Short Sale

The Foreclosure Alternative

TICOR TITLE
OF NEVADA, INC.

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FORECLOSURE ALTERNATIVES

You may be facing foreclosure, so what are your options? Try to look at the situation more from a financial standpoint rather than an emotional standpoint. This way you can more successfully analyze which option might best suit your needs and desires to move you toward resolving your financial difficulty. One very important thing to remember: Time is of the essence! It's time to think through your situation and make a decision. Then take action right away so you have enough time to complete the solution you choose.

TEN OPTIONS WHEN FACING FORECLOSURE

1. **DO NOTHING** – If a homeowner does nothing, they most likely will lose their home at foreclosure auction. Credit reports disclose this damaging information. Loan applications generally ask if the applicant has even been foreclosed upon.
2. **PAYOFF/REFINANCE** – Completely paying off the entire loan amount plus any default amount and fees. Usually this is accomplished through a refinance of the debt. New debt is normally at a higher interest rate and there may be a prepayent penalty. With this option, there should be equity in the home.
3. **REINSTATEMENT** – Paying the entire default amount plus interest, attorney fees, late fees, taxes, missed payments and fees.
4. **LOAN MODIFICATION** – Utilizing the existing mortgage company to refinance the debt or extend or modify the terms of the loan. To qualify, you must prove to the lender you have fixed the problem that caused the late payment.
5. **FORBEARANCE/MEDIATION** – The lender may be able to arrange a repayment plan based on the homeowner's financial situation. The lender may even be able to provide a temporary payment reduction or suspension of payments. Information will be required from the lender to show that you are able to meet the new payment plan requirements.
6. **PARTIAL CLAIM** – A loan from the lender for a 2nd loan to include back payments, costs and fees.
7. **DEED IN LIEU OF FORECLOSURE** – Give the property back to the bank instead of the bank foreclosing. Banks generally require the home be well maintained, all mortgage payments and taxes must be current. Banks must approve this option. Most loan applications ask if this has ever happened.
8. **BANKRUPTCY** – This option can liquidate debt and/or allow more time. Speak with a qualified Bankruptcy attorney.
    - Chapter 7: (Liquidation) To completely settle personal debt.
    - Chapter 13: (Wage Earner Plan) Payments are made toward a plan to pay off debts in 3-years.
    - Chapter 11: (Business Re-Organization) A business debt solution.
9. **SALE** – If the property has equity (money left over after all the loans and monetary encumbrances are paid), the homeowner may sell the home without lender approval through a conventional home sale.
10. **SHORT SALE** – Also known as a pre-foreclosure sale, a short sale can be negotiated with your lender by a Real Estate Professional if what is owed is more than the property's value. The lender can agree to accept less than what is owed on the property as pay-off of the loan obligation.

FAQ ABOUT SHORT SALE

1. **WHAT IS A SHORT SALE?**

   A short sale is the process by which homeowners can sell their home and the sales proceeds do not fully pay off the existing loans(s) and the lender(s) accepts a discounted payoff to satisfy the loan.

   This is accomplished by providing proper documentation to the lender(s) to convince them to reduce the payoff balance to allow the sale. If the sale is approved, the home can be sold for a price lower than the total debt on the property without the seller having to come up with immediate cash to cover the shortfall. The mortgage is either fully or partially satisfied and any foreclosure process stops.

2. **WHY WOULD A MORTGAGE COMPANY AGREE TO ACCEPT A SHORT SALE?**

   There are actually several reasons why a mortgage company would approve a Short Sale, including the following:

   Legal Concerns: Mortgage lenders have come under legal pressure to work with borrowers to equitably resolve situations where borrowers are unable to meet their mortgage obligation, particularly when the borrower makes an effort to arrive at a compromise solution.

   Wall Street is Watching: Mortgage lenders rely heavily on their ability to package and sell bundles of loans on the secondary mortgage market. They need to sell these bundles of loans in order to put the funds back to work by loaning the money again and collect loan fees along the way. If mortgages perform poorly after they are sold it could impact the lender’s ability to sell their loans on the secondary market. A successful Short Sale gets the loan payoff resolved quickly.

