



## Short Sale Policy

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## STATUS

1. **Question: My “Short Sale” MLS listing has an offer on it that is being considered for approval by the lender; what status should my listing be in?**

Answer:

A. When a “Short Sale” listing has an accepted offer (even with a Short Sale Addendum) signed by both the buyer and the seller, and is waiting for approval from the lender, the listing **MUST** be put into **AWC or Pending** status. (Note: Any subsequent offer would be accepted in a back-up position. This approach will prevent the seller from selling the house more than once. Talk to your Broker for more clarification.)

B. If there is an offer, with the AAR Multiple Counter Offer and the “AAR Short Sale Addendum to Purchase Contract” signed by both buyer and seller and forwarded to the lender for approval, the listing may remain in **ACTIVE** status. The AAR Multiple Counter Offer may need to be modified (lines 7-8) if at the time of the offer there is only one offer being forwarded to the lender. (Note: Upon obtaining lender approval of the short sale and upon **SELLER FINAL ACCEPTANCE** of the AAR Multiple Counter Offer, listing status must be changed to AWC or Pending, per A, above). Talk to your Broker for more clarification.

Note: Some Agents have been submitting offers directly to the lender without the seller signing or acknowledging the offer. There may be some potential problems with this approach and you should carefully review the Realtor Code of Ethics-Article 1 and Standard of Practice 1-6 and talk to your Broker for more clarification:

## LIST PRICE

1. **Question: What are the list price requirements for a “Short Sale”?**

Answer: Rule 8.11 of the ARMLS® Rules and Regulations states: *Listing Price Specified. **The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings unless the property is subject to auction. If a property will only be sold by auction, the Listing must state whether the Listing has a reserve price or that the property will be sold at auction without reserve.***

What does this mean? The rule only calls for the listing to have the same price that was agreed upon in the listing contract. The price could also have been modified via a price change form. There are no other special rules governing the list price of a Short Sale Property.

**2. Question: *Isn't the Agent being unethical by listing the property for a price below what they or the lender will accept?***

Answer: ARMLS Rule 17.2 states: *Complaints of Unethical Conduct and Arbitration Requests.* *ARMLS may refer complaints of unethical conduct and requests for arbitration to the Association from which the Subscriber receives MLS service.*

What does this mean? If you feel that another Agent has been unethical in dealing with you or your clients, you or your client may file an ethics complaint with the local association. ARMLS does not hear ethics complaints, nor does ARMLS directly file complaints with the local associations. An ARMLS referral means that we will inform the Subscriber, when appropriate, of their option to file an ethics complaint with their local association.

**COMMISSION** The policy allowing for conditional commissions to be offered through the MLS (instituted on 3/10/09) has been revoked effective 6/24/09. No conditions on the commission may be portrayed through the MLS.

## **Background**

At the May 2009 NAR Mid Year Conference, ARMLS with the support of many large and small MLSs around the country, appealed the decision made by the NAR during the November 2008 Conference to mandate that if an MLS requires disclosure of a listing being a potential Short Sale, that it must also allow any potential reduction of commission required by the lender to be disclosed through the listing in the MLS.

The outcome of the appeal resulted in the aforementioned commission rule being reclassified as an optional rule instead of a mandatory rule. At the May 2009 ARMLS Board of Directors meeting, the Board voted to return ARMLS to its original policy of not allowing any conditional commissions to be offered through the MLS. This includes in any field, Remarks or otherwise, as well as any media or attachments to the listing. To review the appeal and position of ARMLS on

this subject, written by the ARMLS CEO and presented to NAR, please go to:  
<http://files.flexmls.com/az/20090605201840412678000000.pdf>.

## Short Sale Commission Policy

As with every other type of transaction in the MLS, the commission stated in the listing's Buyer Broker and/or Sub Agent field is a binding contract at the time an offer is made on the property. **YOU MUST NOT CONDITIONALIZE AN OFFER OF COMPENSATION THROUGH THE MLS.**

See Rule 12.1 of the ARMLS Rules and Regulations for the compensation rule titled Cooperative Compensation Specified on Each Listing.

A Subscriber will be in violation of the rules if the subscriber in any way (e.g. including, but not limited to: through any public or private remarks, any photo, virtual tour, link or attached document) conveys an offer of compensation any different than the stated gross percentage or flat dollar amount in the listing's Buyer Broker and/or Sub Agent field.

Per the ARMLS Penalty Policy, offers of conditional commissions in or attached to an MLS listing is an Automatic Violation. It will result in the language being removed by ARMLS Data Integrity staff and a penalty being imposed according to the subscriber's progression level at the time of the violation. See the Penalty Policy for more details. Any violating conditional commission language that exists in the listing, that has not yet been removed, does not bind the Buyer's Broker to a different commission than what is listed in the Buyer Broker/Sub Agent Compensation fields.

