



# **The Short Sale Specialist Desk & Field Book**

***Supplementary Material for  
Certified Short Sale Specialist (CSSS) Bootcamp  
Third Edition 9/1/2009***

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# **Welcome**

At the time of this writing the housing stock of the United States has lost 10 Trillion Dollars in equity. The credit bubble and the world wide liquidity crisis has dashed 'business as usual' and makes it incumbent for real estate professionals to become far more comfortable in the area of distressed sales if they are to provide their clients with needed services. When all is said and done it was realtors in most cases that sold them the homes that they are now occupying. It is projected that there will be 8.5 million homes entering the foreclosure process in 2009 and that 6 out of 10 sales will be of a distressed property. There are eight foreclosures for every short sale which points out the need for more competent realtors rolling up their sleeves and spending the time to learn how the system works, how they can work the system and make a business in this arena. For homeowners this manual can provide you with the truth behind the façade and assist you in determining the facts and overcoming the hurdles.

## ***Realtors Duty to Know Territory***

Realtors have a duty under most state laws to exercise reasonable skill and care and to deal honestly and in good faith similar to Washington state statute RCW 18.86.030. Likewise there is the REALTOR® Code of Ethics specifically, Article 11 which provides that REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service or unless the facts are fully disclosed to the client.

Realtors have an ethical if not legal duty to "know their territory" both geographically and in terms of competence. Many do not embrace the risk of listing and selling "Short Sales" without engaging any outside expertise. There is a general desire to avoid liability based on Article 13 that states "REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires". There are legal and accounting ramifications to all short sales.

Most realtors do not work routinely with clients in financial distress. When they do, they find that such transactions require an entirely different skill set. They find themselves spending so much time mired in the problems of one client that they neglect other transactions. Meanwhile, the stakes are high, and there is little or no control over the players or the experience. This makes many realtors uncomfortable, wondering if they would be better off referring these clients to a specialist.

## ***Traps for Unwary Realtors***

As the short sale market heats up agents are pressed to deal with complex issues beyond their normal experience and it is vital that realtors understand how to protect themselves.

I've started this article with a quick review of the statutes ruling agent conduct. I've added comments on issues specific to the Short Sale market, where deals can become complex with overlapping legal, financial and real estate issues and each player has their own set of rules.

### ***What Constitutes Unprofessional Conduct?***

(Based on RCW 18.235.130 "Responsibility of the Real Estate Agent")

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or *nolo contendere* is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;
- (2) Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;
- (3) Advertising that is false, deceptive, or misleading;
- (4) Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;
- (5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;
- (6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:
  - (a) Not furnishing any papers or documents requested by the disciplinary authority;

(b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;

(c) Not responding to a subpoena issued by the disciplinary authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;

(7) Failure to comply with an order issued by the disciplinary authority;

(8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

(12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

(13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or *nolo contendere* is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and

(15) Engaging in unlicensed practice as defined in RCW 18.235.010.

## **Concerns Specific to the Short Sale Market**

### **Issues of Breaching of Fiduciary Duty**

Many investors are increasingly executing what's known as a "double close and flip," a type of short-sale transaction that can leave practitioners exposed to irate sellers, who say they got a raw deal.

Here's what typically happens: Investors insist on handling short-sale negotiations with the lender, thus freeing up their real estate practitioner to concentrate on finding a buyer. During the negotiations, the investors—often without the practitioner's knowledge—talk the sellers into turning over the deed. Once the practitioner finds a buyer, the investors do a "double closing," buying it themselves from the seller at a deep discount and then flipping it to the buyer at the listed price, making money on the spread.

### **Best Practice: When Using an Investor**

There are good reasons to allow reputable investors an opportunity to make a wholesale cash offer to the seller, process the short sale and allow the agent to then co-list the property with the investor after the property, **WITH THE FULL KNOWLEDGE AND WRITTEN CONSENT OF THE SELLER**, is placed into a family trust, still controlled by the seller, to achieve "market seasoning."

The investor's cash offer speeds up the process

The investor is an institution with sufficient size, staff and expertise to process the sale and **MOST IMPORTANTLY**, provide the agent and homeowners with regular email updates; and

The investor has sufficient economic resources to honor his all-cash offer without having to resort to a "double close."

The delayed listing allows for less buyer fallout and more certainty in the retail sale.

In the event the investor cannot obtain approval from the lender at a low enough price to achieve sufficient "spread," the investor, on behalf of the trust, will deed the property back to the homeowner. This now allows the agents to present the lender(s) with the retail offer that should now be looked upon more favorably in comparison to the wholesale offer investor has been negotiating.

This eliminates time consuming processing by the agent and generally (but not always) provides greater revenue to compensate for the time and cost of doing the short sale.

### **Issues of Poor Oversight of a Loss Mitigation Company**

Companies that specialize in managing short sales promise to focus on the complicated details of the short sale, freeing up practitioners' time to find buyers. But a lot of these companies are fly-by-night outfits or have one person who's overworked. In these instances, practitioners are coming back a month later to check on the deal only to find no one has even opened the file. Agents who take a hands-off approach can be charged with negligence if a deal falls apart.

### **Best Practice: Know Who You Are Dealing With**

Confirm that the processor has been in business for more than two years and has closed at least 25 Short Sales. The processor should be willing to provide you with redacted commitments from lenders agreeing to the short sale.

Before trusting your deal to a processor, check out whether or not they have ANY license and whether or not they are subject to any governmental supervision. Obtain testimonials and/or recommendations from those who have utilized their services in the past. Ask them how many files they are processing and what the ratio of files per negotiator is; 25 to 1 is usually the most one processor can handle without an assistant.

### **Issues of Missing Credentials to Undertake Loss Mitigation**

It often makes sense for practitioners to take a two-pronged approach with clients facing a difficult time paying their mortgage—first trying to help them accomplish a loan modification (for a fee), and then finding a buyer if a modification doesn't work.

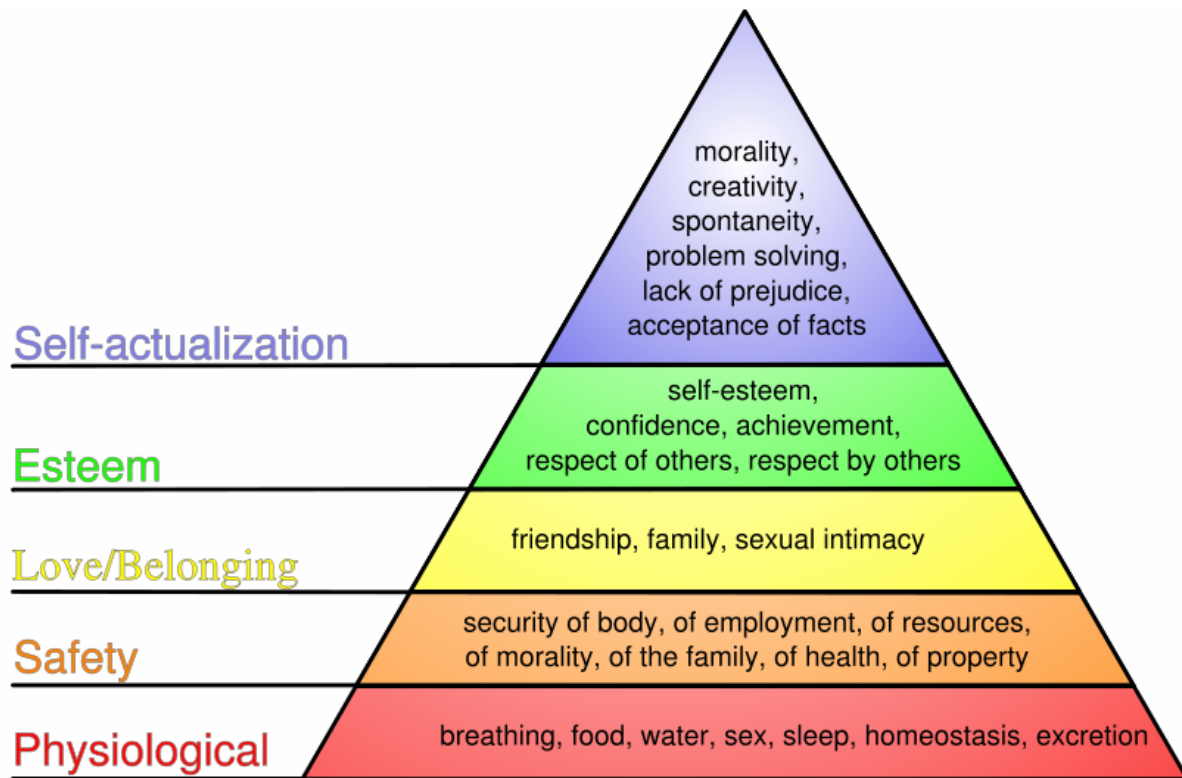
But watch out. Depending on your state, you may need a specific license, sometimes called a credit repair license, to earn a fee for helping owners modify mortgage terms. Without the right credentials, taking a fee for loan modification assistance could be a criminal offense.

### **Best Practice: Use Specialized Professionals**

In Washington State loan modifications may be undertaken only by attorneys and/or licensed mortgage brokers. Agents should focus on putting together a team that involves someone to process the short sale, someone to provide legal advice and someone to provide tax advice. Agent must know “what they don't know” and be willing to bring in professionals to ensure deals are managed legally.

# ***The Homeowner's Experience***

Maslow's Hierarchy of Needs



Even on the surface, you can see that loss of a home impacts basic needs at several levels. A home provides a place to cook and get drinking water, sleep and provide privacy for other physiological needs.

A home provides a safe place to raise a family and to retreat from the rest of the world. A home makes you part of a community. Owning a home is an achievement to be proud of, earning the respect of others and building self respect.

Loss of a home is more than just the loss of a piece of property; it can represent the loss of an entire life, even the loss on one's very identity.

Many of your clients will be devastated by this loss. Understand that current circumstances have undermined even the most responsible homeowners and treat all your clients with respect at all times.

## ***Understand the Homeowner's Grief***

The loss of a home can be as traumatic as loss of a loved one, loss of a job or the loss you're your health. As you work with your client through the Short Sale process, it will help both of you if you keep in mind that they are grieving their loss. Below I've listed the emotional stages associated with this kind of loss.

I offer them here for your use only. I don't recommend that you tell your client he is in denial or in the negotiation stage. People in the grieving process are unlikely to welcome your insights. But if you know your client is having difficulty, it wouldn't hurt to show some compassion and validate their feelings, or if appropriate in your relationship, you might suggest they talk with a professional about what is happening. It won't hurt and it might help.

So, here are six generally accepted phases of grief,

### Denial

I feel fine.

This can't be happening to me.

### Anger

Why me? It's not fair!

How can this be happening to me!

Who can I blame?

### Bargaining:

Just let me get out of this mess and I'll ....

Just let me keep my house until my children graduate and I'll....

I'll do anything for a few more years.

I'll give my life savings if only...

### Depression:

I'm so sad, why bother with anything?

Everything I've worked my whole life for is gone; why go on?

### Acceptance:

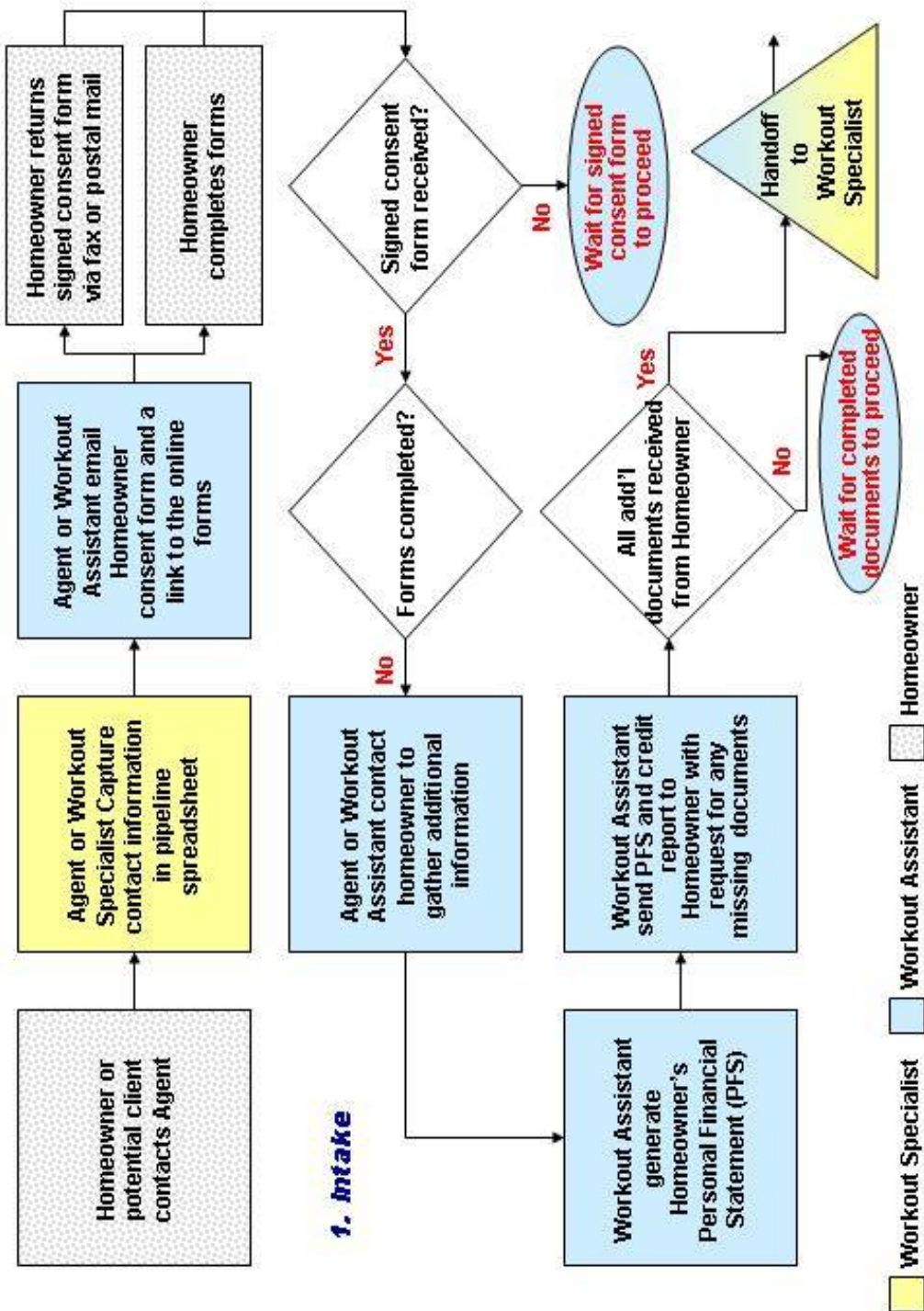
It's going to be okay.

I can handle this, I've dealt with change before.

I can't fight it; I may as well prepare for it.

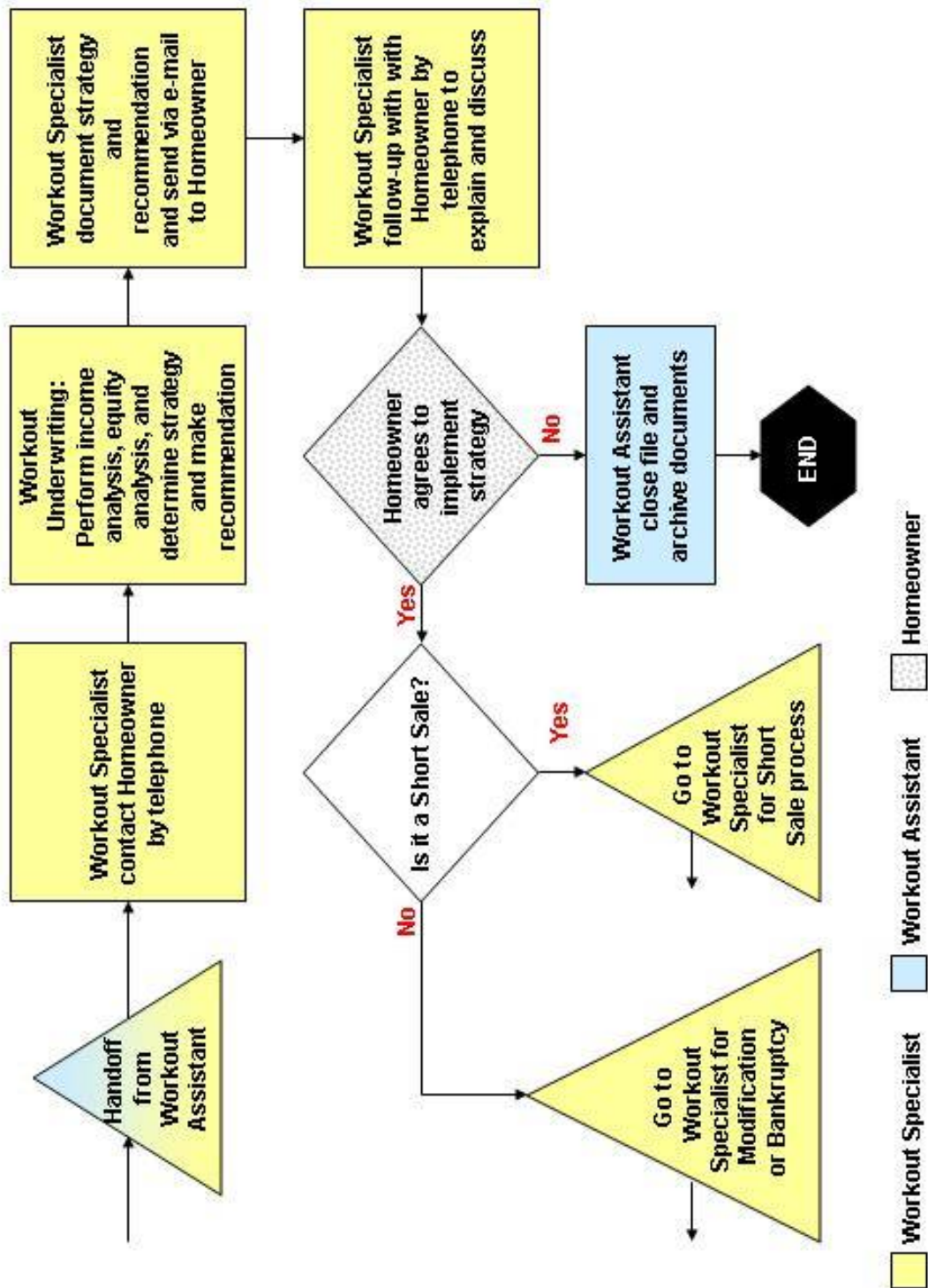
Acceptance is the stage where the best help can be given.

# Short Sale and Workouts Workflow

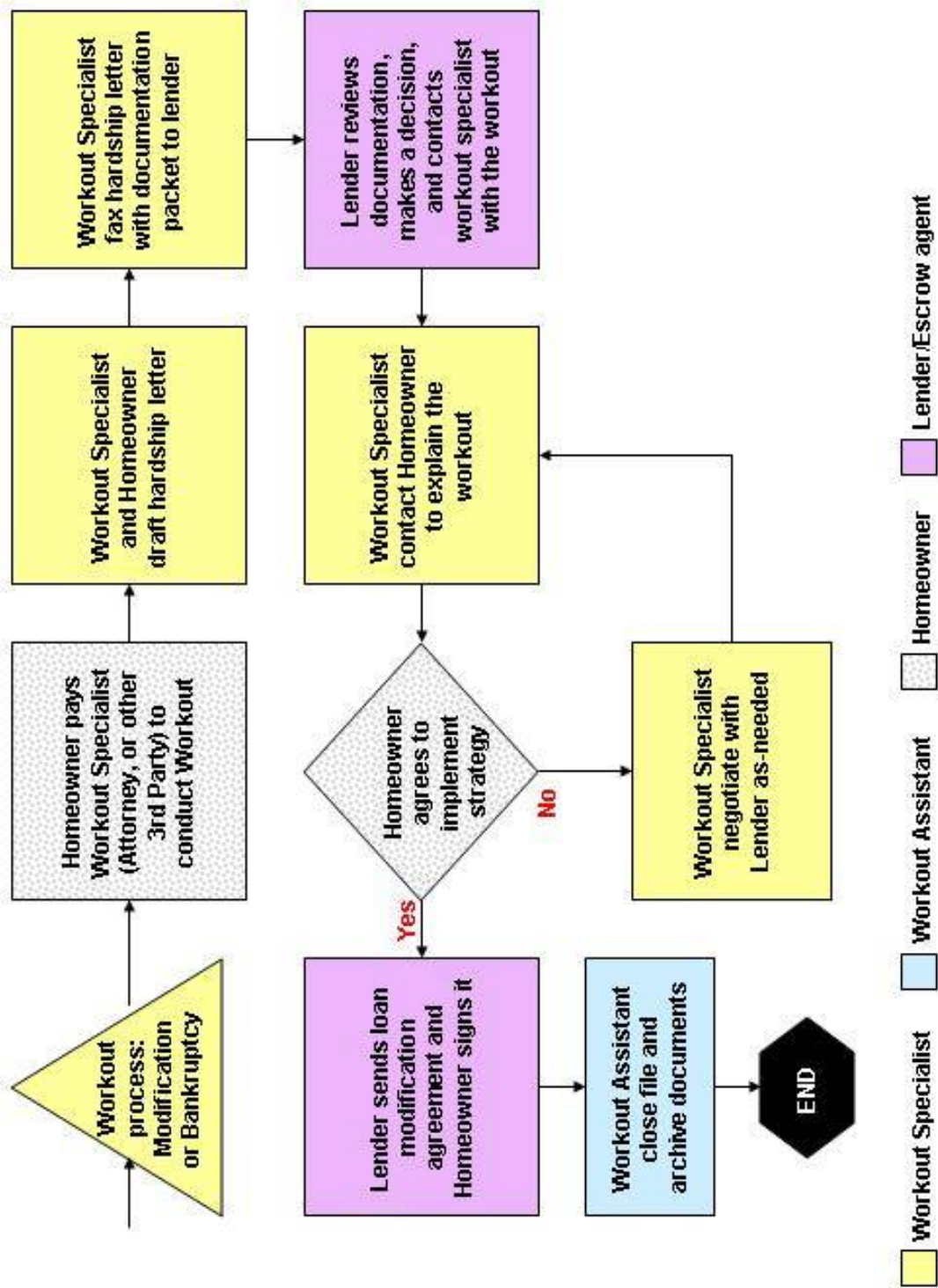




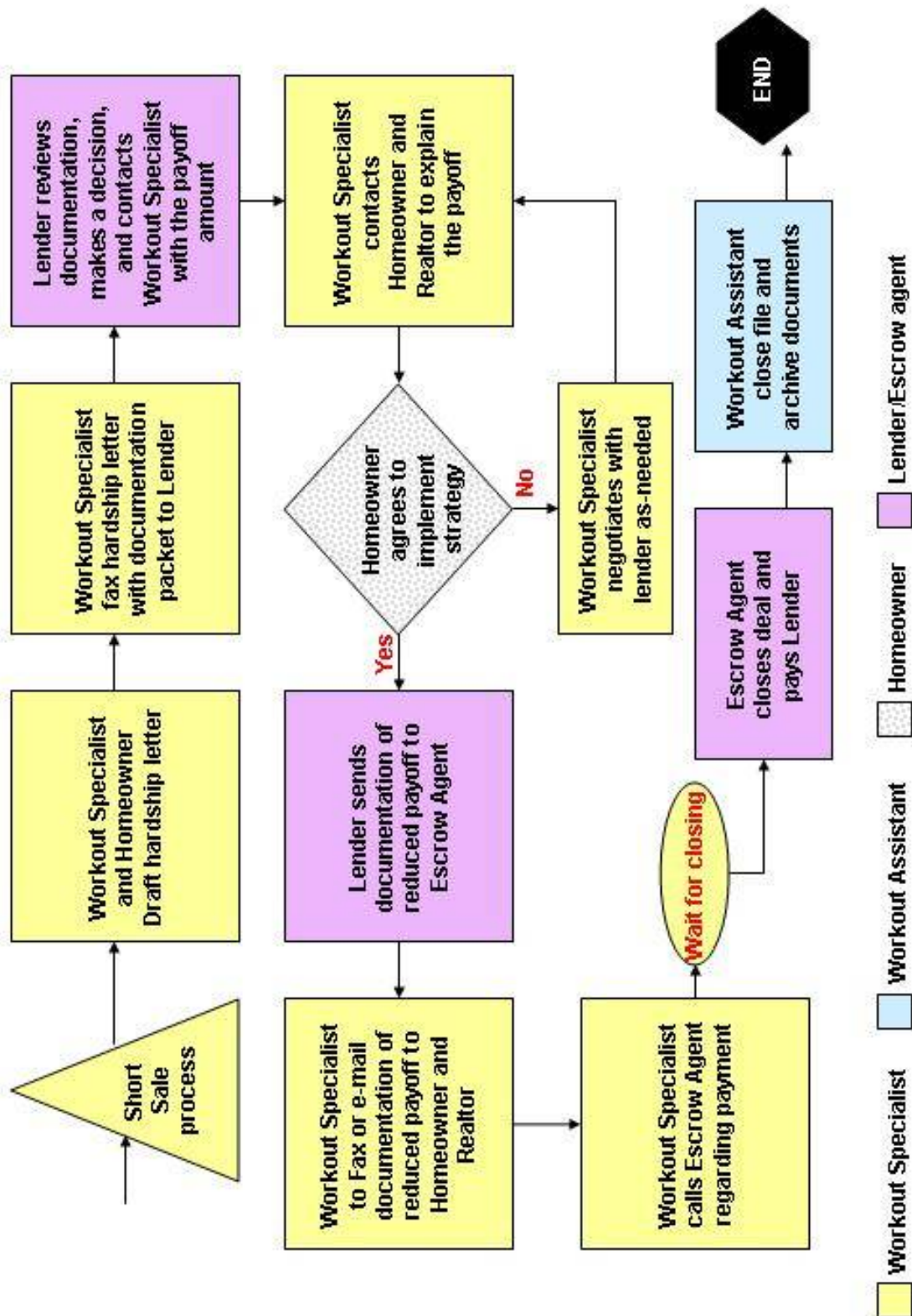
## 2. Processing



### 3. Loan Modification or Bankruptcy



#### 4. Short Sale



# Workout Process Document Flow

Phone: 877-385-3030 (toll-free) or 206-799-9348 (Seattle)  
 Fax: 877-385-3029 (toll-free) or 206-260-9050 (Seattle)  
[www.funderschoice.com](http://www.funderschoice.com) • [info@funderschoice.com](mailto:info@funderschoice.com)

## Workout Process

Days	Action	Responsibility
Week One Day 1	Complete "Consent to Share Credit Information"	Agent to work with homeowner. Document must be printed, signed, and faxed to Funder's Choice. (Download from <a href="http://www.funderschoice.com">www.funderschoice.com</a> )
Week One Day 2	Submit personal financial data.	Agent to work with homeowner. Homeowner must log onto <a href="http://www.funderschoice.com">www.funderschoice.com</a> and complete online form at Get Started Now.
Week One	Complete Personal Financial Statement	Funder's Choice
Week One Day 3	Submit Income Information: Two Years Tax returns or extensions; Last two paystubs with YTD income; and last 2 months bank statements for all accounts. If self-employed balance sheet and income statement YTD.	Agent to work with homeowner. Fax or e-mail documents to Funder's Choice.
Week 2	Title report	Agent to provide to Funder's Choice (from title company)
Week 2	Open Escrow Order Payoff	Escrow company
Week 2	Provide preliminary HUD (Settlement Statement)	Agent to provide to Funder's Choice from escrow company
Week 2	Listing Agreement	Agent to provide to Funder's Choice.
Week 2	Other miscellaneous documents	Funder's Choice requests documents from agent as needed
Week 3	Submit Purchase and Sale Agreement	Agent to provide to Funder's Choice.
Week 3	Submit CMA or Appraisal with original photos	Agent to provide to Funder's Choice.
Week 3	Prepare hardship letter	Funder's Choice
Week 3	Ship file to lender	Funder's Choice
Week 7	Lender order's valuation	Foreclosing lender
Week 10	Conduct negotiation between the parties	Funder's Choice
Week 12	Closing Escrow	Escrow company



## ***What the Listing Agent Should Know to Successfully Negotiate a Short Sale***

I have included a copy of the document NAR uses as a standard for handling Short Sales. I have found it vague in some matters, but it is a starting point.

I've included the text here with comments on some points it is important to keep in mind.

You can download the original document at this website:

<http://www.nhar.org/filemanager/filedownload/phpNT3dtq/ShortSaleWorkflow.pdf>

ARTICLE I

WHAT THE LISTING AGENT SHOULD KNOW TO SUCCESSFULLY  
NEGOTIATE A SHORT SALE

THIS SHORT SALES WORK FLOW IS AN EDUCATIONAL TOOL INTENDED TO GIVE BROKERS AND SALES ASSOCIATES A COMPREHENSIVE OVERVIEW OF THE SHORT SALE PROCESS (LISTING, MARKETING, NEGOTIATING AND CLOSING PROPERTIES SUBJECT TO A POTENTIAL SHORT SALE). IT IS NOT INTENDED TO AND DOES NOT CONSTITUTE LEGAL, FINANCIAL OR TAX ADVICE AND SHOULD NOT BE INTERPRETED AS POLICY OF THE NATIONAL ASSOCIATION. TO THE EXTENT LEGAL, FINANCIAL OR TAX ADVICE IS NEEDED BY A MEMBER OR A MEMBER'S CLIENT OR CUSTOMER, THOSE INDIVIDUALS SHOULD BE ENCOURAGED TO CONSULT WITH THEIR LAWYER OR ACCOUNTANT. STATE AND LOCAL ASSOCIATIONS MAY SUPPLEMENT OR MODIFY THE SHORT SALES WORK FLOW BASED UPON LAWS AND REGULATIONS AFFECTING THEIR JURISDICTION. INDIVIDUAL BROKERS MAY ALSO USE THE SHORT SALE WORK FLOW AS THE BASIS FOR THEIR FIRM'S BROKERAGE POLICIES BY MODIFYING IT WITH THE ADVICE OF COUNSEL TO REFLECT NOT ONLY STATE AND LOCAL LAWS AND REGULATIONS BUT ALSO THEIR FIRMS' POLICIES AND PROCEDURES. REALTORS® AND MEMBER BOARDS ARE AUTHORIZED TO MODIFY, REPRODUCE AND DISTRIBUTE THE SHORT SALE WORK FLOW. THE CONTRIBUTIONS OF REALTORS® SERVING ON THE NAR RISK MANAGEMENT, MULTIPLE LISTING ISSUES AND POLICIES, PROFESSIONAL STANDARDS AND CONVENTIONAL FINANCE AND LENDING COMMITTEES TO THE DEVELOPMENT OF THIS DOCUMENT AND OTHER EDUCATIONAL AND INFORMATIONAL TOOLS TO ASSIST REALTORS® DEALING WITH SHORT SALES.

ARTICLE II

WHAT IS A SHORT SALE?

A "Short Sale" is defined as follows: A short sale is one where title has transferred; where the sales price was insufficient to pay the total of all liens and costs of sale; and where the seller did not bring sufficient liquid assets to the closing to cure all deficiencies.

ARTICLE III

WHAT IS A "POTENTIAL SHORT SALE"?

The Work Group defined a "Potential Short Sale" as follows: A potential short sale is one where the listing agent reasonably believes the sale and the seller is unwilling or unable to bring sufficient liquid assets to the closing. When first dealing with a potential short sale situation members are urged to consult with their broker, attorney and risk manager to determine the correct approach in their particular market area. The following is a suggested workflow for agents interested in representing sellers who are or who may be in a short sale situation. It is intended to educate members regarding issues that arise in connection with short sales, if modified by a broker as necessary to reflect local and state laws, requirements and procedures and the broker's own office policies, which should be created with the advice of the broker's counsel, it may also be used as a guide for agents operating within a broker's office.

1. Educate and Prepare Yourself

- Difficult to keep pace with dynamic changes.
- A. Ask your broker if your company has policies and procedures regarding short sales. Follow those guidelines to the extent they comport with federal, state and local laws, MLS rules, the REALTOR® Code of Ethics and your state's real estate regulations.
- B. Know the laws, procedures and timelines regarding foreclosure in your state. These vary widely. Some states use court proceedings to effectuate foreclosures. These are called "judicial foreclosures". Other states use less formal procedures, such as trustee sales, referred to generally as "non judicial foreclosures". Some states, such as California, utilize both. The most obvious difference is that non-judicial states have a much shorter timeline to foreclosure, but generally offer a right of redemption, which states utilizing judicial foreclosure usually, takes longer to complete the foreclosure process, but the former mortgagor did not generally have recourse after the sale. An informal survey of foreclosure timelines suggest that a foreclosure can take as little as 90 days and as long as a year or more. It is critical that you understand the procedures and timelines in your state, even if the property you are dealing with is not yet in foreclosure.
- NAR says foreclosure may take from 90 days to over one year!
- C. Read the most up-to-date material on short sales from reputable sources such as the National Association of REALTORS® and your local and state REALTORS® associations. Be aware that there are a number of illegitimate, ineffective and illegal approaches to short sales that are being heavily promoted to sellers and real estate agents alike. Be mindful that your fiduciary responsibility to your seller applies to a short sale situation just as it applies in any other sale.
- How does one know what is ineffective and illegal? Where is the training?

- D. Research and read online articles and advice on short sales so you will be prepared for seller questions based on those materials. Sellers can become badly misinformed by relying solely on online short sale advice.
- E. Seek out other reputable agents and brokers in your area who are doing short sales. What have they learned? What are their best practices? What are the pitfalls?
- F. Speak with local attorneys and CPA's who are proficient in short sales.

2. Gather information for the seller and other sources

- A. It is important to be aware of how much is owed on the property and whether the seller is in default on any mortgage liens, taxes or association dues. Ask the seller for copies of the most recent mortgage statement(s) including second mortgages and lines of credit. Ask for the most recent property tax statement and association dues bill. Check with the tax assessor, title company and association, if necessary, to verify the total debt and any arrears and penalties. Know that the seller is not always aware of the total debt and may minimize or misstate it if you simply rely on a verbal conversation.
- Local procedures and timelines refer to law. B. Is the seller in default on any liens? If so, has any legal action been taken by the lien holder(s)? This is where it will be important to know what the local procedures and timelines are. If you see that action has been taken, inform the seller.
- C. Is the seller aware that there may be insufficient equity? This can be important because the seller may believe that the value of their home is higher than it actually is. It is especially important to be as accurate as possible in your market value assessment.
- D. Create a careful Comparative Market Analysis (CMA) or Broker Price Opinion (BPO) using the most current comparable sales. Be realistic about the value. Short sellers cannot usually afford to try a high price first then adjust down overtime. Include all costs of sale, such as commissions, closing costs, any interest and penalties on loans or taxes in default. In your best judgment, will there be positive proceeds or does the seller owe more than the property is currently worth after all selling costs?
- Legal terms that vary from deal to deal and state to state. E. Finally, find out whether the loan(s) that might be subject to a deficiency in a short sale are "Recourse" or "Non-Recourse". In a Recourse loan, the borrower retains personal liability for any deficiency after a sale or foreclosure. The lender has "recourse" to the personal



assets of the borrower to make up any deficiency. In a “non-recourse” loan the lender is limited to whatever funds are available from its security interest in the property itself and cannot force the borrower to repay any deficiency. Each state has its own rules and in some states a loan can be either recourse or non-recourse depending on factors such as whether it was a purchase money loan or a refinance. These are legal questions. Do not try to answer them yourself. Always recommend professional legal, credit or tax advice.

3. Meet with the seller to discuss and evaluate the options.
  - A. Assume you have concluded the seller owes more than the property is now worth. It is important at this point that you advise the seller, in writing, to obtain separate legal, credit and tax advice. The decisions the seller will be making all have legal, financial, tax and credit implications. A short sale should never be the first choice because it carries with it serious negative credit and possibly tax consequences. Potential short sellers should always be advised that any action they take other than full payment of the mortgage note will have negative credit consequences. Sellers should be encouraged to consult with a HLJD approved credit counseling agency prior to making any decisions. Sellers should be cautioned that when selecting a credit counselor to carefully check the credentials of the agency as not every credit counselor or foreclosure rescue specialist is going to be HUD approved. What are the options available to the seller? In rough order of the least damage to credit to most damage to credit, they are: If the seller is unhappy that the property value is less than the loan balance, but is otherwise under no pressure to sell, keeping the property can be the best solution. Even if there is some short term financial distress, it need not result in loss of the property. Ask if there are family members or other resources that can carry the seller through if there is some financial stress. Because of the lack of equity, a refinance may not be possible, but be aware of any special “hardship refinance” programs a particular lender may offer. These change frequently. If the sellers must move, could they rent the property (even at a negative cash flow) and sell it later in a better market?
  - B. Sell the property and bring cash to close escrow. This might not sound appealing, but it can be a good choice for sellers who are in a financial position to pay a deficiency from other liquid assets. This approach avoids the credit

What if there is  
no equity...  
by a long shot?

