

## Short Sale Purchase Document Instructions

Congratulations. You have just purchased a package of tried and true, proven to be effective, set of short sale purchase documents. Detailed instructions on how to use them are included.

### List of Documents:

1. Purchase & Sale Agreement
2. Earnest Money Promissory Note
3. Purchase Agreement Addendum "A" and Understanding
4. Authorization to Release Information
5. Authorization to Release Payoff
6. Authorization to Enter Property
7. Assignment of Real Estate Purchase and Sale Contract
8. Request to Open Escrow - Title Company
9. Request to Open Short Sale – Creditor
10. Blank Addendum
11. List of short sale documents needed
12. Power of Attorney
13. Short Sale Package Checklist Enclosure
14. Sample Short Sale Offer
15. Sample Photo Report
16. Generic Financial Statement

### Short Sale Documents Overview:

The purchase documents you just downloaded are specifically designed for buying properties in a short sale.

The "*Purchase and Sale Agreement*" and the "*Earnest Money Promissory*" are necessary to make a purchase and sale agreement legal and binding, and therefore be able to open escrow.

The "*Purchase Agreement Addendum 'A' and Understanding*" is an important but not mandatory purchase contract document. Its mission is to disclose and delineate the conditions of the transaction. It provides the important disclosures that prevent misunderstandings between the buyer and seller.

The "*Authorization to Release Information*" is needed for banks and other creditors to have direct communication with the realtor or investor buying the property. You must have this in order to speak with banks or other creditors.

The "*Authorization to Release Payoff*" is often needed by creditors in order to disclose payoffs and reinstatement amounts.

The "*Authorization to Enter Property*" is used to reduce misunderstandings with neighbors and/or other parties when entering the property when the owners are not present.

The “*Assignment of Real Estate Purchase and Sale Contract*” is for assigning a purchase and sale agreement to a new buyer. This new buyer takes the position of the original buyer.

The “*Request to open escrow - Title Company*” is a form letter used to open escrow with a title company.

The “*Request to open short sale – Creditor*” is a form letter used to initiate a short sale negotiation with a creditor.

The “*Blank Addendum*” is a form addendum to be used any time changes to the original purchase and sale agreement are made.

The “*List of short sale documents needed*” is a list of the documents that the creditor will most likely request from the owner in order to discount a mortgage.

The “*Power of Attorney*” is to be used in case one or more of the owners of a property will not be able to sign documents.

The “*Short sale package checklist enclosure*” is a check list of all the documents to be delivered, as requested, to a creditor discounting a mortgage.

The “*Sample short sale offer*” is a sample of a letter explaining the reasons for offering a certain dollar amount for a property.

The “*Sample photo report*” is a sample of a photo report showing all the shortcomings of a property in order to justify a discount.

## General Instructions

Modify all documents to make sure that you and your company are identified as the buyers. Substitute “Your Company Name” and “Your Name” for your information.

It is preferable to have only the following documents printed with your letterhead. These documents will not be transferred and it is important that they are branded and recognized as originating from your company.

1. Authorization to Release Information
2. Authorization to Release Payoff
3. Authorization to Enter Property
4. Request to Open Escrow - Title Company
5. Request to Open Short Sale – Creditor
6. List of short sale documents needed
7. Short Sale Package Checklist Enclosure
8. Short Sale Offer
9. Photo Report
10. Financial Statement

The following documents should not have letterhead because they may be transferred to a third party.

1. Purchase and Sale Agreement
2. Purchase Agreement Addendum “A” and Understanding.
3. Earnest Money Promissory Note
4. Assignment of Real Estate Purchase and Sale Contract
5. Addendums
6. Power of Attorney

It is extremely important that *you know these documents by heart* so any questions can be quickly answered. If the home seller perceives that the investor does not understand the contract, the seller will become uneasy.