   Asset Management Expenses: If a lender acquires a property through foreclosure, the property will be managed until it is repaired and resold. It is expensive to manage real property assets. Keeping properties maintained, keeping utilities on, making repairs and the administrative costs attached to these activities are all costs the lender would prefer to avoid. A successful Short Sale eliminates most of these costs.

   Reserve Requirements: Delinquent and non-performing loans place another burden on mortgage lenders. For all delinquent and non-performing loans lenders must set aside funds in reserve to deal with potential losses. These funds cannot be put to work generating new loan fees until the bad loans are resolved. A successful Short Sale lets the lender put more money to work.

3. **CAN I SIMPLY DEED MY PROPERTY TO SOMEONE ELSE AND AVOID THE HASSLE?**

   The lender still considers you primarily responsible for payment on the loan. If loan payments do not get paid, or if the lender ultimately forecloses, this will still show on YOUR credit. Do not deed your property to someone else without consulting with an attorney.

4. **WHAT SORT OF HARDSHIP WOULD MY LENDER CONSIDER LEGITIMATE?**

Generally, so long as the hardship is real and the mortgage company believes the loan is likely to become delinquent as a result, the Short Sale request will be processed by the Loss Mitigation Department. The key to getting the Loss Mitigation Department to accept a hardship is to submit a strong hardship letter. Below is a list of "hardships" that are common and frequently accepted by mortgage lenders.

- Family illness or injury
- Job loss or significant income loss
- Divorce of split of domestic partners
- Death of Spouse
- Adjustment in mortgage payment or unforeseen increase in living expenses.

5. I AM CONCERNED ABOUT MY CREDIT. HOW WILL A SHORT SALE AFFECT MY CREDIT?

The big key here is to avoid foreclosure. Short Sales will affect your credit rating especially if you miss your mortgage payments during the process. But, by nearly any measure, a foreclosure is the most damaging event your credit status can encounter.

6. CAN I BE CONSIDERED FOR A SHORT SALE IF MY LOAN PAYMENTS ARE CURRENT?

Yes, however the required financial documentation must be submitted along with a detailed hardship letter explaining the inability to continue to maintain your loan payments and reason behind the Short Sale request.

7. WHY WORK WITH A REALTOR?

Getting a Short Sale approved by the lender is a complicated, multi-step process. This requires a high level of patience, persistence and most importantly, experience. The Lender realizes that it is in their best interest as well as the borrowers to have the Short Sale file packaged correctly from the very beginning, by a Real Estate professional that does not have a conflict of interest.

You get professional representation at LITTLE OR NO COST TO YOU! The lender pays the Real Estate commission along with most of the other sales costs, so that professional representation if FREE to you.

8. HOW DOES THE MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007 WORK?

Prior to passage of this law, for any debt that was forgiven in a Short Sale or Foreclosure the homeowner would receive a 1099 and would have to report this forgiven (or cancelled) debt as income. This still holds true for those individuals who do not qualify for the exceptions of the act. From January 1, 2007 to December 31, 2013, the act eliminates the phantom tax on debt cancellation in mortgage discharge.

- Debt must have been debt incurred to acquire a principal residence
- Cancelled debt up to $2 million is eligible
- Sets forth rules for determining the allowable amount of exclusion for taxpayers with non qualifying indebtedness and taxpayers who are insolvent
- Debt from a second (non-acquisition) mortgage or HELOC is not eligible
- Cancelled debt from investment properties and second homes is not eligible

9. WHAT ABOUT TAX CONSEQUENCES?

If you do not qualify for the above exclusions, the IRS defines the amount you are "short" as having been "cancelled". It is also required for the lender that allows this debt cancellation to issue you a 1099 for this amount and you are required to claim this amount as income.

If a property is foreclosed on, this is also debt cancellation and the default amount can also be treated the same way. In most cases the amount of default with a foreclosure will be much greater than with a short sale. This is one of many reasons why avoiding foreclosure is most likely the better option.

