


Mortgage and Financing Outlook: Foreclosure Defense and Short Sales

Presented by 
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Pretty Boy Floyd

By Woody Guthrie

* * * *

. . . Yes, as through this world I've wandered
I've seen lots of funny men;
*Some will rob you with a six-gun,
And some with a fountain pen.*

*And as through your life you travel,
Yes, as through your life you roam,
You won't never see an outlaw
Drive a family from their home.*

FORECLOSURE DEFENSE AND SHORT SALES

I. FORECLOSURE OVERVIEW

- A. Definition: a proceeding to extinguish all rights, title, and interest of the owner(s) of property in order to sell the property to satisfy a lien against the property.
- B. BASICS:
 - 1. Illinois is a Judicial Foreclosure state
 - 2. The process is not completed overnight
- C. Trigger and Initial Steps
 - 1. missed payment(s) (usually three) –homeowner should be contacting bank
 - 2. lender notifies attorney
 - 3. attorney reviews property’s title
- D. Summons and Complaint
 - 1. prepared typically within a month of trigger (four months after missed payments start)
 - 2. seeks possession of property
 - 3. summons (notice) served personally by sheriff or by publication
 - 4. homeowner usually has thirty days to respond to complaint
- E. Lis Pendens
 - 1. filed with Recorder of Deeds
 - 2. prevents owner from selling until foreclosure is resolved
- F. Right of Reinstatement
 - 1. mortgagor has right to reinstate mortgage within 90 days of summons being served or first date of publication
 - 2. must pay all costs and expenses required by mortgage to cure default (must get current on mortgage)
 - 3. bank may extend the time periods in some circumstances

G. Initial Court Date

1. common tactics utilized by mortgagor including continuance to hire attorney or file appearance and answer
2. possibly set a trial date when mortgagor alleges defenses to foreclosure
3. question of improper fees being charged by bank

H. Judgment of Foreclosure

1. court awards foreclosure judgment if mortgagor loses at trial, or if homeowner defaults (does not appear in court)
2. judgment awards property ownership rights to mortgagee
3. starts redemption period

I. Right of Redemption

1. mortgagor may redeem as follows:
 - a. if mortgagor *resides* in the property - within 7 months from the date mortgagor was served with summons or by publication, or three months after judgment, whichever is later
 - b. if mortgagor *does not reside* in the property - within 6 months from the date mortgagor was served with summons or by publication *or* no later than 3 months after the judgment of foreclosure is entered, whichever is later
 - c. regardless of whether mortgagor resides in the property, if (1) the value of the real estate as of the date of the judgment is less than 90% of the amount required to redeem and (2) the mortgagee waives any all rights to a deficiency judgment against the mortgagor(s) — within the **right of reinstatement period** or 60 days after the date of the foreclosure judgment, whichever is later
2. if the court determines that the property is abandoned, the right of redemption period ends 30 days after the date of the foreclosure judgment
3. a mortgagor may redeem by paying the foreclosure judgment amount plus other expenses authorized by the court
4. a commercial property owner can (and usually does) waive his or her (their) reinstatement and redemption rights; waivers for residential properties are not valid

J. Foreclosure Sale

1. Upon expiration of reinstatement and redemption periods or entry of a foreclosure judgment and waiver of all redemption rights, a foreclosed property may be sold
2. Notice of sale must be published at least 3 weeks in a row, once per week, in a newspaper circulated to the general public
3. Notice of the sale may be given prior to the expiration of the reinstatement or redemption period
4. Notice of sale does not need to be given to homeowner if he/she is in default

K. Report and Confirmation of Sale (= more time)

1. the lender will file a motion including a report of the sale with the court to confirm the validity of the sale
2. court conducts a hearing on the sale (generally two weeks after) and will approve the sale unless notice was not given or the sale was otherwise not conducted properly

L. Deficiency Judgment

1. if property is sold for *less* than amount necessary to redeem, the mortgage company may enter a deficiency judgment against the mortgagor
2. if mortgage company purchased the property and the sale price was less than the redemption amount, mortgagor has special right to redeem
3. **special right to redeem** expires within 30 days after the sale is confirmed and is satisfied only if the sale price plus any court approved costs are paid

M. Deed in Lieu of Foreclosure

1. homeowner “gives back” the property to lender without need of a court case
2. both parties have to agree
3. no deficiency judgment against homeowner
4. does not extinguish other liens, thus not very popular with lenders

N. Foreclosure scams and schemes

1. phantom or phony help (“rescue” fraud)
2. bait, switch and equity skimming
3. balloon refinance

II. FORECLOSURE DEFENSE

- A. Valid Defenses May Exist
 - 1. RESPA violations
 - 2. TILA violations
 - 3. Summons and complaint defects - e.g., incorrect property description?
 - 4. FHA loan requirements
 - 5. Fair Debt Collection Practices Act
 - 6. Other
- B. Audit of Case
- C. Engagement
- D. Motions/Filings
- E. Attorneys Fees and Penalties
- F. Negotiation Leverage with Lenders

Lenders and Lending Programs:

- 1. Illinois Homeowners Assistance Initiative
Phone: 877.819.4268
Offers 30-year fixed (5.75-8.00%), low fees and no prepayment penalties
Credit Scores as low as 580
- 2. HopeNow
Phone: 888.995.4673

Federal Government Program offering mortgage counseling and referrals for one- on-one loan workouts with lenders.
- 3. FHASecure
Phone: 800.970.7511 (www.homemortgagematch.com)

Offers FHA guaranteed loans to borrowers with good credit and employment history, who can not make payments due to adjustable rate mortgages.

Mortgage Counseling Centers:

1. Neighborhood Housing Services of Chicago
Phone: 773.329.4010 (www.nhschicago.org)
2. Resurrection Project
Phone: 312.666.1323 (www.resurrectionproject.org)
3. Spanish Coalition for Housing
Phone: 773.342.7575 (www.spanishcoalitionforhousing.com)

III. SHORT SALES

WHAT IS A SHORT SALE?

A short sale is a real estate transaction in which the Purchase Price offered by the Buyer is *less* than the amount necessary to pay-off (a) all of the claims, liens and encumbrances, including mortgages and (b) all of the costs of the transaction, including title insurance, transfer taxes, broker commissions and attorney fees. Because many of the other RESPA line items to be paid out of the Purchase Price are non-negotiable, the essential component of a short sale is that the mortgagee(s) must agree to fully release their mortgage liens in return for an agreed-upon “short payoff” of the net proceeds of the Purchase Price. In many cases, because the short payoff is insufficient to pay the senior mortgagee, junior mortgagees may receive none of the proceeds of the sale.

WHAT ARE THE MECHANICS OF THE SHORT SALE?

