

**From:** Buford, Thomas A. (USTP)  
**Sent:** Friday, November 06, 2015 4:42 PM

**To:**

**Cc:**

**Subject:** Short Sale Guidance

Ladies and Gentlemen,

The United States Trustee has been investigating and monitoring the short sale practice in the Western District of Washington. Based on our review, we provide the following summary of our findings and guidance.

As part of this process, we met with realtors and other professionals active in the short sale market, trustees, and attorneys for various parties, including debtors and mortgage creditors. In addition, we reviewed the court decisions regarding the short sale practice, including, but not limited to Judge Lynch's May 20, 2015, order issued in *In re Don Walls Greathouse*, Case No. 15-40666-BLD at ECF No. 36. Further, the United States Trustee objected to several proposed short sales, primarily on grounds that the trustee and the professionals had not provided evidence establishing that they had adequately marketed the properties. See e.g. *In re Burke*, Case No. 14-12071-MLB at ECF No. 27.

Although the United States Trustee will continue to closely monitor the short sale practice, it is in the best interests of all parties involved to issue guidance concerning the short sale process to clarify the United States Trustee's position on certain aspects of the process:

1. **Negotiation Fee.** The United States Trustee generally opposes approving the payment of additional fees for professionals involved in short sales. These fee are often sought in a motion to approve a short sale. This opposition, however, is tempered by the benefits to unsecured creditors and others resulting from short sales. Accordingly, the United States Trustee generally will not object to a 1.5% short sale negotiation fee in addition to real estate commission under the following circumstances:
  - a. The applicant seeking the fee has been employed by Court order and the proposed additional fee was fully disclosed and explained in the employment application;
  - b. The proposed purchase price of the property is less than \$250,000 (including the buyer's premium);
  - c. The proposed realtor commission is split equally between the seller's agent and the buyer's agent; and

d. The applicant files a declaration with the motion to approve the short sale which includes:

(i) The initial date and duration that the property was listed on the Northwest Multiple Listing Service (“MLS”). The MLS listing should be attached to the applicant’s declaration as Exhibit A to the their declaration supporting the sale and should reflect that the property was marketed on the internet (the “Internet Ad” check box should be marked yes); and

(ii) The date and duration that the property was listed on any proprietary website such as [www.trusteehub.com](http://www.trusteehub.com). A copy of that listing should be attached to the applicant’s declaration supporting the sale (failure to list the property on a proprietary website will not disqualify a recipient from eligibility for the 1.5% fee, however, failure to list the property on the MLS during the duration of the listing of the property on a proprietary website will result in an objection).

2. **Technology Fee.** The United States Trustee generally will object to any technology fee included in a contemplated sale.
3. **Marketing.** For a listing agent to earn commission on a sale, the property must be listed on the Northwest MLS and the listing must allow third party websites to pull information about the listing (the “Internet Ad” check box should be marked yes). In addition, the listing must contain pictures of the outside and inside of the property. In most scenarios, a single photo of the outside of the property is not adequate marketing and the United States Trustee may object to the listing agent’s commission. If special circumstances exist such that photos could not be taken, the details of those circumstances should be included in a declaration attached to the motion to approve sale.
4. **Debtor’s Consent.** If a sale of the debtor’s primary residence is contemplated, the United States Trustee will likely object to a sale if a debtor does not consent to the sale.
5. **Fifty Percent to Unsecured Creditors.** The United States Trustee will likely object to a sale that involves less than fifty percent of the buyer’s premium being paid to unsecured creditors.
6. **Prompt Determination of Claims.** The process to obtain a short sale approval is often lengthy. Accordingly, the United States Trustee recommends that trustees seek a claims bar date as soon as it is determined that a short sale will be attempted. The amount of filed claims can greatly influence the short sale process. Further, in situations where only a small amount of claims are filed, trustees should evaluate whether proceeding with the sale is appropriate. The timing of a request for a claims bar date will influence the United States Trustee’s analysis of any variation from fifty percent of the buyer’s premium going to creditors.
7. **Prompt Administration of Cases.** If the sole or primary asset remaining in a case is the potential short sale of real property, absent extraordinary circumstances, the sale of such property should be closed within twenty-four months from date the case was filed. Unless a longer period of time is adequately justified, the United States Trustee may seek relief from the Court.

The United States Trustee reserves her right to revise her position based upon facts and circumstances of any particular case. Additionally, the Court may impose different requirements on short sales.

Thank you,  
Thomas Buford

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