



# Short Sale Seller Advisory

ARIZONA DEPARTMENT OF REAL ESTATE

## The Short Sale Seller Advisory is a resource for Real Estate Consumers Provided by the Arizona Association of REALTORS®

*A short sale is a real estate transaction in which the sales price is insufficient to pay the loan(s) encumbering the property in addition to the costs of sale and the seller is unable to pay the difference. A short sale involves numerous issues as well as legal and financial risks. This Advisory is designed to address some of these issues and risks, but does not purport to be comprehensive.*

### BEFORE PROCEEDING WITH A SHORT SALE

#### 1 Understand a Lender’s Options upon Loan Default

There are many types of loans that are secured by real property. These may be purchase loans, refinanced loans, home-equity loans, or one of the various other types of loans. The type of loan and type of property will determine what remedies a lender may have if the homeowner fails to make the agreed upon payments. The available remedies, the homeowner’s overall current or potential future financial strength, the lender’s cost in acquiring the loan and any shared-loss or similar agreement if the loan was acquired by purchase or merger, are some of the many factors that the lender may consider in deciding how to proceed when a loan is in default. For an overview of these issues, go to [www.aaronline.com/AZR/Dec/09LoanDefaults.aspx](http://www.aaronline.com/AZR/Dec/09LoanDefaults.aspx)

#### 2 Be Aware of Predatory “Rescue” Scams & Short Sale Fraud

Homeowners worried about foreclosure may be susceptible to predatory “rescue” scams which may cost you money with no results, result in the loss of your home entirely, or involve you in a fraudulent scheme. For more information, go to [www.efanniemae.com/utility/legal/antifraud.jsp](http://www.efanniemae.com/utility/legal/antifraud.jsp) or [www.efanniemae.com/utility/legal/pdf/fraudnews/mortgagefraudnews0709.pdf](http://www.efanniemae.com/utility/legal/pdf/fraudnews/mortgagefraudnews0709.pdf)

“Red Flags” of fraudulent schemes include:

- Guarantees to stop the foreclosure
- Large upfront fees
- Instructions not to contact the lender
- Transfer of title or lease of the property
- The proposed buyer is an LLC
- Requests that the homeowner execute a power of attorney
- The proposed buyer, at the buyer’s sole expense, retains a third party to negotiate the short sale for the seller’s benefit.



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# Short Sale Seller Advisory

## BEFORE PROCEEDING WITH A SHORT SALE (CONTINUED)

### 3 Report suspected scams

- Financial Fraud Enforcement Task Force [www.stopfraud.gov/](http://www.stopfraud.gov/)
- HUD, in partnership with the Loan Modification Scam Prevention Network [www.preventloanscams.org/](http://www.preventloanscams.org/)
- Arizona Department of Financial Institutions at <http://azdfi.gov/FraudLine/Intro.htm> or email [consumeraffairs@azdfi.gov](mailto:consumeraffairs@azdfi.gov)
- Arizona Attorney General's Office <http://www.azag.gov/consumer/foreclosure/index.html#Complaint>
- NeighborWorks® at [www.loanscamalert.org/default.aspx](http://www.loanscamalert.org/default.aspx)

### 4 Contact a Free HUD-Approved Housing Counselor or Contact Your Lender Directly

- Contact a HUD-approved housing counseling agency online at [www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=AZ](http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=AZ) or call (800) 569-4287 or TDD (800) 877-8339 for advice on your options. For additional HUD resources: [http://portal.hud.gov/portal/page/portal/HUD/topics/avoiding\\_foreclosure](http://portal.hud.gov/portal/page/portal/HUD/topics/avoiding_foreclosure)
- Contact the Neighborhood Assistance Corporation of America at: [www.naca.com/refinance/refinanceTenStep.jsp](http://www.naca.com/refinance/refinanceTenStep.jsp)
- Contact the lender directly. To find the lender's contact information, check the loan billing statement, or coupon book. Ask for the lender's home retention department, loss mitigation department, (or other department that handles negotiation of loans in default); explain the situation and find out if the lender is willing to discuss options.

