# The Biggest Reasons to say Yes to a Short Sale

## ...and important information you need to know


Written by:
Real Estate Attorney
Brian D. Lit, Esq.



## What is a Short Sale?

A short sale is when real estate property is sold for less than the amount of the outstanding mortgage(s) balance secured by that real estate...in other words, you sell the property for less than what is owed.

## Is a short sale my best option?

For many distressed homeowners, short sale is a great option, but it may not be your best option. Other options available are loan modification, deed-in-lieu of foreclosure, bankruptcy or foreclosure defense. You must consult with an attorney and tax advisor on which is your best option. Your realtor cannot advise you which is your best option. Make sure that short sale is your best option before you enter a short sale agreement.

## Why would my Lender consider a Short Sale?

The main reason is that a Lender will typically lose much less money by allowing the borrower to short sale than having to repossess the home through foreclosure and then selling it. Foreclosures take a long time, involve attorney and court costs, and sell for considerably less on average than a short sale.

## Absolutely do not...

do a short sale without understanding the consequences. An improperly negotiated short sale can lead to devastating financial consequences for you and your family. Heed the advice of your Real Estate Agent and seek the counsel of a qualified real estate attorney and certified public accountant to explain the consequences and ensure the best possible outcome.

# Reasons to say Yes

## Financial Certainty

Once a short sale has been negotiated and reviewed by a qualified attorney, you will know what the consequences are prior to signing the short sale agreement and closing on the property. A short sale can be a great opportunity to negotiate and/or eliminate the deficiency. Also, by performing a short sale you are assisting the lender in mitigating their losses.

## Improve Future Borrowing Capability

Initially, both short sale or foreclosure will have a similar negative effect on your credit score. There are many that feel a these effects will diminish more quickly with a short sale vs. foreclosure. However, by performing a short sale instead of allowing the property to go into foreclosure, you will be able to purchase a home within 24 months. Fannie Mae guidelines now allow only 24 months to pass from a short sale to being able to secure a new mortgage, and that's good news for sellers who sell via short sale. With a foreclosure, the time frame to be able to obtain a new mortgage could be 7 years.

## Deficiency Judgment

A deficiency is the difference between the mortgage balance versus the amount recovered by the bank in a foreclosure, short sale or deed-in-lieu of foreclosure. To estimate your deficiency, use this simple equation: Mortgage Balance minus (-) Amount recovered by bank (either fair market value of property or amount tendered to bank upon short sale) = Your Estimated Deficiency Balance.

Upon foreclosure, banks have up to 5 years to seek a judgment for the amount of the shortfall. This judgment can last for up to 20 years. This means that the bank can collect from a distressed borrower for up to 25 years.

This is the reason that many borrowers choose the short sale as an alternative to foreclosure. A short sale is a great way to negotiate the deficiency balance with your lender. It is important to note that not all short sales guarantee a waiver of the deficiency balance. It is strongly advised that you seek a qualified real estate attorney to negotiate and review all short sale approval documents. It will be worth spending a small amount of money on an attorney now as opposed to exposing yourself to a large liability for the next 25 years.

# Reasons to say Yes cont.

## Control

One major reason to consider a short sale versus a foreclosure is Control. In a foreclosure, the bank takes possession of the property and decides what offers to accept for a sale. Once the property is sold, the bank then calculates your deficiency balance. If the bank chooses to accept a small offer, then your deficiency balance will usually be greater. If you did not attempt a short sale and the bank foreclosed, then you have lost Control of the process. After a foreclosure, you are powerless to control the sale of the property.

In a short sale, you maintain control. You decide whether to accept certain offers with the bank's consent. If an offer is leaving a large deficiency balance, then you have the power to refuse the sale and attempt to find a more suitable offer. In a certain sense, you control your own financial destiny in a short sale versus a foreclosure.

## Avoid the 'F' Word

Foreclosure is a very negative term. Neighbors know when foreclosure occurs. Not so with a short sale. With short sale, your listing looks like all the other normal listings in the neighborhood. Also, foreclosures have a larger impact on neighborhood values than short sales.

## Employment

Many companies regularly check the credit reports of their employees who are in sensitive positions. A foreclosure on the credit report may be grounds for reassignment or termination. If you are applying for a job, you may not be accepted if a foreclosure is on your report.

A short sale appears on your credit report as “paid-settled,” “paid-satisfactory” or “paid in full for less than agreed.” It should not affect present or future employment.

# BOLO
## (be on the lookout)

## A Borrower without hardship

Borrowers that currently demonstrate no hardship have become serious deal killers. Up until about 6 months ago, it was very easy to short sale with any client – hardship or not. Now, banks have begun the crackdown on strategic defaulters and are now requiring that distressed borrowers show an inability to pay the monthly mortgage payment.

Many borrowers believe that the value of the property presents a hardship. This is incorrect. Just because a homeowner pays a $600k loan for a property worth only $300k doesn't mean that the borrower faces a hardship. Many borrowers who are underwater on their home have the financial ability to continue making full monthly mortgage payments.

An experienced real estate attorney may present other hardships that went unnoticed by the borrower and the realtor. It is important that every borrower meet with an attorney to fully discuss their options. Not only is it possible to uncover a hidden hardship, but the borrower may have other options to avoid foreclosure.

## A Borrower who is currently in or recently had a Bankruptcy

Many banks have loss mitigation guidelines that prevent a borrower from achieving a short sale during a bankruptcy and/or shortly thereafter. For those banks that do allow for a short sale during a BK, the Federal BK Court must approve the sale. This means that an attorney must be involved in the short sale process. A realtor is not permitted to represent his/her client in any court of law.

## Borrowers who have delinquent HOA Fees/Dues/Assessments

Delinquent HOA fees will ultimately lead to a separate foreclosure conducted by the HOA and their attorneys. This foreclosure will often move at a much quicker pace than the foreclosure conducted by the mortgage lender. This may have a serious effect on the ability of the borrower to short sale the distressed property.

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## Properties with more than 2 lienholders

Many borrowers have 3 liens on their property. Although the 3rd lien is usually smaller than the others, the 1st lien holder will typically only allow $3000.00 to pay off the 2nd lien and $0.00 for payoff of a 3rd lien. This means that the 3rd lien holder would be forced to accept nothing in exchange for releasing their lien and allowing the short sale. It is very unlikely that a 3rd lien would sign off on such a deal. Many times, a 3rd lien would need to be paid outside of closing and before the short sale would occur. These negotiations are very complex and involve various mortgage laws. From RESPA to various state laws, the negotiation and payment of these liens while conforming to the approval letters of all lenders can be very tricky – do not attempt this without the advice of an experienced real estate attorney.

## A Borrower who has good credit on all tradelines except for mortgage

The lender will frequently pull credit reports on borrowers who request consideration of a short sale. If the borrower is making all other payments on time every month while missing their house payment, the lender's negotiator will deny the request for short sale.

## Borrowers who are excellent loan modification candidates

Many short sale programs require that a borrower be declined for any modification programs before proceeding to a short sale option. For those borrowers who are prime modification candidates, the short sale process can be a little more complex. Some lenders allow the borrower to write a letter explaining that they do not wish to be considered for a loan modification, while other lenders require a hardship involving a move to another geographic region as a pre-requisite to short sale without loan modification consideration.

## About the Author

Brian Lit, Esq. is Managing Partner of the Lit Law Group, P.A.  Brian got his undergraduate degree while playing tennis at the University of South Florida. After graduating from Stetson University College of Law, Brian represented one of the nation's largest lenders here in the state of Florida.

For a free consultation with Brian, call 877.449.0340