



SHORT SALES **Frequently Asked Questions**

This factsheet is provided for information purposes only. It is not a substitute for advice from legal, accounting, housing, or real estate professionals. Please seek professional advice for information specific to your situation.** (Note: The term “lender” has been used through this factsheet. It should be understood that you may be negotiating with a bank, lender, or servicer.)

SHORT SALE BASICS

Q: What is a short sale?

A: A short sale is a real estate transaction in which you sell your house and your mortgage lender agrees to accept a price less than what you owe on your mortgage. In other words, your mortgage is “upside down” or “underwater” and your house cannot be sold for what you owe.

Q: What are the benefits of a short sale?

A: You have more control over when you leave your house, and the lender usually receives more money through a short sale than a foreclosure or “REO” (post-foreclosure) sale. The difference between what you owe and the amount of money the lender receives from the sale can be, but is not automatically, forgiven.

Q: What are the potential pitfalls of a short sale?

A: After a short sale, you may still owe the lender the difference between your loan balance and the proceeds from the sale. If part of your agreement is for the lender to write off any remaining balance, you need to get this commitment in writing. Also, though you are avoiding a foreclosure, a short sale will have the same negative effect on your credit score as a foreclosure because in both cases, only part of the debt was paid.¹ A future mortgage lender, however, may treat a short sale more favorably than a foreclosure when evaluating you for a new mortgage loan in the near future.²

Q: How does a short sale work?

A: It works like other house sales, except that obtaining your lender’s approval of the sale price makes the process longer than in a normal sale. Generally, a lender will not consider a short sale until you have found a buyer for your house and signed a contract of sale. You must also prove that you have suffered an economic or financial hardship which makes you unable to afford your mortgage payments or cover the difference between the value of your house and what you owe. You should work with a local real estate agent experienced in short sales who will value, list, and market the house for you. You should also hire a local attorney experienced in real estate

**The Connecticut Fair Housing Center does not provide short sale assistance, but encourages homeowners interested in a short sale to work with experienced local real estate agents, attorneys, and housing counselors.

¹ See <http://www.myfico.com/crediteducation/questions/Foreclosure-Credit-Score.aspx> for more.

² See <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/se11005.pdf> for an example.

transactions and short sales. Both the agent and the attorney can negotiate with the lender and assist you with the required paperwork.

Q: How long does the short sale process take?

A: The process usually takes months longer than a normal real estate sale because your lender must review your financial paperwork and approve the sale price. However, if you work closely with a knowledgeable real estate agent, it can take as little as three months. As every lender has different procedures, a good real estate agent will confirm your lender's process, including the required paperwork. He or she should know your neighborhood and how to price your house.

Q: What is a foreclosure by market sale? Do I have to participate in this?

A: A foreclosure by market sale is like a normal short sale except that it also includes an agreement between you and the lender to get court approval for the sale. No matter what notice you receive, you are not required to negotiate a foreclosure by market sale, or a short sale, with your lender. Your realtor and lender will have more information about this process.

FEES, DEFICIENCIES, AND TAXES

Q: What will it cost me to sell my house in a short sale?

A: You might not pay any fees out-of-pocket in a short sale, and all the fees may be paid from the proceeds of the sale. In order for this to happen, all fees, including closing costs, legal fees, and real estate agent commissions, must be approved by the lender. Your agent or attorney may submit a Preliminary HUD-1 Settlement Statement to the lender so that the lender can review and either approve or revise the fees. Your real estate agent should make sure that all agents involved in the sale agree to accept the commission the lender approves and that they understand that you will not make up the difference if the lender is not willing to pay the proposed fees.

Q: Will I owe the bank money after completing a short sale on my house?

A: It depends. The amount owed by you or "deficiency" will be the difference between the total balance owed to the lender and the amount the lender receives from the short sale, provided that the amount received is less than the amount owed. In many situations, the lender will forgive the deficiency due to your hardship and the difficulty of recovering the funds from you. You must, however, obtain the lender's written approval to forgive the deficiency.

Q: Will the lender request a deficiency judgment?

A: Legally, the lender may be entitled to a "deficiency judgment," which is a legal claim by the lender for the remaining amount owed following a sale. You should work closely with your attorney to determine whether the lender will seek a deficiency judgment.

Q: If my lender forgives a portion of my mortgage balance, will I have to pay taxes?

A: You may be taxed on forgiven debt as if the forgiven amount was income. You should work with an attorney or tax accountant to determine whether you qualify for an exception to taxation under the Mortgage Forgiveness Debt Relief Act of 2007 (which expired on 12/31/14 but could be extended someday by Congress), or whether you are "insolvent" and not subject to taxation on the forgiven amount. Furthermore, if you are in foreclosure and especially if you have legal defenses in the foreclosure, your attorney may be able to negotiate with the lender to treat the forgiveness as non-taxable.