### 5 Utilize Free Services Available to Arizona Residents

- **Contact the Arizona Foreclosure Helpline** at 1-877-448-1211 (toll-free) or visit [www.housingaz.com/ShowPage.aspx?ID=248](http://www.housingaz.com/ShowPage.aspx?ID=248)
- **Review the Arizona Foreclosure Prevention Task Force Workbook** [www.dbtaz.org/flyers/2009.9.1.State.Task.Force.Wrkbk.pdf](http://www.dbtaz.org/flyers/2009.9.1.State.Task.Force.Wrkbk.pdf). *This book will help you evaluate your options and provide you with tools to take action. Additional resources are available at:*  
[www.azforeclosureprevention.org](http://www.azforeclosureprevention.org)
- **Arizona Department of Housing** <http://www.azhousing.gov/>

### 6 Obtain Legal Advice

An attorney can advise you about your options and legal liability.

- To find out if you are eligible for free or low cost legal assistance, contact a legal aid organization in your county or one of the organizations listed at [www.azbar.org/LawyersHelpingYou/freelegal.cfm](http://www.azbar.org/LawyersHelpingYou/freelegal.cfm) or [www.azlawhelp.org/housing.cfm](http://www.azlawhelp.org/housing.cfm)
- Contact the Lawyer Referral Service in your county where you can consult with an attorney for a small fee for a half-hour consultation.  
**Maricopa County:** [www.maricopabar.org/displaycommon.cfm?an=16](http://www.maricopabar.org/displaycommon.cfm?an=16) (602) 257-4200.  
**Pima County:** [www.pimacountybar.org/web/lawyer-referral-service-lrs](http://www.pimacountybar.org/web/lawyer-referral-service-lrs) (520) 623-4625.
- Attorneys who are State Bar Real Estate Law Certified Specialists can be located at [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm).



# Short Sale Seller Advisory

## BEFORE PROCEEDING WITH A SHORT SALE (CONTINUED)

### 7 Obtain Tax Advice

- For Mortgage Forgiveness Debt Relief Act and Debt Cancellation tax information, go to [www.irs.gov/individuals/article/0,,id=179414,00.html](http://www.irs.gov/individuals/article/0,,id=179414,00.html)
- Attorneys who are State Bar Tax Law Certified Specialists can be located at [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm).

### 8 Be Aware of the Consequences of Committing “Waste”

Damaging the property or removing fixtures such as sinks, toilets, cabinets, air conditioners, and water heaters may result in liability to the lender for “waste.” In other words, the lender may be able to sue you for damages if you have physically abused, damaged or destroyed any part of the property.

## OPTIONS OTHER THAN SHORT SALE

### CONSIDER ALL OPTIONS

**A SHORT SALE MAY NOT BE YOUR BEST COURSE OF ACTION.  
CONSIDER ALL YOUR OPTIONS BEFORE MAKING A DECISION.**

### 1 Loan Workout

- **Reinstatement:**  
Paying the total amount owed by a specific date in exchange for the lender agreeing not to foreclose.
- **Forbearance:**  
An agreement to reduce or suspend payments for a short period of time.
- **Repayment Plan:**  
An agreement to resume making monthly payments with a portion of the past due payments each month until they are caught up.
- **Claim Advance/Partial Claim:**  
If the loan is insured, a homeowner may qualify for an interest-free loan from the mortgage guarantor to bring the account current.

### 2 Loan Modification

The lender may agree to change the terms of the original loan to make the payments more affordable. For example, missed payments can be added to the existing loan balance, the interest rate may be modified or the loan term extended. Loan modification resources include:

- **Making Homes Affordable:**  
[www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)
- **National Foreclosure Mitigation Counseling Program:**  
<http://findaforeclosurecounselor.org/network/home.asp>
- **Homeownership Preservation Foundation:**  
[www.995hope.org](http://www.995hope.org)  
1-888-995-HOPE™ Hotline



# Short Sale Seller Advisory

## OPTIONS OTHER THAN SHORT SALE (CONTINUED)

### 3 Refinance

If the lender will not agree to a loan workout or modification, the homeowner may be able to refinance the loan with another lender.