How do you  
know what you  
don't know?  
Where are  
the boundaries?

damage that even a successful short sale will cause. An alternative in some circumstances is for the seller to agree to convert any deficiency into a personal note, or a note on another property owned by the seller. REALTORS® should always advise sellers to consult appropriate legal and tax professionals before considering such a note. You should not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

#### ARTICLE IV

##### ATTEMPT A WORKOUT WITH THE LENDER

Lenders are increasingly interested in helping financially distressed homeowners stay in their homes. In some cases, they have been willing to reduce or roll back interest rates or reduce the allowable payment to help sellers avoid short sales and foreclosures. It is not generally advisable for the agent to take the lead in representing a property owner in a workout. Workouts are not real estate transactions. They are complex contract modifications and to date, relatively few homeowners in distress have been able to come to a permanent agreement with their lender. The homeowner should be advised to consult an attorney if this is the option they choose. Note that new laws and emerging policies and procedures by Fannie Mae, Freddie Mac, the VA, the ELLA and private lenders make the workout option more complex, but also present greater opportunities for financially distressed homeowners.

Lenders are  
obligated to  
their share-  
holders  
first and last!

All workouts  
require  
proof of  
income.

Offer to the lender of the foreclosure. If the seller owes more money than the property is worth, is unable to make payments and is likely to lose the property in foreclosure in the near future, offering to trade the property to the lender in exchange for the cancellation of the note might make sense. This approach is more likely to be successful in states with very long foreclosure timelines. The lender can obtain the property much sooner and may feel that the mitigation of loss is worth the cancellation of the note. Like workouts, this is a contract negotiation and should be undertaken only after consulting with an attorney.

We will discuss the short sale process in greater detail below. Be aware that, on occasion, lenders have "approved" short sales that included personal notes for the deficiency and unwitting sellers have signed the notes without a full understanding of the consequences. Note that the lender is not a principal in the transaction. The agent represents the seller, not the lender. In a short sale, the offer is negotiated with the seller, just as in a traditional sale. The offer is then submitted to the

lender, not for an “acceptance” but for the approval of the terms and net proceeds. The elements of a successful short sale are generally these:

- This focuses on the result and neglects the process.
- The property is worth less than is owed.
  - The seller has some hardship that makes it impossible or extremely impractical for the seller to keep the property.
  - The seller is cooperative and willing to work with a real estate broker to package the short sale.
  - The lender is contacted and expresses willingness to entertain a short sale.
  - The property is listed, with appropriate caveats and protections for the seller, properly priced and effectively marketed.
  - The lender is presented with an offer, accepted by the seller. Along with a completed short sale package and narrative explaining why the short sale is necessary and desirable. The lender approves the offer and escrow closes as usual. No proceeds go to the seller.

There are tax consequences associated with these options, some of which have changed under the Mortgage Forgiveness Debt Relief Act of 2007. Under the new law passed in December 2007, up to \$2 million of the qualifying mortgage debt forgiven on the taxpayer's principal residence in 2007, 2008 or 2009 will not be treated as income for the taxpayer. The limit is \$1 million for a married person filing a separate return. Mortgage debt reduced (forgiven) through restructuring, such as a workout or a short sale, as well as mortgage debt forgiven in connection with a foreclosure, all qualify for the tax exclusion. Also, the exclusion applies only to “acquisition indebtedness”, which is generally defined as debt used to originally build, purchase or improve a property. Although short sales tend to minimize the difference between what is owed and the proceeds turned over to the lender thereby minimizing the taxable income potentially accruing to the seller, the possibility remains. Sellers should be advised to consult with tax or legal counsel regarding the impact of the new law and other tax rules on their circumstances.

CPAs and Lawyers call the shots here.

#### ARTICLE V

##### ALLOW THE PROPERTY TO GO TO FORECLOSURE

Usually this is the worst option. It does the most damage to a property owner's credit. There are circumstances, however, in which it might make sense for a property owner who has no other resources with which to obtain housing to simply stay in the property as long as possible. Also, as a practical matter, if you are contacted by a homeowner who is days or a

It may not be the worst option if there is a large tax liability for “forgiveness of debt.”

few weeks away from a foreclosure sale, it will be difficult to stop the sale, though it is always worth trying.

#### ARTICLE VI

##### TAKING AND SERVICING THE SHORT SALE LISTING A TYPICAL WORKFLOW

Assuming that after full reflection and consultation with appropriate legal, credit and tax professionals, the homeowner decides that a short sale makes the best sense. What are the factors that will lead to a successful short sale? The elements of a successful short sale are typically:

- The battle of valuation.
- A. The property is worth less than is owed. Establish this by doing a careful CMA or BPO, taking into account that the market may be declining. Pay special attention to similar properties that did not sell. The lender will need to see clearly that there is no chance that the property will sell with enough to cover all liens and closing costs. These sales are considered by buyers to be distressed properties and will typically command somewhat less than a non-distressed price. Remember that the lender may be thousands of miles away and not be at all familiar with your market. Incorporate local newspaper articles about the local market and MLS statistics to strengthen your analysis.
  - B. The seller has some hardship that makes it impossible or extremely impractical for the seller to keep the property. How are hardships as defined by most lenders? Most lenders focus on and require "changed financial circumstances", unusual medical costs, death of the owner, natural disasters, even extended military service for the reservists can be hardships. There should be a nexus between the hardship and the need to sell. A job loss leading to a problem paying the mortgage is obvious, but an illness might require a family to move closer to specialized medical help, or even without an unbearable financial hardship a homeowner simply cannot stay. Lenders do not consider a decline in value alone to be a hardship. Except to them!
  - C. The seller is cooperative and willing to work with a real estate broker to package the short sale. You will need the seller to write a narrative of the hardship involved. The seller will be asked by the creditor to reveal all details of the seller's financial situation. If there is a formal short sale application, the seller will have to complete it. This can be embarrassing and some sellers simply won't do it. Prepare them and make sure they are willing to do what is required. If they are uncooperative, you will not be able to help them. An important note is that many troubled loans today are "subprime loans" and/or "stated income loans". Be especially careful to explain in writing to all sellers

Consider that circumstances change. It is doubtful that lenders have the ability to cross check and if they did the question is: Who completed the application in the first place?

that that any representations of the seller's financial status that were made on the initial loan application will be scrutinized in the short sale application process. Sellers may expose themselves to charges of loan fraud if the short sale application information they provide is inconsistent with the material provided on the initial loan application. In other words if the seller represented on the original loan application that the income was \$10,000 per month but the short sale application represents that his income recently dropped from a high of \$5,000 a month to \$3,000 a month, this will raise the question of loan fraud. If the seller is concerned or has questions, it is advisable for the seller to consult with an attorney before completing a short sale application.

D. The lender is contacted and expresses willingness to entertain a short sale. Contact the lender's "loss mitigation department". Ask for the person who will be responsible for processing the short sale application. Ask to speak to the same person each time you call. You will need an authorization letter from the seller verifying that you have permission to speak with the lender on the sellers behalf. Let the lender know the situation and your proposed short sale solution. Ask for the list of documents that the lender may require. This may vary with each lender. Ask for copies of any proprietary documents the lender specifically wants to see, such as a particular short sale application form or an income and assets sheet. These also will vary by lender. The lender may ask you and other area brokers to a Broker Price Opinion (BPO) to verify your evaluation. If there is more than one loan subject to a shortfall, you will need to contact multiple lenders and go through the same process. Some lenders are proactive and will immediately send the short sale requirements to you. Others will be non-committal. Even institutions go into denial when faced with bad news. Unless the lender indicated that it will categorically refuse a short sale under any circumstance (a rare occurrence), you can proceed with the next steps.

Disclosure is important!

E. The property is listed with appropriate caveats and protections for the seller, properly priced and effectively marketed. When you list the property it is important to have a record of your discussion with the seller regarding the short sale. The listing agreement should state that the seller's acceptance of any offer will be subject to the lender's approval of the offer without requiring that the seller bring cash to close escrow and an agreement by the listing broker to accept the commission as approved by the lender. Offers to purchase the property would need the same caveat regarding lender approval. This protects the seller against agreeing unconditionally to sell the home, only

insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple Listing Services may as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they must also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers. Multiple Listing Services that permit but do not require participants to disclose potential short sales should adopt the following rule:

Section 5.0.1: Participants may but are not required to, disclose potential short sales to other participants and subscribers. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

Alternatively, Multiple Listing Services that require participants to disclose potential short sales should adopt the following rule:

Section 5.0.1: Participants must disclose potential short sales when reasonably known to the listing participants. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing agreement, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

#### ARTICLE X

Conflict: Who can spend valuable time and money on a sale that may not close?

#### MARKETING

Both for the seller's sake and to generate lender confidence, your short sale listings should be aggressively marketed. Use multiple pictures, virtual tours, websites and advertising as appropriate. You may want to accelerate the marketing if there is a foreclosure deadline looming. The lender will need to understand that you have done everything possible to sell the property at the highest price. The lender is not your client. You represent the seller, but everybody should understand that the lender is the true decision maker. You will want to include the marketing history in the short sale package. Once again, if you have no offers within a

insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple Listing Services may as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they must also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers. Multiple Listing Services that permit but do not require participants to disclose potential short sales should adopt the following rule:

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reasonable time, adjust the price. The lender is presented with an offer accepted by the seller, along with the completed short sale package including a hardship letter explaining why the short sale is necessary and desirable.

#### ARTICLE XI

##### THE OFFER

The ideal offer should be from a prequalified or preapproved buyer, with no unusual contingencies, such as the sale of the buyer's existing residence. It should be flexible in terms of closing. The ideal offer might provide "The close of escrow to occur 30 days after buyer's receipt of acceptance of the short sale by lender". The ideal buyer is willing to be patient. Of course, not all offers will be ideal. If you receive a very low offer, you may wish to attempt to negotiate it between the seller and the buyer as in an ordinary sale setting. Certainly you should counter terms that affect the seller in a negative way, such as early possession without compensation or inclusion of seller's personal property. Remember that it is the seller who "accepts" the offer. Once the offer is fully negotiated between buyer and seller, it should be signed by both, subject to the approval by the lender as discussed elsewhere in this document. Recognize that lenders will want to see "as-is" offers without credits for repair or closing costs to the buyers. Policies regarding short sale counter offers vary widely around the country and also between brokers. Experience suggests that if you receive an offer on the low side of "reasonable" from a qualified buyer, you may still want to pass the offer along to the lender. In a short sale, it is more important to get the lender a bona fide offer than it is to negotiate the perfect sale price. The very fact that an offer is presented to the lender for approval may persuade the lender to put the foreclosure process on hold, at least temporarily. The lender will have every opportunity to disapprove the offer and request a different price. Of course, just as in a traditional sale, all offers you receive must be presented to the seller throughout the course of your agency agreement. If your state or local Association of REALTORS®, or your broker, provides a short sale addendum, use it in any counter offer you make. It is designed to protect the seller against liability to the buyer in the event the lender disapproves the short sale. Check the California Association of REALTORS® website for some typical provisions for the short sale addendums. Or you may check with your broker.

The ideal offer should require the buyer to complete inspection up front.

Any offer is better than none; its a place to start negotiations.

#### ARTICLE XII

##### THE COMPLETED HARDSHIP LETTER SHORT SALE PACKAGE AND NARRATIVE



Every lender is different and each short sale package can be different as well. You may choose to submit most of the package to the lender when you obtain the listing and then pass along the offer, or you may wait until you have an offer to submit a complete package. The following are the most common elements. Some will be required and some are advisable because they will help you explain to the lender why the short sale is a good alternative to foreclosure.

- A. A hardship letter written by the seller describing the seller's circumstances. The seller should be persuasive as possible in describing why the seller is in no position to continue with his or her financial obligations to the lender. This letter can make or break the short sale. The reasons given by the seller should be compelling and the seller should be both honest and frank in their disclosures to the lender. The seller should include corroborating material. If the seller was fired, include the termination letter. If the seller has medical bills, summarize them. If the seller is disabled, the seller should explain how that has made it impossible for the seller to keep the property. If there are tax problems, the seller should describe and document them. If the property was damaged and not covered by insurance, as in several recent natural disasters, the seller should document the damage and the denial of the claim.
- B. A copy of the purchase contract along with all supporting documents signed by both the seller and the buyer
- C. Written proof of the buyer's ability to purchase the property, i.e., completed loan applications, pre-approval by a lender or evidence of cash on hand (a current bank statement).
- D. A copy of the certified escrow instructions.
- E. A preliminary title report if applicable in your state.
- F. An estimated net/closing statement (HUD 1) certified by an escrow officer who is acceptable to the lender. It is very important that this estimate be as complete and accurate as possible. Many lenders will reference the closing statement in their acceptance or rejection. You may receive an approval that states "Lender will accept net proceeds of no less than \$273,585 no later than November 30, 2009". If the estimate of the net proceeds is wrong for any reason, you may have to attempt to renegotiate with the lender.
- G. A completed and signed IRS Form 4506
- H. A completed and signed personal financial worksheet. This will include assets such as other real estate, stocks, bonds, 401K's, etc.
- I. Tax returns for the previous two years.
- J. Two most recent copies of employment paychecks.
- K. Profit and Loss statements if the seller is self employed.

- L. Bank statements for the past two or three months.
- M. A completed short sale application if the lender provides one. Many don't.
- N. Your CMNRPO with supporting sales data. You want to show that the offer you are presenting is the best market price offer the lender is likely to receive.
- O. A short narrative, written by you, about the market and market trends in the immediate area of the property being sold. Highlight such data as average time on the market, number of short sales and REQ listing in the MLS and price trends. Support your conclusions with material such as recent economic data and newspaper articles. The decision maker may well be in another state and will not necessarily understand why the property is suddenly worth less than the loan.
- P. Your marketing history, showings and feedback. Here again, you need to show the lender that you have made a real effort to get the highest price. They must understand that you have done a better job than they would have and that you have presented them with a quick and attractive solution to a deteriorating situation.
- Q. A formal request signed by the seller asking that the short sale be approved as submitted. IMPORTANT NOTE: If there are multiple loans, you will repeat this process for each lender. It can be especially difficult to obtain a short sale approval from a second trust deed holder or other junior lien holder that is "wiped out" in a short sale. You will probably need to request that the first trust deed or mortgage holder offer at least a symbolic sum to the second trust deed holder to secure approval. Anecdotally, second trust deed holders have recently been accepting partial payments as low as \$5,000 on trust deeds of \$100,000 or more.

#### ARTICLE XIII

#### FOLLOWING UP

Once you have submitted the short sale package, stay in touch with the lender every day if possible. Make sure they acknowledge that the package is complete. Try to talk to the same person in the Loss Mitigation Department each time and document your conversations. This is not a happy decision for the lender. Lenders are infamous for "losing" short sale paperwork. Keep the agents of the seller and buyer up to date. If there is a drop dead time limit to the offer, remind the lender of it often.

#### ARTICLE XIV

### SUBSEQUENT OFFERS

There are different opinions and practices concerning whether to submit all offers received to the lender, or whether to limit the submission to the first offer the seller accepts. Many lenders will require in writing that all offers be submitted to the lender as a condition of reviewing the short sale package. Consult with your broker concerning the broker's policy regarding subsequent offers. Remember, once again, that all offers must be submitted to the seller, even if they are not submitted to the lender. In some areas, agents are simply submitting all offers to the lender without having the seller negotiate or accept any particular offer. Recognize that, without an accepted offer signed by both the buyer and the seller, you will not have a contract even if the lender approves. This approach presents certain practical and risk management issues. Consult with your broker about this practice if it appears to be common in your area, or if you are inclined to follow the practice.

Submit only one offer to the lender and hold the rest.

### ARTICLE XV

#### THE LENDER RESPONSE AND THE CLOSE OF ESCROW

The lender can do one of several things.

- A. Ignore the offer. (This happens.)
- B. Refuse the offer, either with or without an indication of what net proceeds would be acceptable.
- C. Ask the seller to bring some or all the shortfall to escrow. This is a typical first response. If the seller is unwilling or unable to do so, you will need to contact the lender immediately with a letter from the seller to that effect.
- D. Approve the offer
- E. If the lender refuses the offer, try to determine the net proceeds the lender would accept. Go back to the buyer and see if he or she will increase the offer to provide those proceeds. This process can be similar to any counter offer situation but it takes more time. If the buyer refuses, obtain a cancellation and go to your back-up buyers (if any) in order. If there are no back up buyers, ask the lender to give you some time to place the property in MLS as an "approved short sale" at the price and terms the lender will accept. If you then obtain a buyer who agrees to that price and those terms, you can proceed to close normally. Note that you may need a new approval from the lender even if the price and terms are exactly the same. Check with the lender.
- F. If the lender approves the offer, it will typically be in a form of demand to escrow (and possibly to you) to the effect that the

lender will accept no less than X dollars in proceeds no later than X date. The lender may also attempt to reduce your commission. You can certainly argue with the lender about this, but ultimately, the lender will decide. Remember that the lender is not accepting the offer, but is simply agreeing to a smaller payment than the lender would otherwise be entitled to. This is why it is so important that the estimated closing statement be accurate if the lender approves the short sale. It will not care what problems you might have closing the escrow on time or what unanticipated costs you face. There will simply be a dollar amount that will need to be available at the close of escrow. Once escrow has the approval letter, you can proceed to close in the ordinary way. The buyer may have requested in the purchase contract that the seller move prior to the close of escrow so there are no holdover or possession problems. Remember that the seller is responsible for all the usual disclosures in your state, county and city. The seller is still the owner of the property and the seller will be conveying title. You will be responsible for all the usual duties of a real estate agent.

#### ARTICLE XVI

#### FINAL NOTES

Be aware that the Loss Mitigation and Foreclosure Departments are often different entities and are staffed by different individuals. The Foreclosure Department might not be aware of what the Loss Mitigation Department has agreed to. In some cases, this had led to the property being foreclosed even after the Loss Mitigation Department has agreed to a short sale. Try to speak with the Foreclosure Department directly if the foreclosure date is close to your estimated closing date.

## ***The BPO Broker's Price Opinion***

Dear Real Estate Professional:

Funder's Choice appreciates your commitment to providing us with quality products and we look forward to continuing our relationship. Like you, Funder's Choice strives to provide products that adhere to our clients' content and quality standards. Changing market conditions, together with changing client expectations, make this a challenging task. Ultimately, our goal is to receive a high quality product in a timely manner. That translates to no follow-up calls asking for revisions. Revision requests waste your time and ours. To that end, we have created the following CMA guidelines. Try to adhere to these guidelines. If you cannot, please explain why in the comment sections.

CMA must include exterior and interior subject photo (not MLS) as well as a street photo. Funder's Choice requires photographs of each room and any damaged areas.

If the subject property is a condominium or coop, each sale/listing address must include a unit number or floor location.

Comparable sale and listing photos are required (can be MLS photos).

Include a Location map.

Comparable sale transaction dates should be within one year (preferably six months) of the CMA date. If you are unable to conform to this request please comment as to why.

Proximity of all sales and listings to subject property should be accurate (i.e. not all 1 mile). The following sale/listing distances are preferred. Urban properties < 1 Mile, Suburban properties < 2 Miles, Rural properties < 20 Miles. Give an explanation in Comments section if unable to meet the aforementioned criteria.

Avoid similar input ("across the grid") for all sales and listings. For example, the GLA for all sales is 1,000 square feet.

At least two sales and two listings should have the same number of units as the subject property (i.e. duplex, 3-family).

At least two sales and two listings should have a similar design/style or number of floors as the subject.

The condition rating of the subject property and sales/listings is extremely important. Please use the following guide for rating improvements in poor to fair condition:

Poor Condition (Worn Out): Repair and overhaul is needed on painted surfaces, roofing, plumbing and heating. There are numerous functional inadequacies and substandard utilities, etc. Excessive deferred maintenance and abuse, limited value in use, approaching abandonment or major reconstruction; reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age.

Fair Condition (Badly Worn): Significant repair is needed. Many items need refinishing or overhauling and deferred maintenance is obvious. There is inadequate building utility and services all shortening the life expectancy and increasing the effective age.

Average Condition: There is some evidence of deferred maintenance and normal obsolescence with age in that a few minor repairs are needed, along with some refinishing. All major components are still functional and contributing to an extended life expectancy. The effective age and utility are standard for like properties of its class and usage.

If the subject condition is stated as average or better then the CMA “as is” high value should be in the upper half of the Neighborhood Sale Price Range or Listing Price Range. If not, explain in Comments section.

If the subject condition is stated as poor or fair then the CMA “as is” high value should be in the lower half of the Neighborhood Sale Price Range or Listing Price Range. If not, explain in Comments section.

At least one sale one listing should be rated in the same condition as the subject.

The unadjusted sale/listing prices of at least two sales/listings should be within 10% of the CMA “as is” low or high values. If not, please explain in the Comments section.

The GLA for at least three sales/listings should be within 20% (or 200 square feet if subject GLA is under 1,000 square feet) of the subject GLA if subject property is located in an Urban or Suburban area. If the subject is located in a Rural area, the GLA for at least three sales/listings should be within 50% (or 200 square feet if subject GLA is under 1,000 square feet) of the subject GLA. If you are unable to conform to this request please explain as to why.

At least two comparable sales should have bedroom counts that do not vary from the subject by more than one.

Do not use REO sales or listings unless the subject’s neighborhood/market is primarily comprised of REO sales or the subject property condition is similar to other REO properties. Use of REO sales and listings require an explanation in the Comments section.

Repair costs must be specific and stated as line items. A “lump sum” estimate is not acceptable.

The CMA value ranges (low value vs. high value) should not exceed 25% or (\$20,000 for values under \$100,000).

Refrain from writing remarks that could be interpreted as biased or prejudicial.

Use the CMA Comment sections to explain any unusual factors (adverse location, health & safety, illegal/non-conforming use, adverse market conditions, etc.) variations from the aforementioned criteria, or your analysis. An explanation as to why you varied from the criteria specified above is extremely helpful and can avoid revision requests and follow-up phone calls.

After completing the request, you should immediately Email it to [documents@funderschoice.com](mailto:documents@funderschoice.com).

Again, through mutual cooperation we can create greater efficiencies for all. Believe me, the last thing we want to do is call you for CMA revisions or additional clarification. Hopefully, the above guidelines provide more clarity regarding our expectations. Please remember to provide the appropriate commentary when dealing with unusual properties/circumstances. Thank you.

## Broker's Price Opinion

BPO ID <input type="text"/>	Ref Num <input type="text"/>	Date <input type="text"/>	
Loan # <input type="text"/>	Vendor ID <input type="text"/>		
Borrower: <input type="text"/>	Vendor ID <input type="text"/>		
Address <input type="text"/>	Phone # <input type="text"/>		
Property Type <input type="text"/>	County <input type="text"/>	Legal <input type="text"/>	

**I. GENERAL MARKET CONDITIONS**

☐ Rural      ☐ Suburban      ☐ Urban  
 Current market conditions: ☐ Depressed      ☐ Static      ☐ Improving  
 Market price of this type property has: ☐ Decreased      ☐ Been Stable      ☐ Increased       % in past       months  
 Competing Listings in neighborhood: ☐ Over Supply      ☐ Normal      ☐ Approx #  
 Employment conditions: ☐ Declining      ☐ Stable  
 Percentage of in neighborhood:  % Owners       % Tenants  
 Number of in neighborhood of:  BOARDED or VACANT homes       Competing listings that are REO/Corporate Owned

Comments

**II. SUBJECT MARKETABILITY**

☐ House      ☐ Condo      ☐ Townhouse      ☐ Multi-family      ☐ CO-OP  
 Range of values in neighborhood: \$  to \$       Predominant \$   
 Subject improvement is: ☐ Under Improved      ☐ Appropriate      ☐ Over Improved...for the neighborhood  
 Marketability of subject property is: ☐ Poor      ☐ Fair      ☐ Good  
 Normal marketing time in the the area is:  to  days

Comments

Assessed Value	Year	Yearly Taxes	Tax Rate	Delinquent Taxes
\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="text"/>	\$ <input type="text"/>

Condo/Co-op Fees \$       ☐ Under Rent Control?Y/N  
 Subject presently occupied? ☐ Owner      ☐ Tenant      ☐ Vacant  
 Suspect Damage? ☐ No      ☐ Yes      ☐ Earthquake  
 Last date subject sold:       Sale Price \$

Is it currently listed? ☐ No      ☐ Yes      \$       Listing Agent   
 Is it in a known flood zone? ☐ No      ☐ Yes      Phone No.

**III. MARKET DATE (Market Value "As Is" MUST FALL WITHIN the range of indicated values of the comparables use below.)**

Item	Subject	Sale 1	Sale 2	Sale 3	Listing 1	Listing 2	Listing 3
Location/ Address							
Prox. To Subj.							
Orig. 1st Price							
Current price							
Sales price							
Price & GLA							
No of units							
Date Sale/ COM							
Sales or Financing Concessions							
Leasehold int.							
Location/View							





**V. MARKETING THE SUBJECT PROPERTY:**

**A. MARKETING CONSIDERATIONS:**

Functional or economic obsolescence?	
Positive or negative site influences?	
Hazardous conditions?	
Anticipated resale problems?	

Indicate the type of financing property will qualify for: ☐ FHA ☐ VA ☐ Conventional  
 Indicate the most probable purchaser: ☐ First Time ☐ Move Up ☐ Empty Nester ☐ Investor

Identify what personal property is typically sold with the home (example: range, oven, refrigerator, etc.):

**B. THE RELATIONSHIP OF TIME AND MONEY:**

Number of COMPETING LISTINGS in subject's market area	
Range of Current Listing Prices	low <input type="text"/> high <input type="text"/>
Range of Days on Market	least <input type="text"/> most <input type="text"/>

Have PRIOR listing periods been included in this DOM range? ☐ NO ☐ YES

Number of SALES within past year in subject's market area:	
Range of these SALE Prices	low <input type="text"/> high <input type="text"/>
Range of Days on Market	least <input type="text"/> most <input type="text"/>

Have PRIOR listing periods been included in this DOM range? ☐ NO ☐ YES

These sales had FINAL listing prices that averaged  % above the final sales price

These sales had ORIGINAL listing prices that averaged  % above the final sales price

MARKET VALUE "AS REPAIRED"		SUGGESTED LIST "AS IS"		SUGGESTED LIST "AS IS"	
\$ <input type="text"/>	LOW	\$ <input type="text"/>	LOW	\$ <input type="text"/>	LOW
\$ <input type="text"/>	HIGH	\$ <input type="text"/>	HIGH	\$ <input type="text"/>	HIGH

**C. OTHER MARKETING ISSUES**

Actual or pending special assessments \$  for

Delinquent association dues for the subject  Owner's association financially solvent? Y/N ☐

Utilities covered in the association fee

Are common areas adequately maintained? Y/N ☐

Estimated monthly rent?  Typical Security Deposit?  Typical Lease Term

Landlord paid utilities?

Should the subject property be marketed as ☐ Vacant or ☐ Tenant Occupied?

Probability of vandalism if property left vacant? ☐ Low ☐ Medium ☐ High

**D. PROACTIVE MARKETING ACTIONS: What actions can be taken to maximize and enhance the subject's exposure? appropriate actions...**

Please comment on

Make recommended repairs?	
List in MLS?	
Open Houses?	
Advertising?	
Canvassing?	
Price Strategy?	
Other?	

At what point would it be useful to review the effectiveness of these marketing actions? Other comments?

--

## **Short Sales on Steroids**

“One in five borrowers owe lenders more than what their house is worth.”

*First American Core Logic.*

“20% of all real estate closings will soon involve a short sale.”

*Wall Street Journal*

“Short Sales can benefit homeowners, buyers, lenders and the surrounding community.”

*Richard Gaylord, President National Association of Realtors.*

These are just a few quotes circulating through the media as everyone comes to terms with what is now recognized as the largest real estate meltdown ever seen in the U.S.

Let's take a look at a few more economic realities:

Today's market is seeing a growing demand by homeowners for knowledgeable real estate professionals capable of processing short sales. The situation has the potential to, if not to create a fortune, at least create a profit or sustain a real estate career until better times return.

The government has thrown a vast fortune in cash at our economy, yet it is still not clear when or if the real estate market will show a consistent upward movement, or even hit a point that the economic analysts say and real estate experts agree to call a bottom.

To further frustrate everyone in the midst of this increasing demand, the traditional methods for processing short sales is antiquated. Historically, short sales have been processed through the loss mitigation and foreclosure departments of the lender; departments notorious for their lack of customer oriented service.

The result of increased demand colliding with this antiquated process is a nearly unworkable patchwork of non-uniform policies and procedures conducted by disparate lenders and loan servicers.

The National Association of Realtors (NAR) must be careful not to overtly criticize their partners in real estate -- the lenders. Therefore, typical education pertaining to Short Sales has been heavily theoretical, without really addressing how to get things done.

As a result, real estate agents, investors and homeowners alike attempting to process short sales have a “fail” rate of up to 90%. This is because they did not have the tools and resources necessary. But more importantly, they were confused as to what constituted the correct advice.

Okay, you say. I know the problem. What's the solution? What's this Short Sales on Steroids?

Patience, Grasshopper.

To truly understand the challenges faced by real estate agents, investors and homeowners attempting to navigate a short sale, you need a glimpse into the Lender's Culture.

# Mortgage Broker Practices

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State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

## INTERPRETIVE STATEMENT

MORTGAGE BROKER PRACTICES ACT (MBPA IS-2009-01)

CONSUMER LOAN ACT (CLA IS-2009-01)

**DATE:** March 10, 2009

**FROM:** Deborah Bortner, Director, Division of Consumer Services

**RE:** Loan Modification Services – License Required under the MBPA or CLA

**QUESTION PRESENTED:** Must loan modification service providers be licensed to offer services to Washington residents?

**BRIEF ANSWER:** Yes, under the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW, or Consumer Loan Act (CLA), chapter 31.04 RCW.

**DISCUSSION:** The Division has received many inquiries regarding the applicability of the MBPA or CLA to loan modification services. According to callers, individuals are communicating directly with borrowers and lenders in order to negotiate loan modifications. In most of the calls, the caller inquires as to what restrictions are applicable to loan modification services.

For purposes of this Interpretive Statement, "loan modification" means a change in one or more of the loan terms. Loan modifications includes forbearances, repayment plans, modifications of interest rates, loan term (length), loan type, capitalization of arrearages, and principal reduction.

The MBPA defines a mortgage broker as any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. See RCW 19.146.010.

A loan originator is a natural person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. See RCW 19.146.010.

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It is the Director's position that individuals and companies offering or negotiating residential mortgage loan terms are acting as mortgage brokers or loan originators and must be licensed under the MBPA or CLA.

Additionally, unless sponsored by a licensed mortgage broker, or a person exempt from licensing as a mortgage broker, a loan originator's license is considered inactive. A loan originator with an inactive license may not hold himself or herself out as being able to conduct the activities of a licensed loan originator.

In addition to any applicable licensing requirements under either the MBPA or CLA, all individuals who offer or negotiate loan terms for borrowers are required to comply with the following:

- a. Disclosures – [to be determined]
- b. Fees – upfront fees are prohibited pending further interpretation
- c. Prohibited Practices – the following is prohibited: directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person; engaging in any unfair or deceptive practice toward any person; obtaining property by fraud or misrepresentation; soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker or loan originator may earn a fee or commission through "best efforts" to obtain a loan modification even though no loan modification is actually obtained for the borrower.

If the mortgage broker or loan originator has an offer of a loan modification on terms and conditions agreed to by the borrower and the borrower fails to finalize the loan modification through no fault of the mortgage broker or loan originator, the mortgage broker or loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. section 1601, and Regulation Z, 12 CFR 226, as amended.

The Director's position on this matter shall not be construed to include employees of nonprofit HUD-approved housing counseling agencies, as long as such individuals are acting in the course of their employment by the nonprofit counseling agency.

Noncompliance may result in the imposition of any of the sanctions allowable under the MBPA including, but not limited to: fines, restitution to the borrower, refusal to renew a license, refusal to grant a license, and license revocation.

**CONCLUSION:** Loan modification services fall under the jurisdiction of the Mortgage Broker Practices Act and Consumer Loan Act. A mortgage broker or loan originator license, or a license under the Consumer Loan Act is required to conduct loan modifications for Washington residents.

Prepared by: Cindy Fazio, Staff Attorney

**STATUTES AND RULES RELIED UPON:** Chapter 19.146 RCW.

MBPA IS-2009-01

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## ***Fannie Mae /Freddie Mac by The Book***

The government is big. Really big. And while Fannie Mae and Freddie Mac are not technically government agencies, they run like government agencies. That means there are about a gazillion steps paperwork must go through in exact order before 10:00 a.m. after the 3<sup>rd</sup> Tuesday of the month...or something like that.

Here are the steps a borrower's loan might go through as it moves through delinquency to any number of work out solutions.

Bear with me. I've limited these just to the bullet points because it would take a 300-page manual to go into each one of these in detail.

### **Temporary Indulgence**

When delinquency can be cured In 30 days or less

Fannie Mae approval not required

Reasons to use:

Pending sale or rental

Insurance settlement

Assistance arranged

Payments lost in mail

### **Repayment Plans**

Borrower agrees to make additional payments to cure delinquency

Reasons to Use:

Use for a temporary hardship

Fannie Mae approval not required

Formal written plan

Borrower can afford additional payments

if plan will exceed 5 months - consider modification

Evaluating Possible Repayment Plan

Consider the borrowers monthly income and monthly expenses (Use one page financial on loans with no MI)

Consider the borrower's current monthly mortgage payment

Consider the length of the plan; if over 5 months consider a modification

### **Special Forbearance**

Reduces or suspends payments for specific period

Written agreement

Pay additional funds at scheduled intervals

Fannie Mae approval not required (less than 18 months)

Used in cases of:

Death/Illness where income source will return

Natural disaster

Unpreventable loss of income

If a repayment plan is not a solution or fails, consider other Work Out Options

### ***Work Out Options - Relief Provisions***

If providing temporary indulgence, a repayment plan or granting special forbearance, the loan may be processed through any number of relief provisions called workouts. Workouts reduce costs and eliminate or reduce the costs of foreclosure.

Workout solutions include:

Modification

Pre-Foreclosure Sale

Deed-in-Lieu of Foreclosure

Assumption

### **Modification Plan – Special Military Indulgence**

Qualifies under the terms of Soldiers' and Sailor& Relief Act

- Interest rate reduction
- Allowed up to 6% if borrowers income is reduced by activation of military status

Contact regional office for instructions

## **Modification Plan**

- Allows the borrower to keep home by changing the original terms of the mortgage loan
- Adds the delinquency to the unpaid principal balance
- Extends term out (usually up to 360 months)
- Possible reduction of interest rate (using step rate plan, return to existing rate or higher)
- Changes the product type

*Example of a modification plan:*

Original mortgage:

- \$50,000 unpaid principal balance
- Interest rate 10.5% payments made for 5 years (300 months remaining)
- Mortgage payment is \$457.37 owes 2 months of interest (\$875.00)
- Expenses each month \$2,000
- Income each month = \$2,150

Evaluation

- Reason for default: unemployed for 3 months
- Disposable income = \$150+ a month
- 2 children under 12
- A repayment plan would take over 5 months
- \$50,000 balance; interest rate 10.5%; 5 yrs old
- Mortgage payment is \$457.37 owes 2 months (\$875.00) add the amount owed - (\$875.00) to the balance the borrower now owes \$50,875
- The new mortgage payment would increase to \$480.35

If borrowers still cannot afford the P & I payment of \$480.35, the next step is to extend the term by the number of months capitalized to as much as 480 months if necessary.

If that doesn't work consider a step rate modification of

- 8.5% for the 1st year,
- 9.5% for the 2nd year, and back to 10.5% the 3rd year



### **When to Consider a Modification**

- Re-employed
- Death of a co-borrower
- Reduction in income
- Permanent short term disability
- Large unexpected expenses
- Divorce
- Catastrophe or natural disaster

### **Repayment Plan vs. Modification Plan**

<b>Repayment Plan</b> <ul style="list-style-type: none"><li>• Re-employed after short- layoff</li><li>• One time, unexpected expenses</li><li>• Income can support additional payments</li><li>• The plan will last less than five months</li><li>• Large unexpected expenses</li></ul>	<b>Modification Plan</b> <ul style="list-style-type: none"><li>• Re-employed after short layoff</li><li>• Death of a co- borrower</li><li>• Reduction in income</li><li>• Disability</li><li>• Divorce</li></ul>
<b>Repayment Plan</b> <ul style="list-style-type: none"><li>• Impacts monthly delinquent numbers until cured</li><li>• Requires the borrower to make additional payments for extended periods</li><li>• Requires monthly monitoring until cured</li></ul>	<b>Modification Plan</b> <ul style="list-style-type: none"><li>• Cures a delinquency immediately for both the lender and the borrower</li><li>• Removes the loan from the delinquency numbers</li><li>• Insures the lender receives monthly servicing fee</li></ul>

## **Pre-foreclosure Sale**

Allows the borrower to sell the property for the current market value, even if it is less than the Balance owed

### *Example of Pre-foreclosure Sale*

- The balance owed is \$150,000 while the value of the home is \$75,000
- The borrower must find a buyer willing to pay at least \$75,000
- the borrower may be required to contribute to the loss

### *When to consider a presale*

- Unable to afford payments and unable to sell for total amount due
- Unemployed Job transfer
- Reduction in income
- Catastrophe/Natural disaster

## **Deed-in-Lieu**

Allows acceptance of property in satisfaction of the debt

- Must be only alternative to foreclosure
- Property should be listed at market value 90 days (waived in special circumstances)
- Court ordered
- Death of principal borrower
- MI approved
- Title must be marketable and free of judgments and liens

### *When to consider a DIL*

- Death of a principal or co-borrower
- Reduction of income
- Unemployment
- Catastrophe or natural disaster
- Divorce

## **Assumption**

Transfers property by allowing new buyer to take over existing mortgage

- Buyer must qualify

## **Bankruptcy Proceedings**

We (Fannie Mae/Freddie Mac) expect the Servicer (assisted by appropriate legal counsel) to take all action necessary to protect our interest. A Servicer must be able to provide to us evidence that it took all required action to mitigate our loss.