## Purchase & Sale Agreement Instructions

### **First Paragraph:**

*This identifies the buyers and sellers by name and address.* Edit the document so your name and address are shown. Fill in by hand the date, name and address of the sellers. It is even better if the seller fills in this part of the document.

As you can see, the buyer's name is followed by "and / or assignees". The "and / or assignees" clause opens exit strategy possibilities. The "and" creates the option of associating with partners for the purchase of the property. The "or assignees" creates the option of assigning the contract to another buyer.

### **Item 1. The Property:**

*This identifies the transaction's subject property.* No mistakes can be made here. Enter county and state and mailing address. Then enter the legal description. The legal description is a very delicate matter.

*The legal description is the geographical identification of the parcel land where a property is located, that can be accepted by a court of law.* Mailing address is what is normally used to locate a property for arriving or delivering mail and it is given by the post office. Legal description is the geographical location of the parcel and it is given by the municipality where the property is located. Although they both identify the same property, they are entirely different things, are not interchangeable and coexist with each other. It is good to already have the legal address of the property at the time of writing the contract. This can be through online real estate information sites, a trio or a title report. Copy this description character by character into the space for legal description. Alternatively, if the legal description is too complicated, long or cryptic, a page from the trio or a printout can be added to the contract as an attachment.

*Personal property included in the sale is always critical.* This is easy to overlook and can later be a source of disputes. *Personal property is anything that is not physically attached to the property.* This includes refrigerator, washer and dryer, pianos, etc. Doors, windows, trees, etc. are part of the real estate. The removal of such items is "depletion of real estate". Items such as chandeliers and Jacuzzis are in the gray zone. Make sure that everything that is included or an exception to the transaction is listed here. Personal property can be used later for making or getting concessions. Generally speaking, without being greedy or losing focus on the big ticket item, which is the house, the investor should try to include everything in the sale as long as it does not create any conflicts with the owner.

### **Item 2. Purchase Price:**

*This is where the initial purchase price for buying the property in a short sale is established.* The initial offer for the property should always be a low number that can easily be funded by a private loan and still leave enough room for a profit. In other words, *the initial offer has to be the as-is wholesale price or less.* Later in the negotiations with the creditors the price can be adjusted up depending on the available exit strategies. It is easier to adjust a price up than to adjust it down.

*Earnest Money is the deposit of funds made by a buyer of real estate as evidence of good faith.* It is also called *deposit*.

In short sales it is better to present the earnest money in the form of a promissory note deposited in escrow. This is as good as cash. This way, if the transaction can't be consummated, there is no money tied up in escrow. This is vital, because in short sales, if the investor can't get the property at the right price, he/she should always be able to walk out of the transaction. If cash earnest money is insisted upon, that amount should be deposited in escrow.

*Cash balance is the amount due at closing.* This is the total amount of money to be brought at closing. It is the total purchase price minus the earnest money.

*Total purchase price and/or consideration is the total initial sales price agreed upon.* Of course, as mentioned above, the initial purchase price agreed upon will be a low or “whole sale” price because it needs to be immediately fundable via private lender. Private lenders fund at 65% to 70% of retail price. However, this price is not cast in stone, it is a starting point. Later, *this price can be changed, up or down, by using a price change addendum.*

At the end of Item #2 there are two protective clauses to be checked, or preferably initialed, by the seller(s).

*“Sale price not to exceed acceptable existing lender payoffs, as determined by buyer”.* This is created in order to not have to pay the homeowner above the short sale purchase price negotiated with the bank. The bank will not allow this to happen anyway. The “...by buyer” clause gives the control of this to the buyer, not the seller.

*“Said price is subject to appraisal by buyer and/or agent of buyer’s choice”* insures that if for any reason the initial amount agreed upon does not work out, there is an avenue to walk away. This is particularly important in the purchase of older homes and heavy fixers. If for example a huge foundation crack is found at inspection, just prior to closing, then the options are that either the seller reduces the price accordingly, or the investor gets to walk away. Remember, we obtain properties at a good price by resolving homeowner’s problems. We are not in the business of inheriting other people’s problems.

