



From the desk of

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KEEP YOUR SANITY!... A Buyers' Intro to Short Sales

As our economy adjusts in these times, and unemployment rises while doing so, buyers are apt to see more homes in what we call a "short sale". Should you choose to place an offer on a home in this status, there are a few caveats and warnings I'd like to pass on to help you keep your sanity. The home buying process can be frustrating and stressful under the best of conditions, but a short sale will test your patience and frustration beyond any normal real estate transaction.

A *short sale* is a short period before the foreclosure process usually starts for a homebuyer in default on his payments (or if they wish to sell anyway). This can occur at any time from the first late payment, up until the bank moves to foreclose... generally 4 months after the collection stage (unless they have made special concessions with the home owner). It's called a *short sale* because there is more debt owed on the home than a sale will bring in the current market (such as 100%+ mortgage, 2nd mortgage, any type of tax or construction liens, or judgments). Unlike a foreclosure, where the bank takes title via the deed, the homeowner is still the owner of record on the deed for a *short sale*. However, in order to consummate a sale, the bank has to agree to accept a loss. These listings will be noted on our RMLS listing data sheets with a field in the 2nd to bottom section (with the taxes) as "3rd Party". A *short sale* will have a "Y" for yes, and the bank is the interested 3rd party.

Attempting to purchase a *short sale* home can be like bidding for a home in a closed bid auction... but with no deadline for offer submission. In other words, multiple buyers can place offers on the home over an unspecified length of time. A wise seller can accept them all... putting each in "back up offer" position in the order he accepts them. They may all be sent on to the bank. The lender then picks and chooses which one they want to accept.... **REGARDLESS OF THE ORDER!** At that time, the bank most often chooses to communicate **only** with the buyers who's offer they have accepted... the rest are likely to be ignored, and you may never know if the bank even saw your offer... despite your agent's best intentions.

To complicate the process further, most banks and listing agents choose to leave the homes as "active listing" status until the bank has responded to "the one". This means you could have put in an offer weeks ago, and the bank could receive an offer the same day they may have been about to accept yours... and change their mind, accepting the latest offer. Just like in a closed bid auction, you are not likely to know the terms and prices of other competing offers for privacy issues. This creates added stress on buyers with the constant "no word yet" on the offer, and has been known to stretch on for months. Your buyers' agent cannot speak to the bank direct, and can only communicate with the listing agent, or with the specialty short sale mitigation company (if the seller entered into an agreement for such service). If this is your first purchase, the *short sale* is the most brutal and stressful introduction to the process. So the things to keep in mind as a general rule:

