Your Guide Through The Short Sale Process

OWE MORE THAN YOUR HOME IS WORTH?
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CNBC BusinessWeek FOX NEWS channel THE WALL STREET JOURNAL.

What is a Short Sale?

The term “Short Sale” is used in the real estate world to describe when there is more debt owing against the property than the actual property is worth. The owner can’t sell or refinance the property unless the mortgage or lien holders agree to accept a payment that is less-or-SHORT-of the amount the owner actually owes. A short sale is when a borrower who is underwater on their property has no other way but to short the lender(s) the payoffs in order sell the property.

Why do a short sale?

The answer is simple. Borrowers do a short sale to avoid having a foreclosure, which can be very damaging on one’s credit. A short sale is also another way for borrowers to understand the outcome of the situation and to lessen the amount of late payments in a lengthy stressful foreclosure process.

The Foreclosure Timeline

Knowing your states foreclosure timeline is essential. Most borrowers have no idea how long they can be in their property until they will get evicted. Some think its one-month after first missed payment while others think it’s much longer. The truth is it is depends on what state you are located in since foreclosure law varies state by state. You must first know whether your state is judicial or non judicial.

IL is a judicial state; therefore, the foreclosing lender must go through the court system in order to foreclose on any borrower. In IL is takes approximately 210 days to foreclose on a borrower after Notice of Default (NOD) is served.

It is important to understand what NOD (Notice of Default) means. Notice of default is the official notice that foreclosure has been filed and being pursued. A borrower should know if an NOD has been filed because they will have been served in person or through some certified mailing. They can also expect to get a thick stack of legal documents, which may look very threatening.

In some states the process may be as quick as a couple months. It is super important your real estate professional truly understands your state's timeline since that is really the timeline you are up against. Depending on your situation you will now know how fast or slow you need to move to beat the foreclosure sale date.

The Different Types of Liens

When facing foreclosure or a short sale, it is so important to distinguish the different types of liens on your property. There is a lot of miscommunication and bad advice out there on this subject. It is ESSENTIAL that your real estate professional understand this aspect of the transaction as it may make the difference between walking away with no financial liabilities and having recourse against you.

- **1st Mortgage:** This is the primary mortgage or senior lien on the property. As long as this lien is being "shorted" the bank who holds this will control the deal in terms of how much is paid out in total commissions, payout's for title/attorney fees, and how much will be allowed to payout the 2nd mortgage or junior lien holders. They pretty much run the show and all other subordinate liens are at their mercy. Most first liens will treat the deal in the same manner in regards to any deficiencies. They will most likely issue the seller a 1099. The first lien position or senior lien holder is typically the foreclosing lien. This is also normally the larger dollar amount. Seniority is granted by the time it was recorded. In a deficiency judgment state they may come after the borrower for any deficiency.

- **2nd Mortgage:** True 2nd mortgages were commonly used during the previous boom years as a creative financing tool to allow buyers to avoid paying PMI. They were highly prevalent during the subprime boom. About 1-2 years ago you would see more of these types of loans attached to the property but in the current short sale market you will see more HELOC's (Home Equity Line Of Credit). If a property goes into foreclosure the 2nd mortgage is wiped out and the 2nd lender will receive nothing. 2nd mortgages typically settle for $3000 to $5000 per deal or $0.01 to $0.05 cents on the dollar. Remember, the loan in 1st lien position will generally only allow $1,000 to $5,000 so there is really nothing else they can do. 99% of 2nd mortgages are at a zero equity position in the property in this market. These typically are not too difficult to deal with although you may run into a few snags here and there. Bottom line is they understand their position in the foreclosure process and that they will be wiped out at foreclosure, therefore, they will take what they can get in most cases.

Please note that while the chances are highly unlikely that a true 2nd lien can come after a borrower after foreclosure sale, they have every right to as long as the borrower is in a recourse state. If they were to follow through on this they would technically have to sue the borrower. Truthfully, banks in these positions generally are not going to throw good money after bad money by chasing someone down that will only file bankruptcy if they were pursued. You can expect the vast majority of lenders in this position to send the seller a 1099. It is rare to see this type of lien pursue the deficiency, but they have every right to in a recourse state.

- **HELOC, Home Equity Line of Credit:** This is more like a credit card and needs to be negotiated for a settlement in order for the client to get a full release from this debt. Unlike a true 2nd mortgage, if a foreclosure were to take place on the seller's property, the bank/lender who issued the HELOC still maintains the rights to collect for the debt owed even after foreclosure, whereas, the true 2nd mortgage is completely wiped out at foreclosure. Their lien on the title of the property will be gone, but their rights to collect on the deficiency will not. The main difference is HELOC debt is a collectible debt after foreclosure sale. There are many stories of borrower's attorneys advising to walk away and let the property foreclose. In this case, not only do those borrowers have a foreclosure on their credit, but they also have the full amount owed on the HELOC as a collectible balance. HELOC's right now are generally getting settled for about $0.10 to $0.20 on the dollar. Smaller local banks will demand more, therefore, use this as a guideline. A true 2nd lien can sue for the difference but will rarely do so. A HELOC doesn’t have to sue for the difference. Their rights are already retained due to the characteristics of the loan. This is an important detail that you must be familiar with. Your clients need to be made aware of the consequences of the HELOC if the property were to go into foreclosure. The difference is mainly for a true 2nd to come after you they have to go through the hassle of suing someone, whereas, a HELOC’s right never go away. Banks will typically sell this right to some collection company which will be much more difficult to deal with.

Where do you start?

Believe it or not a short sale is conducted like a typical real estate transaction. It is your agent’s job to bring in a purchaser for your home through aggressive and traditional marketing. It is once you receive an offer, where the short sale process begins. However, before the process begins, it is essential you and your specialist are ready to go which is why the following forms must be completed. The following documents outline what is needed for a short sale package. No lender will begin the process of a short sale without a full package being submitted into the short selling lenders.

Short Sale Documents Defined

- **Authorization Letter:** This is a letter that allows your default specialist to speak to the lien holder on your behalf. Without it we cannot communicate with your lien holder.

- **Payoff Request:** This document allows us to order your current payoff amount. This is essential to us so we know how to renegotiate your loan.

- **Hardship Letter:** This is your reasoning and explanation to the bank. This is where you state why you are in the situation you are in. For example: job loss, medical, falling real estate prices, death, divorce, etc.

- **Pay Stubs (2 most recent):** This is so the lien holder can see an accurate accounting of your monthly income

- **Bank Statements (2 months most recent):** The bank does not care if you make money, but they do want to confirm that your deposits correspond with your paycheck stubs and that the money spent each month is substantiated with your financial worksheet.

- **Federal Tax Returns:** We will only need the first two pages. The lien holder is only interested in the bottom line.

- **Financial Worksheet:** This is the document where you paint out your monthly financial picture for the lien holder

- **Do Not Call Form:** This gives written notice to lien holders and more importantly stops your phone from ringing.

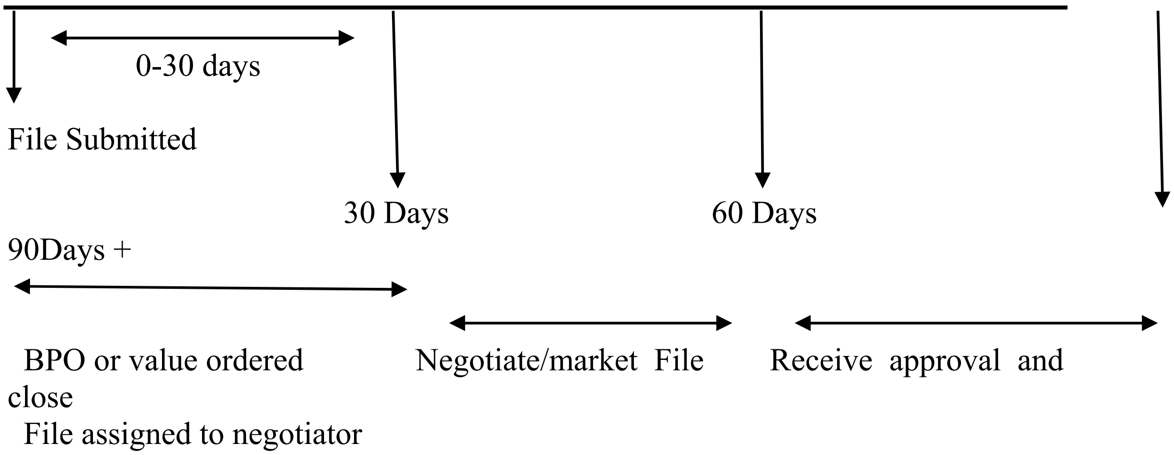
- **Exclusive Listing Agreement:** This shows that you are actively trying to sell the property and do something about your situation.

- **Real Estate Purchase Contract:** Once you have an offer your lien holder will need to verify there is really an offer to purchase.

- **Estimated HUD:** This will show an estimation of what the bank will net after the sale.

- **Loan approval for the buyer:** Your lien holder will want a full loan approval to the new purchaser. They need to make sure you have a ready, willing, and able buyer.

Short Sale & Loss Mitigation Timeline, Structuring Your Deal


0-30 days
File Submitted
30 Days
60 Days
90Days +
BPO or value ordered
Negotiate/market File
Receive approval and
close
File assigned to negotiator

Stage I

In the first 30 days your real estate professional should make sure once a full short sale package is sent into the lender(s), a BPO (broker price opinion) is ordered. A BPO is like an appraisal of a property submitted by a Realtor. It is this value of the property that will eventually determine the end sales price, as everything will revolve around this number only. Different lenders have different guidelines on short sales, but in general, the value submitted as the BPO will be a key factor in final sales price. Expect the initial offer to get countered by the lender. The second thing your real estate professional needs to do is make sure the file is assigned to a negotiator on the banks end who will process the file on that end.

Stage II

Stage II of the short sale process consists of receiving the value of the BPO and working with all additional liens on title. It is important during this stage that your real estate professional obtain short sale approval letters with favorable terms for you. Remember it is only an offer of mortgage assistance. Your professional should have exit strategies planned should the initial offer not work out. During this stage your agent should be finding the happy medium between the lender, buyer, and seller in terms of price of the subject property.

Stage III

Stage III you should receive the pay off demand letter or the short sale approval(s) from your lender. Your real estate professional should make sure your buyer is willing ready and able to close on the property at this point contingency free. Short sale approvals typically only have 30 days to close or you may have to start over which is why timing, exit strategies, and coordination with all lien holders, buyer, and seller are so important. Please note these are only terms offered to you and you have the right to accept or reject the lenders offer.

Understanding your relationship with your lender or servicer.

As the market has changed, so should the mentality of a short sale specialist. The most important concept to take into consideration is the agent's fiduciary duty to the seller on a short sale and that is to liquidate the property and move on. An agent has no duty to the bank on the short sale, as the bank is not the agents' client. Their duty to their seller should be to get them out of the property with the least amount of financial damage as possible. Agents often confuse short sales with REO's (bank foreclosures or real estate owned) and they think the lender must see all offers. They also think the bank is the owner of the property. The seller is the owner of record all the way until the bank repossesses it at foreclosure sale or a judge deeds the property back to the bank. Therefore, they have every constitutional right as the property owner and seller. Only the Seller can accept, reject, and entertain all offers. A short sale is only an approved payoff amount the bank is going to accept or deny to release their lien interest and, preferably, settle the debt that is owed to them by the Seller. It is also against the seller's interest to submit every offer you get on the property. I hate when agents do this and I see it all the time. It's completely ridiculous and I want to ask them whom they work for. Please tell me how this is in the seller's best interest. Your job is to help your sellers get out of this situation, not the opposite.

The seller owns the property. The bank owns the note attached to the title of the property. The Realtor works for the seller, not the bank. Only the seller can have the final say on the short sale. According to Realty Trac as of September 2011, Bank foreclosures sell for 39.92% under market value while short sales sell for 20.51% under market value. The mere fact that the seller is participating in a short sale is a way to mitigate the banks loss so who do you think is wearing the pants?

Pricing the Property

During stage I of the short sale process the lender will determine the eventual sales price on your property by basing that value off of the BPO or appraisal they do. Since you will not be receiving funds from the sale, do not be so concerned with the price, but more so with the terms of your release. It is rare that you will have financial liabilities associated with the short sale, but the terms are more important to you. My best advice is to lose any emotional attachment you have with the property.

Deficiency Judgment

What many people tend to ask next is what happens to all the money that is never paid back to the bank? The result of a lender taking less money than what they are owed is called a deficiency. There are several ways a lender can handle a deficiency amount. Some lenders may enter into a deficiency judgment against you for their loss. Here is what can happen after a short sale is conducted.

