



Foreclosure Defense and Alternatives:

Litigation Steps, Practice Suggestions, and Recent Developments

Presenter:

Ralph J. Schumann, Attorney at Law President, Illinois Real Estate Lawyers Association (IRELA)

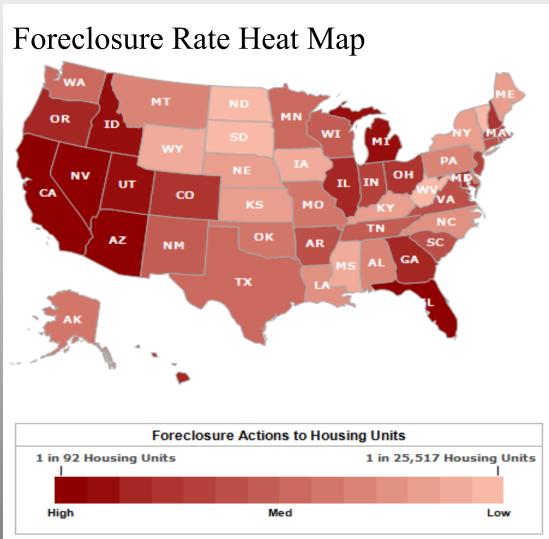
April 20, 2012







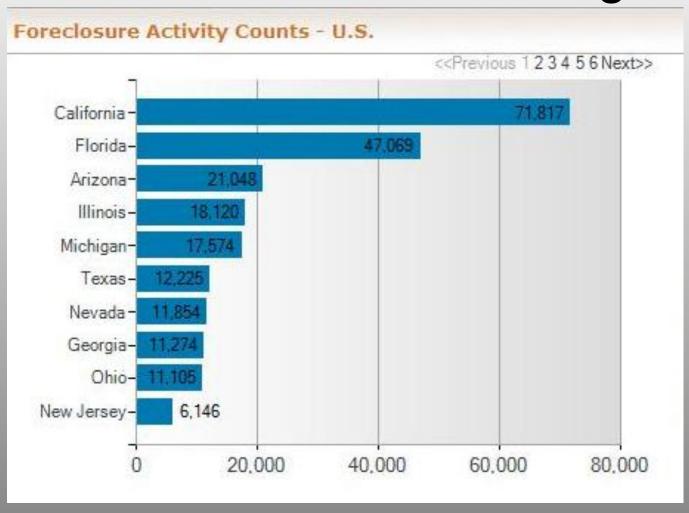
National Foreclosure Filings







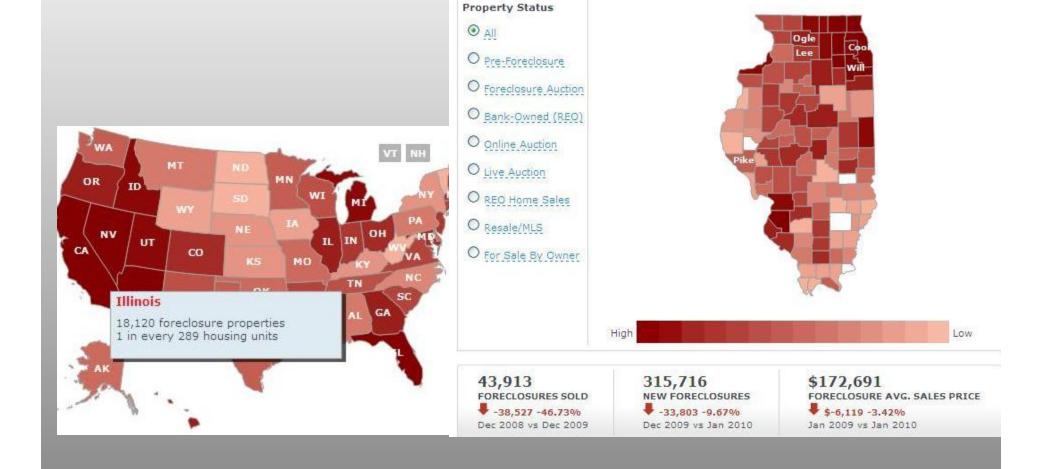
National Foreclosure Filings







Area Foreclosure Filings

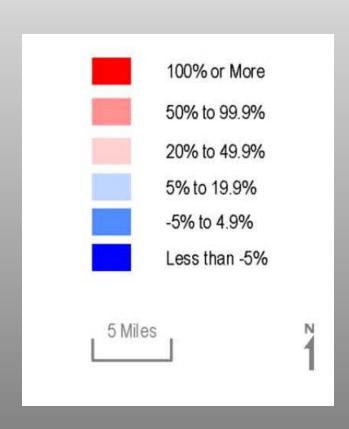


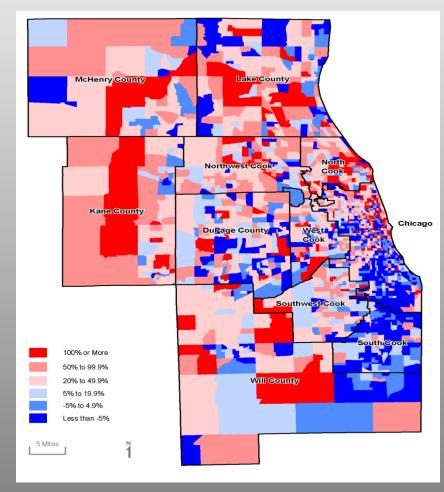




Change in Foreclosure Filings –

Chicago Six-County Region 2008-2009









Chicago Region Properties with New Foreclosure Filings

		New Foreclosu		Change		
	2006	2007	2008	2009	2008 to 09	2007 to 0
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%	75.0
