



ADDENDUM

(C.A.R. Form ADM, Revised 10/01)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: [X] Residential Purchase Agreement, [ ] Manufactured Home Purchase Agreement, [ ] Business Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Vacant Land Purchase Agreement, [ ] Residential Income Property Purchase Agreement, [ ] Commercial Property Purchase Agreement, [ ] other

dated \_\_\_\_\_, on property known as \_\_\_\_\_

in which \_\_\_\_\_ is referred to as ("Buyer/Tenant") and \_\_\_\_\_ is referred to as ("Seller/Landlord").

1) Day one of escrow to start the day after written short sale lien holder(s) approval is delivered to Buyer's agent.

2) All terms of contract subject to lien holder(s) approval.

3) Notices given pursuant to this agreement shall be deemed delivered to Buyer when received by Buyer's agent.

4) Buyer is aware that Seller may be required by lien holder(s) to submit all offers creating a multiple offer situation. Non-submitted offers are backups.

5) House sold as-is: no inspections, clearances or warranties provided.

6) Title and Escrow Seller's choice.

7) This contract is conditioned on Seller's review and written approval of all expenses and terms necessary for Seller to satisfy any requirements of Lien holder(s) Buyer, appraiser and Buyer's lender. If Seller does not approve the above expenses or terms, Seller reserves the right to terminate this contract.

8) Updates on short sale offers are provided at http://www.Alternative2Foreclosure.com. Buyer's agent is advised to track their short sale offer through all stages of the process using this site.

9) Buyer's agent to submit a pre-approval letter with proof of funds to close with this addendum.

10) Within 2 business days of receipt of written lien holder approval buyer's agent to provide a DU APPROVAL letter and proof of funds to close, no older than 30 days prior to the delivery of lien holder approval. If not provided seller reserves the right to cancel this contract.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date \_\_\_\_\_

Date \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_

Seller/Landlord \_\_\_\_\_

Buyer/Tenant \_\_\_\_\_

Seller/Landlord \_\_\_\_\_

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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_ Broker or Designee \_\_\_\_\_





# SHORT SALE INFORMATION AND ADVISORY

(C.A.R. Form SSIA, 11/10)

This Short Sale Information and Advisory is intended to give general information regarding short sales, their potential impact, and the rights and responsibilities of the parties involved. It is not intended as legal advice for any particular property owner or buyer. Seller and Buyer should consult with their own professional advisors for legal, tax, credit and personal advice. Real estate brokers will not provide such advice.