- Before filing an individual must obtain credit counseling. Exceptions exist - disability or active duty
- Before discharge — borrower must complete a personal financial management course
- Chapter 7 and 13 borrower must provide Tax return attend a pre-creditors meetings
- Chapter 13 borrower must provide an annual statement of income, and statement of expenses Means Test

## **Bankruptcy - Chapter 7**

Chapter 7 bankruptcy is not permitted:

- If borrower has the 'means' to repay over a five year period
- If last Chapter 7 discharge was less than 8 years prior
- Conditions surrounding Chapter 7 proceedings:
- Loans must be 60 days delinquent to refer case to attorney
- 60 days delinquent or more and is in foreclosure
- Servicer must refer filing case within two weeks of bankruptcy

## **Bankruptcy - Chapter 13**

Chapter 13 bankruptcy is not permitted:

- If discharge of debt is related to fraud, defalcation by a fiduciary, or to willful and malicious acts that cause personal injury or death
- Bankruptcy plan must be five years in duration if the income is greater than state median
- Under new bill pending in congress, debtors can "cram down" a lender who holds purchase money security interests.

## **Bankruptcy - Chapter 11**

- Regardless of status loan must be referred within two weeks of bankruptcy filing

## **Bankruptcy - Chapter 12 or Chapter 13**

- Loan must be 60 days delinquent to refer case to a bankruptcy attorney
- Loan must be sent within two weeks form the 60th day of delinquency.
- If loan is 60 days or more delinquent or in foreclosure, referral must be sent within two weeks after bankruptcy filing

## **Bankruptcy - Chapter 20**

Chapter 20 bankruptcy is a Chapter 7 followed by a Chapter 13 within four years. These are not allowed under any circumstances.

## **Bankruptcy Serial Filings**

- No stay - 2nd case dismissed with prejudice
- Stay can be lifted for unapproved transfers, or
- Multiple filings done to defraud or hinder creditor

## **Discharge Injunction Protection**

- Servicer able to collect payments without violating discharge injunction
- Servicer permitted to make calls, send statements, and offer workout alternatives

## **Liability for Failure to Credit Payments**

Violates discharge injunction. It does not apply if plan is revoked, or in default or payments not made.

*Written procedures must address the requirements to:*

- Proactively monitor bankruptcy filings
- Establish a case status and portfolio performance tracking system
- Maintain an individual case file
- Refer the case to the bankruptcy attorney promptly; filing a proof of claim

*Circumstance under which it is required and how to prepare it:*

- Review proposed payment plans
- Analyze the results of the bankruptcy attorney's negotiations
- Pursue legal action to obtain early dismissal of the case
- Other options may include stay relief, plan objection, or other relevant proceedings

All of the requirements are not listed. Review Section VII of the Fannie Mae Servicing Guide

## ***Foreclosure as a Last Option***

Foreclosures involve much more than just paperwork. Here are just a few highlights:

- Lengthy and expensive
- Borrowers lose their home
- Servicer incurs expenses (salaries, postage, etc.)
- Reduced or curtailed MI claims
- Corporate advances for taxes and insurance
- Loss of servicing fee income

Processor's day-to-day tasks in dealing with potential foreclosures:

- Diligently monitor late-paying loans
- Employ methods for assessing delinquency performance
- Carefully evaluate each default
- Employ Loss Mitigation Specialists
- Employ good listening skills
- Provide support and training
- Enlist the aid of counseling agencies, the investor, and mortgage insurers (National Foundation of consumer credit - (800) 388-2227)
- Work with second lien agencies
- Be familiar with MI and Fannie Mae procedures
- Develop and utilize in-house counseling procedures and guidelines
- Utilize management reviews and approve foreclosure/repayment plans

When foreclosure is the only option, Servicers must keep these guidelines in mind:

- Be familiar with regional economic conditions
- Servicers are required to monitor the attorneys or trustees
- Provide required documentation to the attorney or trustee
- Ensure required time lines are kept
- Report the delinquency as instructed by the investor and mortgage insurer.
- Provide the insurer with a copy of the foreclosure notice sent to the trustee/attorney
- Keep records of your activities and communications



***Announcement 09-03***

***February 24, 2009***

***Amends these Guides: Servicing***

***Miscellaneous Servicing Policy Changes***

**Introduction**

This Announcement contains several new and updated servicing policies, as itemized below:

- Delinquency Status Reporting to Begin at 30 Days Delinquent
- Establishment of a Standard Reimbursement Date
- New Requirements for a Business Continuity Plan
- No Negotiation of Preforeclosure Sales Commission
- Updated *Property Preservation Matrix and Reference Guide*

**Delinquency Status Reporting to Begin at 30 Days Delinquent**

*Servicing Guide*, Part VII, Section 602: Reporting Monthly Mortgage Status

Effective with the May 2009 reporting month, servicers will be required to report the delinquency status code, delinquency status code effective date, and reason for delinquency code for any mortgage loan that is one or more months (30 days or more) past due as of the last day of the preceding month.

Servicers are reminded that beginning with the July 2009 reporting month, the scheduled completion date for forbearances and repayment plans must be reported. Servicers are encouraged to comply with the new delinquency status reporting requirements immediately, if possible.

**Establishment of a Standard Reimbursement Date**

*Servicing Guide*, Part X, Section 302: 02: “Scheduled/Scheduled” Remittance Types

Fannie Mae will automatically reimburse the servicer for:

- delinquency advances of principal and interest, and
- reimbursement of unpaid principal balance of special servicing mortgage loans that were acquired by foreclosure.

Reimbursement shall occur on the first business date following the 24<sup>th</sup> day of the same month that the servicer

- remits the funds required to remove the mortgage loan from Fannie Mae's active accounting records or a special servicing option MBS pool, and
- reports the applicable removal action code to Fannie Mae's investor accounting system, provided that the removal action does not generate an exception.

This change is effective with the date of this Announcement.

### **New Requirements for a Business Continuity Plan**

*Servicing Guide, Part I, Chapter 3: Maintaining Eligibility*

Lenders and servicers must implement and maintain a viable business continuity plan that ensures the lenders' or servicers' ability to regain critical business operations in the event of a disaster, or an unforeseen disturbance that would otherwise hinder the company's ability to do business.

The business continuity plan should ensure that the lender or servicer has adequate facilities and staff to continue operations in the event of a business disruption or disaster; has a data recovery plan in place that maintains and will restore critical electronic data and systems in the event of a business disruption or disaster; and ensures that the lenders' or servicers' affiliates and third-party vendors have business continuity plans as well. The plan should be comprehensive, written, and accessible to critical staff in addition to periodically being tested and updated.

### **No Negotiation of Preforeclosure Sales Commission**

*Servicing Guide, Part VII, Section 504.02: Contacting Selected Borrowers*

Effective March 1, 2009, closing of preforeclosure sales may not be conditioned upon a reduction of the total commission to be paid to real estate agents to a level below what was negotiated by the listing agent with the borrower, unless the fee exceeds 6 percent of the sales price of the property in aggregate. Servicers are reminded that they must continue to obtain any approvals that may be required by interested third parties in connection with preforeclosure sales.

### **Updated *Property Preservation Matrix and Reference Guide***

*Servicing Guide, Part VIII, Section 106: Property Maintenance and Management*

The Property Preservation Matrix has been updated and expanded upon. It is included in the *Property Preservation Matrix and Reference Guide*, which is available on [eFannieMae.com](http://eFannieMae.com). The cost limits outlined in the Matrix are effective March 1, 2009. Servicers should refer to the Matrix for pre-approved allowable reimbursement amounts for property preservation work (e.g.,

securing the property, lawn maintenance). The Property Maintenance & Management Reference Guide, which includes the Lawn Service Schedule, has been created to provide additional detail for assistance with submitting preservation requests.

When the cost of the contemplated preservation work exceeds the allowable amounts, the *Fannie Mae Property Preservation Request for Repair (Form 1095)* should be completed and submitted with supporting photographic documentation to: [property\\_preservation@fanniemae.com](mailto:property_preservation@fanniemae.com). All other pertinent supporting information and documentation that will assist Fannie Mae in making a sound property preservation decision should be attached to the email request (e.g., copies of city notices of violation or citations). Questions about this process may be submitted to the preceding email box.

\*\*\*\*\*

Servicers should contact Fannie Mae's Servicer Support Center at 1-888-FANNIE5 (888-326-6435) if they have questions about Announcement 09-03.

Michael A. Quinn  
Senior Vice President  
Single-Family Risk Officer



## ***Fannie Mae / Freddie Mac By The Book Summary***

- Describe the early relief provisions available to counselors
- Discuss the various alternatives to foreclosure
- Discuss the common reasons for default and the appropriate cures
- Discuss the importance of Risk Profiler when considering a workout alternative
- Discuss methods and mechanisms of reporting and communicating the loans in default
- Discuss the sample timeline for delinquent reporting
- Discuss the actions necessary to protect our interests when a borrower files bankruptcy
- Discuss Fannie Mae requirements for Servicers Delinquent Reporting System
- Discuss various collection techniques that we consider to be minimum requirements for a Servicer Delinquent Reporting System.
- Discuss Fannie Mae's requirements for full file reporting of mortgage status to the credit repositories
- Discuss delinquency Prevention Blueprint for Successful Foreclosure Strategies
- Discuss the differences between a collector and a counselor and your role in Loss Mitigation
- Discuss "how-to" strategy and develop a successful foreclosure prevention plan

Okay. That ends this section on "Fannie Mae By the Book." As you can see, the internal lender's culture is steeped in redundancy and repetition, mired in methodology and buried under bureaucracy and paperwork. With the current tsunami of distressed real estate flooding their offices, they are simply overwhelmed.

Yet, this is the journey a loan traditionally makes before it is finally allowed to Rest in Peace in some form or another. Borrower default for any number of reasons. No one wants a foreclosure, a short sale or a bankruptcy, but the cruel truth is that the current harsh economic times have turned millions of hard-working, tax-paying Americans into deadbeats.

A swifter, more humane system is needed to move these millions of citizens through the machinery of the lending culture, so that they can get back to work, rebuild their lives and become hard-working tax-payers again.

Now just to make things more fun, I've included some documents in the next few pages that has information real estate agents and home owners need to keep in mind during any of these legal proceeding. Basically, FMFM want the property in question to stay in good condition and they have rules about that, too!

## Fannie Mae / Freddie Mac by The Book



### Property Maintenance and Management: Property Preservation Matrix and Reference Guide

#### I. Property Preservation Matrix

Throughout the foreclosure process, as indicated in the Fannie Mae Single-Family *Servicing Guide*, Part VIII, Chapter 1, Section 106, the servicer is responsible for performing all property maintenance functions to ensure that the condition and appearance of the property are maintained satisfactorily.

Servicers should refer to the Fannie Mae Property Preservation Matrix (below) for the allowable reimbursement amounts for property preservation functions. Where the cost of the contemplated preservation work exceeds the allowable amounts, the [Fannie Mae Request for Repair Form 1095](#) should be completed and submitted to: [property\\_preservation@fanniemae.com](mailto:property_preservation@fanniemae.com).

As automation is implemented, all requests exceeding the allowable reimbursement amounts will be submitted via HomeTracker®. Pertinent supporting information and documentation that would assist Fannie Mae in making a sound property preservation decision should be included on the Request for Repair Form. Photos are also required.

#### Property Preservation Matrix (allowable amounts are per occurrence)

Property Preservation Type	Comments
<b>Roof Repair</b>	
Tarping or patchwork	Up to \$400 for 10x20 sq ft area
<b>Boarding</b>	
Windows	Small, 75 UI or less \$60 Medium, 76-100 UI \$80 Large, 101-125 UI \$100
Slider door	Up to \$160
Security door	Up to \$250
Crawl space	Up to \$60
<b>Lock Changes and Securing</b>	
Knoblock	Up to \$60 each
Knoblock and Deadbolt	
Padlock	Up to \$40 each
Padlock and hasp	
Slider lock	Up to \$25 each
Window lock	Up to \$25 each

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## Fannie Mae / Freddie Mac by The Book

<b>Health and Safety</b>	
Cleaning refrigerator or Cleaning stand alone freezer	Up to \$100 each
Cleaning toilet(s)	Up to \$75 each
Capping wires	Up to \$10 each
Capping gas/water	Up to \$50 each
Removing gas can(s) or Propane tank(s)	Up to \$15 each
<b>Swimming Pool</b>	
Swimming Pool - Initial Service and Securing	Up to \$400
<b>Lawn Maintenance</b>	
Initial Lawn Cut (up to 10k sq ft)	Up to \$100
Initial Lawn Cut (up to 15k sq ft)	Up to \$150
Regular Lawn Maintenance Cut (up to 10k sq ft)	Up to \$80
Regular Lawn Maintenance Cut (up to 15k sq ft)	Up to \$100
<b>Winterization</b>	
Snow Removal	Up to \$75 one time only if needed to secure property
Winterization/De-winterization	Up to \$200 for first unit and up to \$80 per each additional unit
<b>Other</b>	
Emergency funds	Up to \$500
Sump pump	Up to \$300
Water/Gas/Electric/Unclassified utility	Up to \$75 for one time shut off/transfer fee of each

## II. Property Preservation and Management Reference Guide

Specific servicer requirements for pre-foreclosure property preservation are as follows:


### Roof Repair

When an active leak is discovered at a property, appropriate measures should be taken to preserve the property by stopping the leak. Fannie Mae typically does not encourage replacing roofs prior to sale, but in cases where the servicer feels this is necessary, a bid should be submitted. Do not tarp flat roofs.

### TARPING OR PATCHWORK

Fannie Mae requires that when roof repairs exceed allowable, a bid to tarp, except as noted above and a bid to patch must be submitted simultaneously on the same form. Include area dimensions, location of damage, active or inactive leak, amount of bid to complete work, valid photo documentation, and advise us if an insurance claim has been filed.

## **Fannie Mae / Freddie Mac by The Book**



### **Boarding**

Properties should not be boarded unless it is necessary to prevent vandalism, where required by local ordinance, or when windows are broken. The allowable for any security door and/or crawl space will include the cost of boarding and padlock(s). United Inches (UI) is calculated by adding length and width (e.g., a 25x60 window is 85 UI).

#### **LOCK CHANGES AND SECURING**

Servicers are required to secure rear or secondary doors on vacant and abandoned properties, including main dwelling and all outbuildings.

Slider locks and window locks should only be placed if existing locks are inoperable or not present on the main level and where accessible.

### **Health and Safety**

#### **REFRIGERATOR/FREEZER**

The Fannie Mae allowable for cleaning includes the removal of all perishables from both the refrigerator and freezer sections and a wipe down of the appliance's interior and exterior. A separate allowable is provided for a stand alone freezer(s) to include removing all perishables and a wipe down of the appliance's interior and exterior.

#### **TOILET/BATHROOM**

The Fannie Mae allowable for cleaning should be used when fecal matter is present. This allowable also includes cleaning with a toilet brush, wiping down exterior, and winterizing, if in season.

#### **GAS/WATER**

Bare wires and uncapped or open gas/water lines are required to be capped regardless of utility status.

#### **FUEL REMOVAL**

The Fannie Mae allowable for removal of gas can(s) or propane tank(s) does not include removing equipment that contains gas or propane (e.g., lawnmower, weed eater, grill, etc.).

### **Swimming Pool**

Servicers are required to drain, secure, and tarp or board where required by local ordinance. Allowable may be used for, but not limited to, the following: draining, securing, locking gates, and repairing gate/fence panels that surround the pool/hot tub. Securing is defined by Fannie Mae as the confirmation that all fences and gates are intact, secured, and a minimum of four feet high.

### **Lawn Maintenance**

#### **INITIAL GRASS CUTS**

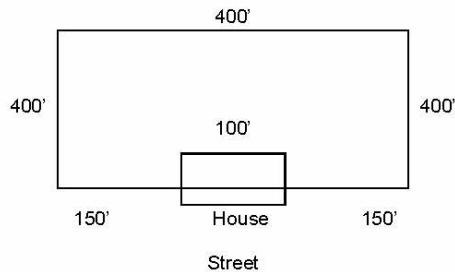
Initial grass cuts should be performed on lots up to 15,000 sq ft. If lot size is greater than 15,000 sq ft, initial full lot and subsequent cuts and initial perimeter and subsequent perimeter cuts should be submitted simultaneously. Grass cuts must be submitted for the entire season. Perimeter is defined as 100x150 or 15,000 sq ft.

## Fannie Mae / Freddie Mac by The Book

### DEBRIS IN YARD/SHRUBS

Incidental debris removal should be included as part of the allowable grass cut as well as edging, minimal leaf removal, and clearing of all grass cut clippings. The yard and its surroundings should be in model condition upon completion of the yard maintenance. Bids are required for shrub trimming when shrubs affect condition, access to the property, or where local ordinance dictates.

### DIAGRAM OF PERIMETER EXAMPLE



### GRASS CUT SCHEDULE

Initial grass cuts are allowed between **April 1 and October 31** in the following states/territories:

- |                 |                  |                        |
|-----------------|------------------|------------------------|
| • Arkansas      | • Michigan       | • Pennsylvania         |
| • Colorado      | • Minnesota      | • Rhode Island         |
| • Connecticut   | • Missouri       | • South Dakota         |
| • Delaware      | • Montana        | • Tennessee            |
| • Idaho         | • Nebraska       | • Utah                 |
| • Illinois      | • New Hampshire  | • Vermont              |
| • Indiana       | • New Jersey     | • Virginia             |
| • Iowa          | • New York       | • Washington           |
| • Kansas        | • North Carolina | • West Virginia        |
| • Kentucky      | • North Dakota   | • Wisconsin            |
| • Maine         | • Ohio           | • Wyoming              |
| • Maryland      | • Oklahoma       | • District of Columbia |
| • Massachusetts | • Oregon         |                        |

Initial grass cuts may be completed during **any month** of the year in the following states/territories:

- |              |               |                      |
|--------------|---------------|----------------------|
| • Alabama    | • Hawaii      | • South Carolina     |
| • Arizona    | • Louisiana   | • Texas              |
| • California | • Mississippi | • The Virgin Islands |
| • Florida    | • Nevada      | • Puerto Rico        |
| • Georgia    | • New Mexico  | • Guam               |

Initial grass cuts are allowed from **June 1 to September 30** in the state of:

- |          |
|----------|
| • Alaska |
|----------|

One initial grass cut should be performed per calendar year.

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## Fannie Mae / Freddie Mac by The Book

### GRASS RE-CUTS

Grass should typically be cut twice a month between April 1 and October 31. Approval is required if more frequent re-cuts are necessary. Once a month may be sufficient depending on the level of rainfall during the spring and summer seasons. Prior approval for re-cuts from November 1 to March 31 must be obtained unless otherwise prescribed below:

- Re-cuts can be completed all year in CA, FL, HI, NM, the Caribbean, and the Pacific Islands.
- Re-cuts should be completed from April 1 to November 30 in AL, AR, GA, LA, MS, OK, SC, and TX.
- Re-cuts should be completed from June 1 to September 30 in AK.
- Re-cuts should be completed once per month in CA, CO, NM, UT, and WY.
- Prior approval is required for all re-cuts in AZ and NV.

Refer to previous GRASS CUT SCHEDULE within this document for details.

### Winterization

Generally, all properties should be winterized between October 1 and March 31.

Winterizations are allowed during any month of the year in the following states:

- |                 |                 |                |
|-----------------|-----------------|----------------|
| • Alaska        | • Michigan      | • Ohio         |
| • Connecticut   | • Minnesota     | • Pennsylvania |
| • Iowa          | • Montana       | • Rhode Island |
| • Illinois      | • North Dakota  | • South Dakota |
| • Indiana       | • Nebraska      | • Vermont      |
| • Massachusetts | • New Hampshire | • Wisconsin    |
| • Maine         | • New York      |                |

Properties should be winterized only once. The property may be re-winterized only if the initial winterization is deemed to be no longer effective. The Servicer must submit bids to Fannie Mae for winterization prior to the work being done. Winterizations should include shutting off the water source either at the curb or the main interior water supply if it is not possible to shut it off at the curb. Winterization also includes a complete draining of all plumbing and heating systems. For properties where water services and utilities are shared with other units, such as condominiums, the utilities should be maintained. The water service should also be maintained if needed for wet winterizations.

### Additional Information


#### EMERGENCY REPAIRS

The most important element to defining an emergency is that an immediate response is necessary to prevent damage or lessen the loss of property. Gradual and progressive deterioration or lack of property maintenance does not qualify as an emergency.

#### SUMP PUMPS

If an existing sump pump is used to keep basements or crawl spaces dry, check the sump pump to make sure it is operational. If the sump pump in question is electrical, ensure that the sump pump is plugged into a

## **Fannie Mae / Freddie Mac by The Book**



power source and the electricity to the property is turned on and if necessary, transfer the electricity into the servicer's name. If the sump pump is inoperable, the servicer may use the allowable to replace the pump.

### **CODE VIOLATIONS**

If code violations have been posted by the city or have been received by the servicer, the servicer should submit a bid to correct the code violations (if amounts exceed Fannie Mae's allowable) and attach a copy of the violation to the e-mail that contains the bid. The servicer should note in the comments section of the Request for Repair Form (form 1095) that the violation has been submitted. As an alternative to e-mailing a copy of the violation, the violation can be faxed to the appropriate Fannie Mae contact for review.

### **PROPERTIES IN BANKRUPTCY**

Servicers should consult with their legal department when addressing issues of vacant properties in bankruptcy.

### **DISCOLORATION**

Identify the source of the discoloration. Fannie Mae typically does not contemplate remediation during pre-foreclosure proceedings. When submitting bids to treat discoloration, include the area affected in square feet. Include the exact method to be used in treatment and cause/source of discoloration.

### **DEBRIS REMOVAL**

Interior and exterior items submitted as debris may be considered personal property by the mortgagor. As a result, Fannie Mae does not typically consider the removal of any items during foreclosure proceedings.

The following are examples of items typically not removed: toothpaste, medicine, household cleaning products, and paint thinner, dry or canned goods, paint cans with secured lids, oil in secure containers, alcohol, fire extinguishers, car batteries, or interior tires.

### **PERSONAL PROPERTY**

Fannie Mae will not usually consider removal or storage of personal property prior to foreclosure with exceptions regarding code violations, liens, fines or discolored debris caused by water damage. Servicers should consult their legal department and provide acknowledgment of approval to remove personal property in the comment section of the bid.

Items located on the exterior of the home should be moved to the garage or a secured area. **Do not submit** requests to remove personal property. Examples include, but are not limited to, the following:

- Vehicles (autos, trailers, boats, recreational vehicles, motorcycles, etc.)
- Building materials
- Clothing
- Furniture
- Lawn and garden equipment

## ***What Was Bush's Plan?***



Support & Guidance For Homeowners

**For Immediate Release**  
November 11, 2008

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### **HOPE NOW JOINS WITH GOVERNMENT TO CREATE STREAMLINED MORTGAGE MODIFICATION PLAN**

#### *SMP Is Important New Tool to Prevent Foreclosures*

Washington, D.C. (November 11, 2008) HOPE NOW, the private sector alliance of mortgage servicers, non-profits, counselors, and investors that has already helped almost 2.5 million homeowners avoid foreclosure, today announced that, working with the U.S. Treasury, the Federal Housing Finance Agency, Fannie Mae, Freddie Mac, and a number of major mortgage loan servicers, it has helped develop a new program that will make it easier and faster for the most at-risk homeowners to modify their mortgages and stay in their homes.

The "Streamlined Modification Plan," or SMP, which is an expansion of what many lenders are already doing, will be implemented by December 15, 2008.

"This is an important effort by the mortgage industry to help homeowners," said Faith Schwartz, HOPE NOW's executive director. "This is a big step forward that will make it easier to modify loans for the most at-risk homeowners so they will be able to avoid foreclosure and stay in their homes."

Under the new SMP, lenders will use an expedited process to modify, or restructure, a mortgage so that the homeowner can afford the monthly payments. The streamlined process will apply to at-risk borrowers who are 90 days or more late on their existing mortgages and whose loans are owned by Freddie Mac, FNMA or participating balance sheet lenders/servicers.

After compiling the homeowner's information, lenders will use a simple process that reduces the homeowner's monthly payment to no more than 38 percent of the borrower's monthly income. This may include in any combination (1) extending the number of



years of the loan, (2) reducing the interest rate, and/or (3) forbearing part of the principal. If these steps cannot reduce a homeowner's monthly payment to that affordable level, the borrower will receive an additional loan-by-loan review that will include all other options to prevent foreclosure.

While many lenders have used some combination of these SMP components up to now, the real benefit of the program will be the systematic and uniform approach that lenders will now apply to modifications. This is expected to streamline the process significantly.

According to Schwartz, SMP's consistent guidelines and standards will make it much easier and faster for homeowners to get the assistance they need. "This effort compliments those being made by other institutions and should provide homeowners with real confidence that the mortgage lending industry wants to help them avoid foreclosure," she said. "SMP will help stabilize the housing market."

#### ABOUT HOPE NOW

HOPE NOW is the alliance of counselors, mortgage market participants, and mortgage servicers that is working to help as many homeowners as possible avoid foreclosure and stay in their homes. For more information, including a full list of members, go to [www.hopenow.com](http://www.hopenow.com)

HOPE NOW coordinates a nationwide campaign to reach homeowners who may be at risk of losing their homes. So far, HOPE NOW has sent almost 1.9 million letters. About 17 percent of homeowners receiving the HOPE NOW-coordinated letters have contacted their servicer, 6 times more than the routine 2-3 percent response rate servicers receive when they send their own mailings.

In the past nine months, HOPE NOW has connected thousands of homeowners with their lender and/or a HUD-certified housing counselor at workshops in more than 20 cities. Additional workshops are being scheduled around the country.

In addition, HOPE NOW members have agreed to make substantial additional efforts to contact homeowners whose mortgages will reset in the coming months and to further expedite the process used to determine how best to keep them in their homes.

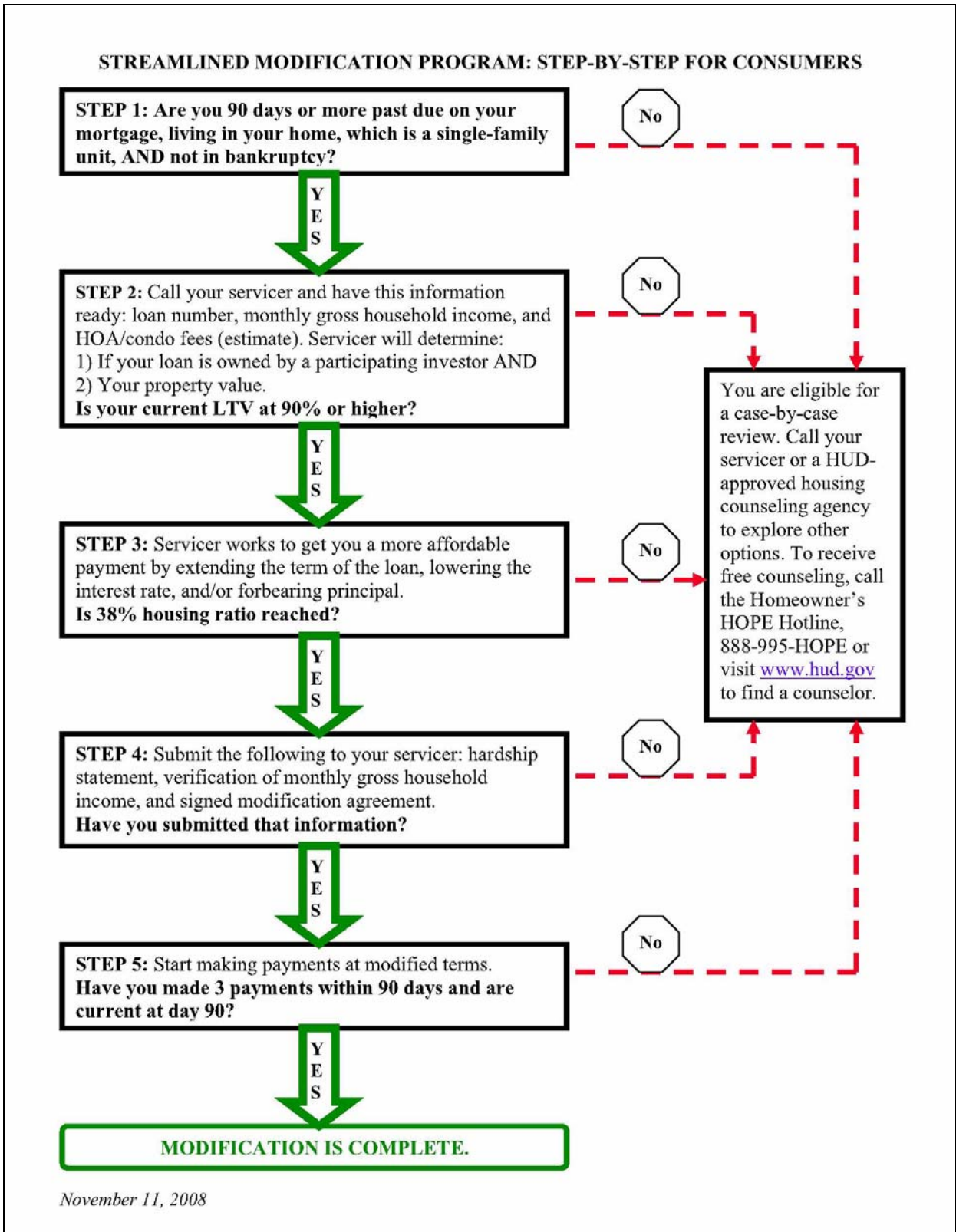
The Homeownership Preservation Foundation, a HOPE NOW member, operates the Homeowner's HOPE™ Hotline (888-995-HOPE™), which is available 24 hours a day, 7 days a week, and 365 days a year. The Homeowner's HOPE™ Hotline receives an average of more than 7,000 calls a day. There is no cost to homeowners for contacting a nonprofit advisor by calling 888-995-HOPE™.

###

**HOPE NOW: Streamlined Modification Program Fact Sheet**

<b>Start Date:</b>	December 15, 2008.
<b>Goal of SMP:</b>	Help the most at-risk borrowers stay in their homes through a streamlined process to establish an affordable monthly housing payment. The goal is to reach a monthly housing payment (which includes capitalized past due payments, principal, interest, taxes, insurance and HOA/condo fees) that is no more than 38% of the borrower's monthly gross household income.
<b>How SMP Works:</b>	Participating servicers work with eligible qualified borrowers to reach a more affordable mortgage payment through extending the term of the loan, lowering the interest rate, and/or forbearing principal. All outstanding late fees are waived.
<b>Eligible Borrowers:</b>	90 days or more past due on mortgage, can be in foreclosure, must not be in bankruptcy, owns and occupies the property, and the property is a single family residence.
<b>90% or Higher LTV:</b>	Borrower's current loan-to-value ratio must be 90% or higher. The property value will be determined by the servicer, Fannie Mae or Freddie Mac, depending on ownership of the loan.
<b>Mandatory Escrow:</b>	Escrows for real estate taxes and homeowners' insurance must be set up under this program if they are not currently escrowed.
<b>Required Documentation:</b>	A hardship statement, verification of monthly gross household income, and a signed modification agreement. The homeowner must make the first payment at the modified terms when he or she submits these documents.
<b>3 Months of Payments:</b>	For modification to be complete, borrower must make 3 payments within 90 days at the new modified payment level and be current at day 90.
<b>Counseling Encouraged:</b>	Participating servicers and investors encourage borrowers to seek housing counseling at HUD-approved housing counseling agencies. They can receive free counseling by calling the Homeowner's HOPE Hotline™, 888-995-HOPE or visit <a href="http://www.hud.gov">www.hud.gov</a> to find a counselor.
<b>Participating Investors:</b>	Fannie Mae, Freddie Mac, and majority of HOPE NOW portfolio lenders/servicers.
<b>Reaching Borrowers:</b>	Participating servicers will send letters to eligible borrowers. Borrowers may also call their servicer to see if they qualify.
<b>Reaching Servicers:</b>	Servicers are encouraged to dedicate separate toll-free numbers and faxes for borrowers interested in SMP. When established, those numbers will be publicized by HOPE NOW and participating investors and servicers.
<b>Reporting:</b>	Participating servicers are required to report on implementation and success of SMP. HOPE NOW will release data on this program on an ongoing basis.
<b>Additional Tool:</b>	SMP is an additional tool to assist homeowners avoid foreclosure. It is compatible with and does not replace other on-going efforts by servicers and investors. If a borrower does not qualify for SMP, they are eligible for a case-by-case review.

November 11, 2008



## ***What is Obama's Plan?***

Obama's new economic stimulus plan is in full affect and many short sale investors are wondering how this will change their business. The "American Recovery and Reinvestment Act of 2009" was designed to stabilize the housing market and restore consumer confidence in homeownership. That's why they increased the tax credit for first-time homebuyers to \$8,000 and eliminated the repayment provision. This means that more potential buyers are motivated to buy houses now.

The more drastic changes are contained in what is referred to as the "Homeowner Affordability and Stability Plan."

Here are the highlights and what role they play in our short sale endeavors:

1. The Home Affordable Refinance Program. Under this program, eligible borrowers may refinance loans that Fannie Mae or Freddie Mac (the government sponsored enterprises, or GSEs) own or guarantee. The program can help homeowner-occupants who are current in making loan payments and have loan-to-value ratios (LTVs) above 80 percent but not more than 105 percent. Cash out refinancing is not permitted. The program ends in June 2010.

How does this affect our short sale people?

Well, first of all, most of the people calling you to get rid of their house don't WANT their property. They don't want to stay in their property. They don't want anything to do with it. So they will need your short sale expertise regardless of the above provisions. But, as you can see, the ONLY ones eligible for this subsidy are those that fit within those stringent guidelines. Most of the people you will be dealing with will not be eligible to get a better loan and therefore will have to work out a loan modification. See the next section for more details on this option.

2. The Home Affordable Modification Program. This is a \$75 billion program with lender, servicer, investor, and borrower incentives to make it work. The program is limited to homeowner-occupants who are at risk of default or already in default and who have loans at or below the maximum GSE conforming loan limit of \$729,750 (or higher for 2-, 3-, and 4-unit properties). Loan modifications under the program may be made until December 31, 2012.

Our experiences have taught us that most people who try to work out a repayment plan end up in foreclosure anyway. The percentages are staggering. As a professional, you know better than the homeowner that in most cases, they will need your help anyway down the road

3. More Support for the GSE's. President Obama also announced more support for the GSE's, including doubling of potential Treasury investment from \$100 billion to \$200 billion for each GSE, to maintain their positive net worth. The plan also raises the cap on mortgages that the GSE's may hold in their portfolios by \$50 billion to \$900 billion.

GSE's are government sponsored entities. This "bail-out" of failed government sponsored mortgage companies has yet to change much in the short sale world from

our perspective. Lenders are still using the same procedures as they always have to approve short sales. How will this change the landscape of short sales in the next few years? Based on the past few months, it will produce little to no changes in the short sale approval process. My finger is extremely close to the short sale pulse and the backend bailing out of failed lenders has yet to adjust the standard short sale approval process that has been in place for decades.

In conclusion, there is one part of the plan that could affect some short sale investors in a negative manner. And that is the extension of the high loan limits for FHA, Fannie Mae and Freddie Mac. This means that more buyers have the ability to use GSE loans. The issue is that when a new buyer uses a GSE as their lender, a hidden requirement in the loan guidelines states that the seller must be on title for 90 days prior to being able to sell the property to a new buyer.

Beware of the “lost note” or “lost mortgage” (deed of trust, security deed, etc.) position taken by foreclosing party in securitized mortgage foreclosure cases:

To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and the mortgage note, ownership of the mortgage, and the defendant’s default in payment.

A recurring pattern in mortgage foreclosure cases involving securitized mortgage transactions is a statement in the lawsuit filed by the party seeking to foreclose that either the Note or the Mortgage (also called, depending your state, a Deed of Trust, Security Deed, or something else) was “lost”, but that copies are attached to the lawsuit.