## Frequent Questions

- 1. Question: How can a Listing Broker inform the Buyer's Broker of the likelihood that the commission will be reduced by the lender as a condition of the sale?**

Answer: A portion of Rule 12.1 states: *This shall not preclude the Listing Participant from offering any Participant compensation other than the compensation indicated on his/her Listings as published by ARMLS provided the Listing Participant informs such Participant in writing before the Participant produces an offer to purchase and provided that the modification in the specified compensation is not the result of any agreement among all or with any other*

*Subscribers. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.*

Additionally, Note 5 (mandatory) of the of the NAR model rules in reference to rule 12.1 states: *Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.*

A Broker may only alter the commission listed in the MLS if it is done in writing outside of the MLS. Since the MLS must not be used for this purpose, the alternate compensation agreement must be done individually with the prospective Buyer's Broker outside of the MLS.

ARMLS suggests putting a statement into the Realtor Remarks to inform any prospective Subscriber that they must call the Listing Agent prior to making any offers. One compliant example would be: "You could also state that an additional addendum is required to be submitted prior to making an offer and to call for details".

- 2. Question: *I brought a full price cash offer to the listing Agent and the offer was refused. They have no intention of selling the home for the price listed. Am I owed the commission on this property?***

Answer: You should consult your Broker if you feel you are owed a commission. ARMLS does not have the authority to rule on contractual issues. Also, you could not file for arbitration through your local association as there was no closing on the property.

- 3. Question: *What if we closed on the property and I feel that I am owed a commission different than what I received?***

Answer: In such a case, you would have the option to file for arbitration through your local association or AAR as the situation warrants.

## **Property Features Field Requirement**

1. **Question:** *Which field and selection am I required to choose to indicate that this is a short sale for which an offer must be approved by the Lending Institution of record on the property as a condition of the sale?*

Answer: “Short Sale Approval Required” is now the proper choice to use in the “Special Listing Conditions” field. **Participants must disclose potential short sales, where lender review and agreement is required, when reasonably known to the listing participants.**

Note: on some property types other than Residential, the proper selection for a short sale remains Lender/Corp Approval Required. ARMLS is working to change those property types to be consistent with the Residential selection of Short Sale Approval Required.

2. **Question:** *Must the MLS listing state “Short Sale” (or other synonymous language) in the Public and/or REALTOR® Remarks of the listing if it indeed is a Short Sale?*

Answer: It is not a current requirement that you designate that the listing is a Short Sale in either of the Remarks fields. You may include the information if you wish in either, both or none of the Remarks fields. Short Sale Approval Required must be selected in the drop down menu of Special Listing Conditions.

3. **Question:** *“Special Listing Conditions” is marked as a required section on the profile sheet or in the MLS system. Are we required to disclose the items under this section if one or more of the items in the drop down list apply to the property?*

Answer: Yes. If one or more (of the special conditions) apply to your listing you **must** select each appropriate drop down item. **You may only select N/A if none of the conditions apply to your listing.**

## **Revised Short Sale Policy Commission Language Enforcement**

**All Active and AWC status listings** that are subject to short sale approval by a third party will have until July 31, 2009 to remove any and all statements or references to commissions that may have conditions on the stated commission in the actual compensation field(s). Other status listings will not be subject to removal of the language unless they are changed to be in Active or AWC status after July 31, 2009.

On August 1, 2009, ARMLS will begin enforcing this policy per the procedures in the Penalty Policy. This violation is considered an automatic violation per the Penalty Policy. As such, the offending language will be removed by ARMLS staff upon its discovery and the list Agent will be subject to whatever penalty corresponds to their current level on the penalty progression.

Listings that are reported to the Compliance Department between June 24, 2009 and July 31, 2009 will receive a phone call with a reminder to the Agent to remove the language prior to penalties being enforced. Please go to the Link section on the flexmls Dashboard, or [www.armls.com](http://www.armls.com) in the Subscriber's area under the Rules & Policies link, for the entire Penalty Policy and Short Sale Policy.

### **SYNOPSIS**

**EFFECTIVE DATE OF REVISED SHORT SALE POLICY PROVISIONS:  
JUNE 24, 2009**

**DUE DATE TO REMOVE CONDITIONAL COMMISSION LANGUAGE  
FROM LISTINGS AND ANY ATTACHMENTS OR LINKS: JULY 31, 2009**

**ENFORCEMENT OF THE REVISED SHORT SALE COMMISSION POLICY  
FOR NEW AND EXISTING LISTINGS: AUGUST 1, 2009**