10. Will the Lender pursue a deficiency judgment against me?

In some cases, lenders also pursue a deficiency judgment against borrowers and attempt to collect the amount that was short. This does require a separate action to be filed in court causing the mortgage company in incur further expense. The mortgage company is acutely aware of your inability to pay and often see further collection as fruitless. In most cases, a short sale will get the lender more money than a foreclosure. The bank also has the right to pursue a deficiency judgment in a foreclosure. When considering all consequences, a short sale is almost always a better option than a foreclosure.

11. What are Qualifications for a Short Sale?

Consider the following to determine whether you may qualify for a short sale. If you cannot answer yes to all four requirements, you may not qualify for a short sale.

The Home's Market Value Has Dropped.
Hard comparable sales must substantiate that the property value is less than the unpaid mortgage balance. This unpaid balance may include a prepayment penalty.

The Mortgage is in or near Default Status.
In the past, banks would not consider a short sale if the payments were current, but that is no longer the case. Realizing that other factors contribute to a potential default, many banks are now willing to consider a short pay off.

The Seller Has Fallen on Hard Times.
The Seller must submit a letter of hardship explaining why the Seller cannot pay the full loan amount, and why the Seller has, or will, stop making the monthly payments.

Examples of hardship are:

- Adjusting Rates
- Unemployment
- Divorce
- Medical emergency / sudden illness
- Bankruptcy
- Death
- Decrease in income

The Seller Has No Assets
The bank may request a copy of the Seller's tax returns and financial statement. If the bank discovers assets, the bank may not grant the short sale because the Seller has the ability to pay the shorted difference. Sellers with assets may still be granted a short sale but could be required to pay back the

shortfall.

For example, if the Seller has savings, owns other real estate, stocks, bonds or even IRA accounts, the bank will most likely determine that the Seller has assets: however, the bank may discount the deficiency. In a Short Sale, the Seller cannot make a profit.

12. What are the Steps of a Short Sale?

Sometimes, to avoid going through the costs of foreclosure, a bank will sanction a short sale by allowing a Buyer to purchase the home for less than the mortgage balance while the home is in pre-foreclosure stage. Pre-foreclosure state is the first of the three stages of the foreclosures. Here are the basic steps to a short sale:

- Seller signs a listing agreement with a real estate agent subject to selling as a short sale with third-party approval
- Buyer makes an offer for less than the amount of the mortgage
- Seller accepts Buyer's purchase offer
- Seller provides lender with documentation necessary to process short sale request
- Short Sale Approval letter issued by the lender
- Buyer and Seller close transaction when Buyer delivers funds and sellers delivers deed in accordance with the short sale approval letter.

13. What are the possible consequences of a short sale transaction?

- Tax Consequences
- Blemished Credit Report
- Future Financing hurdles

The information provided is for informational purposes only. Prior to entering into any Short Sale, you should discuss the matter with a qualified accountant or attorney regarding your options and the consequences of each.

BASIC STEPS OF FORECLOSURE

The foreclosure process begins when a borrower defaults on their mortgage/loan payments and the lender either records a Notice of Default or files a judicial foreclosure action. The lender must then take certain steps according to specific timelines, which vary by state law, to complete the entire foreclosure process over a series of several months. In a nutshell, there are three basic parties to the non-judicial foreclosure process:

Borrower = Trustor

Lender = Beneficiary

Trustee = 3rd Party acting on behalf of beneficiary (often a title company or neutral party. Some states have specific trustee requirements)

In very general terms, there are three basic steps to the foreclosure process:

1. Notice of Default is recorded in the county in which the property is located. A copy of this Notice is sent by certified mail to the borrower within 10 business days of recording. The borrower has 90 days from the date of recordation to "cure" (fix) the default. (In some states, that notice may be referred to as the" Notice of Sale" and timelines may vary).

