



# Short Sales Vs. Foreclosure



short  
sales



# Short Sale definition



- A sale of a house in which the proceeds fall short of what the owner still owes on the mortgage. Many lenders will agree to accept the proceeds of a short sale and forgive the rest of what is owed on the mortgage when the owner cannot make the mortgage payments. By accepting a short sale, the lender can avoid a lengthy and costly foreclosure, and the owner is able to pay off the loan for less than what he owes.

# Short Sale Process



- Work Out Package submitted to lender by seller
- Offer submitted
- Counter offer response
- Both parties sign a contract
- 5 day attorney review
- Pre-HUD prepared to submit to lender with contract
- Waiting period
- Negotiator assigned/ Appraisal ordered
- Bank may counteroffer
- Final approval given
- Buyer moves forward with financing and purchases property
- **THIS PROCESS CAN TAKE UP TO 16 WEEKS**

# Foreclosure



- **Foreclosure** is the legal and professional proceeding in which a mortgagee, or other lien holder, usually a lender, obtains a court ordered termination of a mortgagor's equitable right of redemption. Usually a lender obtains a security interest from a borrower who mortgages or pledges an asset like a house to secure the loan. If the borrower defaults and the lender tries to repossess the property, courts of equity can grant the borrower the equitable right of redemption if the borrower repays the debt. While this equitable right exists, the lender cannot be sure that it can successfully repossess the property, thus the lender seeks to *foreclose* the equitable right of redemption. Other lien holders can also foreclose the owner's right of redemption for other debts, such as for overdue taxes, unpaid contractors' bills or overdue homeowners' association dues or assessments.

# Judicial Vs. Non-Judicial Foreclosure



- Each state in the U.S. handles its real estate foreclosures differently, it's important to understand those differences and know your specific state's procedures. The terms used and timeframes vary greatly from state to state, but the following information provides a general overview of the different processes and considerations.

- **Judicial Foreclosures**

Judicial foreclosures are processed through the courts, beginning with the lender filing a complaint and recording a notice of Lis Pendens. The complaint will state what the debt is, and why the default should allow the lender to foreclose and take the property given as security for the loan. The homeowner will be served notice of the complaint, either by mailing, direct service, or publication of the notice, and will have the opportunity to be heard before the court. If the court finds the debt valid, and in default, it will issue a judgment for the total amount owed, including the costs of the foreclosure process. After the judgment has been entered, a writ will be issued by the court authorizing a sheriff's sale. The sheriff's sale is an auction, open to anyone, and is held in a public place, which can range from in front of the courthouse steps, to in front of the property being auctioned. Sheriff's sales will require either cash to be paid at the time of sale, or a substantial deposit, with the balance paid from later that same day up to 30 days after the sale. Check your local procedures carefully. At the end of the auction, the highest bidder will be the owner of the property, subject to the court's confirmation of the sale. After the court has confirmed the sale, a sheriff's deed will be prepared and delivered to the highest bidder, when that deed is recorded, the highest bidder is the owner of the property.

- **Non-Judicial Foreclosures**

Non-judicial foreclosures are processed without court intervention, with the requirements for the foreclosure established by state statutes. When a loan default occurs, the homeowner will be mailed a default letter, and in many states, a Notice of Default will be recorded at approximately the same time. If the homeowner does not cure the default, a Notice of Sale will be mailed to the homeowner, posted in public places, recorded at the county recorder's office, and published in area legal publications. After the legally required time period has expired, a public auction will be held, with the highest bidder becoming the owner of the property, subject to their receipt and recordation of the deed. Auctions of non-judicial foreclosures will generally require cash, or cash equivalent either at the sale, or very shortly thereafter.

- It is important to note that each non-judicial foreclosure state has different procedures. Some do not require a Notice of Default, but start with a Notice of Sale. Others require only the publication of the Notice of Sale to announce the sale, with no direct owner notification required. You need to know the specific procedure for your state.

