



SHORT SALES:  
They Are Easier Than You Think

Presented By: TRACY MEDINA

3/30/2010

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Points to be Covered

- POSSIBLE RAMIFICATIONS TO A SELLER DOING A SHORT SALE
- FORECLOSURE PROCESS
- LIEN PRIORITY
- BANKRUPTCY
- JUDGMENTS
- MARKETING PROPERTIES IN DEFAULT
- LISTING AGENT
- SHORT SALE PACKAGE
- RECEIVING OFFERS
- BANK'S APPROVAL
- BUYERS AGENT

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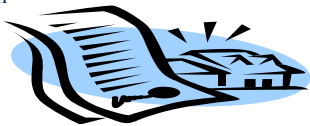
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Foreclosure

- What causes a Foreclosure?
  - Default on the loan
    - Failure to make mortgage payments on a timely basis or failure to comply with other requirements of the loan



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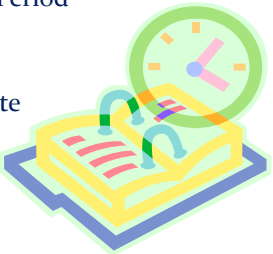
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### Notice of Default Time Line

- **Notice of Default Period**  
– 90 Days
- **Posting of Sale Date**  
– 21 Days

**TOTAL: 111 DAYS**



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### Let's Compare The Two

Foreclosure	Short Sale
<ul style="list-style-type: none"> <li>– Eviction for Current Owner can take up to 6 months</li> <li>– Lender must now pay somebody to prepare the property for resale</li> <li>– The 1<sup>st</sup> Mortgage can receive as little as 40%</li> <li>– Most Junior Lien Holders will receive ZERO</li> </ul>	<ul style="list-style-type: none"> <li>– Current Owner may be able to stay in the home</li> <li>– New Buyer improves the property at their expense</li> <li>– 1<sup>st</sup> Mortgage will receive a minimum of 60-80%</li> <li>– Junior Lien Holders will receive what is left</li> <li>– Less Liability Probable</li> </ul>

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### Ramifications to a Seller doing a Short Sale

- **Deficiency Judgment**
  - Judgment must be docketed by the clerk and execution may be issued for remaining balance owing
  - When a Short Sale occurs the mortgage company may obtain a Judgment against the seller for the difference of what was originally owed and what they agreed to accept in the Short Sale
- Refer to Utah Code 78-37-2



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## Forgiven Debt

- The Lender and IRS consider anything over \$600.00 of Forgiven Debt as "INCOME"
- The Seller may receive a 1099-C from the Mortgage Company, which is also sent to the IRS, for the difference of what was owed compared to what was accepted for the Short Sale

### EXAMPLE

- Debt amount is \$100,000.00
- Amount received \$80,000.00
- Forgiven Debt \$20,000.00

There are Exceptions



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## Disclosure

- Do an attachment to your Listing Agreement disclosing these possibilities
- Sellers have elected to seek Legal Council and Tax Advice
- Sellers have elected NOT to seek Legal Council and Tax Advice
- It is up to your Broker to prepare such a document

### NOT Advice



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## Lien Priority

- Homeowners Association
  - If a lien is recorded against the property for Non Payment of HOA fees
    - It is no longer a priority over the 1<sup>st</sup> Mortgage
    - Utah Code 57-8-37
- Ways to get the HOA to Cooperate
  - Go to the Board Meeting
  - Show them what will happen to the value of the complex with a foreclosure
- Junior Lien Holders
  - Will usually accept anywhere from Zero and above to release their lien once they realize that in a Foreclosure their lien will be removed.