- **Forgiveness** - A foreclosure may result in cancellation of debt income depending on whether the bank pursues a deficiency judgment. If the bank chooses not to pursue a deficiency judgment, or pursues the judgment unsuccessfully, the borrower may incur income tax liability for debt forgiveness.

- **1099 Tax Form** - The lender may choose to tax the borrower on the deficiency amount as a capital gains tax. They basically consider their loss as your gain, therefore making it taxable. In many circumstances the client involved in the short sale is in financial hardship so may be able to claim insolvency. This can eliminate this obligation, but you should consult with a good attorney or tax professional.
- **Promissory Note** - A lender can issue the borrower a promissory note which can pay back the amount owed over an extended period of time say 15-20 years in the form of monthly payments.

- **Cash Contribution** - Sometimes the lender may just ask for cash at the time of closing ranging anywhere from $200-$5,000.

One point to remember is these are remedies for the lender to cure their loss. Since each situation is different, results will vary. The most important thing to remember is none of these listed above are any worse than having a foreclosure on your credit.

The Mortgage Forgiveness Act of 2007

When your real estate professional negotiates your short sale correctly you can expect to be given debt forgiveness in conjunction with receiving a 1099-C (cancellation of debt). The legislation that is in effect right now can best be summarized as follows:

Any borrower who receives a 1099 resulting from short sale or foreclosure are completely forgiven from any 1099 tax liabilities if they…

- Reside in the residence as their primary
- Can show they are insolvent if 2nd home or investment property.

This is the most common way the deficiency amount is resolved. You should always confirm this information with your CPA or and attorney.

Your Credit Score

When you foreclose on a home your credit will be altered for about 5+ years, to say the least. However, when you do a short sale your credit is also affected, but for a much shorter time period and less damage is done. The truth is there is no concrete answer as to how many points it will affect your score. Every person has his or her own FICO and each individual's score will vary. What I can tell you is the late payments are typically what have the major affect on a borrowers credit. Most people are usually able to qualify for a new loan and buy a new home within 2 years after a short sale vs. the 5+ years if you were to go into foreclosure. Since everyone is different its best to consult with a credit repair-person or your real estate professional in more detail.

FAQ’s

Why don’t I file Bankruptcy?

Short Sale vs. Bankruptcy – When faced with foreclosure many people tend to turn to bankruptcy as an option of solving their problem. Now there is a large difference many of the “professionals” fail to tell you. Filing for bankruptcy will consolidate your debt and can wipe out your liabilities, but it will not save you from having a FORECLOSURE put onto your credit report. Instead, now you will have both a bankruptcy and a foreclosure on your credit. If you plan on eventually turning back your property you WILL STILL HAVE A FORECLOSURE ON YOUR CREDIT REPORT. Trying to conduct a short sale while in bankruptcy can hold up the process, but it is not impossible. It will just take some more paperwork. My best advice is to consult with a great bankruptcy attorney prior to making any decision should you have additional debt you are unable to control besides your property. One key point to keep in mind is if your home is the only debt that is creating an uncontrollable situation for you then a short sale option is most likely your best bet vs. a bankruptcy. If you have other uncontrollable debt then a bankruptcy might also be needed in addition to a short sale. You should consult with a bankruptcy attorney should this be the case.

Why will the bank “forgive” my debt?

Simple, the bank does not want to go into foreclosure. It takes time and costs money. Conducting a short sale is really like a pre-foreclosure; you are just securing a buyer prior to your sale date. Banks usually find themselves losing more money if it goes into foreclosure and lenders do not want to tally up another foreclosure on their books. They understand their loss, as loan defaults are part of the business they are in. As in any situation they are trying to cut their losses and move on.

What do I do after a short sale?

After your short sale, the stress of your housing payment is extinguished and it’s time to get back on track to restoring your credit. Many people will rent for a while until their credit is fixed and then it’s time to get back into another house. With the right team of people working for you, you will be in a new house before you know it.

How much money does this cost YOU?

It costs you nothing! When conducting a short sale, or any real estate transaction, you always must deliver free and clear title to the new purchaser of your property. While we are conducting a short sale with a lender, all costs are taken into account and paid for by the lender from the purchase price of the new buyer bringing your loan current. Part of the amount you are shorting the lender includes all the closing costs typically associated with selling a home. These costs are viewed as a wash for any lender because if they took the property back they would have to pay them anyway since the property would have to be free and clear when resold. These include property taxes, title costs, attorney fees, back assessments, and even commissions, which is how we are paid.

Alternatives to Foreclosure:

- **Do Nothing**

If a homeowner does nothing, they most likely will lose their home at foreclosure auction. Loan applications generally ask if the applicant has ever been foreclosed upon. Credit reports also disclose this damaging information. Not the best option.

- **Payoff Request**

Completely paying off the entire loan amount plus any default amount and fees. Usually this is accomplished through a refinance of the debt. New debt is normally at a higher interest rate and there may be a prepayment penalty because of the recent default. With this option, there should be equity in the home.

- **Reinstatement**

Paying the entire default amount plus interest, attorney fees, late fees, taxes, missed payments and fees.

- **Loan Modification**

Utilizing the existing mortgage company to refinance the debt or extend the terms of the loan. This may allow the homeowner to catch up at a more affordable level. To qualify, you must prove to the lender you have fixed the problem that caused the late payment.

- **Forbearance**

Lender may be able to arrange a repayment plan based on the homeowner’s financial situation. The lender may even be able to provide a temporary payment reduction or suspension of payments. Information will be required from the lender to show that you are able to meet the new payment plan requirements.

- **Partial Claim**

A loan from the lender for a 2nd loan to include back payments, costs, and fees.

- **Deed in Lieu of Foreclosure**

  Give the property back to the bank instead of the bank foreclosing. Banks generally require the home be well maintained, all mortgage payment and taxes must be current. Most loan applications ask if this has ever happened.

- **Bankruptcy**

  This option can liquidate debt and/or allow more time. I can refer you to a qualified bankruptcy attorney.
  -Chapter 7 (Liquidation) To completely settle personal debt.
  -Chapter 13 (Wage Earner Plan) Payments are made toward a plan to pay off debts in 3-5 years.
  -Chapter 11 (Business Reorganization) A business debt solution.

- **Sale**

  If the property has equity, (money left over after all loans and monetary encumbrances are paid) the homeowner may sell the home without lender approval through a conventional home sale. In this case, the homeowner will get cash from the sale. On the other hand, a Short Sale, also known as a pre-foreclosure sale, can be negotiated with your lender by your Real Estate Professional if what is owed is MORE than the property's value. **This is what we specialize in!**

In Conclusion

I hope that this information will help you better understand the short sale process. It is important you discuss your particular situation with your real estate professional since all situations differ. Based on your current liens and timing of your short sale I can help you get into more detail but would need more information. Please feel free to reach me directly at 702-458-3999

Sincerely,
Steve Hawks

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The Truth About Short Sales & Current Policies Affecting The Housing Market

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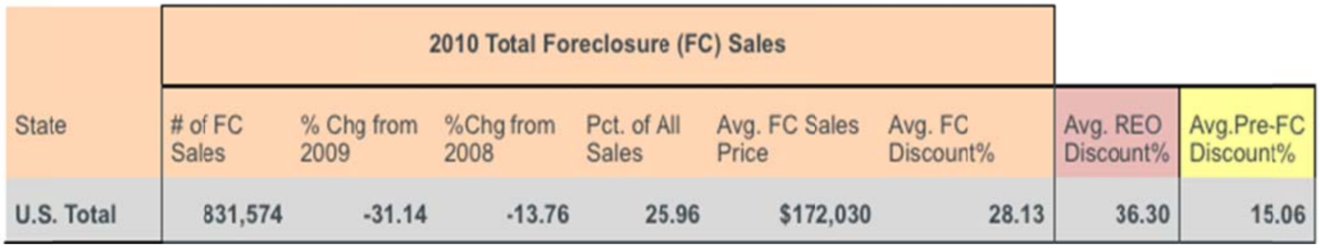
Five years ago, most individuals were not familiar with the term “short sale”. Now in 2010 and 2011, short sales are becoming more and more common and the housing market has continued to suffer and remain distressed. The amount of foreclosures, short sales, and overall large housing inventory has hurt everyone’s bottom line. Furthermore, the overall depreciation and deterioration of the housing market can be contributed to lender and GSE, Government Sponsored Enterprises, short sale policies. Short sales have been one proven way to mitigate the losses, but are the policies created by many of the *GSE’s* and lenders regarding short sales the cause of the large influx of foreclosures and short sales? One notable negative outcome of these policies is the current inventory in the marketplace and the surplus of short sales and foreclosures, which can be extremely detrimental to the economy as a whole. In March 2011, Core Logic states that roughly 24% of homeowners are underwater or owe more on their property than what their home is actually worth. This is a staggering statistic considering that in the third quarter of 2010, the percentage of U.S. homeowners underwater was at 19%. What is even more daunting is that this number increased by 5% in only six months! Can you imagine if these numbers increased any further? How much of the American wealth would disappear? What can we do right now to further mitigate the overall loss in the housing market? As the market, as a whole, increasingly deteriorates GSE’s, banks/lenders, and the American citizens reap the negative effects.

Furthermore, if short sales are a way to mitigate the lenders or GSE’s loss, why are there so many policies that make the short sale process so difficult? Many would think short sales should be encouraged and supported by the government, yet the policies in place regarding short sales end up costing taxpayers billions of dollars and larger losses to both GSE’s and lenders. Lets first look at the Nationwide Foreclosure and Short Sale Summary to see what the figures show.

Part 1: 2010 Nationwide and State Foreclosure Summary



State	2010 Total Foreclosure (FC) Sales							
	# of FC Sales	% Chg from 2009	%Chg from 2008	Pct. of All Sales	Avg. FC Sales Price	Avg. FC Discount%	Avg. REO Discount%	Avg.Pre-FC Discount%
U.S. Total	831,574	-31.14	-13.76	25.96	$172,030	28.13	36.30	15.06

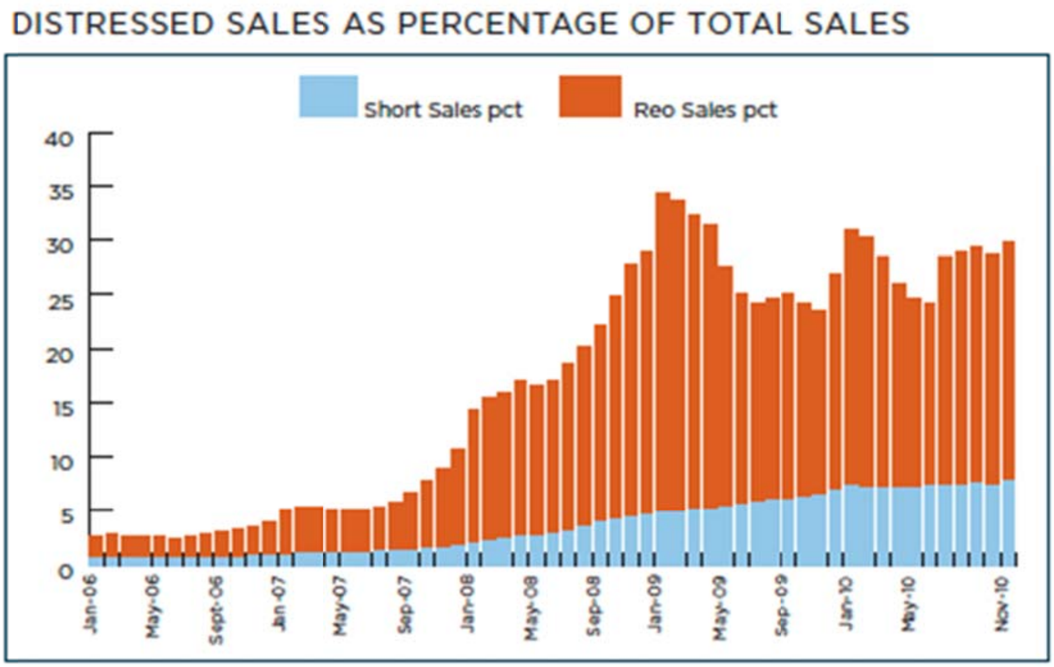
The chart above is from Realty Trac and displays the national percentage discount of REO's and Short Sales from the national average sale price of non-foreclosure homes. The chart above shows that the National Average Sales Price of all foreclosure properties (pre-foreclosure or short sale and actual foreclosures), was discounted an average of 28% from the average sales price of Non-Foreclosure properties. The figures above suggest we should be doing everything possible to avoid properties ever reaching pre or post foreclosure, however, when taking into consideration other factors and economic indicators, it is impossible to think that properties are not headed towards foreclosure one way or the other. If you examine the statistics further, you will be able to see a huge difference in loss between pre-foreclosures and actual foreclosures. Pre-foreclosures are what we will refer to as short sales and actual foreclosures we will refer to as REO's. When properties are foreclosed(REO) on or get sold at an auction, they sell for 36% less than the fair market value vs. 15% of the fair market value if they were sold via a short sale. That is a whopping 21% differential in market value prices! It is the foreclosed homes or REO's, which are closing out at rock bottom prices that are doing more damage to the marketplace than the short sales. In addition, there are many more foreclosures or REO's in the marketplace. It would be ignorant to believe that we could avoid properties to reach foreclosure but, when you take into consideration the figures above, don’t you believe that it would make more sense to get these properties to be sold via a short sale rather than go through foreclosure?