**Item 3. Earnest Money:** This clause specifies that the earnest money will be deposited in escrow and not given to the home seller. If there is a default in the agreement on the side of the buyer, the money will be kept by the seller. That will not happen because the purchase and sale agreement has plenty of safety measures for the investor to be safe. Not only that, for the investor’s additional safety, an earnest money promissory note is used. So in reality no money is at risk. In short sales, transactions fail only when the investor is ending up with a bad deal. The owner is already up side down on the property.

**Item 4. New Loan:** This item ensures that the purchase will only consummate if the investor obtains the right kind of financing. If the property is not financeable, the investor has a way out. If it is not a good deal, the property will not be financeable. If it is a good deal, then the property will be financeable.

**Item 5. Closing.** This specifies the closing date, closing costs payment responsibility distribution and any non short sale negotiable expenses to be paid at closing.

For short sales the closing date should be as far away as possible because short sale negotiations can take a long time. *It is better to establish the closing date as close as possible to the auction date.* Select a date within the final two weeks prior to auction date. If for any reason the short sale negotiation fails, close the escrow and allow the home seller to find other options.

*In short sales all closing costs should be paid by the seller.* This is because, since there is more owed on the property than what the property is worth, it is the lender(s) who are really paying the closing costs. This also makes it a lot easier for the investor to determine how much the property actually is costing. Select “*seller to pay all closing costs*”.

Items to be or not to be pro-rated are usually all the costs associated with the property that are not discountable in a short sale. *Do not pro-rate any items. All this should be paid by the seller.* These include taxes, homeowner association fees, etc. Select “will not be prorated”, then select all the items, because none of them will be pro-rated. Then, after “other” write “no items to be prorated”. Since the home seller is upside down on the property, it is really the lenders who will be paying for all of this. In addition, this makes it easier for the investor to calculate the final purchase price because it includes everything.

**Item 6. Possession:** This is the date in which the investor takes total control of the property and the home seller is out of the property. *A misunderstanding or non-compliance of a possession date can be the source of a horrible legal dispute.* This almost never happens, but it is always a risk with a property that is still occupied by the home seller. If the seller is in financial distress, he/she may attempt to stay in the property for free.

*A specific date for the property to be turned in clean should be established in the contract.* Use around \$5,000 as the amount to be held as security. In reality, the \$5,000 is not an issue because in a short sale, per the creditor instructions, no amount should come out for or be withheld in favor of the seller. However, if for any reason the seller later needs to be evicted, then the seller will owe the buyer \$5,000. Damages in an amount greater than the value of moving to a motel should be charged for every day in the property beyond the possession date. I usually use \$200 per day because that is definitely more expensive than renting space in a motel. Although it almost never happens, the investor should be well positioned to evict home sellers turned squatters.

If needed, money should be given to the seller to move out. Since in a short sale the owner is not supposed to receive any funds, any money should be given after the seller is out of the property and outside of escrow. Use this only for finding a new home for the seller. Maybe an advance can be given for the seller to reserve a rental.

**Item 7. Inspection.** *This inspection should take place as close as possible to the closing date.* This clause allows for a last minute inspection of the building. The inspector should be a professional building inspector or a contractor to rehab the building. The last minute inspection protects the investor from the home seller removing pieces of the building or personal property initially included in the sales agreement. Examples:

- Seller may decide to take the kitchen cabinets.
- Water damage may have occurred since last investor’s visit because of unattended plumbing.
- Someone may have broken into the property and vandalized it - a very real possibility with a vacant property.

These are all real possibilities. If any of this is noticed in the last minute inspection, the investor has the option of either not closing or getting a price adjustment.

**Item 8. Access.** *The investor should have access to the property to show to whomever he may be associated with in the transaction.* This can be a sensitive matter if the seller is still occupying the property. Use the “Authorization To Enter Property” form.