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## Bankruptcy

### Most common with Real Property

Chapter 7	Chapter 13
<p>Wipes out all debt included in the bankruptcy with creditor approval</p> 	<p>Repayment plan structured by the Trustee to repay the debts included in the bankruptcy</p> 

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## Bankruptcy Timelines



Chapter 13	Chapter 7
<ul style="list-style-type: none"> <li>• <b>6 Weeks After Your Case is Filed</b> <ul style="list-style-type: none"> <li>– There is a Meeting of the Creditors</li> </ul> </li> <li>• <b>30 Days After the Meeting of the Creditors</b> <ul style="list-style-type: none"> <li>– Trustee and Creditors have 30 days after this meeting to object to your exemption claims.</li> </ul> </li> <li>• <b>45 days After the Meeting of the Creditors</b> <ul style="list-style-type: none"> <li>– There is a confirmation hearing, where the Trustee will recommend to the judge whether or not your repayment plan should be approved by the Court.</li> </ul> </li> <li>• <b>90 Days After the Meeting of the Creditors</b> <ul style="list-style-type: none"> <li>– Creditors must submit proof of the amount you owe them or they will not share in the payments from the Chapter 13</li> </ul> </li> <li>• <b>3-5 Years from the Date of Your First Payment</b> <ul style="list-style-type: none"> <li>– Bankruptcy is Discharged</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>6-8 Weeks After Your Case is Filed</b> <ul style="list-style-type: none"> <li>– There is a Meeting of the Creditors</li> </ul> </li> <li>• <b>60 Days After Meeting of the Creditors</b> <ul style="list-style-type: none"> <li>– Your Creditors have 60 days after this meeting to object to the discharge of any of the debts listed in the Schedules of the Bankruptcy petition.</li> <li>– You will receive your Discharge as soon as the 60-day time period for objecting to discharge or moving to dismiss your case expires.</li> </ul> </li> <li>• <b>30-45 Days After Discharge Bankruptcy is Closed</b> <ul style="list-style-type: none"> <li>– Unless the Trustee sets the discharge aside if you did not turn over any nonexempt property or if you commit other bankruptcy violation</li> </ul> </li> </ul>

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## Bankruptcy is Dismissed

- *This happens if the Debtor didn't follow the guidelines for filing a Bankruptcy*
- *If the Debtor didn't provide documents requested*
- *If the Bankruptcy is dismissed it is as if it was never filed.*



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## What Questions Should I Ask?

- Have they filed a Chapter 7 or Chapter 13?
- Who is their Attorney?
- Have they gone to the meeting of the creditors?
- Is there a Relief of Stay?



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**US Bankruptcy Court  
District of Utah (Salt Lake City)  
Bankruptcy Petition #12045678**

**Assigned to:**

Chapter 7  
Voluntary  
Asset

Date Filed 11/13/2003  
Date Discharged 4/13/2004

**Debtor**

Sam Seller

**Represented By**

Debtor Attorney

Trustee  
United States Trustee  
89 Exchange Place  
Suite 100  
Salt Lake City, UT 84111  
U.S. Trustee

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Date	Doc #	Description
11/13/2003	1	Chapter 7 voluntary Petition Filed by Sam Seller
11/13/2003	2	Statement of Financial Affairs and Schedules Filed by Sam Seller
12/23/2003	3	Notice of Meeting of Creditors 341(a) meeting to be held on 1/14/2004 at 8AM at Fed Bldg Room 123, Ogd Last day to oppose discharge or dischargeability is 3/15/2004
12/25/2003	5	BNC Certificate of Service – Meeting of Creditors, Service Date 12/25/2003 (Related doc #3)
1/ 7/2004	6	Receipt of Filing fee for Motion for Relief From Stay (hearing scheduled for 1/29/2004)
1/ 16/2004	10	Reaffirmation Agreement
3/ 9/2004	16	Trustee's Request For Creditors to File Claims filed by Trustee
4/13/2004		Order Discharging Debtor(s)
4/15/2004	22	BNC Certificate of Service – Order of Discharge. Service Date
9/16/2004	23	Motion to Reopen Case and to Avoid the Fixing of Judicial Liens
9/16/2004	24	Notice of Hearing (related documents(s) 23 Motion to Reopen Case)

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Date	Doc #	Description
9/16/2004		Receipt of Filing fee for Motion to Reopen Case filed by Debtor Attorney
10/20/2004	26	Amended Notice of Hearing (related documents): 25 (Amended Motion) Filed by Debtor Attorney: Hearing scheduled for 11/10/2004 @ 11AM @ US Bankruptcy Court
12/22/2004	40	Order Granting Amended Motion To Set Aside Judicial Liens. The Judgment Liens are Removed.
1/14/2005	42	Trustee's Chapter 7 Asset Final Report filed by Trustee



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## Judgments

- How does a Judgment affect property if it is included in the Bankruptcy?
  - What filed first the “judgment” or the “bankruptcy?”