- A. Written authorization for the Buyer and its attorneys to contact all lienholders to obtain information regarding the liens and payoff amounts.
- B. Written approval and payoff amounts of all lienholders is essential prior to closing.
- C. Promissory Note generally must already be in payment default for at least 90 days, but if the property is already in foreclosure, there must be enough time left to structure and process a short sale.
- D. Property generally must be actively on the market by an arm’s length real estate broker.
- E. Seller must be able to demonstrate financial hardship and inability to cure the default.
- F. A valid, fully-executed (and generally non-contingent) Real Estate Sale Contract must exist. The Contract maybe modified to provide for a short sale contingency.

- G. Lienholders will require a detailed Closing Statement or a **preliminary HUD-1 RESPA Settlement Statement** reflecting every line item to be paid out of closing as of the projected closing date and the net short payoff that each lienholder will receive. Generally, the Seller will receive none of the proceeds of the sale and will not contribute to the closing costs, therefore the closing statement must “zero out” as to cash to/from Seller.
- H. Lienholder approval will be in the form of a Payoff Letter, but will be contingent upon (a) receipt of the net short payoff and (b) closing on or before a specified closing date.

WHAT HAPPENS TO THE REMAINING DEBT?

Mortgage Lien is released, but the Promissory Note is not.

Promissory Note is in default and remains enforceable unless the remaining debt is forgiven.

Mortgagee writes off the remaining debt if it is deemed uncollectible.

Forgiveness of Debt may be taxable income to the debtor and Mortgagee will send a 1099 statement to the Debtor and the IRS reflecting the amount of the forgiven debt. (NOTE: **The Mortgage Forgiveness Debt Relief Act of 2007, as extended**, provides that, *within specific limitations*, forgiveness of “acquisition” debt relating to a personal residence that occurs prior to December 31, 2012, will not be treated as a taxable event.)

The debtor may not have to claim the forgiven debt as taxable income if the debtor is insolvent per IRS Form 982. Also, Forgiveness of Debt may not be taxable if it is the result of a settlement due to defenses raised by the mortgagor in a foreclosure action by the mortgagee.

REPRESENTING A SELLER IN A SHORT SALE:

Some Preliminary Inquiries:

Given the Seller’s specific circumstances, is a short sale in the Seller’s best interests?

How many payments have been missed?

Is a Deed in Lieu of Foreclosure possible?

Can a favorable Loan Modification be negotiated?

Has a foreclosure action been filed?

Is foreclosure a better alternative?

Has the Seller filed for bankruptcy?

Is bankruptcy a better alternative?

Could the property sell for substantially more at a later date?

Will a Promissory Note be required?

Will the Seller be required to bring cash to the table to close?

Short Sale Considerations:

If the asking price for the property is clearly less than an accurate, comprehensive estimate of the amount necessary to close the sale and payoff all liens, then the MLS Listing or other advertising of the Property should reflect that “Any sale must be contingent upon Lender(s) approval”.

If a short sale is in the Seller’s best interests and a Contract has been submitted, suggested modifications to the Contract include:

- The property is being sold AS-IS, without representations of any kind, including non-compliance with municipal codes;
- Regardless of the results of any inspection, Seller will make no repairs to the property nor give any credits or escrows for any repairs to the property;
- Approval of short pay-offs by all lienholders is an absolute contingency to the Contract;
- Seller will submit the Contract to the Lender(s) within XX days of the date of Seller’s acceptance;
- Seller will immediately notify Buyer when the Lender(s) has approved the sale, along with all conditions of such approval;
- If any Lender does not approve the short sale, the Contract is canceled and any earnest deposit shall be returned; and
- If the commission to the Seller’s Broker is reduced by any Lender, unless Seller’s Broker and Buyer’s Broker mutually agree to a pro-rata reduction of the brokers commissions, Buyer is responsible to Buyer’s Broker, if any, for the difference between such pro-rata reduction in the Buyer’s broker and the agreed-upon commission payable to Buyer’s Broker per the listing.

REPRESENTING A BUYER IN A SHORT SALE:

Because the Seller is probably financially distressed in these situations, the seller may not have the means or inclination to obtain legal counsel. If the Seller is not represented by counsel, it may be prudent for Buyer’s counsel to confirm in writing directly with the Seller that (a) regardless of an authorization given to you by the Seller to contact the lienholders, you are only representing the Buyer’s interests in the transaction and (b) you are *not* representing the Seller’s interests and *will give them no legal advice* regarding the transaction. It would also be prudent to have the Seller confirm this understanding at the start of the Closing, in the presence of the Buyer and the Closer.

DO NOT discuss with the Seller at any time any financial aspect of the transaction, especially the income tax treatment of Forgiveness of Debt, or the applicability of **The Mortgage Forgiveness Debt Relief Act of 2007** to their specific circumstances.

Consider whether any aspect of the transaction is affected by Illinois statutes, including the Mortgage Rescue Fraud Act.

WHAT DO YOU NEED FOR APPROVAL OF A SHORT SALE?

Remember that, if any Lender or lienholder is represented by counsel (especially if the Seller has received collection letters from a law firm or a foreclosure suit has been filed), you should not contact the Lender directly without first contacting Lender's counsel.

The requirements of the various Lenders for approval of a short payoff vary widely. Before submitting the request to the Lender, contact them first to determine what they will require for approval. It is best to be ready with the following documents:

1. Authorization Letter signed by all mortgagees;
2. Payoff requests by the Seller;
3. Proof of Valuation for the Property - a full appraisal performed on the property by a certified appraiser or a Broker Price Opinion (BPO) reflecting valuation based on current values, condition of the property and the neighborhood, including any necessary repairs;
4. Draft HUD-1 RESPA Settlement Statement as of a projected closing date reflecting commissions, closing costs, payoff amounts, interest due, late fees, attorneys fees, association dues and fees, transfer taxes, closing costs and title insurance policies, etc.
5. Hardship Letter;
6. Pay stubs covering 30 days, including a year-to-date amount;
7. W-2's for the prior 2 years;
8. Federal and State income tax returns and schedules for prior 2 years;
9. Bank statements for prior 2 months;
10. Evidence of other assets, including most recent quarterly statements for all retirement, stock, CD, money markets, etc.;
11. Debtor's budget and cash flow demonstrating limited disposable income;
12. Most recent escrow analysis reflecting past due taxes or other encumbrances;
13. Copy of existing listing agreement with stated commissions;
14. Copy of MLS Listing which reflects market time;
15. Copy of fully executed contract;
16. Estimated closing date.

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SAVING YOUR CLIENT'S HOME

What can be done if your client is in default of their mortgage debt
and in danger of losing their home?

What is the role of a real estate lawyer in helping to save a client's home?

How do you determine what is in the client's best interests?

What is the track record for mortgage modification and other retention programs?

