

**KAYSER & ASSOCIATES, LLC**  
**(Kayser Short Sale Law Center)**

636.220.2218 (St. Louis) | 630.534.3104 (Chicago)|  
kayserslawfirm.com

**Agent Guide**

(Read, sign, and fax or email back to your assigned file manager)

**Attorneys:**

Elizabeth Kayser, J.D. Esq.	636.220.2218   Fax 314.261.9316	attykayser@kayserslawfirm.com
Ryan Hyde, J.D. Esq.	314.669.5316   Fax 314.261.9316	attyhyde@kayserslawfirm.com
Ted Disabato, J.D. Esq.	314.276.1318   Fax 888.288.9341	tdisabato@kayserslawfirm.com

**File Managers:**

David Quinn	309.212.7657   Fax 888.552.6177	dquinn@kayserslawfirm.com
Matt O'Toole	314.422.4444   Fax 855.793.1393	motoole@kayserslawfirm.com
Rhonda Motes	314.441.6750   Fax 866.610.1475	rmotes@kayserslawfirm.com
Robert Clarke	636.336.2893   Fax 678.792.3020	rclarke@kayserslawfirm.com

**Here's what we do:**

- 1) Assist the agent in analyzing viability of the short sale, provide free consultation to homeowner & Agent.
- 2) Set expectations from the get-go on contributions, HELOCs, deficiency issues, challenges, trends of particular banks, dynamics of particular situation (divorce, HELOCs, hardship, seller's motivation, questions on unknown liens, etc)
- 3) Gather short sale documents and compiles short sale package from seller (see below).
- 4) Complete and submit to appropriate lien holders documentation requested by lien holders in order to process request for short sale approval;
- 5) Conduct all communications with appropriate personnel at short sale lender;
- 6) Provide Agent and sellers periodic status reports concerning the short sale request;
- 7) Coordinate preparation, initial, and revised HUDs with title company and identify title issues.
- 8) Negotiate the short sale APPROVALS-COUNTERS-CONTRIBUTION DEMANDS AND WAIVERS OF DEFICIENCIES.
- 9) Verify whether client will be eligible for RELOCATION INCENTIVES through the investor or servicer.

**NOTE:** "Kayser" will be the sole agent to negotiate the short sale of the subject property. Seller(s) & listing agent agree that they will not continue or initiate any contact with the lenders in regard to this short sale unless Kayser & Associates requests the same. Seller & listing agent understands the importance of adhering to this policy and recognizes the risks and problems associated with more than one agent negotiating the delicate and complex issues and variables associated with this short sale. If Kayser's representation is terminated after substantial work has been done on the file, a lien for legal fees will be attached to the property to compensate Kayser for work done when the property is sold.

**I. What affects the success of Kayser & Associates?** "It clearly begins with how we take the listing, the kind of documents we collect; on to our pricing strategy and how to deal with inevitable low ball offers, and then once a contract is obtained, how to structure and present a short sale package that makes the processors job easier . . . then the creative negotiation process which is clearly our forte." How does the bank decide if they will take the reduced short sale amount? The Loss Mitigation department knows they are going to take a loss; it is just a question of degrees of loss. They have a computer program that estimates what it will cost to foreclose on the property, maintain it after foreclose, put the house on the market and rehab the house. If they think they can take the house back, fix it up and make a profit to defray their loss, then they will turn the short sale down and take it to sale at auction. They compare the loss if they short sell to the loss if they sell the house at auction. The bottom line is that it depends on what is offered compared to what the house is worth determined by the BPO "**brokers price opinion.**"

**Buyers:** It is really important for buyers to start working with a lender **before** the home buying process. Things like closing an unused credit card can affect your credit score in the short run.