DuPage County	1,886	2,640	4,470	5,552	24.2%	110.
Kane County	1,614	2,302	3,451	4,857	40.7%	111.0
ake County	2,219	2,781	4,124	5,590	35.6%	101.0
AcHenry County	1,014	1,366	2,091	2,660	27.2%	94.7
Vill County	2,742	3,388	4,832	6,281	30.0%	85.4
S-County Region	28,997	38,215	57,927	70,122	21.1%	83.5
DeKalb County	257	286	473	617	30.4%	115.7
Kendall County	371	646	1,182	1,401	18.5%	116.
Vinnebago County	205	1,732	2,093	2,051	-2.0%	18.4
-County Region	29,830	40,879	61,675	74,191	20.3%	81.5

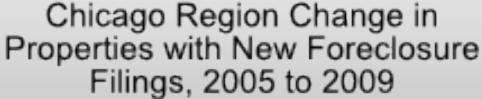
Source: Foreclosure Report of Chicago, Record Information Services

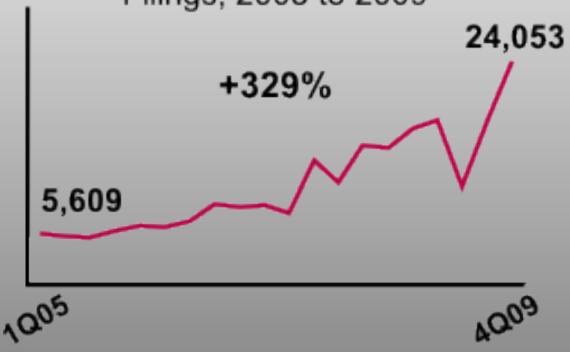
The fourth quarter of 2009 had the highest level of foreclosure filing activity for any quarter since the foreclosure crisis began in 2006. Chart 1 illustrates