FACILITATING A SHORT SALE

Q: When is the best time to start the short sale process?

A: As soon as you realize you are unable to make your mortgage payments, you should consider all your options, such as a loan modification. See “Resources for Homeowners at Risk of Foreclosure” at the end of this factsheet for ways to learn about your options. If, after taking a hard look at your finances, you determine that you may need to sell your house to avoid foreclosure, you should immediately begin the process. The further into the foreclosure process you go, the more your lender will have spent on the foreclosure process and the less likely it may be to consider a short sale.

Q: What documents are necessary to proceed with a short sale?

A: The specific documents necessary to approve a short sale will depend on the lender. However, the lender will typically require:

- An authorization from you so that the lender can discuss the sale directly with your real estate agent and attorney.
- A hardship letter describing the circumstances leading to your mortgage problems.
- The listing agreement with your real estate agent.
- A signed, valid contract for the purchase of your real estate between you and the buyer.
- A preliminary HUD-1 Settlement Statement for the short sale, which indicates the contract sales price and all associated costs of the sale (including real estate commissions, if any), unpaid loan balances, and unpaid fees. The “bottom line” will provide a preliminary estimate of proceeds to the lender.
- An independent appraisal of the house.
- If any repairs are needed, a repair cost estimate, and photos of any areas that need repair.
- Copy of property tax statement, a statement of any judgments or liens on the property, the deed, divorce decrees, and bankruptcy petitions, discharges, or dismissals.
- Detailed information on your financial condition, including tax returns, payment stubs, bank statements, and a monthly budget worksheet (on the lender’s forms).

Q: Do foreclosure proceedings stop while I attempt to work out a short sale?

A: Not necessarily. Generally, foreclosure proceedings do not stop until, at a minimum, you have submitted a request for short sale approval to your lender. You can use Connecticut’s Foreclosure Mediation Program to buy time to do a short sale – hundreds of Connecticut homeowners have already done this. In mediation and court, you should be ready to show proof that you are working to move the short sale along as quickly as possible. If you are pursuing a short sale while under threat of foreclosure, you should begin the process as soon as possible and employ a real estate agent that has the experience and knowledge to successfully complete the transaction. You should keep your agent and attorney informed of any new legal papers you receive or any information you receive from your lender or through mediation that may affect your property.

Q: What if there is more than one mortgage on my house?

A: Short sales are difficult transactions and they are more difficult to obtain when there are two loans involved – especially if the loans are with two different lenders. However, your real estate agent or attorney may be able to get both lenders to cooperate on a short sale solution. Typically,

the first lender will offer the second lender a small amount to agree to the short sale. It will be up to your real estate agent and attorney to work closely with all parties to negotiate a solution.

HOME AFFORDABLE FORECLOSURE ALTERNATIVES (HAFA)

Q: What is HAFA?

A: HAFA is part of the federal government's Home Affordable Modification Program (HAMP). HAFA provides financial incentives to lenders and borrowers who use a short sale to avoid a foreclosure on a HAMP-eligible loan. HAFA may be available to you if your servicer participates in HAMP (http://www.makinghomeaffordable.gov/contact_servicer.html). If your loan is eligible for HAMP, but you do not qualify for a HAMP loan modification (due to, for instance, your financial situation or your missing of trial payments), you may be able to participate in HAFA. You may also be eligible to participate in HAFA if you ask to participate.

Q: How does a borrower become eligible for HAFA?

A: Participating servicers must evaluate you for a HAMP loan modification before considering you for HAFA. You must also be considered for HAFA before your loan is referred to foreclosure or, if your loan has already been referred to foreclosure, before the lender allows a pending foreclosure sale to be conducted. Your loan is eligible for a HAMP review, and therefore eligible for HAFA, if all the following are true:

- The property facing foreclosure is your principal residence;
- Your mortgage loan is a first lien mortgage originated on or before January 1, 2009;
- Your mortgage is delinquent or default is reasonably foreseeable;
- The mortgage's current unpaid principal balance is equal to or less than \$729,750; and
- Your total monthly mortgage payment (including taxes, hazard insurance, and condo fees) exceeds 31 percent of your gross (pre-tax) income.

Q: How does the HAFA short sale process work?

A: The HAFA short sale process works similarly to a normal short sale, except the federal government has created specific rules and forms for your lender, agent, and attorney to use. You must accept your lender's offer to participate in HAFA in order to be eligible for HAFA.

Q: What are the benefits of participating in HAFA?

A: If your house is sold through a HAFA short sale, you may be eligible for a payment meant to help you with moving costs. Your lender may not seek a deficiency judgment against you, and must waive any deficiency following the sale.

Q: What are my responsibilities in a HAFA short sale?