* * *

There are two types of programs for dealing with homes in financial distress:

NON-RETENTION PROGRAMS:

FORECLOSURE

DEED IN LIEU OF FORECLOSURE

SHORT SALE

DEED FOR LEASE

RETENTION PROGRAMS:

LOAN MODIFICATION - Federal Programs

LOAN MODIFICATION/RESTRUCTURING - Internal Lender Programs

HAMP (Home Affordable Modification Program)

Aimed at helping 7 to 9 million homeowners in default or at imminent risk of default by reducing monthly debt service to sustainable levels. The modifications are accomplished by reducing the interest rate and stretching the repayment term.

Qualification A borrower will qualify for HAMP if the verified income documentation demonstrates that the “monthly mortgage payment ratio” to the modification is greater than 31%. The “monthly mortgage payment ratio” is the ratio of the borrower’s current monthly payment to the borrower’s monthly gross income (or, in the case of co-borrowers, the borrowers’ combined monthly gross income).

The “monthly mortgage payment” includes the monthly principal, interest, property taxes, hazard insurance, flood insurance, condominium or homeowners association fees (including any escrow payment shortage amounts subject to a repayment plan).

There are additional qualifications for ARM’s schedule to reset within 120 days after the evaluation.

FEATURES OF HAMP:

- A. First lien mortgage loan originated on or before January 1, 2009 (no program for 2nd mortgages)
- B. The current unpaid principal balance prior to capitalization must be no greater than:

- 1 unit	\$729,750
- 2 units	\$934,200
- 3 units	\$1,129,250
- 4 units	\$1,403,400
- C. Has not been previously modified under HAMP
- D. Mortgage loan is delinquent or default is reasonable foreseeable
- E. Includes foreclosures, property in active mortgage litigation and bankruptcy (at lenders’ discretion)
- F. Loan is secured by a 1 to 4 unit property, one unit of which is the borrower’s principal residence
- G. The property must not be vacant or condemned
- H. Borrower’s financial hardship is documented (HAMP Hardship Affidavit) and represents that they do not have sufficient liquid assets to make the monthly payments (supporting documentation cannot be more than 90 days old)
- I. May also include borrowers who received Chapter 7 discharge in a case involving the first mortgage lien who did not reaffirm the debt.

- J. Requires an escrow account for taxes, hazard and flood insurance to be established before the end of the Trial Period

The HAMP documents are available through www.financialstability.gov

NPV TEST

Net Present Value (NPV) Test - All loans eligible for HAMP must meet a standardized NPV Test. If the NPV result under the proposed modification is greater than the NPV of the unmodified loan, the result is considered to be POSITIVE and the lender must offer the modification.

If the NPV Test is NEGATIVE, the lender has the option of modifying the loan at its discretion.

NPV Test and Servicers - If the mortgage is serviced on behalf of a third-party investor and the NPV Test is Negative, the servicer must obtain investor. If the NPV Test is Negative and the modification is declined, the servicer must consider the borrower for other options to avoid foreclosure, including alternative modification programs, deeds-in-lieu and short sales.

TRIAL PAYMENT PERIOD

The Trial Payment Period is three months in duration. The borrower must be current at the end of the Trial Payment Period to receive a permanent loan modification. The first payment under the Trial Payment Period is the first day of the month following the lender's mailing of the offer.

SERVICER INCENTIVE COMPENSATION

\$1,000 for each completed modification
\$500 additional, if borrower was not in default under the original mortgage loan
\$1,000 (or ½ of the reduction in the borrower's annualized monthly payment), whichever is less, for each of the following three years, **if** the borrower's monthly mortgage payment is reduced by more than 6% under the HAMP modification.

BORROWER INCENTIVE COMPENSATION

\$1,000 (or ½ of the reduction in the borrower's annualized monthly payment), whichever is less, for each of the following five years, **if** the borrower's monthly mortgage payment is reduced by more than 6% under the HAMP modification and the loan remains in good standing.

**WHAT DO YOU DO IF YOUR CLIENT'S APPLICATION
FOR A HAMP MODIFICATION IS REJECTED**

Get it in writing. Know the reason why the lender/servicer declined the application.

Try Try Again! Resubmit the application as many times as necessary, especially if the borrower's financial situation and debt ratio change

Foreclosure Alternatives Program (announced May 14, 2009) effective through 2012

- Minimum eligibility requirements as in HAMP, but are unable to retain the home
- Servicers must determine if a short sale is appropriate
- Servicers will establish property value and minimum acceptable net return in accordance with investor requirements, based on appraisal or BPO issued no more than 120 days before the date of the short sale
- standardized Short Sale Agreement and Offer Acceptance Letter
- must give borrower at least 90 days to market and sell the home (or up to 1 year)
- no foreclosure during first 90 days
- home must be listed with a licensed real estate broker with local experience
- servicer must agree not to negotiate a lower commission after an offer has been received
- incentives of: \$1,000 to servicer for successful short sale or DIL
\$1,500 to borrowers to help with relocation expenses
up to \$1,000 towards the release of junior liens (\$1 from government for every \$2 paid by the investor)



LEGISLATIVE UPDATE

MORTGAGE FORGIVENESS DEBT RELIEF ACT AND SHORT SALES -- A PRIMER

By RALPH J. SCHUMANN, President, Illinois Real Estate Lawyers Association, Attorney at Law

Mortgage foreclosure can be one of the most devastating things a homeowner can face. At a minimum, he or she will likely end up with damaged credit.

The "Double Whammy"

Until recently, the tax laws further penalized homeowners who were relieved of mortgage debt obligations with additional taxation. Homeowners owe taxes on the amount of the debt obligation from which they are relieved. For example, in a "short sale" situation, if a bank agreed to accept \$200,000 as payment in full to satisfy a mortgage where the homeowner owed \$250,000, the homeowner would owe taxes on the \$50,000 amount "forgiven".

The \$50,000 of the mortgage debt forgiven relieved the homeowner of the obligation to repay it. When a homeowner is relieved of debt, a financial benefit results because he or she

no longer has the obligation to pay it back. Hence an income tax obligation arises with this "unrealized income" even if there was no direct corresponding benefit, such as equity proceeds from a sale. As a practical matter, how is the homeowner who just lost everything going to be able to pay tax on the differential of the satisfied mortgage obligation when he or she received no tangible proceeds from the sale?

While it has received some media coverage, it is still not commonly known that forgiveness of any portion of debt in a home foreclosure or "short sale" situation can result in reportable taxable income. Many people who've walked away from their homes have found this out the hard way when they receive an unpleasant surprise. Many found out at the end of the year when they opened their mail and found they'd received a 1099C. (The 1099C is the IRS form that a creditor issues to report that it

has forgiven a portion of a debtor's debt.)

Mortgage Forgiveness Debt Relief Act of 2007

On December 20, 2007, President Bush signed the **Mortgage Forgiveness Debt Relief Act of 2007** (H.R. 3648; P.L. 110-142). This law is designed to protect some but not all foreclosed homeowners from a "double whammy" where a 1099C form is sent by the lender after a portion of the debt is forgiven.