Chicago Region Change

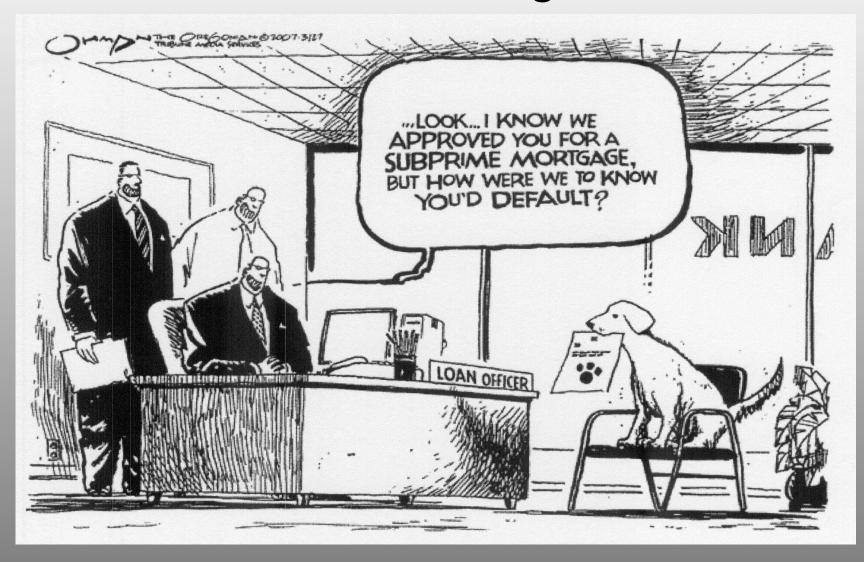








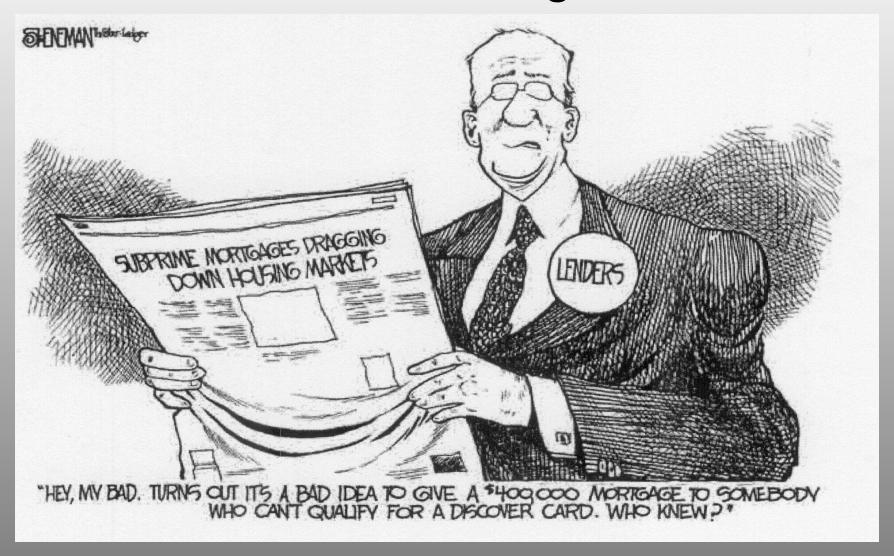
Past is Prologue







Past is Prologue







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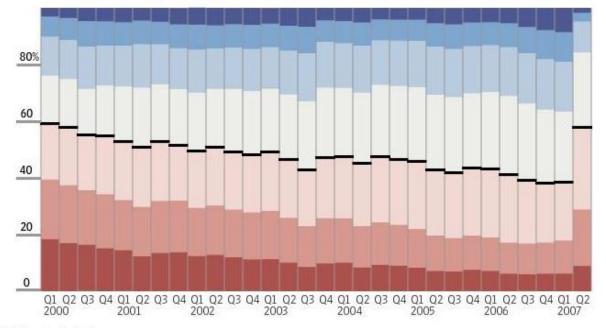
Past is Prologue

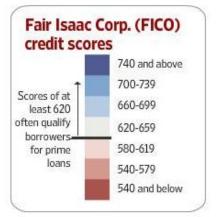
THE WALL STREET JOURNAL.

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.)







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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Real estate lawyers have some foreclosure advice

By LIZ WOLGEMUTH - Iwolgemuth@nwnewsgroup.com

Comments (No comments posted.)

At a recent meeting with officials from the Illinois Real Estate Lawyers Association, Dean Martinez, the secretary of the Illinois Department of Financial and Professional Regulation, asked if lawyers might be willing to serve as credit counselors to first-time homebuyers.

A new law that will take effect in July 2008 will require first-time Cook County homebuyers with risky mortgage terms to be recommended for credit counseling, but the county may need additional credit counselors to meet the requirement.

It was an ironic request, given that Martinez was asking the lawyers to share their experience and credit wisdom with strangers, but most are unable to share it with their own clients before they obtain a mortgage.

