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# CRAWFORD & KELLER PLLC

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## SHORT SALE PACKAGE

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# CRAWFORD & KELLER PLLC

Crawford & Keller is pleased to assist you with your short sale negotiations. Please be advised that Crawford & Keller PLLC cannot guarantee any particular result. We will work diligently on your behalf, however, we cannot guarantee approval or acceptance of any offer. This process requires a great deal of cooperation on your part so we ask for your patience and timely responses when called upon. We also ask you to keep in mind that it is not uncommon for weeks, even months, to go by with little or no progress on the file. That being said, in order to keep a line of communication open at all times, we ask that you provide the following:

Daytime phone number: \_\_\_\_\_

Cell phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Included in the packet is a variety of information that we need from you. Please review and complete all requested information and return to one of our offices. You can drop off the documents at either location: 120 N. George Street, Charles Town, WV or 212 Lutz Avenue, Martinsburg, WV. We ask that you keep originals of all paperwork you provide to us except for pages 7 and 8 of this packet. We need originals of the notice of representation and the account authorization request form. Please note that Crawford & Keller stores all documents digitally, therefore, no originals provided to us will be returned to you.

Finally, we suggest that you conduct an online search on the topic of short sales. We would also recommend that you consult with a tax expert on the tax consequences may arise as a result of a short sale. Crawford & Keller PLLC does not give tax advice and no information contained in the packet or obtained from our office, staff or attorneys should be construed as such. For our part, we have attempted to answer the most commonly asked questions with a brief Q&A outline.

Thanks!

Crawford & Keller PLLC

**Crawford & Keller PLLC** is pleased to assist you in the short sale of your property. Every lender handles short sale requests in their own way and in accordance with their own guidelines. That being said, here are some questions and answers to the most common questions:

**Q. What is a short sale?**

A short sale is a sale of real estate in which the proceeds of sale are not sufficient to pay the balance owed to the seller's lender. In a short sale, the lender agrees to accept less than the total debt owed to allow the seller to sell the property.

**Q. Why would a lender accept a short sale?**

Lenders often agree to a short sale due to the economic circumstances of the seller (debtor) and to help mitigate the loss the lender would otherwise incur if forced to foreclose on the property.

**Q. How does a lender determine the amount it will accept for a short sale?**

The lender determines how much it will accept based on a number of factors including (1) a review of the seller's financial position – this often includes a review of the seller's most recent tax returns, pay stubs, bank statements, a statement as to the seller's hardship and a breakdown of monthly expenses and; (2) a Broker Price Opinion (BPO) – this is a realtor's opinion of the probable selling price and/or an appraisal.

**Q. How long does a short sale take?**

The answer varies depending on the lender. Some take as little as two weeks while others take up to a year. An average is between 5 and 6 months. Each lender has its own guideline for how a short sale is processed and many lenders use a "staging" process. However, these guidelines are always subject to change. For example, at the outset, you may be told that stage one in the negotiation takes 30 days but, then in 30 days, you are told that the stage now takes 90 days due to high work volumes.

**Q. How will I know when my short sale is approved?**

Your lender will issue a short sale approval letter. This letter will set forth the terms and conditions under which the short sale has been approved. This generally includes what fees the lender will allow to be paid at closing out of the sale proceeds and what fees will have to be paid by the seller personally. It also will provide the timeframe and describe whether the collateral as well as the debt is being released and how the lender plans to deal with the deficiency.

**Q. What is the difference between a release of the debt and a release of the collateral?**

A release of the collateral means the lender will accept the short sale amount in order to release the collateral (i.e., the house being sold) to be sold to the buyer. This will allow the seller to sell the property to the buyer free and clear of the lender's lien. A release of the debt means that the lender is accepting the short sale payment as complete satisfaction of the debt and will not attempt to collect the deficiency.

**Q. What if I have two loans?**

If you have two loans, then both lenders must approve the short sale.

**Q. What is a deficiency?**

A deficiency is the difference between the debt owed and the amount accepted by the lender as a payoff for the short sale.