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First American Title Insurance Company

Commitment Number: TMEDINA

SCHEDULE A

1. Commitment Date: November 16, 2004 at 08:00 AM
2. Policy (or Policies) to be Issued:
 

	Amount
(a) Owner's Policy (EAGLE Own Policy (10/17/92))	\$ 150,000.00
Proposed Insured: BARBARA BUYER	Premium: 1,111.00
(b) Loan Policy (ALTA Loan Policy (10/17/92))	\$ 150,000.00
Proposed Insured: Give You Money Mortgage	Premium: 557.00
(c) Endorsements (100, 118 & F1)	\$ 55.00
Proposed Insured:	
3. Fee Simple Interest in the land described in this Commitment is owned, at the Commitment Date, by SAM SELLER and SUSIE SELLER, husband and wife, as joint tenants
4. The land referred to in this commitment is situated in the county of Salt Lake, State of Utah, and is identified as follows:  
SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

The property covered by this report is known by the street address of:  
125 Anywhere Avenue  
Riverton, UT 84065

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## YOU MUST COME BACK TO RECEIVE CREDIT

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### Be Aware of the DIFFERENCE when Marketing Homeowners in Default

Voluntary Seller	Seller in Default
<p>You look for the best things about the house</p> <p>The Seller WANTS to move</p> 	<p>Property is in bad Condition</p> <p>Property is over mortgaged</p> <p>The Seller has received many calls and mailings</p> <p>THEY DON'T WANT TO LOSE THEIR HOME</p>

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### What if the Homeowner is just not ready to list?



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## Seller Agrees to List the Property

What do you need to take to your appointment?

Authorization Letter for them to sign

Listing Agreement must contain

“Subject to 3<sup>rd</sup> Party Approval”

Do a CMA

KNOW THE VALUE

OF THE PROPERTY



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## Listing Appointment

Prepare the Seller for the Short Sale Process

Review Time Lines

You will need a lot of Personal Information

Possible Multiple Offers

No Guarantee



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## MLS



Buyers Agent Commission

Key boxed



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## Short Sale Package

How do I get a Short Sale package from the Servicer?

Who sends it to the bank?



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## Two Important Questions to Ask The Servicer

1. Estimated turn around from the time they receive the package to when the appraisal (BPO) is ordered
2. Estimated Turn Around from the time they receive the appraisal back to the time we will receive an answer to our request



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## Listing Agent Responsibility

Determining the Property Value

You **CAN'T** argue value

You **MUST** prove value



You must notify the Buyers Agent in **WRITING** when Short Sale is Approved

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## Buyers Agent Responsibility

### Prepare the Buyer for the Short Sale Process

Buyer's Loan  
Pre Qualification Letter  
Pre Approval



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## Receiving Offers

### Review the REPC and Short Sale addendum very carefully



Do you have to send every offer you receive to the Servicer?



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**SHORT SALE DISCLOSURE**



THIS SHORT SALE DISCLOSURE is provided by \_\_\_\_\_ (the "Company")  
to: \_\_\_\_\_ [ ] the Buyer [ ] Seller of the following property located at:  
\_\_\_\_\_ (the "Property"). The following is an explanation regarding some of the  
practical and legal issues involved in Short Sales.

**1. SHORT SALE DEFINED.** The term "Short Sale" is used in the real estate business to describe a situation where the current fair market value of the property is less than the debt owing against the property. In other words, the Seller can't sell the property unless the creditors ("Third Parties") agree to accept a payment that is less than (or "short of") the amounts actually owed to those Third Parties. The Third Parties may include mortgage lenders, mortgage insurers, bankruptcy trustees, and federal, state and local taxing authorities (such as the IRS or State Tax Commission) or other lien holders.