Now, debt forgiveness in connection with a foreclosure proceeding against a personal residence will not be treated as taxable income if the debt forgiveness occurs within a specified period of time. The protection is subject to certain provisions and limitations:

1. The relief originally applied to debts forgiven between January 1, 2007, and December 31, 2009,

but has now been *extended* to **December 31, 2012**.

2. There is no income limitation.
3. Mortgages must have been secured by the borrower's principal residence. A borrower cannot have more than one principal residence. Debt must be deemed "a c q u i s i t i o n indebtedness;" debt must have been used to buy build, or rehab the primary residence.
4. Limited to \$2,000,000 of mortgage debt (\$1,000,000 for married persons filing separate returns).
5. Does not apply to cashouts.
6. Home equity debt may qualify if the money owed was used to make home improvements.
7. Refinanced debt qualifies if it is not more than the amount of the original debt.

Some Fine Print

Note that since the forgiveness is limited to debt incurred in buying or improving the house, it will not help those who took out a second mortgage or home equity line of credit to consolidate high

interest credit card debt at a time when home values were skyrocketing and sub-prime lenders were handing out money like candy. Generally, those who refinanced their homes would not have done so without paying off outstanding consumer debt. In many cases, it would have been a lender requirement. This portion of the home debt will continue to trigger tax liability when the loan is foreclosed.

Under the circumstances, homeowners should do a careful analysis of their loan history and actual expenditures made. Without such an analysis, an unfortunate byproduct of this legislation could well be a false sense of security for a homeowner facing foreclosure. The failure to act promptly could result in some unpleasant surprises at tax time.

Also, second homes, vacation homes, business and investment property are not included in the forgiveness; it will only apply to debt secured against the qualified principal residence of the taxpayer. If a taxpayer has two homes, only the home that is used the majority of the time will qualify in most circumstances.

The Bottom Line

The **Mortgage Forgiveness Debt Relief Act of 2007** provides an incentive to protect a homeowner's credit and work out an acceptable solution with a lender such as a **short sale**. Potential income tax liability now can often be

eliminated as an impediment to a short sale since the law removes tax liability that otherwise would result from mortgage forgiveness. A short sale in such instances will be beneficial to the seller's credit and may be helpful when the seller becomes a buyer and wants to obtain another mortgage in the future.

Homeowners and lenders now have more incentive to work together to either sell or refinance the existing mortgage debt, without having to pay tax on the amount forgiven. In general, short sales impact market values less than a lender going through the foreclosure process and then reselling the property as an REO, and should be encouraged where feasible since the large numbers of foreclosures the country is currently experiencing will otherwise cause lasting harm to real estate market valuations and to communities.

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Foreclosures, Short Sales



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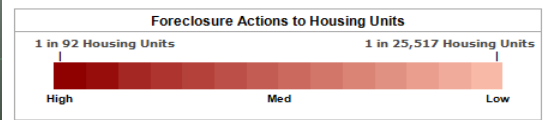
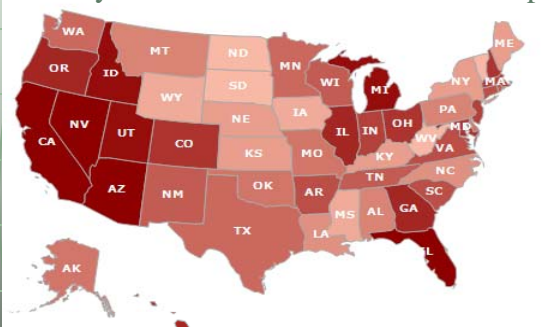


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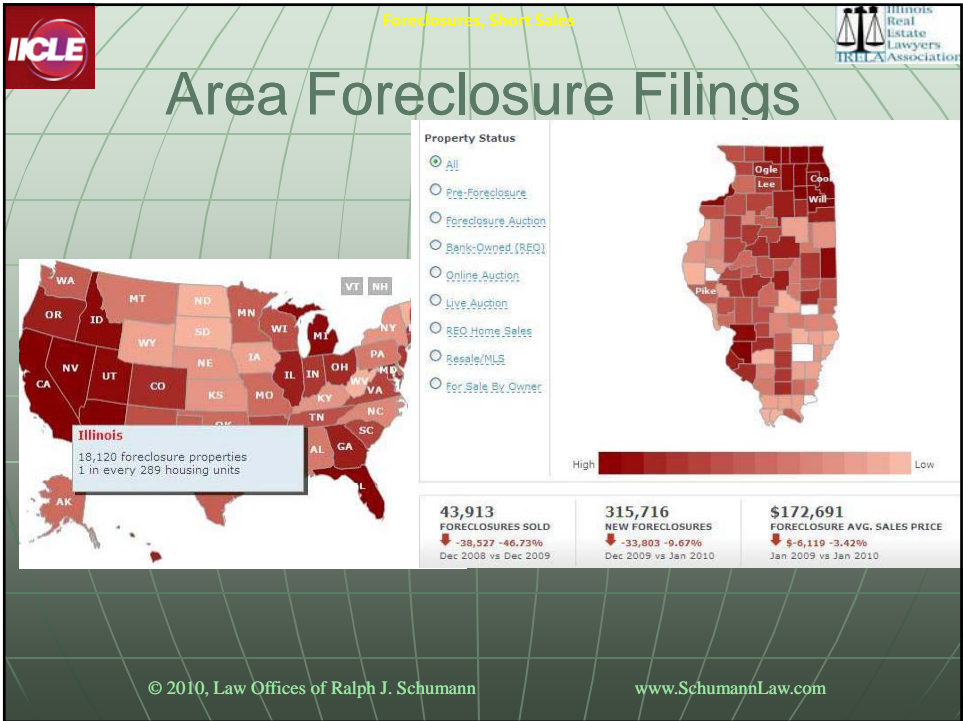
National Foreclosure Filings

