



**WASHINGTON DEPARTMENT OF LICENSING
WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS**

Short Sale Seller Advisory

What is a Short Sale?

A short sale is a real estate transaction where a lender releases its security interest in a property for less than the total amount of money owed. This usually means the sales price of the property is not enough to pay off the debts owed on the property, the costs related to the property sale, and the seller (homeowner) is not able to pay the difference.

The seller's lender must agree to a short sale and agree to release their security interest in exchange for less than what is owed on the loan. However, it is possible for a seller to sell their home and still owe the unpaid difference, including interest and penalties, to the lender. Lenders may seek a deficiency judgment against the seller for this difference.

This Advisory addresses *some* of the legal and financial risks of a short sale. The Advisory does not replace the need for legal counsel, tax and other professional advice. All sellers should seek the advice of a lawyer and tax professional before proceeding with a short sale.

Take Precautions – Scam Alert

Homeowners worried about foreclosure may be at risk of predatory “rescue” scams which may cost money with no results, result in the loss of the home entirely, or involve the seller in a fraudulent scheme. Be sure to confirm who has authority to make decisions and be aware of scams. All agreements between you and the lender must be in writing.

“Red Flags” of Fraudulent Schemes Include:

- Guarantees to stop the foreclosure
- A promise that you can buy the house back or stay in the house following transfer of title
- Upfront fees (or advanced fees)
- Instructions not to contact the lender
- Transfer of title or lease of the property
- Requests that the homeowner execute a power of attorney

What Should You Do If You Think Someone Scammed You or Is Trying to Scam You?

Report suspected scams to the Department of Financial Institutions at: www.dfi.wa.gov or 1-877-RINGDFI (746-4334).

Before Proceeding with a Short Sale

Call the Washington State Homeownership Information Hotline at 1-877-HOME (4663)

Take steps to understand your debt and options. Any homeowner can contact a free housing counselor at any time if they are facing foreclosure to speak to a housing counselor. For more information visit www.fenwa.org/housing.

Contact Your Lender

To find the lender's contact information, check the loan billing statement, or coupon book. Ask for the lender's home retention department, loss mitigation department, (or other department that handles negotiation of loans in default). Explain your situation and find out if the lender is willing to discuss options.

Take Caution with Intentionally Missing Payments

Some lenders will tell you that they will not consider you as a short sale candidate unless you are behind on payments. Do not intentionally withhold mortgage payments, solely for short sale consideration, without first consulting legal counsel. This will harm your credit rating and may impact other options available to you.

Impacts of Damaging Property or Removing Things Fixed to the Home

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

Consult an Attorney

An attorney can help you determine whether a short sale is the best option and can advise you during the short sale process.

Low to moderate income homeowners may also be eligible for help from the statewide civil legal aid hotline. Call 1-800-606-4819 for more information.

Short Sale Considerations

Understand that a Short Sale may Result in a Higher Tax Debt

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

Contact a Qualified Licensed Real Estate Broker or Lawyer

Interview real estate professionals and ask about their experience in short sales, the number of short sale transactions they have handled, their education and training in short sales and inquire about any past or pending lawsuits or disciplinary actions.

Determine the Amount Owed on the Property

All debt and costs must be factored in before a lender can determine whether a short sale is more economical for them. The analysis will include the delinquent loan, all other recorded debt (past due homeowner's association fees, unpaid property taxes), and the costs of a sale (closing costs, brokerage commissions, and necessary repairs). If you have more than one loan on the property, a short sale will require the approval of all lenders.

Determine the Estimated Fair Market Value of the Property

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

Frequently Asked Questions

Does a short sale mean I no longer owe money to the lender?

No. The lender's approval of a short sale does not necessarily mean the lender relieves the seller of liability for repayment of the entire debt.

Do I only owe the lender the difference between the sale price and the loan?

It depends. The lender can request interest and penalties in addition to the loan balance.

What if I do nothing?