In such a case, it is more likely than not that nothing was “lost” at all, and that the party seeking to foreclose is simply trying to take advantage of state laws which permit the filing of a foreclosure action with a “lost” Note or Mortgage when in fact such a statute may not apply as the Note and/or Mortgage were never “lost”, but were sold, assigned, or transferred more than once to different persons or entities.

A securitized mortgage transaction, as has been previously discussed in other articles, involves a situation where, as part of the creation of a special investment vehicle or security, the original “lender” has sold off the Note and/or Mortgage either as a whole or in pieces to others such as a mortgage aggregator, who then sells these bundles of mortgages to an investment banker who uses these as collateral for a mortgage-backed security.

In this sale and assignment process, there are often many links in the chain between the original lender and the ultimate alleged owner of the Note or Mortgage. During the course of sale and assignment, the original Notes and Mortgages have either been destroyed or cannot be located, as the down line sale of what wound up being bundles of hundreds or perhaps thousands of mortgages was accomplished through loan summaries, not a physical transfer of the actual mortgage and loan documents.

In several cases we have seen, the original lender has admitted, in writing, that the original loan documents were sold off to an “investor”, but the original lender does not know who this “investor” is or where the original documents are.

Now here comes some bank as *Indenture Trustee for the Registered Security Holders of Collateralized Mortgage Obligation Loan Trust Series XYZ-2006* (or some other equally complicated name) seeking to foreclose on your mortgage by filing a lawsuit where they claim that the original Note and/or Mortgage is or was “lost”.

This is most likely an absolute falsehood in cases of this type, and for the attorney to represent to the court, in a written lawsuit, that the originals of the Note and/or Mortgage were “lost” is not only fraudulent itself but also constitutes a fraudulent attempt to manufacture a foreclosure case which could not be legally brought in the first instance.

At least one Judge in the State of New York has addressed this problem and cited case law as to the burden of the party seeking to foreclose to demonstrate that they have the legal right to do so, and absent such proof, a foreclosure action may not be brought. The legal premises of the New York cases are common in other states.

The Judge in the matter of Wells Fargo Bank, N.A. as Trustee, etc. v. Farmer cancelled and voided a series of real estate transactions as to property located in Brooklyn, New York including several Assignments of Mortgage, resulting in the termination of the foreclosure. In the decision, the Judge set forth the well-established law that one seeking to foreclose on a mortgage must demonstrate and prove title to and a legal or equitable interest in the mortgage, and must also establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the borrower’s default in payment.

The decision rested on case law, which provides that foreclosure of a mortgage may not be brought by one who has no title to the mortgage, and absent transfer of the debt that the assignment of the mortgage is a nullity. The decision also set forth the law that a party seeking to foreclose on a mortgage in which he has no legal or equitable interest is a lawsuit without foundation in law or fact.

### **How to find out if the loan is held by Fannie Mae or Freddie Mac**

Most borrowers don’t realize that it is very common for their lender to sell the loan note for their property to a “secondary” market. The nation’s two largest mortgage finance lenders are government sponsored enterprises (GSEs) and between the two of them they are responsible for an estimated 90% of the “Secondary” market.

There are a couple of ways to find out if this is the case.

First, check the mortgage coupon. They sometimes include that information.

Or you can contact Fannie Mae or Freddie Mac and ask.

You can call Fannie Mae at 1-800-7FANNIE (8AM – 8PM EST) or fill out a short online request form at <http://www.fanniemae.com/homepath/homeaffordable.html>.

You can call Freddie Mac at 1-800-FREDDIE (8AM – 8PM EST) or fill out the online form at [freddiemac.com/corporate/](http://freddiemac.com/corporate/)

This booklet includes a comprehensive list of lenders and their contact information, so you can give them a call too, to find out. x



## The Secondary Market

The real estate mortgage market actually consists of two separate sections: the Primary Market and the Secondary Market. The primary market is where loans are originated; mortgage lenders and banks loan money to borrowers for the purpose of financing real estate transactions. These lenders make their profit on the fees that they charge to fund the loans. They then bundle these loan notes together in a package and sell them in the secondary market.

The secondary market, therefore, manages mortgages that were originated in the primary market. The secondary market consists of investors, both public and private, who buy the mortgage notes. This allows the mortgage lenders to replenish the cash reserves, so that they can originate more mortgages to more consumers. The investors profit from the interest that the mortgages charge the borrowers.

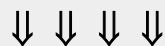
In an article Profit from Mortgage Debt with MBS by George D. Lambert for Investopedia written in 2006, Lambert references Research Quarterly:

“In its May 2006 edition of Research Quarterly, the Bond Market Association estimated that mortgage debt represents \$6.1 trillion of the \$25.9 trillion bond market. As more people buy their first homes, move into bigger spaces, or purchase vacation homes, this borrowing is bound to expand. This situation creates an opportunity for astute investors, who can use mortgaged-backed securities (MBS) to own a piece of this debt. In this article, we'll show you how you can use MBS to complement your other fixed-income assets.”

### How MBS Are Formed

MBS are debt obligations purchased from banks, [mortgage](#) companies, credit unions and other [financial](#) institutions and then assembled into pools by a governmental, quasi-governmental, or private entity. These entities then sell the securities to investors, as illustrated below:

Real estate buyers borrow from financial institutions.



Financial institutions sell mortgages to MBS entities.



MBS entities form mortgage pools.



Individuals invest in mortgage pools.

## Types of MBS

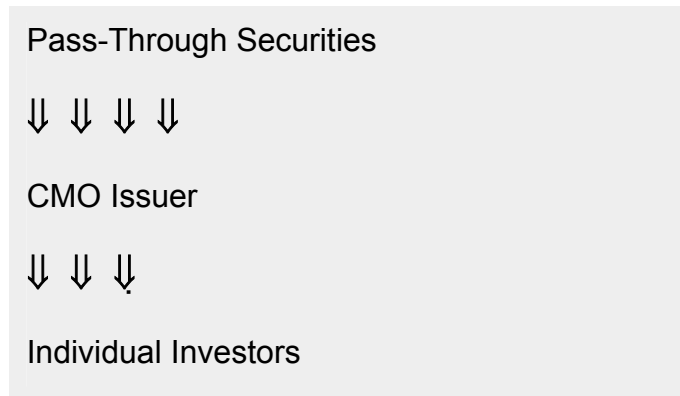
### *Pass-Through*

The [pass-through](#) or participation certificate represents direct ownership in a pool of mortgages. You will get a [pro-rata](#) share of all principal and interest payments made into the pool as the issuer receives monthly payments from borrowers. The mortgage pool will usually have a five-to-30-year maturity. However, the cash flow can change from month to month depending on how many mortgages are paid off early - this is where the [prepayment risk](#) lies.

When current [interest rates](#) decline, borrowers might [refinance](#) and prepay their loans. Investors then must try to find yields similar to their original investments in a lower, current-interest rate environment. Conversely, investors can face [interest rate risks](#) when current interest rates go up. Borrowers will stay with their loans, leaving investors stuck with the lower yields in a rising current-interest rate environment.

### *Collateralized Mortgage Obligations (CMO)*

[Collateralized mortgage obligations](#) (CMOs) are pools of pass-through mortgages. The formation of a CMO is illustrated below:



There are several types of CMOs that are designed to reduce investors' prepayment risk, but the two most common are:

### *Sequential Pay CMOs*

In a [sequential pay CMO](#), CMO issuers will distribute cash flow to bondholders from a series of classes, called [tranches](#). Each tranche holds mortgage-backed securities with similar maturity and [cash flow](#) patterns. Each tranche is different from the others within the CMO. For example, a CMO might have four tranches with mortgages that average two, five, seven and 20 years each.

When the mortgage payments come in, the CMO issuer will first pay the stated coupon [interest rate](#) to the bondholders in each tranche. Scheduled and unscheduled principal



payments will go first to the investors in the first tranches. Once they are paid off, investors in later tranches will receive principal payments.

The concept is to transfer the prepayment risk from one tranche to another. Some CMOs may have 50 or more interdependent tranches. Therefore, you should understand the characteristics of the other tranches in the CMO before you invest.

#### Planned Amortization Class (PAC) Tranche

[PAC tranches](#) use the [sinking fund](#) concept to help investors reduce prepayment risk and receive a more stable cash flow. A [companion bond](#) is established to absorb excess principal as mortgages are paid off early.

Then, with income from two sources (the PAC and the companion bond) investors have a better chance of receiving payments over the original maturity [schedule](#). (For more insight, see [What is a sinking fund?](#))

#### Z-Tranche

[Z-tranches](#) are also known as accrual bonds or accretion bond tranches. During the [accrual](#) period, interest is not paid to investors. Instead, the principal increases at a compound rate. This eliminates investors' risk of having to reinvest at lower yields if current market rates decline.

After prior tranches are paid off, Z-tranche holders will receive [coupon](#) payments based on the bond's higher principal balance. Plus, they'll get any principal prepayments from the underlying mortgages.

Because the interest credited during the accrual period is taxable - even though investors don't actually receive it - Z-tranches may be better suited for [tax-deferred accounts](#). (For more insight, see [What is a tranche?](#))

#### Stripped Mortgage Securities

[Strips](#) are MBS that pay investors principal only (PO) or interest only (IO). Strips are created from MBS, or they may be tranches in a CMO.

##### Principal Only (PO)

Investors pay a deeply-discounted price for the PO and receive principal payments from the underlying mortgages. The market value of a PO can fluctuate widely based on current interest rates. As interest rates drop, prepayments can increase, and the PO's value might rise. On the other hand, when current rates go up and prepayments decline, the PO could drop in value.

##### Interest Only (IO)

An IO strictly pays interest that is based on the amount of outstanding principal. As the mortgages [amortize](#) and prepayments reduce the principal balance, the IO's cash flow declines. The IO's value fluctuates opposite a PO's in that as current interest rates

drop and prepayments increase, the income can go down. And when current interest rates rise, investors are more likely to receive interest payments over a longer period of time, thereby increasing the IO's market value.

### Safety Ratings

Fitch Ratings provides [credit ratings](#) as well as coupon rates and maturity dates for MBS. (For more information, check out [The Fitch Ratings Residential Mortgage Backed Securities \(RMBS\) Group](#).)

### MBS Issuers

You can buy MBS from several different issuers:

#### *Independent Firms*

Investment banks, financial institutions and homebuilders issue private-label, mortgage-backed securities. Their creditworthiness and safety rating may be much lower than those of government agencies and government-sponsored enterprises.

#### *Federal Home Loan Mortgage Corporation (Freddie Mac)*

[Freddie Mac](#) is a federally-regulated, government-sponsored enterprise that purchases mortgages from lenders across the country. It then repackages them into securities that can be sold to investors in a wide variety of forms. Freddie Macs are not backed by the U.S. government, but the corporation has special authority to borrow from the [U.S. Treasury](#). (For more information, visit the [Freddie Mac website](#).)

#### *Federal National Mortgage Association (Fannie Mae)*

[Fannie Mae](#) is a shareholder-owned company that is actively traded (symbol FNM) on the [New York Stock Exchange](#) and is part of the [S&P 500 Index](#). It receives no government funding or backing. As far as safety goes, Fannie Maes are backed by the corporation's financial health and not by the U.S. government. (For more information, check out the [Fannie Mae website](#).)

#### *Government National Mortgage Association (Ginnie Mae)*

[Ginnie Maes](#) are the only MBS that are backed by the full faith and credit of the U.S. government. They mainly consist of loans insured by the Federal Housing Administration or guaranteed by the Veterans Administration. (For more information, visit the [Ginnie Mae website](#).)

### Mutual Funds

If you like the idea of profiting from an increase in the growth of mortgages but are not up to researching all the different types of MBS, you might be more comfortable with mortgage [mutual funds](#). There are funds that invest in only one type of MBS, such as Ginnie Maes, while there are others that incorporate various types of MBS within their

other government bond holdings.

Besides greater diversification of loans, mutual funds can reinvest all returns of principal in other MBS. This lets investors receive yields that change with current rates and will reduce prepayment and interest rate risks. (For additional reading, see [\*Mutual Fund Basics\*](#) and [\*Advantages Of Mutual Funds\*](#).)

## Servicer Organization Charts

You need to understand how complex the lender culture is. It is built tier upon tier with each level exacting its own protocols before any paperwork can move to the next level. Within each level are hundreds of people, any of which you might get on the phone at any time, and none of whom talk to each other.

Yes, they often have a central database where information is logged, but you will likely end up talking to multiple people, explaining everything from scratch each time, and each person can give you slightly different instructions. One person may be find with the title company statement, another insists on the HUD-1 and delays the paperwork (or in some cases shreds the whole packet as incomplete) until every possible form is collected.

The negotiating skill and patience of the Real Estate agent is never so tested as it is when packaging a short sale to the lender. To get an idea of the organizational labyrinth typical of major lenders, click open these links. It is like looking at a whole new dimension.

Litton Loan Servicing

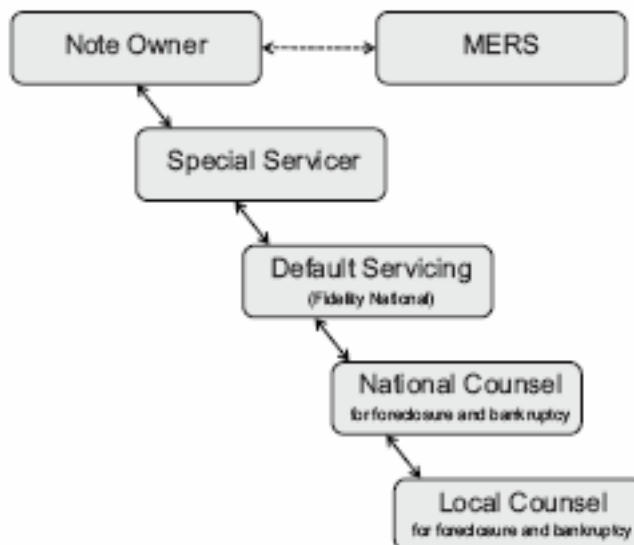
<https://www.littonloan.com/pdf/MoodysJan2006FINAL.pdf>

SEC Info - Merrill Lynch Mortgage Investors Trust/Series 2007

<http://www.secinfo.com/dsvr4.ueDs.htm>

## Lenders Without Standing

Servicing in Foreclosure or Bankruptcy

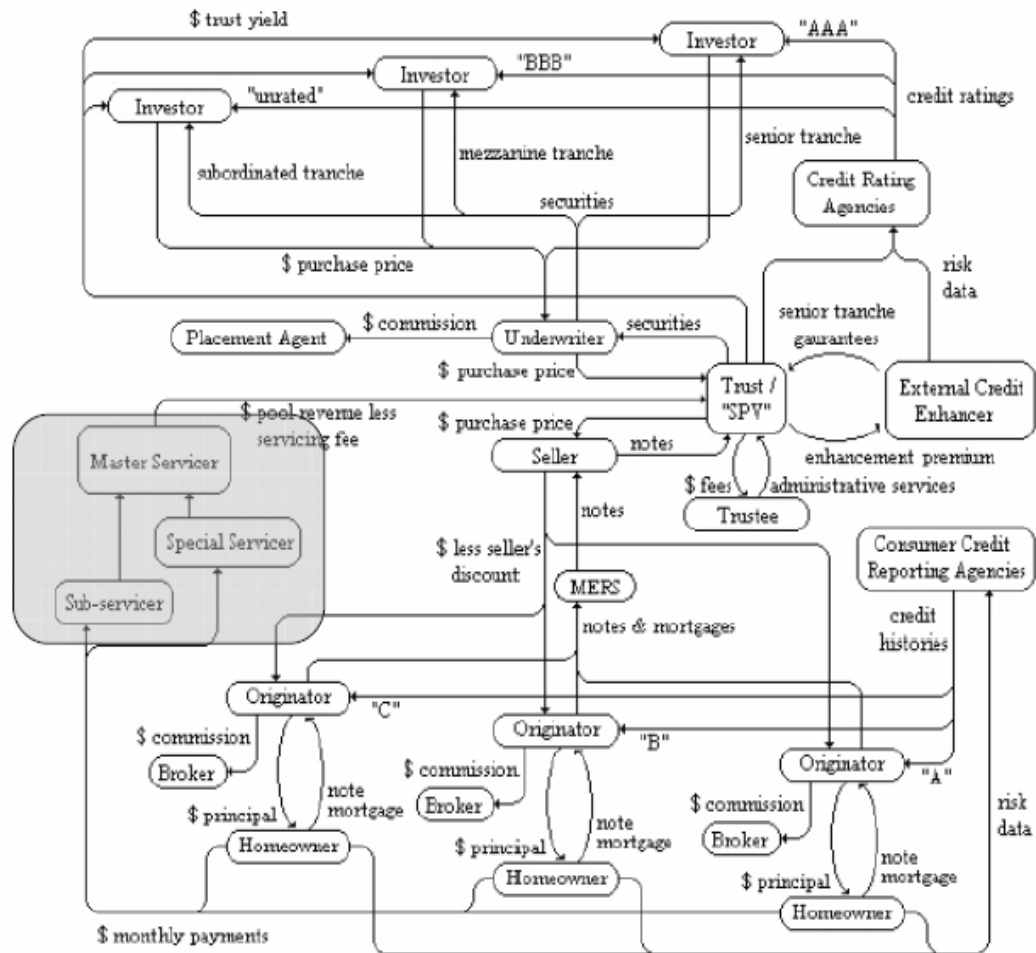


Charts ©2009  
Katherine Porter,  
University of  
Iowa, School of

## ***Lenders Without Standing***

# Mysterious Mortgage Debt

Figure A -- Subprime Home Mortgage Securitization Structure



Charts ©2009  
Katherine Porter,  
University of  
Iowa, School of

## ***Property Flipping: Legal or Illegal?***

“Property flipping generally refers to purchasing existing property with the intention of immediately reselling the property for a profit. It is not illegal per se. When however, an immediate resale is accompanied by acts of fraud or misrepresentation, including but not limited to appraisals with inflated property values and other misleading or fraudulent documentation, it can result in fraud”. **Dec 2005 Newsletter FNMA assistant general counsel for regulatory policy**

We believe the likelihood of fraud or misrepresentation increases when the lender is not able to confirm that the property seller in a purchase money transaction (or the borrower in a refinance transaction) is the owner of the subject property based on publicly available information. Therefore, we are modifying our policy to require the lender to confirm and document in the mortgage file that the property seller in a purchase money transaction (or the borrower in a refinance transaction) is the owner of the subject property when a new appraisal is required.

Examples of acceptable documentation include, but are not limited to, the appraiser's analysis and conclusions in the appraisal report, a copy of a recorded deed or mortgage, a recent property tax bill or tax assessment notice, a title report, a title commitment or binder, or a property sale history report.

This documentation is especially important for transactions involving an assignment (or sale) of a contract for sale and/or “back-to-back,” simultaneous,” or “double” transaction closings (or double escrows) to support the property acquisition, financing, and closing. **Fannie Mae Single Family/2007 Selling Guide XI, 102.03: Property Flipping (11/08/04)**

Property flipping is defined as the purchase of an existing property with the intention of quickly reselling the subject property for a considerable profit. For the purposes of this guideline, a “quick sale,” is defined as any property resold six (6) months or less from the date of acquisition by the seller. The underwriter has discretion to require any and/or all of the provisions contained in this topic (regardless of the time frame) in order to substantiate the appraised value. Property flipping, in and of itself, is not illegal; however, when an immediate resale is accompanied by acts of fraud or misrepresentation (appraisals with inflated property values or other misleading or fraudulent documentation), it can result in a predatory transaction.

For the purposes of this guideline, “assignments of a contract for sale” are considered to fall under the definition of a Property Flip. These requirements apply to conventional loans only. For government loans, refer to FHA and VA guidelines for specific requirements. The property seller must be the owner of record. Examples of acceptable documentation, to be placed in the loan file, include: the appraiser's analysis and conclusions in the appraisal report, a copy of the recorded deed or mortgage, a recent property tax bill or tax assessment notice, a title report, a title commitment or binder, or a property sale history report. This documentation is especially important for transactions involving “back to back,” “simultaneous closings,” or “double” transaction closings to support the property acquisition, financing and closing. **Sun Trust Appraisal Guidelines April 17, 2009**

### **Equitable transfer of title**

**When a contract is affected for the sale or transfer of property that property will operate so as to transfer equitable title to the property from the original owner to other contracting party. The transfer of equitable title takes effect by means of a constructive trust. The rationale behind the operation of this principal is as follows: Once a contract is formally created, the contracting parties acquire the right of specific performance to compel the other party to perform its part of the bargain. On that basis, each party has a right in equity of specific performance and further that it is said that the party so entitled acquires a right to the entire equitable interest in that property. Therefore, once such a binding contract has been formed for the transfer of the property it is said that equitable title passes to the buyer automatically on the creation of that contract. This automatic vesting of the equitable interest is said to arise due to the equitable principal that "equity looks upon that which should be done as done" therefore equity considers that because the contract requires transfer of title that transfer of title must be deemed to have taken place automatically. Equity and trusts by Alastair Hudson 2009**

### **Disclosure**

The transfer of title sufficient to satisfy the law of equity and most importantly to agents, the regulations that control their professional conduct requires that there be an absence of any fraud upon the short selling homeowner. This requires a careful analysis of the agent to all laws and regulations of state law and the regulations of the multiple listing services to which the agent belongs. At minimum the agent must disclose to the homeowner the following:

1. The exact nature of his/her duty to the seller;
2. Compensation from all sources and his/her expectation to make a profit on any resale;
3. Effects of the sale to the sellers credit;
4. Effects of the sale on possible tax liability to the seller;
5. Advising the seller to contact an attorney

**AGENTS MUST CONSULT AN ATTORNEY OR THEIR BROKER REGARDING THIS PRACTICE AND CANNOT RELY UPON THIS MANUAL FOR ANY LEGAL ADVICE.**

### **The Reason for the Equitable Transfer--- Seasoning**

As can be seen in the underwriting guidelines referred to above, the new lender requires the title to the property be "seasoned." In other words, the property deed must already be in the investor's name and recorded at the County land records for some period of time before they will agree to lend on the property. And, if the investor has not yet gone to settlement with the seller, how can he satisfy this requirement?

### **Using an Equitable Transfer for Title Seasoning**

Investors often find lenders' requirements for title seasoning an obstacle to selling their properties. Holding costs and declining market value can eat into profits. Leaving a house vacant can make it a target for vandalism.

So... What is title seasoning?

This refers to the length of time a person's name has been on the title document recorded on a piece of real estate. Lenders' underwriting guidelines vary as to how long a person's name must be on title for a purchaser to buy an investor's home or for the investor to refinance the property and cover his costs to rehab it.

Chain of Title refers to the sequence of historical transfers of title to a property. The "chain" runs from the present owner back to the original owner of the property. A "break in the chain of title" occurs when a conveyance is missing or there are duplicate conveyances out from the same owner. Title is continually vested in the Trustee from the Seller until it is finally conveyed from the Trustee to the end buyer. Assigning the beneficial ownership of the trust for value does nothing to affect the chain whatsoever. Upon assignment, the investor acquires an interest in the Land Trust, not the property itself.

I have had some questions from agents as to what "Seasoning" is and how it will affect them in a deal. So, here it is an explanation in a nutshell of what we're dealing.

**"SEASONING"**

Seasoning refers to the length of time that the Seller has owned the property. Homeowners (home buyers) CANNOT obtain a "Conforming Mortgage" if they are putting less than 20% down and the Seller hasn't owned the property for at least 90 days.

**"CONFORMING MORTGAGE":**

This is a loan that complies with ALL the relevant underwriting guidance provided by HUD. Most Low-Income & First Time home buyers obtain FHA, VA, Freddie Mac, Fannie Mae, government backed loans, which are protected by PMI (private mortgage insurance) provided by HUD.

An equitable transfer may be the solution to both these problems.

A type of equitable transfer, a land trust is simply a private agreement whereby the property is placed into a trust and a named trustee is empowered by the trust documents to sign over deed, but the "beneficiary" is the one entitled to all the "benefits" of the property just as if that beneficiary were in title herself.

**Here's what an equitable transfer transaction would look like:**

Seller's bank has a mortgage against Seller's property for \$150,000.00, but agrees to accept \$100,000.00 as a short sale payoff;

Seller creates an equitable transfer naming herself as a beneficiary and records a deed at the land records placing the deed into the Trust;

Investor contracts with Seller to buy her "beneficial interest" in the Trust for \$100,000.00.

At the same time, Investor finds an end-buyer willing to pay \$125,000.00 for the property;

On the day of settlement, the Seller assigns her beneficial interest in the Trust to Investor, and the Investor gives Seller \$100,000.00 which, in turn, is paid to Seller's bank.

A few moments later, the end-buyer shows up for settlement and pays \$125,000.00 to Investor, and the trustee of the Trust executes a deed for the property to the end-buyer.



By using a land trust, the investor solves both problems mentioned above.

The end-buyer's lender doesn't question the transaction because there is no deed that needs to be recorded at the County land records placing the Investor in title.

The Investor gained title to the property simply by purchasing the beneficial interest in the Trust, and this type of purchase does not require a deed recordation.

Thus, the new lender will only expect to see a deed from the Trust to the end-buyer.

In essence, the Investor becomes "invisible" to the lender and this eliminates any seasoning issues.

**A recorded option to purchase may accomplish this equitable transfer as well.** This practice must be used in connection with the legitimate business practice of buying real estate at a wholesale or discounted price and selling it at fair market value.

Although this is an advanced investor strategy and only to be used under the guidance of a competent real estate attorney, this may be the best way to get short transactions done in today's real estate market.

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**OPTION PURCHASE AGREEMENT**

**1. DESCRIPTION OF PARTIES**

SELLER 1: \_\_\_\_\_ BUYER: \_\_\_\_\_

SELLER 2: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

\_\_\_\_\_: \_\_\_\_\_

PHONE: \_\_\_\_\_ PHONE: \_\_\_\_\_

**2. DESCRIPTION OF PROPERTY BEING SOLD**

STREET ADDRESS CITY/STATE ZIP: \_\_\_\_\_

\_\_\_\_\_  
Parcel #: \_\_\_\_\_

**3. PURCHASE PRICE**

- A. The Purchase Price is \$\_\_\_\_\_ or the total purchase will be the negotiated balances of all liens, mortgages and all title, escrow and other closing costs.
- B. SELLER understands that this transaction is a "short sale" and is contingent upon acceptance of sort pay offers that are satisfactory to the Buyer as payment in full by all current lienholders and that the Seller will receive NO funds at Closing. The Option period shall be reasonably extended for the purpose of obtaining and satisfactory approval(s) but for not more than an additional 180 days. If said satisfactory short pay offers cannot be obtained, then Buyer may cancel the Option and forfeit the deposit.
- C. The parties acknowledge that the Purchase Price has been initially based on an estimated negotiated debt at Closing. During negotiation, there may be several different preliminary offers/contracts with different estimated Purchase Prices submitted by Buyer to the Lender(s) until a final discounted figure is accepted by the Lender(s).
- D. Accordingly, Seller agrees to authorize Buyer to prepare various negotiating offers with various prices without obtaining Seller's signature or approval of each and every negotiating offer.

**4. FINANCING AND INSPECTION PERIOD** The Property is being sold "As Is" with regard to the physical condition of the Property and any improvements. Buyer shall have \_\_\_\_\_ days or the term of the Option period (the "Financing and Inspection Period") following the Commencement Date to inspect and evaluate the Property. Seller shall grant to the Buyer reasonable access to the Property for purposes of inspection and evaluation (such as environmental testing, "home inspection" and "BPO" or appraisals, etc.). If, prior to the end of the Financing and Inspection Period Buyer gives notice to Seller that Buyer elects to cancel this Contract (the "Cancellation Notice"), this Contract shall terminate. If Buyer does not deliver the Cancellation Notice, the Contract shall continue.

\_\_\_\_\_ This transaction is contingent upon Buyer obtaining acceptable financing;

OR

\_\_\_\_\_ This is a cash transaction/

**5. REPRESENTATIONS AND WARRANTIES** To induce the Buyer to enter into this Agreement, the Seller makes the following representations, warranties, and covenants:

- A. The Property is being sold "As Is" with regard to the physical conditions of any improvements. Seller is giving no warranties to the Buyer.
- B. Seller has good and marketable fee simple title to the Property, free and clear of all liens, property taxes, encumbrances, and restrictions, except for those restrictions appearing of record, taxes for year of Closing, and encumbrances that will be cleared prior to or at the Closing, usually out of the Seller's proceeds from Purchase Price.
- C. There are no condemnations or similar proceedings affecting any part of the Property and no such proceeding shall be pending on the Closing Date. To the best of the Seller's knowledge, no such condemnations or other proceedings are threatened or planned.
- D. There are no service contracts or agreements relating to the operation, maintenance, or security of the property under which the Seller is bound and will survive Closing.
- E. The Seller is not subject to any commitment, obligation, or agreement, including but not limited to, any Right of First Refusal or Option To Purchase, granted to a third party, which would or could prevent the Seller from completing the sale of the Property to the Buyer as contemplated by this Agreement.
- F. Seller does \_\_\_\_/does not \_\_\_\_ have sole and exclusive possession of the Property and will \_\_\_\_/will not \_\_\_\_ be able to deliver possession of the Property free of all leases on the Closing Date.
- G. Seller understands that this transaction is a short sale and is contingent upon acceptance of short pay offers from some or all of the current lienholders that MUST be satisfactory to the Buyer and that the Seller will receive NO funds at Closing.
- H. Seller hereby grants the Buyer and/or their representatives all of the necessary rights to list for sale, market, negotiate and enter into a contract to sell or lease the property to a third party. Buyer intends to promptly resell the property for a profit.
- I. Seller grants Buyer the additional following rights, but not obligations, as to access or maintenance of the subject property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. CONDITIONS PRECEDENT** The obligations of the Buyer to close this transaction are subject to a) the Buyer having given Notice to Purchase to the Seller; and b) that all representations and warranties of the Seller shall be true and correct as of the Closing Date as such representations and warranties were the date they were being made. In the event that any of said conditions are not fulfilled on or as of the Closing Date, and notwithstanding anything to the contrary in this Agreement, the Buyer shall have the right to terminate this Agreement whereupon all parties shall be relieved of any further obligations hereunder.

**7. CLEAR TITLE**

- A. Seller shall convey a marketable title, subject only to liens, encumbrances, exceptions, or qualifications set forth in this Contract and those which shall be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of the State Bar and in accordance with State Law.
- B. If the Buyer discovers that the title is defective, the Buyer shall notify the Seller in writing specifying the defect(s). If said defect(s) render the title unmarketable or uninsurable, the Seller will have 120 days from receipt of notice within which to remove said defect(s). The option period shall also be extended up to 120 days to allow for said removal. If Seller is unsuccessful in removing them within said time, the Buyer shall have the option of either accepting the title as it then is or terminating this Agreement and thereupon the Seller shall

**8. GOVERNING LAW** In the event of any dispute, the laws of the State of \_\_\_\_\_ and the County of \_\_\_\_\_ shall apply.

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. DO NOT SIGN IF THERE ARE BLANK SPACES NOT FILLED IN. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.**

**ACCEPTANCE:** Seller accepts the above offer and irrevocably instructs the Escrow Agent to pay from Seller's escrow funds a commission of \_\_\_\_\_percent (\_\_\_\_%) of the Purchase Price to \_\_\_\_\_(Broker) at \_\_\_\_\_(Address) and \_\_\_\_\_percent (\_\_\_\_%) of the Purchase Price to \_\_\_\_\_(Broker) at \_\_\_\_\_ as the sole procuring agents in this transaction.

**SELLER(s)**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**BUYER(s)**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

## ***Who's On Your Team?***

When you start talking with those who are finding success in RE, one thing that each of them will tell you is "You Have to Network." You will need to know RE brokers, insurance brokers, mortgage brokers, bankers, appraisers, attorneys (business and closing agents), accountants, contractors and all the other people that have anything to do with a deal.

You don't want to wait until you need a professional to find them. You will not have time to conduct the interview and develop the relationships necessary to find someone that understands you and your business. How can they take care of your needs properly if they don't know you and your business?

Realtors have a duty under most state laws to exercise reasonable skill and care and to deal honestly and in good faith similar to Washington state statute RCW 18.86.030. Likewise there is the REALTOR® Code of Ethics specifically, Article 11 which provides that REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service or unless the facts are fully disclosed to the client.

Realtors have an ethical if not legal duty to "know their territory" both geographically and in terms of competence. Many do not embrace the risk of listing and selling "Short Sales" without engaging any outside expertise. There is a general desire to avoid liability based on Article 13 that states "REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires". There are legal and accounting ramifications to all short sales.

Most realtors do not work routinely with clients in financial distress. When they do, they find that such transactions require an entirely different skill set. They find themselves spending so much time mired in the problems of one client that they neglect other transactions. Meanwhile, the stakes are high, and there is little or no control over the players or the experience. This makes many realtors uncomfortable, wondering if they would be better off referring these clients to a specialist.

You must make relationships and network with Certified Public Accountants (CPA'S) and Attorneys both Real Estate and Bankruptcy to be able to render advice to your clients on an "as needed" basis. This not only keeps you out of the unauthorized practice of law or the rendering of tax advice but it reflects well on your professionalism and meets the homeowners' needs. This team can provide you with a knowledge base and a network of referrals that you could not generate on your own.

In summary, know what you don't know and find someone who knows it, and knows it well! You can't practice law! Find an attorney with the expertise you need. You aren't an accountant! Find an accountant or tax expert with the expertise you need.

## ***Why Become a Certified Short-Sale Specialist (CSSM)?***

Many real estate professionals are venturing into the world of short-sales. They are discovering that those sellers in a competitive market are looking for every advantage to ensure they achieve both the highest possible price, in the shortest time frame and to ultimately avoid foreclosure. Sellers are becoming more aware of the availability of selling short but are unaware how to start the process and how much more complex the process of selling short, compared to purchasing the home, can be.

There are many advantages to adding short sales marketing mix. Not the least of which are an increased number of listings that will sell faster and reduce the possibility of the seller being forced into foreclosure. One of the key ways of getting there is by effectively positioning yourself and your product in your market.

Adding short selling to your skill set is a great tool to assist you in accomplishing both of these objectives. Being able to offer short selling as a value added service for your clients is an excellent way of “positioning” yourself ahead of the competition. Sellers are looking for the agent that can show them how to overcome their two greatest fears: 1) Being Foreclosed Upon and 2) Taking forever to sell.

By being able to answer their questions regarding what is involved in a short sale and helping them to develop a short sale plan you have already given them a huge reason to list with you. And the more you exercise that skill set the greater your reputation will grow along with your referral network. Nothing generates referrals faster than success and selling your clients home during a difficult time.

With training in the art of short sales comes the ability to view the client's home through the eyes of the lender. You will be able to assist the seller in “positioning” their home to quickly sell and to put together a short-sale package that will be more easily approved by the lender. You will be able to point out the strengths of the offer and assist the lender in making a quick decision. As a short-sale professional you will be able to set your client's home above the competing short-sale packages by positioning it to target the lender's position.

## ***Basic Forms***



## ***Analysis of Short Sale Properties***

Property type: Residential\_\_\_\_\_ Commercial\_\_\_\_\_ Apartment\_\_\_\_\_

All Owners' Names:\_\_\_\_\_

Complete Address: \_\_\_\_\_

of Property \_\_\_\_\_

Does property have an auction date? No\_\_\_ Yes\_\_\_ When?\_\_\_\_\_

Is property listed? No\_\_\_ Yes\_\_\_ MLS#\_\_\_\_\_

Reason for selling?\_\_\_\_\_

Time frame for selling:\_\_\_\_\_

How many loans are on the property?\_\_\_\_\_

Who holds the first and what is balance?\_\_\_\_\_

Who holds the second and what is balance?\_\_\_\_\_

Any other liens?\_\_\_\_\_ or HOA dues\_\_\_\_\_

How many months behind on payments?\_\_\_\_\_ HOA?\_\_\_\_\_

Is seller in bankruptcy?\_\_\_\_\_

Is there a buyer?\_\_\_\_\_

Seller's market value?\_\_\_\_\_

How was that determined?\_\_\_\_\_

Agent's opinion of low market value as-is:\_\_\_\_\_

Condition?\_\_\_\_\_ Vacancy?\_\_\_\_\_

Repairs needed? What kind?\_\_\_\_\_

How much?\_\_\_\_\_

Describe location:\_\_\_\_\_

Other comments?\_\_\_\_\_

**BPO ID**  **Ref Num**  **Date**   
**Loan #**  **Vendor ID**   
**Borrower:**  **Vendor ID**   
**Address**  **Phone #**   
**Property Type**  **County**  **Legal**

**I. GENERAL MARKET CONDITIONS**

☐ Rural ☐ Suburban ☐ Urban  
 Current market conditions: ☐ Depressed ☐ Static ☐ Improving  
 Market price of this type property has: ☐ Decreased ☐ Been Stable ☐ Increased  % in past  months  
 Competing Listings in neighborhood: ☐ Over Supply ☐ Normal ☐ Approx #  
 Employment conditions: ☐ Declining ☐ Stable  
 Percentage of in neighborhood:  % Owners  % Tenants  
 Number of in neighborhood of:  BOARDED or VACANT homes  Competing listings that are REO/Corporate Owned

**Comments**

**II. SUBJECT MARKETABILITY**

☐ House ☐ Condo ☐ Townhouse ☐ Multi-family ☐ CO-OP  
 Range of values in neighborhood: \$  to \$  Predominant \$   
 Subject improvement is: ☐ Under Improved ☐ Appropriate ☐ Over Improved...for the neighborhood  
 Marketability of subject property is: ☐ Poor ☐ Fair ☐ Good  
 Normal marketing time in the the area is:  to  days

**Comments**

**Assesed Value**  **Year**  **Yearly Taxes**  **Tax Rate**  **Delinquent Taxes**

**Condo/Co-op Fees** \$  ☐ Under Rent Control?Y/N

Subject presently occupied? ☐ Owner ☐ Tenant ☐ Vacant

Suspect Damage? ☐ No ☐ Yes ☐ Earthquake

Last date subject sold:

Sale Price \$

Is it currently listed? ☐ No ☐ Yes

List Price  Listing Agent

Is it in a known flood zone? ☐ No ☐ Yes

Phone No.

