



Get The Bank Off Your Back

Sale Short!

When Your Debt Exceeds Your Home Value

Part I : One option to consider is called a short pay off.

- **What is a short pay off?**

Imagine your home is worth \$200,000, but you owe \$220,000 on it. If you were to sell it in the open market at \$200,000, you might net \$184,000, or \$36,000 less than what you need to pay off the loan. A short pay off is where your lender will forgive a portion or all of the short amount.

- **What lender would just write off that type of money?**

Just about all of them will, with justification. Justification might mean a substantial loss of income that would prevent you from paying on the mortgage, therefore being forced in a position to sell the home. Attempting to sell short so you can upgrade to a larger property is not justification. In addition, lack of cash reserves will also serve as justification. Don't expect to place your home on the market at 75% of market value and expect your lender to jump on any offers.

- **How will this affect my credit?**

Depending on how you negotiate the transaction, it could go on your credit report as, "settled," or, "paid," or "short payoff." It depends on the lender and how well you can negotiate.

- **Are some lenders harder to deal with than others?**

Yes. If you have a Freddie Mac loan, Freddie Mac will probably want you to contribute to the short sale, get your agent to reduce brokerage fees, and get the buyer to take the property with the termites. Some lenders will just ignore you.

- **What will my lender require from me in order to consider participating in a short sale?**

Packaging is very important. When you place the property on the market (go with an agent), your agent should send the lender the following:

1. Your past 2 years tax returns
2. Letter of hardship
3. Complete loan application
4. Preliminary title report
5. Listing contract
6. Copy of MLS
7. A marketing plan for your home
8. A broker price opinion (like an appraisal).

When you have an offer, all of the above should be enclosed with the offer (except for the marketing plan) plus the purchase agreement, and a good faith estimate as to what the lender will net after the close of escrow.

- **Why should I list with an agent? It seems if I can save the brokerage fee that the lender would net more and be more inclined to accept any offers that come in.**

You are correct. If your loan is current, you may be able to get a qualified buyer yourself. If your loan is delinquent, or in default, you don't have time to play around getting your home sold. You need as much exposure as possible.

- **What happens if my lender says "No," and I'm in foreclosure?**

This is one situation where "No," means, "Maybe, you just haven't convinced me that participating in a short sale is to my benefit." Keep hammering your lender, and do not take your home off the market until your lender agrees to a sales price and the prospective buyer has formal loan approval.

- **Should I try to hide any assets in order for the lender to consider participating?**

Most assets are traceable, except for personal collections (guns, coins, etc.). If you own another property, it will show up on your credit report. Your lender may back track to your original loan application to see if there are any other assets. No, don't hide assets. If your lender discovers you're not dealing honestly, they'll never co-operate.

- **Can any real estate agent or attorney handle a short sale?**

A lot will say they can. There's no real way to tell if they can. If your home goes into foreclosure, you'll get flooded with a ton of mail. There's a good bet that most of the mail is from people who have helped out previously in these situations. One way to tell is if the person you're dealing with will ask you for the information outlined above. They'll know these are the requirements.

- **Question: I believe that the loan is secured by the property, so the bank cannot go after your assets to make you pay the remaining balance of the loan. The bank will try and guilt you into doing so, ignore them. If they refused, threaten to foreclose and be ready for the bank to do so. At that point, they will usually negotiate.**

Once you refinance the property, take out an equity line of credit, obtain a

consumer loan that is secured by the property, this rule no longer applies. The lender has the right to go after you in a deficiency judgment, even if a senior lien holder takes the property back and a junior loses his security instrument.

- **How can I assure a non-purchase money lender won't go after me after the short sale?**

When any lender agrees to a short pay, they are relinquishing their right to pursue the borrower in the future.

- **Are there any tax ramifications?**

Yes. According to IRS Section 108 a-e, there are debt/income interpretations that may come into play. The IRS may view the deficiency on a non-purchase money loan as income and demand you to pay taxes on that amount. If the short pay transaction resulted in a net loss of \$20,000 to the lender, your tax liability could be around \$6,350.

- **So why would I want to do a short sale only to owe the IRS money?**

To limit your tax liability. In some cases (not Citicorp, Fannie Mae, or Freddie Mac) the senior lien holder will allow for some funds to be allocated to the juniors. If you allow the property to go into foreclosure, and the juniors lose 100% of their money, you can get taxed on the full amount. You should really contact a CPA concerning this part of the Tax Code.

