NATIONAL ASSOCIATION OF REALTORS®

GOVERNMENT AFFAIRS

# HOME AFFORDABLE FORECLOSURE ALTERNATIVES PROGRAM (HAFA)

NATIONAL ASSOCIATION OF REALTORS

*The Voice for Real Estate®*

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## *In early 2009,*

the National Association of REALTORS® (NAR) urged the U.S. Treasury Department, the Federal Housing Finance Agency, Fannie Mae and Freddie Mac to improve the short sales process.

NAR's concerns were first addressed on May 14, 2009, when the Obama Administration announced the outline of a program to provide incentives and uniform procedures for short sales and deeds-in-lieu (DIL) of foreclosure under the Making Home Affordable Program.

NAR kept in contact with the various agencies and departments during 2009 to keep them apprised of the problems REALTORS® were having with short sales and urged them to implement the program as quickly as possible.

Finally, on November 30, 2009, the Obama Administration released guidelines and uniform forms for its Home Affordable Foreclosure Alternatives Program (HAFA).

# *About HAFA*

HAFA, which will help homeowners who are unable to retain their home under the Home Affordable Modification Program (HAMP), provides incentives in connection with short sales and deeds-in-lieu of foreclosure.

The program:

- Complements HAMP by providing a viable alternative for borrowers (the current homeowners) who are HAMP eligible but nevertheless unable to keep their home.
- Uses borrower financial and hardship information already collected under HAMP.
- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds).
- Prohibits the servicers from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6%).
- Requires borrowers to be fully released from future liability for the first mortgage debt and, if the subordinate lien holder receives an incentive under HAFA, that debt as well (no cash contribution, promissory note or deficiency judgment is allowed).
- Uses a standard process, uniform documents and time frames/deadlines.
- Provides financial incentives: $1,500 for borrower relocation assistance; $1,000 for servicers to cover administrative and processing costs; and up to a $1,000 match for investors for allowing a total of up to $3,000 in short sale proceeds to be distributed to subordinate lien holders.
- Requires all servicers participating in HAMP to implement HAFA in accordance with their own written policy, consistent with investor guidelines. The policy may include factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, and borrower motivation and cooperation.
- Does not take effect until April 5, 2010, but servicers may implement it before then if they meet certain requirements. The program sunsets on December 31, 2012.

# *Timeline*

## NOTIFICATION

If a servicer has not already discussed a short sale or DIL with the borrower, it must notify the borrower in writing of these options and give the borrower **14 calendar days** to respond, orally or in writing. If the borrower does not respond, that ends the servicer's duty to give a HAFA offer.

Servicers must consider HAMP-eligible borrowers for HAFA **within 30 days** after the borrower does at least one of the following:

- Does not qualify for a HAMP trial period plan
- Does not successfully complete a HAMP trial period plan
- Is delinquent on a HAMP modification (misses at least two consecutive payments)
- Requests a short sale or DIL

## SHORT SALE AGREEMENT

The borrower has **14 calendar days** from the date of the Short Sale Agreement (SSA) to sign and return it to the servicer. The SSA must give the borrower an initial **period of 120 days** to sell the house (extensions permitted up to a total of 12 months).

## PURCHASE OFFER

**Within three business days** of receiving an executed purchase offer, the borrower (or agent) must submit a completed Request for Approval of Short Sale (RASS) to the servicer, including:

- a copy of the sale contract and all addenda
- buyer documentation of funds or pre-approval/commitment letter from a lender
- all information on the status of subordinate liens and/or negotiations with subordinate lien holders

**Within 10 business days** after the servicer receives the RASS and all required attachments, the servicer must approve or deny the request and advise the borrower.

## CLOSING

The servicer may require the closing to take place within a reasonable period after it approves the RASS, but **not sooner than 45 days** from the date of the sales contract unless the borrower agrees.

The servicer must release its first mortgage lien **within 10 business days** (or earlier if required by state or local law) after receipt of sales proceed from a short sale or delivery of the deed in the case of a DIL. Investor must waive rights to seek deficiency judgments and may not require a promissory note for any deficiency.

# *FAQs*

HAFA is a complex program with 43 pages of guidelines and forms. To help you better understand the process, NAR has prepared some frequently asked questions that address the basics. For more information on HAFA and more detailed FAQs, please visit **www.REALTOR.org/shortsales**.