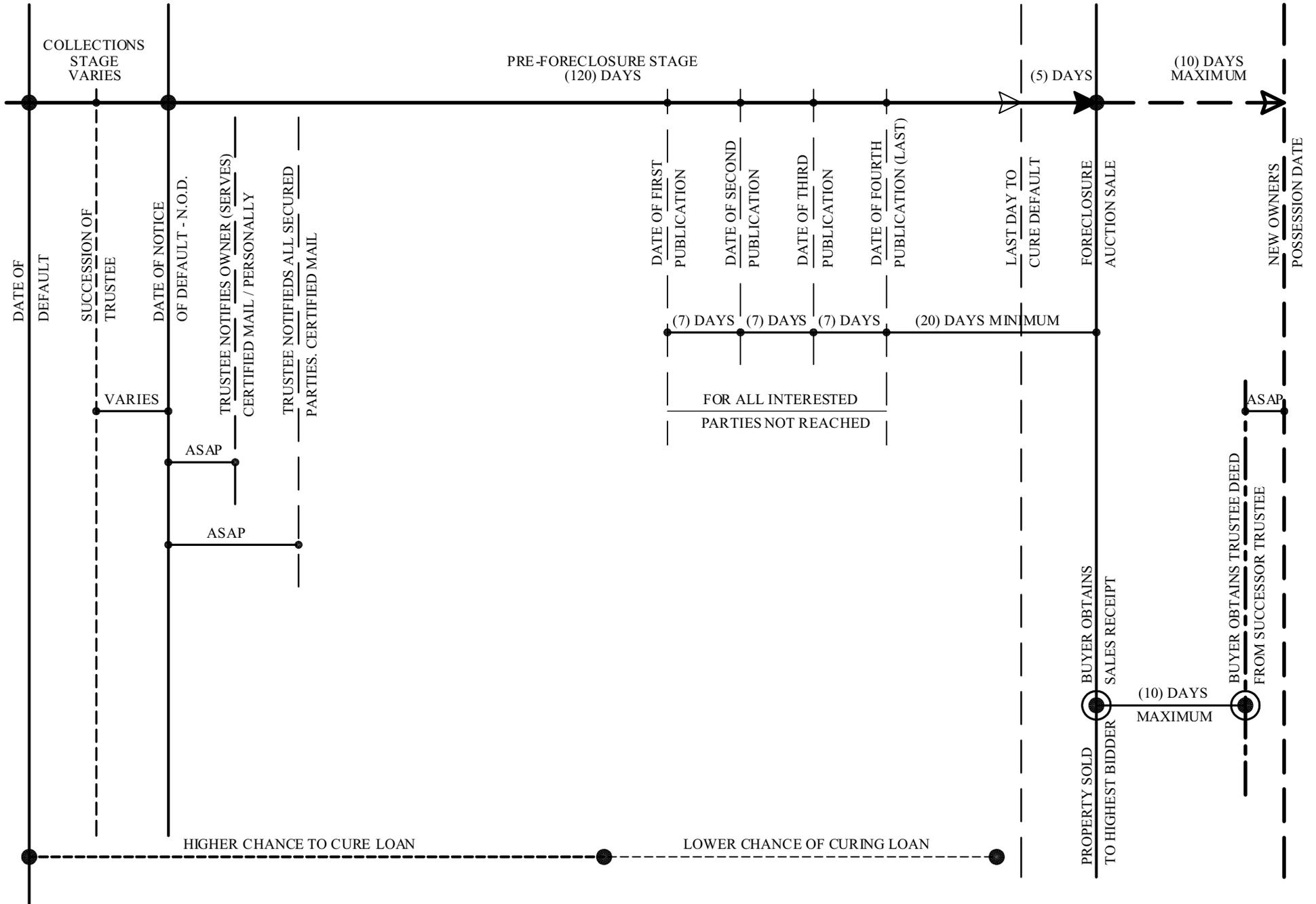
- ▶ **Use a promissory note** unless the bank demands otherwise. If you submit a check, Oregon law requires that check be deposited in escrow until the deal is officially rejected by the bank. This ties up personal funds unnecessarily, and banks can be notoriously slow in providing paperwork to release your funds.
- ▶ Stipulate **all deadlines** for inspections, redemption of promissory note, etc **start the calendar or business day after you receive the WRITTEN acceptance** from the bank that your offer has been accepted. Do not trust verbal acceptance.
- ▶ Keep a close eye on your lock dates for your loan with your lender. If the bank delays you too long, you may find the rates have gone up, and you no longer qualify for the same mortgage amount, and risks loss of your earnest money.
- ▶ Always have an "end date". I.e. **"closing to be 30 days after bank's written acceptance, but no later than x date"**.
- ▶ Make sure to add that you have the **option to withdraw your offer any time prior to receiving the bank's acceptance.**

I suggest that buyers continue to shop until they have written acceptance. In the meantime, a better home could show up, and be obtained for far less stress. So go into a short sale ready to be ignored, armed with patience, and hope for the best!