A: Once you obtain an agreement to do a HAFA short sale, you have 120 days to sell your house. Any scheduled foreclosure sale during the 120-day period will be postponed so long as you:

- Provide all information and sign all required documents;
- Cooperate with your agent to actively market the property and respond to lender inquiries;
- Maintain the interior and exterior of the property;
- Work with your attorney clear any liens or other title problems that would prevent transfer of the property; and

- Make any monthly payment contained in the agreement, if applicable.

Q: What are some of the restrictions with short sales through HAFA?

A: You cannot use as an agent or sell your house to anyone to whom you are related to or with whom you have a close personal or business relationship. If you have a real estate license, you cannot earn a commission by listing your own property. The buyer of your property must agree to not sell the house within 90 calendar days of the date it is sold by you. You may not have any expectation that you will be able to buy or rent your house back after the closing. In addition, the same difficulties discussed earlier regarding second mortgages apply to HAFA.

Q: Are there short sale programs other than HAFA?

A: Yes, HAFA is only one type of short sale program. Borrowers with Fannie Mae, Freddie Mac, and FHA loans, or whose lenders have agreed to certain kinds of settlements with the federal government, may qualify for specific short sale programs. Your lender might also offer an “in-house” short sale program on its own. Your lender will have information about what might be available to you.

ENTERING THE RENTAL MARKET AFTER FORECLOSURE?

If you are looking for housing because you are considering a short sale, you should be aware of your rights under the fair housing laws. These laws make it illegal to discriminate based on: **race, color, national origin, sex, religion, familial status, disability status, marital status, sexual orientation, age, lawful source of income, gender identity, or gender expression.**

If you suspect that one of these characteristics has played *any* role in the way you are treated in the housing market, *call the Connecticut Fair Housing Center* at (860) 247-4400.

Q: Can an owner refuse to rent to me because I lost my house to foreclosure?

A: An owner can refuse to rent to people who have bad credit. A foreclosure is considered bad credit regardless of the reason you fell behind. An owner can violate the law, however, if she only turns down people in the protected groups who have bad credit. For example, it is illegal for an owner to only reject African-Americans or Latinos with bad credit while accepting White people with similar credit histories.

Q: Can an owner charge me a higher security deposit because I lost my house to foreclosure?

A: No. The law says that an owner can charge a security deposit equal to two months’ rent plus first month’s rent. If the renter is 62 or older, an owner can only charge one month’s rent plus first month’s rent. For more information, go to: <http://ctlawhelp.org/tenants-rights-security-deposits>.

Q: What if I or someone who lives with me has a disability?

A: An owner cannot refuse to rent to you because you or someone who will live with you has a disability. In addition, an owner must make “reasonable accommodations” for people with disabilities to provide them equal access to housing. If a medical professional recommends something that is “against the rules” you can ask for a change or exception to that rule by requesting a reasonable accommodation. For example:

- Waiving a “no pet” policy because you need a service or companion animal;
- Giving you a first floor apartment or an assigned parking space because your arthritis makes it hard for you to walk; or
- Allowing you to have a live-in aide to help you with chores.

Landlords are also required to permit people with disabilities to make alterations to their homes as “reasonable modifications.” For example, an owner must allow a tenant who uses a wheelchair to install a ramp. But, unless the owner receives government funding, the tenant is generally responsible for the cost of the modification, and the modification must be done to code.

These are just a few of the many types of reasonable accommodations and modifications that can be requested. *Call the Connecticut Fair Housing Center* at (860) 247-4400 to learn more.

Q: What does illegal discrimination look like?

A: It could be statements like:

- “No kids.”
- “You must have a job to live here.”
- “No kids under six because there is lead paint in the apartment.”
- “I don’t rent to people who are disabled.”
- “Boys and girls cannot share a bedroom.”
- “Families with kids can’t live in this building.”
- An ad that reads, “Perfect for working adults.”

If an owner/agent says or does anything like this, *call the Connecticut Fair Housing Center* at (860) 247-4400.

Q: What behavior is illegal under the fair housing laws?

A: Illegal behavior includes:

- Refusing to rent based on race, national origin, or any of the protected groups bolded on the previous page;
- Having rules that only apply to people in the protected groups and no one else;
- Steering people based upon their membership in a protected group; and
- Advertising in a way that keeps people in the protected groups out.

Q: What should I do when looking for an apartment?

A: Here are five things you can do:

1. **Keep a log of where you call and visit.** When looking for an apartment, keep a log that includes the phone number you called, the date you called, the person you talked to, the address of the apartment, the information you receive, and what you discuss.
2. **Ask for an application.** Always ask for an application. Ask if the owner has anything in writing about who qualifies for an apartment. If the owner doesn’t use applications, ask what the next steps are for applying for an apartment.

