also will refer them to attorneys or loan modification firms if they feel another option may be suitable to them such as deed in lieu, foreclosure, or loan modification. When I feel that they are good candidates and still want to move forward, I will take their listing. Have I done a short sale where the home owner receives an approval letter where the deficiency issue was not addressed? Quite honestly yes, but the seller was well informed and it was a calculated risk on the home owners part. I have also had sellers who did not agree to the terms of the approval letter and chose another option. I do NOT count those, as properties I lost to foreclosure in my numbers. I have also had clients who have decided to cancel their listing even before the approval letter was issued for different reasons, I do NOT count those against my record either. Simply put, my approval rating means that I was able to get an offer on the home, get the lender to agree to the terms of the offer and price, and the home was sold. The instances I count against my record are those where I was not able to get an offer on the property before it went to

foreclosure or the bank would not agree to the terms of offer I brought to them and they chose to foreclose instead.

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20. What is my obligation?

You are free to cancel your short sale at any time with no fees paid. If you are able to find other alternatives or solutions you can cancel your contract and keep your home. We are in the business of helping people and if some solution other than a short sale presents itself in order for you to keep the home, such as winning the lottery, you are absolutely free to cancel your contract. No Fees and No obligations!

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21. How Do I Start the Process?

First thing to do is contact The Smith Group for a free 1 Hour phone consultation to make sure a short sale is right for you, or fill out our website form. From there he will set up a time to come to your home and again counsel you in person and go over the entire process and his methods of doing short sales. There is NO OBLIGATION and NO FEES!