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MONTANA TITLE & ESCROW

SHORT SALE

INFORMATION GUIDE



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ALTERNATIVES TO FORECLOSURE

Sellers facing delinquency and potential foreclosure action have options and alternatives. These options may not be available to every homeowner, but it is important to consider the advantages and disadvantages of each. Additionally, sellers should seek professional legal and tax counsel to consider the best alternative for the situation.

Repayment Plan: A homeowner may choose to work with the lender directly to establish a repayment schedule for the delinquent amount; this usually includes making a small payment towards the delinquent amount in addition to the full mortgage payment each month over the specified period of time.

Special Forbearance Plan: This may provide a temporary reduction or suspension of payments to repay the delinquent amount; the regular mortgage payment would then be increased at a later point to make up the difference.

Mortgage Modification: A lender may allow a borrower to refinance the debt, permanently changing the terms of a borrower's loan and allowing the loan to be reinstated at a payment the borrower can afford.

HUD Partial Claim: If the loan is an FHA insured loan, the lender may be able to obtain a one time payment from the FHA-Insurance Fund to bring the mortgage loan current with payments.



Bankruptcy: Bankruptcy stops all civil proceedings against the debtor while the debtor is in bankruptcy. By law, a mortgage lender has to suspend all legal actions including a foreclosure action. While bankruptcy does stop foreclosure, it does not allow a debtor to keep a house without paying the mortgage lender.

Refinance: This option may allow a homeowner to use the equity in the home to pay the delinquent amount. Depending on the interest rate of the new loan, monthly payments might be reduced. The loan could be refinanced with the existing lender or with any lender of choice.

Sell The Home: If there is equity in the property, a homeowner may be able to sell the home and receive proceeds from the sale to cover what is due on the mortgage loan.

Short Sale: Lenders may be willing to make an agreement with the homeowner to accept less than the amount owed if the homeowner can prove a financial hardship.

Assumption: With this option, the homeowner signs the property over to another person; the third party person would then take possession of the home and take over the payments.

Deed In Lieu Of Foreclosure: This option may allow the borrower to voluntarily "give back" the property to the lender without actually going into foreclosure.

Some of these alternatives may involve tax implications and it is recommended that homeowners consult with a tax/legal advisor. Homeowners may also wish to visit the U.S. Department of Housing & Urban Development's website for more information and resources for avoiding foreclosure: www.hud.gov/foreclosure/

WHAT IS A SHORT SALE?

SHORT SALE An agreement with the lender(s) to accept less than the amount owed by a borrower when the property is sold to a third party.

A short sale includes two unique events:

- Net Proceeds Loss — the net proceeds from the sale of the property insufficiently pay back the balance due on the loan(s)
- Lender Agreement — the lender(s) agrees to discharge the mortgage lien(s) and remaining obligations on the home in exchange for the short sale proceeds

WHO QUALIFIES FOR A SHORT SALE?

The lender(s) must agree to accept less than the amount owed on the mortgage and may choose to accept a short sale when a homeowner can prove distress and financial hardship. The following may be cause for a lender to consider a short sale:

- Interest rate adjustment
- Loss of job
- Divorce
- Illness
- Death



WHY MAY WE DECIDE TO HIRE A NEGOTIATOR FOR A SHORT SALE TRANSACTION?

The negotiator evaluates all liens and determines qualification for the short sale, working with the real estate agent to obtain documentation needed for lender approval. The negotiator acquires an estimated HUD settlement statement reflecting all terms in the contract between the buyer and seller, updating documents and submitting them to the Loss Mitigation Department of the lender(s). A real estate agent may choose to work with a short sale negotiator to avoid direct lender contact, eliminate the mountain of paperwork needed for short sale approval, and save time that is better used focusing on client relationships. Additionally, using a negotiator allows the real estate agent to remain an advocate for their client without becoming entwined in the seller's sensitive and confidential financial information.

FREQUENTLY ASKED QUESTIONS ABOUT SHORT SALES

What is a short sale? A short sale is an agreement with the lender(s) to accept less than the amount owed by a borrower via a sale of the property to a nonrelated third party. When a borrower is faced with a hardship, has fallen behind (or is likely to fall behind) in the mortgage payments and the home cannot be sold for the amount owed to the lender(s), a short sale may be an alternative for distressed homeowners.

