

QUESTIONS/ANSWERS



How does the bank decide what price to put on the property?

Every bank has a specific method of deciding how much they'll accept on a short sale. Some will send a Realtor to complete a BPO (Broker Price Opinion) of the value of your home. This will require that the bank's Realtor access the inside of the home. Other banks may actually hire an appraiser to access the value of your home. Values are based on recent sales (last 3-6 months), similar home sales within your community and also homes within 3 miles of your community. This will include foreclosures and other short sales.

3. What type of situation is the short sale best for?

Most short sales are accomplished on properties heading toward foreclosure. This means the homeowner is behind on their monthly payments and in some cases in the foreclosure process has already begun. Recently however, more mortgages that are simply behind or "in default" are considered short sale candidates without actually being in foreclosure.

Next, the homeowner typically has no equity or negative equity in the home. In other words, the total balance owed to the lender is equal to, or greater than, the price at which the house can be sold.

Also, the homeowner must have some type of financial "hardship" which is preventing him or her from paying the mortgage. A hardship can include: job loss, divorce or split of domestic partners, reduction in income, loss of a loved one- which resulted in loss of income, job relocation when the home is equity deficient, etc. We have seen banks accept a short sale and the homeowner is not late *yet*, *BUT* often the bank will want to see that you have been late. There are many cases where the mortgage company will also pull the owners credit and see if they have been late with other creditors. Often, if the owner is in good standing with other creditors, but in default with the mortgage company, they will frown upon this and this could result in a promissory note being requested from the mortgage company or cash contribution.

4. Does a homeowner benefit from a short sale?

First and foremost, a short sale relieves the stress of being in foreclosure and it allows the homeowner to get rid of their big mortgage payment and move on with their lives. A short sale allows you to stop a foreclosure proceeding and get a fresh start. In our experience, this is the primary benefit to the homeowner.

On the credit side, a short sale is arguably the lesser of two evils. Having some late payments, and a foreclosure filed has already done damage to your credit. However, a completed foreclosure generally does more damage than a short sale agreed to by a lender. Obviously, a bankruptcy significantly damages your credit score.

- Also, you are in control of the sale, not the bank! You have more control over the timing of the transaction and the date they will vacate, rather than a forced eviction by the bank.
- You may sleep better at night knowing who is buying your home.
- You will spare yourself the social stigma of the "F" word, foreclosure.
- Your home sale will be handled like any other home sale.
- Short sales can result in a 80-150 point drop on a credit score, whereas a foreclosure can lower a credit rating by 200-300 points and can prohibit a new purchase for up to seven years. (FHA will allow you to buy again if you show you are back on track and have recovered.) FNMA will not provide a new loan for 'walk away" or foreclosed homeowners after five years. Freddie Mac will need seven years to pass.

5. I'm an investor, can I short sale my rental property? : Well, remember the "hardship" element which must be present. For investors there may also be some income tax issues resulting from mortgage relief. Remember to consult your tax advisor. I would expect the mortgage company to want to send you a 1099 and claim the 'shorted' part as income; mainly because you were not the 'primary' residence of the home.

6. Does it matter what kind of loan I have?

Possibly. In some instances there is a potential risk of a deficiency judgement or a lawsuit on a loan contract, as opposed to judicial foreclosure. It can also depend on the 'investor' that owns your loan as well. . Give me a call and we can discuss the specifics of your situation

7. I am in foreclosure. Is a short sale for me?

Each situation is different and must be evaluated individually. The important factors in relation to a short sale are:

- a. Property in foreclosure or default
- b. Personal financial hardship
- c. Little or no equity in the property
- d. At least 60 days until eviction date
- e. The value of the home has declined below the loan amount

If you feel you fit into these criteria, give me a call and we can discuss your specific situation.

8. What if my mortgage is an FHA, HUD or VA mortgage?

Short sales can still generally be accomplished on all of these types of mortgages, though each one has different criteria.