**III. MARKET DATE (Market Value "As Is" MUST FALL WITHIN the range of indicated values of the comparables use below.)**

Item	Subject	Sale 1	Sale 2	Sale 3	Listing 1	Listing 2	Listing 3
Location/ Address							
Prox. To Subj.							
Orig. 1st Price							
Current price							
Sales price							
Price & GLA							
No of units							
Date Sale/ COM							
Sales or Financing Concessions							
Leasehd int.							
Location/View							

Item	Subject	Sale 1	Sale 2	Sale 3	Listing 1	Listing 2	Listing 3
Site size							
Land Value							
Design							
Age							
Condition							
Above Grade Room Count	TOT. BR BA	TOT. BR BA	TOT. BR BA	TOT. BR BA	TOT. BR BA	TOT. BR BA	TOT. BR BA
Gross area	s.f.	s.f.	s.f.	s.f.	s.f.	s.f.	s.f.
Basement							
Garage/Carpet							
Porches, etc.HOA Fees							
Indicated Value							
Comments							

<b>MARKET VALUE "AS IS"</b>		<b>ESTIMATED MARKETING TIME</b>		<b>FOR FC USE</b>	
\$ _____	LOW	to _____ days		Comments	
\$ _____	HIGH	Estimated time necessary to activate Market Value contract			
		<b>TYPICAL CLOSING PERIOD</b>			
		to _____ days		Reviewer's Initials:	
		The average time between contact acceptance and closing.			
Interior Inspection? <input type="checkbox"/> YES <input type="checkbox"/> NO		_____ Date Completed			
by: _____		Phone # _____		Signature _____	

The original form and supporting PHOTOGRAPHS of the subject property and street scenes MUST be sent to Funders Choice within 5 business days of your receipt.

## IV. REPAIRS AND IMPROVEMENTS:

#### REPAIRS REQUIRED BY LENDER

[illegible]

**ADDITIONAL REPAIRS WHICH WOULD IMPROVE MARKETABILITY:**

[illegible]**Total of ALL Recommended Repairs and Improvements**

\$

## Certified Short Sale Specialist Training

### V. MARKETING THE SUBJECT PROPERTY:

#### A. MARKETING CONSIDERATIONS:

Functional or economic obsolescence?

Positive or negative site influences?

Hazardous conditions?

Anticipated resale problems?

Indicate the type of financing property will qualify for: ☐ FHA ☐ VA ☐ Conventional

Indicate the most probable purchaser: ☐ First Time ☐ Move Up ☐ Empty Nester ☐ Investor

Identify what personal property is typically sold with the home (example: range, oven, refrigerator, etc.):

#### B. THE RELATIONSHIP OF TIME AND MONEY:

Number of COMPETING LISTINGS in subject's market area

Range of Current Listing Prices low high

Range of Days on Market least most

Have PRIOR listing periods been included in this DOM range? ☐ NO ☐ YES

Number of SALES within past year in subject's market area:

Range of these SALE Prices low high

Range of Days on Market least most

Have PRIOR listing periods been included in this DOM range? ☐ NO ☐ YES

These sales had FINAL listing prices that averaged % above the final sales price

These sales had ORIGINAL listing prices that averaged % above the final sales price

MARKET VALUE "AS REPAIRED"		SUGGESTED LIST "AS IS"		SUGGESTED LIST "AS IS"	
\$	LOW	\$	LOW	\$	LOW
\$	HIGH	\$	HIGH	\$	HIGH

#### C. OTHER MARKETING ISSUES

Actual or pending special assessments \$ for

Delinquent association dues for the subject Owner's association financially solvent? Y/N

Utilities covered in the association fee

Are common areas adequately maintained? Y/N

Estimated monthly rent? Typical Security Deposit? Typical Lease Term

Landlord paid utilities?

Should the subject property be marketed as ☐ Vacant or ☐ Tenant Occupied?

Probability of vandalism if property left vacant? ☐ Low ☐ Medium ☐ High

D. PROACTIVE MARKETING ACTIONS: What actions can be taken to maximize and enhance the subject's exposure? appropriate actions...

Please comment on

Make recommended repairs?

List in MLS?

Open Houses?

Advertising?

Canvassing?

Price Strategy?

Other?

At what point would it be useful to review the effectiveness of these marketing actions? Other comments?

## ***The Broker's Price Opinion Guidelines***

Dear Real Estate Professional:

Funder's Choice appreciates your commitment to providing us with quality products and we look forward to continuing our relationship. Like you, Funder's Choice strives to provide products that adhere to our clients' content and quality standards. Changing market conditions, together with changing client expectations, make this a challenging task. Ultimately, our goal is to receive a high quality product in a timely manner. That translates to no follow-up calls asking for revisions. Revision requests waste your time and ours. To that end, we have created the following CMA guidelines. Try to adhere to these guidelines. If you cannot, please explain why in the comment sections.

CMA must include exterior and interior subject photo (not MLS) as well as a street photo. Funder's Choice requires photographs of each room and any damaged areas.

If the subject property is a condominium or coop, each sale/listing address must include a unit number or floor location.

Comparable sale and listing photos are required (can be MLS photos).

Include a Location map.

Comparable sale transaction dates should be within one year (preferably six months) of the CMA date. If you are unable to conform to this request please comment as to why.

Proximity of all sales and listings to subject property should be accurate (i.e. not all 1 mile). The following sale/listing distances are preferred. Urban properties < 1 Mile, Suburban properties < 2 Miles, Rural properties < 20 Miles. Give an explanation in Comments section if unable to meet the aforementioned criteria.

Avoid similar input ("across the grid") for all sales and listings. For example, the GLA for all sales is 1,000 square feet.

At least two sales and two listings should have the same number of units as the subject property (i.e. duplex, 3-family).

At least two sales and two listings should have a similar design/style or number of floors as the subject.

The condition rating of the subject property and sales/listings is extremely important. Please use the following guide for rating improvements in poor to fair condition:

**Poor Condition (Worn Out):** Repair and overhaul is needed on painted surfaces, roofing, plumbing and heating. There are numerous functional inadequacies and substandard utilities, etc. Excessive deferred maintenance and abuse, limited value in use, approaching abandonment or major reconstruction; reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age.

**Fair Condition (Badly Worn):** Significant repair is needed. Many items need refinishing or overhauling and deferred maintenance is obvious. There is inadequate building utility and services all shortening the life expectancy and increasing the effective age.

**Average Condition:** There is some evidence of deferred maintenance and normal obsolescence with age in that a few minor repairs are needed, along with some refinishing.

All major components are still functional and contributing to an extended life expectancy. The effective age and utility are standard for like properties of its class and usage.

If the subject condition is stated as average or better then the CMA “as is” high value should be in the upper half of the Neighborhood Sale Price Range or Listing Price Range. If not, explain in Comments section.

If the subject condition is stated as poor or fair then the CMA “as is” high value should be in the lower half of the Neighborhood Sale Price Range or Listing Price Range. If not, explain in Comments section.

At least one sale one listing should be rated in the same condition as the subject.

The unadjusted sale/listing prices of at least two sales/listings should be within 10% of the CMA “as is” low or high values. If not, please explain in the Comments section.

The GLA for at least three sales/listings should be within 20% (or 200 square feet if subject GLA is under 1,000 square feet) of the subject GLA if subject property is located in an Urban or Suburban area. If the subject is located in a Rural area, the GLA for at least three sales/listings should be within 50% (or 200 square feet if subject GLA is under 1,000 square feet) of the subject GLA. If you are unable to conform to this request please explain as to why.

At least two comparable sales should have bedroom counts that do not vary from the subject by more than one.

Do not use REO sales or listings unless the subject’s neighborhood/market is primarily comprised of REO sales or the subject property condition is similar to other REO properties. Use of REO sales and listings require an explanation in the Comments section.

Repair costs must be specific and stated as line items. A “lump sum” estimate is not acceptable.

The CMA value ranges (low value vs. high value) should not exceed 25% or (\$20,000 for values under \$100,000).

Refrain from writing remarks that could be interpreted as biased or prejudicial.

Use the CMA Comment sections to explain any unusual factors (adverse location, health & safety, illegal/non-conforming use, adverse market conditions, etc.) variations from the aforementioned criteria, or your analysis. An explanation as to why you varied from the criteria specified above is extremely helpful and can avoid revision requests and follow-up phone calls.

After completing the request, you should immediately Email it to [documents@funderschoice.com](mailto:documents@funderschoice.com).

Please remember to provide the appropriate commentary when dealing with unusual properties/circumstances.

Again, through mutual cooperation we can create greater efficiencies for all. Believe me, the last thing we want to do is call you for CMA revisions or additional clarification. Hopefully, the above guidelines provide more clarity regarding our expectations at Funder’s Choice. Thank you.

## Distressed Homeowner Agreement

Homeowner(s)/Seller(s): \_\_\_\_\_

Funder's Choice Properties Michael Kaminski (Facilitator)

Property: \_\_\_\_\_

In 2008, the Washington Legislature passed the Distressed Homeowner Act to regulate the foreclosure rescue business. This Addendum is to inform you of the law and to clarify your relationship with Broker.

1. **"Distressed Homeowner":** A Distressed Homeowner is anyone who owns a Distressed Home as a primary residence. A property is a "Distressed Home" if: (a) it is in foreclosure; (b) the owner is 30 days or more behind in mortgage payments; (c) the homeowner believes he or she may default on the mortgage in the upcoming four months; or (d) it is at risk of loss due to nonpayment of taxes. A homeowner who is not "distressed" when a listing is executed may become a Distressed Homeowner later because of unforeseen circumstances. Use of this Addendum does not necessarily mean that Homeowner(s)/Seller(s) is a "Distressed Homeowner."
2. **"Distressed Home Consultant":** A Distressed Home Consultant is a person who offers to perform any service to assist a Distressed Homeowner in connection with an actual or prospective foreclosure or short sale. Any person who offers such services may be a Distressed Home Consultant. Please refer to the list of services on the next page before making the following disclosure.
3. **Disclosure by Homeowner(s)/Seller(s):** Homeowner(s)/Seller(s) represents the following to the best of Homeowner(s)/Seller(s)'s knowledge:
  - a. (Check one): Homeowner(s)/Seller(s) ☐ IS ☐ IS NOT a Distressed Homeowner.
  - b. (Check one): Homeowner(s)/Seller(s) ☐ HAS ☐ HAS NOT hired Facilitator to act as a Distressed Home Consultant.
4. **Distressed Home Purchaser:** A "distressed home purchaser" means any person who has acquired an interest in a distressed home under a distressed home conveyance. A distressed home purchaser includes a person who acts in a joint venture or joint enterprise with one or more distressed home purchaser(s) in a distressed home conveyance.
5. **Statutory Notice:** Whether you are a Distressed Homeowner or not, the statutory notice provides valuable information that every homeowner should consider if your home is in foreclosure, at risk of foreclosure or you are attempting a short sale.

**NOTICE REQUIRED BY WASHINGTON LAW  
THIS IS AN IMPORTANT LEGAL CONTRACT AND  
COULD RESULT IN THE LOSS OF YOUR HOME.**

Funder's Choice Properties Michael Kaminski (Facilitator), or any Distressed Home Consultant or anyone working for any of them CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home or to continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this

contract or any Distressed Home Consultant Agreement. If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back.

Homeowner(s)/Seller(s) (s) initial here: \_\_\_\_\_

Distressed Home Consultant Services Agreement: Facilitator shall provide only those Distressed Home Consulting Services for which the corresponding box is checked:

✓ **None. No Distressed Home Consulting Services will be provided.**

- ☐ Seeking a loan forbearance or lender approval for a short sale. In any transaction that is a "short sale," this box should be checked.
- ☐ Assisting the Homeowner(s)/Seller(s) in attempting to stop, delay or set aside a foreclosure sale by attempting to purchase the property. If the Property is in foreclosure, this box should be checked.

**\*\*\*No boxes below this line may be checked.\*\*\***

- ☐ Assisting the Homeowner(s)/Seller(s) exercise a right of reinstatement or to refinance a loan.
- ☐ Obtaining an extension of the period within which Homeowner(s)/Seller(s) may reinstate the loan.
- ☐ Obtaining a waiver of an acceleration clause.
- ☐ Assisting Homeowner(s)/Seller(s) to obtain a loan or advance of funds.
- ☐ Offering to purchase or obtaining an option to purchase Homeowner(s)/Seller(s)'s residence within twenty days of a scheduled foreclosure sale.
- ☐ Saving Homeowner(s)/Seller(s)'s residence from foreclosure.
- ☐ Assisting the preservation of the Homeowner(s)/Seller(s)'s credit rating.
- ☐ Arranging for Homeowner(s)/Seller(s) to continue to reside at the Property after a sale.
- ☐ Arranging for Homeowner(s)/Seller(s) to have an option to repurchase Homeowner(s)/Seller(s)'s residence after a sale.
- ☐ Engaging in any transaction affecting Homeowner(s)/Seller(s)'s right to redeem the Property.

The parties acknowledge and agree that the ordinary process of negotiating a short sale could include some of the services performed by a Distressed Home Consultant, and that the sale of any Distressed Home could have the effect of saving the property from foreclosure however, such services are provided merely to facilitate the sale of the property. Unless Homeowner(s)/Seller(s) has hired Facilitator to act as a Distressed Home Consultant, the parties agree that any such incidental consequences of Facilitator's conduct in the purchase or sale of the home shall not create a Distressed Home Consultant relationship.



Home owner agrees that Facilitator may present an offer from Investors whose primary objective is to purchase the property, negotiate a short sale with Homeowner(s)/Seller(s) Lender, and then close the sale at a price that Homeowner(s)/Seller(s) Lender and Investor has agreed to. The investors intend to remarket the property at a higher price in order to resell the property for a profit or retain the property in their portfolio. Facilitator shall make a good faith effort to seek approval from Investors but cannot guarantee that the property will meet all of Investors requirements for purchase.

Homeowner(s)/Seller(s)(s) initial here: \_\_\_\_\_

Seller acknowledges that Facilitator has agreed to work with third party negotiators, investors and service providers in order to provide the greatest likelihood that Seller will be able to successfully close a sale on the property. Facilitator may not provide direct negotiations on Sellers behalf with Sellers Lenders. Seller further acknowledges that Seller's lender is under no legal requirement to negotiate or grant a short sale approval and that neither Facilitator nor third party investors and service providers can guarantee the outcome of the negotiations including but not limited to lender's demand for debt obligations which shall survive closing or lender pursuit of collection actions after closing.

**COMPENSATION:** In addition to getting paid a commission pursuant to an Exclusive Sale and Listing Agreement with the seller of the short sale property, Facilitator may also receive compensation from Investor Buyers when Investor Buyers sell the property. Facilitator's compensation from Investor Buyers may include a commission pursuant to an Exclusive Sale and Listing Agreement with Investor Buyer and/or a percentage of profit that Investor Buyer makes on the sale of the property.

**DUTIES TO SELLER:** If Facilitator has agreed to act as a Distressed Home Consultant for seller then Facilitator owes a fiduciary duty to act in seller's best interest and in utmost good faith toward seller, and not compromise seller's rights or interests in favor of another's rights or interests. Although Facilitator may have a future relationship with Homeowner(s)/Seller(s), Facilitator is not acting as an facilitator for the Homeowner(s)/Seller(s) in any transaction with seller in which the facilitator or any affiliated companies of the facilitator are purchasing the property. If the offer made by the facilitator or any affiliated companies of the facilitator is not approved then the homeowner's agree that they shall retain the facilitator as their agent in a written listing agreement to sell the property and in that transaction the facilitator shall act in seller's best interests in the listing and sale of seller's property.

**ATTORNEY REVIEW:** Facilitator cannot provide legal advice to seller. Seller is encouraged to obtain legal advice concerning all aspects of this transaction and seller's relationship with Facilitator.

**FINANCIAL INFORMATION:** Facilitator is not a licensed CPA or a financial counselor. Seller is encouraged to obtain financial advice concerning all aspects of this transaction and Seller's relationship with Facilitator.

**PRIVACY:** By completing the short sale package Seller understands that Facilitator will be in possession of Sellers sensitive financial information. Seller understands that the package is a lender requirement in order to engage in short sale negotiations and has agreed to release this information in order to facilitate the negotiation process.

**CREDIT AND CREDITOR CONSIDERATIONS:** A short sale may adversely affect the Seller's credit score. Further, even if the lender agrees to a short sale, the lender may not agree to forgive the debt entirely, and may require the Seller to pay the difference as a personal obligation. If the loan is guaranteed by the FHA or VA, these entities may also require payment of the difference. Therefore, the Seller is advised to consult independent legal counsel regarding the advisability of entering into a short sale agreement, be certain of the terms of any short sale before making a decision, and obtain any debt forgiveness agreement in writing.

**TAX CONSIDERATIONS:** A short sale in which a portion of the debt is forgiven is considered a relief of debt and may be treated as income for tax purposes. A creditor who forgives a debt must submit a 1099 form to the IRS indicating the amount of the debt that has been forgiven. Therefore, Seller is advised to obtain professional tax advice immediately regarding the tax implications and the advisability of entering into a short sale agreement.

**SERVICES TO BE PERFORMED:** It is understood that the facilitator is an independent contractor engaged by the seller for the limited purposes described above. Although facilitator may provide seller with advice from time to time those actions should not give rise to an agency relationship. Licensee does not owe buyer fiduciary duties customarily associated with a real estate agency relationship which may be changed in writing by the agreement of the parties.

Homeowner(s)/Seller(s) (s) initial here: \_\_\_\_\_

**FHA/TRUST: FHA** Underwriting guidelines require a title seasoning period of at least 90 days prior to a buyer making an offer to purchase property. In order to facilitate the FHA Title Seasoning Requirements, where an investor is first purchasing the property and then reselling it to another buyer, the property can be put into a trust, or buyer might record an option to purchase which will begin the 90 day title seasoning period upon recording. The ability to offer FHA financing may increase the number of available buyers for properties that qualify for FHA financing.

- ☐ Homeowner(s)/Seller(s) elect to form a family trust and to timely sign the required documents to facilitate the creation and recording of said trust.
- ☐ Homeowner(s)/Seller(s) waive the election to form a family trust and agree that FHA financing will not be available for this property.

Homeowner(s)/Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

Facilitator \_\_\_\_\_ Date \_\_\_\_\_

Homeowner(s)/Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

## ***Buyer's Agent Short Sale Guidelines and Disclosure Agreement***

(To be signed by Buyer's Agent and faxed to Seller's Agent)

Buyer's Agent to sign this document and fax to Seller's Agent

Agent acknowledges that property was listed on the MLS and the remarks section stated that the property is a "Short Sale" to be sold in "As-Is" condition, the commission may be subject to the lender(s) approval. Buyer and Buyer's agent should be aware that the process of receiving approval will take 45 to 90 days after submission of the application and purchase and sale agreement to the lender(s).

Buyer's Agent and Buyer acknowledges that Purchase Contract states that the property is to be sold in "as-is" condition and the sale is subject to mortgage servicer approval (over which seller has no control and which may take 45 to 90 days) with the close of escrow to be determined by the current mortgage lien holder(s) closing to be within 30 days of short sale approval. In the event the lien holder(s) disapprove the short sale application the contract will be null and void and all things of value will be returned.

The commission is negotiable, and subject to lender(s) approval. In the event, a commission reduction is required and both listing and selling agent agree to said reduction, the commission will be reduced on a pro-rata basis.

Under no circumstances should Buyer's Agent have contact with or answer any questions from the lien holder(s) mortgage servicer. If you do receive a call refer them to the seller's short sale processing agent

The property closing date will be on or before 30 days from the date of acceptance of the offer by the mortgage servicer.

In the event the seller's lender denies the short sale application this contract shall be null and void and all things of-value returned.

Buyer must be aware that seller will not pay for any of the following expenses;

- Septic, termite or any other related inspection
- State, County or Municipality mandated inspections
- Appraisals and Survey Costs
- Tax service fees
- All Fees charged by buyer's lender will not be paid by the seller unless the FHA/VA loan requires the Seller to pay this cost.

By signing below, all parties understand and acknowledge the guidelines set forth in this document.

By: \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Agent Signature Date

NWMLS Form 11  
Referral Agreement  
Rev. 03/03  
Page 1 of 1

© Copyright 2003  
Northwest Multiple Listing Service  
ALL RIGHTS RESERVED

REFERRAL AGREEMENT

REFERRAL FEE: \$ \_\_\_\_\_ Date: \_\_\_\_\_  
☒ 50 % of LOC  
☐ % of SOC  
☐ % of sale price

1. REFERRING BROKER: \_\_\_\_\_ NWMLS Office No: \_\_\_\_\_  
Licensee Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

2. DESTINATION BROKER: Funder's Choice Properties NWMLS Office No: 4511  
Licensee Name: Michael S. Kaminski  
Address: 4711 Wallingford Ave N  
Seattle, WA 98103  
Phone: 206-799-9348 Fax: 206-260-9050 Email: michael@mkaminski.com

3. PROSPECT INFORMATION: ☒ Seller ☐ Buyer ☐ Other \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Comments:

Destination broker who may be acting in the capacity of Distressed Home Purchaser pursuant to RCW 61.34 and will retain counsel or other licensed professionals under the Mortgage Broker Practices Act or the Consumer Loan Act to negotiate with the homeowner's lender or trustee handling the foreclosure. Referring broker will not engage in any activities that would define referring broker as a Distressed Home Consultant and all activities will simply be limited to providing information as reasonably required by the destination broker. Destination Broker shall be listed on the settlement statement and the escrow agent does hereby accept to make the gross and net distributions called for in the referral agreement as supplemented by these escrow instructions.

4. TERMS OF REFERRAL

Destination Broker shall pay to Referring Broker the Referral Fee if, within \_\_\_\_\_ months (eighteen (18) months if not filled in) of the date of this Agreement, Destination Broker is paid a commission as a result of the services it provides to Prospect.

\_\_\_\_\_  
Referring Licensee

\_\_\_\_\_  
Destination Licensee

File name \_\_\_\_\_

Escrow file no. \_\_\_\_\_

### **Addendum to Closing Agreement and Escrow Instructions**

This is part of the closing agreement and escrow instructions signed by the parties under the closing agents escrow file number as set forth above. Except as expressly modified, changed or mended by this addendum, all terms and conditions of the closing agreement and escrow instructions, and any previous agenda thereto will stay in full force and effect.

#### **105. Disbursement by Closing Agent.**

(a) Direct to Listing and Selling Members. In the case of all sales of property which have been turned In to NWMLS or input by a member, the Commission Disbursement Form shall include instructions to the closing agent to disburse the selling and listing members' share of the commission directly to each. Attached hereto and marked Exhibit "A" and by this reference incorporated herein as if set out in full at this point as a referral agreement under NWMLS Form 11 signed by the listing and selling members and providing for, among other things compensation for

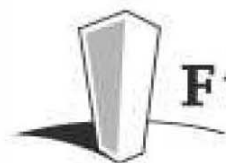
Destination broker who is to acting in the capacity of Distressed Home Consultant pursuant to RCW 61.34 and will retain counsel or other licensed professionals under the Mortgage Broker Practices Act or the Consumer Loan Act PLLC to negotiate with the homeowner's lender or trustee handling the foreclosure. Referring broker will not engage in any activities that would define referring broker as a Distressed

Home Consultant and all activities will simply be limited to providing information as reasonably required by the destination broker. Destination Broker shall be listed on the settlement statement and the escrow agent does hereby accept to make the gross and net distributions called for in the referral agreement as supplemented by these escrow instructions.

Date \_\_\_\_\_

\_\_\_\_\_  
Referring Licensee

\_\_\_\_\_  
Destination Licensee



# Funders Choice, LLC

Trusted | Secure | Direct

Phone: 877-385-3030 (toll-free) or 206-799-9348 (Seattle)

Fax: 877-385-3029 (toll-free) or 206-260-9050 (Seattle)

www.funderschoice.com • info@funderschoice.com

## Funder's Choice LLC Transmittal Form

**To be completed by listing agent. Please print neatly or complete in Microsoft Excel.**

**DATE SUBMITTED:** \_\_\_\_\_

HOMEOWNER	
_____	
Name (First - MI - Last)	
_____	
Address	
_____	
City - State - Zip Code	
(____) _____ - _____	(____) _____ - _____
Home phone	Work phone
(____) _____ - _____	(____) _____ - _____
Fax	Cell
Email: _____	
_____ - _____ - _____	____/____/____
Social Security Number	Birth Date

CO-HOMEOWNER	
_____	
Name (First - MI - Last)	
_____	
Address	
_____	
City - State - Zip Code	
(____) _____ - _____	(____) _____ - _____
Home phone	Work phone
(____) _____ - _____	(____) _____ - _____
Fax	Cell
Email: _____	
_____ - _____ - _____	____/____/____
Social Security Number	Birth Date

REAL ESTATE AGENT	
<hr/>	
Name (First - Last)	
<hr/>	
Company	
<hr/>	
Address	
<hr/>	
City - State - Zip Code	
( ) - -	( ) - -
Cell	Office
( ) - -	Email:
Fax	

ESCROW AGENT	
<hr/>	
Name (First - Last)	
<hr/>	
Company	
<hr/>	
Address	
<hr/>	
City - State - Zip Code	
( ) - -	( ) - -
Cell	Office
( ) - -	Email:
Fax	

PROPERTY INFORMATION	
<hr/>	
Address	
<hr/>	
City - State - Zip Code	
Property type: ____ SFR ____ Condominium	
List price:	Valuation:
<hr/>	<hr/>
Year built:	County:
<hr/>	<hr/>
Bedrooms:	Bathrooms:
<hr/>	<hr/>
Structure approx. square footage:	Lot size:
<hr/>	<hr/>
Please describe property condition and supply photos if helpful.	

LOAN INFORMATION	
Trustee sale date: _____	
First DOT lender and loan #: _____	
Loan Amount: _____	# Delinquent payments: _____
Monthly payment amount: _____	
Second DOT lender and loan #: _____	
Loan Amount: _____	# Delinquent payments: _____
Monthly payment amount: _____	

NATURE OF HARDSHIP	
<input type="checkbox"/> ARM Reset/Payment Shock	<input type="checkbox"/> Incarceration
<input type="checkbox"/> Damage to property (incl. natural)	<input type="checkbox"/> Job Relocation
<input type="checkbox"/> Death	<input type="checkbox"/> Loss of Job
<input type="checkbox"/> Death of Spouse or Co-Borrower	<input type="checkbox"/> Marital Separation
<input type="checkbox"/> Divorce	<input type="checkbox"/> Medical Bills
<input type="checkbox"/> Failed Business	<input type="checkbox"/> Military Duty
<input type="checkbox"/> Illness	<input type="checkbox"/> Reduced Income
<input type="checkbox"/> Other (Please specify): _____	

PLEASE CHECK DOCUMENTS SUBMITTED WITH THIS FORM (partial or incomplete submissions will not be processed)
<input type="checkbox"/> Funder's Choice agreement
<input type="checkbox"/> Consent to share mortgage information
<input type="checkbox"/> Buyer's agent disclosure
<input type="checkbox"/> Payoff request
<input type="checkbox"/> Net worksheet
<input type="checkbox"/> Last two years of homeowners' tax returns or extensions
<input type="checkbox"/> Last two months of homeowners' bank statements (all accounts)
<input type="checkbox"/> If homeowner is a W-2 employee, last two paystubs with YTD income
<input type="checkbox"/> If homeowner is self-employed, balance sheet and income statement YTD
<input type="checkbox"/> Title report
<input type="checkbox"/> Payoff from escrow company
<input type="checkbox"/> Preliminary HUD (settlement statement)
<input type="checkbox"/> Listing agreement
<input type="checkbox"/> CMA or appraisal
<input type="checkbox"/> Purchase and Sale agreement
<input type="checkbox"/> Other (please specify): _____



**Customer Authorization and Consent to  
Share Mortgage Information**

EXISTING 1st LENDER:

Lender Name: \_\_\_\_\_

Loan No: \_\_\_\_\_

Street address, City, State Zip

Phone No: \_\_\_\_\_

Loan Number: \_\_\_\_\_

EXISTING 2<sup>nd</sup> LENDER:

Lender Name: \_\_\_\_\_

Loan No: \_\_\_\_\_

Phone No: \_\_\_\_\_

Street address, City, State Zip \_\_\_\_\_

I/we, the undersigned, hereby grant permission for

---

to share information specific to my/our mortgage loan with said agent  
for any lawful purpose and to obtain a copy of my / our credit report.

This consent shall automatically expire thirty (360) days from the  
date of my/our signature(s) below.

Signature	Social Security #	Date
-----------	-------------------	------

Signature	Social Security #	Date
-----------	-------------------	------

**SHORT SALE TRANSACTION DISCLOSURE**

Seller: \_\_\_\_\_

Seller acknowledges the following items:

1. **SHORT-SALE DEFINED:** The term "short sale" is used to describe a sale of property in a situation where there is more debt owing against the property than the property's value. Depending on the circumstances of the borrower, a lender may be willing to agree to allow the property to be sold for less than the loan amount and/or the amount owed as payment in full. The Seller acknowledges that there may be disadvantages to a short sale.
2. **CREDIT AND CREDITOR CONSIDERATIONS:** A short sale may adversely affect the Seller's credit score. Further, even if the lender agrees to a short sale, the lender may not agree to forgive the debt entirely, and may require the Seller to pay the difference as a personal obligation. If the loan is guaranteed by the FHA or VA, these entities may also require payment of the difference. Therefore, the Seller is advised to consult independent legal counsel regarding the advisability of entering into a short sale agreement, be certain of the terms of any short sale before making a decision, and obtain any debt forgiveness agreement in writing.
3. **TAX CONSIDERATION:** A short sale in which a portion of the debt is forgiven is considered a relief of debt and may be treated as income for tax purposes. A creditor who forgives a debt must submit a 1099 form to the IRS indicating the amount of the debt that has been forgiven. Therefore, Seller is advised to obtain professional tax advice immediately regarding the tax implications and the advisability of entering into a short sale agreement.
4. **OBTAINING CREDITOR APPROVAL:** A short sale is contingent upon an agreement between the Seller and Seller's lender(s), acceptable to both, to sell the Premises for less than the loan amount(s). The Seller's lender may condition such acceptance on a review of the Seller's financial condition. Seller agrees to provide any information reasonably requested by Seller's lender. Seller(s) agrees to grant creditor(s) permission to communicate directly with Broker(s).
5. **OTHER OPTIONS:** Seller represents to Buyer that Seller has considered options other than a short sale, such as loan modification, revised repayment plan, refinance or entry into a lender(s) loan mitigation program, and wished to continue. Seller agrees to go forward with this transaction.
6. **BUYER'S FUTURE PROFIT:** Seller acknowledges that the Buyer is purchasing the Seller's property with the intent of making a profit in a subsequent resale. Seller will pay no fees to Buyer for the negotiation of the short sale transaction.

**SELLER(S):**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Short Sale Disclosure Document

Page 1 of 1

SELLER(S) INITIALS \_\_\_\_\_ / \_\_\_\_\_

**Hardship Letter Example -- [Keep Key Information Up Front and Clear]**

March 13, 2009

RE:    Loan # \_\_\_\_\_

Property Address: \_\_\_\_\_

To Whom It May Concern:

[The first paragraph of the letter should identify what loss mitigation option the homeowner is requesting.] E.g. I currently have no job and no income and can no longer afford to live in this house. My home has lost value and is now worth less than my mortgage and I have listed it as a short sale.

[Include a description of the hardship and the reason for the hardship. It's important for the borrower to be specific, explaining what caused the problem.] E.g. I lost my job eight months ago and will not be rehired. I have used up my savings, cashed in all my liquid assets including my children's college funds, exhausted my unemployment benefits and used up all my resources.

Below are acceptable reasons:

Adjustable Rate Mortgage Reset-  
Payment Stock (uncommon, but we will  
see more lenders accept this in the  
future)

Illness

Loss of Job

Reduced Income

Failed Business

Job Relocation

Death of Spouse or Co-Borrower

Death of Borrower

Incarceration

Divorce

Marital Separation

Military Duty

Reduced Income

Medical Bills

Damage to Property (natural disaster or  
unnatural)

Other (Please Specify)

[Summarize current income and expenses. This should restate same figures as provided on the full financial disclosure paperwork included in the package. Make sure there are no discrepancies!]

I wish there was a better solution to this situation, but I can't change the facts.

Sincerely,

[Sign name as it appears on loan]

[Best method of contact such as daytime and evening phone numbers.]

[Attachments are listed on the Short Sale Checklist and need to be included in full package, but don't need to be listed on the letter.]



## CONFIDENTIAL PERSONAL FINANCIAL STATEMENT

Date: \_\_\_\_\_

### Personal Information

#### Applicant

Name:	Former name:
Birthdate:	Social security number:

#### Co-Applicant

Name:	Former name:
Birthdate:	Social security number:

Home address:			
Email:			
Home phone:	Cell phone:		
Work phone:	Fax:		
Realtor:	Realtor phone:		

Marital status:	Dependents:
Unpaid judgments:	
Wage garnishments:	
Creditor accounts in hands of attorneys:	
Prior bankruptcy:	
Expecting changes in income:	
Currently seeing an attorney for:	
Additional comments:	

### Income Sources

	Applicant	Co-applicant
Employer:		
Job title:		
Monthly gross salary:		
Monthly net salary:		
Other monthly income:		
<b>MONTHLY COMBINED NET TOTAL:</b>		<b>\$</b>
Annual bonus or commission:		
Annual dividends:		
Additional comments:		

Test Data

Page 2 of 3

### Monthly Expenses

Item	Monthly Amount	Item	Monthly Amount
Condo/homeowner fees:		School lunches:	
Gas/electric/oil:		Barber/beauty shop:	
Phone:		Tobacco/alcohol:	
Water/sewer:		Health insurance/co-pay:	
Cable/internet:		Prescriptions:	
Home repair/maintenance:		Life insurance:	
Cellular/wireless:		Child support pmts:	
Home/renter's insurance:		Student loans:	
Property taxes:		School supplies/tuition:	
Car pmt 1:		Child care:	
Car pmt 2:		Tax pmts:	
Car insurance:		Charity, church donations:	
Car maintenance:		Entertainment:	
Parking/tolls/fuel:		Gifts/holidays:	
Dining out:		Pet care:	
Clothing:		Rent:	
Groceries/household:		Other expenses:	
		<b>MONTHLY TOTAL:</b>	<b>\$</b>
<b>Additional comments:</b>			

### Creditors

	Months Past Due	Monthly Payment	Balance
<b>First Mortgage:</b>			
Account number:			
<b>Second Mortgage:</b>			
Account number:			
<b>Line of Credit:</b>			
Account number:			
<b>Other Loan:</b>			
Account number:			
<b>Credit card 1:</b>			
<b>Credit card 2:</b>			
<b>Credit card 3:</b>			
<b>Credit card 4:</b>			
<b>Credit card 5:</b>			
<b>Credit card 6:</b>			
<b>TOTAL:</b>		<b>\$</b>	<b>\$</b>
<b>Additional comments:</b>			

### Liabilities and Assets

Assets		Liabilities	
Cash and savings:		Life insurance policy loans:	
Real estate:		Revolving debt:	
Loans receivable:		Notes payable:	
Vehicles:		Unpaid income tax:	
Life insurance (cash value):		Other liabilities:	
Retirement accounts:			
Other assets:			
<b>TOTAL:</b>	<b>\$</b>	<b>TOTAL:</b>	<b>\$</b>
<b>Additional comments:</b>			

**WASHINGTON SHORT SALE  
PURCHASE AND SALE AGREEMENT**

This **PURCHASE AND SALE AGREEMENT** (hereinafter called the Purchase Agreement) is entered into by: \_\_\_\_\_

pursuant to an assignment (hereinafter called the Buyer); and

**SELLER:**

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip \_\_\_\_\_

Home Phone: \_\_\_\_\_

Mobile: \_\_\_\_\_

Fax: \_\_\_\_\_

(hereinafter called the "Seller" whether one or more).