**Item 9. Securing this Agreement.** *Here the investor requests permission, up front, to secure the contract with an instrument. Do this only if needed.* This can be a protective lien, an option agreement or a trust deed with promissory note. Any of this will have to be signed by the home seller. Any of these instruments will cloud the title. In a short sale, this is not usually a problem because the property is already over-mortgaged anyway. Because of this, the home seller usually agrees.

A protective lien is filed to make sure nobody else will be motivated to get into the chain of title and affect the short sale negotiations. A trust deed to the name of the investor will do the same. An option agreement will ensure that nobody can circumvent the investor and take advantage of his efforts.

It is better to not cloud the title. This can complicate matters with the title company and the lenders. Do it only if you have to.

**Item 10. Other Provisions and Conditions.** *This space is used for adding any conditions or provisions to the contract that may be needed.* It is important that no contradicting escrow instructions be added. For example: “Buyer to provide \$5000 to seller for moving costs” is an escrow counter instruction because the lenders will not approve the seller to get any money at closing because the lenders are losing money. Such a clause in the agreement will compromise the transaction.

## Purchase Addendum “A” and Understanding

*Addendum “A” prevents any misunderstanding which can later become a dispute.* It protects the investor and makes clear to the home seller all the conditions of the sale. This addendum is not vital for the transaction but it is very convenient to have.

*Addendum “A” delineates the terms, responsibilities, assumptions and conditions of the short sale purchase.* The home seller needs to understand all this. I never had a problem with a home seller not signing and initialing this document. This document is fair. In a short sale, the home seller is upside down on the property anyway. If they are motivated and real about the transaction, they will initial and sign the whole document. *If they do not like the addendum, they may have wrong expectations and problems may arise later.* Remember, in short sales the investor obtains a property at a good price by resolving a seller’s problem, not by inheriting it.

### Completing Addendum “A”

Preferably the seller should complete the document. The investor should thoroughly understand the document and be able to explain each item in a phrase or two, just like below. Each item has a lot of legalese. Let the home seller read it.

The first thirteen items of the Addendum A are initialed at the end of the item. All of these items have to do with the expectations of the transaction.

**Item 1. Payments:** The investor has not agreed to pay all or any of the back payments due.

**Item 2. Possibility of Foreclosure:** If the short sale is not successful, foreclosure may still happen. This is always a possibility.

**Item 3. Hold Harmless:** The home seller will not blame or sue the investor.

**Item 4. Possession:** Match the possession date in the purchase and sale agreement.

**Item 5. Intent to Profit:** Discloses that the investor is doing this for profit. The home seller should not be offended by this.

**Item 6. Communication:** The investor and the home seller will be in touch through the transactions. If they are serious and motivated, this is never a problem.

**Item 7. Fully Informed and Understand:** The seller understands exactly what the investor is actually doing.

**Item 8. Satisfied With Sales Price:** The seller is happy with how much is offered for the property. In reality, since all short sales are in over-mortgaged properties, the price is meaningless to the home seller. The lender is the one taking the hit.

**Item 9. Legal Council Not Denied:** The seller can talk to his lawyer.

**Item 10. Fairly Negotiated:** The seller is not forced into the transaction in any way.

**Item 11. Execution of Counter Parts:** Basically, the documents can be faxed.

**Item 12. Legal Authority:** The seller has the legal authority to sell the property. The investor, by this time should be certain of who has the right to sell. It may be the owner, a person with power of attorney, a court appointed representative, the executor of a state, etc. Make sure of this or all efforts will be in vain.

**Item 13. Possible Tax Implications:** The owner may be responsible for taxes if he lived in the property less than two years or less than a total of twenty four months within the last five years. This is often seen in non-owner occupied properties.