2. Notice of Trustee Sale is recorded next if the borrower fails to cure the default within this 90 day period. This Notice states that the lender or trustee will sell the property at auction in a designated number of days. This Notice is also sent certified mail to the borrower, published weekly in a newspaper of general circulation in the county of sale for three consecutive weeks prior to the sale date, and is also posted on the property as well as in a public place (usually at the county courthouse).

3. Trustee Sale or Public Auction is held at the time and place designated in the Notice of Trustee Sale, and conducted by the lender's representative. The successful bidder must pay immediately with cash or cashier's checks in the full amount of the bid. The successful bidder receives a trustee's deed on completion of the sale. The lender usually bids in the amount of the balance due plus costs. If no one else bids, the property reverts to the lender and is known as an REO (Real Estate Owned) and can then be purchased directly from the lender.

Some agents specialize in selling REO properties. They become extremely knowledgeable in the process and establish a relationship with the lender.

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Foreclosure vs. Short Sale

Homeowner Consequences

ISSUE	Foreclosure	Successful Short Sale
Future Fannie Mae Loan Primary Residence	A homeowner who loses a home to foreclosure is ineligible for a Fannie Maw backed mortgage for a period of 5 years	A homeowner who successfully negotiates and closes a short sale will be eligible for a Fannie Mae backed mortgage after only 2 years.
Future Fannie Mae Loan Non-Primary	An investor who allows a property to foreclosure is ineligible for a Fannie Maw backed mortgage for a period of 7 years.	An investor who successfully negotiates and closes a short sale will be eligible for a Fannie Mae backed mortgage after only 2 years.
Future Loan with any Mortgage Company	On any future application, a prospective borrower will have to answer "Yes" to question C in section VIII of the standard 1003 form that asks "Have you had a property foreclosed upon of given title or deed in lieu thereof in the last 7 years? This will affect future rates	There is no similar declaration or question regarding a short sale
Credit Score	Score may be lowered anywhere from 350 to more than 300 points. Typically will affect a credit score for over 3 years.	Only late payments on a mortgage will show, and after short sale, mortgage is normally reported as "paid as agreed", "paid as negotiated" or "settled". This can lower the score as little as 50 points if all other payments are being made. A short sale's effect can be as brief as 12 to 18 months
Credit History	Foreclosure will remain as a public record permanently, and on a person's credit report for 10 years or more.	A short sale is not reported on a credit history. There is no specific reporting item for "Short Sale". The loan is typically reported "paid in full, settled"
Security Clearance	Foreclosure is the most challenging issue against a security clearance outside a serious misdemeanor or felony conviction. If a client has a foreclosure and is a police officer, in the military, in the CIA, security, or any other position that requires a security clearance, in almost all cases clearance will be revoked and position will be terminated.	On its own, a short sale does not challenge most security clearances.
Current Employment	Employers have the right and are actively checking in the credit of all employees who are in sensitive positions. In many cases, a foreclosure is reason for immediate reassignment or termination.	A short sale is not reported on a credit report and is therefore not a challenge to employment
Future Employment	Many employers are requiring credit checks on all job applicants. A foreclosure is one of the most detrimental credit items an applicant can have and in most cases will challenge employment.	A short sale is not reported on a credit report and is therefore not a challenge to future employment
Deficiency Judgment	In 100% of foreclosures (except in those states where there is no deficiency), the bank has the right to pursue a deficiency judgment.	In some successful short sales, it is possible to convince the lender to give up the right to pursue a deficiency judgment against the homeowner
Deficiency Judgment (Amount)	In a foreclosure, the home will have to go through an REO process if it does not sell at auction. In most cases this will result in a lower sales price and longer time to sale in a declining market. This will result in a higher possible deficiency judgment.	In a properly managed short sale, the home is sold at a price that should be close to market value, and in almost all cases will be better than an REO sale resulting in a lower deficiency.

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THE MORTGAGE DEBT FORGIVENESS DEBT RELIEF ACT OF 2007 AND DEBT CANCELLATION

If you owe a debt to someone else and they cancel or forgive that debt, the canceled amount may be taxable.

The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief.