**Q. What if the lender only releases the collateral and not the debt?**

In this case, the seller can sell the property free and clear of the lien however, the lender maintains its right to seek a deficiency judgment against the seller. In other words, the lender may attempt to collect the difference between the amount paid to the lender as part of the short sale and the amount owed. For example, if the seller owes \$250,000.00 and the lender accepts \$150,000.00 as a short sale payoff, then the seller may still be obligated to pay the lender the difference, or in this example, \$100,00.00.

**Q. What are the tax implications of a short sale?**

A short sale involves forgiveness of a debt. Normally, forgiveness of a debt is a taxable event according to I.R.S. regulations. However, there have been modifications to this I.R.S. provision as it relates to certain short sales. Depending on the circumstances of sale, the seller may be responsible for paying taxes on the difference between what the lender is owed and what the lender accepts as part of the short sale. To learn more about these I. R. S. exceptions, any person considering a short sale should consult with a tax professional. Crawford & Keller PLLC does not give tax advice and no information received from our firm should be construed as such.

**Q. What is a soft note?**

A soft note is an unsecured loan. Lenders often request a soft note to be signed by the seller to induce the lender to accept the short sale. The soft note is generally repaid at zero percent interest for a period of time determined by the lender – generally between three and ten years. The seller is then obligated to repay this loan even though the property has been sold. Soft

notes are common among short sale proposals from lenders. All persons considering a short sale should be aware of the soft note and the high probability that his/her lender will request one.

**Q. What does a short sale do to my credit?**

As a general rule, short sales are not considered by the lender unless the loan is in default. Any loan in default has a negative impact on your credit every month that it is delinquent.

**Q. If my short sale is not approved, and I am in default, the lender will likely exercise its right to foreclose. What is foreclosure?**

In West Virginia, foreclosure is a process by which the lender executes its rights under the deed of trust instrument, which secures the promissory note, after there is a default by the maker of the note. In other words, your failure to pay your mortgage results in your house going up for sale in front of the courthouse for purchase to the highest bidder at the sale. The time between missing your first payment and the sale varies, but it is typically four to six months or more. The purchaser is often times the lender. Occasionally, a private person will buy the property, but whomever purchases the house will demand you leave. Depending on the type of the loan, you may be able to resist this demand for a period of time. The only sure way to stop this sale is to file a petition in Bankruptcy.

If the proceeds of sale are insufficient to satisfy the lender and any other junior creditors such as the second mortgage holder, they still have their claim against you for any deficiency on any amounts that are owed to them. In other words, they can sue you for the balance that is still owed and have a judgment rendered in their favor in the amount of the deficiency. There is some information on the internet that West Virginia is an anti-deficiency state, but this is false. The only anti-deficiency language in the West Virginia Code is found in the Consumer Protection Act (Chapter 46A) which says that if the debt is under \$1,000.00 the creditor cannot collect it. In most cases involving real estate, the debt exceeds \$1,000.00. In addition to the possibility of the attempt of the creditor to secure a judgment against you and collect the balance owed, we believe that a foreclosure will have the most adverse affect on credit rating as opposed to a deed in lieu or a short sale.

**Q. What is a deed in lieu of foreclosure?**

You and the lender agree that the lender will accept a deed to your property in lieu of foreclosing on the property. There is some good case law that would suggest that if a lender enters into a deed in lieu of foreclosure agreement with you, that in effect, they have taken the deed in exchange for the cancellation of your debt. This approach may be effective if there is only one lien against the property. If there is more than one lien, the lender taking the deed to your property would take the deed subject to those liens and a deed in lieu is not as desirable.

**Q. Will the lender stop foreclosure efforts during the short sale process?**

No. The foreclosure process will continue and run parallel with the short sale process. Often, a foreclosure can be postponed to permit the short sale process to be finalized but only in certain situations and NEVER if a ratified contract is not in place and under review by the lender.