- **I have an FHA loan. They won't do a short pay. Any suggestions?**

Any feedback from other states would be appreciated. There are certain regions where FHA will not participate in short sales. One region is the state of California. If you are in foreclosure on an FHA loan in California, you may want to approach HUD to see if they will consider a lower interest rate, or some type of repayment schedule until you get back on your feet.

SHORT SALES

Part II

If you purchased your property late 1980s through early 1990s, there is a chance that the equity in your home has not increased -- worse yet, it may have fallen. In areas hardest hit by poor market conditions over the past few years, property values have decreased up to 30%.

In some California communities lenders have taken back more homes through the foreclosure process than they have in over a decade. The economy, corporate downsizing, defense cutbacks and slow housing sales in the recent past all combined to create a large group of homeowners who lost a significant

portion of income. These owners do not qualify for refinancing, cannot keep up with current payments, or have lost so much equity in their home that the loan amount is equal -- or nearly so -- to the price the home would bring on the current market.

At the same time, lenders are under pressure from regulators to reduce the amount of homes they actually own, called REO (real estate owned) or non-performing real estate portfolios.

When a lender pursues a foreclosure full-term and obtains ownership to a property, they often net much less than the original appraised value; foreclosure properties sometimes sell nearly 20% below the market value of comparable homes. The more properties lenders acquire through the foreclosure process and dump on the real estate market at prices below current value, the worse the market becomes -- a downward spiral.

At this point, some lenders are increasingly willing to bend the rules and bargain with homeowners and are more inclined to cut a deal for fear of losing even more money through the time-consuming foreclosure process.

Short payoffs, or short sales, are the latest catch word in real estate -- more prevalent in today's market and a significant trend of the 90's. A short payoff is termed as "any debt forgiveness granted to a homeowner by a lender." Often a short sale comes in the form of a bank allowing a homeowner to sell a home for less than what is owed against the property.

What does this mean to you?

Many homeowners in today's market do not think they have a choice about whether to stay or sell! If your equity has fallen and your calculations show no room for profit, you may think you have no choice but to stay in your home. In fact, an agent may have told you there was nothing he or she could do to help. The opposite is true -- there are qualified professionals who have implemented programs specifically designed to assist you in negotiating short payoff arrangements with your lender.

We can help owners who are in default or on the brink, or have little or no equity in their home, yet need to sell and walk away with credit intact. The process of negotiating with a lender on a market value sale begins by offering the property for sale at a price which is less than or close to what is owed against it. The lending institution is generally only interested in negotiating once a qualified offer to purchase the home is obtained, so contacting the lender beforehand is sometimes pointless.

Sounds easy, but it can be complicated and difficult. A real estate agent such as myself, experienced in short sales, can guide you through the paperwork with a

minimum of frustration, assist you in understanding the tax consequences of selling at a loss and help you complete the sale without a cloud on your credit.

Think your options are limited?

A "short payoff" occurs when your lender agrees to accept less than the total owed in exchange for a release of the mortgage as a lien on the property. Other terms for a short payoff include short sale, pre-foreclosure sale, or pre-sale.

As stated above, you own your home during the foreclosure case. You can sell it at any time before a foreclosure sale. This may be possible even if you owe more on your mortgage than the house is worth.

A "short payoff" occurs when your lender agrees to accept less than the total owed in exchange for a release of the mortgage as a lien on the property. Other terms for a short payoff include short sale, pre-foreclosure sale, or pre-sale.

According to HUD, short payoffs account for approximately 50% of all workouts on conventional loans. This option is one of the oldest and most frequently used, and it is the one that lenders are most familiar with. Since they are the most familiar with it, it is the option they prefer more than any other.

You must determine how much time you have to sell your home. Refer to the timeline in The Foreclosure Process for this purpose.

If you decide to sell your home to avoid foreclosure, the way to handle it depends on whether or not you have equity in your home. You have equity in your home if there will be enough money to pay off your mortgage in full after all the expenses are paid when you sell. If not, then you must apply for a short payoff.

If you have equity in your home, you can sell it just as you would if you were not in foreclosure. The only difference is that you must order the loan payoff statement from the foreclosure attorney or trustee instead of getting it from your lender. Your only concern should be closing the sale and paying off the loan before the end of the redemption period.

Homes with no Equity:

You must apply for a short payoff if the sale of your house will not leave enough money to pay off all the mortgages and other liens on your property. If this is the case, call your lender immediately and get a financial package from them to make your request for a short payoff. The sooner you do this, the sooner the lender can complete its review of your short payoff request. Different lenders have different packages for different workout options. Make sure that you

request and receive the package to apply for a short payoff

The longer you wait to get the package, complete it and return it to your lender, the longer it will take to get the short payoff approved. The longer it takes to get the short payoff approved, the greater the chance that the buyer for your house will get impatient and void the contract in order to buy another house.

