



**Main Office:** 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814  
**Diamond Head Office:** 614 Kapahulu Avenue, Suite 101, Honolulu, HI 96815

## SHORT SALES

### WHAT IS A "SHORT" SALE?

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A short sale may occur when a property owner cannot afford to make his or her monthly mortgage payments and market conditions do not support a sales price that covers all existing liens. In a short sale, the owner asks a mortgage lender to accept a payoff that is less than or "short" of the full amount of the loan, in exchange for a release of the mortgage. The standard Hawaii Association of Realtors Short Sale Addenda to the Purchase Contract and to the Exclusive Right to Sell Listing Agreement (05/09) describes a "short sale" as a sale where:

- The liens against a property combined with the associated costs [of closing] will exceed the purchase price of the property; and
- The seller will be asking the lien holder for a release of the lien on the subject property without a complete payoff.

The standard Short Sale Addendum to the purchase contract states that the sale is contingent on the Seller's receipt of written approval of a short sale from all lien holders by a specific date and the seller's acceptance of the terms of such approval.

### CLOSING CHALLENGES

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In escrow, we see many short sales close and some that do not. Many of the challenges that arise can be addressed or foreseen with realistic information and diligence. The following are some items that may cause delays if not planned for in advance:

- Less than complete documentation for approval - lenders have specific lists of items to review before approving a short sale.
- Typically no cash or monetary benefit to the seller (except under some federal programs where a small amount may be received) - lenders may not allow payment of any unsecured liens and frequently deny payment of certain seller costs out of seller's proceeds.
- Requests by the lenders that the owner accept continuing liability for debt - lenders sometimes require that the seller sign a note for the amount.
- HARPTA or FIRPTA withholding - short sale lenders often do not allow HARPTA or FIRPTA withholding to be deducted from their proceeds. State approval for a waiver of withholding must be obtained prior to closing.
- Ongoing foreclosures - sometimes a foreclosure may proceed while a short sale is being negotiated so it is important to keep all parties notified.



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