

# WORRIED ABOUT FORECLOSURE?

## HAFAs May Be Able to Help

### (Home Affordable Foreclosure Alternatives Program)

August 2012

#### About HAFAs

Keeping families in their homes is a top priority for REALTORS®. While there are loan modification and other programs to help families, these don't always succeed. Many who are at risk of losing their homes through foreclosure may be able to receive help through the Home Affordable Foreclosure Alternatives Program or HAFAs, established by the Treasury Department.

HAFAs is primarily designed for borrowers (no longer just owner occupants) with a documented hardship who do not qualify for a loan modification under the Home Affordable Modification Program (HAMP) or other program.

Under HAFAs, borrowers may be able to avoid a foreclosure by selling the home as a "short sale" (where the value of the home is less than the remaining amount of the first mortgage) or by transferring title to the current owner of the mortgage through a "deed-in-lieu of foreclosure" (DIL). The program uses uniform processes, documents, and timelines/deadlines. Fannie Mae and Freddie Mac (the housing government sponsored enterprises, or GSEs) have issued similar guidelines for their own versions of the program. The FHA, VA, and Rural Housing Service have their own short sale procedures and are not participating in HAFAs.

#### HAFAs:

- Provides financial incentives:
  - \$3,000 for borrower or tenant relocation assistance.
  - \$1,500 (GSEs pay \$2,200) for mortgage servicers to cover administrative and processing costs.
  - up to a \$2,000 match for the owner of the first mortgage for allowing a total of up to \$8,500 in short sale proceeds to be distributed to subordinate lien holders in order of priority (on a one-for-three matching basis).
- Requires each servicer participating in HAMP to implement HAFAs in accordance with its own written policy, consistent with mortgage investor requirements. The policy may include factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, borrower motivation and cooperation, customary transaction costs, and the amount needed to release any subordinate liens.

#### SUMMARY OF TERMS

**Servicer:** A servicer represents the mortgage investor that owns the borrower's mortgage. Ordinarily borrowers send their monthly payments to the servicer and the servicer collects their payments and maintains financial records related to the loans. If the borrower is late, the servicer works with the borrower to resolve the problem, if possible.

**Mortgage Investor:** The current owner of the mortgage (also referred to as the lender).

**Short Sale:** In a short sale, the servicer (on behalf of the investor/owner of the mortgage) allows the borrower to list and sell the property even if the net proceeds from the sale turn out to be less than the remaining balance due on the loan.

**Deed-in-Lieu of Foreclosure (DIL):** Generally, if the homeowner makes a good faith effort to sell the property but is not successful, a servicer may consider a deed-in-lieu of foreclosure on behalf of the investor/owner of the mortgage. With a deed-in-lieu, the homeowner voluntarily transfers ownership of the property, if the title is free and clear of other mortgages, liens, and encumbrances. Under HAFAs, homeowners will have no further responsibility to the owner of the mortgage.

## TYPICAL TIMELINE

	<b>SERVICER RESPONSIBILITIES</b>	<b>HOMEOWNER RESPONSIBILITIES</b>
<b>CONSIDERATION WITHOUT BORROWER REQUEST</b>	<p>The servicer must consider a borrower for HAFA within <b>30 calendar days after</b> the borrower:</p> <ol style="list-style-type: none"> <li>1. Does not qualify for a trial period under HAMP.</li> <li>2. Does not successfully complete the HAMP trial period.</li> <li>3. Misses at least two consecutive payments if the loan was modified under HAMP.</li> </ol> <p>If the servicer determines a borrower is eligible, it must notify and give the borrower <b>14 calendar days</b> to request consideration.</p>	<p>The borrower has <b>14 calendar days</b> to respond (orally or in writing) requesting consideration for the program. If the borrower does not respond, the servicer has no further duty to consider the borrower for the HAFA program (but may do so).</p>
<b>CONSIDERATION FOR HAMP AFTER BORROWER REQUEST</b>	<p>If the borrower requests HAFA but has not previously been evaluated for HAMP, the servicer must evaluate the borrower for HAFA. If the servicer determines the borrower is also eligible for HAMP, it must notify and give the borrower <b>14 calendar days</b> to request consideration for HAMP.</p>	<p>The borrower has <b>14 calendar days</b> to notify the servicer requesting consideration for the HAMP program. If the borrower does not respond, the servicer has no further duty to consider the borrower for the programs (but may do so).</p>
<b>ACKNOWLEDGEMENT DEADLINE</b>	<p>Within <b>10 business days</b> after a servicer receives a borrower request for consideration for a short sale or DIL, or receives an Alternative Request for Approval of Short Sale (ARASS), the servicer must acknowledge receipt, describing the HAFA evaluation process and a timeline for decision.</p>	
<b>NOTIFICATION THAT BORROWER IS NOT ELIGIBLE</b>	<p>If the servicer determines a HAFA short sale or DIL is not available for a borrower, the servicer must advise the borrower. The notice must explain why the borrower does not qualify and provide a toll-free number the borrower may call to discuss.</p>	<p>The borrower may accept the decision to ask for more explanation and possible reconsideration.</p>
<b>SHORT SALE AGREEMENT</b>	<p>The servicer sends the homeowner a Short Sale Agreement (SSA) if it determines the homeowner qualifies for HAFA based on further determinations of eligibility (related to hardship, eligibility for the relocation incentive, property valuation, and other</p>	<p>A homeowner has <b>14 calendar days</b> from the date of the SSA to sign and return it to the servicer. The real estate broker must also sign the SSA.</p>