**II. How do you price a short sale?** List the property competitively based off the average “SOLD” in last 6 months. Listing too high will create a high BPO and will kill a short sale! (What is owed on the mortgages should not influence your list price). If a foreclosure sale is already scheduled, drop it as low as possible and quickly to accelerate an offer. If it is not in foreclosure, drop it regularly about 3% every 2 or 3 weeks providing you started at the right original list price. Once an accepted contract is secured, leave the price where it is.

### **III. Items needed from the Agent right away**

Scan or fax to your assigned file manager right away (see above):

1. Listing agreement & listing history (please ensure the listing agreement and all other documents to be submitted to the bank are fully executed with “wet” signatures. Most banks will **not** accept any form of electronic signatures on short sale documents.)
2. MLS Printout (pdf—not a link! We can’t send links to banks)
3. CMA & comps (including foreclosures & short sales, pdf-not a link). We can send you a sample CMA in pdf form.

**IV. What type of contract do we need for a short sale?** All contracts must be fully executed with “wet” signatures. Most banks will **not** accept any form of electronic signatures on short sale documents. All contracts must be arms-length transaction (no familial relationship of buyer to seller). Please ensure all contracts are bona fide offers and are “*clean*”, no buyer prepaids (minimal if any), no Home Warranties (lenders will not pay), and “As Is” (inspection period is not used for negotiating but for Buyers information only). For the most part, no “seller’s concessions.” If you can get buyer to agree to do the inspection after making the offer, please do so as it makes them a committed and vested buyer. Otherwise, a buyer can walk upon inspection after we receive lender’s approval. Also, please try to get as much earnest money as you can –for the same reasons...a committed buyer. Don’t forget to get proof of funds and/or buyer approval letters. Contingent investor contracts that are subject to partner’s approval or investor contracts that give the investor “owner by contract” status are absolutely **not** accepted . . . a/k/a “double closings”. . . no “flopers”. Please be aware of the following **red-flags** that the potential buyer may be looking to engage in illegal flipping, flopping, or double-closing:

- The seller recently acquired title OR the seller listed on the sales contract is not in title
- The subject property was a recent distressed sale
- The seller’s lender is taking a loss, but the seller is realizing a profit
- The owner listed on appraisal or title does not match the seller on contract
- The sales price is much higher than last purchase price
- No real estate agent is involved
- Many flipping schemes feature a straw buyer who is not represented by an agent
- Indications of a straw buyer
  - o The buyer is a first time homeowner
  - o There are suggestions of stolen identity like a fraud alert on credit report
  - o Perpetrator may use a Power of Attorney for the straw buyer so that the straw buyer does not have to go to closing
  - o Straw buyer’s asset documentation usually shows just enough cash for the down payment, closing costs, and minimum reserves

\*Please note that the presence of one or more of these red flags is not proof of flipping. However, the more that are present, the more likely it is that the buyer has fraudulent intent.

## **V. I have a contract, now what do I do?**

After accepted and qualified contract (see III):

1. Fax or scan signed Contract & Buyer's pre-approval and/or proof of funds.
2. Get the contract to your Title Co *right away* and email us the Title Co contact info right away.
3. We will then order the title report & HUD 1. Any title issues will be identified by Kayser & Assoc and the Title Co. Short sale files will only be processed if title issues, defects, extraneous liens (outside of standard mortgages) are resolved right away, otherwise, Kayser & Assoc will withdraw from representation. As we all know, the sooner these issues are identified, the higher likelihood these issues can be resolved before closing. Otherwise, closings never take place and no one gets paid.

**VI Short Sale Addendum:** A short sale addendum allows the Buyer the right to terminate the contract and receive the earnest money back at any time prior to the Seller notifying the Buyer of lien holder approval. If Buyer terminates the Contract (Or "walks") after receiving notice of lien-holder approval, the Buyer may be liable for a claim for damages and will likely lose earnest money. If the seller has a foreclosure approaching, the damages could be significant. There is a lot of work, energy, resources, and time invested prior to obtaining a short sale approval. The buyer cannot jump ship after all of this work is been done and approval has been successfully obtained. It is time to walk to the closing table and honor their contractual commitments.