The purpose of the financial package is basically: 1) to make sure that the reason for the default was unavoidable, involuntary or beyond your control, 2) to make sure that you have experienced financial hardship, 3) to make sure that you do not earn enough money now to pay the deficiency in installments over time, and 4) to make sure that you do not have money to pay some or all of the deficiency in a lump sum. Here are some important points to remember about selling your house if a short - payoff is required:

Carefully choose the people who will represent you in the sale of your home. Many attorneys and realtors are not familiar with the short sale process. It is important to use a attorney and a realtor with experience in foreclosure and short sale procedures. The listing agreement that you sign with your realtor must provide:

"The seller's obligation to perform on this contract is subject to the approval of the lien holders on the property. The Seller may cancel this agreement prior to the ending date of the listing period without advance notice to the broker and without payment of a commission or any other consideration, if the seller tenders a Deed-in-Lieu of Foreclosure."

It is very important for you to write this language on the listing agreement. If you do not, you may be liable to pay a realtor commission even if you do not sell your house! The contract that you sign to sell the property absolutely must provide:

"This contract is contingent upon acceptance by the seller's lien holders."

If your lender does not approve the contract, this language will allow you to back out. If the contract does not have this language and your lender does not approve a short -payoff you must either bring money to the closing to make up the shortage or your buyer can sue you for breach of contract! Each case is different. Your lender's decision to approve or deny the short-payoff will depend on many factors.

FHA-Insured Mortgages:

HUD has clear guidelines for reviewing short -payoff requests. As long as you

meet the guidelines, your request will be approved. After your lender receives all of the written documentation from you, they will have the house appraised. The basic guidelines for approval are:

- Your loan must be 2 months behind
- You must live in the property
- The reason for the default on the mortgage must be unavoidable, involuntary or beyond your control
- The house must appraise for at least 70% of the unpaid principal balance
- The contract price must be at least 95% of HUD's appraised value
- The net amount to your lender after all closing expenses are paid must be at least 87% of HUD's appraised value

VA Guaranteed Mortgages:

Unlike HUD, the VA has no set guidelines for reviewing short payoff requests. Rather, they conduct their own analysis to determine if they would lose less money by completing the foreclosure or allowing you to sell the house.

Conventional Mortgages:

There are no guidelines available for reviewing short payoff requests on conventional mortgages. Conventional loans usually have an investor such as [Fannie Mae](#) or [Freddie Mac](#) and private mortgage insurance. Your short payoff request must be approved by all the parties to your mortgage: your lender, the investor and the private mortgage insurer. This process takes time, so prepare the buyers to wait about 60 days from the contract date until closing.

Short payoff requests are an art form. Each one is different and the parties to the contract must bring the following qualities to the transaction: patience, persistence, knowledge, experience and creativity.

The more liens on the property, the more difficult it is to complete the short payoff.

Most Chapter 13 bankruptcies fail! If you file a Chapter 7 bankruptcy, your lender will probably still be able to foreclose your home.

In some cases filing bankruptcy may be your last and only hope of avoiding foreclosure; however, it is unlikely that a bankruptcy by itself will be your ultimate remedy. It is best used to your advantage in combination with other options such as HUD's Partial Claim Program, or to delay foreclosure long enough for you to sell your home.

Most Chapter 13 bankruptcies fail! If you file a Chapter 7 bankruptcy, your

lender will probably still be able to foreclosure your home.

There are certain limited situations in which a bankruptcy might be necessary or helpful, but before you throw good money after bad and do more unnecessary damage to your credit rating, get informed and understand what a bankruptcy can and cannot do for you. Here are the basic points you need to know:

- For most people a bankruptcy should be the last option, not the first
- A bankruptcy automatically stops the foreclosure case the minute it is filed.
- You can file a bankruptcy at any time before a foreclosure sale. Only use a bankruptcy attorney that has been recommended to you. Bad bankruptcy advice can cost you more than just the money you paid to get it.
- A Chapter 7 is a straight bankruptcy. It will wipe out your debt including your personal liability on the Note only. More than likely, your mortgage company will still be able to foreclosure the mortgage. After a Chapter 7, your lender cannot obtain a deficiency judgment against you for any amount owed after a foreclosure sale or a short payoff. After receiving a discharge in a Chapter 7 bankruptcy, you must wait 6 years before you can file another one.
- A Chapter 13 is a type of forced repayment plan. Use this only after your lender refuses to give you a repayment plan. On a repayment plan, you will need ½ of the arrearage as a down payment and make 1 ½ payments a month. In a Chapter 13 bankruptcy, there is no down payment but you must pay both your regular monthly mortgage payment and a bankruptcy payment to the trustee. Lenders will normally only agree to a repayment plan of 1 year or less while a Chapter 13 bankruptcy can last 2 or 3 years.
- You can file multiple Chapter 13 bankruptcies unless barred by court order.
- You may be able to convert a Chapter 13 bankruptcy into a Chapter 7.
- You can file a Chapter 13 bankruptcy after receiving a discharge in a Chapter 7 case.

