

Bankruptcy and Short Sale

What Agents Need to Know

December 2012

Bankruptcy and Short Sales

What happens to the short sale?

- Bank of America can review a short sale offer while the loan is in an active bankruptcy. To complete a short sale and issue the approval letter, the bankruptcy documents must be filed and approved by the court. Any final agreement will require bankruptcy court approval
- Homeowner(s) should consult with their Bankruptcy Counsel about how these programs could affect their mortgage and their bankruptcy case.
- When a loan is in bankruptcy, there is an Automatic Stay, also known as a “hold,” of any collection activity placed on any and/or all debts to which the debtor is a party. Before the short sale specialist can discuss the short sale, Bank of America must have written authorization from the Homeowner(s’) Bankruptcy attorney on the law firm’s letterhead to discuss loss mitigation options with the borrower. This is in addition to the [Bank of America Third-Party Authorization Form](#) needed from the borrower to speak to the bankruptcy attorney and the listing agent.

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If Homeowner(s) is/are currently in a bankruptcy proceeding, or have previously obtained a discharge of this debt under applicable bankruptcy law, all communication and notices are for information purposes only and is not an attempt to collect the debt, a demand for payment, or an attempt to impose personal liability for that debt.

The Homeowner(s) is/are not obligated to discuss their home loan with Bank of America or enter into a short sale agreement or other loan-assistance program. Customers should consult with their bankruptcy attorney or other advisor about their legal rights and options.

For a short sale to be processed to completion for a loan in bankruptcy, Bank of America must receive one of the following releases issued by the bankruptcy court:

- Granted Motion to Sell*
- Granted Motion for Relief from Automatic Stay with noted short sale negotiation*
- Dismissal
- Discharge with Abandonment, Closing Order, Final Decree, Trustee No Asset Review

*A *granted* Motion differs from a *requested* Motion.

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Note: If Homeowner(s) receive(s) a discharge under a Chapter 7 a bankruptcy proceeding: discharge releases the Homeowner(s) from personal liability for certain specified types of debts. The Homeowner(s) is/are no longer legally required to pay any debts that are discharged.

The discharge is a permanent order prohibiting the creditors of the Homeowner(s) from taking any form of collection action on discharged debts, including legal action and communications with the Homeowner(s), such as telephone calls, letters, and personal contacts.

Although a Homeowner is not personally liable for discharged debts, a valid lien (i.e. a charge upon specific property to secure payment of a debt) that has not been avoided (i.e. made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien.

Bankruptcy Frequently Asked Questions

1. What additional documents will be needed to complete this short sale?

Bank of America must have written authorization from the Homeowner's bankruptcy attorney (on the law firm's letterhead) to discuss loss mitigation options with the Homeowner.

The customer and the attorney may determine that they do not want to give this authorization and the short sale can be negotiated through the attorney. This attorney authorization permitting Bank of America to speak to the Homeowner(s) is in addition to the [Bank of America Third-Party Authorization Form](#) needed from the Homeowner(s) to speak to the bankruptcy attorney and agent.

Communication cannot occur with the real estate agent/Homeowner(s) until the bankruptcy attorney's written authorization on the firm's letterhead and the Bank of America Third-Party Authorization form are received.

2. When will I receive the approval letter?

An approval letter cannot be issued until the releases, identified above from the bankruptcy court has been received. Once the release is received, the file can be submitted for approval to the appropriate investor(s) and/or mortgage insurance company. The file will then follow the normal approval process to ensure it meets investor requirements.

Bankruptcy Frequently Asked Questions

3. Why can't you approve a short sale file while waiting for the bankruptcy to be released?

An approval must follow the direction provided in the release by the bankruptcy court. That is why a short sale will not be approved unless a court order permitting the sale is first received.

4. Can a homeowner qualify for a Home Affordable Foreclosure Alternative (HAFA) incentive while in bankruptcy?

Yes. However, any funds going to the Homeowner(s) through state incentives or other incentive programs must be properly disclosed and handled in accordance with bankruptcy legislation and local rules.

6. Are additional documents required for a short sale when the homeowner is in active bankruptcy?

Yes. Two additional documents are needed for a short sale that is in active bankruptcy:

- An attorney authorization letter from the bankruptcy attorney providing permission to speak with the Homeowner(s) is required. This is separate and in addition to the required Bank of America Third-Party Authorization Form signed by the Homeowner(s) permitting Bank of America to speak with the bankruptcy attorney and the real estate agent.
- Bank of America must receive a release issued by the bankruptcy court (previously listed).



Service Release

During the short sale process, loan servicing may be transferred to a different loan servicer.

- Servicing refers to collecting principal, interest and escrow payments, if any, as well as sending monthly or annual statements, tracking account balances and handling other aspects of the loan.
- We may assign, sell or transfer the servicing of a loan at any point while the loan is outstanding.
- Your client will be given advance notice before a transfer occurs.
- Depending on the status of the short sale when the servicing of a loan is transferred, the new servicer may not be required to accept the terms and conditions of a short sale.