9. What options other than a short sale might I have?

- a. Cure your mortgage default (bring your payments current);
- b. Attempt a loan modification that adjusts the terms of your existing loan;
- c. Refinance your mortgage with another lender;
- d. Try to sell your home through normal channels;
- e. Rent your home and make your payments current
- f. Attempt to get your lender to accept a deed in lieu of a foreclosure; and/or
- g. File for bankruptcy.

10. What is "financial hardship" and why is it so important?

"Financial hardship" is a critical part of the short sale equation. No matter what you hear about banks "not being in the business of owning real estate", they DO NOT easily give homeowners a break. They require GOOD REASON to give a discount for a short a sale.

The only reason a lender will agree to a short sale is if they determine that a short sale will net them more money than proceeding with the foreclosure. Understanding the homeowner's financial hardship plays a major role in the lender's estimation of whether or not it will be paid

in full for the mortgage. Quite simply, lenders will make the borrower pay the shortfall if there is no hardship.

Many homeowners try to use a short sale as a "get out of jail free" card to dump a poor investment. Lenders will not allow this, and it is a waste of time to try. If you are employed and have some assets, but you have simply lost value in your home and want to sell, you probably cannot short sale. If you are current on your mortgage, it is very difficult to short sale. Lenders need to see that you simply cannot pay them before they will agree to a short sale.

11. Who owns the house after a short sale?

The purchaser of the house is the owner after a short sale, just the same as in a normal sale. The mortgage lender is paid off and the previous homeowner moves to a different home.

12. What do I do about my back property taxes when I do a short sale?

Just as in a normal home sale, the property taxes are the responsibility of the homeowner until the date the sale is closed. Then they become the responsibility of the buyer. If your property taxes have not been paid this will affect the negotiations between the buyer and the bank, so you must inform me or any buyer of the taxes owed. In some cases the bank MAY allow those back taxes to be included in the short sale when we as your Realtor prepare the HUD-1 statement and send to the bank along with the other requested short sale documents.

13. Do you handle homes in my area?

Our focus is the Atlanta area and outlying counties, however, we will consider listings in other areas of Georgia. In addition, I work with other short sale specialists in the Georgia region and can often refer your case to another Real Estate Broker if I cannot help you.

14. Do you handle duplexes, apartment buildings, condos, or commercial property?

We handle residential properties of all types in virtually all price ranges and have the capacity to handle commercial properties as well.

15. My home is already listed for sale on the MLS, but isn't selling; can I still do a short sale?

Yes, you can and it is relatively common. Some lenders even require that a house be listed for sale before approving a short sale in order to show that a discount is necessary. Since your home is already listed, discuss a short sale with your current listing agent and see if they are familiar with the short sale process and if they have in-fact closed any. If not you certainly have the right to request a new agent within the agency or another company.

16. My home is really nice, why is the short sale offer price so low?

Sellers often have an emotional attachment to their home and may feel a short sale offer is too low. It is important to remember a few things. First, the seller in a short sale can never receive any money in the transaction. It should therefore be of little concern what price is offered as long as the short sale is done. The only real exception is when the seller has tax liability concerns. (If there is tax liability, a lower sale price means a larger mortgage relief and a greater tax liability.) Otherwise, the price should not matter to the seller.

The important factor in a short sale is whether the lender will accept the price offered. Lenders often accept prices for short sales which may be surprising to normal homeowners or Realtors. Discounts of 30% are no longer uncommon. This happens for several reasons:

A. Sellers are often in denial about how bad the market really is for housing and therefore, how far the value has declined.

B. Lenders don't like the foreclosure process any more than homeowners do (especially in Georgia). Lenders incur substantial costs during a foreclosure process that can last more than 12 months. They have attorney fees, filing fees, publication fees, lost interest on the money that is tied up, property taxes, insurance, maintenance costs, as well as the potential for vandalism of a vacant home. This is all BEFORE having to try to sell the home as a bank-owned (REO) property and pay sales commissions. A short sale is a way to avoid some or all of these costs. If a lender calculates his cost of eviction at \$50,000 for a house, they will often take a \$40,000 loss on a short sale instead and be better off for having done so.