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SHORT SALES – A BRIEF SUMMARY (For Buyers)

1 **The following Summary is intended to briefly address some of the practical and legal issues that can arise in a Short Sale**
2 **transaction. This Summary is not intended to be a complete explanation of Short Sales, does not constitute legal advice, and**
3 **should not be relied upon in lieu of securing competent legal, tax and consumer credit advice.**

4 **1. DEFINITION.** The term "Short Sale" is used to refer to those real estate transactions in which the agreed-upon purchase price is
5 insufficient to pay off all of the secured debt on the property (such as mortgages, trust deeds, state/federal income taxes, liens, property
6 taxes or other local assessments) including the costs of closing, such as escrow and recording fees, title insurance premiums, real estate
7 commissions, etc. If the seller is in bankruptcy, a trustee for the seller's creditors will take control of the sale. In most Short Sales, the seller
8 must secure an agreement from one or more third-party creditors to accept from the closing proceeds something less than the remaining
9 amount of the debt due them. In other words, the debt is "shorted" or reduced. The one thing common to all Short Sales is that the final
10 decision on price and terms of the transaction, as well as the identity of the ultimate buyer, will be in the control of third parties, usually
11 creditors, whose consent to the transaction is required in order for the seller to convey clear title to a buyer.

12 **2. TRANSACTION CONTINGENT ON THIRD-PARTY CREDITOR CONSENT.** Since a Short Sale requires approval from one or more
13 creditors who are not parties to the pending real estate sale transaction, the seller's agreement to sell must be made subject to (or
14 "contingent upon") third-party consent. This generally means that if the seller is unable to secure the necessary consent (for example,
15 because the creditor refuses to give consent or it cannot be obtained by the closing date), the transaction fails and all earnest money is to
16 be promptly refunded to the buyer.

17 **3. TRANSACTIONAL CHANGES REQUIRED BY THIRD-PARTY CREDITORS.** In Short Sales it is not unusual for a creditor whose
18 consent is sought to insist that other creditors who would be paid from the closing also share some of the cost. They may also insist that
19 the sale price be increased, or require removal of provisions for the seller to pay certain repairs, etc. Some creditors may require an
20 appraisal or independent broker's price opinion ("BPO") of the property before making any decision. Thus, in Short Sale transactions, seller
21 and buyer must be prepared for delays resulting from changes to the price, terms and conditions agreed upon in the original transaction,
22 responses from third-party creditors, as well as other events outside of the seller's and buyer's control.

23 **4. BUYER DUE DILIGENCE CONTINGENCIES.** In Short Sale transactions, the deadlines for completion of buyer contingencies may
24 need to be suspended pending third-party creditor consent. However, if consent is slow in coming and the buyer wishes to proceed
25 anyway, buyers must understand that there is a risk they could expend their funds only to later learn that the necessary creditor's consent to
26 the Short Sale cannot be obtained. Normally, buyers have no recourse for recovery of these expenditures.

27 **5. ADDITIONAL OFFERS.** Since most third-party creditors will want to secure the highest and best offer for the property, they may insist
28 that it remain on the market, notwithstanding a pending transaction. As a result, a creditor may withhold final consent until they have had an
29 opportunity to compare one offer with other potential offers that may come in the future. In some Short Sales, a creditor may refuse to give
30 consent to a pending transaction because they want the seller to accept another offer, or potential offer, with a better price or terms. As a
31 result, the entire Short Sale process may involve a significant risk of delay or failure.

32 **6. USE OF EXPERTS.** Short Sale transactions can be complicated and time consuming. They raise important issues, especially for
33 sellers, including income tax implications, liability issues for unpaid mortgage indebtedness, credit rating issues, bankruptcy and other legal
34 issues, all of which can affect the ultimate success of the transaction. Your real estate broker is not an expert in these areas. **Buyers are**
35 **strongly encouraged to secure additional competent professional advice before entering into a Short Sale transaction.**

36 Selling Firm _____ Selling Licensee _____

ACKNOWLEDGEMENT OF RECEIPT

37 **The undersigned acknowledge that they have read and understand this Summary.**

39 Buyer _____ Date _____ a.m. _____ p.m. ←

40 Buyer _____ Date _____ a.m. _____ p.m. ←

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Sale Agreement # _____

SHORT SALE ADDENDUM

1 This Short Sale Addendum ("Addendum") shall become a part of the Real Estate Sale Agreement (hereinafter referred to as the "Sale Agreement") between
2 _____, Buyer and _____, Seller,
3 dated _____, for the Property located at _____, Oregon ("Seller's Property").