**VII Work the BPO for a Successful Short Sale Approval:** The "broker's price opinion" is the most critical step in the short sale process. It will determine whether or not the lender will allow a payoff that is low enough for a buyer to accept. Sometimes it is done by an Agent or an actual appraiser. Your lender will make this decision.

1. Prepare for the BPO. Your job is to make your house look as 'worthless' and as much of a 'liability' as possible. Go to the local police department to get crime statistics for your area. Search online to find out if there are any sex-offenders in your area and print out the details. Get 3 nearby sales of similar homes that support your buyers offer.

2. You will need to meet the BPO agent at the property with your own CMA including foreclosure and short sale comparables. The lenders BPO agent will be contacting you. Ensure the BPO agent does not access the property without going through you. Remind all BPO agents per Fannie and Freddie's own guidelines, "appraisers must consider foreclosures and short sales that are representative for the market in which the property is located." Offer your data to help them with their evaluation.

## **VIII. The Process (please explain to the buyer's agent)**

**Timeframe:** From the time a Contract is entered into to sell the home, the short sale process time can vary greatly depending on the lender(s), number of liens, mortgage insurance, motivation of seller to the process, title issues, negotiations, sellers qualifications for a short sale, BPO, whether the loan is bank-held or held by an investor or Freddie Mac or Fannie Mae, government programs, lender policies, cooperation of Seller, cooperation of Agent, short sale staff of lender, buyers level of commitment.

**Major Milestones:** 1.Short sale package submitted to all lenders/lienholders 2. Confirmation package has been received 3. BPO ordered 4. BPO results in 5. Negotiators assigned 6. File submitted to Investors 7. Final approval/demand in 8. Negotiations of contributions (2<sup>nd</sup> liens and HELOCs and deficiency issues.)

**IX. Disclaimer:** 1) Agent acknowledges that there is no guarantee that the lienholder will consent to a short sale or agree to forgive any deficiency. 2) Agent has determined with the Seller that the Seller is not currently nor intends to pursue a loan modification, forbearance, deed in lieu, and/or bankruptcy. 3) Agent acknowledges there is no guarantee that foreclosure proceedings will be canceled or postponed during the short sale process. Each lender is different and whether a foreclosure continues is within the discretion of each lender. Nothing in the Agreement and nothing in Attorney's statements to Client or your Agent may be construed as a promise or guarantee about the outcome of this matter.

**X. Indemnification:** Agent agrees to indemnify and hold harmless Kayser & Associate, LLC and its directors, officers, partners, joint ventures, attorneys, insurers, contractors and employees from liability.

**XI. Items Needed from the Homeowner** (you may be asked to assist in collection of these documents if Seller does not have a fax or cannot scan and email):

1. Authorization allowing us to negotiate with lender
2. Recent mortgage statement for all lenders
3. Delinquency notices, notice of trustee's sale, notice of default and any other documents that seller has received or will receive from the lender
4. Signed Hardship letter: A letter that states the events and reasons that caused the owners to not be able to make the house payments. We provide samples as a guide.
5. Bank statements: Last (2) months bank statements from all the banks where the owner(s) have accounts – checking and savings.
6. Financial statements: Shows income sources, savings, assets and expenses of the owner(s). Many lenders have their own workout documents which we have.
7. Last two years federal tax returns, first two pages only – and W2s.
8. Last two months pay stubs (or signed explanation as to why pay-stubs cannot be provided).
9. Profit and Loss statements (if self-employed) 6 months.
10. Bankruptcy Discharge letter if applicable.
11. Proof of Disability, if applicable.
12. Any document demonstrating hardship.
13. Divorce Decree, if applicable.

Listing Agent - Print name \_\_\_\_\_

Listing Agent – Sign name \_\_\_\_\_

Last name of Seller \_\_\_\_\_ Date \_\_\_\_\_