# Foreclosure Process



- The entire process in Illinois takes, on average, from the filing of the complaint to the eviction by the sheriff, nine months. Foreclosure defense in court is seldom successful in defeating the foreclosure action but may prolong the foreclosure by as much as 24 months. If the property is not residential or is abandoned, the process can be substantially shortened. The following is an outline of a typical foreclosure case:
- Default
- Filing of Foreclosure
- Personal Service of Summons
- Foreclosure Judgment and Order of Sale
- **Reinstatement Period Expires** (90 days after personal service)
- **Redemption Period Expires** (7 months after personal service or 3 months after judgment, whichever is later)
- Foreclosure Sale
- Foreclosure Sale Confirmed
- Right to Possession Expires (30 days after foreclosure sale confirmed)
- Eviction by Sheriff of Named Parties
- Recording of Foreclosure Deed

# Definitions



- **Default:** The date of the first missed payment.
- **Reinstatement:** Payment of past-due amounts, including all accumulated costs and fees, bringing the account current. 735 ILCS 5/15-1602. This right is only available once every five years. The mortgagor has the right to reinstate the mortgage within 90 days from the date the mortgagor was served with a summons or is served by publication or was otherwise submitted to the jurisdiction of the court.
- **Redemption:** Payment of the full principal balance, all accumulated interest, fees, and costs. In the case of residential real estate, the redemption period ends seven months from the date the mortgagor was served with summons or by publication or three months from the date of entry of the judgment of foreclosure, whichever is later.
- **Special Redemption:** A right of redemption that applies if the purchaser of residential property at a foreclosure sale is the mortgagee and if the sale price is less than the total amount of principal, interest, costs, and attorneys' fees. Under those circumstances, the mortgagor has a special right to redeem up to 30 days after the foreclosure sale is confirmed by paying the sale price, all additional costs incurred by the mortgagee set forth in the report of sale and confirmed by the court, and interest at the statutory judgment rate from the date the purchase price was paid. 735 ILCS 5/15-1604.
- **Mortgage:** Mortgages for this purpose include real estate installment contracts of more than five years duration, entered into after July 1, 1987, whose balance is less than 80% of the original purchase price. IMFL provides the exclusive method for foreclosing on all mortgages. In addition, the secured party in some UCC actions may elect to use IMFL, if the security interest is based on the assignment of a real estate installment contract or the beneficial interests in a land trust.

# REO



- An REO (Real Estate Owned) is a property that goes back to the mortgage company after an unsuccessful foreclosure auction. Most foreclosure auctions do not even result in bids. After all, if there was enough equity in the property to satisfy the loan, the owner would have probably sold the property and paid off the bank. That is why the property ends up at a foreclosure or trustee sale.
- Foreclosure sales begin with a minimum bid that includes the loan balance, any accrued interest, plus attorney's fees and any costs associated with the foreclosure process. In order to bid at a foreclosure auction, you must have a cashier's check in your hand for the full amount of your bid. If you are the successful bidder, you receive the property in "as is" condition, which may include someone still living in the property. There may also be other liens against the property.
- Since what is owed to the bank is almost always more than what the property is worth, very few foreclosure auctions result in a successful sale. Then the property "reverts" to the bank. It becomes an REO, or "real estate owned" property.

# FAQs



- Do I need Cash to buy a foreclosure or short sale?

No, Lenders will accept conventional financing as a means to purchase a property. A Pre-Approval will have to be submitted with offer.

- Why does the short sale process take so long?

The lender has a process in which they follow when agreeing to take less money than what is owed to them.

- Will I get clean title when purchasing a short sale?

As long as a warranty deed is issued at closing than the buyer will be covered.

- Why do I need to be Pre-qualified?

The bank and property owner will REQUIRE documentation that supports you can indeed purchase the property.

# FAQ



- Do I need a home inspection?

Most properties are sold “AS IS”, although it is highly recommended that you get a home inspection so that you know exactly what you are getting. The buyer is responsible for costs.

- Can I cancel the contract if major repairs issues surface during inspection?

Yes, the inspection needs to be done during the 5 day review. At that time your attorney can cancel contract.

- Do I need to put up earnest money for short sales?

Yes

# Notes