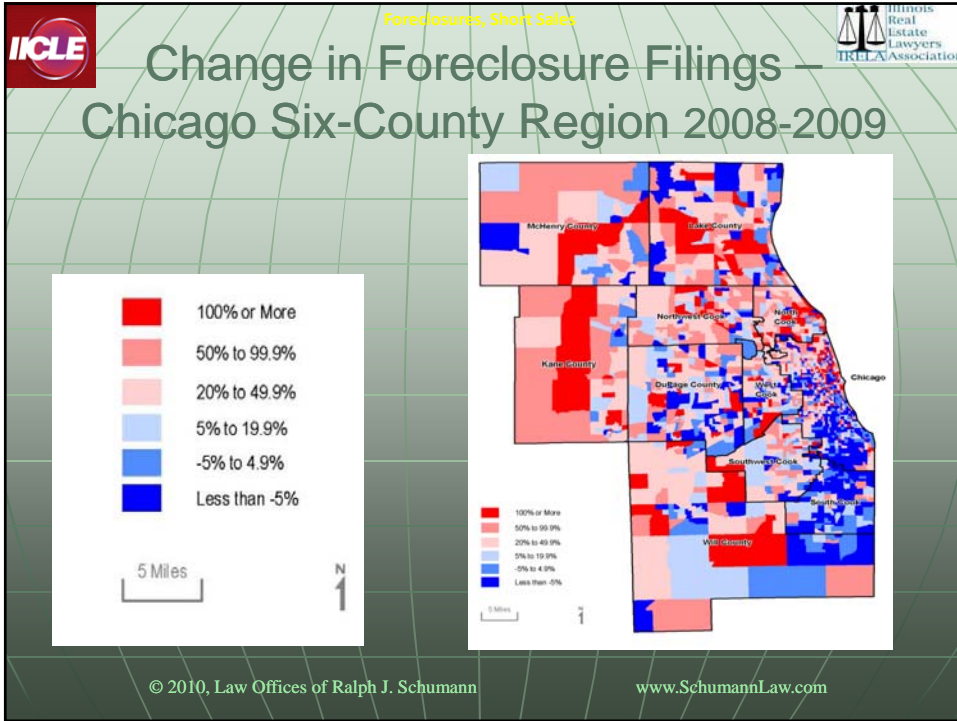
January 2010 Foreclosure Rate Heat Map



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Foreclosures, Short Sales

**Chicago Region Properties with
New Foreclosure Filings – 2006-2009**

Table 1. Chicago Region Properties with New Foreclosure Filings, 2006 to 2009^a

	New Foreclosure Filings				Change	
	2006	2007	2008	2009	2008 to 09	2007 to 09
Cook County Subregions						
Chicago	10,268	13,872	20,592	22,685	10.2%	63.5%
North Cook	575	962	1,845	2,739	48.5%	184.7%
Northwest Cook	1,472	1,971	3,700	5,365	45.0%	172.2%
West Cook	1,793	2,545	4,344	5,453	25.5%	114.3%
Southwest Cook	1,240	1,615	2,465	3,315	34.5%	105.3%
South Cook	4,174	4,773	6,013	5,625	-6.5%	17.9%
Cook County (total)	19,522	25,738	38,959	45,182	16.0%	75.6%
DuPage County	1,886	2,640	4,470	5,552	24.2%	110.3%
Kane County	1,614	2,302	3,451	4,857	40.7%	111.0%
Lake County	2,219	2,781	4,124	5,590	35.6%	101.0%
McHenry County	1,014	1,366	2,091	2,660	27.2%	94.7%
Will County	2,742	3,388	4,832	6,281	30.0%	85.4%
6-County Region	28,997	38,215	57,927	70,122	21.1%	83.5%
9-County Region	29,830	40,879	61,675	74,191	20.3%	81.5%

Source: Foreclosure Report of Chicago, Record Information Services

The fourth quarter of 2009 had the highest level of foreclosure filing activity for any quarter since the foreclosure crisis began in 2006. Chart 1 illustrates

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Chicago Region Change 2005-2009



Chicago Region Change in Properties with New Foreclosure Filings, 2005 to 2009




Past is Prologue



Foreclosures, Short Sales






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Foreclosures, Short Sales

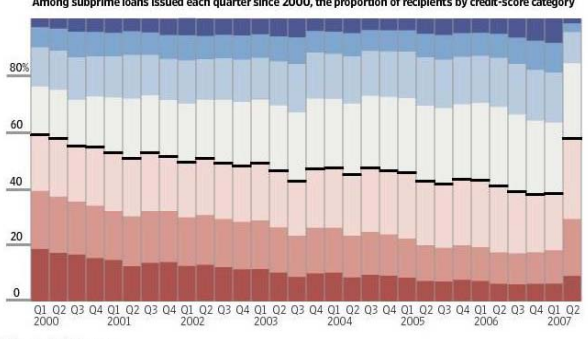



Past is Prologue

THE WALL STREET JOURNAL

Raising the Subprime Bar

During the recent boom in mortgage lending, aggressive marketing, extremely flexible loan terms and pay practices encouraged brokers to make loans with high interest rates. At the height of the market, in 2005, about 55% of subprime mortgages went to borrowers with credit scores that might have been high enough to qualify them for regular mortgages with lower interest rates. (See related article.)



Fair Isaac Corp. (FICO) credit scores
 740 and above
 700-739
 660-699
 620-659
 580-619
 540-579
 540 and below




There is no official definition of what is a "good" credit score. But the median score in the U.S. is 723, according to Fair Isaac Corp. That puts most borrowers roughly in the range to qualify for regular mortgages unless they want to stretch their income or get unconventional loan terms that are routinely offered by subprime lenders.

Source: First American LoanPerformance
 Note: Data exclude non-securitized subprime loans and those for which no data were available.


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Foreclosures, Short Sales

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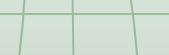





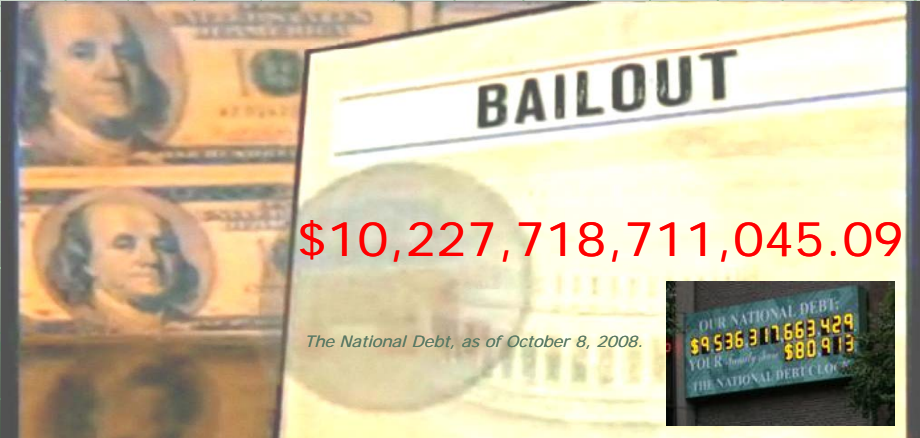
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Foreclosures, Short Sales

Bailouts, Rescues, Corrections



\$10,227,718,711,045.09

The National Debt, as of October 8, 2008.

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Foreclosure Defense; Short Sales: *Overview*

1. Foreclosure Overview
2. Foreclosure Defense
3. What is a Short Sale?
4. What are Short Sale Mechanics?
5. Short Sale Contract Issues,
Approval Package Information



Foreclosure Overview

A. Definitions and Basic Procedure

- A Foreclosure proceeding is designed to extinguish all rights, title and interest of the owner(s) of property in order to sell the property to satisfy a lien against the property.