General Options to Avoid

Foreclosure

**“A performing loan is better than a non-performing loan.”
Jim Sorrentino, Dept. of Housing and Urban Development**

You have a variety of options to avoid foreclosure by either bringing your loan current or paying it off.

1. Reinstatement (“bringing your loan current”): Reinstatement occurs when the loan is brought current by paying the total amount past due. You have an absolute right to fully reinstate your loan within 90 days of being served with a Notice of Default.

Lenders will normally accept full reinstatement at any time before a foreclosure sale, even though they are [not required to by law](#).

Call your lender or the trustee to obtain the amount to reinstate.

The total amount paid must include all back payments, late charges, inspection fees, any advances and attorneys or trustee costs and fees. The standard deed of trust provides that you must pay all of the lenders fees and costs.

2. Repayment Plan: A repayment plan is an agreement to bring the mortgage current over time. The terms are generally a payment of ½ of the arrearage as a down payment and 1 ½ payments a month until the loan is current.

Always attempt to negotiate a repayment plan before filing a Chapter 13 bankruptcy. You can always file bankruptcy after a failed repayment plan but your lender will not give you a repayment plan after a failed bankruptcy. If the written repayment plan that your lender asks you to sign provides that you waive any defenses that you have to the foreclosure, get advice before you sign it. If the repayment plan fails, your lender gets to keep the money you paid and proceed with the foreclosure. Negotiate to have the foreclosure case dismissed during the repayment plan. This may help you obtain a refinance.

3. Redemption: Redemption is the act of paying off your loan in full. You have the right to pay off the loan anytime during the redemption period and the redemption expires 10 days prior to a foreclosure sale. [\[civil code reference\]](#) Redemption usually occurs either through a sale or a refinance of the property.

4. Refinance: It may be possible for you to avoid foreclosure by refinancing your mortgage, but be realistic about your chances for a refinance and your ability to pay on the new loan before you pay money to apply for one.

Remember these points about refinances before you pay any money to a mortgage broker:

- You must have about 30% to 40% equity in your home to refinance. If not, you will not be able to refinance.
- You must be employed to refinance. If not, you will not be able to refinance.
- In the mortgage business, risk equals rate. The worse your credit rating, the greater the risk you are, and, therefore, the higher the interest rate on the new loan. In addition, you will pay high loan costs to get the new mortgage.
- If you are able to make steady payments on the refinanced loan, you may be able to refinance again within a short period (6 to 12 months) to a lower interest rate (although you will have to pay more loan costs).

5. **Loan Modification:** A loan modification refers to changing the terms of your loan. These changes may include extending the term of the mortgage, adding the delinquency to the mortgage amount or reducing or fixing your interest rate. Loan modifications are rare.

6. **Bankruptcy:** Filing bankruptcy will stop the foreclosure case. A Chapter 7 bankruptcy will eliminate your personal liability on your debts including the Note; however, your lender can still foreclose the mortgage. A Chapter 13 bankruptcy is a type of forced repayment plan. A bankruptcy can be filed anytime before a foreclosure sale. For most people, this should be the last option, not the first!

7. **Deed-in-Lieu of Foreclosure:** A deed-in-lieu of foreclosure is a surrendering of the property to your lender in full satisfaction of the amount owed. By accepting the deed, the lender releases you from personal liability on the loan. Here are some other points about Deeds-in-Lieu of Foreclosure:

- Lenders will not accept a deed-in-lieu of foreclosure if there are other liens on the property.
- You will need to move out of the house shortly after you sign the deed-in-lieu of foreclosure.

**"Utilizing alternatives to foreclosure is a positive action
which benefits lenders homeowners and FHA."
HUD Mortgagee Letter 96-25**

In addition to the general options outlined, there are a number of other programs available to you if your mortgage is FHA-insured. To qualify for any of these programs, the following criteria must be

met:

- You must live in the property;
- The reason for the default must have been unavoidable, involuntary or beyond your control. Examples include loss of a spouse, loss of a job, divorce or an extended illness;
- Usually the reason for the default must be over, and you must be able once again to make your regular monthly mortgage payment.