1. **WHAT IS A SHORT SALE:** A short sale is the name used to describe a real estate transaction where the seller's lender(s) agree to allow the property owner to sell the property for less than the amount of the loan(s) secured by the property. The consent of the seller's lender(s) is necessary because without it there would not be enough money from the sale to pay off the lender(s) in full and to pay other costs of the sale. As a result, the lender's lien(s) would remain on title, and the seller would be unable to transfer title to the buyer free of monetary liens. (Properties that are worth less than the amount owed to the secured lender(s) are often referred to as being "underwater" or distressed properties).
2. **ALTERNATIVES TO A SHORT SALE:** Owners of distressed or underwater properties are faced with difficult choices that could have financial and emotional consequences. Any of the following or other alternatives potentially have negative tax or credit consequences, or both, for the owner:
  - A. **A loan modification** is an arrangement between a borrower and a lender. It can involve a reduction in the interest rate on the loan, a deferment in payments on the loan, an extension of time to pay back the loan, a reduction in principal of the loan, a combination of these possibilities, or other changes to the repayment plan. A loan modification requires the consent of both lender and borrower.
  - B. **A foreclosure** is a legal process through which the lender acquires title to the property from a borrower who has stopped making payments on a loan. The lender can foreclose whether or not the borrower consents.
  - C. **A deed in lieu of foreclosure** occurs when the borrower offers to transfer the property to the lender, in lieu of the lender having to go through the foreclosure process, and the lender agrees to accept title to the property from the borrower and forgives the debt. A deed in lieu of foreclosure requires the consent of both lender and borrower.
  - D. **Bankruptcy** is a legal action typically filed by a borrower to have debt(s) discharged. An automatic stay occurs as soon as a borrower files bankruptcy, staying all actions against the borrower. While a petition for bankruptcy can have the effect of delaying a foreclosure, it does not necessarily prevent a foreclosure from eventually occurring. No lender consent is required for a borrower to file bankruptcy.
3. **LENDER AGREEMENT TO SHORT SALE:** In order for a short sale to be completed, the lender(s), at a minimum, must agree to release the property from the lender(s) lien(s) to allow the sale. The lender(s) may or may not agree to reduce the amount owed to satisfy the debt. If not, the lender(s) may continue to pursue the borrower for payment of the balance of the debt. Prior to granting approval of the sale, the lender(s) may require the borrower to disclose all of the borrower's assets. They may require that the borrower liquidate other assets. They may require that the borrower sign an agreement to repay some or all of the debt at some later time. They may require that the borrower secure the unpaid debt with other assets owned by the borrower. Additionally, they will generally require that the transaction be arm's length, and that all terms of any benefit conferred on the seller be fully disclosed and that the Seller cannot stay in the Property following the Sale. Finally, many first lien holders will limit the amount they will allow to be paid to a second lienholder, further complicating negotiations for the short sale. The lender will usually submit a "term sheet" to the borrower indicating the terms to which lender(s) will agree. If the Seller and Buyer do not modify their contract to comply with the lender(s) terms, the lender(s) may not permit the short sale to proceed. Seller is strongly advised to seek legal and tax advice regarding review of the term sheet. Brokers cannot and will not give legal or tax advice on the lender's term sheet or its effect on the Buyer and Seller's agreement or on the consequences to Buyers and Sellers should they proceed to close. There is no assurance that once the lender(s) have begun short sale negotiations, they will discontinue the foreclosure process.
4. **SELLER'S CONTINUING LIABILITY ON THE DEBT:** Many borrowers who attempt a short sale are concerned with whether the borrower is released from any further liability to the lender(s) or whether the lender can pursue the borrower for any unpaid balance of the debt. Some refer to continuing liability as a deficiency judgement. Generally speaking, a deficiency judgement is the right of a lender to pursue the borrower for the difference between the amount the lender receives and the amount the borrower owes on the debt. Deficiency judgements in California are prohibited in certain circumstances.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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## SHORT SALE INFORMATION AND ADVISORY (SSIA PAGE 1 OF 3)

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Phone: 209-627-0791

Fax: 209-247-1127

Prepared using zipForm® software

Broker: Allison James Estates and Homes 2435 Greenwich Dr Fullerton, CA 92833

**A. Short Sale:**

- 1. While deficiency judgement laws in California apply to foreclosure proceedings, these restrictions do not necessarily apply to lender(s) ability to pursue a borrower for unpaid balance on a loan following a short sale. A foreclosure is an involuntary legal proceeding resulting in loss of property by the borrower. A short sale, on the other hand, is a consensual agreement between borrower and lender(s). As a result, some lenders in negotiating a short sale will want the owner to sign a note for the balance of the unpaid principal. Other lenders will release the lien only but not forgive the underlying debt. Some lenders will "reserve their rights." One of the reasons for the seemingly inconsistent lender terms is that the lenders fund loans in many states throughout the country and many states do not have the same anti-deficiency rules as California. Thus, whether lender retains the right to pursue a deficiency following a short sale becomes a negotiable term for each sale.
- 2. Beginning January 1, 2011, a lender who approves a short sale is not permitted to seek a deficiency against the borrower if the loan is secured by a first Trust Deed on residential property containing 1-4 units. The January 1, 2011 law does not apply to (i) short sale approvals by junior lienholders or (ii) senior lienholders on other types of property or (iii) a Borrower who has committed fraud or waste.

**B. Purchase Money Loans:** Loans given by lenders to purchase 1-4 unit properties, one of which will be occupied by the borrower, and seller-financed purchases are subject to "purchase money" anti-deficiency protection rules. Generally, this means that the lender cannot pursue the borrower for any deficiency after the property is foreclosed upon by the seller or lender, whether the seller or lender uses a non-judicial trustee sale or a judicial foreclosure. Refinancing a purchase money loan causes it to lose any purchase money protection it might have.

