



OLR RESEARCH REPORT

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SHORT SALES

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You asked for a summary of the potential impact of requiring banks to (1) set a floor on any given short sale price in Connecticut and (2) accept or reject offers above that threshold within a certain time period. You also asked whether other states have legislated in this area.

SUMMARY

A short sale, also known as a pre-foreclosure sale, is when a person sells his or her home for less than the balance remaining on the mortgage. If the mortgage company agrees to a short sale the property is sold and the proceeds are used to pay off all, or a portion of, the mortgage balance.

We were unable to identify any state that has passed legislation specifically requiring banks to (1) set a floor on any given short sale price and (2) accept or reject offers above that threshold within a certain time period. We were also unable to find any study that assesses the potential impact of making such requirements law. However, various sources addressing similar proposals to increase regulation of short sales indicate that such measures could have several potential effects. These range from removing barriers to short sales and preventing foreclosures to increasing the cost of getting mortgages and decreasing their availability.

According to the National Conference of State Legislatures (NCSL), in 2013, 38 states considered legislation regarding foreclosures. At least seven states considered bills regarding short sales. None of these bills specifically addressed setting a floor on short sale prices. However, both Florida and Connecticut considered legislation that would establish decision-making timelines. One Florida bill would require a lienholder to approve a short sale and execute any documents necessary to close the sale within a specified time period, if a debtor finds a buyer who makes an offer in writing equal to the property's fair market value. The Connecticut bills would add a foreclosure option called foreclosure by market sale. This is a court-approved sale on the open market where the court, as opposed to the bank, sets the sale date which must be a certain number of days of approving an offer.

In general, Connecticut law does not specifically govern short sale transactions, other than debt negotiators' licensure requirements. OLR Report [2013-R-0083](#) summarizes these requirements in short sale negotiations.

In assessing the impact of making changes to state foreclosure laws, note that the banking industry operates under a dual regulatory system, federal law and state law. Federal law preempts state law regarding federally chartered banks on a number of issues. As such, the impact of certain changes in state law is generally limited to state chartered banks.

Also note that federal guidelines expediting the short sale process went into effect in 2012 for mortgages owned or guaranteed by Fannie Mae or Freddie Mac. According to the Federal Housing Finance Agency (FHFA), these federal agencies back three out of every four residential mortgages in the United States.

IMPACT OF REQUIRING PRICE FLOOR AND DECISION TIMEFRAME

We were unable to identify any state that has passed legislation specifically requiring banks to (1) set a floor on any given short sale price and (2) accept or reject offers above that threshold within a certain time period. We were also unable to find any study that assesses the potential impact of enacting such requirements into law. However, various sources have addressed or considered the impact of related issues concerning the regulation of short sales or other foreclosure prevention alternatives, such as foreclosure by market sale. As Table 1 shows, these sources differ on the potential impact of such measures.

Table 1: Potential Impact of Specified Short Sale Measures

Source	Measures	Potential Impact
Connecticut Association of Realtors	Foreclosure by market sale bill raised in 2013 regular session. (SB 971)	<ul style="list-style-type: none"> Establish uniform standards to guide the courts and encourage broader participation by real estate professionals. Leverage the judicial foreclosure process and real estate licensees to sell properties closer to their market value. Connecticut Association of Realtors March 5, 2013 Testimony
Connecticut Bankers Association (CBA)	An Act Concerning Homeowner Protection Rights HB 6355 (2013).	<ul style="list-style-type: none"> Result in an increase in the guarantee fee charged when a mortgage loan is sold to Fannie Mae or Freddie Mac (guarantee fees are generally designed to compensate for credit risks taken to own or guarantee a mortgage). Increase costs, time, complexity, and risks of foreclosing on a property in Connecticut. Connecticut Bankers Association – February 19, 2013 Testimony
CBA Representative (Telephone interview with OLR)	Short sale price floor and decision timeframes.	<ul style="list-style-type: none"> Result in Fannie Mae and Freddie Mac charging a premium to offset the risk of setting a statutory loss (i.e., setting a price floor), which could increase the cost of getting mortgages and decrease their availability. Reduce the safety and soundness of asset quality, making it more difficult to sell loans to investors because of a perception that it would be a greater risk. <p>Also indicated that these measures could have impact similar to those identified in the CBA testimony above; referred to:</p> Federal Register – Vol 77. No. 186, September 25, 2012
FHFA	Federal standard short sale guidelines.	<ul style="list-style-type: none"> Remove barriers to short sales by providing servicers and borrowers clarity on processing short sales. Streamline short sales and make the process more efficient for homeowners and mortgage servicers, preventing foreclosures. FHFA August 21, 2012 News Release

2013 SHORT SALE LEGISLATION

In 2013, at least seven states considered bills that would amend the foreclosure process to address concerns regarding short sales. The Georgia bill is the only one that became law.