- **Average REO Discounted Price = 36%**
- **Average Pre-FC=(short sale) Discounted Price = 15%**

The figures above are astounding so why wouldn’t major GSE’s and lenders be making it so difficult to complete short sales? Nationally speaking there is an additional 21% discount in sales price on average from when a property reaches short sale vs. letting it go to auction or become an REO. It is this staggering statistic that has left many baffled, confused, and angry as why there are such tight restrictions and increasing regulations on the short sale process and guidelines in which lenders and GSE’s implement. Are they shooting themselves in the foot and only setting themselves for a greater loss not only on their books but also on the American taxpayer by placing horrible guidelines and processes for short sales? One thing has proven to be true based on all foreclosure avoidance options: in order for the market to recover we first must get rid of the bad debt. Ineffective short sale policies and guidelines are only creating a much larger problem vs. helping sustain the problem that we already have. For example, HAFA and HAMP programs have shown to be problematic and non-effective so it’s time for the problem to fix itself through private market solutions. Please refer to my additional report specifically on HAMP and HAFA and the true figures behind those programs.

2010 STATS & INFO

2010: ***2,871.891 U.S. properties in 2010 received a foreclosure filing (Default Notice, Auction Notice, and/or Bank Repossession). This number could have surpassed 3 million if foreclosure activity had not dropped in the 4th quarter due to the foreclosure documentation controversies in late 2010.***



As the number of short sales and REO's continue to rise it is becoming evident that short sales are beginning to play more a role in the recovery as indicated form the chart above.

Total Foreclosed homes = REO, Pre-FC, and/or Auction.

- Total Foreclosure homes accounted for 26% of all U.S. residential sales in 2010.
- Total Foreclosure homes accounted for 29% of all U.S. residential sales in 2009.
- 831,574 = Total Sales Volume of U.S. Residential Properties which were in Foreclosure (REO, Pre-FC, Auction).
- Sales Volume for Non-Foreclosure properties in 2010 decreased 18% from 2009.

According to the statistics above, the amount of foreclosures and short sales within the marketplace have only led to a much larger depreciation of market values throughout the United States. Traditional sales are down 18% from 2009. The typical buyer’s mindset and mentality is now opposite of what it was in the 2004-2007 “boom” days. Buyers are more concerned with the value of the property rather than falling in love with a property, and rightfully so. The question many Realtors have trouble answering is “how does one explain the market value?” It is my opinion that the market value is 5-10% below what the most recent comparables sold at. Think about it from a logical point of view and as a buyer yourself. Would you pay the market value in this current real estate climate? The answer is most likely “no” and that is why this is a problem and my motivation for compiling this report and placing it into the right hands immediately. The main point that I want to get across is that the longer we have to face this foreclosure epidemic, the longer we are going to endure overall damage and depreciation of our marketplace in general. I am aware that there are many other aspects that are leading to the soft real estate market such as, unemployment, properties that are underwater, and many others, but what we can do is at least mitigate the damage as much as possible. Real estate ownership is a privilege and should be a way to build wealth, but in this market and in the foreseeable future it is proving to be the exact opposite. Unfortunately, both potential and current property owners are losing confidence and that can be a very dangerous thing. Something must to be done to restore and stabilize the market so that this does not occur. Let’s look specifically at REO’s or Bank Repossessed Properties.

REO STATS

- 512,886 REO/Bank-Owned Properties Sold in 2010.
- 36% = Average $ Discount for REO/Bank-Owned Properties in 2010.
- 33% = Average $ Discount for REO/Bank-Owned Properties in 2009.
- REO sales accounted for 16% of all U.S. residential sales in 2010.
- REO sales accounted for 18% of all U.S. residential sales in 2009.

- REO sales accounted for 13% of all U.S. residential sales in 2008.

As you can see above, there is a continuous trend we are observing here and even though REO/bank owned sales are down 2% from the previous year, the overall discount from a traditional sale is what is discouraging. This percentage has increased by 3% within the last year! This is indirectly affecting the overall marketplace in a very negative way and no one sees this coming. While it is too early to tell what 2011 will bring us, all economic indicators suggest that the trends will only get worse in the months to follow. This will also lead to an increased amount of foreclosures and a larger amount of homeowners will be in default.

Let's now look at some basic figures regarding pre-foreclosures or short sales.

PRE-FORECLOSURE (Pre-FC, aka short sales)

- 318,688 Pre-Foreclosure Properties Sold in 2010.
- 15% = Average $ Discount for Pre-Foreclosure Properties in 2010.
- 17% = Average $ Discount for Pre-Foreclosure Properties in 2009.
- Pre-Foreclosure sales accounted for nearly 10% of all sales in 2010.
- Pre-Foreclosure sales accounted for nearly 11% of all sales in 2009.
- Pre-Foreclosure sales accounted for nearly 11% of all sales in 2008.

There are not as many short sales as there are REO's, which probably amounts to about 40% less. The REO's also sell for an average of 15% less than a traditional sale in 2010 vs. 36% less as an REO, but yet there are not nearly as many short sales taking place. In 2010 there were 512,886 REO's sold compared to 318,688 short sales. Short sales confirm an estimated savings of roughly an additional 21% of the sale price as well. The solution to this problem is not rocket science. To lessen the blow we should be encouraging more short sales as the primary way to mitigate loss. The foreclosures are unavoidable at this point! Many people wonder why there are not more short sales that close successfully. It is very obvious that short sales are the way to go. According to statistics, only 24% of short sales actually close. This implies that 76% of attempted short sales fail! If 100% of short sales close with short sales being 11% of the closed transactions in 2010, would that mean that 44% of short sales would be the marketplace in 2010? The main source of short sale failure is simply due to short sale lender and servicer policies, incompetent real estate professionals, and an overall lack of education on the topic. Many Realtors tend to shy away from short sales naturally and so many homeowners are STILL ILL ADVISED on the benefits that short sales have for both the homeowner and the banks. You would think logically, one would believe that instead of letting a property go all the way to foreclosure, lenders and servicers would attempt to do a short sale. The truth is that policies regarding short sales make them unattractive and a huge headache for most people to take on. Why do the GSE's not have this data? How do the GSE's not have this data? Why are short sale policies not being reformed? Who is advising the GSE's? If it is the banks don't you think that there is an adversarial relationship when servicing rights pay more money to foreclose than they do to short sale? What's really going on here?

U.S. STATE OVERALL FORECLOSURE DATA

Five states accounted for 51% of the nation's total foreclosure activity in 2010: ***California, Florida, Arizona, Illinois, and Michigan***. Together these five states documented nearly 1.5 million properties receiving a foreclosure filing during the year.

The following list breaks down the top 10 foreclosure states and the percentage of foreclosure sales within these states.

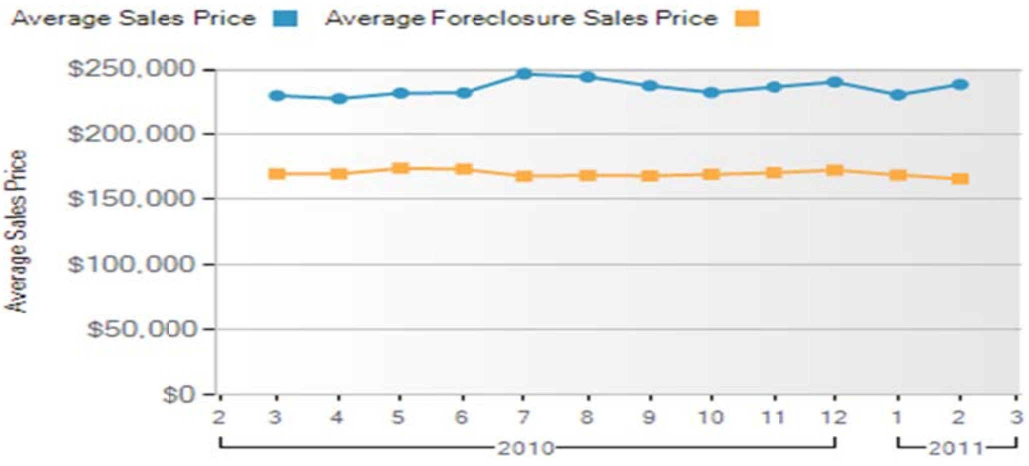
- **Nevada:** Foreclosure Sales in Nevada accounted for 57% of all residential sales in 2010.
- **Arizona:** Foreclosure Sales in Arizona accounted for 49% of all residential sales in 2010.
- **California:** Foreclosure Sales in California accounted for 44% of all residential sales in 2010.
- **Florida:** Foreclosure Sales in Florida accounted for 36% of all residential sales in 2010.
- **Michigan:** Foreclosure Sales in Michigan accounted for 33% of all residential sales in 2010.
- **Georgia:** Foreclosure Sales in Georgia accounted for 29% of all residential sales in 2010.
- **Idaho:** Foreclosure Sales in Idaho accounted for 28% of all residential sales in 2010.
- **Oregon:** Foreclosure Sales in Oregon accounted for 28% of all residential sales in 2010.
- **Illinois:** Foreclosure Sales in Illinois accounted for 26% of all residential sales in 2010.
- **Virginia:** Foreclosure sales in Virginia accounted for 25% of all residential sales in 2010.
- **Colorado:** Foreclosure sales in Colorado accounted for 25% of all residential sales in 2010.

2010 Foreclosure Comment:

Foreclosures will continue to represent a substantial percentage of all U.S. residential sales and continue to sell at an average sales price that is significantly below the average sales price of properties not in foreclosure.

The increased supply of foreclosures and weak demand from homebuyers will both continue to weigh down the prices of properties in 2011. The housing market will not fully recover until the oversupply of foreclosures on the market winds down and the economy improves for more buyers to enter the housing market. It will also not recover until all of the negative debt is resolved as well as the insane amount of inventory is absorbed. The one fact that is evident throughout all of the statistics is that as that our government and our society should be doing everything possible for all properties to not be foreclosed on. Specifically, I mean that short sales should be encouraged and foreclosure should be avoided. At this stage in the game I think it is safe to assume that short sales are the leading loss mitigation option within the marketplace right now. With a 21% savings, lenders and GSE's fail to recognize that an REO property actually causes the overall depreciation, which negatively affects all property owners throughout the country. Current short sale policies are gradually evaporating the wealth of this country and damaging the next generation of Americans.

Why Do REO's and Short Sales sell for so much less than short sales?



Now there are many factors that contribute to this but more specifically is that an REO property is more than likely more distressed than a short sale. For example, REO's are not going to be staged or freshly painted in most cases so the direct vacancy of the property will naturally yield less money. Ask any Realtor or watch any HGTV show and you will see. Also, homeowners become spiteful and are more likely to leave a property in the worst condition once they know the bank is going to take it back from them. We all know this is not morally correct but this is the reality of the situation. When a property sits vacant the wear and tear on a property accumulates quickly. For example, in a colder climate, which is usually four months out of the year, a property sits vacant and it risks the chances of freezing or the chances of the pipes bursting increases. This causes much more damage to the property therefore decreasing the value of the property. Additionally, vacant properties have a much higher chance of being vandalized or broken into. What incentive does a homeowner have to keep the property in great condition? REO's, when reverted back to a lender, will always sell for less because they must liquidate it immediately to get it off the lender's books. Prices tend to be lower when REO's enter the marketplace from the beginning of the listing history as well. It's just the way it is and that will not change anytime soon. The more important figure that is being left out here is that the prices reflected are only including sales prices and not the total loss suffered by the lender or GSE at foreclosure or short sale. Especially in a foreclosure, those costs rarely get reported and can be quite expensive i.e., court costs, maintenance costs, unpaid property taxes, HOA liens. These costs all contribute to the total amount lost during the foreclosure process. The costs for these items in a short sale are in majority of cases settled, which is not the case when a property is foreclosed on. Short sales, on the other hand, have the opposite effect.

