

# The Short Sale Seller Advisory

## A New Resource for Distressed Homeowners

By K. Michelle Lind, Esq. • Posted: February 2010



The Arizona Association of REALTORS® (AAR) is pleased to provide the Arizona Department of Real Estate (ADRE) Short Sale Seller (SSS) Advisory. Real estate professionals regularly meet with property owners in financial distress who are interested in pursuing a short sale. These owners have many questions about their options and the implications of a short sale; however, there was no single resource for reliable information to which they could be directed. To address this need, the ADRE Short Sale Task Force recommended the development of an advisory similar to the widely used Buyer Advisory.

Thus, the SSS Advisory was drafted to provide information to homeowners about the issues and risks involved in a short sale situation. The SSS Advisory explains why certain issues may be important and directs the homeowner, via hyperlink, to additional resources. The SSS Advisory is divided into three general sections: (1) Before Proceeding with a Short Sale; (2) Options other than Short Sale; and (3) Short Sale Considerations. The topics discussed in each of these sections are as follows:

### Before Proceeding with a Short Sale

The homeowner is provided with some basic information and resources of which the homeowner should be aware before proceeding with a short sale, such as:

- ▶ **A Lender's Options upon Loan Default:** The type of loan and type of property will determine what remedies a lender may have if the homeowner fails to make the agreed-upon payments.
- ▶ **Predatory "Rescue" Scams & Short Sale Fraud:** Homeowners worried about foreclosure may be

susceptible to predatory "rescue" scams, which may cost money with no results, result in the loss of the home entirely or involve a fraud.

- ▶ **Free HUD-Approved Housing Counselor Resources:** These counselors can advise on options and contact the lender on the homeowner's behalf.
- ▶ **The Arizona Foreclosure Prevention Task Force Workbook:** This valuable workbook will assist in understanding and evaluating options.
- ▶ **The Importance of Legal Advice:** Resources for obtaining legal advice, including free or low cost legal assistance, are provided.
- ▶ **The Importance of Tax Advice:** Resources for investigating tax liability for debt forgiveness are provided.
- ▶ **The Consequences of Committing "Waste":** The owner is warned that physically abusing, damaging or destroying any part of the property may result in liability to the lender.

### Options Other than Short Sale

The homeowner is advised to investigate and provided resources to explore options other than a short sale, such as:

- ▶ **Loan Workout:** The lender may agree to loan reinstatement, forbearance, a repayment plan, or the owner may be eligible for a claim advance.
- ▶ **Loan Modification:** The lender may agree to change the terms of the original loan to make the payments more affordable.

- ▶ **Refinance:** The homeowner may be able to refinance the loan with another lender.
  - ▶ **Deed-in-Lieu of Foreclosure:** The lender may allow a homeowner to "give back" the property.
  - ▶ **Work-Out Sale:** The lender may allow a specific amount of time for the home to be sold and the loan to be paid off.
  - ▶ **Bankruptcy:** Depending on the owner's overall financial situation, the best option may be to file for bankruptcy protection.
  - ▶ **Foreclosure:** In certain circumstances, allowing the lender to foreclose on the property may be the owner's only viable option.
- ▶ **Obtain Tax Advice:** Relief of debt may be treated as income for tax purposes.
  - ▶ **Be Aware of the Credit Score Impact:** The credit score impact depends upon a variety of factors.
  - ▶ **Understand That There May Be a Waiting Period Before a Short Sale Seller Can Buy Another Home:** The ability to qualify for a loan to purchase another home will likely be impacted.

## Short Sale Considerations

If the homeowner determines that a short sale is the best option, the SSS Advisory sets forth what steps to take, such as:

- ▶ **Find a Qualified Real Estate Professional:** Determine their experience in short sales.
- ▶ **Investigate Documentation and Eligibility:** The criteria for short sales vary depending on the lender.
- ▶ **Determine the Amount Owed on the Property:** All debt and costs must be factored in.
- ▶ **Determine the Estimated Fair Market Value of the Property:** The seller must prove to the lender that the home is worth less than the unpaid loan balance.
- ▶ **Consult Legal Counsel:** The importance of competent legal counsel is emphasized.
- ▶ **Understand that a Short Sale May Not Discharge the Debt:** Even if a lender agrees to a short sale, the lender may not agree to forgive the debt entirely.

Because some brokers may wish to have the seller acknowledge receipt of the SSS Advisory, a Seller's Acknowledgment section and prompt for initials are included. Consult with your broker about your firm's policy.

The SSS Advisory should result in more informed homeowners and sellers by providing reliable information and resources in one manageable document. This benefits not only the consumer, but the brokers involved in the transaction, and the real estate industry as a whole. I was honored to have been a part of its development.

The SSS Advisory is available on the Arizona Association of REALTORS® ("AAR") website at: [www.aaronline.com/documents/ssseller\\_advisory.aspx](http://www.aaronline.com/documents/ssseller_advisory.aspx) and is available via Zipforms.

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*K. Michelle Lind is General Counsel/Assistant CEO to the Arizona Association of REALTORS® (AAR). She serves as the primary legal advisor to the association. Michelle oversees AAR's Risk Management Committee, which includes professional standards administration for twenty of the state's local REALTOR® associations, and the development of standard real estate forms. She is the author of Arizona Real Estate: A Professional's Guide to Law & Practice and a regular contributor to the Arizona REALTOR® and the Arizona Journal of Real Estate & Business. Please note that this article is of a general nature and may not be updated or revised for accuracy as statutory or case law changes following the date of first publication. Further, this article reflects only the opinion of the author, is not intended as definitive legal advice and you should not act upon it without seeking independent legal counsel*