C. The bank will have the final say-so on any offers presented. Even though the owner still owns the home and has the sign and bind the purchase and sales contract, the final offer is contingent upon the bank's approval. There are several levels of approval and often that is why it takes so long to close a short sale. The bank, their investor, and sometimes a mortgage insurance company has to approve the terms before issuing a short sale approval letter. There are a lot of levels of approvals and this does not happen very fast. Sometimes our team can escalate the file for a fast approval if we are facing the buyers walking away or facing a foreclosure sales date. Which in Georgia is every first Tuesday of the month.

17. Who pays the real estate commissions on a short sale?

The commissions are paid by the seller's mortgage company. It is part of the short sale and is reflected on the HUD-1 we prepare and send to the bank for their final approval.

18. Are short sales guaranteed to work?

No. All of the criteria must be met before a bank will even consider a short sale. Even then it isn't easy to convince a bank that the market value of the home is lower than what they are owed.

Even if all the paperwork has been correctly completed it can take several weeks, or even months, only to be denied. If the lender does not approve the short sale, no transaction occurs. The Purchase Agreement becomes void and the listing continues.

Sometimes we may wait months for the bank to respond to our offer and they deny the offer or 'counter' the buyers offer. Or there are times the mortgage company comes back and requests the seller sign a promissory note and the seller disagrees with the terms and decides not to proceed with the short sale.

19. How long does a short sale take?

A short sale can take 60 to 120 days or longer to complete. This is very important. The process is complicated and takes a lot of time. So to exercise the short sale option, you must act quickly. If you wait until one week before foreclosure, no one can help you with a short sale. It is simply impossible. DO NOT WAIT!! Some mortgage companies will not entertain a short sale-even with an offer on the table 2-3 weeks before the set foreclosure sales date. SO DO NOT WAIT!

20. Why do I have to sign a Borrower's Authorization?

The Borrower's Authorization gives the lender permission to speak to your representative about your loan. That's all it does, but it is necessary. An authorization must be filled out for each mortgage and for each Realtor to act on your behalf.

21. I have heard that I could owe income taxes after a short sale, is this true?

Possibly, but it's not that simple. There are a number of factors involved. For example, are you an investor or is the property your primary residence. Is the debt on the property "purchase money" or has the home been refinanced. If you're an investor or if the property was refinanced are you insolvent? You can see how the matter can become complex in very short order. You must consult with an attorney or CPA on this issue. However, without getting too complicated, I can provide our experience with this problem.

When a lender writes off part of a loan (discounts it) the portion written off is the equivalent of a cash infusion to the owner. This "mortgage relief" is then reported as income to you by means of a 1099C form.

Even if you receive a 1099C and declare it as income, there is a good chance you will owe very little tax. This is because there is an IRS rule regarding "insolvency" which essentially says if you are insolvent (more liabilities than assets) at the time of the short sale, you don't have to count the 1099C as income (instead you declare it, then obtain the exemption). There is an IRS form to complete to show you are insolvent. See the Internal Revenue Service website at www.irs.gov

In December of 2007, President Bush signed a new law into effect providing that for a specified period of time homeowners who satisfy certain requirements will not be taxed on mortgage relief. This bill is called, the "Homeowners Debt Forgiveness Act" and it may or may not apply to your situation.

Again, please consult a CPA or tax adviser.

20. I am behind on my mortgage payments, but not yet in foreclosure. Can I do a short sale?

Yes, this is happening with much greater regularity. Sometimes these are the most attractive short sales for both the buyer and the lender because the buyer can take advantage of the lender's ability to avoid the vast majority of the costs of foreclosure.

In these cases, it is more important to have a very clear "hardship" story to explain to the lender why you are unable to make the payments.

This is an ideal time to contact us so we can begin the short sale process and explain your other options as well.

21. My house needs a lot of repair; can I still do a short sale?

Yes, though it can make the process more difficult because the price must be lower to compensate for the repairs. The key is to show the bank's appraiser all the work that needs to be done. In some cases I may also request a contractor give us an estimate of those repairs to submit to your mortgage company. This will assist in justifying the price we have to list the home for in the near future.