Before we get into the specific issues we face with short sales we should first address the current state of the market and where we are now headed. In addition to the research already mentioned, Core Logic found the following statistics in an in depth study of 250,000 short sale transactions.

The following statistics are key findings from the study:

► The number of short sales has more than tripled since 2008. Multiple variables indicate short sales will continue to be a significant factor for the industry.

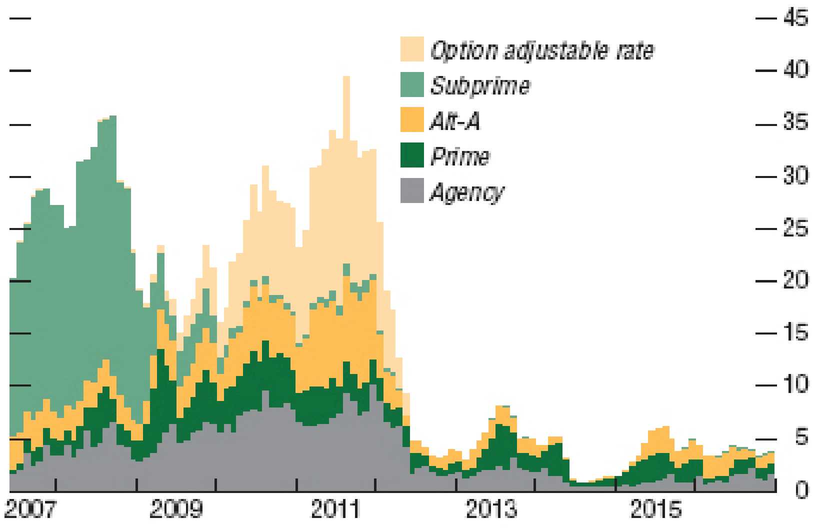
► approximately 4% of short sales have a subsequent resale within 18 months.

► Investor-driven short sales are not inherently bad, since investors provide the industry with necessary liquidity

The Current Market and Foreclosure Potential

Figure 1.7. Monthly Mortgage Rate Resets

(First reset in billions of U.S. dollars)

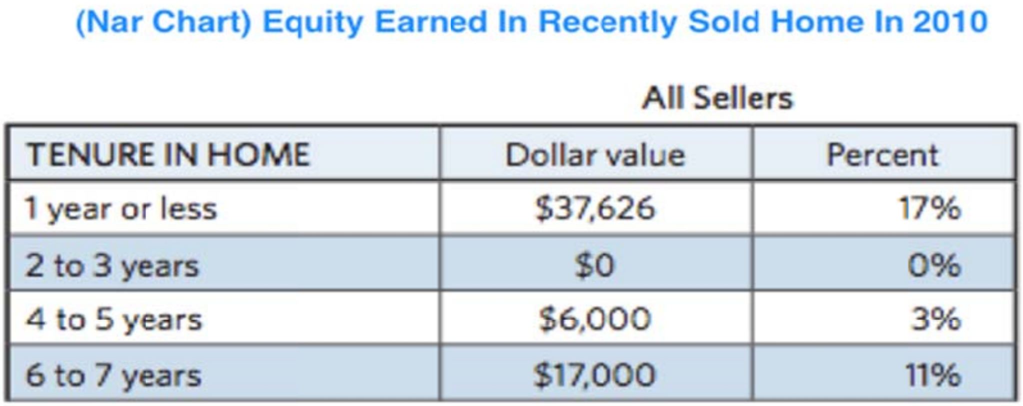


Source: Credit Suisse.

The previous chart shows the amount of mortgage resets that are coming in 2011 along with 2012. You can see that the amount surpasses that of what we once knew and thought of as the "foreclosure boom" of our lifetimes from 2007-2010. This chart suggests that we are in the middle of another foreclosure tsunami. With the economy not fully recovering and many other factors, another large wave of foreclosures is here and a double dip is realistic if not already present in the housing market.

NEGATIVE EQUITY STATISTIC:

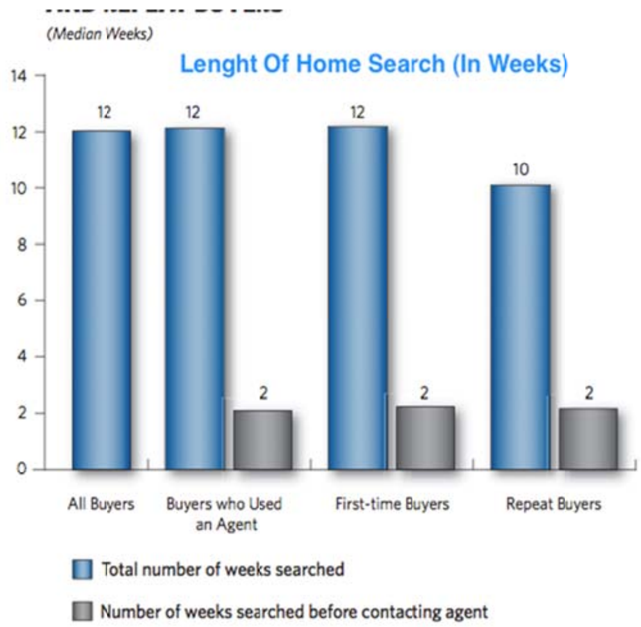
- 4th QTR 2010: 23.1%, or 11.1 million of all residential properties with a mortgage were in negative equity at the end of the fourth quarter of 2010.
- 4th QTR 2010: U.S. had $751 billion in Negative Equity
- 4th QTR 2009: U.S. had $800 billion in Negative Equity
- 4th QTR 2010: 2.4 million borrowers had less than 5% equity, referred to as "near-negative equity".
- Negative equity, means borrowers owe more on their mortgages than their homes are worth.



(Nar Chart) Equity Earned In Recently Sold Home In 2010

	All Sellers	
TENURE IN HOME	Dollar value	Percent
1 year or less	$37,626	17%
2 to 3 years	$0	0%
4 to 5 years	$6,000	3%
6 to 7 years	$17,000	11%

This is a chart taken directly from National Association of Realtors. Borrowers who purchased two to five years ago all show negative equity in their residences. Borrowers who have purchased in the last year show a substantial amount of equity, which can be attributed to them by buying some type of foreclosure property for a discount. Equity sales or "foreclosure" sales are what are currently driving the real estate market. They are currently the majority of real estate sales. If the market were to depreciate another 4-6% in the next year or two, that would put all homeowners who purchased a property in the last 2-7 years underwater. This is a very scary thought.



This is the amount of time potential purchasers are spending on making a decision when searching for a property. Realtors would interpret this graph as an obvious factor related to the recent depreciation and price drops. This also suggests a very long market time for properties listed as well as a very cautious buying community. Longer search times only suggest that there is a large amount of inventory within the marketplace. This suggests that there is a high level of inventory within the marketplace and a sense of uncertainty within the overall market. Both are very negative for the real estate marketplace.

Short Sale Policies: Are they really helping us or hurting us?

Most people would look at this information and understand that it is obvious that short sales are the best way to mitigate losses for properties inevitably headed towards foreclosure. They will also agree that we are headed towards another foreclosure wave or a double dip in the housing market. However, at the same time only 24% of short sales attempted ever succeed. With short sales as one of the last mitigation options left, why are they so difficult to process? The overall view regarding short sales is poorly looked upon and even frowned upon amongst many Realtors and other professionals simply due to the process itself. It is the GSE and short sale lender policies that attribute a majority of the failure and negative stereotypes short sales receive. While we cannot speak of each individual private investor and their specific guidelines, we can speak for the GSE guidelines regarding short sales specifically for HUD/FHA, Freddie Mac, and Fannie Mae. The first area of discussion is the negative view these GSE's have towards the real estate investor community.

RELAVANT INVESTOR DATA & INFO:

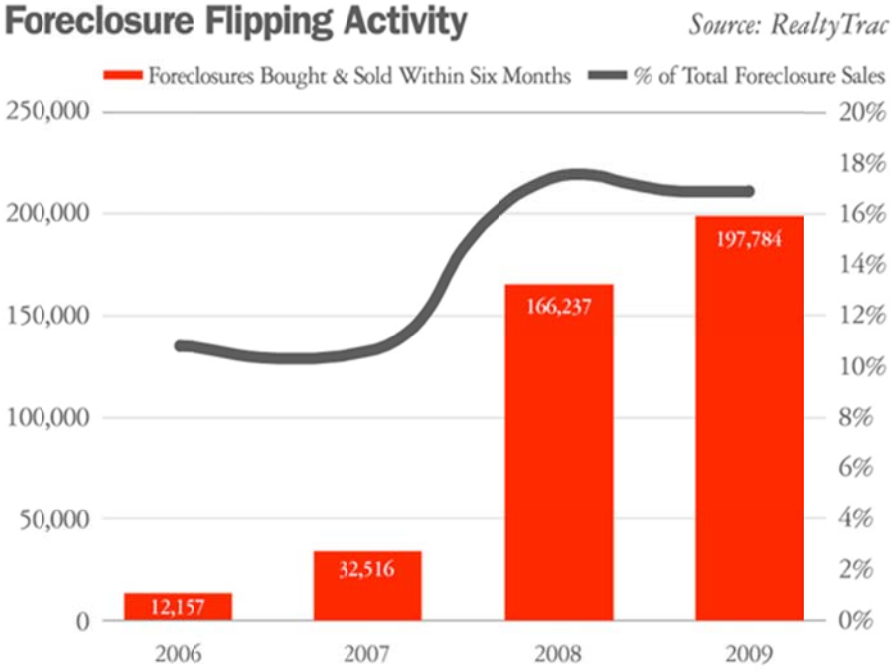
Real estate investors have received much criticism and the topic of many slanderous topics in the last few years regarding short sales, however they are a major component to the overall economic recovery. As a matter of fact they represent a very important percentage of the buying population and are the key to market stabilization. The lack of buyers in the marketplace is leading to the depreciating values and the overall insane amount of inventory. For GSE'S to criticize the type of buyer who purchases a property on a short sale is ludicrous. However, they do it on a daily basis and GSE's may not approve short sales in which an LLC, investor, or other entity is the purchaser. If it were not for the investor community, the real estate market would be in worse financial situation than where it is right now. From the statistics alone, there is a 21% decrease in the sales price and an undetermined additional amount in holding costs that accumulate on a foreclosure. Thus, the GSE's have been held up on the fact that an investor may resell the property for a profit. I can understand their position because they are trying to get the most out of the short sale process, but it's the overall picture that is contradictory. Investors are discriminated upon because they are investors and they will make a profit. That is the point and the reason capitalism has succeeded in the greatest country in the world! Let's say that an investor did resell the property for a profit and made a gross margin of 15% on the transaction, that would still be a 6% higher net than the GSE would get than if the property went to foreclosure less the additional holding and foreclosure costs that would accumulate. If you interview short sale investors and rehabbers across the country they are not going to gross more that 20% of a gross profit in 99% of their transactions. Once a property becomes an REO what do you think happens to it? It can be purchased by an investor and the property is wholesaled or rented out for cash flow. When a property goes all the way to REO that becomes the new comparable in the neighborhood at a sales price that is 21% less, thus hurting the neighboring properties and lowering values or what the market is willing to pay. This only shifts more people into a negative equity position and increases the chances of another property entering into foreclosure. This same frustrating pattern has been repeated time and time again. Remember the figure that was cited on the first two pages of this report, that in just six months the overall percentage of homeowners who are in a negative equity position rose by a whopping 5%. That number will rise in the next 12 months, which is inevitable. This leads to an overall depreciation which increases more short sales and foreclosures.

Investors and foreclosures are the heart of the current real estate market. The recent changes with the 90-Day Seasoning Rule on FHA backed loans, provides evidence that HUD and the FHA have recognized this fact. However, GSE policies regarding short sales contradict this position. As a matter of fact, legal opinions from the GSE legal counsel have directly contradicted the short sale policies in place. Freddie Mac's *Attachment A,* which was released last year and was a legal opinion, states the following: “Property flips are not inherently illegal and not all transactions involving a rapid purchase and resale are improper. Legitimate property flips are acceptable transactions in connection with loans purchased by Freddie Mac. Some indications of property flips that may be legitimate include:

Sales of properties in which the property seller acquired at below market value after purchasing as a result of a distress sale (i.e. REO sale, short sale, tax lien sale, bankruptcy trustee’s sale, etc.), where any increase in the sales price over property seller’s acquisition cost can be clearly shown to be the result of the difference, if any, in the market’s reaction to distress sales and typical arms-length market”.