Foreclosure Overview

B. Trigger and Initial Steps

- Missed payment(s) (usually three) – homeowner should be contacting bank
- Lender notifies attorney
- Attorney review property's title



Foreclosure Overview

C. Summons and Complaint

- Prepared typically within a month of trigger (4 months after missed payments start)
- Seeks possession of property
- Summons (notice) served personally by sheriff or by publication
- Homeowner usually has 30 days to respond to complaint



Foreclosure Overview

D. Lis Pendens

- Filed with Recorder of Deeds
- Prevents owner from selling until foreclosure is resolved



Foreclosure Overview

E. Right of Reinstatement

- Mortgagor has right to reinstate mortgage within 90 days of summons being served or first date of publication
- Must pay all costs and expenses required by mortgage to cure default (must get current on mortgage)
- Bank may extend the time periods in some circumstances



Foreclosure Overview

F. Initial Court Date

- Common tactics utilized by mortgagor including continuance to hire attorney or file appearance and answer
- Possibly set a trial date when mortgagor alleges defenses to foreclosure
- Question of improper fees being charged by bank



Foreclosure Overview

G. Judgment of Foreclosure

- Court enters foreclosure judgment if mortgagor loses at trial, or if homeowner defaults (fails to appear in court)
- Judgment awards property ownership rights to mortgagee
- Starts redemption period



Foreclosure Overview

H. Right of Redemption

- Mortgagor may redeem as follows:
 - a. If mortgagor resides in the property - within 7 months from the date mortgagor was served with summons or by publication, or three months after judgment, whichever is later
 - b. If mortgagor does not reside in the property - within 6 months from the date mortgagor was served with summons or by publication or no later than 3 months after the judgment of foreclosure is entered, whichever is later



Foreclosure Overview

H. Right of Redemption (continued)

- c. Regardless of whether mortgagor resides in the property, if
 - (1) the value of the real estate as of the date of the judgment is less than 90% of the amount required to redeem and
 - (2) the mortgagee waives any all rights to a deficiency judgment against the mortgagor(s) –within the **right of reinstatement period** or 60 days after the date of the foreclosure judgment, whichever is later



Foreclosure Overview

H. Right of Redemption (continued)

- If the court determines that the property is abandoned, the right of redemption period ends 30 days after the date of the foreclosure judgment
- A mortgagor may redeem by paying the foreclosure judgment amount plus other expenses authorized by the court
- A *commercial* property owner can (and usually does) waive reinstatement and redemption rights; waivers for residential properties are not valid



Foreclosure Overview

I.



- Upon expiration of reinstatement and redemption periods or entry of a foreclosure judgment and waiver of all redemption rights, a foreclosed property may be sold
- Notice of sale must be published at least 3 weeks in a row, once per week, in a newspaper circulated to the general public
- Notice of the sale may be given prior to the expiration of the reinstatement or redemption period
- Notice of sale does not need to be given to homeowner if he/she is in default



Foreclosure Overview

J. Report and Confirmation of Sale (= *more time*)

- The lender will file a motion including a report of the sale with the court to confirm the validity of the sale
- Court conducts a hearing on the sale (generally two weeks after) and will approve the sale unless notice was not given or the sale was otherwise not conducted properly



Foreclosure Overview

K. Sale Deficiency

- If property is sold for less than amount necessary to redeem, the mortgage company may enter a *deficiency judgment* against the mortgagor
- If mortgage company purchased the property and the sale price was less than the redemption amount, mortgagor has special right to redeem
- Special right to redeem expires within 30 days after the sale is confirmed and is satisfied only if the sale price plus any court approved costs are paid



Foreclosure Overview

L. Deed in Lieu of Foreclosure

- Homeowner “gives back” the property to lender without need of a court case
- Both parties have to agree
- No deficiency judgment against homeowner
- Does not extinguish other liens, thus not very popular with lenders



Foreclosure Overview

M. Foreclosure Scams and Schemes

- Phantom or phony help (“Rescue” scams)



[Mortgage Rescue Fraud Act; Unlicensed Third Party Short Sale Negotiators?]

- Bait, switch and equity skimming
- Balloon refinance



Foreclosure Defense

A. *It's All About Leverage*

- RESPA violations
- TILA violations
- Summons and complaint defects
 - Standing; Note and Mortgage attached?
- FHA loan requirements
- Fraud, Abuse, Collusion
- Fair Debt Collection Practices Act



Foreclosure Defense

- B. Audit of Case – Review all docs
- C. Engagement - define parameters
- D. Motions/Filings
- E. Attorneys Fees and Penalties
- F. Negotiation Leverage with Lenders
 - Other circumstances: investigation pending, *e.g.*, *Countrywide-type situation?*



Short Sales Basics



Preliminary Considerations:

- Appropriateness: Is there a potential buyer?
- Other possible options considered? (Refinance, Loan Modification? Deed in Lieu of foreclosure? Bankruptcy?)
- Is there sufficient time? (How far along are we?)
- When Should an Attorney be Hired?



Short Sales

3. What is a Short Sale?

- Purchase Price is **less** than amount necessary to pay off:
 - all claims, liens and encumbrances, including mortgages, and
 - all of the costs of the transaction, including title insurance, transfer taxes, broker commissions and attorney fees



Short Sales

4. What are Short Sale Mechanics?

- Essential component:

The mortgagee(s) must agree to fully release their mortgage liens in return for an agreed-upon "short payoff" of the net proceeds of the sale transaction



Short Sales

4. Short Sale Mechanics

Third Party Coordinators

The screenshot shows the website for 'The Short Sale Company'. The header includes the company name and tagline 'THE NATION'S LEADING SHORT SALE / LOSS MITIGATION COMPANY'. A navigation menu contains links for HOME, ABOUT US, F.A.Q., PRESS ROOM, BLOG, TESTIMONIALS, LOGIN, and CONTACT. A link for 'Homeowners Click Here' is also visible. The main content area is titled 'Transaction Update Page' and features a section for 'The Hellickson Team' with a phone number 'Work: 877-...' and a website URL 'http://www.com'.



Short Sales

Transaction Updates

The following describes activities performed on your transaction. While this list does not include EVERY effort made on behalf of your transaction, it will provide you with the most up to date status.

Please refer to this information whenever possible, rather than calling our office for updates. You'll get faster, more accurate, and more immediate information, and it will allow us to focus on handling the important details of your transaction.

As always, when you come across people who could benefit from our service, please call us with their name and number. We'll take great care of everyone you send our way.

Huntley, IL

Activity	Type	Date	Description
TW- File received. Sent login information.	activity	2008-08-11 12:32:00	
TW- Missing the following: INTAKE FORM, MLS PRINTOUT, AGENT FORM, COMPS, LISTING AGREEMENT, PRELIM TITLE, OFFER, HUD, PRE-APPROVAL FOR THE BUYER, AND REFERRAL AGREEMENT.	activity	2008-08-11 12:34:00	
TW- Received docs from Bill. STILL NEED HUD AND LISTING AGREEMENT.	activity	2008-08-11 13:01:00	
JM- received file, faxed to Countrywide and Wells Fargo	activity	2008-08-11 13:34:00	
JM- sent email to RE agent:	activity	2008-08-21 11:29:00	I will be the negotiator on the file. In response to your question below their truly is no time line on a short sale. It can take anywhere from 1 weeks to 8 months. The average time is about 4 months. I hope this helps. Each deal is different and has it's own



Short Sales



Bank of America Short Sales.