	requirements). The servicer must send the borrower a Short Sale or DIL Agreement within <b>45 calendar days</b> from the date the borrower requests a short sale or DIL or responds to the servicer's notification. If the servicer is unable to do so within 45 calendar days, the servicer must send a written status notice to the homeowner every <b>15 calendar days</b> , until the servicer is able to provide an SSA or a written notification that the homeowner will not be offered a short sale.	
<b>MARKETING PERIOD</b>	The SSA must give the homeowner an <b>initial period of at least 120 calendar days</b> to sell the house.	The servicer, with homeowner approval, may extend the period the homeowner has to sell the house for <b>up to a total of one year</b> .
<b>SALES CONTRACT</b>		Within <b>3 business days</b> of receiving an executed sales contract, the homeowner must sign and submit to the servicer a Request for Approval of Short Sale (RASS), along with the sales contract, and other documents. A homeowner may submit an ARASS if they already have an executed sales contract before the SSA is executed.
<b>APPROVAL OF SSA</b>	Within <b>10 business days</b> after receiving the RASS and all required attachments, the servicer must approve or deny the request and advise the homeowner of the reasons for denial.	
<b>APPROVAL OF ARASS</b>	Where a borrower submits a short sale sales contract to the servicer before receipt of a SSA, the servicer must communicate approval, disapproval, or a counter offer no later than <b>45 calendar days</b> after receiving (i) the executed sales contract, (ii) the ARASS, (iii) evidence of borrower or tenant occupancy, and (iv) a signed Hardship Affidavit. If the servicer is unable to respond within 45 calendar days, the servicer must send a written status notice to the borrower every 15 calendar days, until the servicer is able to send a written response to the ARASS.	

<b>CLOSING</b>	The servicer may require the closing to take place within a reasonable period but not sooner than <b>45 calendar days</b> from the date of the sales contract.	The closing may take place <b>sooner than 45 calendar days</b> if the homeowner agrees.
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## WHO IS ELIGIBLE FOR HAFA?

To qualify for HAFA, a borrower (HAFA is no longer limited to principal residences) must meet these basic eligibility requirements:

- The first lien (the first loan on the home) must have been originated before January 1, 2009. The remaining balance must be more than the value of the property.
- The mortgage must be delinquent or default must be reasonably foreseeable.
- The mortgage loan must be secured by a 1- to 4-unit property that has not been condemned.
- The current unpaid principal balance may not be more than \$729,750 (higher limits for 2- to 4-unit dwellings).
- The borrower must document a financial hardship.
- The borrower must be a “natural person” (not a corporation, partnership, or other business entity).

Even if a homeowner meets these threshold requirements, the servicer must consider the particular circumstances and mortgage investor policies. Not everyone will qualify.

## WHAT ELSE SHOULD I KNOW?

- The sale of the property must be an “arm’s length” transaction between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise. However, in certain circumstances, a nonprofit may purchase the property to rent or resell it to the seller.
- The seller may not list the property with anyone with whom they are related or have a close personal or business relationship, nor may the buyer be represented by such a person. A real estate professional may not list or purchase the property using his or her brokerage.
- Neither the seller nor the buyer may receive any funds or commissions from the sale of the property. They may not have any agreements to receive a portion of the commission or the sales price after closing.
- Homeowners must be fully released by the lender(s) and any mortgage insurer(s) from future liability for all mortgage debt. No cash contribution, promissory note, or deficiency judgment is allowed. A lien holder may not require the real estate agent to agree to a lower commission as a condition for releasing its lien or releasing the borrower from personal liability.
- The amount of debt forgiven might be treated as income for tax purposes. Under a law now scheduled to expire at the end of 2012, however, forgiven debt will not be taxed if the amount does not exceed the debt that was used for acquisition, construction, or rehabilitation of a principal residence. Check with a tax advisor or the IRS.
- The servicer will report to the credit reporting agencies on the status of the loan every

month. There will be a negative effect on credit scores for delinquent borrowers and short sales.

- A buyer may not reconvey the property for 90 days (no “flipping”).
- HAFA allows for a broker commission of up to 6 percent to be paid out of sale proceeds as a “reasonable and customary” closing cost as specified by the servicer in the Short Sale Agreement (SSA). HAFA also prohibits the payment of a servicer’s vendors by the borrower or from the real estate commission. The GSEs’ HAFA and proprietary short sale programs provide that servicers will pay a commission as contracted in the listing agreement, but not more than 6 percent of the final sale price.
- The program sunsets on December 31, 2013. Closing must occur before October 1, 2014.

## **FIND OUT MORE ABOUT HAFA**

NAR encourages homeowners to call their servicers to tell them they are interested in this program and find out if they qualify. They may also get free advice from HUD- approved housing counselors. The toll-free number is 1-888-995-HOPE. Counselors can answer homeowners’ questions about HAMP, HAFA, and other programs. For more information on HAFA and more detailed NAR FAQs, please visit [www.realtor.org/shortsales](http://www.realtor.org/shortsales).

## **ABOUT NAR**

The National Association of REALTORS®, “The Voice for Real Estate,” is America’s largest trade association, representing 1.1 million members involved in all aspects of the residential and commercial real estate industries.

## **USEFUL LINKS**

- National Association of REALTORS® - [www.realtor.org/shortsales](http://www.realtor.org/shortsales)
- HouseLogic (NAR’s consumer web site) – [www.houselogic.com](http://www.houselogic.com)
- Making Home Affordable – [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)
- Fannie Mae – <https://www.efanniemae.com/sf/servicing/hafa/>
- Freddie Mac – <http://www.freddiemac.com/singlefamily/service/hafa.html>