Learn more at [www.makinghomeaffordable.gov/programs/lower-rates/Pages/short-refinance.aspx](http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/short-refinance.aspx)

And [www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx](http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx)

### 4 Deed-in-Lieu of Foreclosure

The lender may allow a homeowner to “give back” the property. This option may not be available if there are other liens recorded against the property. Review the HUD requirements at [www.hud.gov/offices/hsg/sfh/nsc/rep/dilfact.pdf](http://www.hud.gov/offices/hsg/sfh/nsc/rep/dilfact.pdf)

### 5 Work Out Sale

The lender may allow a specific amount of time for the home to be sold and the loan to be paid off. The lender may also allow a buyer to assume the loan to purchase the property even if the loan is non-assumable.

### 6 Bankruptcy

If you are considering bankruptcy as an option, consult with an attorney that specializes in bankruptcy cases: [www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm)

Access the Arizona Bankruptcy Court self help information by calling 866-553-0893 or visit [www.azb.uscourts.gov/default.aspx?PID=78#866](http://www.azb.uscourts.gov/default.aspx?PID=78#866)



### 7 Foreclosure

Allowing the lender to foreclose is another option. The counselors at the Arizona Foreclosure Help Line can explain the foreclosure process, call:

**1-877-448-1211**

Ultimately, only you and your attorney can decide if foreclosure is the best option for you. Attorneys who are State Bar Real Estate Law Certified Specialists can be located at:

[www.azbar.org/LegalResources/findspecialist.cfm](http://www.azbar.org/LegalResources/findspecialist.cfm)

Ask your attorney about the possibility of a deficiency lawsuit after foreclosure. Assuming all statutory requirements are met, the Arizona anti-deficiency statutes may limit the lender’s remedy to foreclosure, even if the amount due to the lender exceeds the value of the property.

Also, seek professional tax advice about the consequences of a foreclosure and review the IRS information at [www.irs.gov/individuals/article/0,,id=179414,00.html](http://www.irs.gov/individuals/article/0,,id=179414,00.html)



# Short Sale Seller Advisory

## SHORT SALE CONSIDERATIONS

### IF YOU DECIDE TO PURSUE A SHORT SALE, CONSIDER TAKING THE FOLLOWING ACTIONS

#### 1 Contact a Qualified Real Estate Professional

Interview several real estate professionals and ask about their experience in short sales, the number of short sale transactions that they have handled, and their education and training in short sales.

- Review the real estate professional's background and continuing education on the ADRE website at: <http://services.AZRE.gov/publicdatabase>
- Ask if the real estate professional has obtained a short sale certification, such as the Short Sales and Foreclosure Resource Certification ("SFR") [www.realtorsfr.org/](http://www.realtorsfr.org/).
- Find a REALTOR® at [www.aaronline.com/ConsumerAssistance/FindARealtor](http://www.aaronline.com/ConsumerAssistance/FindARealtor)

#### 2 Investigate Documentation and Eligibility

Documentation and eligibility criteria for short sales vary depending on specific lender and investor guidelines. Generally, you must prove that you are financially incapable of paying the loan and the lender is convinced that it will fare better by agreeing to a sale for less than the outstanding loan amount than foreclosing.

#### 3 Determine the Amount Owed on the Property

All debt and costs must be factored in before determining whether a short sale is feasible. Consider the delinquent loan, home equity loan or other loans recorded against the property, past due homeowner's association fees, unpaid property taxes and the costs of a sale, such as closing costs, escrow fees and brokerage commissions. If you have more than one loan on the

property, be aware that a short sale will generally require the approval of all lenders.

#### 4 Determine the Estimated Fair Market Value of the Property

You must prove to the lender that the home is worth less than the unpaid loan balance. Consult a real estate professional or an appraiser for assistance in estimating the value of the property.

#### 5 Consult Legal Counsel

The importance of competent legal counsel to help you determine whether a short sale is the best option and to advise you during the short sale process cannot be over emphasized. See the legal resources listed on page 2 or visit [www.azbar.org](http://www.azbar.org).

