

# Real Estate Short Sales - How to Handle Real Estate Short Sales

From [Elizabeth Weintraub](#),  
Your Guide to [Home Buying / Selling](#).  
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## How To Do a Short Sale

There are many ways to lose a home but signing away ownership in a manner that destroys credit, embarrasses the family and strips an owner of dignity is one of the hardest. For owners who can no longer afford to keep mortgage payments current, there are alternatives to bankruptcy or foreclosure proceedings. One of those options is called a "short sale." When lenders agree to do a [short sale in real estate](#), it means the lender is accepting less than the total amount due. Not all lenders will accept short sales or discounted payoffs, especially if it would make more financial sense to foreclose. If you are considering [buying a short sale](#), there could be drawbacks. For your protection, I suggest that all borrowers

- Obtain legal advice from a competent real estate lawyer
- Call an accountant to discuss tax ramifications

As a real estate agent, I am not licensed as a lawyer nor a CPA and cannot advise on those consequences. Be aware the I.R.S. will consider debt forgiveness as income, and there is no guarantee that a lender who accepts a short sale will not legally pursue a borrower for the difference between the amount owed and the amount paid. In some states, this amount is known as a deficiency. A lawyer can determine whether your loan qualifies for a deficiency judgment or claim.

Although all lenders have varying requirements and may demand that a borrower submit a wide array of documentation, the following steps will give you a pretty good idea of what to expect.

- **Call the Lender**  
You may need to make a half dozen phone calls before you find the person responsible for handling short sales. You do not want to talk to the "real estate short sale" or "work out" department, you want the supervisor's name, the name of the individual capable of making a decision.
- **Submit Letter of Authorization**  
Lenders typically do not want to disclose any of your personal information without written authorization to do so. If you are working with a real estate agent, closing agent, title company or lawyer, you will receive better cooperation if you write a letter to the lender giving the lender permission to talk with those specific interested parties about your loan. The letter should include the following:
  - Property Address
  - Loan Reference Number
  - Your Name
  - The Date
  - Your Agent's Name & Contact Information
- **Preliminary Net Sheet**  
This is an estimated closing statement that shows the sales price you expect to receive and all the costs of sale, unpaid loan balances, outstanding payments due and late fees, including real estate commissions, if any. Your closing agent or lawyer should be able to prepare this for you if you do not know how to calculate any of these fees. If the bottom line shows cash to the seller, you will probably not need a short sale.
- **Hardship Letter**  
The sadder, the better. This statement of facts describes how you got into this financial bind and makes a plea to the lender to accept less than full payment. Lenders are not inhumane and can understand if you lost your job, were hospitalized or a truck ran over your entire family, but lenders are not particularly empathetic to situations involving dishonesty or criminal behavior.
- **Proof of Income and Assets**  
It is best to be truthful and honest about your financial situation and disclose assets. Lenders will want to know if you have savings accounts, money market accounts, stocks or bonds, negotiable instruments, cash

or other real estate or anything of tangible value. Lenders are not in the charity business and often require assurance that the debtor cannot pay back any of the debt that it is forgiving.

- **Copies of Bank Statements**  
If your bank statements reflect unaccountable deposits, large cash withdrawals or an unusual number of checks, it's probably a good idea to explain each of those line items to the lender. In addition, the lender might want you to account for each and every deposit so it can determine whether deposits will continue.
- **Comparative Market Analysis**  
Sometimes markets decline and property values fall. If this is part of the reason that you cannot sell your home for enough to pay off the lender, this fact should be substantiated for the lender through a comparative market analysis (CMA). Your real estate agent can prepare a CMA for you, which will show prices of similar homes
  - Active on the market
  - Pending sales
  - Sold from the past six months.
- **Purchase Agreement & [Listing Agreement](#)**  
When you reach an agreement to sell with a prospective purchaser, the lender will want a copy of the offer, along with a copy of your listing agreement. Be prepared for the lender to renegotiate commissions and to refuse to allow payment of certain items such as [home protection plans](#) or termite inspections.

Now if everything goes well, the lender will approve your short sale. As part of the negotiation, you might ask that the lender not report adverse credit to the credit reporting agencies, but realize that the lender is under no obligation to accommodate this request.

### Prepare the Seller for Lender Demands

A lender is not going to agree to a short sale unless the seller has no equity and is unable to repay the difference between your sales price and the existing loans. Sellers need to provide a hardship letter to the lender. Sellers may also owe taxes on the amount of debt that is forgiven.