**CRAWFORD & KELLER**

**SHORT SALE CHECK LIST**

1. Signed authorization for Crawford & Keller to represent you. (included with this packet)
2. Signed authorization for Crawford & Keller to charge for its services on the settlement statement at closing. (included with this packet)
3. Contact information for you including daytime phone number, email, mailing address
4. Contact information for your realtor
5. Signed and dated Listing Agreement
6. Copy of most recent statement from your lender(s)
7. Telephone number for your lender(s)
8. Two most current bank statements
9. Paystubs for the past two pay periods or one month (whichever is greater)
10. 2007 and 2008 tax returns (or two most recent filed returns)
11. Hardship letter setting forth specific reasons why you are no longer able to afford the house payments.
12. Financial Statement. Please provide a detailed itemization of your monthly expenses and your monthly income (included in this packet)
13. Copy of any foreclosure notes or other paperwork you may have received from your lender as it relates to a default on your mortgage payments.
14. Copy of a sales contract (if applicable)

**Please be prepared to update these documents upon request from Crawford & Keller PLLC during the process of the short sale negotiations.**

**“SHORT SALE” NEGOTIATION REQUEST FOR REPRESENTATION BY CRAWFORD & KELLER PLLC**

Buyer(s): \_\_\_\_\_

Seller(s): \_\_\_\_\_

Brief Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Sales Contract dated \_\_\_\_\_, \_\_\_\_\_.

The undersigned request(s), in conjunction with the above referenced sales contract, Crawford & Keller, PLLC to negotiate the acceptance of “short” payoff from the Seller’s lender(s) and procure the release of any liens secured on the subject property.

The undersigned has attached an “Account Authorization for Crawford & Keller PLLC”, executed by the Seller, authorizing Crawford & Keller, PLLC to negotiate with the Seller’s lender(s) for the purpose of facilitating settlement of the above contract.

The undersigned agrees that, while Crawford & Keller, PLLC will work diligently to obtain a payoff that is suitable to all parties in furtherance of settlement, Crawford & Keller, PLLC can guarantee no particular result.

The undersigned agrees to allow Crawford & Keller PLLC to release any all information as it relates to this short sale to my realtor and to allow updates on the status of the short sale to be given to the buyer’s realtor.

The undersigned further employs, agrees and consents to allow Crawford & Keller PLLC to represent him/her at the time of closing for this transaction and to permit Crawford & Keller PLLC to charge a sum representative of the work performed on the file to be charged at closing and paid out of the proceeds of the sale.

The undersigned further acknowledges and consents to Crawford & Keller, PLLC representing multiple parties to the transaction at closing, including, but not limited to, Buyer(s), Seller(s) and Lender(s).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

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**PLEASE RETURN THE ORIGINAL OF THIS DOCUMENT TO CRAWFORD & KELLER PLLC**

**ACCOUNT AUTHORIZATION FOR CRAWFORD & KELLER PLLC**

Borrower(s): \_\_\_\_\_ SSN: \_\_\_\_\_

\_\_\_\_\_ SSN: \_\_\_\_\_

Lender: \_\_\_\_\_

Loan # \_\_\_\_\_

Property Address: \_\_\_\_\_

I/We, the undersigned, do hereby authorize Crawford & Keller, PLLC to obtain a payoff of the above loan. I/We acknowledge that the payoff amount sought from the Lender may be less than contractual amount due. In furtherance of that goal, **Crawford & Keller, PLLC is authorized to communicate with the above lender on my behalf, obtain information regarding my account and participate in all negotiations in order to obtain a final payoff.** Crawford & Keller PLLC is also authorized to share and communicate all information to and with my realtor.

I/We understand that regardless of what Crawford & Keller may negotiate on my behalf, it is ultimately my decision to accept or reject any short sale offer.

I/We further understand that, while the Lender may accept a payoff for less than the amount contractually due in exchange for a lien release, I may still be obligated to pay any deficiency or sums due to the lender. Additionally, I acknowledge that a "short sale" may constitute a taxable event and that it is my obligation to consult independent tax advice to deal with this taxable event.

I/We acknowledge that none of the information I have received from Crawford & Keller is intended or to be construed as tax advice or tax counsel. Furthermore, I agree to indemnify and hold harmless, Crawford & Keller, PLLC for any such claims that I/We may be subject to and for reliance on this authorization form.

Dated \_\_\_\_\_

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**PLEASE RETURN THE ORIGINAL OF THIS DOCUMENT TO CRAWFORD & KELLER PLLC**