

Term

Arm's Length Transaction	Deal terms reflect a true negotiation. This deal is between parties that are unaffiliated, and it reflects the true result of an arm's length negotiation ("You are negotiating for your interest, I'm negotiating for my interest, and here is where we have reached in the middle."). These transactions are not subject to Undue Influence ("I'm not being unduly coercive, I do not have something over you that I am extorting a better deal than I can." This arm's length negotiation reflects the true market value of the Property.
Deficiency Claim	Short Sale Approval Letter must state, in writing, that the Lender is waiving it's deficiency claim. Otherwise, you can find yourself in the position where the Seller sells in a short sale and the Lender comes in and sues for the deficiency amount of the loan.
Loan Modification	The Lender is negotiating with the Borrower to alter the terms of the loan (change the payoff date, the interest rate, lower the monthly payments, etc.). This is off limits to an agent unless you have a mortgage license to engage in loan modification discussions.
Short Sale	Amount owed on property is more than the property is worth. The only way to sell is to persuade the bank (Lender) to accept a reduced payoff amount (an amount that is less than or short of the true balance of the loan). Lenders will do that if they see that the property is not worth the amount owed, but they are not required to.

Concept

Acknowledgement of Short Sale	This Addendum/Counteroffer must be approved by each of the lenders (Third Parties).
Acknowledgement of Short Sale Disclosure	Seller acknowledges that the Seller received the Short Sale Disclosure form. The Seller acknowledges that they read, understand, and agree with the information.
Acknowledgement of Third Party Approval	Addendum No. ____ to Real Estate Purchase Contract: Buyer and Seller acknowledgement comes into play after you get Third Party Approval. The updated contract deadlines are spelled out within this document so there is no confusion on what the deadline are.
Addendum No. ____ to Exclusive Right to Sell Listing Agreement & Agency Disclosure (Short Sale)	This addendum should be presented to the Seller along with the Listing Agreement. This addendum protects you as the Listing Agent. It is designed to make sure that you get the right approvals from your Seller to do your job as the Listing Agent.
Advice to Consult with Legal Counsel or Other Professionals	Seller has been advised by Seller's Agent and Company that there may be significant legal and tax consequences and negative credit rating impacts, Seller is encouraged before agreeing to a short sale to consult legal counsel and tax professionals.
All liens must be resolved	There could be more than one lien on the property (first mortgage, second mortgage, mechanic's lienholder) in which every creditor has to agree to the reduced payoff amount. Seller cannot convey clear title to the Buyer at the closing unless all the liens have been resolved. This is a time to exercise powers of persuasion, but remember to be honest.
Approval by Buyer	Buyer has agreed to any Third Party Modifications and any Additional Third Party Requirements that require specific approval by the Buyer.

Approval by the Seller	Seller has entered into a separate written agreement with Third Parties regarding any conditions of approval specifically required of Seller by the Third Parties.
Approval by Third Parties	Third Parties have provided written approval of the terms and conditions of the Short Sale. The Third Party Modifications are not binding on Buyer and Seller unless they agree by signing the Acknowledgement of Third Party Approval Addendum.
Bad Loans	Lenders do not want to give short sale approval and they are willing to take their time because they are then subject to regulatory scrutiny by government officials. Once the loan becomes a short sale it becomes a “bad loan”, and lenders don’t want to acknowledge the fact that they gave a “bad loan”. They want the property to stay on the market to see if it sells to avoid having a bad loan. Because lenders are not obligated to reduce their loan voluntarily, they are willing to take their time.
Buyer & Seller’s Right to Cancel REPC	Seller and the Buyer acknowledge that there will be significant time delays in obtaining the response from Third Parties. During the time delays, circumstances may change for the Buyer and the Seller including: adjustments in financing rates and terms; modification in financial circumstances for the Buyer and the Seller; the timing of the transaction may not meet the Buyer or the Seller’s needs; Buyer may find another property; and Seller may receive additional offers that better meet the Seller’s needs. If any time prior to Third Party Approval, or Third Party Deadline, the Buyer or the Seller may cancel the REPC by providing written notice to the other party. The Earnest Money Deposit shall be released to the Buyer without the requirement of further written authorization from the Seller.
Buyer acknowledges that	This property is being marketed as a short sale and is subject to Third Party Approval. Seller has previously accepted a purchase offer for the Property from another buyer. Because the Seller and the Third Parties desire to minimize their losses under a short sale, the Seller has the right to accept additional Backup Contracts from other interested buyers. Seller has submitted or will submit the Prior REPC to the applicable Third Parties for Third Party Approval. Seller may or may not submit the Backup Contract and any Additional Backup Contracts to the applicable Third Parties for Third Party Approval. If this REPC is submitted to Third Parties, the Seller agrees to provide Buyer with written notice within 4 days after submission to the Third Parties. Seller (by mutual agreement with the Buyer) or Buyer (under any Additional Backup Contract) amend or modify the terms of the Prior REPC and/or any Additional Backup Contracts, in the event this REPC is submitted to the Third Party Approval, any modification of this REPC and this Addendum shall require written consent of the Buyer and the Seller.
Buyer and Seller’s Right to Cancel	Any time prior to Third Party Approval Deadline or Third Party Approval, whichever comes first, the Buyer and Seller may cancel this REPC in accordance with the Short Sale Addendum. If Third Party Approval of this REPC is not obtained by the Third Party Approval Deadline, the REPC will automatically be deemed cancelled.
Cancellation of Indebtedness Income	Typical IRS rule says: if you owe money and your creditor forgives that debt, it is treated as income.
Commission Sharing	Short sale agents typically hire unlicensed staff to help process the approvals and to communicate with lenders. Their salary cannot not be dependent on a closing of the short sale. The Division of Real Estate will look at that as commission sharing, which is not allowed.
Contract Deadlines	This addendum modifies the deadlines in the REPC. This is the place to extend those deadlines.
Delays in Response from the Third Parties	The parties might have to continue issuing addendums extending the Settlement Deadline further out.