**2. THIRD PARTY APPROVAL CONDITION.** A Short Sale requires the written approval of the Third Parties. Consequently, the Seller of the property and any Buyer is advised that even if they reach an agreement with each other for the purchase and sale of the property the Buyer's obligation to purchase, and the Seller's obligation to sell, are respectively conditioned upon Third Party Approval of the Short Sale as defined in the Short Sale Addendum.

**3. THIRD PARTY REJECTION OR CHANGES TO THE PROPOSED SHORT SALE.** Third Parties may reject a proposed Short Sale. If however, the Third Parties do not reject the proposed Short Sale, they will usually send to the Seller a list of requested changes to the proposed purchase contract ("Third Party Modifications"). The Third Party Modifications may affect the Seller, and others may affect the Buyer. For example, the Third Parties may not permit the Seller to pay for any of the Buyer's closing costs, or may require that the transaction close by a certain date. The Seller and the Buyer are not obligated to accept any of the requested Third Party Modifications - in which case, there will be no Short Sale. If, however, the Seller and Buyer agree upon the Third Party Modifications in an addendum to the REPC, then the Short Sale transaction may proceed to closing.

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**4. DELAYS IN RESPONSE FROM THE THIRD PARTIES** Most purchase contracts for Short Sales impose a deadline for written approval by the Third Parties. The Third Parties may not meet that deadline or respond at all. The Seller and the Buyer should be prepared for significant delays in receiving any response from the Third Parties.

**5. RIGHT OF THIRD PARTIES TO ENCOURAGE ADDITIONAL OFFERS** As a condition to considering any proposed Short Sale, the Third Parties may require the Seller to keep the Property on the market even after the Seller and the Buyer have agreed to the terms of a proposed purchase contract. The Third Parties want to obtain the highest possible price for the property. Therefore, some Third Parties require the Seller to keep the Property on the market, and to promptly submit to the Third Parties any additional offers that the owner may receive from other Buyers. The Seller and the Buyer should understand that the Third Parties may not respond to a proposed Short Sale transaction until they have had an opportunity to compare that offer with other purchase offers. That process may also result in significant delays for all parties.

**6. RIGHT OF BUYER AND SELLER TO CANCEL** Seller and Buyer are also advised that at any time prior to the Third Party Approval Deadline or the Third Party Approval, whichever occurs first, as defined in the Short Sale Addendum, Buyer or Seller may cancel the proposed Short Sale transaction in accordance with the terms and conditions of the Short Sale Addendum.

**7. TAX AND LEGAL CONSEQUENCES** The undersigned is advised that participating in a Short Sale transaction may have negative legal or tax consequences. You are advised to consult your attorney or tax advisor if you desire specific legal or tax advice.

**ACKNOWLEDGEMENT OF RECEIPT**

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 **Short Sale ADDENDUM NO. \_\_\_\_\_**  
**TO**  
**REAL ESTATE PURCHASE CONTRACT** 

Participating in a Short Sale may have negative legal or tax consequences. If you desire specific legal or tax advice, consult your attorney or tax advisor.

**THIS IS AN [ ] ADDENDUM [ ] COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of \_\_\_\_\_ including all prior addenda and counteroffers, between \_\_\_\_\_ as Buyer, and \_\_\_\_\_ as Seller, regarding the Property located at \_\_\_\_\_ (the "Property"). The terms of this Addendum are hereby incorporated as part of the REPC, and to the extent the terms of this Addendum modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control.

**1. ACKNOWLEDGMENT OF SHORT SALE.** This transaction is commonly referred to as a "Short Sale" because the Purchase Price for the Property is less, or "short", of the amount(s) owed to individuals/entities that have a financial interest in the Property (the "Third Parties"). Under the terms of the REPC, the Third Parties are being requested to accept less than what is owed to them. Therefore, the REPC is subject to Third Party Approval as defined in Section 2 below. For purposes of this Addendum, the Third Parties may include, without limitation, institutional lenders, mortgage insurers, bankruptcy trustees, federal, state and local tax authorities, and private parties.