To apply for any of these programs, you must call your lender and request a HUD financial package. Be specific about the type of workout that you are applying for. Be prepared to send your mortgage company the following:

- The completed package with financial information about each person that is on the mortgage
- A financial statement showing income and expenses
- A hardship letter explaining the reason for the default
- 2 years' tax returns
- 2 months' bank statements
- 2 months of pay stubs or other proof of current income

The current alternatives to foreclosure offered by HUD are as follows:

1. **Partial Claim Payment:** This program is designed for homeowners who have suffered a temporary period of financial hardship that is now over. You must be able to once again make your regular monthly mortgage payment. If so, under this program, HUD pays your lender the amount owed to bring your loan current. You then begin making your regular monthly mortgage payment. HUD records another mortgage against the property for the amount that they paid your lender. You do not have to pay the Partial Claim mortgage until ownership of the house changes hands or the first mortgage is paid. Incentive to lender = \$250.

Here are some other points about the Partial Claim Program:

- Your loan must be between 4 and 12 months behind and not in foreclosure. If you are in foreclosure, offer to pay the attorneys' costs and fees.
- Your income-to-debt ratio must be between 29% and 50%. In other words, if the financial hardship is not over, you will not qualify for this program.

- The amount of the Partial Claim mortgage cannot be more than 12 monthly payments.
- There is no interest on the Partial Claim mortgage.
- You can apply for the Partial Claim Program even if you are in a Chapter 13 bankruptcy.

2. Special Forbearance: A special forbearance involves changing your monthly payment. You can be considered for it if the default was caused by a involuntary reduction in income or an increase in living expenses and there is a reasonable chance that you can bring the loan current under the plan. Incentive pay from HUD = \$100.

Here are some other points about the Special Forbearance Program:

- Your loan must be between 4 and 7 months behind.
- The special forbearance usually involves a reduction or suspension in the amount of your monthly payment.
- There is no limit on the length of the special forbearance but you must start making your full monthly payment again within 18 months of the default.
- The special forbearance must be in writing.

3. Streamline Refinance: This program allows your lender to refinance your loan if it is no more than 2 months delinquent at the time of the refinance. Your lender makes 1 monthly payment, then the balance owed, including closing costs, is added to the new loan amount. What is streamlined about the process is the application and loan approval, since your lender already has much of the information in your file to evaluate this option. A streamline refinance can possibly lower your interest rate and reduce your monthly mortgage payment. It should be considered after a special forbearance and before a mortgage modification.

4. Mortgage Modifications: In the past, certain regulations made loan modifications on FHA-insured loans a rarity. As of July 1, 1996 the rules were relaxed, which now allows for greater use of this tool. Although a mortgage may be modified in many ways, the most common are: 1) a reduction of the interest rate or changing an adjustable rate to a fixed rate, or 2) an extension of the term of the mortgage or 3) adding the arrearage to the principal balance. Incentive to lender = \$500.

Other points about the Mortgage Modification program:

- The new unpaid principal balance may be more than the

old unpaid principal balance.

- The new unpaid principal balance can only include the amount of the unpaid monthly payments. You will have to pay any advances by your lender, such as the foreclosure costs and fees.

5. Pre-Foreclosure Sale: If you meet certain criteria, HUD will allow you to sell your home even if more is owed on the loan than the house is worth. To qualify, the appraised value of the house must be at least 70% of the unpaid principal balance, you must sell the house for at least 95% of the appraised value and HUD must receive at least 87% of the appraised value to pay off the loan. Refer to Chapter Three for more information on Pre-Foreclosure Sales. Incentive to lender = \$1,000.

6. Deed-in-Lieu of Foreclosure: If none of the other programs fit, and only with the lender's agreement. Incentive to lender = \$500.



[Back](#)



FEEDBACK!



PRINT THIS!



E-MAIL THIS!



If Your Buying or Selling Let The Gale Team Serve You !

Thank You For Taking the Time To View Our Site

Marty & Laurie and The Gale Team



801-205-3500 Toll Free **877-898-9502**

[Home](#) | [Buyers](#) | [Sellers](#) | [Contact us](#) | [Privacy Policy](#) | [Testimonials](#)

RE/MAX Metro - Salt Lake City, Utah, USA. 801-205-3500 - Toll Free 877-898-9502 - fax 801-

277-3510