This provision applies to debt forgiven in calendar years 2007 through 2013. Up to $2 million of forgiven debt is eligible for this exclusion ($1 million if married filing separately). The exclusion does not apply if the discharge is due to services performed for the lender or any other reason not directly related to a decline in the home's value or the taxpayer's financial condition.

More information, including detailed examples can be found in Publication 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments. Also see IRS news release IR-2008-17.

The following are the most commonly asked questions and answers about The Mortgage Forgiveness Debt Relief Act and debt cancellation:

What is Cancellation of Debt?
If you borrow money from a commercial lender and the lender later cancels or forgives the debt, you may have to include the cancelled amount in income for tax purposes, depending on the circumstances. When you borrowed the money you were not required to include the loan proceeds in income because you had an obligation to repay the lender. When that obligation is subsequently forgiven, the amount you received as loan proceeds is normally reportable as income because you no longer have an obligation to repay the lender. The lender is usually required to report the amount of the canceled debt to you and the IRS on a Form 1099-C, Cancellation of Debt.

Here's a very simplified example. You borrow $10,000 and default on the loan after paying back $2,000. If the lender is unable to collect the remaining debt from you, there is a cancellation of debt of $8,000, which generally is taxable income to you.

Is Cancellation of Debt income always taxable?
Not always. There are some exceptions. The most common situations when cancellation of debt income is not taxable involve:

- Qualified principal residence indebtedness: This is the exception created by the Mortgage Debt Relief Act of 2007 and applies to most homeowners.
- Bankruptcy: Debts discharged through bankruptcy are not considered taxable income.
- Insolvency: If you are insolvent when the debt is cancelled, some or all of the cancelled debt may not be taxable to you. You are insolvent when your total debts are more than the fair market value of your total assets.
- Certain farm debts: If you incurred the debt directly in operation of a farm, more than half your income from the prior three years was from farming, and the loan was owed to a person or agency regularly engaged in lending, your cancelled debt is generally not considered taxable income.

- Non-recourse loans: A non-recourse loan is a loan for which the lender's only remedy in case of default is to repossess the property being financed or used as collateral. That is, the lender cannot pursue you personally in case of default. Forgiveness of a non recourse loan resulting from a foreclosure does not result in cancellation of debt income. However, it may result in other tax consequences. These exceptions are discussed in detail in Publication 4681.

What is the Mortgage Forgiveness Debt Relief Act of 2007?
The Mortgage Forgiveness Debt Relief Act of 2007 was enacted on December 20, 2007 (see News Release IR-2008-17). Generally, the Act allows exclusion of income realized as a result of modification of the terms of the mortgage, or foreclosure on your principal residence.

What does exclusion of income mean?
Normally, debt that is forgiven or cancelled by a lender must be included as income on your tax return and is taxable. But the Mortgage Forgiveness Debt Relief Act allows you to exclude certain cancelled debt on your principal residence from income. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief.

Does the Mortgage Forgiveness Debt Relief Act apply to all forgiven or cancelled debts?
No. The Act applies only to forgiven or cancelled debt used to buy, build or substantially improve your principal residence, or to refinance debt incurred for those purposes. In addition, the debt must be secured by the home. This is known as qualified principal residence indebtedness. The maximum amount you can treat as qualified principal residence indebtedness is $2 million or $1 million if married filing separately.

Does the Mortgage Forgiveness Debt Relief Act apply to debt incurred to refinance a home?
Debt used to refinance your home qualifies for this exclusion, but only to the extent that the principal balance of the old mortgage, immediately before the refinancing, would have qualified. For more information, including an example, see Publication 4681.

How long is this special relief in effect?
It applies to qualified principal residence indebtedness forgiven in calendar years 2007 through 2013.

Is there a limit on the amount of forgiven qualified principal residence indebtedness that can be excluded from income?
The maximum amount you can treat as qualified principal residence indebtedness is $2 million ($1 million if married filing separately for the tax year), at the time the loan was forgiven. If the balance was greater, see the instructions to Form 982 and the detailed example in Publication 4681.