Delivery of REPC to Third Parties	After acceptance of the REPC by the Buyer and Seller, the Seller agrees to submit the REPC to applicable Third Parties.
Don't let greed cloud your judgement- example	Licensee got the listing, clearly a short sale. Way more owed than property was worth. Agent started to see that he could get short sale approval for a really low price because the property had meth contamination. When lenders realize that their collateral is contaminated by meth they want to get rid of it. They will often agree to a much lower short sale price to get rid of the collateral. The agent's friend submitted a super low offer and the agent was very effective at getting the lender to agree to the super low short sale price. After the closing, the agent was in control of the clean-up, the rehab, etc. and then relisted it at a significantly higher price. Problems: This agent was looking out for his own interest. The agent was acting as the principal (the Buyer and the Seller's Agent). Motivated by greed. Always ensure that you do what is best for your client. Never be motivated by greed
Earnest Money Deposit	Buyer agrees to deliver the Earnest Money Deposit to Buyer's Brokerage either as required in the first paragraph of the REPC; no later than 4 calendar days after the Third Party Approval; or another agreed upon date.
EX of No Control of Timing Associating with Decisions Made by Third Party	An Agent gets a 6 month Listing Agreement, a short sale. Around month 3, you get a contract in place. The Buyer is willing to pay this price, Seller accepts, and you submit the contract to the Lender for Short Sale approval. The Lender takes forever in deciding on the approval and has not approved the Short Sale before the Listing Agreement expires. Months after Listing Agreement has expired and the Lender finally approves. As you get close to the expiration of the Listing Agreement, you should go ahead and get an extension.
Ex. of Deficiency Claim	House has a loan of \$400,000 and only worth \$300,000. This house goes to foreclosure sale and someone buys it at \$300,000. The Lender now has a deficiency (\$100,000). Lender has a right to sue the Borrower for that deficiency.
Ex. of Delays in Response	Buyer and Seller enter into a contract and they agree that the Settlement Deadline is 45 days from now and that it is subject to Third Party Approval, because it is a short sale. Buyer and Seller might want the Settlement Date to be 45 days from now, but that is not binding on the Lender.
Ex. of Fiduciary Duty of Loyalty	Someone wanted to buy a lot to build a retirement home. Narrowed it down to two lots they liked, the agent decided she liked one of the lots herself. While the client was out of town on vacation, the agent bought one of the lots for her own use. This resulted in a lawsuit. The Buyer was very upset that his agent purchased one of the lots for her own use and did not tell him. She should have told him, in writing, from the beginning, I am interested in this lot. If you are not going to buy it, then I am. She should have given him the first opportunity to buy before she did. Everything has to be fully disclosed.
Ex. of Indebtedness Income	I own an investment property for \$500,000, I do a short sale for \$400,000 (\$100,000 deficiency). The Lender agrees not to sue me for the deficiency, but they still report it to the IRS as debt forgiveness. Could result in a \$30,000 to \$40,000 tax liability.
Example of the Opposite of an Arm's Length Transaction	Agent's daughter fell behind on her house, and found herself in need of doing a short sale. Agent came in as a Buyer, and wanted to buy it short.
Failure to Obtain Third Party Approval	Seller and Buyer shall have until the Third Party Approval Deadline to obtain the Third Party Approval or the REPC shall automatically be deemed cancelled and the Earnest Money Deposit shall be released to the Buyer.