22. I have more than 10% equity in my home - can I still do a short sale?

Probably not. However, you may be a candidate for a regular sale.

23. Other people are on the deed with me, but they don't want to short sell. Can I still do a short sale?

No. All parties listed on the deed [or mortgage](#) must sign the short sale purchase agreement. There are no exceptions to this.

24. I have other liens (i.e. mechanics, IRS, court judgments) on my house; can I still do a short sale?

Yes, but it gets much more complicated and will take longer. If this is the case with your home, be sure to COMPLETELY list all liens you have. Each lien holder must be negotiated with individually. A short sale in this circumstance will take substantially longer. In Georgia a

seller cannot sell their home without conveying clear title to the buyer. These issues will have to be resolved prior to closing.

25. I have property I inherited but I can't afford the mortgage. Can I do a short sale?

Yes. As long as your name is on the deed and all parties that hold interest in the property are willing to sign the Listing Agreement.

26. I have 2 or 3 mortgages on my house. Can I still do a short sale?

Yes, each mortgage or line of credit ([HELOC](#)) can be negotiated individually. It is important to know which mortgage filed the foreclosure or, if more than one are in foreclosure, which one filed first. The primary or lien holder in the first position will dictate to the other mortgage companies how much will be paid to them at closing. Often the 2nd and even 3rd lien holders will not get paid as much as they are requesting from the first. This is very common and often leads to them requesting funds from the seller at closing.

27. Can I buy again after a short sale?

- If your payments have never fallen behind 30 days late and the lender does not require that you pay back the loan, Fannie Mae guidelines may allow you to buy another home immediately. Finding a lender who will fund that kind of loan is very difficult. If you are current on your mortgage, you can qualify for an [FHA loan](#) immediately as well, but lender requirements can be weird such as you have to move more than 600 miles away. In other cases you may have to wait 3 years after your short sale to purchase again. (FHA will allow you to buy again if you show you are back on track and have recovered.) FNMA will not provide a new loan for "walk away" or foreclosed homeowners after five years. Freddie Mac will need seven years to pass.

28. What happens to my credit after a short sale?

A short sale may be considered to be a derogatory mark on your credit even though credit bureaus do not show the word "short sale" on your credit report. It may say "paid in full for less than agreed" or "settled for less," among other categories. Some clients have reported negative [FICO score](#) drops from 50 points to 130 points. Major point drops are typically due to being in default, meaning you have fallen behind on your payments.

29. How does my mortgage company benefit from approving my short sale vs. letting it foreclose?

It costs the bank- The summary of expenses and time incurred as a result of a foreclosure can amount up to \$30,000+ (Attorney fees, eviction process, brokerage fees, borrower's bankruptcy, damage to the property while it sits vacant (theft, harsh weather, etc.) The bank

is not in the business of owning real estate. They would rather work with you to stay in the home through loan modification or approving a short sale on your home!

30. What is the HAFA Program? And why should I call the bank and see if I qualify?

HAFA- Home Affordable Foreclosure Alternatives. This allows the borrowers to receive pre-approved short sale terms before the home is ever listed! This includes the minimum acceptable net proceeds and approvable closing costs. This will speed up the short sale process and encourage Realtors to show your home to prospective buyers. This requires borrowers to be fully released from future liability for the first mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed). Junior lien holders accepting a HAFA incentive must also release borrowers from future liability. They may not require contributions from either the real estate agent or borrower/seller as a condition for releasing its lien and releasing the borrower from personal liability. Financial incentives includes: \$3000 for borrower relocation assistance; \$1500 for servicers to cover administrative and processing costs; and up to \$2000 match for investors for allowing a total of up to \$6000 in short sale proceeds to be distributed to subordinate lien holders (on a one-for three matching basis; up to 6% of the unpaid principal balance of each subordinate loan). FANNIE MAE & FREDDIC MAC HAFA programs offer different incentives. It can range from \$15-3000. *No servicer or borrower incentive will be paid for short sales on Fannie Mae 2nd lien mortgage loans.*

Timelines for HAFA: The servicer must consider every potentially eligible borrower for HAFA. They must consider eligible borrowers for HAFA within 30 days after the borrower does at least one of the following:

1. Does not qualify for a HAMP trial period plan.
2. Does not successfully complete a HAMP trial period plan.
3. Is delinquent on a HAMP modification (misses at least 2 consecutive payments.)

