

# Short Sale after Filing Bankruptcy??

## Why Take on the Hassle???

Ah, you've just filed a bankruptcy and agreed to surrender that upside down money pit made out of concrete, studs, siding and maybe brick. But you just got a phone call from a "short sale" specialist wanting to sell your home and wanting you to list the property with them. Or maybe a real estate broker has suggested that she has a buyer lined up for the house. So ... let's try to short sell it. After all, you won't have to wait for the property to go through foreclosure and you won't have a foreclosure on your credit record.

Before you agree, consider the following:

### **A Short Sale Typically Does Not Help You!**

With a couple minor exceptions mentioned below, a short sale typically does not benefit you at all. It only burdens you further.

1. **Who Benefits?** Typically, the only winner in a short sale is the Realtor or "specialist" who will get a commission from the sale. You will not get ANY money out of it. The other winner is the mortgage company that you have just helped find a buyer for the house and saved them a lot of hassle in doing the foreclosure and then fixing up the property and finding a buyer at a later date. They should be paying you for the help you provide them with ... but they Won't! Instead, they'll make you feel like They are doing You a favor.
2. **You Are Already Off the Hook.** You've already gone through the heartache of filing a bankruptcy and you've already gotten your discharge from the mortgage debt. You are no longer personally liable for the balance due on the mortgage. When the house is eventually foreclosed the bank can't come after you for the deficiency and there is no further negative credit stigma because your debt has been discharged already. Don't buy the line that the short sale will look better on your credit than the foreclosure. IT DOESN'T! They each are treated the same by FHA and most conventional lenders. This is simply a line that Realtors are likely to use to suggest that they are doing you a big favor by short selling the home.
3. **It's an Unnecessary Headache.** By doing a short sale, you'll be taking on a lot of additional hassle (and typically for NOTHING in return). You'll need to keep the house in condition to show to prospective buyers. You'll need to put up with realtors showing your home while you're still living in it. You'll have to sign a contract of sale for the property and a slew of other documents where you may make warranties concerning the condition of the home and expose yourself to liability if there are defects that it is alleged that you failed to disclose. You'll have to wait on pins and needles while someone negotiates with the mortgage (and possibly a 2<sup>nd</sup> mortgage as well) and then attempt to resell the home when the bank takes four months to eventually decide to reject the initial contract. You'll have to open your home to the prospective buyer for appraisals and inspections. Then, who is supposed to make the repairs that are

disclosed by the inspection? Hopefully not you! Finally, you'll need to take time to attend a closing. ... And all of this to simply benefit a realtor and an ungrateful mortgage company. Then, remember that when it all falls through ... you will be the one that everyone is mad at for having wasted "their" time and effort?

4. **Closing Problems.** If despite all of the above you do decide to help out the Realtor and the mortgage company by doing a short sale, then you need to be sure that the Contract you signed doesn't obligate you to pay anything at the time of closing. **BE CAREFUL AND READ THE CONTRACT CLOSELY!** The contract may obligate you to pay some of the closing costs and some of the prorated utilities, taxes, HOA dues and other expenses. Why should you pay ANYTHING without getting ANY benefit?? Then, make sure that the Realtor, the Contract and the mortgage company are in agreement that **YOU DO NOT OWE ANYTHING FURTHER AND WILL NOT PROVIDE ANY FUNDS AT THE CLOSING.** There have been many times when the Seller (You) show up at the closing and the mortgage company has a Promissory Note for you to sign indicating that you continue to owe the balance of the mortgage that is not being paid off by the short sale. But your already discharged that debt! Why would you sign a Promissory Note re-obligating yourself for the debt all over again? Finally, when the deal falls apart at the closing because you refuse to sign the Note (with the Buyer, Realtor and mortgage company staring at you across a table), everyone (especially those such as the Realtor – who has now lost a commission after lots of work) is angry at you and gives you these life threatening looks (if not actual verbal threats). Think about it.

5. **Occupancy of the Home.** If you short sell, you'll be obligated to be moved out of the home on the date that the closing occurs. If you are not out by this time, you may be subjected to fines and penalties. If you don't short sale, the mortgage company has to file and complete a foreclosure ... often taking several months ... before you need to vacate the property. In many cases, mortgage companies are taking their time doing foreclosures and you may be still in the property (without paying any mortgage or rent) longer than you might have thought. This gives you some time to save up for the coming move.

### **When a Short Sale May be Helpful.**

There are few unusual circumstances where a short sale may be helpful.

A. **Sale to Someone You Want to Get the Home.** You may want to go through the hassle of the short sale if the home is being sold to someone who you want to see get the home. However, note that most banks will refuse a short sale if it is being sold to a friend or relative of you (the current owner of the home) and you will be signing documents that the buyer at the short sale will not be selling the home back to you.

B. **You have an Expensive Homeowner's Association.** Under the U.S. Bankruptcy Code, you still owe the monthly homeowner's association dues that arise after the bankruptcy case is filed for as long as you are the titled owner of the home. That means that all HOA fees that arise from the date of the bankruptcy filing until the day the condo leaves your name, the meter is running. If the bank is taking its time doing its foreclosure, you will continue to owe all of the monthly HOA dues (and possible special assessments that are levied) until the date the

foreclosure sale is completed AND the home (legal title) is taken out of your name. Here, a short sale might allow the home to be sold quicker and your obligation for future HOA dues may end sooner. But this is speculative. Who knows if you can short sale the home quicker or if the bank will complete a foreclosure sooner? You might be better to simply stay in the house while it is being foreclosed and continue to pay the HOA dues. After all, in most cases this is a very small “rent” to pay to stay in the home.

Just some thoughts to consider when the Realtor comes calling!