Why would a lender agree to accept less than what is owed? Whether the lender chooses to go through with a foreclosure or agrees to a short sale, they will be taking a loss. Lenders are not in the business of owning and managing properties; a short sale gives the lender the ability to cut their losses upfront and resolve the matter in a shorter timeframe. This allows them to avoid a potentially greater loss through the expense and time of a foreclosure.

When should I begin the short sale process? Time is of the essence; short sale situations tend to be time sensitive and time intensive for negotiations. The sooner negotiations begin, the greater the chances of a successful resolution. If you foresee trouble in making your monthly mortgage payment, you should begin considering your options; there is no need to wait until the lender sends you a notice of default or initiates formal foreclosure proceedings.

Do I qualify for a short sale? Qualifying for a short sale is dependent on individual circumstances; you must be able to prove to your lender(s) that you are a victim of a “hardship” and therefore be unable to continue making payments on your mortgage.

What are some examples of “hardship”? A hardship situation is one that is the result of some extenuating circumstance that leaves the borrower unable to afford their mortgage payments. While each situation varies, some frequent examples of hardship include:

- Divorce or separation
- Health issues or medical bills
- Job loss or reduction of income
- Death of spouse or wage earner
- Adjustment in mortgage payments
- Employment relocation
- Failure of a business

How will a short sale affect my credit? In a short sale and foreclosure situation, the delinquency of the mortgage will likely have a negative impact, but it is generally understood that a foreclosure will have more serious effects on your credit. Some mortgage and credit experts suggest that a foreclosure may impact a credit score up to 250 points, while a short sale may result in a reduction of 100 points or less.

What are the tax ramifications of a short sale? In December 2007, the Mortgage Forgiveness Debt Relief Act was signed into law by President Bush. This law, which was extended to cover debts forgiven through 2012, eliminates potential tax liability associated with a short sale depending on the specifics of your particular situation. On a state level, a taxpayer may or may not face tax consequences, again depending on individual circumstances.

What are the benefits of working with a short sale negotiator? Homeowners who choose negotiators may benefit due to the experience a negotiator brings. Having worked with lenders previously and being a third party who is not emotionally involved allows a unique perspective to guide the short sale through the proper channels.

REQUIRED DOCUMENTATION FROM SELLERS

Please provide the following items to your real estate agent within 72 hours of listing your property.

- Written explanation of the cause of the current financial situation (loss of job, divorce, etc.) and any supporting documentation
- Copy of the two most recent Federal Tax Returns
 - For 1040 filing, please provide only the first 2 pages
 - For self-employment filings, please provide the Schedule C and all attachments, including W-2
- Copy of previous full month’s pay stub(s) – with year to date totals
- Copy of previous two month’s bank statements
- Current mortgage statements from all liens against the property. Also include any personal notes, home equity line of credit, etc.
- Please note that an appraisal may be necessary. If you have a current appraisal, please provide a copy.

HARDSHIP LETTER GUIDELINES

Most lenders require the hardship letter pursuant to a short sale. The homeowner should not waste this valuable opportunity to appeal to the lender for approval of a short sale. In the hardship letter, present the facts clearly and honestly. A well-written hardship letter will be able to explain the situation that caused you to fall behind and provide proofs of hardship; this should convince the creditor(s) that the homeowner's situation is genuinely distressing and the lender would be better off accepting the lesser amount in a short sale than to pursue a foreclosure. Situations such as divorce/separation, job loss or reduction of income, adjustment in mortgage payment, prolonged illness, or a death in the family are all acceptable hardships.

Here are some points to help when writing a hardship letter:

- ▶ Get personal; you should not feel embarrassed about the situation. This is your opportunity to appeal to your lender and honestly state your case.
- ▶ A *handwritten* letter is recommended.
- ▶ Include details regarding the hardship. Detail your current and past hardships (for example, job loss, car accident, medical problems either personally or in your immediate family, etc.) and include specifics for each hardship.
- ▶ Be sure your letter conveys the following important messages to your lender(s):
 - Why you will not be able to bring your past due amount up-to-date
 - Your income is not enough to make the payments and you have no assets with which to continue paying the mortgage
 - You are leaving the property
- ▶ Any signed exemptions of documents should be included. If you do not have current bank statements, pay stubs or tax returns, you will need to explain in greater detail as to why those documents cannot be provided. For example: "I do not have pay stubs because I've been unemployed for 6 months and unable to find work." Also, if you do not have tax returns, the lender will want Extension Filings. If you do not have these to provide, explain why (i.e., "I haven't worked in over 2 years so I haven't filed taxes or extensions.").