**1. PROPERTY.** Seller hereby agrees to sell and Buyer hereby agrees to buy the real property described below as:

(the "Property").

**2. PURCHASE PRICE.** The Purchase Price to be paid at Close of Escrow by Buyer for the Property (the "Purchase Price") is \_\_\_\_\_  
All deposits or cash advances provided to Seller by Buyer shall be applied to and credited against the Purchase Price at Close of Escrow.

**3. PROPERTY TURNOVER.** The Seller will provide Buyer with keys to the Property and vacate the Property by 12:00 a.m. on the day of the Close of Escrow or \_\_\_\_\_. In the event the Seller does not vacate the Property by the date and time specified, a charge of \$100 per day will be levied. All unpaid Purchase Price funds will be held in escrow until Seller has vacated the Property and turned over to the Buyer all Property keys and garage openers.

**4. CLOSE OF ESCROW.** The closing date shall occur on \_\_\_\_\_  
(hereinafter the "Close of Escrow" or "Closing Date").

**5. ESCROW AGENT.** Seller and Buyer hereby employ

Phone: \_\_\_\_\_ (the "Escrow Agent") to act as escrow agent for this transaction.

**6. REPRESENTATIONS BY SELLER(S)**

A. Seller represents that the Property may currently be in foreclosure, and that there is more debt owing against the Property than the current market value of the Property.

**B. Seller represents to Buyer that there is more debt owing against the Property than the Purchase Price being offered by the Buyer.**

**C. Seller represents to Buyer that Seller has not obtained an appraisal of the Property. Seller acknowledges and represents that the Purchase Price being offered by the Buyer may be less than market value, but that to the best of the parties' individual knowledge, the Purchase Price is a good faith estimate of the market value of the Property.**

**D. When Seller vacates the premise, Seller is to leave the Property "neat and clean". "Neat and Clean" is defined as all debris removed from the interior/exterior of the Property. In the event the Property is not left in a neat/clean condition, Buyer will have clean-up completed at Seller's expense and deduct costs from monies due the Seller. Any items remaining in the Property on the Close of Escrow will be considered trash and removed by the Buyer. Risk of loss of the Property shall be borne by Seller until the Close of Escrow. If prior to the Close of Escrow, all or a substantial portion of the Property is destroyed or substantially damaged by fire or other casualty, then Buyer, in Buyer's sole discretion, may cancel this Contract, in which event Buyer shall be entitled to a full refund of all amounts previously paid to Seller.**

**E. If the Property is vacant at the time of acceptance of this offer, Seller hereby gives permission to the Buyer to retain a key or have one made by a locksmith, and show the premises to contractors and/or prospective occupants and/or buyers.**

**F. Seller asserts that to date, they have not entered into any other agreement or contract to sell the Property, and is not currently leasing the Property. Seller further asserts they will not enter into an agreement or contract to purchase with anyone else from this date forward unless released in writing by the Buyer. Should seller participate in another agreement which will interfere with the Close of Escrow by the undersigned, Seller will be responsible for all costs, losses of the Buyer (undersigned) to include, but not limited to: attorney's fees, losses, and/or costs suffered by Buyer.**

**7. SHORT SALE TRANSACTION AND CLOSING: Seller represents to Buyer that Seller desires to proceed with the sale of the Property by way of a "short sale" transaction as that word is defined in the Short Sale Transaction Disclosure. Buyer and Seller acknowledge that this Contract is contingent upon an agreement between the Seller and Seller's lender(s), acceptable to both, to sell the Premises for less than the loan amount(s). Seller acknowledges that Buyer may cancel this Contract by notice to Seller at any time before Buyer's receipt of notice from Seller's lender(s) that the short sale offer has been accepted.**

**8. REMEDIES.** In the event Buyer is forced to institute legal action to enforce this Contract, Seller will be held responsible for and hereby agrees to pay all legal fees and costs of said action. Seller shall pay attorney's fees and costs incurred by Buyer as they come due and Seller irrevocably assigns all unpaid Purchase Price funds held in escrow to the benefit of Buyer and for the immediate payment of Buyer's attorney's fees and costs. Seller hereby instructs the escrow company to pay out of such unpaid Purchase Price funds all of Seller's attorney's fees and costs as they are incurred. Seller acknowledges that in the event Buyer is forced to institute legal action to enforce this Contract, the Purchase Price to be paid to Buyer shall be reduced by all attorney's fees and costs of the action.

**9. ESCROW AGENT.** This Contract constitutes the escrow instructions to Escrow Agent. Should Escrow Agent require execution of its standard form printed escrow instructions, Buyer and Seller agree to execute same; however, such printed escrow instructions shall be construed as applying only to Escrow Agent's employment, and if there are conflicts between the terms of this Contract and the terms of the printed escrow instructions, the terms of this Contract shall control. Escrow Agent, if necessary, is hereby authorized and instructed to prepare and execute on behalf of Buyer and Seller any documents required for closing.

**10. AGENCY/LICENSEE DISCLOSURE.** SELLER ACKNOWLEDGES THAT SELLER HAS NOT BEEN REPRESENTED BY BUYER, OR BY ANY REPRESENTATIVE OF BUYER WITH RESPECT TO THE PURCHASE AND SALE OF THE PROPERTY AS CONTEMPLATED BY THIS CONTRACT. SELLER AGREES AND UNDERSTANDS THAT THE BUYER IS NOT ACTING AS SELLER'S AGENT IN THIS TRANSACTION AND HAS BEEN ACTING SOLELY FOR BUYER'S OWN BENEFIT. SELLER AGREES TO HOLD BUYER FREE FROM ANY AND ALL LIABILITY REGARDING THIS PROPERTY AND TRANSACTION ARISING FROM ANY CLAIM OF AGENCY. SELLER ACKNOWLEDGES THAT BUYER IS NOT ACTING AS A LENDER IN THIS TRANSACTION AND THIS TRANSACTION DOES NOT INVOLVE THE LOAN OF ANY MONEY BY BUYER TO SELLER. SELLER ACKNOWLEDGES AND IS AWARE AND BUYER DISCLOSES THAT CERTAIN PRINCIPALS OF BUYER HOLD REAL ESTATE LICENSES AND HAVE A FINANCIAL INTEREST IN THE TRANSACTION OTHER THAN THE RECEIPT OF COMPENSATION FOR REAL ESTATE SERVICES.

SELLER(S) INITIALS \_\_\_\_\_ / \_\_\_\_\_

**11. CLOSE OF ESCROW AND CONVEYANCE.** Buyer shall have the right to approve the property's title status before the Close of Escrow. At the Close of Escrow, Seller shall pay for a standard coverage owner's policy of title insurance, without endorsements, issued by Escrow Agent (or its title underwriter) insuring Buyer's title to the Property in the amount of the Purchase Price, subject to the Permitted Encumbrances. Buyer shall take title as determined by Buyer in escrow. All parties agreeing to this transaction agree that Buyer, for purposes of taking title, shall mean Buyer individually, any trust in which Buyer is the sole beneficiary, or any limited liability company or corporation in which Buyer holds both managing control and all ownership interest. Buyer shall pay all normal non-reoccurring closing costs.



## **12. MISCELLANEOUS**

**A. Time is of the essence with respect to the performance of all terms, conditions, and provisions of this Contract.**

**B. Buyer shall have until the Close of Escrow to satisfy itself in its sole discretion as to the physical condition of the Property in every respect, and its suitability for Buyer's intended use. Accordingly, notwithstanding anything to the contrary contained in this Contract, at any time on or before the Close of Escrow, Buyer shall have the right to terminate this Contract if Buyer determines in its sole discretion that the purchase of the Property is not feasible and/or that the physical condition of the Property does not meet Buyer's criteria. In the event Buyer terminates this Contract, Buyer shall be entitled to a full refund of the earnest money deposit paid, plus any accrued interest.**

**C. This Contract shall inure to the benefit of and shall be binding upon the parties, their heirs, personal representatives, successors, and assigns. Buyer may freely assign this Contract without notice to the Seller.**

**D. Seller acknowledges that Buyer is an investor and is purchasing the property with the intent of making a profit on its resale in a subsequent transaction.**

**E. No modification or amendment of, or waiver or discharge under, this Contract shall be effective unless in writing signed by the party against whom enforcement is sought. The waiver of any breach of any provision of this Contract shall not constitute a waiver of such provision or a future or continuing waiver of that or any other provision hereof.**

**F. This Contract shall be governed by and construed and enforced under the laws of the State of Arizona, whose courts shall have jurisdiction over any legal proceedings or actions arising out of this Contract. Phoenix, Maricopa County, Arizona shall be the place of venue of any such proceeding or action.**

**G. Within five (5) days after request therefore, Buyer and Seller shall execute and deliver any additional documents requested or reasonably required by the other party, by Buyer's lender, or by Escrow Agent in order to evidence or give effect to the provisions of this Contract, both before and after the Close of Escrow. If the parties cannot agree upon the terms and conditions of any documents to be executed that are not specifically agreed upon in this Contract, then Escrow Agent's standard form of that particular document shall be used.**

**13. NO ORAL REPRESENTATIONS OR MODIFICATIONS.** Buyer wishes to avoid any misunderstandings concerning Buyer's purchase of the Property. The Buyer and Seller have agreed that this Contract is the only agreement for the purchase and sale of the Property herein and shall constitute a binding contract between them. Buyer agrees to buy and Seller agrees to sell solely in accordance with this Contract. The Buyer and Seller agree and warrant that there are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties that are not also in this Contract. Specifically, Seller acknowledges that unless expressed in writing, there are not leases, options, or other agreements existing between Seller and Buyer identified herein. If Seller believes that there are other agreements between the parties, Seller shall write in below any representations or promises that are not set out in this Contract, but that Seller believes have been made by Buyer or its purported agents or employees, and upon which Seller is relying in making this purchase (if "None," so state):

---

Buyer and Seller agree that Seller will contribute up to 6% of contract sales price to closing costs.

---

ALL PARTIES ARE AWARE THAT THIS IS AN ARM'S LENGTH TRANSACTION. Buyer and

---

Seller agree to extend Close of Escrow date as necessary in order to allow for lender approval.

---

SELLER(S) INITIALS \_\_\_\_\_ /

---

**SELLER(S):**

Owner: \_\_\_\_\_

Co-Owner \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**BUYER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**By:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Date**

NOTICE OF CANCELLATION  
Copy 1 of 2

\_\_\_\_\_  
You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before:

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to the Buyer:

\_\_\_\_\_  
located at  
\_\_\_\_\_

NOT LATER THAN: \_\_\_\_\_

I hereby cancel this transaction.

\_\_\_\_\_  
SELLER(S):

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Under Washington law, the seller has until midnight of the fifth business day following the day on which the seller signs this contract or until 8:00 a.m. on the last day of the period during which the seller has a right of redemption to cancel the contract. The five-business-day period during which the seller may cancel the contract must not begin to run until all parties to the contract have executed the contract and the buyer has complied with this section.

NOTICE OF CANCELLATION  
Copy 2 of 2

\_\_\_\_\_  
You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before:

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to Buyer:

\_\_\_\_\_  
at  
\_\_\_\_\_

NOT LATER THAN: \_\_\_\_\_

I hereby cancel this transaction.

\_\_\_\_\_  
SELLER(S):

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Under Washington law, the seller has until midnight of the fifth business day following the day on which the seller signs this contract or until 8:00 a.m. on the last day of the period during which the seller has a right of redemption to cancel the contract. The five-business-day period during which the seller may cancel the contract must not begin to run until all parties to the contract have executed the contract and the buyer has complied with this section.

**ADDENDUM TO SHORT SALE PURCHASE AND SALE AGREEMENT**

Dated \_\_\_\_\_ Between \_\_\_\_\_ (Buyer)

and \_\_\_\_\_ (Seller)

Purchase Price will be \_\_\_\_\_

New Close of Escrow Date will be \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Buyer:

Form 22 FSBO  
For Sale by Owner  
Rev. 3/09  
Page 1 of 1

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ALL RIGHTS RESERVED

**FOR SALE BY OWNER ADDENDUM TO  
PURCHASE & SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated \_\_\_\_\_ 1  
between \_\_\_\_\_ ("Buyer") 2  
and \_\_\_\_\_ ("Seller") 3  
concerning \_\_\_\_\_ ("the Property"). 4

1. **DISTRESSED HOME.** Seller warrants that the Property ☐ is; ☐ is not a "Distressed Home." A "Distressed Home" (fully defined in RCW 61.34) is a dwelling in a one-to-four family residence, a condominium unit, a residential cooperative unit, a residential unit in any other type of planned unit development, or a manufactured home, which has been occupied by the owner as the owner's primary residence within 180 days of mutual acceptance of this Agreement that is (1) in the process of foreclosure or in danger of foreclosure because (a) Seller has defaulted on a mortgage; (b) Seller is at least thirty days delinquent on a loan secured by the Property; or (c) Seller believes that Seller is likely to default on such mortgage or loan within four months due to a lack of funds; or (2) at risk of loss due to nonpayment of taxes. 5  
6  
7  
8  
9  
10  
11  
12
2. **CLOSING DATE IS NOT WITHIN 20 DAYS OF A FORECLOSURE SALE.** Seller warrants to Buyer that mutual acceptance of the Agreement and the Closing Date in the Agreement are not within twenty (20) days of an advertised or docketed foreclosure sale. Seller further warrants that if a foreclosure sale is scheduled within twenty (20) days of mutual acceptance or the Closing Date, Seller will provide immediate written notice of that fact to Selling Licensee and Buyer. If Seller provides such notice, Buyer may, in Buyer's sole discretion, elect to terminate this Agreement within five (5) days of such notice by providing written notice to Seller. In the event Buyer timely elects to terminate this Agreement, Seller shall reimburse Buyer for all out of pocket expenses incurred or committed by Buyer in connection to this Agreement, including, without limitation, inspection fees, loan application fees, and title commitment cancellation fees, and the Earnest Money shall be refunded to Buyer. 13  
14  
15  
16  
17  
18  
19  
20  
21
3. **POSSESSION DATE.** If the Property is a Distressed Home and the Possession Date on page one of the Agreement is after the Closing Date, notwithstanding the Possession Date on page one, the Possession Date shall be on the Closing Date, unless otherwise agreed in writing. 22  
23  
24

Initials: BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_ 25  
BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_ 26

**FOR SALE BY OWNER ADDENDUM TO  
PURCHASE & SALE AGREEMENT**

**ASSISTANCE FILLING IN THE BLANKS:**

Click on this  button of the Viewer. The curser will change into a "?" and as you roll over the blanks of the form, instructions will pop up.

**GENERAL COMMENTS:**

- A. **Use of this Form.** Use this form when you are presenting an offer on a property that is not listed by a real estate licensee.
- B. **Distressed Homes – 20 Day Rule.** The Distressed Homes Law (RCW 61.34) provides that if the parties reach mutual acceptance or close a sale of a "Distressed Home" within 20 days of a foreclosure sale and the seller is not represented by an attorney or a real estate licensee, the buyer is a "Distressed Home Consultant" for the seller. If this happens, the buyer needs to have a separate written agreement with the seller and the buyer owes fiduciary duties to the seller.
- To address this issue and to protect the buyer, Form 22-FSBO requires the seller to disclose whether or not they are distressed and warrant that mutual acceptance and the closing date do not fall within 20 days of a foreclosure sale. If the seller can make this warranty, the selling licensee and the buyer need not be concerned with this provision of the Distressed Home Law. The form further provides that if circumstances change and mutual acceptance or the closing date fall within 20 days of a foreclosure sale, then the seller agrees to notify the selling licensee and the buyer of that fact in writing. If the seller provides this notice, the buyer has the option to terminate the agreement and is entitled to the return of any earnest money and buyer's out of pocket expenses. If the buyer elects to proceed with the closing, the buyer needs to consult with an attorney because the buyer may be a Distressed Home Consultant for the seller. Please see Legal Bulletin No. 181 for more information on Distressed Homes.
- C. **Distressed Homes – Delayed Possession .** The Distressed Homes Law provides that if a buyer allows a "Distressed Homeowner" to retain possession of the property after closing and the homeowner is not represented by an attorney or a real estate licensee, the buyer is a "Distressed Home Consultant" for the seller.
- To address this issue and to protect the buyer, Form 22-FSBO provides that, despite what the parties agreed to on page one of the Purchase and Sale Agreement, the Possession Date will not be later than the Closing Date. Please see Legal Bulletin No. 181 for more information on Distressed Homes.
- D. **Check Applicable Box.** The form requires that the parties check one of two boxes. The first box provides a warranty from the seller that the property is not a Distressed Home. If this is true and this box is checked, the Distressed Homes Law does not apply. The second box provides a warranty from the seller that the property is a Distressed Home. If this is true, then the balance of Form 22-FSBO addresses the relevant issues associated with the Distressed Homes Law.



# ***Distressed Homeowner Agreement***

Customer: \_\_\_\_\_

Michael S. Kaminski Funder's Choice Properties (Agent)

Property: \_\_\_\_\_

In 2008, the Washington Legislature passed the Distressed Homeowner Act to regulate the foreclosure rescue business. This Addendum is to inform you of the law and to clarify your relationship with Broker.

**"Distressed Homeowner":** A Distressed Homeowner is anyone who owns a Distressed Home as a primary residence. A property is a "Distressed Home" if: (a) it is in foreclosure; (b) the owner is 30 days or more behind in mortgage payments; (c) the homeowner believes he or she may default on the mortgage in the upcoming four months; or (d) it is at risk of loss due to nonpayment of taxes. A homeowner who is not "distressed" when a listing is executed may become a Distressed Homeowner later because of unforeseen circumstances. Use of this Addendum does not necessarily mean that Customer is a "Distressed Homeowner."

**"Distressed Home Consultant":** A Distressed Home Consultant is a person who offers to perform any service to assist a Distressed Homeowner in connection with an actual or prospective foreclosure or short sale. Any person who offers such services may be a Distressed Home Consultant. Please refer to the list of services on the next page before making the following disclosure.

**Disclosure by Customer:** Customer represents the following to the best of Customer's knowledge:

(Check one): Customer ☐ IS ☐ IS NOT a Distressed Homeowner.

(Check one): Customer ☐ HAS ☐ HAS NOT hired Agent to act as a Distressed Home Consultant.

**Statutory Notice:** Whether you are a Distressed Homeowner or not, the statutory notice provides valuable information that every homeowner should consider if your home is in foreclosure, at risk of foreclosure or you are attempting a short sale.

**NOTICE REQUIRED BY WASHINGTON LAW THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.**

Windermere Real Estate/Maple Valley Inc, Ken Crotts, or any other Distressed Home Consultant or anyone working for any of them CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract or any Distressed Home Consultant Agreement.

If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back.

Customer(s) initial here: \_\_\_\_\_

**Distressed Home Consultant Services Agreement:** Agent shall provide only those Distressed Home Consulting Services for which the corresponding box is checked:

☐ None. No Distressed Home Consulting Services will be provided.

☐ Seeking a loan forbearance or lender approval for a short sale. In any transaction that is a "short sale," this box should be checked.

☐ Assisting the Customer in attempting to stop, delay or set aside a foreclosure sale by attempting to purchase the property. If the Property is in foreclosure, this box should be checked.

\*\*\*No boxes below this line may be checked.\*\*\*

☐ Assisting the Customer exercise a right of reinstatement or to refinance a loan.

☐ Obtaining an extension of the period within which Customer may reinstate the loan.

- ☐ Obtaining a waiver of an acceleration clause.
- ☐ Assisting Customer to obtain a loan or advance of funds.
- ☐ Offering to purchase or obtaining an option to purchase Customer's residence within twenty days of a scheduled foreclosure sale.
- ☐ Saving Customer's residence from foreclosure.
- ☐ Assisting the preservation of the Customer's credit rating.
- ☐ Arranging for Customer to continue to reside at the Property after a sale.
- ☐ Arranging for Customer to have an option to repurchase Customer's residence after a sale.
- ☐ Engaging in any transaction affecting Customer's right to redeem the Property.

The parties acknowledge and agree that the ordinary process of negotiating a short sale could include some of the services performed by a Distressed Home Consultant, and that the sale of any Distressed Home could have the effect of saving the property from foreclosure. However, such services are provided merely to facilitate the sale of the property. Unless Customer has hired Agent to act as a Distressed Home Consultant, the parties agree that any such incidental consequences of Agent's conduct in the purchase or sale of the home shall not create a Distressed Home Consultant relationship.

Home owner agrees that Agent may present an offer from Done Deal Investments LLC (DDI) who's primary objective is to purchase the property, negotiate a short sale with Sellers lender, and then close the sale at a price that Sellers lender(s) and DDI has agreed to. DDI, as an investor, intends to remarket the property at a higher price in order to resell the property for a profit or retain the property in their portfolio. Agent shall make a good faith effort to seek approval from DDI but cannot guarantee that the property will meet all requirements for purchase by DDI. If turn down for purchase

Seller acknowledges that Agent has agreed to work with DDI in order to provide the greatest likelihood that Seller will be able to successfully close a sale on the property. Seller further acknowledges that Seller's lender is under no legal requirement to negotiate or grant a short sale approval and that neither Agent nor DDI can guarantee the outcome of the negotiations.

By completing the short sale package Seller understands that Agent and DDI will be in possession of Sellers sensitive financial information. Seller understands that the package is a lender requirement in order to engage in short sale negotiations and has agreed to release this information in order to facilitate the negotiation process. Agent and DDI agree to take reasonable precautions to safeguard Sellers information.

Customer \_\_\_\_\_ Date \_\_\_\_\_

Customer \_\_\_\_\_ Date \_\_\_\_\_

Agent \_\_\_\_\_ Date \_\_\_\_\_

**TRUST AGREEMENT**

Name of Trust: 26127 184th Ct SE Family Trust

Date of Trust: September 9, 2008

Trustors: \_\_\_\_\_  
26127 184th Ct SE  
Covington, Washington 98042

Trustees: \_\_\_\_\_

Beneficiaries: \_\_\_\_\_

Trust Property: 26127 184th Ct SE  
Covington, Washington 98042

I, the above identified Trustor, hereby assign, transfer and deliver the above identified Trust Property to the above identified trustee (hereinafter referred to as the "Trustee"), and agree to hold such property, and any additions thereto acceptable to the Trustee, IN TRUST, on the following terms and conditions:

Now, therefore, the parties hereby agree as follows:

1. Declaration of Trust. The trust created by the Trustors herein shall be known by the Name of Trust identified above (hereinafter referred to as the "Trust").
2. Trust Property. The corpus of the trust will be the Trust Property identified above that the Trustors will convey or cause to be conveyed fee simple absolute by deed. The trustee shall hold full legal and equitable title to said property, in trust, only for the use and purpose stated under the terms of this Agreement and any valid addendum hereto duly executed by the parties. If permissible in the state in which the real property sits, title shall be held in the name of the Trust itself, to wit: 26127 184th Ct SE Family Trust otherwise, the Trustee shall hold title in his or her name "an individual, as Trustee, and not personally, of 26127 184th Ct SE Family Trust."
3. Trust Purpose. The objects and purposes of this Trust shall be to hold full legal and equitable title to the Trust Property until its sale, disposition or liquidation, or until the trust is terminated or expires by its own terms and/or as a matter of law. The Trustee shall not undertake any activity that is not strictly necessary to the achievement of the foregoing objects and purposes, nor shall the Trustee transact business within the meaning of applicable state law, or any other law, nor shall this Agreement be deemed to be, or create or evidence the existence of a corporation or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture, limited liability company, or similar limited liability association by or between the Trustee and the Beneficiaries, or by or between the Beneficiaries.
4. Consideration. The Trustee has paid no consideration for the conveyance of real property described herein. The conveyance will be accepted and held by the Trustee subject to all existing liens, encumbrances, easements, restrictions or other clouds or claims against the title thereto, whether the same are of record or otherwise. The property will be held on the trusts, terms and conditions and for the purposes hereinafter set forth, until the whole of the trust estate is conveyed, free of this trust, as hereinafter provided.

5. Rights and Duties of the Beneficiaries. The persons and/or entities named as Beneficiaries above (including their heirs, assigns or successors) are the Beneficiaries of this Trust, and as such, shall be entitled to all of the earnings, avails and proceeds of the Trust Property according to their interests set opposite their respective names. No Trustor shall have any legal or equitable right, title or interest, as realty, in or to any real estate held in trust under this Agreement, or the right to require partition of that real estate, but shall have only the rights, as personalty, set out below, and the death of a Trustor shall not terminate this Trust or in any manner affect the powers of the Trustee.

The interests of the Beneficiaries shall consist solely of the following rights respecting the Trust Property: (a) the right to direct the Trustee to convey or otherwise deal with the title to the Trust Property as hereinafter set out; (b) the right to participate in the management and control of the Trust Property; and (c) the right to receive the proceeds and avails from the rental, sale, mortgage, or other disposition of the Trust Property.

6. Powers and Duties of Trustee. The Trustee, who holds the property on behalf of the Beneficiary, has the following powers with respect to the Trust Property at the written direction of the Beneficiary:

a. To have, together with, and at the direction of the Beneficiaries, the exclusive management and control of the property as if he were the absolute owner thereof, and the full power to do all things and perform all acts which in his or her judgment are necessary and proper for the protection and preservation of the Trust Property and for the interest of the Beneficiaries in the property of the Trust, subject to the restrictions, terms, and conditions set forth herein, or as specifically instructed by the Beneficiaries;

b. To take possession of the trust property in the event it becomes vacant, and to rent or lease the whole or any part of the Trust Property for long or short terms, but not for terms exceeding the term of the Trust then remaining;

c. To repair, alter, tear down, add to, or erect any building or buildings upon land belonging to the Trust; to fill, grade, drain, improve, and otherwise develop any land belonging to the Trust; to carry on, operate, or manage any building, apartment house, mobile home, lot or hotel belonging to the Trust;

d. To make, execute, acknowledge, and deliver all deeds, releases, mortgages, leases, contracts, options, agreements, assignments, instruments, and other obligations of whatsoever nature relating to the Trust Property, and generally to have full power to do all things and perform all acts necessary to make the instruments proper and legal (and to do so by a duly appointed attorney-in-fact);

e. To pay all lawful taxes and assessments and the necessary expenses of the Trust; to employ such officers, brokers, property managers, engineers, architects, carpenters, contractors, agents, counsel, and such other persons as may seem expedient, to designate their duties and fix their compensation; to fix a reasonable compensation for their own services to the Trust, as organizers thereof.

f. To represent the Trust and the Beneficiaries in all suits and legal proceedings relating to the Trust Property in any court of law or equity, or before any other bodies or tribunals; to begin suits and to prosecute them to final judgment or decree; to compromise claims or suits, and to submit the same to arbitration when, in their judgment, such course is necessary or proper.

g. To negotiate the sale, payoff, and short sale of the Trust Property or any encumbrance thereon, as directed by the Beneficiary.

The Trustee in addition to the other duties herein imposed upon him or her, shall have the obligation to keep a careful and complete record of all the beneficial interests in the Trust Property with the name and residence of the person or persons owning such beneficial interest, and such other items as they may deem of importance or as may be required by the Beneficiaries. Nothing in this agreement shall preclude the powers and authorities of a trustee as defined by state law, code or statute, unless such additional powers shall cause this agreement to be construed as a "trust" as defined in Section 301.7701-4(a) of the Procedure and Administration Regulations of the Internal Revenue Code.

7. Compensation and Liability of Trustee. The Beneficiaries jointly and severally agree that the Trustee shall receive no compensation for the Trustee's services. The Trustee and his or her successor as Trustee shall not be required to give a bond, and each Trustee shall be liable only for his own acts and then only as a result of his own gross negligence or bad faith.

8. Removal of Trustee. The Beneficiaries shall have the power to remove a Trustee from his office or appoint a successor to succeed him or her. This removal must be in writing, signed by all of the beneficiaries. Upon Seven (7) days written notice, the Trustee shall deliver all books, records, bank account information, keys, security deposits, leases and funds in his or her possession, and execute any documents necessary to convey title and/or authority over the Trust and the Trust Property to the Successor Trustee.

9. Resignation of Trustee. Any Trustee may resign his or her office with thirty (30) days written notice to Beneficiaries. The Beneficiaries shall appoint the Trustee named as successor Trustee herein (or proceed to elect a new Trustee) to take the place of the Trustee who had resigned, but the resignation shall not take effect until an affidavit signed and acknowledged before a notary public by both the resigning Trustee and the new Trustee shall have been procured in a form which is acceptable for recording in the registries of deeds of all the counties in which properties held under this instrument are situated. If the Trust property is recorded in the name of the trustee himself, the resigning trustee shall also execute a general warranty deed in the proper form and manner for recording the registry of deeds in the county in which the property is situated. Said deed and/or affidavit need not be recorded unless so requested of the new Trustee at the written direction of the Beneficiaries. In the event a new trustee is not appointed within Sixty (60) days after notice the resignation of the existing Trustee is received by the beneficiaries, this agreement shall terminate, and the resigning Trustee shall deliver all books, records, bank account information, keys, security deposits, leases and funds in his or her possession, and execute any documents necessary to convey title to the trust property to the beneficiaries as their interests may appear. Whenever a new Trustee shall have been elected or appointed to the office of Trustee and shall have assumed the duties of office, he or she shall succeed to the title of all the properties of the Trust and shall have all the powers and be subject to all the restrictions granted to or imposed upon the Trustee by this agreement, and every Trustee shall have the same powers, rights, and interests regarding the Trust Property, and shall be subject to the same restrictions and duties as the original Trustee, except as the same shall have been modified by amendment, as herein provided for.

10. Death or Incapacity of Trustee. Upon the death, termination, resignation or physical or mental incapacity of the Trustee, the above named Successor Trustee shall immediately be appointed as successor Trustee, with the full powers and duties of the former Trustee. In the event the above named Successor Trustee is not then living or is unable or unwilling to act as Trustee, then a new Trustee will be elected and appointed as per paragraph "10" herein. In the event of the death of any beneficiary, his or her right and interest hereunder, except as otherwise provided, shall pass to his or her executor or administrator and to his heirs at law.

11. Beneficiary not Bound by Trustee. The Trustee is not an agent or partner of, and shall have no power to bind the Beneficiaries personally and, in every written contract he may enter into, reference shall be made to this declaration; and any person or corporation contracting with the Trustee, as well as any beneficiary, shall look to the funds and the Trust Property for payment under such contract, or for the payment of any debt, mortgage, judgment, or decree, or for any money that may otherwise become due or payable, whether by reason or failure of the trustee to perform the contract, or for any other reason, and neither the Trustee nor the Beneficiaries shall be liable personally therefore.

12. Dealings with Trustee. No party dealing with the Trustee in relation to the Trust Property in any manner whatsoever, and, without limiting the foregoing, no party to whom the property or any part of it or any interest in it shall be conveyed, contracted to be sold, leased or mortgaged by the Trustee, shall be obliged to see to the application of any purchase money, rent or money borrowed or otherwise advanced on the property; to see that the terms of this Trust Agreement have been complied with; to inquire into the authority, necessity or expediency of any act of the Trustee; or be privileged to inquire into any of the terms of this Trust Agreement.

13. Term of Agreement. This agreement shall continue for a period of five (5) years from the date of its execution. The Trustee shall contact all Beneficiaries in writing at least twelve months prior to that time. The trustee shall place the Trust Property for public sale, pay all debts due and owing with regard to the Trust Property, and remit the proceeds to the Beneficiaries according to their respective interests in the Trust. The Beneficiaries may choose to renew this agreement for a term of twenty (20) additional years by submitting their intention in writing to the Trustee. If any portion of the Trust Property is in any manner or time period capable of being held in this Trust for longer period of time than is permitted under the laws of the state law governing this Agreement, or the besting of any interest under this Trust could possibly occur after the end of such permitted time period, then, upon the occurrence of the foregoing, the Trustee is directed to immediately terminate the Trust and to distribute the Trust Property to the Beneficiaries as their respective interests may appear at the time of the termination of the Trust. As much as possible, the Trustee will maintain the Trust Property intact and not liquidate it, but, rather, distribute the Trust Property in kind.

14. Assignment of Beneficial Interest. The interest of a Beneficiary, or any part of that interest, may be transferred only by a written assignment, executed in duplicate and delivered to the Trustee. If there is more than one beneficiary, the remaining beneficiaries must first approve of said transfer in writing. Unless stated otherwise, any assignment of beneficial interest hereunder shall also include the power of direction and revocation of this Trust Agreement. Any beneficiary who assigns his interest in full shall forever waive his right to revoke this Trust Agreement.

15. Individual Liability of Trustee. The Trustee shall not be required, in dealing with the Trust Property or in otherwise acting under this Agreement, to enter into any individual contract or other individual obligation whatsoever; nor to make itself individually liable to pay or incur the payment of any damages, attorneys' fees, fines, penalties, forfeitures, costs, charges or other sums of money whatsoever. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership, as Trustee, of the legal title to the Trust Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Trust Property or in otherwise acting under this Agreement, except only as far as the Trust Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of that liability or obligation.

16. Unanimous Direction of Beneficiaries. Wherever an act, decision or direction is required by the "Beneficiary" or "Beneficiaries" herein, said designation shall be deemed to mean all of the beneficiaries acting in a unanimous agreement, unless a lesser percentage is so specified.

17. Governing Law. This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in the County in which the property sits. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

18. Binding Effect. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under it, as well as upon the executors, administrators, heirs, assigns and all other successors in interest of the Beneficiaries.

19. Termination of this Agreement. This Trust may be terminated on thirty (30) days written notice signed by all of beneficiaries and delivered to the Trustee. Upon the termination of this Agreement, the Trustee shall deliver all books, records, bank account information, keys, security deposits, leases and funds in his or her possession, and execute any documents necessary to convey title to the trust property to the beneficiaries as their interests may appear.

20. No Contest. In the event any beneficiary of this Trust, or any Amendment hereto, directly or indirectly contests the validity of this Trust or any Amendment hereto, then any interest, power or fiduciary appointment given such beneficiary in this Trust or any Amendment hereto shall be void. The voided interest shall be paid or distributed and the voided power or fiduciary appointment given such beneficiary in this Trust or any Amendment hereto shall be void. The voided interest shall be paid or distributed and the voided power or fiduciary appointment shall be interpreted in the same manner as if such contesting heir or beneficiary had predeceased Trustor.

21. Entire Agreement. This Agreement contains the entire understanding between the parties and may be amended, revoked or terminated only by written agreement signed by the Trustee and all of the Beneficiaries.

22. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears hereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories.



IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

Trustor/s:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me \_\_\_\_\_ a notary public in and for said state personally appeared \_\_\_\_\_, personally known to me (or proved to me based upon satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that (s)he/they executed the same in his/her/their signature on the instrument the person(s) or entity on behalf of which they acted executed the instrument.

Witness my hand and official seal,

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

NOTARY SEAL

The Trustee(s):

\_\_\_\_\_  
Matthew Thill

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me \_\_\_\_\_ a notary public in and for said state personally appeared Matthew Thill, personally known to me (or proved to me based upon satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that (s)he/they executed the same in his/her/their signature on the instrument the person(s) or entity on behalf of which they acted executed the instrument.

Witness my hand and official seal,

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

NOTARY SEAL



**TRUSTEE INSTRUCTION FOR SHORT SALE TRANSACTION  
&  
WAIVER OF TRUSTEE LIABILITY**

Initial Beneficiary:	_____	(the "Seller")
Address:	26127 184th Ct SE	
City/State/Zip:	Covington, Washington 98042	
Buyer:	DONE DEAL INVESTMENTS, LLC	(the "Buyer")
Property:	26127 184th Ct SE	
	Covington, Washington 98042	(the "Property")

Seller acknowledges to the Trustee the following items, and provides the Trustee the following instructions:

1. **PROPERTY FINANCIAL CONDITION:** Seller represents to Trustee that there is more debt owing against the Seller's Property than the current market value of the property and the purchase price being offered by the Buyer. Seller acknowledges to the Trustee that the purchase price being offered by the Buyer may be less than market value, but that to the best of the Seller's knowledge, the purchase price is a good faith estimate of the market value of the Property. Seller instructs the Trustee to take all actions to effectuate the sale of the Property as outlined in the Purchase Agreement and any addendum thereto (collectively the "Purchase Agreement").
2. **SHORT-SALE TRANSACTION:** Seller represents to Trustee that Buyer desires to purchase the Property pursuant to a "short sale" transaction as that word is defined in the Short Sale Transaction Disclosure. Buyer and Seller acknowledge that the Purchase Agreement between Buyer and Seller is contingent upon an agreement between the Seller and Seller's lender(s), acceptable to both, to sell the Premises for less than the loan amount(s), and that Seller may face tax considerations and credit consideration as disclosed in the Short Sale Transaction Disclosure. Seller instructs the Trustee to take all actions to facilitate the short sale transaction as outlined in the Purchase Agreement.
3. **TRUST FORMATION AND ADMINISTRATION:** Seller represents to Trustee that the Buyer will only proceed with the transaction set forth in the Purchase Agreement provided the Buyer may close by assuming the Seller's beneficial interest in the Seller's Trust. Seller represents to Trustee that Seller must establish the Seller's Trust in the form acceptable to Buyer and that the sole purpose of Seller in establishing the Seller's Trust is to satisfy the requirements of the Buyer. Accordingly, Seller instructs Trustee to take all actions as Trustee necessary to see that the Seller's Trust is created in such a manner as to satisfy the requirements of the Buyer as set forth in the Purchase Agreement, and that the Purchase Agreement is closed on the terms and conditions set forth by the Buyer.
4. **BUYER'S FUTURE PROFIT:** Seller represents to Trustee that the Seller is aware that the Buyer's structure of the transaction is to facilitate the Buyer's ability to resale and profit from the Buyer's purchase of the Property and not for a specific trust need of the Seller.
5. **TRANSFER OF SELLER'S PROPERTY INTO TRUST:** Seller instructs the Trustee to take all steps necessary to transfer the Seller's property in the Seller's Trust as soon as possible after the formation of the Seller's Trust, and to effectuate such transfer by way of the General Warranty Deed in the form prescribed by Buyer.