3. **Never lie.** If you are asked about your credit, do not lie. Do not lie on the application about anything, big or small.
4. **Fill out the application completely.** If there is a question about which you're unsure, let the owner know you need some time to complete the application. Do not just leave the answer blank.
5. **Follow-up.** Once you have filled out an application, call the owner back to follow-up. If you are turned down, ask why.

Q: What should I do if I suspect discrimination?

A: Call the Connecticut Fair Housing Center at (860) 247-4400 immediately.

OTHER ALTERNATIVES

Q: What about companies that offer to buy my house and sell it back to me later at a discount? Or what about companies that offer to buy my house, rent it back to me, and let me buy it back over time?

A: Unfortunately, most of these offers are scams designed for the company to obtain your house at a discount while defrauding your lender. State banking law makes most of these scams illegal and provides civil penalties for violators. In July 2009 the U.S. Attorney's Office and the Federal Bureau of Investigation announced the formation of the Connecticut Mortgage Fraud Task Force to investigate and prosecute mortgage fraud cases and related financial crimes. The Task Force encourages you to report any suspected mortgage fraud activity by calling 203-333-3512 and requesting the Connecticut Mortgage Fraud Task Force, or by sending an email to ctmortgagefraud@ic.fbi.gov.

Q: I have been contacted by someone who offered to buy my house for cash at a significant discount and to negotiate with my lender for free. Is this a good deal?

A: No. Most of these companies are either trying to defraud your lender into thinking the property is worth far less than it actually is or they are hoping the lender will accept a low-ball offer. Typically, your lender does not care if the transaction is an "all cash" offer.

RESOURCES FOR HOMEOWNERS AT RISK OF FORECLOSURE

- The State of Connecticut Department of Banking’s toll-free Mortgage Foreclosure Assistance Hotline: **(877) 472-8313**.
- Connecticut Fair Housing Center’s manual “Representing Yourself in Foreclosure: A Guide for Connecticut Homeowners” via the Center’s website at www.ctfairhousing.org.
- HUD/CHFA-approved Housing Counselors – listed on pp. 37-38 of the Connecticut Fair Housing Center’s manual and through www.chfa.org.
- Connecticut Fair Housing Center’s free foreclosure prevention clinics. Information is available at www.ctfairhousing.org.
- Experienced local consumer attorneys and consumer bankruptcy attorneys: available via www.naca.net (National Association of Consumer Advocates), www.nacba.org (National Association of Consumer Bankruptcy Attorneys), www.ctbar.org (Connecticut Bar Association), or your county’s bar association.

This chart is for homeowners who have decided to explore the sale of their house. It lists some of the differences between selling your house and going through a foreclosure.

Again, you may have options that allow you to keep your house, such as a loan modification, or other options, such as a deed-in-lieu of foreclosure or bankruptcy, which may be appropriate to your situation. You should consult a housing counselor or an attorney.

	Conventional Sale	Short Sale	Foreclosure
Description	Your house is worth <u>more</u> than the amount owed on the mortgage. In other words, you have equity in your house. You and the buyer agree to the terms of the sale.	Your house is worth <u>less</u> than the amount owed on the mortgage. The lender must agree to the sale of house and approve all terms of the deal between you and the buyer.	Legal process which occurs when you do not make payments on the loan. The mortgaged property is sold by the lender to pay back your loan. You must leave the property.
Cash Position	You receive the net proceeds, if any, <u>after</u> the costs and fees to sell the house, and any unpaid loan balances and fees are paid.	Depending on the lender, and the program used to sell your home, you may receive money to help with moving costs. You should obtain advice about possible deficiency judgments or tax consequences of a short sale.	Your lender may offer you a “cash for keys” payment in exchange for you leaving the house in good condition. Owner should obtain advice about possible deficiency judgments. You may need to go to court to claim proceeds from a sale.
Real Estate Commission	You and the buyer negotiate who pays and how much the real estate agents are paid (typically a percentage of the sale price).	After approval by the lender, it is paid from the proceeds of sale.	N/A
Impact on Your Credit	The sale itself has no impact.	Because of how lenders report short sales to credit reporting agencies, a short sale has the same negative impact on your credit score as a foreclosure sale (though a future mortgage lender may be more willing to lend to you). In the next few years, it will be more difficult for you to obtain another loan, and a short sale may complicate your application for certain jobs or your ability to obtain car insurance.	Same as a short sale (see the box to the left).
Comments:	Success partly depends on the strength of the real estate market in your area. If available, this is the best option.	The process is complicated and may take 3 months or longer. This may be an appropriate option to avoid foreclosure, manage your move from your house, and obtain some help with moving expenses.	Typically, an uncontested foreclosure can take 3-4 months to complete. However, it depends on the court, your participation, the lender, and the lender’s attorney. This option is typically a last resort.