Short Sale process for sellers. Step-by-step



1. Set-up a listing appointment with The Byrdsong Team to learn about your options
2. List your home with the Short sale professionals of The Byrdsong Team
3. Contact your bank(s) and inquire about the HAFA program and request a short sale package. Ask if they will fax it to us at: 77.406.2728
4. We take interior photos of your home
5. Your home is listed on the Georgia Realtor listing systems : FMLS & GMLS with photos and virtual tour
6. We do a preliminary title search to see if there are any potential liens on your home.
7. List price is determined by fair market value. If the bank has approved you for the HAFA program they may dictate the list price.
8. We begin marketing your home online! We have a very aggressive online marketing campaign that will attract the right buyers for your home quickly!
9. Forward us all of the short sale requested documents ASAP to us. (e.g. hardship letter with detailed outline of events, bank statements, W-2's, etc.)
10. We submit an authorization to your bank(s) that allows us to speak with them on your behalf and present offers and the short sale packet.
11. We prepare the short sale packet to send to your lender, including a HUD-1 statement and the listing agreement and any offer we may have received
- 12. All parties sign the Purchase and Sales agreement (offer) and we bind the contract between seller and buyer. We will collect earnest money from the buyer and take your home off of the market! *Remember, we will request your bank pays the buyers requested closing costs!***
13. Some banks require we register through their website or the Equator system to manage the short sale process for you.
14. Once we have submitted your short sale packet to the bank they will order an appraisal or BPO (Broker Price Opinion). This will access the value of your home in today's market.
15. A bank representative will contact the listing agent to gain access into you home to take photos and view the condition of your home and see if it is still occupied or vacant. We ask that you leave the home during this 30-60 minute bank inspection.



16. Once the report is submitted back to the bank-they will assign a bank mitigator to your file to review the BPO and documents we have submitted. During this time frame, **expect 1-2 weeks** for a mitigator to be assigned and to review the information.
17. The bank mitigator will review your short sale packet and contact us via email or through their online system to request additional information. They may require you call into the bank and answer a few questions. We suggest you have the short sale packet you provided to us in front of you during this call. **This may take 2-3 weeks for them to review your file.**
18. During this review period the bank is reviewing hundreds of other short sale files across the country, along with foreclosures and loan modification packets. Also, your package must be reviewed by the investor that owns your loan as well! Also, the mortgage insurance company must review, if applicable. This can be the most frustrating part and can take the most time. BUT BE PATIENT. ☺
19. After the mitigator has reviewed your file and any offer on the table, they will come back with a 'counter offer' or accept the current offer on the table. At this time they will also disclose if they are going to request a promissory note or cash contribution at closing. If you qualify for the HAFA program this will not apply to you and you may see funds back at closing.
20. The buyer at this time can decide to accept the banks terms and proceed with closing in the next 30-45 days. The Byrdsong team will be glad to assist you with finding a home to rent if you need those services.
21. The bank will then send to us a short sale approval letter noting all the terms of the short sale; what they would like to net at closing and if you will receive any funds at closing or if you are required to bring funds to closing. This approval letter is required in order to close. It may take the bank **1-2 weeks to generate this letter.** I don't recommend the buyer perform any inspections or appraisal on your home until we have this letter in our hands. If you have a 1st and 2nd loan, we will have to receive an approval letter from both parties.
22. All parties on the deed must be present at closing. If you live out of state or out of the country a Limited Power-of-Attorney can be assigned to sign for you at closing. This requires that notarized documents are signed by you prior to closing and copies of your i.d. are requested as well. Once we close, the new owners take possession and you no longer own the home!