Instructions to Trustee

Page 1 of 2

SELLER(S) INITIALS \_\_\_\_\_ /

6. **ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST:** Seller instructs the Trustee to take all steps necessary to complete the assignment of beneficial interest to Buyer from Seller at the close of Escrow.
7. **ASSIGNMENT OF PURCHASE CONTRACT:** Seller instructs the Trustee to cooperate with and permit the assignment of the Purchase Contract from Buyer to another buyer provided the remaining terms of the Purchase Contract are not materially altered.
8. **POWER OF ATTORNEY:** Seller represents to Trustee that Seller desires to grant to Buyer the permission to communicate directly with Seller's lender(s) and negotiate the short sale transaction outlined in the Purchase Agreement. Accordingly, Seller instructs Trustee to take all steps necessary to facilitate the Buyer's communication and negotiation with the Seller's lenders.
9. **WAIVER OF TRUSTEE'S DUTY:** Seller hereby acknowledges that the Seller's Trust is established as a condition to the Close of Escrow and the Trustee has the primary obligation of insuring the transfer of the beneficial interest in the Seller's Trust to Buyer. Accordingly, Seller hereby waives and releases, to the greatest extent permitted by law, the Trustee of any liability for carrying out the Seller's instructions contained herein and effectuating the terms of the Purchase Agreement. Seller acknowledges that Buyer has structured this transaction around the creation and use of the Seller's Trust with the expectation of future profit. Seller waives all claims, to the greatest extent permitted by Arizona law, against the Trustee arising from the Buyer's future profits from the sale or rental of the Property.
10. **OTHER OPTIONS:** Seller represents to Trustee that Seller has considered options other than the short sale as outlined in the Purchase Agreement, such as loan modification, revised repayment plan, refinance or entry into a lender(s) loan mitigation program. Seller represents to Trustee that Seller having considered Seller's options, Seller wishes to continue with the Transaction. Seller does not desire the Trustee to pursue an alternative sale of the Property.

**SELLER(S):**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

When recorded mail to:

## Statutory Warranty Deed

The Grantors:

\_\_\_\_\_

For an in consideration of Ten Dollars and other good and valuable consideration in hand paid, conveys,  
and warrants to

**Dated**

the following described real estate situated in King County, Washington:

Lot(s) 2, ( Division 1, according to the plat thereof Recorded in Volume 111 of Plats, page(s)  
through 9, in King County, Washington.

SUBJECT TO: easements, covenants, conditions and restrictions of record if any.  
Assessors Property Tax Parcel / Account Number

Dated this:

\_\_\_\_\_  
**Seller:**

\_\_\_\_\_  
**Seller:**

When recorded mail to:

## Statutory Warranty Deed

The Grantors:

For an in consideration of Ten Dollars and other good and valuable consideration in hand paid, conveys, and warrants to

**Dated:**

the following described real estate situated in King County, Washington:

Lot(s) 2, Division 1, according to the plat thereof Recorded in Volume 111 of Plats, page(s) 5 through 9, in King County, Washington.

SUBJECT TO: easements, covenants, conditions and restrictions of record if any.  
Assessors Property Tax Parcel / Account Number

Dated this:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_ a Notary Public of the County and State first above  
written, do hereby certify that \_\_\_\_\_ personally appeared  
before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires \_\_\_\_\_

NOTARY SEAL

WHEN RECORDED, MAIL TO:

**ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST**

Name of Trust: \_\_\_\_\_

Date of Trust: \_\_\_\_\_

Settlor: \_\_\_\_\_

Trustee(s): \_\_\_\_\_

Initial Beneficiary: \_\_\_\_\_

The undersigned, \_\_\_\_\_, the Initial Beneficiary under the above described trust, hereby assigns all rights, title and interest in the beneficial interest, including the power of direction and revocation, under a certain Trust Agreement created identified above by and between the Settlor identified above, and the above identified Trustee(s), whose purpose is to hold and safeguard for the benefit of the Beneficiary certain real property located at \_\_\_\_\_

(“Assigner”), whose address is \_\_\_\_\_.

We hereby affirm and warrant that the beneficial interest assigned herein is 100% of the total beneficial interest in the aforesaid Trust, and that We have the full power and authority to assign and transfer said interest. We further agree to waive any right to revoke or amend said trust or in any way to direct influence or control the actions of the trustee(s) which would create an ownership interest as defined in Section 521-525 of the Internal Revenue Code. We intend this transfer to be as transfer of 1001-42202 for federal income tax purposes, and we agree to report the same to the Internal Revenue Service. We further understand that if the real property held in trust is encumbered by a security instrument containing a “due on sale” provision, that this assignment may violate said security instrument, giving the holder of said security instrument the right to call any underlying debt due and payable.

BENEFICIARY(S) INITIALS \_\_\_\_\_

\_\_\_\_\_  
Grantor:

\_\_\_\_\_  
Grantor:

STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss:

BEFORE ME, the undersigned Notary Public in and for said County and State, personally appeared the above-named \_\_\_\_\_, Beneficiary, and acknowledged that they signed this instrument as their free and voluntary act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

NOTARY SEAL

\_\_\_\_\_  
STATE OF \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss:

BEFORE ME, the undersigned Notary Public in and for said County and State, personally appeared the above-named \_\_\_\_\_ and acknowledged that they signed this instrument as their free and voluntary act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires \_\_\_\_\_

NOTARY SEAL

03/01/2009 16:10 FAX 2062609050

Michael Kaminski

001/051



5151 Corporate Drive  
Troy, Michigan 48098-2639  
Phone: (248) 312-2000  
[www.flagstar.com](http://www.flagstar.com)

Attn: Stewart Title of Kitsap County,  
1521 SE Pipery Way Ste. 105, Port Orchard, WA 98366

PO WA 98370

Dear Closing Agents:

Flagstar Bank, FSB reviewed the pending sales contract on the above referenced mortgage loan in accordance with the terms of the Pre-Foreclosure Sale Program.

This letter will confirm our approval of the Pre-Foreclosure sale of this property, which is contingent on the conditions listed below. If any of the conditions listed below cannot be met, Flagstar Bank, FSB, will not discharge its lien. Please make sure that all instructions are followed per our request to prevent any delays and further interest accruals.

- THE SALE PRICE IS TO BE NO LESS THAN **\$209,000**
- REALTOR COMMISSIONS ARE NOT TO EXCEED: **\$10,450**
- SELLERS CLOSING COSTS ARE NOT TO EXCEED: **\$5,519.92**
- SELLER CONCESSIONS NOT TO EXCEED: **\$0**
- NET SALES PROCEEDS ARE TO BE NO LESS THAN **\$193,030.00** AND SHOULD BE MADE PAYABLE TO FLAGSTAR BANK, FSB. THIS FIGURE SHOULD BE REFLECTED AS THE **DISCHARGE** TO THE FIRST MORTGAGE. NET PROCEEDS ARE TO BE RECEIVED BY EXPRESS MAIL THE NEXT BUSINESS DAY ALONG WITH A SIGNED COPY OF THE SETTLEMENT STATEMENT.
- SELLERS ARE TO NET \$ **-0-**
- SALE IS TO CLOSE NO LATER THAN **04/05/2009**
- A COPY OF THE HUD-1 SETTLEMENT STATEMENT IS TO BE SENT FOR OUR REVIEW AT LEAST 48 HOURS BEFORE CLOSING.
- APPROVAL IS VOID IF BANKRUPTCY IS FILED.
- NO MODIFICATIONS CAN BE MADE TO THESE TERMS WITHOUT WRITTEN APPROVAL.





5151 Corporate Drive  
Troy, Michigan 48098-2639  
Phone: (248) 312-2000  
[www.flagstar.com](http://www.flagstar.com)

Page 2

**After closing, please Federal Express a copy of the HUD-1 Settlement Statement, Net Proceeds Check, Original Promissory Note (If required), Assignment of Escrow Disclosure Statement, and the release of liens, if any.**

Please be aware that Flagstar Bank, FSB, will be responsible for executing the required release of lien and reconveyance immediately after receiving the net sales proceeds and all other closing conditions are met. They are also responsible for filing any cancellation of Notice of Trustee's Sale that has been recorded, rescission of any foreclosure that may have occurred, or cancellation of any other pending foreclosure action that is already in process.

For your convenience, we have provided the complete mailing address and contact person at Flagstar Bank, FSB, as follows:

Flagstar Bank, FSB  
5151 Corporate Drive  
Troy, MI 48098  
Attention: .

**IMMEDIATELY FOLLOWING CLOSING:** Forward a copy of the HUD-1 Settlement Statement Promissory Note, and Net Proceeds Check by facsimile to my attention at :

**Notwithstanding our Approval of this Short Payoff, Flagstar Bank, FSB reserves the rights to withdraw approval at anytime for Quality Control Reasons that maybe discovered during the Short Sale review and Approval Process and demand a Full Payoff**

Should you have any questions, or require additional information, please contact our office at .

Sincerely,

Loss Mitigation Department  
Flagstar Bank, FSB

03/01/2009 18:23 FAX 2062609050

Michael Kaminski

036/051

Sep-08-08 07:52am From-

T-264 P.002/003 F-870

August 26, 2008

REDMOND WA 98052

RE: Borrower/Loan  
Property Address:

REDMOND, WA 98053  
(Terms and Escrow Instructions)

Dear Borrower:

This letter is to confirm that Washington Mutual Bank has agreed to accept less than full payoff to release its lien interest for the referenced loan. The sales price is \$745,000.00 and the net proceeds to Washington Mutual Bank must be no less than \$691,730.98 with a closing date of 10/30/2008. If this amount is not received within five (5) days of the scheduled close date, this offer shall become null and void and all amounts owed under the terms of the loan shall be due. The reduced payoff amount is subject to the following conditions and stipulations.

- \* No other liens, judgements, repairs, or buyer's costs shall be paid through escrow without prior written permission from Washington Mutual Bank.
- \* Please execute and return the "Waiver of Funds" document, including the seller's mailing address prior to the close of escrow.
- \* This transaction is between the Seller and Buyer as indicated on the certified HUD1. Any unauthorized title transfer or change of Buyer(s) will be a violation of this demand, making it immediately null and void.
- \* Any overages must increase the net proceeds and any escrow/impound balances, which also include any insurance and property tax refunds. These will be applied to reduce the total debt of the loan.
- \* The seller shall not receive any proceeds from the sale of the property.
- \* Please fax the preliminary HUD-1 Settlement Statement to my attention for final review and approval 24 hours before closing to [redacted].
- \* A certified, fully executed copy of the final HUD-1 Settlement Statement must be included with the certified payoff check.
- \* The Seller's contribution amount shall be no less than \$ - towards the closing of this transaction, inclusive of the payoff demand referenced above.
- \* A per-diem in the amount of \$ 186.43 will be charged starting the day after the scheduled close date until five (5) days of the scheduled close date unless prior written approval has been issued extending close of escrow.

03/01/2009 18:23 FAX 2062809050

Michael Kaminski

037/051

Sep-08-08 07:52am From-

T-284 P.009/009 F-870

page 2  
BAKER

Loan: 0697006641

**The Escrow Agent is required to disburse escrow proceeds as follows:**

Real Estate Commission:	\$29,800.00
All other costs:	\$23,469.02
Total Closing Costs:	\$53,269.02

**Any additional closing costs not indicated above will need to be paid by a party other than Washington Mutual Bank, and must be approved in advance by Washington Mutual Bank.**

Please note that the payoff demand is inclusive of appropriate re-conveyance fee charged by Washington Mutual Bank. Washington Mutual Bank will instruct the Trustee, if applicable, to record a full reconveyance unless Washington Mutual Bank receives contrary written instructions. Additionally, hazard insurance placed by Washington Mutual Bank, if applicable, will be cancelled upon payoff of the loan.

The terms of this agreement may constitute a forgiveness of debt for the referenced Seller. Washington Mutual Bank, will report any forgiveness of debt in accordance with Internal Revenue Service requirements. A tax accountant or attorney should be consulted to determine any tax reporting consequences.

The terms and conditions of this agreement shall be null and void if bankruptcy is filed by the Seller prior to the close of escrow and the sale is set aside by a bankruptcy court.

Washington Mutual Bank or the Insurer have no obligation to any party concerning the sale, including but not limited to the buyer, sellers, brokers, contractors, escrow or title companies.

If you have any questions, please contact or fax me at the numbers listed on the cover letter.

Sincerely,

Senior Settlement Representative  
Loss Mitigation Department

CC: Escrow Agent

**VERY IMPORTANT!!!!**

Please direct all payoff checks, HUD-1 Settlement Statements or additional funds in accordance with payoff demands to:

**Washington Mutual Bank,  
ATTN: \_\_\_\_\_  
MAILSTOP: JAXA2000  
7255 Baymeadows Way  
Jacksonville, FL 32256**

**\*\*\* Failure of the Escrow Agent to comply with these requirements may result in the breach of demand conditions/stipulations, thus making Washington Mutual's approval of this discounted payoff null and void.\*\*\***



**DISCOUNT PAYOFF AGREEMENT and Release of Claims.**

February 23, 2009

VIA FAX /EMAIL (michael@funderschoice.co)

Re: Loan Number: \_\_\_\_\_  
Property Address: \_\_\_\_\_ Court Redmond WA 98053  
Borrower(s): \_\_\_\_\_

Dear :

Ocwen Loan Servicing, LLC has approved a discount payoff on the above referenced loan in the amount of \$ **11,000.00**. This discount payoff option expires on 5/26/2008, that is, if you do not comply with the terms described below by this expiration date, this payoff option offer will no longer be available to you. To accept the discount payoff, you (i.e., any of the borrower(s) shown above) must perform the following prior to the expiration date of this offer:

1. Each 1 of the above-named borrowers must sign this letter, which includes a Release of Claims, on the appropriate line under "Acknowledged and Accepted".
2. You must fax a fully signed copy of this letter to \_\_\_\_\_ by 5/26/2008.
3. Ocwen must **receive** the entire payoff amount by bank wire transfer no later than the close of business on 5/26/2008
4. You must fax a copy of the signed HUD-1 Settlement Statement to my attention at the below listed fax number by 5/26/2008. The HUD-1 Settlement Statement must be in accordance with the Good Faith Estimate, which Ocwen relied upon to approve this discount payoff. Any surplus funds must be paid directly to Ocwen Loan Servicing, LLC in accordance with the instructions in item 3 above. Under no circumstances shall any funds go the borrower
5. You authorize Ocwen to apply any funds which may be in your impound account, or in your suspense account, to any deficiency balance that you may owe to Ocwen.
6. (Optional) You (i.e., the Borrowers shown above) have/has agreed to sign a promissory note in the amount of \$ \_\_\_\_\_, **the full amount of which shall be applied to reduce any** deficiency balance you owe Ocwen on your home loan account. The original of this promissory note must be sent to us along with the payoff funds.

Upon our timely receipt of the entire payoff amount and a copy of this letter, properly signed by each of the above-named borrower(s), we will advise our Client, Ocwen, to execute a release and a discharge of the Deed of Trust/Mortgage and, if necessary, to file a withdrawal in connection with any legal action it may already have taken, as of the date of your response to this letter, to collect this obligation.



**RELEASE OF CLAIMS**

As consideration for this discount payoff offer, which Ocwen is not otherwise obligated to make available to Borrowers, the receipt and sufficiency of which consideration is hereby acknowledged by Borrowers, and as a condition to your (i.e., Borrowers shown above) acceptance of this discount payoff offer, Borrower, for himself or herself and his or her heirs, personal representatives, successors, and assigns, hereby jointly and severally, knowingly and voluntarily releases, discharges, and covenants not to sue, Ocwen and its predecessors, successors and assigns, representatives, agents, affiliates, parents, subsidiaries, officers, employees, directors and shareholders, including this law firm (collectively, the "Released Parties") from any and all claims, demands, liabilities, defenses, setoffs, counterclaims, actions, and causes of action of whatsoever kind or nature, whether known or unknown, whether legal or equitable, which he or she has, or may assert in the future, against Ocwen and the Released Parties directly or indirectly, or in any manner connected with this offer and with any event, circumstance, notice of default, action, or failure to act, of any sort or type, whether known or unknown, whether legal or equitable, which was related or connected in any manner, directly or indirectly, to the Property or to the servicing of this Loan. Borrower hereby further acknowledges and agrees that, to the extent that any such claims may exist, the value to the Borrower of the discount payoff offer by Ocwen contained in this letter, substantially and materially exceeds any and all value of any kind or nature whatsoever of any such claims.

Nothing in this letter shall be construed to prejudice, waive, modify or alter any of Ocwen's rights or remedies in law or in equity in collecting the entire amounts due and to come due on the Loan or be construed to waive any defense of Ocwen. Ocwen reserves the right to terminate this offer at any time prior to your timely acceptance of the terms set forth above.

**OCWEN LOAN SERVICING, LLC IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Yours truly,  
Ocwen Loan Servicing, LLC

Loan Resolution Consultant  
Toll Free Phone: (888-779-2857) Fax: (407-737-5071)

ACKNOWLEDGED AND ACCEPTED:

By: \_\_\_\_\_  
(Borrower's sign)

\_\_\_\_\_  
(Co- Borrower's sign)

Date: \_\_\_\_\_

03/01/2008 18:24 FAX 2062809050

Michael Kaminski

040/051

RSBC

4/14/2008 11:31 AM PAGE 2/002 Fax Server

Date: 04/14/2008

From: Payoff Department

Attn: COMMONWEALTH LAND TITLE  
14450 NE 29TH PL STE 200  
BELLEVUE, WA 98007



14450 NE 29TH PL STE 200

Ref: W ER Acct: The amount to payoff the above referenced account in full, is as follows:

Payoff Balance (Principal + Interest)	\$38,037.68
Prepayment Penalty	\$0.00
Funds Advanced	\$0.00
Optional Insurance	\$0.00
Reconveyance/Releasing Fee	\$74.00
Other Fees	\$0.00
Late Fees	\$278.82
Less Unapplied Cash	\$0.00
Total Amount Due	\$38,390.50
Good Until	04/24/2008
Per Diem	\$14.34

The above payoff quote is subject to final audit. The payoff quote does not waive our right to receive any funds which are due and owing on this account as a result of any subsequent adjustments, which may include but are not limited to recent advances, returned items and additional fees and charges. Additionally, we will not release any security interest until this account is paid in full.

Please issue a check referencing our account number for: \$38,390.50 to HFC for the payoff. Please forward the payoff to the address indicated below.

For Regular Mail:  
HFC

Attn: Payoff Department  
P.O. Box 8234  
Carol Stream, IL 60137

For Overnight Mail:  
HFC

Attn: Payoff Department  
1301 E. Tower Road  
Schaumburg, IL 60173

If necessary, refer to the information contained in the credit bureau for verification of this account. HFC reports to each of the three major credit bureaus every 30 days: Trans Union, Experian, and Equifax.

Note: If your loan contains one or more credit insurance products for which refunds are entitled, the net payoff amount includes all related refunds due.

03/01/2009 18:25 FAX 2082809050

Michael Kaminski

043/051

02/10/2009 18:21 FAX 4405488106

LOSS MITIGATION

002/004

**National City.**

National City Bank  
P.O.Box 5570  
Cleveland, OH 44101-0570

Bothell, WA 98012-4929

Date: February 10, 2009  
Re: Account Number: ("Account")  
Collateral:

Dear

Upon receipt of certified funds in the amount of \$18,172.71, we agree to release our lien interest in the above mentioned property. The payoff on the Account as of today's date is \$128,197.39. After applying \$18,172.71 to your Account, you will remain liable for the outstanding balance.

This offer is valid through March 10, 2009. Please remit the certified funds payable to National City Bank on or before that date to the address below.

National City  
6750 Miller Road  
Brecksville, OH 44141  
Attn: Payment Processing, Loc #01-7103.

Except for the release of our lien, all other terms of your contract remain in full force and effect. Please contact me to make payment arrangements for the outstanding balance.

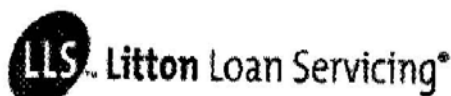
If you have any questions regarding this matter, please contact me at the number below.

Sincerely,

Account Specialist

213006 Rev 10/09

Notice: See Reverse Side for Important Information



4828 Loop Central Drive  
Houston, TX 77081  
Telephone (800) 999 -8501  
Fax (713) 793 -4363  
www.littonloan.com

Aug 16, 2008

Bothell, WA 98012-

Re: Litton Loan #:  
Borrower:  
Property Address: Bothell, WA 98012

Dear Borrower(s):

Litton Loan Servicing LP hereby agrees to participate in the assisted short sale of the above referenced property. This demand letter should be used by the closing agent as our formal demand statement. No additional statement will be issued. This approval is exclusive to the offer by the buyer referenced in this letter. The conditions of approval are as follows:

1. The closing and funding must take place no later than **Sept 10, 2008** or this approval is void.
2. The approved buyer(s) is/are **Clayton A. Williams and Christina L. Williams** and the sales price shall be **\$425,000.00**. Another buyer cannot be substituted without Litton's prior written approval.
3. Proceeds to Litton Loan Servicing LP shall be no less than **\$389,000.00**. Litton reserves its right to adjust its approved net proceeds or cancel this approval if any of the terms on the preliminary HUD 1 provided are altered without our prior approval. The property is being sold in "As-Is" condition. No repairs will be paid out of the proceeds, unless specifically stated.
4. The seller will not receive any proceeds from this short sale transaction. If there are remaining escrow funds or refunds of any kind, they will be sent to Litton Loan Servicing LP to offset the loss.
5. Should the closing be delayed and the investor agrees to an extension of the original closing date, the seller shall be responsible for per diem charges, extension fees and foreclosure sale postponement fees. The seller shall also be responsible for any additional costs and fees over the aforementioned approved amounts.
6. Litton Loan Servicing LP will provide a satisfaction of debt within the statutory time limit governed by the Property State.
7. **The closing agent must provide a copy of the final HUD-1 closing statement at least 24 hours prior to closing for final approval by Litton.**
8. **the closing agent will need a fax a copy of the final HUD for approval, a copy of the certified check and the FedEx tracking number immediately after closing.**

Closing agent Must Federal Express closing proceeds check immediately following closing along with a copy of the final fully executed HUD-1 settlement statement to:

Litton Loan Servicing LP  
ATT: Loss Mitigation Department - Juliette Finney  
4828 Loop Central Drive  
Houston, TX 77081

**Promissory Note Instructions-**

1. Please fax the note and the federal tracking number to.
2. Overnight original to-  
Litton Loan Servicing LP  
ATT: Loss Mitigation Department - Brandi Diaz



03/01/2009 16:26 FAX 2062609050

Michael Kaminski

045/051

**4828 Loop Central Drive  
Houston, TX 77081**

**WE WILL NOT APPROVE THE FUNDS IF THE PROMISSORY NOTE IS MISSING**

Litton Loan Servicing LP may be required to report this transaction to the IRS. We recommend that you discuss this matter with your accountant or financial advisor. Your loan will be reported to the credit bureau as "Account Settled".

~  
Aug 16, 2008  
Page 2

**Litton Loan Servicing LP is a debt collector. This is an attempt to collect a debt and any information provided to us as part of this transaction will be used for that purpose.**

Should you have any further questions, feel free to contact the undersigned at (800) 999.8501 ext. and fax number is 972.653.6328

Sincerely,

\_\_\_\_\_  
Loss Mitigation Department

### Promissory Note

This Promissory Note is made on August 16, 2008. For Value received, and intending to be legally bound, the undersigned individual(s) (the "Obligor(s)") promise(s) to pay to the Litton Loan Servicing LP, its successors and/or assigns (the "Obligee"), the principal sum of (U.S. \$11,000.00) Eleven Thousand dollars interest at an annual rate of the lesser of 00.0 % or the highest rate permitted by law, payable in equal monthly installments of (U.S. \$183.33) for 60 months. **The first installment is due upon signing of this note, and subsequent payments are due on the first day of each month, commencing on October 1, 2008**, and continuing until the principal sum outstanding and any late charges or other amounts due and owing under this Note are paid in full.

Obligor will make monthly installments payable to Dyck-O'Neal, Inc. and deliver them to:

**Dyck O'Neal, Inc.  
P. O. Box 13370  
Arlington, Texas 76094**

or to such other servicer or such other address as Obligee may hereafter designate in writing to Obligor.

Obligor may prepay the unpaid indebtedness hereof at any time in whole or in part without prepayment charge or premium. Obligee will apply partial prepayments to the principal; partial prepayments will not affect the amount or due date of monthly installments, except that the final payment date will occur earlier and the final installment may be smaller than scheduled.

Failure of the Obligor to pay any installment on or before the first day of the month in which it is due, Obligor agrees to pay a late fee on such installment in the amount of ten percent ( 10%) of the regular payment, to the extent not prohibited by applicable law. Installment payments will be applied first to the longest outstanding installment.

In the event the Obligor fails to make payment of any installment due hereunder by the thirtieth day of any month, the entire unpaid balance of this note plus any unpaid late fees and other sums due hereunder shall at the option of the obligee become due and payable immediately. The Obligee may exercise this option to accelerate regardless of any prior forbearance, and shall not by any act of omission or commission be deemed to have waived any of its rights or remedies hereunder unless such waiver be in writing and signed by Obligee.

The Obligor consents to the Obligee commencing action on this Note at any time after acceleration in the State of Washington (the "State"), and the Obligor expressly agrees to be bound by the jurisdiction of the appropriate court in the State. In the event the Obligee takes action to collect any sums owing hereunder, the Obligee may also recover from the Obligor all costs of such action, including costs of suit and other expenses in connection therewith, including a reasonable attorney' fee for collection, to the extent not prohibited by applicable law.

The Obligor hereby waives presentment for payment, protest, demand and notice of nonpayment and agrees that, without affecting Obligor's liability, the Obligee may, without notice, renew or extend the time for payment, or accept partial payments.

This Note shall be the joint and several obligations of all makers, sureties, guarantors and endorsers and shall be binding on them and their successors and assigns.

Any notice to Obligor shall be given by mailing such notice by certified mail addressed to Obligor at the address stated below or to such other address as Obligor may designate by written notice to the address to which payments are made. Obligor shall give such notice within 30 days of any change of address.

In the event any one or more of the provisions contained in this Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

This Note and the obligations of the undersigned shall be governed by the laws of the State.

Obligor: \_\_\_\_\_  
(Name) (Signature)

Obligor's Social security number:

Obligor's Phone: \_\_\_\_\_  
(day) (evening)

Obligor's Mailing Address:

Obligor: \_\_\_\_\_  
(Name) (Signature)

Obligor's Social security number:

Obligor's Phone: \_\_\_\_\_  
(day) (Evening)

Obligor's Mailing Address:

Subscribed and sworn to before me this \_\_\_\_\_ day of, 2008

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

Lender Loan Number: \_\_\_\_\_

HR 1231 IH – Protection of Owners of Distressed Properties  
111th CONGRESS  
1st Session  
H. R. 1231

To protect the property and security of homeowners who are subject to foreclosure proceedings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

**February 26, 2009**

Ms. MOORE of Wisconsin (for herself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To protect the property and security of homeowners who are subject to foreclosure proceedings, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Foreclosure Rescue Fraud Act of 2009'.

**SEC. 2. DEFINITIONS.**

For purposes of this Act, the following definitions shall apply:

(1) COMMISSION- The term 'Commission' means the Federal Trade Commission.

(2) FORECLOSURE CONSULTANT- The term 'foreclosure consultant'--

(A) means a person who makes any solicitation, representation, or offer to a homeowner facing foreclosure on residential real property to perform, for gain, or who performs, for gain, any service that such person represents will prevent, postpone, or reverse the effect of such foreclosure; and

(B) does not include--

(i) an attorney licensed to practice law in the State in which the property is located who has established an attorney-client relationship with the homeowner;

(ii) a person licensed as a real estate broker or salesperson in the State where the property is located, and such person engages in acts permitted under the licensure laws of such State;

- (iii) a housing counseling agency approved by the Secretary;
  - (iv) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)));
  - (v) a Federal credit union or a State credit union (as defined in section 101 of the Federal Credit Union Act ([12 U.S.C. 1752](#))); or
  - (vi) an insurance company organized under the laws of any State.
- (3) HOMEOWNER- The term 'homeowner', with respect to residential real property for which an action to foreclose on the mortgage or deed of trust on such real property is filed, means the person holding record title to such property as of the date on which such action is filed.
- (4) LOAN SERVICER- The term 'loan servicer' has the same meaning as the term 'servicer' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2605\(i\)\(2\)](#)).
- (5) RESIDENTIAL MORTGAGE LOAN- The term 'residential mortgage loan' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act ([15 U.S.C. 1602\(v\)](#)) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).
- (6) RESIDENTIAL REAL PROPERTY- The term 'residential real property' has the meaning given the term 'dwelling' in section 103 of the Consumer Credit Protection Act ([15 U.S.C. 1602](#)).
- (7) SECRETARY- The term 'Secretary' means the Secretary of Housing and Urban Development.

### **SEC. 3. MORTGAGE RESCUE FRAUD PROTECTION.**

- (a) Limits on Foreclosure Consultants- A foreclosure consultant may not--
- (1) claim, demand, charge, collect, or receive any compensation from a homeowner for services performed by such foreclosure consultant with respect to residential real property until such foreclosure consultant has fully performed each service that such foreclosure consultant contracted to perform or represented would be performed with respect to such residential real property;
  - (2) hold any power of attorney from any homeowner, except to inspect documents, as provided by applicable law;

(3) receive any consideration from a third party in connection with services rendered to a homeowner by such third party with respect to the foreclosure of residential real property, unless such consideration is fully disclosed, in a clear and conspicuous manner, to such homeowner in writing before such services are rendered;

(4) accept any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation with respect to services provided by such foreclosure consultant in connection with the foreclosure of residential real property; or

(5) acquire any interest, directly or indirectly, in the residence of a homeowner with whom the foreclosure consultant has contracted.

(b) Contract Requirements-

(1) WRITTEN CONTRACT REQUIRED- Notwithstanding any other provision of law, a foreclosure consultant may not provide to a homeowner a service related to the foreclosure of residential real property--

(A) unless--

(i) a written contract for the purchase of such service has been signed and dated by the homeowner; and

(ii) such contract complies with the requirements described in paragraph (2); and

(B) before the end of the 3-business-day period beginning on the date on which the contract is signed.

(2) TERMS AND CONDITIONS OF CONTRACT- The requirements described in this paragraph, with respect to a contract, are as follows:

(A) The contract includes, in writing--

(i) a full and detailed description of the exact nature of the contract and the total amount and terms of compensation;

(ii) the name, physical address, phone number, e-mail address, and facsimile number, if any, of the foreclosure consultant to whom a notice of cancellation can be mailed or sent under subsection (d); and

(iii) a conspicuous statement in at least 12-point boldface type in immediate proximity to the space reserved for the homeowner's signature on the contract that reads as follows: 'You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the



date on which you sign the contract. See the attached notice of cancellation form for an explanation of this right.’

(B) The contract is written in the principal language used to solicit or market the services to the homeowner.

(C) The contract is accompanied by the form required by subsection (c)(2).

(c) Right To Cancel Contract-

(1) IN GENERAL- With respect to a contract between a homeowner and a foreclosure consultant regarding the foreclosure on the residential real property of such homeowner, such homeowner may cancel such contract without penalty or obligation by mailing a notice of cancellation not later than midnight of the 3rd business day after the date on which such contract is executed or would become enforceable against the parties to such contract.

(2) CANCELLATION FORM AND OTHER INFORMATION- Each contract described in paragraph (1) shall be accompanied by a form, in duplicate, that--

(A) has the heading ‘Notice of Cancellation’ in boldface type; and

(B) contains in boldface type the following statement:

‘You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day after the date on which the contract is signed by you.

‘To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice or any other equivalent written notice to [insert name of foreclosure consultant] at [insert address of foreclosure consultant] before midnight on [insert date].

‘I hereby cancel this transaction on [insert date] [insert homeowner signature].’

(d) Waiver of Rights and Protections Prohibited-

(1) IN GENERAL- A waiver by a homeowner of any protection provided by this section or any right of a homeowner under this section--

(A) shall be treated as void; and

(B) may not be enforced by any Federal or State court or by any person.

(2) ATTEMPT TO OBTAIN A WAIVER- Any attempt by any person to obtain a waiver from any homeowner of any protection provided by this section or any right of the homeowner under this section shall be treated as a violation of this section.

(3) CONTRACTS NOT IN COMPLIANCE- Any contract that does not comply with the applicable provisions of this Act shall be void and may not be enforceable by any party.

**SEC. 4. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.**

(a) In General- If a loan servicer finds that a homeowner has failed to make 2 consecutive payments on a residential mortgage loan and such loan is at risk of being foreclosed upon, the loan servicer shall notify such homeowner of the dangers of fraudulent activities associated with foreclosure.

(b) Notice Requirements- Each notice provided under subsection (a) shall--

- (1) be in writing;
- (2) be included with a mailing of account information;
- (3) have the heading 'Notice Required by Federal Law' in a 14-point boldface type in English and Spanish at the top of such notice; and
- (4) contain the following statement in English and Spanish: 'Mortgage foreclosure is a complex process. Some people may approach you about saving your home. You should be careful about any such promises. There are government and nonprofit agencies you may contact for helpful information about the foreclosure process. Contact your lender immediately at [XXXX], call the Department of Housing and Urban Development Housing Counseling Line at (800) 569-4287 to find a housing counseling agency certified by the Department to assist you in avoiding foreclosure, or visit the Department's Tips for Avoiding Foreclosure website at <http://www.hud.gov/foreclosure> for additional assistance.' (the blank space to be filled in by the loan servicer and successor telephone numbers and Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Housing Counseling Line and Tips for Avoiding Foreclosure website, respectively.).

**SEC. 5. CIVIL LIABILITY.**

(a) In General- Any foreclosure consultant who fails to comply with any provision of section 3 or 4 with respect to any other person shall be liable to such person in an amount equal to the greater of--

- (1) the amount of any actual damage sustained by such person as a result of such failure; or
- (2) any amount paid by the person to the foreclosure consultant.

(b) Attorneys' Fees- In the case of any successful action to enforce any liability under subsection (a), the foreclosure consultant shall also be liable to the person in an amount equal to the costs of the action, together with reasonable attorneys' fees.



**SEC. 6. ADMINISTRATIVE ENFORCEMENT.**

(a) Enforcement by Federal Trade Commission-

(1) UNFAIR OR DECEPTIVE ACT OR PRACTICE- A violation of a prohibition described in section 3 or a failure to comply with any provision of section 3 or 4 shall be treated as a violation of a rule defining an unfair or deceptive act or practice promulgated under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ACTIONS BY THE FEDERAL TRADE COMMISSION- The Federal Trade Commission shall enforce the provisions of sections 3 and 4 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this Act.

(b) State Action for Violations-

(1) AUTHORITY OF STATES- In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating the provisions of section 3 or 4, the State-

-

(A) may bring an action to enjoin such violation in any appropriate United States district court or any other court of competent jurisdiction;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 5 as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action.

(2) RIGHTS OF FEDERAL TRADE COMMISSION-

(A) NOTICE TO COMMISSION- The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) INTERVENTION- The Commission shall have the right--

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action;

(iii) to remove the action to the appropriate United States district court; and

(iv) to file petitions for appeal in such actions.

(3) INVESTIGATORY POWERS- For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) LIMITATION- Whenever the Federal Trade Commission has instituted a civil action for a violation of section 3 or 4, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of section 3 or 4 that is alleged in that complaint.

## **SEC. 7. PREEMPTION.**

No provision of this Act shall be construed as affecting any provision of State or local law respecting any foreclosure consultant, residential mortgage loan, or residential real property that provides equal or greater protection to homeowners than what is provided under this Act.

## **AMENDED DISTRESSED HOMES LAW**

by Northwest Multiple Listing Service  
March 25, 2009

### **Supersedes Legal Bulletin 179**

[LB181 PDF](#)

Effective March 25, 2009, the Washington legislature has amended Distressed Homes Law (RCW 61.34) (the "Law").

