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SHORT SALES, LOAN MODIFICATIONS AND REOs*

Definitions

A **Short Sale** is a transaction wherein the lender(s) agree(s) to accept payoff(s) for less than what is actually owed. Effective 04/15/10, HAFA (Home Affordable Foreclosure Alternatives) is a program designed to streamline the short sale process for folks who are unable to keep their homes under HAMP (Home Affordable Modification Program), and in some instances, give the homeowner-seller and lender monetary incentive to participate in a short sale versus foreclosure. *Caveat: be sure that the short sale approval letter the closing attorney uses allows the seller to receive the incentive at closing on the HUD-1 otherwise the attorney cannot pay the seller.*

A **Loan Modification** is a process whereby the lender(s) agree(s) to modify the terms of the original loan(s) (*i.e.*, reducing the interest rate, extending the loan term from 30 to 40 years or reducing the principal balance owed).

A **Deed in Lieu** is a process in which the homeowner "hands over the keys" to the lender and the lender agrees to accept. Usually takes place after a short sale was approved but the property did not sell. This process may also fall under the HAFA Program to give the homeowner-seller and lender monetary incentive.

An **REO** is "real estate owned" by a lender after that lender has foreclosed.

Helpful Websites

www.makinghomeaffordable.com/contact_servicer.html: List of servicers and contact information for those servicers that participate in HAMP and HAFA programs. Search for your client's servicer or click on "search all servicers" and scroll through the list.

www.hmpadmin.com: Provides detailed information regarding HAMP and HAFA as well as PDFs for standard form letters lenders send their homeowners. For letters: click on "Programs" then click on "Foreclosure Alternatives" scroll to bottom for PDFs. These letters provide info and a worksheet showing what the lender requires to proceed.

Commissions

See attached PDF printouts from www.nar.org which provide information on commissions in certain transactions

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*the information provided herein is for informational purposes only and is neither intended to be exclusive nor to be legal advice. You should contact your attorney for legal advice.

HAFAs Commissions Policy

April 5, 2010



National Association of REALTORS® Government Affairs Division
500 New Jersey Avenue, NW, Washington DC, 20001

What are the Home Affordable Foreclosure Alternatives Program (HAFAs) rules on real estate commissions?

- The servicer specifies the amount of commission in the Short Sale Agreement (SSA) as a “reasonable and customary” closing cost. The servicer transmits the SSA to the borrower for consideration of its terms. The SSA requires the borrower to list the home with a real estate broker. The borrower and the prospective real estate broker may negotiate with the servicer on the terms of the SSA. If the borrower and the listing broker decide to participate, both must sign the SSA, agreeing to its terms. NAR invites member comments on any issues related to HAFAs commissions.
- There is a different rule if the borrower submits an executed sales contract to the servicer for approval before a SSA is executed. In that case, the sales contract is submitted to the servicer along with an Alternative Request for Approval of Short Sale. The amount of the commission in such a case is the amount negotiated in the listing agreement, not to exceed 6 percent. This policy recognizes that the real estate professional has already done the work of marketing the property and obtaining an executed sales contract, so it is not appropriate for the servicer to reduce the commission below the already negotiated amount.
- At the urging of NAR, the Treasury Department rescinded the November 30, 2009, HAFAs policy authorizing the servicer to reduce the real estate commission by a specified amount to pay a vendor/negotiator hired to assist the listing broker. This is a major improvement.
- Neither buyers nor sellers may earn a commission in connection with the short sale, even if they are licensed real estate brokers or agents. They may not have any side deals to receive a commission indirectly.

Freddie Mac Issues Written Short Sales Commission Policy



National Association of REALTORS® Government Affairs Division
500 New Jersey Avenue, NW, Washington DC, 20001

On August 20, 2009, Freddie Mac confirmed in writing that its servicers are not allowed to renegotiate short sales commissions. According to the policy, as a condition of the servicer's acceptance of a short sale offer, servicers cannot renegotiate the sales commission below the amount agreed to by the real estate broker and the seller/borrower. However, if the negotiated commission exceeds 6 percent, servicers are required to limit it to 6 percent. This Freddie policy is consistent with Fannie Mae's policy. Private mortgage insurance companies and second lien holders may still seek to reduce commissions.

NAR has asked Freddie to establish an appeals process for cases when servicers refuse to comply with Freddie Mac's policy.

Freddie Mac Single-Family Seller/Servicer Guide Bulletin 2009-22 (August 20, 2009)

<http://www.freddiemac.com/sell/guide/bulletins/pdf/bl10922.pdf>

Fannie Mae Short Sales Commissions Policy and Appeals Process

http://www.realtor.org/wps/wcm/connect/4fb4f4804e824cf0a6e8e696c79aa288/government_affairs_fannie_short_sales_policy.pdf?MOD=AJPERES&CACHEID=4fb4f4804e824cf0a6e8e696c79aa288

NAR's Short Sales Website

http://www.realtor.org/realtors/basics_short_sales



Fannie Mae Confirms Short Sales Commissions Policy and Establishes Appeals Process



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In discussions between NAR and Fannie Mae, Fannie Mae has reconfirmed its short sale commission policy and established a process for REALTORS® to follow if issues arise. On February 24, 2009, Fannie Mae sent Announcement 09-03 to its servicers instructing them not to negotiate commissions on short sales below the amount negotiated by the listing agent, unless the commission exceeds 6 percent. Private mortgage insurance companies and second lien holders may still seek to reduce commissions. In response to concerns raised by NAR that some servicers of Fannie Mae loans are unaware of this policy or believe it is not binding, Fannie Mae has established a process for NAR members when short sale commission issues arise.

Step 1: Determine whether the loan is owned or guaranteed by Fannie Mae. Only the holder of the loan is allowed to do this, so do so in the presence of your client or after obtaining their written permission.

- Use this website: www.fanniemae.com/loanlookup, or
- If you don't have convenient internet access, call: 1-800-7FANNIE (8am to 9pm Eastern Time)

Step 2: If the servicer is unaware of or disagrees with the policy, provide a copy of Announcement 09-03 to the servicer and negotiate an appropriate commission based on the listing agreement (up to 6 percent).

Step 3: Contact Fannie Mae if the dispute is not resolved directly with the servicer. Be prepared to provide the property address, name of owner, and Fannie Mae loan number (if available):

- Call: 1-800-7FANNIE (8am to 9pm Eastern Time), or
- Email: Resource_center@FannieMae.com.

Fannie Mae Announcement 09-03 (2/24/09)

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2009/0903.pdf>