Freddie Mac’s short sale policy regarding any sort of short sale investor completely contradicts this statement. They will simply not work with investors or at least do not like to and think it’s a better idea to take the chances and foreclose on a property to lose an additional 21% vs. letting a private market solution to their problem gross 10%.

Furthermore, when properties are foreclosed on they are also most likely sold to investors who will wholesale the properties or rehab them for a profit. This is a very healthy thing for the overall housing market and is a revenue booster to the government, not a detriment. The Government thrives on taxes, which is a result of success of the private sector. Resale of properties generates millions of dollars in transfer stamps to local and state governments yet they are being discouraged by short sale policy guidelines which GSE’s hold. This is also discouraging for groups like the National Association of Realtors who endorse the resale of properties. When a property is resold to an investor via short sale it must be done in full compliance with the proper disclosures. GSE lenders and some servicers have put a 30-90 day restriction on the resale or properties which are purchased through means of short sales. Many people argue that this is unconstitutional and contradicts what local governments encourage. Let's take a look at the investor community specifically in depth on investors who rehab or quickly wholesale a property overall. The following graph will illustrate what is taking place in the real estate market amongst the investor community currently:



Investors are a major driving force in the liquidation of the housing recovery. Of course investors will make money but that's the point in a capitalistic society. When they make money it gets transcended through the community, which is a good thing. If you go online right now and Google short sale investing you will find a tremendous amount of negative opinions, most of which are not true. Real estate investing has and always will be legal and to put a negative connotation on it is of disrespect to the Constitution. I will not argue that there are some bad apples out there as there are in any business and government, however, the overall concept for investors is a necessary component of the housing recovery process. This is especially true considering that our unemployment rate remains somewhat stagnant at around 10%. There are simply not enough buyers out there to purchase these properties that will live and enjoy the properties as a personal residence. It just cannot happen metaphysically. Let's take a look at FHA specifically and their recent move to wipe seasoning requirements on buyer financing. Their recent policy suggests that there is a demand for properties, which were newly acquired through short sale or REO and being resold.

The FHA and the 90-Day Rule

Due to the recent amount of properties being resold to qualified buyers and were being purchased and resold within a 90-day period, FHA took the lead and changed their guidelines to offer financing to FHA qualified borrowers who purchased a property from an investor who "wholesaled" or "flipped" it to them.

2010: The FHA insured more than 21,000 mortgages for properties that were resold within 90 days.

2003: HUD moved to change the FHA guidelines to limit ILLEGAL flipping of properties. The new guidelines created the 90-day rule, which states that FHA will not insure any loan for any property that has been sold within the past 90 days. Currently, HUD has temporarily waived the anti-flipping rule with a waiver and is continued through December 31, 2011.

Point well taken but it is important to consider the distinction between what is legal and illegal flipping.

LEGAL "FLIPPING": The quick purchase and sale of property. This is a common, lawful practice, which is now encouraged by the FHA.

ILLEGAL "FLIPPING": A perverse process involving a real estate broker, appraiser, lender, and settlement provider. In illegal flipping it is common to see fraudulent appraisals to support a falsified higher value, or fraudulent loan applications and phony settlements. A property can be sold at an inflated price to an unqualified borrower. The unqualified borrower now owns an overpriced property with large monthly mortgage payments. The results are extremely negative for the new homeowner, the lender, and the immediate real estate market that the property was located in. People may also view flipping as when a third party uses only one set of funds to close two transactions which is frowned upon.

Quotation from FHA Commissioner, David H. Stevens:

"Because of past restrictions FHA borrowers have often been shut out from buying affordable properties. This action enables our borrowers, especially first-time buyers, to take advantage of this opportunity and buy a home that has recently been rehabilitated. It will also help to move more foreclosed properties off the market and reduce the number of vacant homes in neighborhoods throughout this country".

Quotation from HUD:

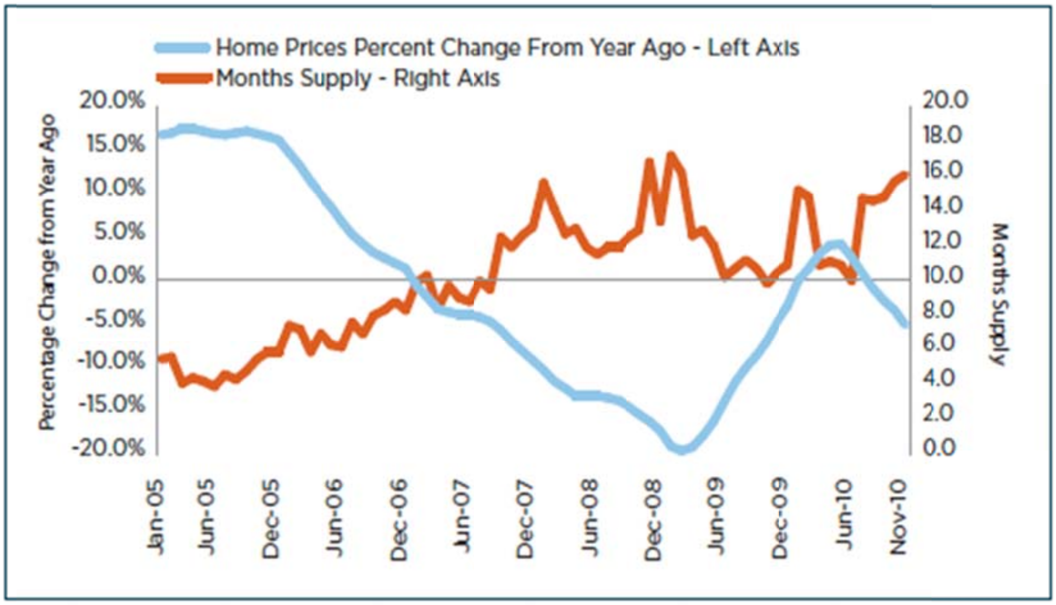
"While the waiver is available for the purpose of stimulating rehabilitation of foreclosed and abandoned homes, the waiver is applicable to all single family properties being resold within the 90-day period after prior acquisition, and was not limited to foreclosed properties".

I find it interesting that FHA would state this and that Freddie Mac would also release a legal opinion about how property flips are not illegal but contradict any statements with short sale policies. In addition, Freddie Mac has no seasoning requirements on the loans in which they purchase but their short sale policies are contradictory.

Freddie Mac, Fannie Mae, & FHA Short Sale Approval Policies

Fannie Mae and Freddie Mac hold roughly half of the mortgages throughout the United States. We can see that most lenders tend to follow their guidelines especially in short sale policies. It appears as if whatever Freddie and Fannie does, the rest seem to follow but I'd like to really expose some of the very bad policies that are in place regarding short sale approval guidelines and how they affect all Americans. This is a very important to take into account because their policies do have a direct effect on our market. Please refer to the graph below, which demonstrates the decline in home prices with an increase in home supply. If the short sale policies are more rigid and strict, the longer it takes to liquidate underwater properties and the uglier this situation can get.

FIGURE 4A: MONTHS SUPPLY REMAINS VERY HIGH



Short Sale Approval Guidelines

The majority of short sales are being serviced through various servicing companies throughout the United States and the actual servicing company is rarely the actual owner of the note that is being sold via a short sale. Regardless of who services the actual note, those servicers are only delegated to approve short sales based on the Freddie, Fannie, and FHA short sale approval guidelines.

Freddie Mac

To get a short sale approved through Freddie Mac the purchase price must net 88% of the amount of the appraisal or Broker Price Opinion. This is also known as a BPO. When a short sale package is sent into the bank or servicer they are going to determine the eventual sales price of that property based on the current market value, not what is owed. The servicing company will commission an independent third party to the property to determine this value. According to Freddie Mac guidelines, in order to approve a short sale, Freddie will only approve 88% NET of what that appraisal amount is. So let's put this in context. If a BPO comes in at $100,000 Freddie Mac will need to NET roughly $88,000. Furthermore, the broker's commission which is usually at 6%, additional closing costs, which is usually an additional 3-6% depending on the file, must also be considered as well. Therefore, Freddie must receive, in most cases, an offer close to 100% of the BPO amount! Now I want you to go back to the statistics we mentioned earlier. If an REO will net the bank on average of 36% less than fair market value at foreclosure then why would these guidelines remain the same? Guidelines need to stay current with the marketplace and this is a major reason why Freddie Mac short sales are headed towards foreclosure for an additional 21% less in the gross sales price. Please also keep in mind that the additional costs to foreclose are not calculated with this simple logic. This is insane but it is the current policy. You can now see one of the main reasons why so many short sales get denied and head to foreclosure because it is nearly impossible for the following: 1.) Get fair market value for a distressed sale and 2.) The minimum net requirements are out of touch with the reality of the marketplace. Under this basic equation and using the example above, if Freddie Mac were to receive an offer of $97,000-$100,000 on a property they valued at $100,000 it would get approved. Anything less than an offer of $95,000 would get denied and the property would head towards foreclosure. When all is said and done, the property would sell at 36% of the current market value price. According to the statistics, the property would sell an REO at roughly $64,000 and net less the closing and holding costs that have accrued! Does this make sense? More importantly, guess who foots the bill at the end of the day, the American Taxpayers!

Fannie Mae

Fannie Mae has a similar equation but is a little more lenient and easier to work with. Their required net from BPO amount is roughly 82%. In the same example above we could probably get a $89,000-$91,000 deal approved but if that was not the case, the property would head to foreclosure and receive an offer as an REO at roughly $64,000! This is extremely frightening, but welcome to the world of GSE short sale policies. How no one has figured this out yet still makes me sick to my stomach.

Let's take a look at both Freddie and Fannie reported losses in the last two years.

According to Freddie Mac's 4th Quarter & Full-Year 2010 Financial Results Report:

"REO operations expense for the full-year 2010 was $673 million, primarily driven by maintenance expenses, property write-downs and net disposition losses, partially offset by recoveries."

"The company expects its REO inventory to continued to grow in 2011. However, the pace of its REO acquisitions could slow due to further delays in the foreclosure process, including delays related to concerns about deficiencies in foreclosure documentation practices"

Freddie Mac Numbers & Helpful Info

- Freddie Mac full-year 2010 net loss was $14.0 billion.
- Freddie Mac full-year 2009 net loss was $21.6 billion.
- REO Operations Expense for 2010 was $673 million.
- REO Operations Expense for 2009 was $287 million.
- Freddie Mac Financed 1.8 million single-family homes in 2010
- According to President's Obama's 2012 budget Freddie Mac & Fannie Mae combined will cost taxpayers $73 billion through 2021.
- Foreclosing on a Freddie Mac mortgage takes an average of 15 months to complete, according to the Hollis McLoughlin, Senior Vice President, External Relations at Freddie Mac.

Fannie Mae Numbers & Info

- Largest single issuer of mortgage-related securities in the secondary market in 2010, estimated at 44% of single-family mortgage-related securities.
- Fannie Mae financed approximately 2,712,000 single-family convention loans in 2010.
- Fannie Mae Total Net Loss in 2010: $14 billion.
- Fannie Mae Total Net Loss in 2009: $72 billion.
- From the Fannie Mae 4th Quarter & Full-Year 2010 Report;

“Given the large current and anticipated supply of single-family homes in the market, it will take years before Fannie Mae’s inventory of real estate owned (REO) properties approaches pre-2008 levels.”

- Fannie Mae completed 75,391 Pre-foreclosure Sales (short sales) & Deeds-In-Lieu of Foreclosure completed in 2010.
- Fannie Mae completed 39,617 Pre-foreclosure Sales (short sales) & Deeds-In-Lieu of Foreclosure completed in 2009.
- Fannie Mae acquired 262,078 Single-family REO properties in 2010.
- Fannie Mae acquired 145,617 Single-family REO properties in 2009.
- Total Carrying Value of Fannie Mae’s Single-family REO inventory at December 31st 2010 was 162,489 valued at $15.0 billion.
- Total Carrying Value of Fannie Mae’s Single-family REO inventory at December 31st, 2009 was 85,155 valued at $8.5 billion.

FHA Short Sale Guidelines

FHA short sales are starting to become more prevalent. One of the major reasons is that FHA typically only requires 3% down. Therefore, most of the borrowers in FHA programs are under water from the day they purchased the property if they considered the costs to sell. FHA is a combination of Fannie and Freddie policy guidelines. They require that they must net 88% of the net amount but will adjust that number by 2% every 30 days the property is listed. They will approve a short sale and then offer an approval to participate with a net dollar amount which must be received. Every 30 days they will take 2% less until an 82% net is received and then it is capped out. Again the net figures do not make sense when you compare them to the grand scheme of things. You can definitely expect more FHA short sales to come about in the next couple of years.