- ▶ Bankruptcy could be addressed in the letter: "I don't want to have to file for bankruptcy."

SAMPLE #1 HARDSHIP LETTER

August 14, 2010

Dear Lender,

I have fallen behind on my mortgage payments and am in a tough situation. The reasons for my failure to keep current with my mortgage payments are as follows:

First, my husband left me and immediately pulled all financial support. I was able to make payments for a while by working full-time at night and part-time during the day.

I was laid off from my full-time job, which was also the largest part of my income, in November 2007. My mother, who was living with me to look after my 9 year old daughter, has since had to move to Seattle, Washington to care for her 90 year old mother. Now that she has moved, I've been left without childcare.

I currently work part-time, 25 hours per week at \$11 per hour. My take-home pay each month is less than \$1,000. I do receive reduced unemployment benefits at this time, but they will run out in about 3 months. I am currently seeking full-time work but have not had any luck so far.

Additionally, with the divorce came a bankruptcy, leaving me without a car. I cashed out my retirement to buy a 1996 Chevy Cavalier; the car needed repairs and further added to my inability to make my mortgage payments.

I want to apologize for my inability to pay my mortgage. I never anticipated that this would happen; as you can imagine, it's been a devastating year for me with a divorce, bankruptcy, layoff after 8 1/2 years on the job, and now losing my home. Please work with me to do a short sale so that I do not go into foreclosure.

Sincerely,
Jane Smith

SAMPLE #2

HARDSHIP LETTER

May 2, 2010

Dear Lender,

It has been requested that I explain why I am in financial peril.

Before the tragedy of 9/11/01, I was working for the painter's union, averaging \$22/hour at different jobs. There was plenty of work and overtime available to me. I bought a house and had good credit. Then everything changed.

A few weeks after the tragedy, work began to dry up and I was laid off. I was able to continue to pay my bills with a combination of efforts: unemployment insurance, selling my possessions and using my credit cards. It seemed like I was unemployed for an unusually long time.

When I did get back to work, the pay scale had dropped down to \$17/hour and it was extremely difficult to find any jobs that were paying overtime. I was behind and it seemed impossible to catch up. I even fell behind in my taxes; there was just no way to pay all of my bills with my income.

Now I've been laid off again, only this time the unemployment check is only \$130 per week. Last year, the unemployment check was \$350 per week. I'm totally out of credit and there is no way to even come close to paying my mortgage and all the other obligations I have. It might come about that I have to file bankruptcy. Even if I go back to work for the union scale of \$17/hour, I would still not even come close to paying all of my obligations. I'm way too far behind and farther behind every day.

Any assistance you can provide would be much appreciated.

Sincerely,
John Smith

SAMPLE #3

HARDSHIP LETTER

October 28, 2010

To Whom It May Concern:

We are unable to continue making any payments on the mortgage loans for the property at 1478 Southwest Grand Avenue. Our Realtor has found a buyer for the home and has asked that we explain why we are in such financial peril.

There are many reasons why we cannot continue the payments that are the direct result of the following events: a recent freeze placed on my husband's assets by the California Department of Justice to determine the true ownership of his assets; a lawsuit asking for relief of \$5,000,000 against both of us filed in Los Angeles County in late 2006; another suit filed against my husband and his businesses by the California Attorney General's Office seeking relief of over \$1,000,000 for four plaintiffs; and a pending criminal investigation into my husband's activities by the Los Angeles County Sheriff's Department. My husband is now working at a new business, but it has not turned a profit; even if it did, his portion of the profit would be frozen at present.