# *Who is eligible for HAFA?*

The borrower must meet the basic eligibility criteria for HAMP:

- Principal residence
- First lien originated before 2009
- Mortgage delinquent or default is reasonably foreseeable
- Unpaid principal balance no more than $729,750 (higher limits for two- to four-unit dwellings)
- Borrower's total monthly payment exceeds 31% of gross income

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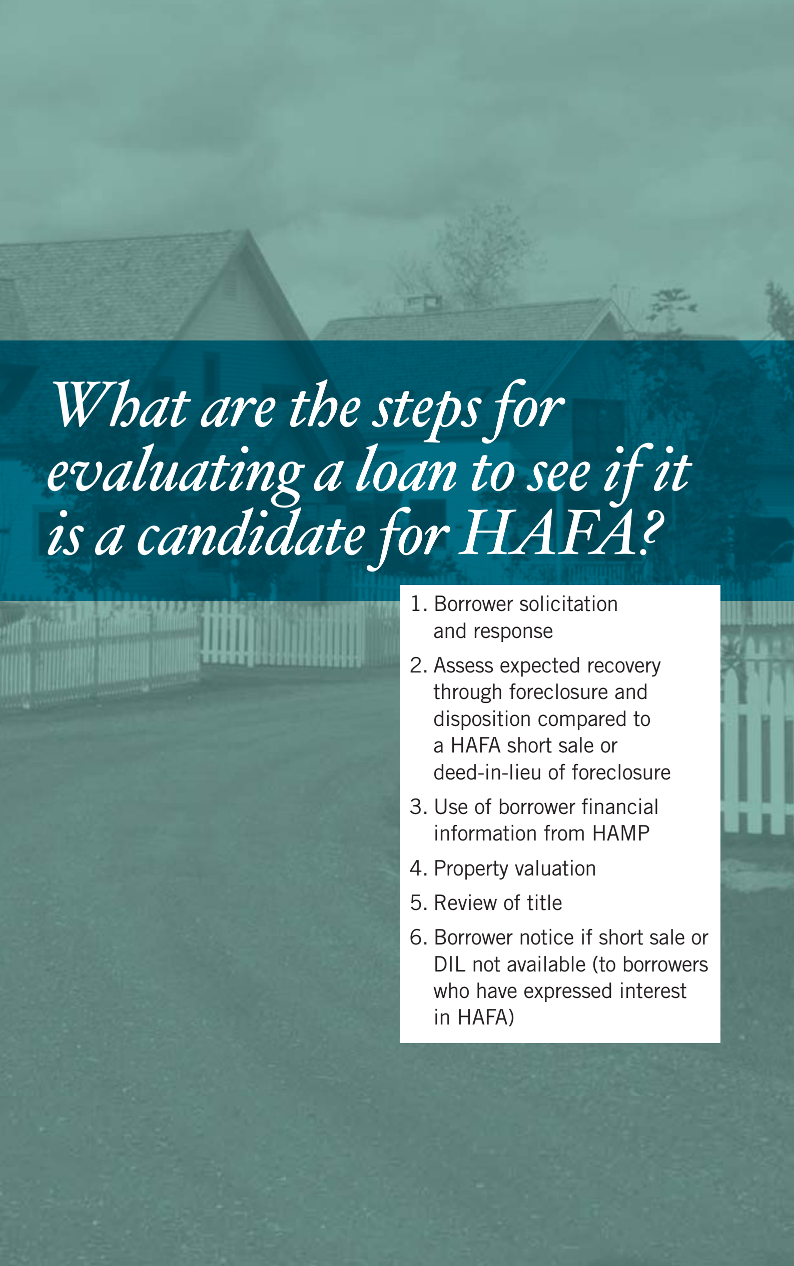
# *How is the program being implemented?*

Supplemental Directive 09-09 (November 30, 2009) gives servicers guidance for carrying out the program. A Short Sale Agreement (SSA) will be sent by the servicer to the borrower after determining the borrower is interested in a short sale and the property qualifies. It informs the borrower how the program works and the conditions that apply.

After the borrower contracts to sell the property, the borrower submits a "request for approval of short sale" (RASS) to the servicer within three business days for approval. If the borrower already has an executed sales contract and asks the servicer to approve it before an SSA is executed, the Alternative RASS is used instead. The servicer must still consider the borrower for a loan modification.



# *What are the steps for evaluating a loan to see if it is a candidate for HAFA?*

1. Borrower solicitation and response
2. Assess expected recovery through foreclosure and disposition compared to a HAFA short sale or deed-in-lieu of foreclosure
3. Use of borrower financial information from HAMP
4. Property valuation
5. Review of title
6. Borrower notice if short sale or DIL not available (to borrowers who have expressed interest in HAFA)

# *What are the HAFA rules regarding real estate commissions?*

The guidance states that a servicer may not require a reduction in the real estate commission below the amount stated in the SSA, up to 6%. However, if the servicer has retained a vendor to assist the listing broker, the vendor must be paid a specified amount from the commission.

# *What else should I know?*

- The deal must be "arms length." Borrowers can't list the property or sell it to a relative or anyone else with whom they have a close personal or business relationship.
- The amount of debt forgiven might be treated as income for tax purposes. Under a law expiring 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.
- The servicer will report to the credit reporting agencies that the mortgage was settled for less than full payment, which may hurt credit scores.
- Buyers may not reconvey the property for 90 days.

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