One policy that is very bad within the FHA program is when there is a second lien or HELOC involved. FHA policy states that if there is a second lien on title that they will not entertain the short sale unless the second lien is approved. What has happened is there are thousands of borrowers who need to do a short sale and they have since taken out a Home Equity Line of Credit on the property. The values have plummeted and there is no longer any equity left in the property which leads to a short sale. The HELOC cannot release their lien without being offered something. Nothing can be offered to the HELOC since the file cannot proceed to the next stage and the lien cannot be released without being offered something first. FHA states they will not proceed with the short sale process until the lien is released. This is very backwards because it requires that the first lien to offer something to the second lien before the second lien can make a decision. It is very backwards but this is the policy that is affecting short sales in our nation right now! Again, this is another reason why I am putting the facts in front of you so that you can help take action and help stabilize the housing market.

Solution

A simple solution to this problem so that more short sales get approved and to limit GSE's loss is be to have them reform their short sale approval net guidelines. A net of 75% or less of the BPO would be a good start which can get adjusted as the market adjusts. It should be more but this would be a good start and doable. This would increase the number of short sales completed, which would lead to overall less depreciation and less REO's. This would also lead an easier transaction to close, for the market to correct itself, and a higher net to the GSE's and lenders. More short sales would close and less homes would foreclose both which would be very healthy to an already ailing marketplace. The less amount of REO's that hit the market, the better for the market overall. If REO's are selling for 36% under market value short sale net guidelines need to be reformed form what they currently are.

Facilitation and Third Party Fees

One of the largest reasons that many short sales fail is the lack of competence that the Realtors or other professionals have when facilitating the transactions. There is not a whole lot of research out available, which educates Realtors about loss mitigation or short sale negotiation. The negotiators on behalf of the servicers for the most part are going to more than likely have the upper hand with anyone they deal with in terms of experience. All GSE's have negative stereotypes with any types of third party fees that come into play. There is a huge demand for this type of work for the any homeowner or Realtor in order to speed up the transaction. However both GSE's state they will not pay third party fees so the lack of cooperation with small companies popping up that offer this service makes a free market solution to this problem near impossible to occur. Facilitating a short sale transaction takes additional training and those out there who are working in this field become easily deterred due to current GSE policy. A standard fee would be around 3% of the sales price for this service. However these fees are frowned upon and considered "evil" in the eyes of many of the GSE's and lenders. Is it worth it to pay a third party fee of 3% to an entity who can facilitate a short sale much quicker than any servicer or risk taking an additional 36% loss at foreclosure because of their policies? The fees need to not be scrutinized and allow a private market solution to assist in the housing recovery but once again this is blocked. Instead money is contributed to HUD counseling services and other non-profit agencies which only prolong the inevitable form occurring. This would encourage a private market solution to this problem and speed up housing recovery. Third party fees should be encouraged as long as they are properly disclosed and everything is above board. Perhaps a licensing requirement should be implemented.

A logical and fairly simple solution to this is to regulate and encourage this new industry within the marketplace. Homeowners and Realtors need this service badly and this is one of the main reasons why we are enduring the current financial crisis. Third party fees should be paid and encouraged for this service as it is an additional way to mitigate the GSE's loss. This can create jobs and help the private market assist with the problem. Again, we now know the American taxpayer foots this bill at the end of the day. GSE's need to be focused on the net number received and that short sale is a business decision nothing else. They should be working off of a net figure necessary when all costs are taken into consideration.

Second liens and HELOCS

Many people tend to forget who the true owner of record of a property is when it is in foreclosure. Realtors are the biggest culprit of this but let me explain the difference very clearly. When a homeowner is in foreclosure they are the owner of record all the way up to the point the foreclosure takes place. It is then that the bank will regain ownership and possession of property to liquidate because that's essentially what the foreclosure process is. The relationship that a homeowner and a lender have at that point is completely adversarial. They have an opposite economic interest. The bank owns the note on the property and the homeowner owns the property itself. However GSE's will only allow a certain percentage generally 6% or $3,000 to any subordinate lien position. In the 2011 market, many of the properties have a home equity line of credit, or HELOC, attached to their property. The nature of this loan is what is very important. At the foreclosure sale the lien on title will get wiped off for a HELOC but the rights to collect on that debt will not cease to exist. It is like having a credit card. A lender who holds this note does not have to enter a deficiency judgment to pursue collection, the collection process can begin immediately. However lenders will either take this debt to their recovery department or they will sell it to a third party or debt collection agency where the homeowner will be sought for collection. Currently, and this will differ amongst borrowers and banks who hold these liens, the going rate to purchase collection rights on this debt is roughly $0.08 cents on the dollar or even less. Current policies suggest that a homeowner cannot contribute nor can their purchaser contribute a dollar amount to settle this debt on behalf of a homeowner. What this does is not give any incentive for the homeowner to go through with a short sale unless all debt is settled. This results in driving more homeowners towards Bankruptcy as an option vs. a short sale since there is no incentive for them to do a short sale. Additionally, when the property goes to foreclosure we know it will sell for 36% less than fair market value so don't you think we should be coming up with ideas on how to encourage more homeowners to do short sales vs. not? What do you think a homeowner really wants? They want to put this behind them, get rid of their debt, and avoid having to file a Bankruptcy at all costs. Current GSE policy towards homeowners in this position does the exact opposite. They will not allow any money towards any lien in the second position, which only drives the property towards foreclosure. This in turn affects the taxpayers and the overall housing market. This includes HOA liens, 2nd liens, and additional judgments that may appear on title.

However there is a simple fix, do not limit any liens in second position to any dollar amount and leave it negotiable. A GSE should not be in control of this but keep it negotiable and on the table. GSE's do not need to throw money at people to do short sales they need to help them get out of all debt. This would be a huge savings to the programs that are currently in tact. GSE's need to be looking at the bottom line not worried about what other liens are receiving. If they want to limit the dollar amount to any secondary lien holder that is fine but the homeowner or owner of record should have the right to counter a buyer any way they like. Purchasers of these properties can be countered to contribute towards other lien which is a true win-win situation for all parties involved. GSE's avoid foreclosure and so do the borrowers, therefore everyone wins. Current GSE policy will not allow any party to contribute additional money towards anyone else other than to a GSE. If done so it must be disclosed but in today's market they are really cracking down on this leaving borrowers to consider bankruptcy as better alternative. This policy needs to be modified so that people can get out of their debt and the housing market will not suffer as bad in return. This will also allow for more closings of short sales in the long run.

PMI Companies

PMI companies are also another reason why short sales fail. PMI companies must also approve the short sale and gain approval since they are insuring some of the loss. Many times the length of time for PMI response or approval takes so long that the buyer of the property becomes impatient and walks away from the deal. In many cases the PMI companies can take an additional 30 days to approve the short sale in addition to the 2-4 months that the potential purchaser has already waited causing them to walk away. Many times the PMI company is capped or maxed out on what they will insure on the loss. When this happens they do not care if the property goes to foreclosure or short sale because their loss is identical. They will often request that the borrower execute a promissory note or offer a cash contribution at closing. This almost always kills the deal! A simple solution to this can be that PMI companies must approve all short sales and give a response within 48 hours of deal submission. The borrower should also be able to contact the PMI company directly vs. working through the servicer companies bogged down process which just creates additional unnecessary delays.

Conclusion

With the uncertainty of the GSE future one thing remains evident and that is the fact that within the short sale marketplace there needs to be some reform in regards to the current policies and guidelines that are in place. It has been proven that investors bring a much needed liquidation aspect to the recovery of the housing market. It has also shown that the GSE short sale policies are not in touch with the reality and even contradict themselves. I hope that you can pick this report up and read the truth about the housing market. Spread the truth and in the end the housing market, our economy, and our nation will prevail.

Loan Modification Guide | Insider Secrets

How To Get Your Payment Reduced, Keep Your Home and Enjoy Life.

Read This Guide If You Want To:

- Stop Worrying whether or not you will be able to keep your home.
- Stop Getting beat up, threatened, and abused by your lender.

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Warning: Here are a Few Common Scams Homeowners in Distress Often Run Into.

- **Companies that charge money upfront to negotiate a loan modification for you.** Call the state Attorney General and ask them if this is a problem. There is also plenty of information on the Department of Real Estate website – www.ca.dre.gov. Check it out. We know first-hand from homeowners who sent $1,000, $5,000, or even more of their hard earned money to these companies or attorneys in the hope that they can negotiate a loan modification for them. Their success rate has been so bad that many states have outlawed this practice. Be aware of scams that offer a money back return on your payment if they don't get your loan modified. We have clients who have received temporary mods or mods that resulted in a higher payment but they were still required to pay the attorney under the contract they signed. The attorney's and modification companies create the contracts that you are signing to work with them. Do you think they are going to create an agreement that is in your favor rather than theirs?
- **How to Stay Out of Jail.** Here are a few tips you should follow to avoid going to jail. First, never ever submit false or tampered paperwork to your lender. This can get you in big trouble. If your lender decides to come after you, they can drag that paperwork right into criminal court. Lender fraud is real and they are on the lookout for it. Be prepared to defend anything you send to your lender. If they do drag you into criminal court, you can come in and say "Your Honor, here's what happened. This is real stuff, I did not lie here."

If you have a stated income loan, then never send them your tax returns. You may have written what you thought you were making onto your loan application. Things looked good. The economy was strong. The housing market was shooting up. Then, at the end of the year your tax returns actually showed a lower income. Your lender can use that against you. **Again, if you got a stated income loan, do not send them your tax returns**.

You don't want them dragging you into criminal court. They will say "Oh, you got your loan in 2007, and said you were making a $200,000 a year. Your 2007 tax return says you only made $65,000. You lied to us, so you're going to jail." So you've got to be prepared to never submit anything that shows substantial discrepancies or that shows a different income to what you stated whenever you were getting your loan.

- **Make sure your bank can't take money directly from your account.** Many lenders will add a clause to your contract. This clause states that if you have a bank account with them, and you are behind on payments, then they have the right to automatically grab that money. It would take hours of time to read thru your entire mortgage and contract to see if this clause is there.

I recommend that if you happen to have your bank account with your lender to simply move it somewhere else. It doesn't matter if your loan is with the biggest bank in the country. They aren't as stupid as we think.

They may not always check to see if they have a bank account with them, but they often will. We can't run the risk of it happening.

- **Do not make a partial payment to your lender unless you have a written agreement.** We have seen many homeowners send a partial payment to the lender or make payments on a temporary loan modification or "trial loan modification". They were told that the lender would stop the foreclosure. The lender simply keeps that money and continues with the foreclosure. The homeowners lose that money and they lose their home.

One of our bay area clients made payments on her "trial loan modification" for 10 months at the new payment amount. During this time her lender filed the legal foreclosure paperwork with the county. When she asked about it they told her not to worry that it was just standard procedure and everything was fine. At the end of 10 months of on time payments at her new payment amount her lender told her that she had to immediately pay all of the past due amounts or they would foreclose on her within 2 weeks. This is real. She came to us and we stopped the foreclosure sale and helped her through a short sale. She is now happily living in a larger nicer home at a lower payment and she didn't have to go through foreclosure or have that mark on her credit history.

So always get a written agreement with your lender before you send them any money. **The only loan modification that you can be confident is permanent is called a "recast".** Unless you hear these words from your lender be very cautious about sending them money regardless of what you are being told.

Chapter 1: Is A Loan Modification Ethical?

I think they are. A lot of people say that if you don't pay your mortgage or you got behind, then you are a flake and you don't keep your promises. I don't agree with that.

Are you a flake to want a better deal or a more reasonable house payment? Is it your fault that house prices shot through the roof over the last three to five years? If you wanted to buy a house, if you wanted the American Dream of home ownership, then you were automatically required to pay way more money for a home than it's worth today. Is it your fault that house prices plummeted?

And here's the question: Does it really make sense long term to pay money on a house that's underwater? If you owe substantially more than your house is worth, you need to consider would it be better to just move on and find a place to rent. Many people are able to find a comparable or nicer home to rent for less money.

One couple was paying $4,200 a month. They tried to get a loan mod. The lender increased their payments up to $4,500 a month. They paid a company $3500 to help them get a higher payment. What kind of a loan mod is that?! They rented a comparable home that even had a pool for the kids. What did they pay? Only $2,700 a month rent. No taxes, no insurance, and no more stress.

Stress-free people do a better job at their jobs and they work harder and they have more time and energy for their families. They're able to go to work and not worry about other things. They don't have to leave work to go home and handle problems that come up. Most people just don't understand the stress and anxiety that comes from not being able to pay your mortgage payment.