Equator was formerly known as REOTrans.com.

Shorter processing times?



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS:

A. Written authorization to contact all lienholders to obtain information regarding the liens and payoff amounts (Authorization vs. Power of Attorney)



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

B. Written approval and payoff amounts of all lienholders is essential prior to closing



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

C. Promissory Note generally must already be in payment default for at least 90 days, but if in foreclosure already, enough time left to structure and process short sale



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

D. Property generally must be actively on the market by an arm's length real estate broker



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

E. Hardship. Seller must be able to demonstrate financial hardship and inability to cure the default. Hardship Letter should cite health reasons, financial reasons, etc. Evidence is needed to verify claims. More evidence is better! Be specific!



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

F. Contract. Must have a valid, fully-executed (and generally non-contingent) Real Estate Sale Contract. The contract may be modified to provide for a Short Sale contingency.



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

G. Preliminary HUD-1 Closing Statement or "net-sheet". Must reflect every line item to be paid out of closing as of the projected closing date and the net short payoff each lienholder will receive. Cash to/from Seller must "zero out".



Short Sales

4. What are Short Sale Mechanics?

- REQUIREMENTS (con't):

H. Lienholder Approval will be in the form of a Payoff Letter, but will be contingent upon (A) receipt of the net short payoff and (B) closing on or before a specified closing date.



Short Sales

4. What are Short Sale Mechanics?

- What Happens to Remaining Debt?

- Mortgage Lien is released, but Promissory Note is not.

- Mortgagee writes off remaining debt if it is deemed uncollectible.

- Taxability of Forgiveness: Mortgage Forgiveness Debt Relief Act of 2007



Short Sales

4. What are Short Sale Mechanics?

- Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648; P.L. 110-142):

1. The relief applies to debts forgiven between January 1, 2007, and December 31, 2012 *[extended]*.

2. There is no income limitation.

3. Mortgages must have been secured by the borrower's principal residence. A borrower cannot have more than one principal residence. Debt must be deemed "acquisition indebtedness;" debt must have been used to buy build, or rehab the primary residence.



Short Sales

Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648; P.L. 110-142) (Con't):

4. Limited to \$2,000,000 of mortgage debt (\$1,000,000 for married persons filing separate returns)
5. Does not apply to cash-outs.
6. Home equity debt may qualify if the money owed was used to make home improvements.
7. Refinanced debt qualifies if it is not more than the amount of the original debt.



Short Sales

5. *Contract Issues*

- Proper disclosures can make a big difference and avoid misunderstandings
[50-55% Success rate?]
- **Short Sale Rider** – *Approved for use with Multi-Board Residential Real Estate Contract 5.0*

Listing – MLS code.

1. "Lender Approval may be required for a Short Sale"



Short Sales

5. *Contract Issues*

- *Recommended Disclosures:*

2. "Property sold 'As Is' – no repairs to be made"
3. "Extended period of time may be required for a response to the offer and/or for closing"



Short Sales

5. *Contract Issues*

- *Recommended Disclosures:*

4. Commission reduction terms:
e.g., Co-op commission will be 50% of reduced amount lender approves.
(Lenders may change the maximum commission amount just prior to closing. This 50/50 split should be disclosed from the onset of marketing.)



Short Sales

5. Contract Issues

- Increase chances of getting the deal closed successfully:
 - Title Search. What liens are actually there?
 - Encourage client to be honest about all debt. Have a "heart-to-heart" talk and get complete, accurate info on full amount of debt of all kinds before lots of time and effort expended. Avoid surprises.

Many of these deals fail to close.



Short Sales

5. Contract Issues

- Contract Modifications to be considered:
 1. Subject to Approval of Existing Lender(s) as to all terms.
 2. The Seller may cancel this Agreement prior to the ending date of the listing period and/or contract without prior notice to the Broker and without payment of commission or any consideration if the Property is conveyed to the mortgage insurer or mortgage holder.



Short Sales

5. Contract Issues

- Contract Modifications:

3. The property is being sold *As-Is*, without representations of any kind, including non-compliance with municipal codes.

4. Regardless of results of any inspection, the Seller will make no repairs to the property nor give any credits or set up any escrow for repairs.



Short Sales

5. Contract Issues

- Contract Modifications:

5. Seller will submit the Contract to the Lender(s) within ____ days of the date of Seller's acceptance.

6. Seller will immediately notify Buyer when the Lender has approved the sale, along with all conditions of such approval.



Short Sales

5. Contract Issues

Contract Modifications:

7. If any Lender does not approve the Short Sale, the Contract shall be deemed canceled and any earnest deposit shall be returned promptly.



Short Sales

Approval Package Items

Lender requirements vary widely. To increase chances of closing the deal, prepare thoroughly, check lender web sites, and have all of the following:

A. Authorization

Letter signed by all mortgagees;

B. Payoff requests;

HomEq Servicing <http://www.homeq.com/forms/shortsale1.pdf>

LOSS MITIGATION—Short Sale Guidelines and Pre-Negotiation Agreement
Page Two

Account Number: _____
Secured Property Address: _____

- A complete financial package includes all documents Servicer has requested from the Borrower and the listing real estate agent/attorney, including, but not limited to:
 - Complete financial information from Borrower.
 - A signed copy of the listing agreement with all addenda and attachments.
 - A signed copy of the Sales Contract with all addenda and attachments.
 - A written, signed hardship letter from Borrower outlining his/her financial situation and the events that caused the financial hardship.
 - Borrower's last two bank statements, checking and savings all pages.
 - Borrower's last two paycheck stubs.
 - A commitment letter from the investor/buyer's lender.
 - A Settlement Statement (HUD - 1 or Sellers Net Sheet) indicating the allocation of all the proceeds of the sale.
 - A payoff demands statement from the senior lienholders, if applicable.
 - Borrower's two most recent state and federal tax returns with all schedules.
 - Borrower's most recent summary statements for any IRA, retirement, or investment accounts.
- Servicer reserves the right to request additional documentation as may be necessary to verify a change in Borrower's financial situation and/or hardship or the status of the secured property prior to close of the short sale. Such documentation may include re-verification of Borrower's financial status at the time of loan origination.
- Borrower's execution of a quitclaim deed will not automatically release him/her of liability under the referenced loan. A quitclaim deed only releases an ownership interest in the property. Likewise, the attempt to execute a short sale without Servicer's consent will not automatically release Borrower from liability.
- Servicer expressly reserves the right to not accept the transfer of title to any secured property unless it has entered into a prior written agreement to accept the transfer of title.
- Borrower must contract all subordinate lien holders prior to closing to secure a written release of each lien in recordable form.
- Servicer reserves the right to terminate review of a short sale request if Borrower fails to provide all requested documentation.