**C. Trustee Sales:** If a lender **forecloses** by non-judicial trustee sale instead of by judicial foreclosure, that lender is barred from seeking any deficiency from the borrower after the trustee sale, even if the loan was not purchase money.

**D. Refinanced Liens:** The anti-deficiency protections become much less clear for loans that are refinanced. Generally, loans that are refinanced lose their "purchase money" protection. Lenders extending refinances may be able to pursue a deficiency judgment against the borrower directly following a judicial foreclosure.

**E. Junior Liens:** The anti-deficiency protections for Junior Liens are also somewhat unclear. Junior liens used to purchase the residence (such as 90/10 first and second) would have "purchase money" protection generally. However, junior liens that are refinanced or junior liens that are used to take out equity do not have "purchase money" protection. Such "non purchase money" junior lienholders may be able to pursue a deficiency judgement against the borrower directly after a Trustee sale by a senior lienholder or after a judicial foreclosure by the junior lienholder. Although the law is not entirely clear, home equity loans (HELOCs) may fall into this category.

**5. CREDIT AND TAX CONSEQUENCES:**

**A. CREDIT:** All of the owner's options discussed above will most likely have a negative impact on the owner's credit and on the owner's ability to finance or purchase property for some time. The credit impact and length of time the owner would have difficulty in obtaining a loan to purchase property again, or to be approved for any other credit transactions such as obtaining a credit card, leasing an apartment, or even to gain employment, varies. Lenders may view short sales and alternatives differently depending on their own underwriting guidelines and those established by governmental or quasi-governmental bodies. To find out more information about the impact to your credit score, go to [www.myfico.com](http://www.myfico.com).

**B. TAX:** With some exceptions, a reduction or discharge of a debt obligation by a lender results in income to the borrower. The income might not be taxable if the debt was being used to purchase, build, or substantially improve a borrower's principal residence. Another exception exists if the forgiveness of debt results from a situation where the lender is barred by law from collecting the debt, as in a foreclosure of purchase money debt. Insolvency and bankruptcy rules can also shield a borrower from forgiveness of debt income. Generally, when any debt is forgiven by a lender, they are required to provide the borrower a 1099 and it will be up to the borrower to make the proper claim on their tax return to avoid debt forgiveness income. Some of these rules are temporary, and state laws and federal laws differ. Broker has advised Seller that if Lender agrees to accept less than full payment, the difference may result in taxable income to Seller even though Seller does not receive any cash proceeds from the sale. Seller may also be taxed on the gain in value of the Property from the date of Seller's purchase to the date of sale, regardless of the amount of any existing Loans/Liens.

**C. PROFESSIONAL ADVICE:** Seller advised to discuss with an attorney, CPA or other professional of Seller's choosing before (i) accepting any offer to present to lender or (ii) agreeing to any changes requested by lender to an already accepted contract.

**6. POTENTIAL IMPROPRIETIES:** It is an unfortunate reality that many persons, including real estate licensees, mortgage lenders, and attorneys, among others, have taken advantage of owners of underwater or distressed properties. Some of the schemes present themselves as "rescues" of the homeowner, promising to let them stay in the property, to protect their credit, or to provide payments to them after closing, and usually outside of the escrow. Both the California Department of Real Estate (DRE) (<http://www.dre.ca.gov>) and the California Attorney General (<http://www.ag.ca.gov>) have issued written warnings of potential red flags in short sales and other rescue schemes. Some of these red flags are:

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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Property Address: \_\_\_\_\_, CA \_\_\_\_\_ Date: \_\_\_\_\_

- A. **No license:** The DRE believes that a real estate license is generally required to negotiate any short sale;
- B. **Up-front fees:** No real estate licensee can collect any up-front or advance fee without having first obtained a "no objection" letter from the DRE and no up-front fees may be taken for arranging a loan modification;
- C. **Surcharges:** Charges by third parties that are not disclosed to the short sale lender and usually paid outside of escrow;
- D. **Straw buyers and house flipping:** Buyers misrepresent the value of the property to the short sale lender and flip the property to another buyer already in place;
- E. **Other:** Other potential red flags include: guarantees to stop the foreclosure; instructions not to contact the lender; transfer of title prior to close (often to a trust) as a condition of negotiating with the lender; the buyer is an LLC; the buyer wants a power of attorney from the seller; and the buyer hires the third party negotiator or wants to negotiate directly with the lender.