Also, if you're able to get a more reasonable payment on your mortgage and keep your home, then you're also keeping up in your neighborhood. These banks are doing a horrible job with foreclosures. They don't keep up on the homes or mow the yards. Every single home that's foreclosed on just means more blight in the neighborhood. It drives house prices down further. Again, the loan modification is the better option.

Chapter 2: Do you qualify for a loan modification?

Here are the steps for how to figure out if you qualify for Loan Modification:

- First off, can you afford a monthly payment?
- If you can afford a monthly payment, what is your wished for payment? Is it a thousand dollars? A three-thousand dollars? Or more? Come up with a number for your "here is what we can afford for a monthly payment."
- Now, take that number and add it with all your other bills. Your car payment, your insurance payment, monthly home-owner's association fee, property taxes (to get a monthly amount, take your annual payment and divide by 12. That is your monthly payment.), and all your other costs. Electric payment, car insurance, home insurance, phone bill, cell phone bill, and all the other bills.
- Take all those other bills that come up every single month and add it to the mortgage payment. Now you have your total monthly bills. Take that number and double it.
- Are you making that much money every month? Because if you are making that much money, the more likely you can afford your "wished for house payment."

If you are not, then you need to look at "okay, we're going to have to negotiate harder for a lower payment." And in fact, in the "Making Home Affordable" program, they say in one of their guidelines that your total bills cannot be more than fifty five percent of your income. If it is more than fifty five percent, we know it's going to be hard for you to afford that payment and keep your home.

The following eligibility guidelines are from the government program Home Affordable Modification Program:

http://www.freddiemac.com/singlefamily/makinghomeaffordable.html

The following mortgages are eligible for a modification under the Home Affordable Modification program (HAMP):

- First-lien mortgages owned, guaranteed, or securitized by Freddie Mac that are single-family 1- to 4- unit primary residences, including condos, cooperatives, *Single-Family Seller/Servicer Guide*(Guide) – eligible manufactured homes, and our negotiated conforming jumbo mortgages.
- FHA, VA, and RHS guaranteed mortgages are eligible, subject to the relevant agency guidelines.
- Mortgages for properties that are abandoned, vacant, or condemned are not eligible.
- Mortgages may be previously modified, but can only be modified once under HAMP.

Borrowers may be eligible for this program if they meet the following requirements:

- Borrowers may be considered for a HAMP Trial Period if they are current or less than 60 days delinquent and determined to be in imminent default, or 60 days or more delinquent.
- A borrower must have an affirmation of financial hardship.
- Borrowers who may be in foreclosure, in pending litigation involving the mortgage, or who are in active bankruptcy.
- Borrowers currently performing under another workout arrangement will be considered for a Home Affordable Modification if they request it.
- Borrowers must currently have a monthly housing expense-to-income ratio greater than 31 percent of their verified gross monthly income.

Chapter 3: The Myth that banks don’t want properties back.

Repossessing property is part of the lending business. Lenders have been lending for years. They’ve been repossessing properties for years as well. They are prepared and if it does come down to it, they will foreclose on your house and sell it as a bank owned property. That’s just one of the things they’re willing to do.

They have entire departments that are designed to handle the foreclosures. They’re often called the “Liquidation Department”, or the “Foreclosure Department.” Once a bank forecloses on a house, these departments specialize in taking that property, putting it up for sale, and handling the transaction.

Now, there are a couple of other reasons why they often prefer to foreclose on a house versus doing a loan modification in some instances. Let’s say someone has two, three mortgages, or even other liens on the property. If the first mortgage forecloses, all of those other liens are gone. They don’t have to deal with them anymore.

That’s another reason why some people do a loan modification on their first only and don’t worry as much about the second. They try to settle with the second. That way, they have more money to pay off the first mortgage every month. Money that would be going to the second mortgage can instead be applied to the first.

In addition, a lot of lenders are actually servicers for a third-party investor. In fact, almost eighty percent of all loans are not even owned by the lender that you’re dealing with. So you might have a loan with ABC Bank. But in reality, most of the time that loan isn’t even owned by ABC Bank.

They’re just servicing it for a third party. It could be somebody on Wall Street, it could be the government, or it could be someone overseas. Who knows who owns it?

Here is another thing that’s interesting. What happens is the owner of the loan actually pays the servicer (the ABC Bank in this situation) more money when you’re in foreclosure. Yes, it’s true. The servicer actually makes more money when your loan is in foreclosure than when it is current.

They profit from you being in foreclosure. I know the system is a mess and it doesn’t appear that it will be getting any better any time soon. But that’s the reality we have to deal with.

Chapter 4: Here’s what you need to do to prepare yourself for the negotiations.

When you negotiate your loan mod you need to remember this. These banks are professional negotiators. They know the tricks. They know the tools to use against borrowers to suck as much money out of them as they can. Don’t kid yourself. They’re going to use every single tool in their tool chest to squeeze as high of a monthly payment out of you as is humanly possible. So before you start negotiations with the bank, you’ve got to be prepared. You can't just walk into a gunfight with a knife. You've got to go prepared so you get yourself the best deal.

Step #1: Make sure that your lender can't come and grab any money out of your bank account. Many lenders will add a clause to your contract. This clause states that if you have a bank account with them, and you are behind on payments, then they have the right to automatically grab that money. It would take hours of time to read thru your entire mortgage and contract to see if this clause is there.

I recommend that if you happen to have your bank account with your lender to simply move it somewhere else. It doesn't matter if your loan is with the biggest bank in the country. They aren't as stupid as we think. They may not always check to see if they have a bank account with them, but they often will. We can't run the risk of it happening.

So, if you have your saving account or any accounts with the lender that has your mortgage, then I recommend closing those accounts and taking that money elsewhere. They can take that money without going to court. They simply sweep in and grab it.

Step #2: Start saving towards your good-faith down payment. On a loan modification, most of the time, they're going to want between thirty and fifty percent of any payments behind. If you're behind twelve payments of three thousand dollars, they're going to want between $10,800 and $18,000 to accept the loan modification.

Step #3: Run your budget. See what you can realistically afford. Look at those numbers again. If we make X amount of dollars per month, we divide that by two. That money goes towards our bills. We have two hundred dollars towards the electric payment, we have a hundred dollars for our car insurance, our car payment is four hundred dollars, etc. We subtract those numbers from that fifty percent number. What we have remaining is what we can afford to pay the mortgage company.

Run your budget and see realistically what you think you're going to be looking for as a payment. Decide on a payment before you even start your negotiations.

Step #3: Look at your options. The lender's negotiator can sense weakness. They can sense when you'll take any payment amount they tell you. Guess what happens next? You're going to be stuck with a much higher monthly payment. Make sure that when you start negotiations, you know the alternatives.

You can't negotiate unless you come from a position of power. All power in negotiation lies with the party who can simply walk-away from the negotiation. You must be able to say, "I can afford to walk away from the negotiating table if you push me to hard. If the bank pushes me to a monthly payment that I can't afford, you know what? Forget about it. I'm not going to get pushed around. I'll walk away and get a better deal for myself elsewhere."

So look at all your options. Find what houses similar to yours are renting for. It might make sense to rent. Get rid of the unrealistic lender and overpriced mortgage. I've seen so many people stay in their house and accept a monthly payment much higher than what they could afford to rent that same house in that same neighborhood for each month. Meanwhile they burn through all of their savings and retirement money, only to lose the house later when they are completely out of all funds.

The other thing is that they are already strapped. In order to pay their mortgage, they are not putting food on the table. Any and all extra money is gone. Why? Their mortgage company was good at negotiating. Don't let someone who's good at negotiating push you around and take food off your table.

Step #4: Research where your lender stands. If you can afford to, then order an appraisal. Or, do your own appraisal. Go on to www.realtor.com and find out what houses in your neighborhood are selling for. Ask a realtor "Hey, what are houses in my area selling for?" or contact me and I will prepare a certified brokers opinion of value or BPO for you at no cost.

I've seen people who bought a house for $900,000 that is worth $620,000 today. If it's only worth $620,000, then you shouldn't be paying a mortgage payment based on a value of $900,000. You should be paying a mortgage payment based on a value of $620,000. Make sense?

Here's how to find calculate you should be paying. Google "amortization calculator." Type in what your home is currently worth. Enter the interest rate you were originally paying. Look at the example numbers below.

- An $900,000 mortgage at 5% interest is a monthly payment of $4,831.39 (P+I – taxes and insurance/hoa fees not included).
- A $620,000 mortgage at 5% interest is a monthly payment of $3328.29 (P+I – taxes and insurance/hoa fees not included).

It looks to me like they are overpaying by $1503.10 a month. Ouch!

Go do the calculations for your house. If your lender forecloses on your house, then it's not necessarily going to sell for the market value. Most foreclosed houses often sell for 85% to 95% of the value today. Remember, knowledge is power.

When you have this information you have a much better negotiating position with your lender. You can say "Hey guys foreclose on my house. You're going to lose your shirt." It's unrealistic to over-pay for a house when you can go and rent somewhere else. This enables you to get your life back on track with less stress and worry.

Step #5: Consider what you are going to do 5 years down the road when your loan modification expires. Unless your loan is "recast" you have a temporary loan mod. Most loan modifications only last for 2-5 years. After the time is up, your payment goes back to the original amount. You've already taken all the hit of getting behind on your payments and you've taken the whack to your credit.

Your credit rating's been affected, and a lot of issues have come up from you getting behind on your payment. A couple years down the road, your payment may adjust back to what it was before. If you can't afford the higher payment down the road, what are you going to do at that point?

Are you going to re-default and try to get another loan modification? Or, would it make sense today to just find a place to rent? Then you can buy a house at today's lower prices, or maybe even wait a little bit?

Experts have been predicting the housing market is going to have a double dip and we are seeing that now.

You can rent until you're sure that housing prices have bottomed out. Fannie Mae's guidelines allow you to buy a house 2 years after a short sale. FHA will lend immediately after a short sale if the buyer was not in default at the time of the short sale. We have now completed numerous short sales without our clients missing a payment. We even have clients who defaulted on their payment, competed a successful short sale with us, went through credit repair and have now purchased a new home again (by the way – their home nearly twice as big as the first one and their payments are 1/3 of what they were paying!). That is just an option to consider. Consider if you want to take a temporary fix right now or if you want a permanent fix.

Step #5: Draw a line in the sand for your negotiations. Every good negotiator recommends that you decide on the maximum you will pay that before you start any negotiation. Decide on the maximum payment you will accept. You've got to decide "I will not agree to a payment more than X and a good faith down payment of more than X."

If you don't do this, then the bank will be able to push you around. You won't be able to negotiation from a position of power. You won't be able to say, "I'm going to walk if you don't give me this deal."

Unless you have a line in the sand, the bank will push you around. They'll shove you into higher payment. Then you'll be stuck with a payment that you think you can afford, but the reality is you can't.

This is the biggest mistake I see homeowners make with their loan modifications. Loan modifications have gotten a bad rep in the media. Many people say "Oh, look. Everyone who gets loan modifications is re-defaulting." That's not the entire story. The reason they're re-defaulting is this. The lenders are pushing so hard to get more money out of people. They're squeezing every single dime they can out of the customers. Why do you think they are doing this? Because they are just there to collect as much as they can for as long as they can. They do not have your best interests at heart.

We know that negotiators at the bank get paid a bonus for how much money they squeeze out of you. So their job is to squeeze and squeeze hard. “You want a payment of $2500 a month? No, we’ll do $3200. Oh, you want a payment of $3000? No, we’ll do it for $3600”, they say. It’s insane.

Unless you have a line in the sand, you’ll get stuck with a higher payment. You’ll be more likely to re-default later on. If you already received one loan modification and it didn’t work, then how are you going to look the next time around?

The people at your lender might say “This guy already got a loan modification with us before, he re-defaulted on it six months down the road, and now he’s come back to us again? Should we even waste our time on this guy?”

That’s the problem. You’re going to look bad in the lenders’ eyes. So the next mod is probably going to be a lot tougher. Don’t just agree to their payment offer. You might think you can afford it. You’ll tell yourself, “Oh, maybe we won’t eat out anymore; maybe we won’t see any movies, etc.”

But, do you want to live your life miserable, broke, and poor for the rest of your life? Push for a payment that you can afford. Then you can afford to keep your house and live stress free.

You can go to work at your job knowing that your family is taken care of. You’ll have enough money for childcare, for movies, and for keeping your sanity. Your sanity is so important.

So getting a good loan modification and getting the payment you want is so important. You’ll have worked so hard to get to that point where they agree to lower your payment. Don’t let all that work go down the drain by accepting a payment you can’t afford.

After all, you’ve got to look out for yourself. The banks are looking out for themselves; the lawyers are looking out for themselves. You’ve got to look out for yourself too.