Short Sales

Approval Package Items

C. Proof of Valuation for the Property

- a full appraisal performed on the property by a certified appraiser or a Broker Price Opinion (BPO) reflecting valuation based on current values, property condition, neighborhood, needed repairs, time on market of area properties, etc. (Realtor should go against his or her instincts and paint a *bleak picture* of prospects for a rapid full price sale, not praise the property);



Short Sales

Approval Package Items

- D. Preliminary HUD-1 or RESPA Settlement Statement as of projected closing date reflecting commissions, closing costs, payoff amounts, interest due, late fees, attorney fees, association dues and fees, state, county and municipal transfer taxes, title insurance premiums, survey fee, and all other line items;
- E. Hardship Letter detailing tough circumstances;



Short Sales

Approval Package Items

F. Pay stubs covering 30 days, including year-to-date amount;

G. W-2's for prior 2 years;

H. Fed'l and State income tax returns and schedules for prior 2 years;



Short Sales

Approval Package Items

I. Bank statements for prior 2 months;

J. Evidence of other assets, including most recent quarterly statements for all retirement assets, stocks, CDs, money market accounts, etc.;



Short Sales

Approval Package Items

K. Budget and cash flow demonstrating limited disposable income (borrower must demonstrate he or she is “insolvent”);

L. Most recent escrow analysis reflecting past due taxes or other encumbrances;



Short Sales

Approval Package Items

M. Copy of existing listing agreement with stated commissions;

N. Copy of MLS Listing reflecting market time;



Short Sales

Approval Package Items

- O. Copy of fully executed contract; and
- P. Proposed closing date.



Short Sales

Loss Mitigation Department Numbers for Lenders at bankrate.com

Mortgage servicers	
Company name	Phone number
ABN AMRO Mortgage Group (merged with CitiMortgage Corp.)	(800) 783-8900*
Accredited Home Lenders (refinance)	(877) 683-4466
AMC Mortgage Services - (now CitiResidential Lending Inc.) (Also handles loans originated by Ameriquest and Argent)	(800) 211-6926
American Home Mortgage Corp.	(877) 304-3100*
Ameriquest Mortgage (Debt collection - see AMC Mortgage Services)	(800) 211-6926
Aurora Loan Services (Debt collection)	(800) 550-0508
Avelo Mortgage LLC	(866) 992-8356*
Bank of America	(800) 846-2222
BB&T Mortgage	(800) 827-3722*
Central Pacific Bank	(800) 342-8422*
Charter One Bank (now CCO Mortgage)	(800) 234-6002*
Chase Home Finance	(800) 848-9136 (customer service), (858) 605-2181 (delinquency customer service)
Chase Home Finance-New Jersey	(800) 446-8939*

Search "contacting mortgage servicers" at www.bankrate.com



Short Sales

www.atgf.com – has list of Loss Mitigation Department Numbers

Consumers, Realtors, Lenders | What You Need to Know about Foreclosure

ATTORNEYS' TITLE GUARANTY FUND, INC.
A COLLECTION OF LOSS MITIGATION DEPARTMENT PHONE NUMBERS

If you are having trouble making your mortgage payments, contact your lender. If your lender has provided you with different contact information for loss mitigation, you should contact that number. We cannot guarantee the completeness or accuracy of this information.

Lender	Phone	Special Instructions
Accredited Home Lenders	877.273.4599	Option 0; Ask for Loss Mitigation
America's Servicing Company	877.222.7876	
American Home Mortgage Servicing	877.304.3100	
Aurora Loan Services	866.521.3828	
Avelo Mortgage	866.992.8356	
Bank of America (Loss Mitigation)	800.846.2222	
Bank of America (Reverse Mortgages)	208.231.1520	
Blue View Corporation	866.310.6670	Ext. 105
CCO Mortgage (Charter One)	800.466.5855	
Cendent (See FHH Mortgage)		
Centar	800.883.3900	Ask for Loss Mitigation
Central Mortgage Company	800.366.2132	Option 2; Ask for Loss Mitigation
Chase Home Finance	800.948.8138	
Chase San Diego	800.628.1674	
CitiFinancial Mortgage	800.422.1498	



Problem soon to be solved? . . .



=





Problem soon to be solved? . . .

A Cautionary Tale: IndyMac "Slap in the Face"



IndyMac Taken Over



IndyMac "Slap in the Face"

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

1st Mortgages
70% of Value

HELOC's
58% of Value

OneWest Buys Debts

Loss Sharing Agreement

FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC to Cover
80% to 95%
of Losses

Due to Short Sale or Foreclosure

Foreclosures, Short Sales

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IndyMac "Slap in the Face"

Loss Calculations are based on the ORIGINAL Loan Balance

\$478,000 + Payments
\$485,200

OneWest Bank

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Foreclosures, Short Sales

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IndyMac "Slap in the Face"

\$478,000 X 70%
\$334,600

OneWest

OneWest Paid: \$334,600
Short Sale Offer: \$241,000

OneWest Bank

OneWest pays 70%

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IndyMac "Slap in the Face"

<p>Original Amount: \$485,200 <small>(Plus missed Payments)</small></p> <p>Short Sale Offer: \$241,000</p> <p>"Adjusted Loss" to OneWest: (\$244,200)</p>	<p>"Adjusted Loss" to OneWest: (\$244,200)</p> <p>FDIC X 80%</p>
<p>OneWest Bank \$195,360</p> <p>FDIC Pays OneWest</p>	

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IndyMac "Slap in the Face"

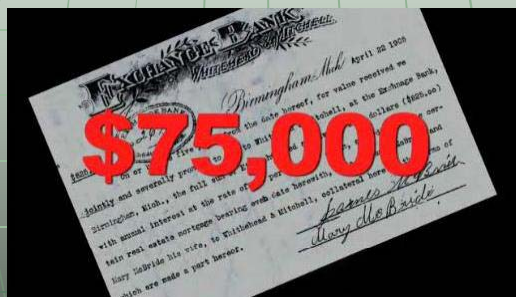
<p>FDIC \$195,360</p> <p>Short Sale Cash Offer: \$241,000</p>	<p>Cash from Short Sale & FDIC: \$436,360</p> <p>Cash Paid by OneWest Bank: \$334,600</p>
<p>OneWest Bank \$436,360</p> <p>OneWest Bank \$101,760</p> <p>Profit to OneWest</p>	

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IndyMac "Slap in the Face"

PLUS



Borrower Required to Sign Promissory Note

Disclaimers: \$2.5 Billion loss threshold, etc.



Bailouts, Rescues, Corrections





Foreclosures, Short Sales



Be a "Trusted Advisor"

*Interact with colleagues
Utilize a good support network.*



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ATG



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Foreclosures, Short Sales

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