**2. THIRD PARTY APPROVAL.** Buyer and Seller agree that their respective obligations under the REPC are conditioned upon Third Party Approval as defined in this Section. For purposes of the REPC the term "Third Party Approval" shall mean that either: (a) Seller has received from the applicable Third Parties, written approval of the terms and conditions contained in the REPC as originally submitted to the Third Parties, or (b) Buyer and Seller have agreed to other terms and conditions as requested by the Third Parties ("Third Party Modifications") on a separate addendum to the REPC. The Third Party Modifications shall not be binding on Buyer or Seller without their mutual written consent, which consent may be withheld by Buyer and/or Seller in their sole discretion.

**3. DELIVERY OF REPC TO THIRD PARTIES.** No later than four (4) calendar days after Acceptance of the REPC by Buyer and Seller (as defined in Section 23 of the REPC) Seller agrees to submit the REPC to the applicable Third Parties, together with any additional documentation required by the Third Parties.

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**4. FAILURE TO OBTAIN THIRD PARTY APPROVAL.** Seller and Buyer shall have until \_\_\_\_\_ ("Third Party Approval Deadline") to obtain Third Party Approval. If by the Third Party Approval Deadline, Third Party Approval has not been obtained, the REPC shall automatically be deemed cancelled whereupon any Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

**5. EARNEST MONEY DEPOSIT.** Buyer agrees to deliver the Earnest Money Deposit to Buyer's Brokerage (check applicable box):  as required in the first paragraph on page one of the REPC;  no later than four (4) calendar days after Third Party Approval as defined in Section 2 above; or  Other (specify) \_\_\_\_\_

**6. SELLER'S RIGHT TO ACCEPT BACK-UP OFFERS.** Buyer agrees that at any time prior to Third Party Approval as defined in Section 2 above, Seller may: (a) continue to market the Property to other interested buyers; (b) continue to advertise the Property through the MLS showing any MLS status category (the MLS will allow) deemed necessary and appropriate by the Seller and/or the Third Parties; (c) accept additional backup offers for the purchase of the Property ("Backup Contracts") subject to the rights of Buyer under this contract; and (d) Seller may or may not submit any such Backup Contracts to the Third Parties for review.

**7. BUYER & SELLER'S RIGHT TO CANCEL REPC.** Seller and Buyer acknowledge that there will be significant time delays in obtaining any response from the Third Parties to the terms of this proposed Short Sale; and because this is a Short Sale, Seller will need to obtain the highest and best terms for the sale of the Property. During this significant time delay, circumstances may change for both Seller and Buyer. The changes in circumstances may include, but are not limited to: (a) adjustments in available mortgage financing rates and terms; (b) modifications in the financial circumstances of Seller or Buyer; (c) the timing of the transaction may no longer meet Buyer or Seller's needs; (d) Buyer may find another property that better suits Buyer's needs; and (e) Seller may receive additional offers for the purchase of the Property that better address Seller's legal and financial needs. Based on the above, if at any time prior to Third Party Approval, or the Third Party Approval Deadline, whichever occurs first, the Buyer or Seller determines that their circumstances have changed and it is no longer in their best interest to pursue the sale/

Page 1 of 2 Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_ Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_

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What prevents a short sale from closing



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"Good dog? No. Great dog."

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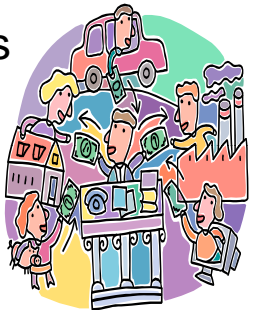
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Too many liens



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Bankruptcy



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You must be....

**In Control**



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**Confident**



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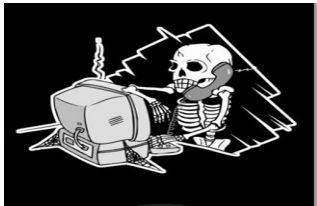
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**Be Patient**

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# GET PAID



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*Thank you for  
attending!  
Have a Super  
Day!!!!*

**REMEMBER TO TURN IN YOUR EVALUATION  
TO GET YOUR CE CERTIFICATE**

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