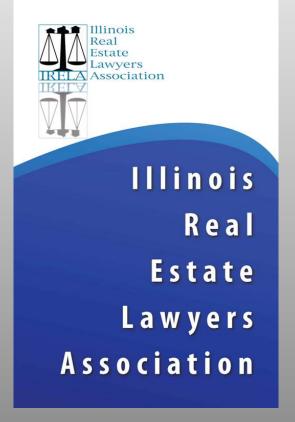
Homebuyers generally work with lenders to hammer out their mortgage terms before a real estate lawyer is involved in a home purchase.

And when lawyers suggest to their clients a mortgage might be too risky, their warnings are often drowned out by buyers' optimism, said Ralph Schumann, president of the Elk Grove Village-based real estate lawyers association.

"People have decided that with their income that they're entitled to a certain lifestyle," Schumann said.



Raph Schumann (right), president of the Ek Grove Villagebased Illinois Real Estate Lawyers Association and John O'Brien, IRELA board chairman. (Justin Runquist photo)







Bailouts, Rescues, Corrections







FORECLOSURE DEFENSE; SHORT SALES:

OVERVIEW

Retention vs. Non-Retention Approaches

- 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





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.





B. Trigger and Initial Steps

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





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





D. Lis Pendens

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





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





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





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





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





H. Right of Redemption (continued)

- If the court determines that the property is <u>abandoned</u>, 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





I.

- FORECLOSURE SALE
- 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





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 about two weeks after) and will approve the sale unless notice was not given or the sale was otherwise not conducted properly





K. Sale Deficiency

- If property is sold for less than amount necessary to redeem, the mortgage company/ lender may seek 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





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





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?





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?





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





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





4. Short Sale Mechanics

Third Party Coordinators

- Working with Non-Lawyers?







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.

1 Huntley, IL

Activity	Туре	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 only





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)





- 4. What are Short Sale Mechanics?
- REQUIREMENTS (con't):
 - B. Written approval and payoff amounts of all lienholders is essential prior to closing





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?





- 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





- 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!





- 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.





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".





- 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.





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







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.





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.





5. Contract Issues

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





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.





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.





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.





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.





5. Contract Issues

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





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:	
	Ch.

- 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/buver'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 401k, 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.





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);





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 (be detailed);





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;





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.;





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;





Approval Package Items

M. Copy of existing listing agreement with stated commissions;

N. Copy of MLS Listing reflecting market time;





Approval Package Items

O. Copy of fully executed contract; and

P. Proposed closing date.





Loss Mitigation Department Numbers for Lenders at bankrate.com

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





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.

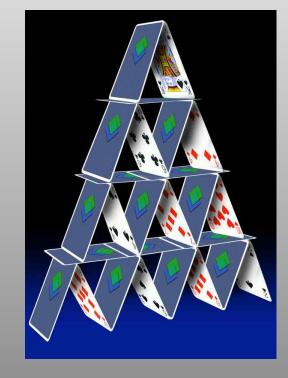
Lender	Phone	Special Instructions
Accredited Home Lenders	877.273.4599	Option 0; Ask for Loss Mitigation
America's Servicing Company	877.222.7875	
American Home Mortgage Servicing	877,304.3100	
Aurora Loan Services	866.521.3828	
Avelo Mortgage	866.992.8356	
Bank of America (Loss Mitigation)	800.846.2222	
Bank of America (Reverse Mortgages)	208.281.1520	
Blue View Corporation	866.310.6670	Ext. 105
CCO Mortgage (Charter One)	800.458.8855	
Cendent (See PHH Mortgage)		
Centar	609.883.3900	Ask for Loss Mitigation
Central Mortgage Company	800.368.2132	Option 2; Ask for Loss Mitigation
Chase Home Finance	800.848.9136	
Chase San Diego	800.828.1674	
CitiFinancial Mortgage	800.422.1498	





Problem soon to be solved? . . .









Bailouts, Rescues, Corrections







"Short Sales Surpass Foreclosures As Banks Agree to Deals"

Bloomberg News, April 17, 2012

- According to figures provided by Lender Processing Services, Inc. (LPS), Short sales in January accounted for 23.9% of home purchases, versus 19.7% for foreclosed homes.
- Inducements as high as \$35,000





Illinois Supreme Court Special Committee on Foreclosure

- Public Hearings to be Held:
- 1. April 27, 2012: Procedural matters – Prove-up Affidavits, Assignments, Notices
- 2. June 8, 2012: Loss Mitigation,
 Mediation -- Adequate Supply of Mediators

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