4 **AS MORE FULLY DESCRIBED ON THE ACCOMPANYING DOCUMENT ENTITLED "SHORT SALES – A BRIEF SUMMARY" ("THE SUMMARY") A**
5 **"SHORT SALE" IS A REAL ESTATE TRANSACTION IN WHICH THE AGREED-UPON PURCHASE PRICE FOR A SELLER'S PROPERTY IS NOT**
6 **SUFFICIENT TO PAY OFF THE SELLER'S TOTAL COSTS AND EXPENSES NECESSARY TO CLOSE THE TRANSACTION AND CONVEY**
7 **MARKETABLE TITLE TO THE BUYER. THESE COSTS AND EXPENSES MAY INCLUDE SUCH THINGS AS THE LOAN BALANCE, LATE FEES, IF**
8 **ANY, RECORDED LIENS, TAXES, ENCUMBRANCES, COMMISSIONS AND OTHER CHARGES THAT WOULD NORMALLY BE PAID FROM**
9 **SELLER'S GROSS PROCEEDS OF SALE AT THE TIME OF CLOSING ("TOTAL CLOSING COSTS"). AS A RESULT, THE PARTIES MAY**
10 **EXPERIENCE SIGNIFICANT TIME DELAYS AND OTHER COMPLICATIONS IN THIS TRANSACTION WHILE NEGOTIATING A REDUCTION IN THE**
11 **TOTAL CLOSING COSTS WITH SELLER'S CREDITORS ("THE CREDITORS"). BY SIGNING BELOW, BUYER AND SELLER HAVE AGREED**
12 **THAT THIS TRANSACTION IS A SHORT SALE, AND ACKNOWLEDGE THAT THEY HAVE REVIEWED THE SUMMARY AND HAVE BEEN ADVISED**
13 **BY THEIR RESPECTIVE REAL ESTATE LICENSEES, TO SECURE COMPETENT LEGAL, TAX AND CREDIT ADVICE, AS NECESSARY.**

14 **1. THE CONTINGENCY.** This sale is contingent upon Seller obtaining written consents from the Creditors permitting a
15 reduction of the Total Closing Costs sufficient to close the transaction for the purchase price and convey marketable title to
16 Buyer ("the Contingency"). All parties acknowledge that at the present time the exact identities of the Creditors and/or the
17 exact amount of the Total Closing Costs may not be currently known. The Contingency shall be deemed to be satisfied if
18 written Creditor consent is given to this transaction prior to the closing date, upon such terms as Buyer and Seller agree in
19 writing. Notwithstanding the preceding sentence, this transaction shall automatically terminate at the end of the day
20 (Midnight) on *(insert date)* _____ with no further notice required from Buyer or Seller, if
21 they have not received the written Creditor consent by that time. Upon such termination, all parties shall cooperate in signing
22 such documentation reasonably necessary to effect a termination of the transaction and refund of all deposits, if any.

23 **2. CONTINGENCY AND DEPOSIT DEADLINES.** Except for the agreed-upon closing date, which shall remain in effect
24 unless jointly rescheduled in writing by Buyer and Seller, all performance or contingency deadlines contained in the Sale
25 Agreement, including but not limited to those for the redemption of earnest money, financing, title, inspection, lead based
26 paint, and Seller's Property Disclosure (ORS 105.465-105.490) shall not commence until the first day after satisfaction of the
27 Contingency occurs as described in Section 1, above. **Caution: If the Property is pre-1978 housing, the Lead-Based**
28 **Paint Disclosure Addendum must be completed by Buyer and Seller and their licensees prior to closing. Unless**
29 **waived, the Buyer must be given an opportunity to conduct a lead-based paint assessment or inspection. See**
30 **Section 15 (Lead-Based Paint Contingency Period) of Sale Agreement.** All parties acknowledge that written Creditor
31 consent may never be issued, or if it is, there may be insufficient time for Buyer to complete all investigations and inspections
32 prior to the scheduled closing date, without rescheduling said date. Notwithstanding the preceding, the following
33 performance or contingency deadlines shall commence in accordance with the date(s)/time(s) contained in the Sale
34 Agreement: _____