In June 2008, the Law created new duties for real estate licensees in order to protect owners of "Distressed Homes." Under certain circumstances, real estate licensees could have been considered "Distressed Home Consultants" for sellers and were required to comply with the various provisions of the Law. The 2009 amendments to the Law generally exempt a real estate licensee from the definition of a "Distressed Home Consultant" when the licensee is providing routine real estate brokerage services.

This bulletin summarizes the amendments to the Law and the resulting revisions to NWMLS forms. Please take the time to read this bulletin carefully, review the revised forms and manual instructions, and watch the instructional video available on Discover.

#### **1. Real Estate Licensees are Exempt from the Law when Rendering Real Estate Brokerage Services.**

The amended Law generally exempts real estate licensees from the definition of a Distressed Home Consultant ("DHC"). Specifically, the definition of a DHC does not include "a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under Chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance." In other words, a real estate licensee will not be considered a DHC when the licensee is providing routine real estate brokerage services.

#### **2. Exception to Exemption – Distressed Home Conveyances.**

A real estate licensee is not exempt from the Law when the licensee participates in a "Distressed Home Conveyance." A "Distressed Home Conveyance" is a transaction where a buyer purchases property from a "Distressed Homeowner" (defined by RCW 61.34), allows the Distressed Homeowner to continue to occupy the property, and promises to convey the property back to the Distressed Homeowner or promises the Distressed Homeowner an interest in, or portion of the proceeds from a resale of the property.

As discussed below, NWMLS's existing forms and its amended forms do not allow real estate licensees to participate in "Distressed Home Conveyances" without a separate written agreement. The reason for this is that these transactions are very risky under the Law and NWMLS forms are not adequate for this type of transaction. The Law requires that this type of transaction be completed on a special form of purchase and sale agreement containing certain provisions that are not included in NWMLS forms and legal counsel is required. Therefore, if a buyer or seller wants to complete a transaction of this type, the buyer or seller should be immediately referred to legal counsel. If the broker and real estate salesperson would like to participate in the transaction, they should also seek legal counsel. These considerations are not new and thus should cause no concern.

### **3. Revised Listing Agreements (Form 1A and 1B).**

NWMLS Listing Agreements (Form 1A and Form 1B) have been revised to eliminate some of the language related to the Law. The forms have also been revised to make clear that the broker and agent will not participate in a Distressed Home Conveyance unless otherwise agreed to in writing.

### **4. Current Listing Agreements Do Not Need to be Replaced.**

If you currently have a listing agreement with a seller, you do not need to replace that listing agreement with a revised listing agreement (rev. 3/09). This is true even if you have a "Distressed Home Listing Agreement" in place. Current NWMLS listing agreements state that the listing broker and agent are not providing the services of a DHC. Those agreements are therefore, consistent with the amended Law.

However, if you have a "Distressed Home Listing Agreement" in place and you have an addendum to that agreement that states that you will provide certain DHC services to your client – you should consult with your broker and consider whether or not you should replace that agreement. It is possible that if you have agreed to provide DHC services as a part of the listing agreement, you may be taking on more liability than necessary under the amended Law.

### **5. Revised Buyer Agency Agreement (Form 41A and 41B).**

Similar to the Listing Agreements, NWMLS Buyer Agency Agreements (Form 41A and Form 41B) have been revised to eliminate some of the language related to the Law. The forms have also been revised to make clear that the broker and agent will not participate in a Distressed Home Conveyance unless otherwise agreed to in writing. Similar to the Listing Agreements, current Buyer Agency Agreements do not need to be replaced with the revised forms.

Additionally and unrelated to the Law, NWMLS has added an option in Form 41A for the broker and buyer to enter into an "exclusive" agency relationship. This will allow an agent to be a buyer's exclusive agent in a certain geographical area. NWMLS manual instructions explain how to use the revised form.

**6. Discontinued Forms (Form 1A-DH, Form 1B-DH, and Form 22NFW).**

The Distressed Home Listing Agreements (Form 1A-DH and Form 1B-DH), including the translated versions of those forms, and the No Foreclosure Warranty Addendum (Form 22-NFW) have been discontinued. Those forms are no longer necessary due to the amendments to the Law.

**7. The Amended Law Modifies the “20 Day Rule” and the “Delayed Possession” Provision.**

The 2008 Law provided that if a person purchases property within 20 days of a foreclosure sale, that person is a DHC for the seller. The amended Law provides that the buyer is not a DHC, even if the parties reach mutual acceptance or close a sale within 20 days of a foreclosure sale, if the seller is represented by an attorney or real estate licensee.

The 2008 Law provided that a buyer is a DHC for the seller, if the buyer allowed the distressed seller to retain possession after closing. The amended Law provides that the buyer is not a DHC for the seller, even if the seller retains possession after closing if (1) the seller is represented by an attorney or real estate licensee; (2) possession is for no more than 20 days after closing; and (3) the purpose of possession is to arrange for the seller to relocate.

Due to these amendments to the Law, most buyers will not need to concern themselves with the Law. However, there are some circumstances under the amended Law where a buyer may unwittingly become a DHC for the seller. These risks can be mitigated by using Form 22-FSBO where appropriate.

**8. Revisions to the For Sale By Owner Addendum (Form 22-FSBO).**

When a seller is not represented in a transaction, the buyer faces the risk of becoming a DHC for the seller under the “20 Day Rule” and the “Delayed Possession” provision. To mitigate this risk, a selling licensee should include a Form 22-FSBO (rev. 3/09) with any offer where the seller is not represented.

The revised form requires a seller to disclose whether or not the property is a “Distressed Home.” The form also requires the seller to warrant that mutual acceptance of the agreement and the closing date do not fall within 20 days of a foreclosure sale. If the seller can make this warranty, the buyer need not be concerned with the “20 Day Rule.”

Like the old Form 22-NFW, the revised Form 22-FSBO provides that if circumstances change and mutual acceptance or the closing date fall within 20 days of a foreclosure sale, the seller agrees to notify the selling licensee and the buyer of that fact in writing. If the seller provides this notice, the buyer has the option to terminate the agreement and is entitled to the return of any earnest money and buyer’s out of pocket expenses. If the buyer elects to proceed with the closing, the buyer needs to consult with an attorney



because the buyer is a DHC for the seller, must have a separate written agreement with the seller, and owe fiduciary duties to the seller.

Finally, to address the Delayed Possession provision of the Law, the form states that, despite what the parties agreed to on page one of the Purchase and Sale Agreement, the Possession Date will not be later than the Closing Date.

#### **9. Delayed Possession – 20 Day Limit.**

Due to the Delayed Possession provision, even when the seller is represented in the transaction by an attorney or real estate licensee, a selling agent should consider limiting any delayed possession to 20 days or less. If the Possession Date is more than 20 days after the Closing Date and the seller is a “Distressed Homeowner,” the buyer will likely be considered a DHC for the seller.

#### **10. Other Amendments to the Law.**

The definition of “dwelling” has been revised to include condominium units in buildings with more than four units and other types of residential units. Also, the definition of “homeowner” has been revised to include persons who have occupied a dwelling as his or her primary residence within 180 days of the latter of a conveyance or mutual acceptance of a purchase and sale agreement. Because real estate licensees will be generally exempt from the Law, these revisions to the Law, while important for other reasons, are not critical for the brokerage industry as they will not affect the day-to-day practice of real estate licensees.

#### **11. Use the Most Current Version of the Forms.**

As always, real estate licensees should use the most current version of NWMLS forms for any contracts that are not yet written. In addition, licensees should recycle all copies of any old forms to make sure that old forms are not accidentally used. This latest forms revision includes changes to Form 1A, Form 1B, Form 22-FSBO, Form 41A, and Form 41B. Also, please remember to discontinue use of Form 1A-DH, Form 1B-DH, and Form 22-NFW.

Washington Revised Cod RCW 61.34.010

## NONJUDICIAL FORECLOSURE PROCESS AND FORFEITURES

Nonjudicial foreclosure of Deeds of Trust and forfeitures of Real Estate Contracts are primarily controlled by statute. They are form- and- calendar-intensive endeavors. The practicing attorney must be particularly diligent in reviewing the contract documents, using up-to-date forms, and conducting thorough searches for those who may have an interest in the subject property.

### I. NONJUDICIAL FORECLOSURE OF DEEDS OF TRUST

(RCW 61.24)

#### INTRODUCTION

Deeds of Trust are the most popular instruments for financing of nonagricultural real estate in Washington. They were developed in reaction to judicial foreclosures, with the intention that nonjudicial trustee's sales would be cheaper and more efficient for all parties concerned. Ideally, these efficiencies make financing more competitive for, and available to, the end consumer.

In simple terms, and on the assumption of compliance with all technical requirements, the deed of trust allows a lender to foreclose its interest by Trustee's sale unjust over 120 days (190 days from date of first default).

RCW 61.24 underwent significant amendment in 1999-especially to modify and clarify the status, rights, and responsibilities of guarantors.

#### NATURE OF INTEREST

The essence of a Deed of Trust is a conveyance of title, in trust, to a neutral third party ("Trustee") during the pendency of the obligation to the Beneficiary. Although the instrument would appear to convey title, Washington views the deed as essentially a security instrument, with the Trustee holding nominal title and the borrower or Grantor holding the beneficial interest of title.

#### THE TRUSTEE

Washington law (RCW 61.24.010) provides a broad list of those who are legally qualified to act as Trustee under a statutory Deed of Trust. As a matter of practice, Trustees tend to be attorneys; title companies bunks, or professional trustee companies, which conduct Trustee's sales en masse.

The Trustee's core functions are to follow the instructions of the Beneficiary upon a default on the underlying obligation, and to provide reconveyance of title upon direction by the Beneficiary. The trustee may resign at any time or transfer his/her authority to a successor trustee. The beneficiary also appears to have the unilateral power to appoint a successor trustee at any time.

The Trustee has apparent duties to both the Grantor and the Beneficiary. Specifically, the Trustee has a duty to act in good faith and to strictly comply with the requirements for nonjudicial foreclosure. Although a Beneficiary's attorney may act as Trustee, Washington courts have expressed concern about potential problems from conflicts of interest. When in doubt, it is safer to appoint a "neutral" Trustee to conduct the sale.

### CONDITIONS TO INVOKE TRUSTEE'S SALE

In order to exercise the nonjudicial Trustee's sale provisions provided under RCW 61.24, the following are required (RCW 61.24.030):

1. The Deed of Trust must contain language conferring power of sale upon the Trustee;
2. The Deed of Trust must contain language expressly acknowledging that the land encumbered is not used principally for agricultural purposes (Deeds of Trust may not be used for agricultural land), and said statement must, in fact, be true;
3. That a default has occurred on the underlying obligation;
4. That there is no pending lawsuit in which the Beneficiary is seeking to enforce the underlying obligation (this is probably designed to ensure that the property or obligation is not already subject to the jurisdiction of a court);
5. That during the sale procedure, the Trustee has a street address at which a party may effectuate personal service; and
6. That at least 30 days before the sale proceedings are started the Trustee and/or Beneficiary serves a proper Notice of Default on the Grantor notifying him/her of the applicable defaults (See RCW 61.24.030(7) for the ten required elements of the Notice of Default).

The Notice of Default need only be served on the Grantor. Service means copies to be sent to the Grantor by regular and registered or certified/return receipt mail, and a copy must be posted on the premises or served personally on the Grantor.

There is no requirement that it be recorded with the county auditor.

### NOTICE OF TRUSTEE'S SALE

Assuming the Trustee or Beneficiary has properly served a Notice of Default, and that the time period set forth therein has expired, the Trustee may initiate sale



proceedings by preparing, serving, and filing for record a Notice of Trustee's Sale (along with the accompanying Notice of Foreclosure). The required contents of said notice, and requirements for service, are listed in RCW 61.24.040.

A standard litigation/foreclosure guarantee from a title company contains a report of interests of record against the subject property. The notice must be served by regular first class, as well as registered or certified/return receipt mail, to all parties having junior interests) of record, as well as occupants for any property with less than five residential units. Another copy must either be posted on the premises or personally served upon an occupant of each residential unit.

Additionally, the Notice of Trustee's Sale must be published in a newspaper of general circulation twice leading up to the sale: one time between 28 and 35 days prior to sale, and a second time between 14 and 17 days prior to sale.

The Notice of Trustee's Sale sets forth when and where the Trustee's sale will take place, and provides further detail of accruing amounts needed to cure the defaults, which usually include costs and attorney fees.

The sale may not take place less than 190 days from the date of first default by Grantor.

#### JUDICIAL RESTRAINT OF SALE

RCW 61.24.130 allows a party in interest to seek an injunction restraining or modifying the trustee's sale "on any proper ground." The court normally will require the delinquent payments, and new payments as they come due, to be paid into the court registry while the restraining order is in effect. The court then has broad authority to modify and monitor the sale proceedings.

A filing in bankruptcy triggers an automatic stay of Trustee's sale proceedings under 11 U.S.C. sec. 362. Upon relief from the automatic stay, or some other relinquishment of bankruptcy court jurisdiction (such as dismissal), the sale may be re-set with similar notice provisions served to the affected parties no less than forty-five (45) days prior to the sale RCW 61.24.130(4).

#### GUARANTOR ISSUES

The 1999 amendments to RCW 61.24 substantially altered the law as it pertains to Guarantors under Deeds of Trust, and the primary question is whether the loan was for the borrower's primary residence, or whether it was a commercial loan.

Primary Residential: The lender faces an election of remedies. If a Beneficiary chooses the remedy of Trustee's sale, he or she waives any claim for a sale deficiency against the Grantor Guarantor, or borrower. Instead, the Beneficiary may pursue a judgment for damages.

Furthermore, the Beneficiary has no claim for damages from waste if it exercises the Trustee's sale remedy RCW 61.24.100(1).

Commercial:

These provisions apply to loans executed after June 11, 1998. The

Beneficiary may sue the Guarantor for a deficiency. The Beneficiary also has a cause of action if the Borrower or Grantor commits waste which results in the market value being lower than the balance owed at time of sale, as well as for rents, insurance proceeds, etc RCW 61.24.100(3).

Actions against a Guarantor must be brought within one year of the trustee's sale, subject to exceptions RCW 61.24.100(4).

Unless otherwise agreed in writing, a deed in lieu of foreclosure presumably discharges the Guarantor RCW 61.24.100(7).

Any action against a Guarantor is predicated upon the Beneficiary providing the Notice of Default and Notice of Trustee's Sale, which must include the additional Guarantor notice language contained in RCW 61.24.042, to the Guarantor during the foreclosure process.

## II. FORFEITURE OF REAL ESTATE CONTRACTS (RCW 61.30)

### INTRODUCTION

Real Estate Contracts are the preferred method of seller-financed real estate transactions.

They are distinguishable from other methods because of the unique nature of the seller's remedy: forfeiture, as opposed to public sale. With forfeiture, the defaulting Buyer's interest reverts back to the Seller, regardless of the Buyer's equity in the property. Consequently, there exists a heightened potential for inequitable results a/k/a windfall to Seller-especially if the Buyer's equity is substantial at the time of forfeiture. Under the maxim of "equity abhors a forfeitures" it is not surprising that Washington courts are receptive to equitable

relief in circumstances where a Buyer might otherwise lose the benefit of his/her substantial equity.

#### NATURE OF INTEREST

Typically, the Buyer obtains a contract interest in the property and is recognized as the owner, even though title is usually not transferred until a fulfillment deed is given upon contract completion. The Seller retains an interest in the contract much like a lender on a note and deed of trust. Buyer's and Seller's interests are usually deemed transferable unless prohibited in the contract with a reasonable basis. The Seller is typically more concerned about transfer, since the Seller is, in essence, "extending credit" to the purchaser/occupant.

#### CONDITIONS TO EXERCISE FORFEITURE

The statutory preconditions to forfeiture are (RCW 61.30.030):

The contract being forfeited is properly recorded;

The Buyer has breached, and as a result, is entitled to commence forfeiture; and

Except for a receiver, the Seller has brought no pending action on the contractual obligation.

#### NOTICE OF INTENT TO FORFEIT

Recording and serving a Notice of Intent to Forfeit commence forfeiture. The form and contents of the Notice of Intent to Forfeit are contained in RCW 61.30.070, and the Seller or his/her attorney may execute the Notice. Service and publication requirements for the Notice are set forth in RCW 61.30.040 and .050, and must be served on all holders of record interests, as well as occupants. The Notice must be served within ten (10) days of recording, and must set a date for forfeiture as set forth in the contract but in any event not less than ninety (90) days from the date of recording.

#### DECLARATION OF FORFEITURE

Upon the expiration of ninety (90) days (or more if provided by contract), the Seller may execute and record the Declaration of Forfeiture. The form and substance of the Declaration of Forfeiture are prescribed in RCW 61.30.070. The Declaration of Forfeiture must be executed by the Seller himself/herself, recorded, and published under certain circumstances.

Acceptance of partial cure payments may jeopardize or delay the forfeiture proceeding. Any acceptance of partial cure should be accompanied by an appropriate written notice of insufficient cure, and may require the lender to disgorge any partial payments received during the process. See RCW 61.30.090(3).

Forfeiture acts to discharge the Buyer completely from any further obligation to Seller. However, Seller may maintain a cause of action in damages for waste to the extent such waste causes the fair market value of the property to be lower than the contract balance at time of forfeiture. RCW 61.30.100(4).

Seller is entitled to possession ten (10) days after recording the Declaration of Forfeiture. If the Buyer (or anyone who takes possession through him/her) remains after that time, he/she is subject to eviction under RCW 59.12 (unlawful detainer).

#### JUDICIAL RESTRAINT OF SALE

RCW 61.30.110 provides a mechanism through which a Buyer, or any other party having an interest subject to the forfeiture, may ask the superior court to temporarily restrain forfeiture in order to cure non-monetary defaults. Forfeiture may also be permanently restrained if the Buyer is found to not be in default.

RCW 61.30.120 provides a mechanism through which any party entitled to cure the default may request the superior court to order a public sale of the property instead of forfeiture. In order to do so, the party must show that significant equity exists beyond the contract payoff balance, and that public sale will more likely produce net proceeds to the Buyer or affected interest holder.

A bankruptcy filing triggers an automatic stay under 11 U.S.C. Sec. 362 preventing the Seller from proceeding forward with forfeiture. The ninety (90) day cure period is tolled while the property is subject to the jurisdiction of the bankruptcy court. Unless the court has ordered public sale of the property, the Seller need not file or serve any new notice on the parties in interest.

Short Sales, Limited Service Brokers,  
RESPA, And Other Current Topics (Includes Rule 6)

By Christopher R. Osborn and NWMLS Staff

July 13, 2004

[Legal Bulletin #169](#)

This Bulletin addresses a number of current issues that NWMLS believes warrant your consideration. Some issues are new; others are not so new. Still others are perennial issues that continue to warrant your attention.

## SHORT SALES

With increasing frequency, listing agents take listings that are, or become, so-called “short sales.” A short sale is a sale that does not produce enough cash to cover the monetary encumbrances against the property (liens and loans), costs of sale, real estate commissions, and other financial requirements of closing. Because the seller ends up “short” at closing, these sales are known as short sales. Short sales are not sales by a bank or HUD after foreclosure. Instead, they are typically “distress” sales by an owner in possession who is at or near foreclosure or bankruptcy or who have little or no equity in their home. Unfortunately, not all listing agents know that a listing is or will become a short sale.

Because the sellers of these properties are typically near or at default on their loans, the lender is almost always involved in the transactions. Although lenders may be happy to give the seller an opportunity to sell the property before resorting to foreclosure, they usually require the seller to submit all offers to them for review and approval. This requirement results in a “seller contingency” that allows the seller to terminate an otherwise mutually accepted transaction in the event the lender does not approve.

Short sales can be difficult for sellers, buyers, lenders, and real estate agents alike. They are particularly difficult when the listing agent does not know or fails to properly disclose to selling licensees and their buyer-clients that the sale may come up short. Furthermore, without proper disclosure, these listings violate several of NWMLS’s Rules.

NWMLS understands that publication of short sale listings is a necessary part of effective multiple listing services. Short sales create opportunities for buyers and may provide the only opportunity for sellers to avoid foreclosure or bankruptcy. Hundreds of short sales close

successfully each year. In order to protect the parties and their agents and to comply with NWMLS's existing rules and regulations, you must follow these procedures for all short sale property listings:

1. Rule 6. Rule 6 provides that unenforceable listings will not be published. Specifically, listings that permit the seller to avoid paying a commission even though an offer meeting the terms of the listing is procured cannot be input into Locator. A short sale is such a listing. However, because the multiple listing service may be the only means by which a seller can sell a distressed property, NWMLS hereby recognizes an exception to Rule 6 for short sales only.

Although this exception will allow listing brokers to input short sale listings, it does not relieve listing brokers from the obligation to pay a commission to a selling office who procures an offer. By inputting these listings, the listing office bears the risk that the lender may not approve the purchase and sale agreement. Therefore, it is absolutely crucial for the listing agent to communicate with the seller and the lender or bankruptcy trustee in order to list the property at a price (1) that will be approved if an offer is procured and (2) that will allow the listing broker to honor the commission advertised in the listing. Remember that if a selling licensee procures a full price, non-contingent offer for the property at the listed price, the selling office has earned the commission as advertised.

2. Rule 10(f). A member must make sure that the listing is complete and accurate when it is input into Locator. A listing is not complete and accurate if it fails to disclose that the listing is a short sale or the third party whose consent is required. Again, if this Rule is violated the listing member may be responsible to a selling member for lost commissions.

3. Rule 11. Rule 11 prohibits restrictions on showing and sale in all listings. In the context of short sales, lender review and approval of the purchase and sale documents is a restriction on sale because it imposes on the selling licensees and buyers a restriction on the sale and purchase of the property. As mentioned above, therefore, agents must disclose this restriction in the listing, discuss the advantages and disadvantages of the restriction with the Seller, and obtain a written statement from the seller indicating that the listing is a short sale and requires lender or bankruptcy court approval.

4. Rule 101. Rule 101 requires the listing office to set forth the selling office's share of the commission. This Rule prohibits variable selling office commissions unless the terms upon which the commission may be paid are fully disclosed in the listing or a full description of the restriction is provided to NWMLS for access by the membership. Therefore, if the short sale

may result in a commission less than indicated in the listing, the listing agent must explain the terms in full in a manner accessible by the membership, usually in the commission or agent remarks section. Again, a violation of this rule may result in liability to the selling member for the commission as advertised in the listing.

Again, listing agents should, if they know the listing is a short sale, encourage the seller to communicate with the lender at the time of the listing about pricing and payment of encumbrances and a real estate commission. Often, the seller and the lender can agree up front about the terms of the listing so that the listing agent can avoid a variable office commission and the listing agent will know at what price and on what terms to list the property in order to ensure approval by the lender.

5. Rule 120. Rule 120 requires the listing office to give notice of sale by changing the status of the property after a purchase and sale agreement is executed. The existence of a right to review the agreement by the lender does not affect this obligation. A contingency allowing the lender to review the agreement is no different than any other agreement, and if the parties have reached mutual acceptance, the property is under contract. The status must be changed to Active STI, Pending, or Contingent no later than 5:00 p.m. of the next business day.

Again, these procedures are not new. They are based on existing NWMLS Rules that have always applied to all listings, including short sales. NWMLS issues this bulletin only to remind members of the critical need to comply with these Rules in the context of short sales. Proper disclosure, as set forth above, is absolutely critical to protect all parties' interests and to comply with NWMLS's Rules.

## **Federal and State Reforms that Effect Tenants**

The State of Washington and the Federal Government have both recently enacted legislation giving tenants to whom the property being foreclosed is their primary residence. In Washington's revised law it amends RCW 61.24 relating to foreclosures on deeds of trust by amending the law requiring proof of attempt to modify the loan and additional notice to tenants. The amended law also requires the foreclosing lender to provide proof that they are entitled to foreclose as bona fide holders of the promissory note secured by the deed of trust ("produce the note").

### **Summary of Changes**

#### **Washington State Senate Bill 5810**

Requires a beneficiary, before issuing a notice of default, to contact the borrower and time period 30 days after initial contact or completion of due diligence; and

1. Shall contact by letter and by telephone;
2. Shall provide "800" number and advise homeowner of resources including DFI the WSBA and Legal Aid;
3. Homeowner has right to meeting within 14 days (may be telephonic);
4. The NOD must include a declaration (FORECLOSURE LOSS MITIGATION FORM) that the homeowner has been contacted or the lender had tried with "due diligence" to contact the homeowner and send a certified letter to homeowner;
  - A) Explored options for the borrower to avoid foreclosure;
  - B) Complied with "due diligence requirement;
  - C) Homeowner has surrendered the property;
  - D) Homeowner has filed bankruptcy and the court has granted relief from stay;

Notice of Foreclosure must be posted and mailed to "Resident of property subject to a foreclosure sale" that in 90 days there will be a trustee's sale and a tenant MUST BE GIVEN WRITTEN NOTICE THAT IN 60 DAYS THE TENANT MAY BE EVICTED.

5. Provides that a tenant of property that has been sold in foreclosure receive 60 days written notice before the tenant can be removed.
6. Provides that a borrower's failure to enjoin a foreclosure does not constitute a waiver of certain claims.
7. Requires that before a notice of sale may be recorded, the trustee must have proof that the beneficiary is the actual holder of the promissory note secured by the deed of trust. A Declaration by the Beneficiary made under penalty of perjury that beneficiary is holder shall be deemed sufficient.
8. Applies to loans made from January 1, 2003 to December 31, 2007



## **Protecting Tenants at Foreclosure Act**

On May 20, 2009, President Obama signed into law the Helping Families Save Their Homes Act of 2009, which includes Title VII, Protecting Tenants at Foreclosure Act (The "Act").

The Act provides that in the case of any foreclosure on a federally related Mortgage loan or on any dwelling or residential real property, the party taking title to property pursuant to the foreclosure ("Foreclosing Party") assumes the property subject to the rights of any bona fide tenant.

If the Foreclosing Party wishes to evict the tenant, the Foreclosing Party must provide the tenant with 90-days notice to vacate. However, if a bona fide lease was entered into before the date of the foreclosure, the tenant has the right to remain at the property until the end of the lease term, except that the lease may be terminated prior to the expiration of such lease term upon the sale of the property to a purchaser who will occupy the property as a primary residence, subject to the 90-days notice.

In the case of a tenant without a lease or if there is a lease terminable at-will, the tenant must be given the 90-day termination notice.

The Act also includes a provision stating that any state or local law providing for longer time periods or other additional protections for tenants shall not be affected by the Act.

The Act raises several unanswered questions and issues:

- 1) The Act may apply to all foreclosures, and not only to loan foreclosures. Accordingly, lien foreclosures (such as a condominium or homeowner's association liens) may trigger the Act's notice requirements.
- 2) The Act may prevent the Foreclosing Party from terminating a lease due to tenant's default.
- 3) Title companies insuring title based on a foreclosure sale will likely require an exception for the rights of tenants pursuant to the Act's notice requirements. It is unclear whether title companies will be willing to delete this exception after the notice requirements have been met.

In conclusion, the Protecting Tenants at Foreclosure Act severely affects the rights of all foreclosing lenders, including lenders foreclosing on condominium projects.

Primary two pages of each of the laws follow.

The full text of the Washington State and Federal laws are available to CSSS Students at <http://www.washingtonshortsalecertification.com/real-estate-agents/articles-reports-forms-plans-business>

CERTIFICATION OF ENROLLMENT  
ENGROSSED SENATE BILL 5810

61st Legislature  
2009 Regular Session

Passed by the Senate April 20, 2009  
YEAS 46 NAYS 2

\_\_\_\_\_  
President of the Senate

Passed by the House April 9, 2009  
YEAS 98 NAYS 0

\_\_\_\_\_  
Speaker of the House of Representatives

Approved

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SENATE BILL 5810 as passed by the Senate and the House of Representatives on the dates hereon set forth.

\_\_\_\_\_  
Secretary

FILED

Secretary of State  
State of Washington

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ENGROSSED SENATE BILL 5810

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington                      61st Legislature                      2009 Regular Session

By Senators Kauffman, Berkey, Shin, Franklin, Keiser, Tom, and Kohl-  
Welles; by request of Governor Gregoire

Read first time 02/03/09. Referred to Committee on Financial  
Institutions, Housing & Insurance.

1            AN ACT Relating to foreclosures on deeds of trust; amending RCW  
2    61.24.005, 61.24.010, 61.24.040, and 61.24.060; reenacting and amending  
3    RCW 61.24.030; adding new sections to chapter 61.24 RCW; adding a new  
4    section to chapter 59.12 RCW; creating a new section; and providing an  
5    expiration date.

6    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            Sec. 1. RCW 61.24.005 and 1998 c 295 s 1 are each amended to read  
8    as follows:

9            The definitions in this section apply throughout this chapter  
10   unless the context clearly requires otherwise.

11           (1) "Grantor" means a person, or its successors, who executes a  
12   deed of trust to encumber the person's interest in property as security  
13   for the performance of all or part of the borrower's obligations.

14           (2) "Beneficiary" means the holder of the instrument or document  
15   evidencing the obligations secured by the deed of trust, excluding  
16   persons holding the same as security for a different obligation.

17           (3) "Affiliate of beneficiary" means any entity which controls, is  
18   controlled by, or is under common control with a beneficiary.

*One Hundred Eleventh Congress  
of the  
United States of America*

**AT THE FIRST SESSION**

*Begun and held at the City of Washington on Tuesday,  
the sixth day of January, two thousand and nine*

*an act*

To prevent mortgage foreclosures and enhance mortgage credit availability.

*Be it enacted by the Senate and House of Representatives of the United States  
of America in Congress assembled,*

**DIVISION A—PREVENTING MORTGAGE  
FORECLOSURES**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This division may be cited as the “Helping Families Save Their Homes Act of 2009”.

(b) **TABLE OF CONTENTS.**—The table of contents of this division is the following:

**Sec. 1. Short title; table of contents.**

**TITLE I—PREVENTION OF MORTGAGE FORECLOSURES**

**Sec. 101. Guaranteed rural housing loans.**

**Sec. 102. Modification of housing loans guaranteed by the Department of Veterans Affairs.**

**Sec. 103. Additional funding for HUD programs to assist individuals to better withstand the current mortgage crisis.**

**Sec. 104. Mortgage modification data collecting and reporting.**

**Sec. 105. Neighborhood Stabilization Program Refinements.**

**TITLE II—FORECLOSURE MITIGATION AND CREDIT AVAILABILITY**

- Sec. 201. Servicer safe harbor for mortgage loan modifications.
- Sec. 202. Changes to HOPE for Homeowners Program.
- Sec. 203. Requirements for FHA-approved mortgagees.
- Sec. 204. Enhancement of liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures.
- Sec. 205. Application of GSE conforming loan limit to mortgages assisted with TARP funds.
- Sec. 206. Mortgages on certain homes on leased land.
- Sec. 207. Sense of Congress regarding mortgage revenue bond purchases.

### TITLE III—MORTGAGE FRAUD TASK FORCE

- Sec. 301. Sense of the Congress on establishment of a Nationwide Mortgage Fraud Task Force.

### TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

- Sec. 401. Sense of the Congress on foreclosures.
- Sec. 402. Public-Private Investment Program; Additional Appropriations for the Special Inspector General for the Troubled Asset Relief Program.
- Sec. 403. Removal of requirement to liquidate warrants under the TARP.
- Sec. 404. Notification of sale or transfer of mortgage loans.

### TITLE V—FARM LOAN RESTRUCTURING

- Sec. 501. Congressional Oversight Panel special report.

### TITLE VI—ENHANCED OVERSIGHT OF THE TROUBLED ASSET RELIEF PROGRAM

- Sec. 601. Enhanced oversight of the Troubled Asset Relief Program.

### TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT

- Sec. 701. Short title.
- Sec. 702. Effect of foreclosure on preexisting tenancy.
- Sec. 703. Effect of foreclosure on section 8 tenancies.
- Sec. 704. Sunset.

### TITLE VIII—COMPTROLLER GENERAL ADDITIONAL AUDIT AUTHORITIES

- Sec. 801. Comptroller General additional audit authorities.

## **TITLE I—PREVENTION OF MORTGAGE FORECLOSURES**

### **SEC. 101. GUARANTEED RURAL HOUSING LOANS.**

## **Revisions to Rule 4 and Rule 11 – Effective October 2, 2009**

**Effective October 2, 2009, revisions to NWMLS Rule 4 and Rule 11 will clarify that sellers must have the unconditional right to sell listed property.**

Listings where the seller does not have the unconditional right to sell are in conflict with Rule 6. That Rule currently provides “any listing containing a provision permitting the seller, in his sole discretion, to avoid payment of a commission even though an offer meets all terms of the listing and any required financing is available will not be published by NWMLS and shall not be input by the listing member.”

NWMLS has recognized exceptions to Rule 6 by expressly allowing short sale listings under Rule 11. NWMLS has also recognized other exceptions to the Rule for properties that require court approval or that are for sale by relocation companies.

Recently, NWMLS has received numerous complaints regarding listings where the seller does not have the unconditional right to sell the property. Typically, the complaints involve listings where the seller has a conditional “equitable interest” in the property.

NWMLS has always allowed a seller who has an unconditional “equitable interest” in real property to list that interest for sale. When parties reach mutual acceptance on the terms of their purchase and sale agreement, two separate interests in the property are created as a matter of law: the legal interest (the seller's interest) and the equitable or vendee's interest (the buyer's interest). The buyer's legal or “equitable interest” exists so long as the buyer has a specifically enforceable interest in the property. NWMLS allows the buyer to list and sell that interest in the property. In such a listing, the buyer will be the seller.

The revision to Rule 4 clarifies that listings where the seller's “equitable interest” is conditioned upon third party approval (e.g. lender approval) are impermissible. In other words, listings where the seller does not have the unconditional right to sell the listed property are not eligible for publication and may not be taken on a NWMLS listing form. The exceptions to this Rule are set forth in revised Rule 11(a) and include short sales, sales that require court approval, and property listed for sale by a relocation company.

Of course, for those listings that fall under one of the exceptions, the listing office must disclose the nature of the restriction in the Remarks section.

Listings entered before September 2, 2009, where the seller only has a conditional “equitable interest” in the property will continue to be published by NWMLS until the original expiration date and will be a permitted exception to revised Rule 4 and current Rule 6. However, for any listing entered on or after September 2, 2009 – the seller must have the unconditional right to sell the listed property (unless otherwise permitted by Rule 11). Of note, this applies to those listings where an investor has reached mutual acceptance with a property owner (subject to lender approval) and the investor lists its interest for sale prior to receiving lender approval.

**The revisions to Rule 4 and Rule 11 are as follows:**

Rule 4 – Certain Agreements not Eligible.

The following agreements will not be accepted by NWMLS and shall not be taken on a NWMLS Listing Form or input into NWMLS’s online system:

- (a) Agreements in which the commission payable is equal to the amount the sales price exceeds the listing price (i.e. net agreements);
- (b) Nonexclusive agreements (i.e. open agreements);
- (c) Undivided interests in property, including tenancies in common, real estate investment trusts, and limited partnership interests, except for timeshares under Rule 5;
- (d) Listings for which the listing member will not receive notices, notices of acceptance, or revocations of offers or counteroffers on behalf of the owner; and
- (e) Listings for which (i) the listing member requires or desires selling licensees to contact the owner directly to obtain property information, schedule showings, or negotiate contract terms; or (ii) the listing member will not assist the owner in preparation or review of contract documentation, unless the limitations set forth in this subsection (e) are disclosed in the Agent Remarks. Such a disclosure by the listing member will constitute approval of the conduct of any other member consistent with such disclosure.

(f) Listings where the seller does not have the unconditional right to sell the listed property, unless otherwise permitted by NWMLS Rules.

Rule 11 – Restrictions on Showing and Sale.

No listing or Letter of Authorization shall include any restrictions on showing, submission of offers, or sale of the property except as authorized by this Rule.

Impermissible restrictions include, but are not limited to: “Only listing office agents to show;” “Do not publish listing until [specific date];” and “Undisclosed address property.”

(a) Restrictions Permitted if Disclosed in Remarks Section. The following restrictions on showing and sale shall be noted in the listing:

(i) The Seller elects not to have a keybox on the property but the listing office possesses a key;

(ii) The Seller may not respond to offers until a future date;

(iii) The sale is a “Short Sale,” subject to the approval of Seller’s creditor(s). A “Short Sale” is a transaction that depends on seller’s creditor(s)’ agreement to accept less than the amount secured by the Property in order to satisfy Seller’s obligations at closing. This restriction must be disclosed by selecting “Short Sale” in the “Third Party Approval Required” amenity field in the listing input program and may also be disclosed in the Remarks section.

(iv) The sale requires court approval. This restriction must be disclosed by selecting “Other – See Remarks” in the “3rd Party Approval Required” amenity field in the listing input program and must be explained in the Remarks section

(v) The Seller is a relocation company and must disclose any conditions to the right to sell in the Remarks section.