Chapter 5: Preparing your loan modification package to submit to your lender.

Here are some of the things you will need to submit.

Part #1: A Hardship Letter. There are lots of hardships letter forms you can find online. Many people recommend different ways to submit a hardship letter. The key is to put in specifics Here is an example. “The reason I got behind in my payments is my boss reduced all employees to forty hours a week.

Before, I was able to work about 50 hours a week. Now, I'm only about to work 40 hours a week. As a result, my income has been reduced by 20% and I can't afford my house." Or, you might say something like, "My company was previously paying me a base salary of $125,000 a year, now I'm only getting paid $80,000 a year."

Or, "I got in a car accident and I collected disability insurance for a little while. I was previously making $1,000 a week. My insurance only paid out $720 a week. As a result, we were making less money and we couldn't afford the house payment. Today, I am back on my feet. I'm back at my job making $1,000 a week."

Was it a temporary blip that caused you to get behind in your payments and you can make the normal payments now? If so, then put that in bold. Put it in huge font. Make it the emphasis of that in your hardship letter. Also put the specifics in bold.

You want to make it look like the things that happened were a temporary blip. **There are two simple things to demonstrate: Number one, you have money. Number two, you have enough income to be able to afford a reasonable house payment.**

Part #2: An appraisal or statement of value. You've got to submit an appraisal or an opinion of value from a real estate agent. Send it into them. Say "Look guys, I bought the house for $750,000. Today, this realtor says it's worth $480,000. Based on that, if you don't take my loan modification, you're going to lose $270,000 or more."

When they see today's value, they're going to be much more willing to look at your loan modification and reduce your payment. And they can see their options and what will happen if they don't work with you.

Part #3: Documentation of income – Pay Stubs. You've got to show them an income that's not too high and not too low. If you show them too low of an income, they're going know that you can't afford your house payment.

They may think If we reduce his payment by $1500, he won't even be able to afford it anyway so what's the point in reducing it? Before, he thought he could pay $3,200 a month. He can't even pay the $1700 a month that's he's asking for today. He's not making enough money, based on our ratios, to be able to afford it."

Here's what happens if your income is too high. Let's say your payment is only $2500 a month and you're making $6,000, $7,000, or $8,000 a month. They will say "What's up with this? This guy's making a ton of money. Why are we going to reduce his payment?"

So you've got to make sure your income and your budget is in that middle range. Look at your recent payment history.

Maybe you can pull the most recent month. If it shows the right numbers use it. Or, pull from a longer period. Use the last three months or the last six months worth of income.

You want to be able to demonstrate that you're making enough money to afford that payment, but not making so much money that they will charge you more."

Part #4: Tax Returns. Many lenders are asking for the last three years of tax returns. Remember; don't send in your tax returns if you have a stated income loan. Even if you were 100% honest at the time you got your loan, there still may be something left to interpretation that could come back and bite you.

Part #5: Bank Statements. They're going to want three to six months of your bank statements,.

Part #6: Your Budget or Financial Statement. They are going to want this all broken down. Here is an excellent financial statement that many lenders use. Find it online at: http://www.freddiemac.com/sell/forms/pdf/1126.pdf

Chapter 6: Submitting to the lender.

After you have all of your paperwork put together, then you're ready to submit it to your lender. Get your last mortgage statement and call the 800 number listed on it. Ask the person who answers the phone for the phone number for the loan modification department.

Write it down. Get the fax number as well. Ask that person if there are any special forms that they use. You will need to send those forms with your application.

Now try to get to the loan modification department. Ask them the same questions. You will discover that not everyone knows the correct answer. So once you have that information, put together your package and fax it in. Then, follow up twice a week.

First, confirm they received your paperwork. Then, follow up to see when a negotiator will be assigned. After that, go through the process with them. Be sure to check with that person at least once a week. You want to make sure they work on your file and aren't distracted by everything else.

Be sure and keep notes of everything. Who you talk to, when you talked to them, and what they said. Track the date and time you talked to them. Always keep your cool. **Never get mad** and do not yell or swear at the negotiator on the phone. Once they agree to a modification they should send you an agreement. Do not send your good faith down payment until you have a signed and notarized agreement with everything laid out.

How to Stop Harassing Debt Collector Phone Calls

Don’t let debt collectors harass you into paying them money that you really should be paying your lender. Paying credit cards and other unsecured debts are your lowest priority. An unsecured debt is a debt where they can’t take away your car or house. A secured debt has something as collateral, such as your car, house, or anything else of value.

The most common unsecured debt is a credit card. When you stop paying them, they will call you nonstop. The reason is because they don’t have any other way to collect from you.

They can’t come get your car or take your house. So, they make up for that by blowing up your phone with harassing calls. In addition, they use deceptive tricks to get you to pay them. For example, there are Federal Laws that regulate what they can do or say.

They aren’t allowed to threaten to sue you, but then not follow thru and actually file suit. To get around this rule, they will use language that sounds legal, but isn’t.

In one situation, a debt collector in Buffalo, New York named their firm Hoffman, Weinberg & O’Brien to make it sound like they were a law firm. They would then leave messages on people’s answering machines.

They would say they were with the office of Hoffman, Weinberg & O’Brien and then say they may resort to future legal action. In addition, they would reference case number 8306042. If you didn’t know any better, you would think the case number was for an actual lawsuit against you. Isn’t that scary?

Most credit card accounts never sue (despite the constant threats.) Even when they do sue and get a judgment, they rarely ever attempt to garnish wages. A lot of judgments expire without getting paid. But, a lot of them get paid off when a person’s income increases, or that person sells a valuable asset such as a house.

Here is how to stop the harassing calls. Simply ask the person who calls for their fax number or mailing address. Then, fax or mail them a letter that requests them to stop calling you.

Here is some sample language you can put into the letter.

“Under my rights in the Fair Lending Law and the Fair Debt Collection Practices Act, I hereby request you stop any and all phone calls to me or any other person. At this time, I do not wish to speak with you, anyone at your company, or anyone representing you concerning this matter. Do not contact me by phone regarding this matter.

I demand that you stop calling my at home, on my cell phone, at work, at my relatives house, or any other location. Please make any future communication with me in writing. I am aware of my rights under section 805(b) 2 of the Fair Debt Collection Practices Act and am willing and able to exercise them. I am keeping track of all calls from your company and may consider recording calls."

Make sure that when you mail the letter, you send it return receipt requested. If you have access to a fax machine, then fax it out. It's much easier and stops the calls quickly. Under the Fair Debt Collection Practices Act, a creditor or collection agency that calls you after you request them to stop may be liable for statutory damages up to $1,000 plus any actual damages suffered, plus attorney fees.

Another tactic you can use to shut down any debt collector is to tell them you are recording the call. They back off when they realize they are on tape. You can buy an inexpensive call recorder at Radio Shack or Amazon.com. Just hook it up to your phone and you're ready to go. In addition, you may want to keep a log of all phone calls from debt collectors. This can be useful if you ever have to go to court.

After reading the Fair Debt Collection Practices Act, in my opinion, the following acts are prohibited:

Violation #1: Call you before 8 AM or after 9PM.

Violation #2: Tell your relatives, family, or friends that you owe them money, or state that they are in the debt collection business when they contact any relatives, family, or friends.

Violation #3: Contact you after you send a written request that they cease further communication.

Violation #4: Contact you after you request they cease.

Violation #5: Threaten you with violence. In addition, they are prohibited from using obscene or profane language.

Violation #6: Publicize a list of people who owe them money.

Violation #7: Cause your phone to ring repeatedly or continuously to annoy you.

Violation #8: Call you without telling you who they are and why they are calling.

Violation #9: Attempt to mislead you. Or, they falsely represent the amount owed, that they are an attorney or law firm, that if you don't pay then you'll go to jail, state or claim that you committed a crime, or threaten to take an action that is not allowed legally.

Violation #10: Not informing you that any information obtained can be used for the purpose of collecting their debt.

Violation #11: Threaten to repossess any property that they legally don't have the right to repossess. I remember hearing a lady calling a national talk show and saying that a debt collector had threatened to repossess her cat. What is this world coming to?!! That is definitely a violation! Cats, dogs, and children are not normally given as collateral against loans. This isn't the Middle Ages here!

Violation #12: Threaten to sue you and then not follow thru with it. In addition, they are not allowed to threaten to do anything unless they actually intend to follow thru with it.

There are many good lawyers who specialize in helping consumers when a debt collector violates the act. Just Google "Fair Debt Collections Lawyer." Many of them can help you at no cost out of pocket. They will take on your case on a contingency basis and get paid from the money they collect from the debt collector.

Frequently Asked Questions on FHA Loan Modification. (From HUD's website)

Question 1: In utilizing the Loan Modification option to bring an asset current, can the mortgagee include all fees and corporate advances?

Answer: Mortgagee Letter 2008-21 states in part: Legal fees and related foreclosure costs for work actually completed and applicable to the current default episode may be capitalized into the modified principal balance.

Question 2: May a mortgagee perform an interior inspection of the property if they have concerns about property condition?

Answer: Yes, per Mortgagee Letter 2000-05, page 20, the mortgagee may conduct any review it deems necessary to verify that the property has no physical conditions which adversely impact the mortgagor's continued ability to support the modified mortgage payment.

Question 3: Can a mortgagee include late charges in the Loan Modification?

Answer: Mortgagee Letter 2008-21 states that accrued late charges should be waived by the mortgagee at the time of the Loan Modification.

Question 4: When utilizing a Loan Modification option, can a mortgagee capitalize an escrow advance for Homeowner's Association fees?

Answer: HUD Handbook 4330.1 REV-5, Paragraph 2-1, Section B, Escrow Obligations states: Mortgagees must also escrow funds for those items which, if not paid, would create liens on the property positioned ahead of the FHA-insured mortgage.

Question 5: Is there a new basis interest rate which mortgagees may assess when completing a Loan Modification?

Answer: Yes, Mortgagee Letter 2009-35 states that the Mortgagee shall reduce the Loan Modification note rate to the current Market Rate. Please refer to Mortgagee Letter 2009-35 for more details.

Question 6: Are mortgagees required to re-amortize the total amount due over 360 month period?

Answer: Yes, per Mortgagee Letter 2009-35, the Mortgagee must re-amortize the total unpaid amount due over a 360 month period from the due date of the first installment required under the modified mortgage.

Question 7: What date is utilized when determining the correct interest rate for a Loan Modification?

Answer: The date the Mortgagee approves the Loan Modification (all verification completed and servicing notes documented, reported to SFDMS) is the date that Mortgagees are to use in determining the interest rate.

Question 8: Will HUD subordinate a Partial Claim, should a mortgagor subsequently default and qualify for a Loan Modification?

Answer: If a mortgagor subsequently defaults and qualifies for a Loan Modification, HUD will subordinate the Partial Claim.

Question 9: Are mortgagees required to perform an escrow analysis when completing a Loan Modification?

Answer: Yes, mortgagees are to perform a retroactive escrow analysis at the time the Loan Modification to ensure that the delinquent payments being capitalized reflect the actual escrow requirements required for those months capitalized.

Question 10: Can a mortgagee qualify an asset for the Loan Modification option when the mortgagor is unemployed, the spouse is employed, but the spouse name is not on the mortgage?

Answer: Based upon this scenario, the mortgagee should conduct a financial review of the household income and expenses to determine if surplus income is sufficient to meet the new modified mortgage payment, but insufficient to pay back the arrearage. Once this process has been completed the mortgagee should then consult with their legal counsel to determine if the asset is eligible for a Loan Modification since the spouse is not on the original mortgage.

Example Hardship Letter:

Name: (Your Name)

Address: (Your Address)

Lender Name: (Your Lender)

Loan #: (your Loan #)

To Whom It May Concern:

I am writing this letter to explain my unfortunate set of circumstances that have caused us to become delinquent on our mortgage. We have done everything in our power to make ends meet but unfortunately we have fallen short and would like you to consider working with us to modify our loan. Our number one goal is to keep our home and we would really appreciate the opportunity to do that.

The main reason that caused us to be late is (insert reason here and don't be too lengthy and long winded) Soon after being late and our income not being nearly enough, we had fallen further and further behind. Now, it's to the point where we cannot afford to pay what is owed to (lender). It is our full intention to pay what we owe. But at this time we have exhausted all of our income and resources so we are turning to you for help.

(The approximate date of hardship and we believe that our situation is Temporary or will be Permanent.)

Our situation has got better because (reason here) and we feel that a loan modification would benefit us both. We would appreciate if you can work with us to lower or delinquent amount owed and or payment so we can keep our home and also afford to make amends with your firm. We truly hope that you will consider working with us and we are anxious to get this settled so we all can move on.