#### 6 Understand that a Short Sale May not Discharge the Debt

Even if a lender agrees to a short sale, the lender, the VA, or the FHA may not agree to forgive the debt entirely and may require you to pay the difference as a personal obligation. This outstanding personal obligation could result in a subsequent collection action. For example, a lender may accept the short sale purchase price to "release the lien" on the property as opposed to agreeing to accept the purchase price as "full and final settlement of the debt" on the property. Therefore, be certain of the terms of any short sale before making a decision, consult an attorney regarding whether the lender is entitled to pursue a deficiency judgment and obtain any debt forgiveness agreements with the lender in writing.





# Short Sale Seller Advisory

## SHORT SALE CONSIDERATIONS (CONTINUED)

### 7 Obtain Tax Advice

A short sale in which the debt is forgiven is a relief of debt and may be treated as income for tax purposes. The Mortgage Forgiveness Debt Relief Act of 2007 created a limited exemption to allow homeowners to pay no taxes on debt forgiveness; however, only cancelled debt used to buy, build or improve a principal residence or refinance debt incurred for those purposes qualifies for this tax exemption. For more information on the tax consequences of debt relief seek professional tax advice and go to [www.irs.gov/individuals/article/0,,id=179414,00.html](http://www.irs.gov/individuals/article/0,,id=179414,00.html)

### 8 Be Aware of the Impact on Your Credit Score

The impact of a short sale on your credit score depends upon a variety of factors, including late or missed payments. A short sale may appear on your credit report as “pre-foreclosure redemption,” “paid in full for less than full balance” or other similar term.

### 9 Understand That There May Be a Waiting Period Before You Can Buy another Home

Your ability to qualify for a loan to purchase another home after a short sale will likely be impacted by a short sale and there may be a waiting period before you can purchase another home.

### 10 Home Affordable Foreclosure Alternative (HAFA) Program

The HAFA program was designed to give homeowners different alternatives to a foreclosure, which include incentives for completing a short sale. For more information on the options available, visit the HAFA program website

[www.makinghomeaffordable.gov/hafa.html](http://www.makinghomeaffordable.gov/hafa.html)

To find out which option you are eligible for go to [www.makinghomeaffordable.gov/eligibility.html](http://www.makinghomeaffordable.gov/eligibility.html)

To find out if your mortgage servicer participates in the HAFA program go to

[www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx](http://www.makinghomeaffordable.gov/get-assistance/contact-mortgage/Pages/default.aspx)

#### Guidelines and Forms:

[www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx](http://www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx)

#### Fannie Mae's HAFA program:

[www.efanniemae.com/sf/servicing/hafa/index.jsp](http://www.efanniemae.com/sf/servicing/hafa/index.jsp).

### 11 Review the Arizona Association of REALTORS® (AAR) Short Sale Forms

AAR has developed a Short Sale Addendum to the Listing Agreement, [www.aaronline.com/law-ethics/forms/samples/short-sale-addendum-listing.pdf](http://www.aaronline.com/law-ethics/forms/samples/short-sale-addendum-listing.pdf)

and a

Short Sale Addendum to the Residential Resale Real Estate Purchase Contract [www.aaronline.com/law-ethics/forms/samples/sample-short-sale-addendum.pdf](http://www.aaronline.com/law-ethics/forms/samples/sample-short-sale-addendum.pdf) to assist in a short sale transaction.

Review these contract forms and any other forms you are asked to sign so that you thoroughly understand your rights and obligations.

#### For More Information, Visit:

The Arizona Department of Real Estate website:

[www.azre.gov/](http://www.azre.gov/)

AAR's Consumer Foreclosure Assistance Links:

[www.aaronline.com/documents/ForeclosureLinks.aspx](http://www.aaronline.com/documents/ForeclosureLinks.aspx)



# Short Sale Seller Advisory

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## SELLER ACKNOWLEDGMENT

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Seller acknowledges receipt of this Advisory and further acknowledges that there may be other issues of concern not listed herein. The information in this Advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy. If you have any additional questions or need advice, please contact your own lawyer.



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