Connecticut

We were unable to find Connecticut bills on the specific issues of requiring banks to (1) set a floor on any given short sale price in the state and (2) accept or reject offers above that threshold within a certain time period.

Table 2 summarizes the bills raised in the 2013 legislative session that sought to amend the foreclosure process to address concerns regarding short sales.

Table 2: 2013 Short Sale Related Bills in Connecticut

State	Bill Number	Summary
Connecticut	SB 971 SB 1059	Adds the option of foreclosure by market sale, a court-approved sale on the open market in which the property must be marketed for at least 120 days from the approval date of a court-approved marketing plan. Offers must be approved by the court, which must set a sale date at least 45 days from the approval date.
	HB 6068 (proposed)	Proposal to create a mechanism for (1) faster approval of short sales and (2) discouraging a mortgage servicer or lender from conducting a trustee sale or recording a notice of default or notice of sale, if a foreclosure prevention alternative is pending.

Other states

During the 2013 legislative session, at least six other states considered bills related to short sale transactions. These bills contained provisions that address issues such as short sale deficiency judgments, short sale requests by borrowers, licensure requirements and exemptions, definitions of certain terms related to short sale facilitation, prohibited foreclosure practices related to short sales, and use of short sale data. Table 3 summarizes these bills.

As Table 3 shows, Florida was the only other state that considered bills in 2013 with provisions that specifically relate to short sale prices and decision-making timeframes.

Table 3: 2013 Short Sale Related Bills in Other States

State	Bill Number	Summary
Arizona	SB 1141	Exempts certain real property sales held under deeds of trust from liability for deficiency after a short sale.
Florida	HB 1177	Creates "Florida Homeowners Bill of Rights Act." Among other things, provides requirements and procedures with respect to a borrower's request for short sale of mortgaged property. Requires mortgage servicer to communicate decision on request for short sale within 30 days after receiving all required information and any third-party consents.
	SB 1228	Creates the "Short Sale Debt Relief Act." Requires a lienholder to approve the short sale and execute any document necessary to close the sale within 45 days of the sale, if a debtor, among other things, finds a buyer who makes a written offer equal to the property's fair market value. Also provides that a debtor does not owe a deficiency judgment after a short sale under specified conditions.
Georgia	HB 83 (passed into law, effective 07/01/2013)	Exempts from the mortgage broker licensing requirement, licensed real estate salespersons assisting in a short sale real estate transaction in which a separate fee is not charged.
Illinois	HB 2722	Requires someone who negotiates residential short sales or otherwise engages in short sale facilitation for a fee to be licensed as a real estate broker.
Missouri	HB 800 SB 336 SB 425	Among other things, these bills specify prohibited foreclosure practices, including completing non-judicial foreclosures during short sale escrows.
New Jersey	AB 3780	Requires the use of short sale data under certain circumstances to assess real property and determine assessment ratios.

Source: [NCSL 2013 Foreclosure Legislation](#); state legislative websites

FEDERAL SHORT SALE GUIDELINES

In August 2012, FHFA announced new standard short sale guidelines for mortgages owned or guaranteed by Fannie Mae or Freddie Mac. The guidelines went into effect on November 1, 2012. One of the goals of these new guidelines is to expedite the short sale process, particularly for borrowers with hardships.

According to the [FHFA News Release](#), the new short sale guidelines:

1. offer a streamlined short sale approach for borrowers most in need,

2. enable servicers to quickly and easily qualify certain borrowers who are current on their mortgages for short sales,
3. offer special treatment for military personnel with Permanent Change of Station orders,
4. consolidate existing short sales programs into a single uniform program, and
5. provide servicers and borrowers clarity on processing a short sale when a foreclosure sale is pending.

Under these guidelines, Fannie Mae and Freddie Mac waive the right to pursue deficiency judgments in exchange for a financial contribution when a borrower has sufficient income or assets to make cash contributions or sign promissory notes. Also, Fannie Mae and Freddie Mac offer up to \$6,000 to second lien holders to expedite a short sale.

New Short Sale Timelines

In June 2012, FHFA announced new, stricter timelines for mortgage servicers considering short sales. Servicers are required to:

1. review and respond to short sales within 30 days of receiving a short sale offer,
2. provide weekly status updates to the borrower if the offer is still under review after 30 days, and
3. communicate final decisions to the borrower within 60 days of receiving the offer and complete a borrower response package.

Under these new guidelines, borrowers are not eligible for a new mortgage backed by Fannie Mae or Freddie Mac for at least two years after a short sale.

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