

## SHORT SALES Q & A—#1

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NOTE: These questions came in response to my article, [“What You Should Know About ‘Short Sales’”](#), and are specifically about a Short Sale in a divorce situation. They are also relevant in a non-divorce situation. Just factor in one borrower (single person or couple) instead of two borrowers who are no longer together.

1. Does the bank have to approve a short sale before the house can be placed on the market?

The bank does not have to approve a short sale before it can be placed on the market. The only thing that is required is for both parties to agree (1) to put it on the market, and (2) under what terms it will be sold. It helps [a lot](#) to start the conversation with the bank about a short sale before putting the house on the market, because only through that conversation can a borrower start to understand what approach the lender will eventually take.

2. Would it matter if the Court ordered a Short Sale...as to whether or not they attempt to collect?

I’m not an attorney, so what I say is quite possibly wrong (and in any event is not a legal opinion). I don’t think a court can order a Short Sale. It might be able to order two parties to agree to sell a home, and do it via a Short Sale if necessary to get it sold; but the decision on whether to accept a Short Sale is the lender’s, not the parties under the court’s order. Check with an attorney about this.

3. How does a lender decide whether or not they are going to attempt to collect the unpaid balance (deficiency) after the short sale is complete?

The answer to this question is in item 4.g. of [“What You Should Know About ‘Short Sales’”](#) (see below). Both parties would likely have to give the lender a complete financial statement showing their incomes and assets (including assets jointly held with someone else). My conversation with another lender in a similar situation leads me to believe that they don’t consider other debts. They want to be first in line to collect the debt owed them, even if it means defaulting on other debts like car payments and credit cards.

[...the lender will likely require a complete financial statement before they consider whether to grant a Short Sale. Not enough assets or income? A Short Sale is possible; and possibly with a release of liability. Enough assets and income to either make the payments or pay off the short sale? A Short Sale is less likely; and if granted, it will probably not be with a release of liability. The lender could require the owner to make a payment of some cash, sign a new promissory note, continue to owe the unpaid portion of the note, or other remedies]

Conclusion: Both parties should contact the lender who would have to agree to a Short Sale. The process for making the decision does not have a timetable, so it could be months before getting a definite agreement that the lender will release them from liability, or will instead attempt to collect the deficiency. The lender is under no obligation to make such a decision prior to having a purchase contract in hand which would inform them of how much of a deficiency would have to be forgiven.

There are thus two different ways to get a house with a deficiency sold (as a Short Sale and not as a Short Sale), each with its advantages and disadvantages. Neither path is a “good” one, only possibly better than the other.

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