

The Short Sale Process - Explained

In a short sale, the Purchase Contract is contingent upon lender approval. The lender does NOT own the property, but because the lender will not be paid in full from the sale, the lender must approve the sale and agree to take less than the entire balance owed on the mortgage.

Once the Seller accepts an offer, it is a binding agreement by the Seller to convey the property to the Buyer. Escrow is also opened at that time. However, the sale is subject to a contingency - approval by the lender. As a result, the Seller must submit the Contract to the lender for approval. If there is a second lender that will not be paid in full, approval from that lender will also be required.

If multiple offers come in at the same time, the Seller may make multiple counteroffers in an effort to obtain the highest offer. In some instances, the Seller may accept a backup offer. A backup offer is usually not sent to the lender unless the offer in first position falls through.

Under the AAR Short Sale Addendum, the Buyer doesn't deposit the Earnest Money until the lender approves the sale, and the Buyer can cancel at anytime prior to that approval. Some sellers are changing the terms of the Short Sale Addendum to require either immediate deposit, or a period of time (such as 90 days) that the Earnest Money is nonrefundable, or both. Obviously this is good for the Seller and bad for the Buyer.

It takes some time for the lender to approve or deny a short sale. The length of the wait depends on a number of factors, including who the lender is, whether there are more than one lender, the strength of the offer, location of the lender and the property, etc. Buyers must be able to wait for the approval(s), so a short sale might not be the best choice with a Buyer that needs a fixed closing date. But the Buyer may (see the above regarding the impact on Earnest Money) have the ability to cancel the sale without penalty prior to receipt of approval if the Buyer does not want to wait any longer.

If the lender approves the offer, the Short Sale Addendum to the Contract requires the Seller to inform the Buyer by providing a document called the Agreement Notice. Receipt of the Agreement Notice is the same as "Acceptance" under the Contract. As a result, the Buyer usually deposits the earnest money into escrow at this time. In addition, the time periods under the Contract start from this date. For example, the inspection period would start, so the Buyer would start the inspection process. Closing would occur 30 days later, or as specified in the Short Sale Addendum.

If the contract is not approved by the lender, the Buyer has the right to cancel the contract. The Seller might counter the Buyer on price or terms, but the Buyer can still cancel if unwilling or unable to change the Contract price or terms,. In order to rescind the offer (and receive a refund of any earnest money), the Buyer will have to put the cancellation in writing and notify both listing agent and the escrow agent.

If the property is scheduled for Trustee Sale, the lender may postpone the date of the Trustee Sale in order to allow time for the Short Sale to be processed. There is no guaranty that the lender will postpone the sale as needed.

We keep you updated on the Short Sale process. Some weeks there may be little to report depending on where we are in the process.