If you do not pay and do nothing, the lender will start the foreclosure process. Homeowners can lose their property to foreclosure to the mortgage lender (1st mortgage lien holder) and still owe the balance(s) from the 2nd mortgage or other lien holders.

How long does a short sale take?

If you decide to pursue a short sale, the process will likely take several months or more to complete.

Will a short sale impact my credit score?

Yes. The impact of a short sale on your credit score depends on different factors, including late or missed payments. A short sale may appear on your credit report as "pre-foreclosure redemption," "paid in full for less than full balance" or other similar term. Once you miss mortgage payments, your credit rating will be severely impacted.

Can I buy another home after a short sale?

Yes, however there may be a period (which could include years) before you qualify for a loan to purchase another home after a short sale because of the impact on your credit score.

Are there limits to what the lender can do based on debts/liens on the property?

The type of debt and type of property will impact your lender's options if you do not make the required payments. For example, Internal Revenue Service (IRS) tax liens, Department of Social and Health Services (DSHS) liens for unpaid child support, home equity lines of credit, and other debts may have different requirements.

What are a typical lender's policies?

Every lender will have its own policies. The staff employed by the lender you work with will follow their lender's policies around debt. They will likely make inquiries regarding your ability to pay debt overtime, and the amount of debt against the property (for example, second mortgages). Information reviewed by the lender may be similar to the information collected for the original mortgage loan. The lender will decide if they agree to a short sale.

What are other types of options that might be available to me?

A short sale might not be your best course of action. If you have missed mortgage loan payments, consider all your options before making a decision. Some loan workout options that your lender may offer include:

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

Refinance

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

Loan Modification

The lender may agree to change the terms of the original loan to make the payments more affordable. For example, missed payments can be added to the existing loan balance, the interest rate may be modified or the loan term extended. Lenders may use government program modifications or may use their own criteria. Loan modifications may be temporary or permanent.

Deed-in-Lieu of Foreclosure

The lender may allow a homeowner to "give back" the property. This option may not be available if there are other liens recorded against the property. If a lender accepts title to property in Washington State through a deed in lieu of foreclosure, the owner's debt owing to that lender is likely forgiven but sellers should have their paperwork reviewed by legal counsel to ensure that outcome.

Work Out Sale

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

Bankruptcy

If you are considering bankruptcy as an option, consult with an attorney that specializes in bankruptcy law.

Foreclosure

Allowing the lender to foreclose is another option. Be sure to understand how a foreclosure may impact you. Washington State has a Foreclosure Mediation Program that may be able to assist homeowners facing foreclosure. Learn more about the Foreclosure Mediation Program here:

<https://dfi.wa.gov/homeownership/washington-foreclosure-mediation-program>

Additional Resources

Contact a Free HUD-Approved Housing Counselor

- [Find an expert near you](#) (free).
- Call (800) 569-4287 or TDD (800) 877-8339 for advice on your options.
- Read additional HUD resources:
<https://www.hud.gov/states/washington#Counselor>

Utilize Free Services Available to Washington Residents

Nonprofit counseling to try to avoid foreclosure: 1-877-894-HOME (4663). If legal advice is needed, callers will be referred to a pro bono attorney through the Washington State Bar Association.

Loan Modification Resources

- National Foreclosure Mitigation Counseling Program: <https://www.neighborworks.org/Homes-Finances/Homeownership/Homeownership-Center-Directory>
- Homeownership Preservation Foundation: www.995hope.org
- 1-888-995-HOPE™ Hotline

Obtain Legal Advice

An attorney can advise you about your options and legal liability. You may be able to receive free or reduced fee legal assistance from one of these sources:

- Northwest Justice Project, <http://www.nwjustice.org/>, (206) 464-1519 or 1-888-201-1012.
- Your county's local [Bar Association](#).

Obtain Tax Advice

Learn more about [Mortgage Forgiveness Debt Relief Act and Debt Cancellation tax information](#).