The next five items refer to the conditions of the sale being favorable to the investor. Read and understand these five items. Most likely, if these conditions are not met, the investor is not getting a good deal. Note that this “additional conditions” are important safety measures for the investor. This group is formatted to be initialed on the left in order to separate them from the first thirteen items.

**Other:**

This space is designed for the any other additional conditions that the seller or investor may need to add. As in the purchase and sale agreement, make sure that no escrow counter instructions are added.

**Remarketing for Profit Disclosure:**

Use the “other” space in the addendum to disclose and obtain permission from the owner to remarket the property, for profit, prior to closing. To accomplish this, hand write, in front of the owner, and have him initial, the disclosure: “*Buyer authorized to remarket property for profit prior to closing*”. This opens the option, marketing the property for assigning the contract or executing a double escrow. Hand writing this disclosure and authorization and having it initialed prevents any misunderstandings with respect to the investor’s intentions.

**Additional Notes:**

- Include this document in the escrow.
- Do not disclose or deliver this document to creditors. They may not be receptive to “remarketing for profit prior to closing”.

### **Authorization to Release Information**

*This is the document that allows the investor to speak with a creditor or lender on behalf of the home seller. Without this document, most lenders will not do anything. Create one release of information form for each lender secured by the property.*

Filling in the document is self explanatory. Sometimes, almost never, the home seller, at the beginning is worried about providing the SSN. If this happens explain what it is. One way to go around the SSN issue is to have the home seller directly fax the document to the bank. If they are motivated and serious about the transaction, the seller will.

### **Authorization to Release Payoff**

*This document allows the investor to obtain the payoffs. For most banks, the release of information is sufficient. Very few need a separate form. It is better to have it. Get one release of payoff for each lender secured by the property.*

### **Authorization to Enter Property**

*This document allows the investor to enter the property. It is mostly used when the property is vacant. Most likely, if the property is vacant, the home seller will turn in keys to the investor so the investor can come and go anytime. However, neighbors can be worried and call the police. This document will prevent having any problems with them. It is a good idea to fax a copy of the document to each person that will see the property without the investor present. It is a great idea to always keep the home seller informed about who is accessing the property and when.*

### **Assignment of Real Estate Purchase & Sale Contract**

*This document is for assigning a purchase and sale agreement to a new buyer. This new buyer takes the position of the original buyer. The document is self explanatory.*

The *assignor* is the original investor, the person who obtained the commitment.

The *assignee* is the person taking the original investor's position.

Note that there is no mention, and there should not be any mention, of valuable consideration (money). Do not add that. In a short sale, and in most instances, this can compromise an assigned transaction.

### **Request to Open Escrow – Title Company**

This a form letter sample used for requesting escrow opening to a title company. Edit this document as needed.

## **Request to Open Short Sale – Creditor**

This is a form letter sample used for starting negotiations with a creditor. Edit this document as needed.

## **Blank Addendum**

This is a form addendum to be used every time there are changes to the original conditions of the purchase and sale agreement. It is better to have one addendum per each item changed, added or deleted.

## **List of Short Sale Documents Needed**

This is a comprehensive list of all the documents that a creditor may possibly request in order to process a short sale. This list is designed to be given to the seller so he/she can start collecting all the documents that apply to the situation.

## **Power of Attorney**

This document is to be used in case one or more of the owners of a property will not be able to sign documents needed for the sale of a property.

## **Short Sale Package Enclosure List**

This is a comprehensive list of all the documents that may be needed to submit to a creditor. Check all the ones that are included in the package faxed or mailed to the creditor.

## **Sample Short Sale Offer**

This is a sample of a letter used to point out all the factors leading to making a specific price offer for a property. Short sale offers have to be tailored to each specific situation.

## **Sample Photo Report**

This is a sample of a photo report used to support a short sale offer for a property. If requested or accepted by the creditor, create a similar one to support the reasons for your offer.

## **Financial Statement**

This is a generic financial statement. Most creditors have their own and want theirs to be used. Use this one if the creditor does not have a form of its own.