A seller I know once demanded that the buyer slip the seller \$1,000 to be given the right to purchase the seller's property. We said no. This is fraud. The lender legally pursued that seller. Do not be lured by sellers who suggest this practice. In a short sale, the seller receives no money because the lender is losing money.

- [Tax Consequences for Home Offices](#)
- [Handling Mortgage Loan Adjustments](#)
- [How Sellers Can get Free Credit Report](#)

## Before You Buy a Short Sale

From [Elizabeth Weintraub](#),  
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Buyers pursue short sales to get a good deal. So when you see a price listed for a home that you think is too low for the neighborhood, before you jump on that price like hot fudge on a sundae, ask your agent to call the listing agent to find out if the home is a short sale.

Because you might want to think twice about making an offer on a pre-foreclosure, short sale home. It's not as simple as you may believe, and very few can close in 30 days or less.

### What is a Short Sale?

A short sale means the seller's lender is accepting a discounted payoff to release an existing mortgage. Just because a property is listed with short sale terms does not mean the lender will accept your offer, even if the seller accepts it.

Be aware that the seller will need to be in default, to have stopped making mortgage payments, before a lender will consider a short sale. Also, the seller might have over-encumbered, owe more than the home is worth, so a discounted price might bring the price in line with market value, not below it.

- [Basics of Short Sales](#)
- [What is a Foreclosure?](#)
- [Buying at a Trustee's Sale](#)

### **Check the Public Records**

Do your research before making an offer to purchase. Your agent can find out who is in title, whether a foreclosure notice has been filed and how much is owed to the lender(s). This is important because it will help you to determine how much to offer.

If there are two loans, you will probably deal with the second mortgage lender. The first mortgage lender's position is protected by the second lender unless the second lender does not want to foreclose. For example, if a seller owes \$160,000 to the first lender and \$40,000 to the second lender, you cannot offer \$160,000 because it will wipe out the second lender.

- [Determine Your Type of Marketplace](#)
- [What is a Title Policy?](#)
- [Chain-of-Title Definition](#)

### **Submit Documentation & Purchase Offer to Lender**

Once the seller has accepted your offer, send it to the lender for approval. You do not have a deal until the lender accepts. Also, send the lender a copy of your earnest money deposit. Do not be astonished if the lender asks you to increase it.

In addition, the lender will want to see that you have your own loan available and you are preapproved. Send a preapproval letter to the lender. It will help if your agent sends a list of comparable sales that support the price you are offering to pay for the home.

- [Computing Mortgage Interest](#)
- [Understanding Option ARM Loans](#)
- [Definition of Negative Amortization](#)

### **Give the Lender a Deadline**

Make your offer contingent upon the lender's acceptance. Give the lender a time frame in which to respond, after which, you will be free to cancel. If the lender is under no pressure to make a decision, the paperwork will sit on an underling's desk.

Some lenders submit short sales to committee, but most can make a decision within two to three weeks, providing you have submitted the offer to the individual in decision-making capacity. Get a name and phone number for the appropriate contact at the lender. Don't send an offer blindly to a department.

- [Protecting Your Good Faith Deposit](#)
- [Purchase Offer Negotiation Tips](#)
- [Writing Buyer's Market Offers](#)

### **Expect Commission Negotiations**

Regardless of the commission the seller has agreed to pay, the lender is actually the entity paying the commission. The reason is the seller is not receiving any money with which to pay a commission. Since the

lender is losing money, the lender will likely negotiate the commission directly with the listing broker, who will then share the commission with your agent.

If you have signed a buyer's broker agreement with your agent, ask if the agent will waive the difference due or you might have to pay it out of your pocket. Some brokers feel it is unfair to penalize the agent, but the lender is calling the shots.

- [Who Pays the Real Estate Commission?](#)
- [How to Negotiate Real Estate Commissions](#)
- [Buyer's Broker Agreements](#)

### **Reserve the Right to Conduct Inspections**

Generally, the lender will not pay for customary items that a seller would pay. These include home protection plans for the buyer, buyer credits of any kind and pest / termite inspections. A buyer will be asked to purchase the property "as is," which means no repairs.

It is extremely important that a buyer obtain a home inspection and pay for other types of inspections such as pest, roof, sewers, septic tanks, chimney or fireplace inspections. Do not waive your right to obtain these inspections and make your offer contingent on approving them.