35 **SAMPLE ONLY**

36
37 **3. WAIVER, MODIFICATION, AMENDMENT; CREDITOR MODIFICATION; DISPUTE RESOLUTION.** The Contingency is
38 for the joint benefit of Buyer and Seller and may not be unilaterally waived, modified, or amended, by one party, without the
39 written consent of the other. Buyer and Seller acknowledge that one or more of the Creditors may require a change in the
40 terms of this transaction before agreeing to any reduction of the Total Closing Costs. However, neither Buyer nor Seller, nor
41 their respective licensees or firms shall be legally required, as a party or fiduciary, to consent to any such proposed change of
42 terms, even though the refusal to do so could mean that this transaction will fail to close. Notwithstanding anything to the
43 contrary contained herein, should there arise any "Claims" (as that term is defined in the Sale Agreement) under this
44 Addendum, between or among Buyer, Seller, or their respective licensees or firms, the matter shall be exclusively resolved in
45 accordance with the alternative dispute resolution provisions contained in the Sale Agreement, even though the Contingency
46 has not yet expired or been satisfied, removed, terminated or waived.

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Sale Agreement # _____

47 **4. TERMINATION OF TRANSACTION; NO REPRESENTATIONS OR WARRANTIES; ASSUMPTION OF RISK.** Buyer
48 and Seller acknowledge that: (a) Closing of this Short Sale transaction will be primarily based upon consent of the Creditors;
49 and (b) A Creditor's failure to consent by the scheduled closing date shall result in an automatic termination of this
50 transaction. Upon such termination, all earnest money, if any, deposited by Buyer shall be promptly returned to Buyer.
51 Buyer and Seller acknowledge that neither the other party, nor their licensee or firm, have made any representations or
52 warranties concerning the likelihood this transaction will successfully close. This Addendum shall not create any right of first
53 refusal to Buyer. Any expenditure of time, money or other consideration by Buyer or Seller prior to termination or expiration
54 of the transaction shall be solely at their own risk, and neither shall have a claim against the other for such expenditure.

55 **5. RIGHTS OF PARTIES DURING CONTINGENCY; BUYER'S CONTACT WITH THE CREDITORS.** Buyer understands
56 that: (a) Seller's Property may remain on the market as an active listing (subject to existing MLS rules); (b) Seller may
57 consider and submit to the Creditors other competing offers to purchase the Property; and (c) Creditors may insist that
58 regardless of the order in which received from Seller, all Short Sale offers will be reviewed before a final decision is made on
59 which one to accept. During the period that this Contingency remains open, Buyer and Seller shall have the right to verify, to
60 their sole satisfaction, that one or more of the Creditors will, in writing, waive or reduce the Total Closing Costs in an amount
61 sufficient to enable Seller to close this transaction for the Purchase Price and convey marketable title to Buyer. This
62 Addendum shall not be construed as requiring Seller to permit Buyer or Buyer's licensees, agents or representatives to
63 contact any Creditors regarding Sellers' financial, personal or confidential information for which any privacy rights may exist.
64 If Seller agrees to permit Buyer or Buyer's agents or representatives to have direct contact with the Creditors concerning or
65 verifying a reduction of Seller's Total Closing Costs, Seller agrees to sign such documents as reasonably required by the
66 Creditors to authorize such contact.

67 **6. SHARING OF NON-CONFIDENTIAL INFORMATION.** Both parties acknowledge that while final Creditor consent is
68 outside of their individual control, they nevertheless agree to timely provide to the other party and their licensees, agents or
69 representatives, if any, with such non-confidential information as they may actually acquire from the Creditors regarding
70 approval or disapproval of this transaction.

71 **7. ADDITIONAL PROVISIONS.** _____
72 *SAMPLE ONLY*
73 _____
74 _____

75 Buyer _____ Date _____ ← Seller _____ Date _____ ←
76 Buyer _____ Date _____ ← Seller _____ Date _____ ←
77 Selling Licensee _____ Listing Licensee _____
78 Selling Firm _____ Listing Firm _____

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