While most of the activities on the above list on their face are not fraudulent, they serve as warning signs that the owner and the real estate agents involved should proceed with caution.

- 7. **BUYER CONSIDERATIONS:** Short sales are often difficult transactions taking considerably longer than a typical real estate transaction to complete. There is no guarantee that the lender or lenders will agree to the terms of the purchase offer or that they will respond in any timely fashion or even respond at all. There is no guarantee that the seller will agree to any terms proposed by the lender as a condition of releasing the lien or the debt on the property. Buyers may expend money on inspections, loan applications, escrow fees and other costs that they will not be able to recover from anyone if the lender does not approve the transaction. Buyers may also have difficulty obtaining the return of their deposit in escrow, if the seller becomes noncommunicative during the short sale process. Generally, sellers also have the right to continue to give offers to their lender(s) even if they have a contract with an existing buyer. Brokers cannot give any assurances as to what will happen. Buyers are strongly cautioned that any undisclosed and unapproved payments to junior lienholders or to seller or to outside third party negotiators may be a form of lender fraud. Buyers are also strongly cautioned that writing offers on more than one short sale property with the intent to purchase only one such property could be a misrepresentation giving rise to legal claims by the seller including a claim for the buyer's deposit.
- 8. **BROKER ROLE:** A real estate broker cannot give legal or tax advice in connection with any of the options available to the borrower nor can the broker suggest what is the best course of action for the owner. Unfortunately, the owner is faced with extremely difficult choices having a lasting impact on the owner. Owners are strongly cautioned that they must seek legal and tax advice in what is not only a choice impacting taxes and credit, but also personal issues affecting the owner and often the owner's family. The broker's role is to assist the owner with the actual sale of the property in a short sale transaction, not to provide legal or tax advice or to guarantee the best possible outcome for the parties, or to assure the buyer that any particular transaction will be completed. Brokers do not, and cannot, assure that either the Seller or the Buyer will perform on their agreement or that the lender(s) will agree to any of the terms presented. Brokers are not a party to the contract between Buyer and Seller.
- 9. **BROKER AUTHORITY:** Seller authorizes Broker to: (1) market the Property for sale, (2) contact lenders concerning lender's approval of a Short Sale (C.A.R. Form ARC) and Seller agrees to give Broker any necessary information to negotiate with lender, and (3) advertise in the MLS and other advertising medium that the Property transfer, sales price and payment of commissions are subject to Lenders approval. If lenders will not cooperate, Broker may cancel the listing agreement.

Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_

Seller  Buyer \_\_\_\_\_ Date \_\_\_\_\_

Real Estate Broker (Selling Firm) \_\_\_\_\_

By (Agent) \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Real Estate Broker (Listing Firm) \_\_\_\_\_

By (Agent) \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

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SHORT SALE ADDENDUM (C.A.R. Form SSA, 11/10)

This is an addendum to the [ ] California Residential Purchase Agreement, [ ] Counter Offer, [ ] Other \_\_\_\_\_, on property known as \_\_\_\_\_ ("Property"), between \_\_\_\_\_ ("Buyer") and \_\_\_\_\_ ("Seller").