Because I was solely dependent on my husband for support and his assets are frozen for an uncertain term, I have started a business. This has yet to turn a profit, so I have now filed for public assistance and been awarded benefits from the State of California. I am also seeking additional employment to help fulfill our financial obligations and support our three children. Other than this new business activity, I have been out of the workforce for 15 years and my earning potential is uncertain. I've been advised to file for bankruptcy but am awaiting resolution of the lawsuits to try to avoid bankruptcy; however, it seems inevitable, especially since there is a possibility of being named in other lawsuits involving my husband.

These lawsuits and my husband's business activities have been devastating for our family and we ask that you assist us in any way you can to help resolve these mortgage debts.

Sincerely,
Carol Smith

AUTHORIZATION TO RELEASE INFORMATION

Date: _____

Lender Name: _____

Attention: _____

Fax: _____

I/We, _____,
being the owner(s) of the real property located at:

give permission for my real estate professional to obtain information regarding my/our loan(s).
The loan information is as follows:

Borrower Name Social Security Number Date of Birth

Borrower Name Social Security Number Date of Birth

Loan Number: _____ Loan Number: _____

Authorized Persons: _____

Please contact me or my real estate professional if you need any additional information regarding my mortgage(s). I am making a good faith effort to resolve my delinquent mortgage(s) and will diligently work to reach a settlement.

Sincerely,

Borrower Signature Borrower Signature

Print Name Print Name

SELLER'S QUESTIONNAIRE

Seller Name(s): _____ Date: _____

Property Address: _____

City/Zip: _____ APN: _____

Lender Name Loan Number Phone Number

Lender Name Loan Number Phone Number

Lender Name Loan Number Phone Number

1. Are you currently paying child support? Yes No
If yes: a) When was the last payment made? _____
b) Are you in arrears? Yes No Amount owed: _____
2. Are your property taxes current? Yes No
a) When was the last installment paid? _____
3. Are the county utilities (water, sewer, garbage, gas, electric) current? Yes No
a) When was the last payment made? _____
4. HOA name _____ Phone: _____
a) Do you currently owe dues? Yes No
b) What is the monthly payment? _____
c) When was the last payment made? _____
5. Do you have liens with family, friends, colleagues, etc? Yes No
If yes: a) How much do you owe in liens? _____
b) Are they willing to release their lien? Yes No
6. Do you currently have any judgments against you for credit cards, medical bills, utilities, etc.? Yes No
If yes: a) What is the outstanding balance? _____
b) When was the last payment made? _____
7. Do you have unpaid plans for PG&E Solar/Green Systems? Yes No
8. Is there anything that may come up in the next few months that your real estate professional should be aware of? _____
9. When was the last mortgage payment made? _____
10. Have you received a Notice of Default? Yes No Date Received _____
11. Have you received a Notice of Trustee Sale? Yes No Date Received _____

SHORT SALE DISCLOSURE

A “short sale” is the sale of a property of which the existing mortgage holder(s)/lender(s) agrees to accept less money than what is owed to them upon the sale of the property. This type of sale requires approval from the existing mortgage holder(s)/lender(s).

The following is a partial list of potential situations that may affect a short sale:

1. After the existing mortgage holder(s)/lender(s) receives a short sale package, it will go through a process which may take up to 90 days, depending on the lender.
2. The seller(s) will receive no cash.
3. The seller(s) may be unable to maintain the property and utilities.
4. All terms are subject to mortgage holder(s)/lender(s) approval and adjustments.
5. Any debt relief may be taxable. It is recommended that a seller consult an attorney or tax advisor regarding a short sale.
6. Buyer is aware that upon existing mortgage holder(s)/lender(s) approval, closing timeframes may be shortened dramatically. It is prudent that the buyer be ready and able to perform all inspections immediately and be ready to close escrow within the existing mortgage holder(s)/lender(s) approval timeframe.
7. Seller is aware that application for loan modifications to existing lender(s) may cause withdrawal of short sale approval.

Property Address: _____

Seller's Signature Date

Seller's Signature Date

Seller's Agent Signature Date

Buyer's Signature Date

Buyer's Signature Date

Buyer's Agent Signature Date

MORTGAGE LATE DISCLOSURE

This disclosure is intended to inform the seller(s) of the property located at

_____ that the mortgage lender(s) may not consider a discounted payoff (short sale) of the mortgage loan unless the loan is delinquent.