If the forgiven debt is excluded from income, do I have to report it on my tax return?
Yes. The amount of debt forgiven must be reported on Form 982 and this form must be attached to your tax return.

Do I have to complete the entire Form 982?
No. Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Adjustment), is used for other purposes in addition to reporting the exclusion of forgiveness of qualified principal residence indebtedness. If you are using the form only to report the exclusion of forgiveness of qualified principal residence indebtedness as the result of foreclosure on your principal residence, you only need to complete lines 1e and 2. If you kept ownership of your home and a modification of the terms of your mortgage resulted in the forgiveness of qualified principal residence indebtedness, complete lines 1e, 2, and 10b. Attach the Form 982 to

your tax return.

Where can I get this form?
If you use a computer to fill out your return, check your tax-preparation software. You can also download the form at IRS.gov, or call 1-800-829-3676. If you call to order, please allow 7-10 days for delivery.

How do I know or find out how much debt was forgiven?
Your lender should send a Form 1099-C, Cancellation of Debt, by February 2, 2009. The amount of debt forgiven or cancelled will be shown in box 2. If this debt is all qualified principal residence indebtedness, the amount shown in box 2 will generally be the amount that you enter on lines 2 and 10b, if applicable, on Form 982.

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SHORT SALE DOCUMENT CHECKLIST

Lenders will require the borrower to submit the below documentation for review in order to initiate the short sale process.

1. 3rd Party Authorization
2. Hardship Letter (Signed & Dated)
3. Financial Statement
4. 30 days of Pay Stubs
5. Self Employed - Profit & Loss
6. 3 Months of Bank Statements (ALL Pages, ALL Accounts)
7. 4506-T Tax Form
8. 2010 Tax Return w/ all schedules & W2's
9. 2011 Tax Return w/all schedules & W2's
10. 2012 Tax Return w/all schedules & W2's
11. Listing Agreement (No digital signatures)
12. Purchase Agreement (No digital signatures)
13. Buyers Pre-Qualification Letter (dated within last 30 days)
14. Buyers Proof of Funds (Actual bank statement dated within last 30 days)

HARDSHIP LETTER GUIDELINES

1. **Hardships** – What are your hardships (current and past). Examples: unemployment, car accident, medical problems (personal or family related), Divorce, Death, Active Military. Go into a little detail about each hardship but make it short and to the point. The following are the most important messages to convey to the Bank:

    - Why you will not be able bring your loan payments current.
    - You do not have enough income to make these payments any longer.
    - You are leaving the property.

2. **Your Assets** – Explain that you have no assets with which to continue paying.

3. **Any Signed Exemptions of Documents** – If you do not have bank statements, pay stubs or tax returns, you will need to explain "why" you cannot provide these documents (i.e. "I've been unemployed for 6 months and have not been able to find work") Realize that if you don't have tax returns, then the bank will ask for Extension Filings. So, if you don't have Extension Filings either, explain why in the hardship letter (i.e. "I haven't filed my tax returns for the past 2 years and I failed to file extensions as well) In addition to the letters, you will need to complete a "Lack of Evidence" Document.

4. **Bankruptcy** – You could also mention "I don't want to have to file bankruptcy."

SAMPLE 3RD PARTY AUTHORIZATION

Date ____________________________

Property Address____

Seller(s) ____

____

1st Mortgage Company____Loan # ______________________

2nd Mortgage Company____Loan # ______________________

To Whom It May Concern:

Please accept this as authorization to discuss any matters pertaining to the above reference loan(s) with my Real Estate Agent, My Escrow Officer, and or any employee at Ticor Title of Nevada, Inc. This authorization, includes, but is not limited to; obtaining and verifying any and all mortgage loan information, payoff, arrearage, short sale status and reinstatement amounts as well as financial history.

The information obtained is to be used for the purpose of facilitating the resolution of my foreclosure. By execution hereon, I acknowledge that I have made the choice to proceed with a short sale for the above referenced loan(s).

____
Seller Printed Name

____ ______________________
Seller Signature Date

____
Seller Printed Name

____ ______________________
Seller Signature Date