

(Insert Office name)

## SHORT SALE ADVISORY

Property Address \_\_\_\_\_

Sellers facing mortgage difficulties have several options including a loan Modification, short sale, foreclosure, deed in lieu of foreclosure and bankruptcy. Each seller's situation is different. The Seller's decision as to which of these options are chosen may affect the Seller's taxes, credit rating, and/or future options. (Insert office name) and its real estate broker and sales associates (collectively referred to as "Agent") cannot and will not provide tax, credit and/or legal advice regarding these possible options, or how any of these issues may affect any sale of the Property. Because of these important issues, **prior to proceeding with a short sale, Sellers are strongly urged to consult with a Certified Public Accountant, credit consultant, and/or an attorney specializing in real property, taxation and/or bankruptcy issues.**

Seller and Buyer acknowledge and agree that Agent has advised Seller and Buyer that the sale of the Property could result in a "short sale". A short sale means that there is insufficient equity in the Property to pay off all of the liens, including deeds of trust, judgments, unpaid taxes and any other debts that have been recorded against the Property and/or the closing costs, including real estate commissions. Therefore, the Seller's Lender(s) must agree to take less money than they are legally entitled to receive so as to enable the Seller to sell the Property to the Buyer for the terms agreed to in the Purchase Contract.

Seller and Buyer acknowledge and agree that as part of the short sale approval process the Lender(s) will issue a letter or other document detailing the terms and conditions upon which the Lender(s) will agree to a short sale ("Term Sheet"). All parties **must** adhere to the Term Sheet. A Seller is only entitled to the Lender-approved if ALL of the terms and conditions required by the Lender(s) are fully met. There is potential liability for any party who tries to circumvent or "work around" those terms and conditions either through escrow or outside of escrow. All payments to be made by any party to anyone as part of the Buyer's acquisition of the Property must be fully disclosed to all Lenders and approved by all Lenders.

There may be significant legal and/or tax ramifications to the Seller as the result of a short sale. For example, the Term Sheet may: (1) Require that the Seller sign a new note, and possibly even record a Deed of Trust against other property owned by the Seller; (2) State that the Seller remains liable for any amount forgiven by the Lender(s) as a result of the short sale; (3) State that the Lender(s) reserve their right to hold the Seller liable for that amount in the future; or (4) Be silent as to future Seller liability for that amount. As such, Seller should not even consider approving the Lender's Term Sheet and/or proceeding with a short sale without first reviewing their legal and financial status with appropriate professionals, including but not limited to attorneys who specialize in bankruptcy issues and financial advisors who understand the tax implications of reducing the Seller's debt as part of a short sale.

Seller and Buyer acknowledge and agree that the Seller's Lender(s) are not obligated to approve the short sale and they are not obligated to provide any type of response regarding the short sale during any set period of time.

If the Seller has ceased making mortgage payments, the Lender(s) may file a Notice of Default and proceed with a foreclosure action notwithstanding the fact that there are ongoing short sale negotiations. **Negotiating a short sale does not stop the foreclosure process.** Seller and Buyer understand and acknowledge that the Agent cannot and does not guarantee that a short sale can be obtained from the

Lender(s) and/or that the foreclosure process can or will be stopped. If a Notice of Default has been filed, Seller should immediately consult with a real estate and/or bankruptcy attorney.

Seller and Buyer acknowledge and agree that they have been advised that the sale may not close unless all of the lien holders agree to take the amount that is offered to them (as specified by the Term Sheet) which may be considerably less than the amount that is owed to them. Seller and Buyer acknowledge further understand that escrow could be delayed for a substantial period of time as a result of resolving the various issues involved in a short sale. Therefore, Seller and Buyer acknowledge and agree that Agent cannot and does not guarantee that escrow will actually close or when it will close, and that Agent has not made and representations, express or implied, in that regard.

Seller and Buyer acknowledge and agree that they had a duty to exercise reasonable care to protect their own interest by conducting their own **investigation and verification** of all information that has been or will be provided to them regarding the short sale process and/or the Property. Seller and Buyer further acknowledge and agree that Agent cannot and will not provide any tax or legal advice regarding the legal or practical effect of a short sale transaction or a possible foreclosure. Seller and Buyer further acknowledge and agree that it is their responsibility to consult with their own legal and tax professionals regarding the effects of the short sale.

Seller and Buyer acknowledge and agree that the Purchase and Sale Agreement provides that the Seller will deliver a current preliminary title report to the Buyer within a specified number of days of final acceptance of the Agreement. This preliminary title report will disclose to the Buyer during escrow monetary liens and encumbrances of record on the property, so that the Buyer can determine, before closing escrow, whether there are any title defect that are unacceptable to the Buyer.

When the existing monetary liens and encumbrances exceeds the sale price of the property and the lenders will not or can not reduce the balance owed on the monetary liens or encumbrances, the Buyer is assuming a substantial risk and may incur damages or harm if the Seller cannot deliver clear and marketable title to the subject property by the close of escrow.

**BY SIGNING BELOW, THE UNDERSIGNED ACKNOWLEDGE AND AGREE THAT THEY HAVE RECEIVED, READ AND UNDERSTAND THE ADVICE IN THIS TWO PAGE ADVISORY.**

Dated: \_\_\_\_\_ Seller \_\_\_\_\_

Dated: \_\_\_\_\_ Seller \_\_\_\_\_

Dated: \_\_\_\_\_ Buyer \_\_\_\_\_

Dated: \_\_\_\_\_ Buyer \_\_\_\_\_

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