It is likely that if a borrower elects to withhold payment on the mortgage, a negative report may be made to your credit file. A “Mortgage Late” notation on a credit report may impact the ability to obtain credit in the future.

The seller(s) hereby acknowledges that there is no guarantee that the mortgage lender(s) will cooperate with a short sale.

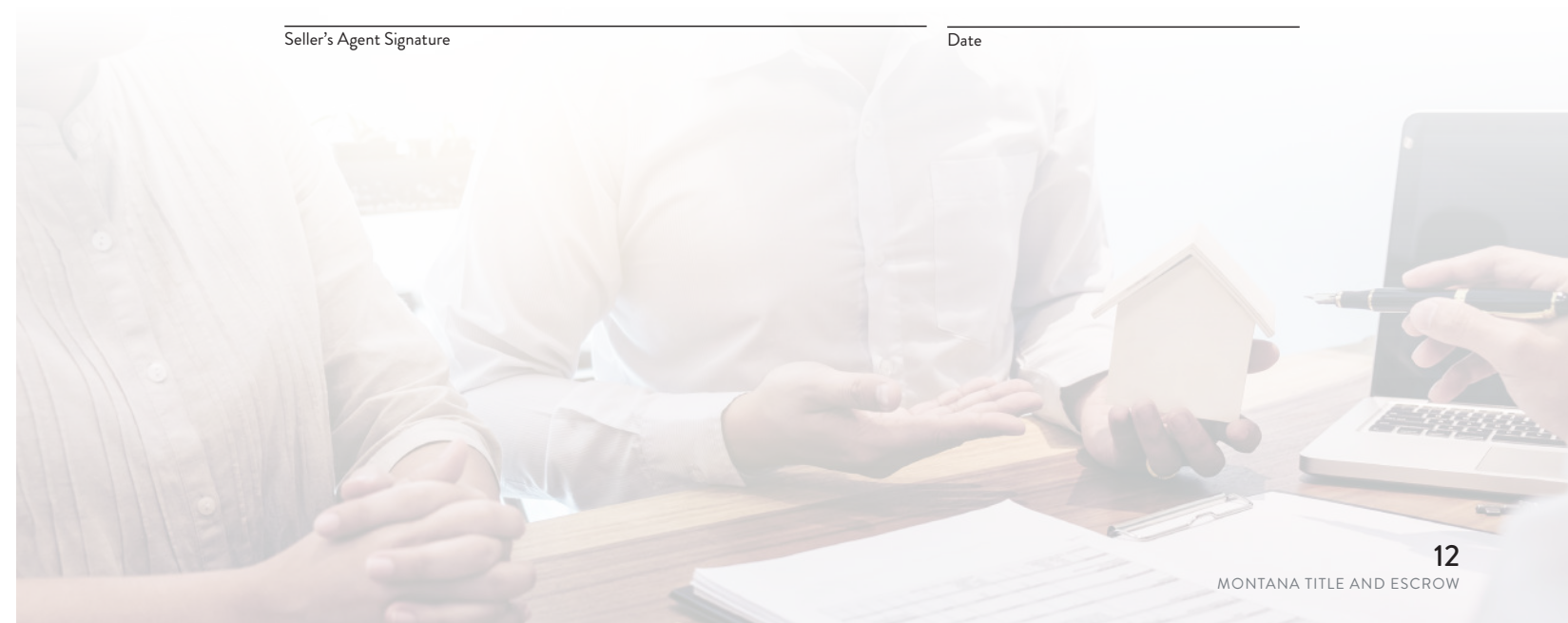
Seller's Signature Date

Print Name

Seller's Signature Date

Print Name

Seller's Agent Signature Date



AUTHORIZATION TO PERFORM INTERIOR/EXTERIOR BPO

Date: _____

I/We, _____,
being the owner(s) of the real property located at:

_____ ,
authorize our lender(s):

_____ (Name of Mortgage Lender) _____ (loan number)

_____ (Name of Mortgage Lender) _____ (loan number)

to perform a complete interior/exterior appraisal of the above property.

Please contact my authorized real estate professional below to schedule an appraisal appointment.

_____ Real Estate Contact _____ Phone

_____ Borrower Signature _____ Date

_____ Borrower Signature _____ Date



NOTES



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DEMAND THE *best!*