How do you know you have a potential short sale?	When you meet with a new Seller you need to find out how much is owed on this Property. Ask yourself, is there enough value in this property to cover the loan payoff? Sometimes you might not know when you list the Property. The Property sits for a while, is not selling, and then becomes a short sale.
Right of Buyer and Seller to Cancel	Seller and Buyer are advised that any time prior to the Third Party Approval Deadline or the Third Party Approval, whichever comes first, the Buyer or the Seller may cancel at any time.
Right of Third Parties to Encourage Additional Offers	Third Party might require the Seller to keep the Property on the market even after the Seller and the Buyer have come to agreed terms of the proposed purchase contract. The Lender wants to make sure they are getting the largest, highest payoff amount as available in this market. If better offers come in, they must be presented to the Lender.
Secondary "Backup" Contract for Short Sale: Addendum No. ____ to Real Estate Purchase Contract	Things could potentially fall apart within a contract even though the Buyer and the Seller have agreed to everything, the Bank might want a secondary offer taken, or Sometimes a secondary Buyer truly wants the Property and wants to be considered if the first Buyer's deal falls through. This is for those potential buyers that choose to be in secondary backup position on a short sale.
Seller Acknowledgements	Seller acknowledges the following: If the Third Party agrees to a short sale then: The Seller may not receive any sales proceeds at Closing. The Seller may be required to bring the Seller's own funds to the Settlement because the price to be paid by the Buyer is not enough to pay off the loan and the Lender is not willing to reduce the price by that much. Third Parties may seek a Deficiency Judgement against the Sellers or pursue any collection effort to recover funds lost. Even if the Third Parties chose not to pursue a deficiency judgement, any short sale discount accepted by the Third Parties may be reported to the IRS by the Third Parties as taxable income to Seller.
Seller Acknowledgements Continued:	If the Third Parties refuse to approve the Short Sale, the Property may go into foreclosure and Seller may lose all legal and financial interest in the Property. A Short Sale transaction may have a negative impact on Seller's credit rating even if the foreclosure process has not begun or is completed yet. Upon marketing the Property as a Short Sale, the Seller may receive one or more offers on the Property, but the Third Party may require that only one offer be presented to the Third Party for approval. Legal and financial options that the Seller may want to consider with legal counsel and tax advisors rather than a Short Sale (Such as: negotiating a loan modification, refinancing, bankruptcy, foreclosure, deed in lieu of foreclosure). The Company has no control over the decision of the Third Parties to accept a Short Sale; or over the timing associated with that decision.
Seller agrees to hold the Company harmless from acts or omissions of the Third Parties.	If the Third Parties does not cooperate or fail to communicate with the Company, then the Company may cancel the Listing Agreement by providing written notice to the Seller. If the Property is conveyed to a mortgage insurer or lien holder during the terms of the Listing Agreement, then Seller may cancel this Listing Agreement prior to its expiration. The brokerage fees referenced in this Listing Agreement are subject to the Third Parties approval. Seller is advised by the Company to consult with legal counsel and other professionals. If the Listing Period expires prior to the Third Party Approval, the Company agree that the Listing Period is automatically extended until the Third Party Approval Deadline.
Seller Authorizations	Seller authorizes the Company to... A Advertise the Property as a Short Sale in all marketing materials prepared by the Company B Advertise the Property as a Short Sale on the MLS C Continue to advertise the Property for sale on the MLS until approval as the Short Sale by the Third Parties D Contact the Third Party to obtain the payoff loan amounts E Communicate directly with the Third Party on the Seller's behalf F Provide to the Third Parties such disclosure, information, and documentation as requested by the Third Parties for the purpose of obtaining approval of the Short Sale.

Seller's Right to Accept Back-up Offers	Buyer agrees that at any time prior to the Third Party Approval, the Seller may continue to market the property; advertise the property on MLS; accept additional back up offers; and Seller may or may not resubmit any Backup Contracts to the Third Parties for review.
Short Sale Addendum No. ____ to Real Estate Purchase Contract	Use with any purchase contract that requires a short sale. This addendum can be submitted by the Buyer or the Seller. Buyer makes an offer on a short sale, include this addendum with the REPC. If you are representing the Seller in a short sale and you receive an offer that does not include this Addendum, then you as a Seller would include this Addendum in your counteroffer to the REPC.
Short Sale Addendum No. ____ to Real Estate Purchase Contract	This document is part of the contract and is therefore agreed to by the Buyer and the Seller. The previous documents are simply disclosures that you as an agent are signing with your client.
Short Sale Disclosure	This disclosure should be given to a Buyer or Seller limited agency deal in a short sale situation (Strongly discouraged). Some banks will not allow short sale transactions to be limited agency.
Tax and Legal Counsel	One of the consequences of purchasing a short sale could be Deficiency Judgement.
Third Party Approval	The Buyer's obligation to purchase and the Seller's obligation to sell are both conditioned upon the Third Party's approval of the Short Sale.
Third Party Approval	The Third Parties, Seller, and Buyer have agreed in writing to the terms of the Short Sale and the Buyer and Seller have signed and accepted the Acknowledgement of Third Party Approval Addendum.
Third Party Considerations	The Short Sale is subject to Third Party Approval and the Third Party may impose conditions on the Short Sale such as: Third Parties obtaining a broker price opinion or appraisal; require the Seller to demonstrate financial hardship; and require Seller to provide copies of tax returns, pay stubs, assets and other financial information.
Third Party Rejection or Changes to the Proposed Short Sale	Lender is not bound by what the Buyer and Seller have agreed to. The Lenders will usually send to the Seller a list of required changes to the proposed purchase contract (Third Party Modifications). They can affect price, timing, and requirements for the sell to close. They often require the parties involved in the transaction to respond with affirmative representations to the Lender (this is the true contract, no side deals, arm's length transaction, no insider deals taking place, etc.).