1. SHORT SALE APPROVAL:

- A. This Agreement is contingent upon Seller's receipt of and delivery to Buyer of written consent ("Short Sale Lenders' Consent") to the Agreement from all existing secured lenders and lienholders ("Short Sale Lenders"), by 5:00 P.M. no later than 45 (or [ ] \_\_\_\_\_) Days After Acceptance (or [ ] on \_\_\_\_\_ (date) ("Short Sale Contingency Date").
B. Short Sale Lenders' Consent means that all Short Sale Lenders shall collectively agree to reduce their respective loan balances by an amount sufficient to permit the proceeds from the sale of the Property to pay the existing balances on loans secured by the Property, real property taxes, brokerage commissions, closing costs, and other monetary obligations the Agreement requires Seller to pay at Close Of Escrow...
C. (i) Seller shall Deliver to Buyer a copy of Short Sale Lenders' Consent or term sheet(s) within 3 (or [ ] \_\_\_\_\_) Days After receipt by Seller. (ii) Seller's presentation to Buyer of Short Sale Lender's Consent satisfying 1B removes the contingency in 1A.
D. If by the Short Sale Contingency Date, (i) Seller has not received Short Sale Lenders' Consent satisfying 1B, Seller may in writing cancel this Agreement, or (ii) Buyer has not received a copy of Short Sale Lenders' Consent satisfying 1B, Buyer may cancel this Agreement in writing. In either case, Buyer shall be entitled to return of any remaining deposit delivered to escrow.
E. Seller shall reasonably cooperate with existing Short Sale Lenders in the short sale process, but neither Seller nor Buyer is obligated to change the terms of their Agreement to satisfy Short Sale Lenders' consent or term sheet(s).
F. If Short Sale Lenders' written consent or term sheet(s) provided to Seller require changes to the Agreement in order to satisfy the terms of 1B, (i) neither Buyer nor Seller shall be obligated to continue negotiations to satisfy any of the requirements of the term sheet(s) (ii) either party may in writing cancel this Agreement. And (iii) Seller is advised to seek legal, accounting and tax advice before agreeing to any such changes. If the Agreement is cancelled pursuant to this paragraph, Buyer shall be entitled to return of any remaining deposit delivered to escrow.

- 2. TIME PERIODS. Time periods in the Agreement for inspections, contingencies, covenants, and other obligations:
(i) shall begin the Day After Seller delivers to Buyer Short Sale Lenders' Consent satisfying 1B. However, time periods for providing pre-approval/pre-qualification letters and verification of down payment and closing costs shall nonetheless begin as otherwise specified in the Agreement;
or (ii) (if checked) [ ] shall begin as specified in the Agreement.

Buyer's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ ) Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

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Property Address: \_\_\_\_\_ CA \_\_\_\_\_ Date: \_\_\_\_\_

- 3. **BUYER'S DEPOSIT CHECK.** Buyer's deposit check shall be delivered to escrow within:
  - (i) 3 business Days After Seller delivers to Buyer Short Sale Lenders' Consent satisfying 1B, or
  - (ii) (if checked)  as specified in the Agreement.
  
- 4. **NO ASSURANCE OF LENDER APPROVAL.** Buyer and Seller understand that Short Sale Lenders: (i) are not obligated to give consent to a short sale; (ii) may require Seller to forward any other offer received; and (iii) may give consent to other offers. Additionally, Short Sale Lenders may require that, in order to obtain their approval for a short sale, some terms of the Agreement, such as the Close of Escrow, be amended or that Seller sign a personal note or some other obligation for all or a portion of the amount of the secured debt reduction. Buyer and Seller do not have to agree to any of Short Sale Lenders' proposed terms. Buyer, Seller and Brokers do not have control over whether Short Sale Lenders will consent to a short sale, or control over any act, omission, or decision by any Short Sale Lender in the short sale process.
  
- 5. **BUYER AND SELLER COSTS.** Buyer and Seller acknowledge that each of them may incur costs in connection with rights or obligations under the Agreement. These costs may include, but are not limited to, payments for loan applications, inspections, appraisals, and other reports. Such costs will be the sole responsibility of the party incurring them if Short Sale Lenders do not consent to the transaction or either party cancels the transaction pursuant to the Agreement.
  
- 6. **OTHER OFFERS.** Unless otherwise agreed in writing, after Buyer's offer has been accepted by Seller, (i) Seller has the right to continue to market the Property for back-up offers or additional offers; (ii) Seller has the right to accept back-up offers (C.A.R. Form PAA, Paragraph 1), and present to Short Sale Lender(s) any accepted back-up offers or additional offers that are received; and (iii) Seller shall notify Buyer when any accepted back-up offers, or other subsequent offers are presented to Short Sale Lender(s).
  
- 7. **CREDIT, LEGAL AND TAX ADVICE.** Seller is informed that a short sale may have credit or legal consequences and may result in taxable income to Seller. **Seller is advised to seek advice from an attorney, certified public accountant or other expert regarding such potential consequences of a short sale.**

**By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Short Sale Addendum.**


Date \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

Buyer \_\_\_\_\_ Seller \_\_\_\_\_

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