Understanding the New Home Affordable Foreclosure Alternatives Program (HAFA)

By Jeff Lischer
Source: rismedia.com

On November 30, 2009, the Treasury Department released guidelines and forms for its new Home Affordable Foreclosure Alternatives Program (HAFA), which will help homeowners who are unable to retain their home under the Home Affordable Modification Program (HAMP). Under HAFA, a borrower (the current owner) may be able to avoid foreclosure by completing a short sale or a deed-in-lieu of foreclosure (DIL). HAFA is designed to simplify and streamline the use of short sales and deeds-in-lieu of foreclosure by improving the process. Specifically, HAFA will:

- Complement HAMP by providing a viable alternative for borrowers (the current homeowners) who are HAMP eligible but nevertheless unable to keep their home.
- Use borrower financial and hardship information already collected in connection with consideration of a loan modification under HAMP.
- Allow borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds).
- Prohibit the servicers from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6%).
- Require 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).
- Use standard processes, documents, and timeframes/deadlines.
- Provide financial incentives: $1,500 for borrower relocation assistance; $1,000 for services to cover administrative and processing costs; and up to $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 (on a one-for-three matching basis; up to 3% of the unpaid principal balance of each subordinate loan).

HAFA is a complex program with 43 pages of guidelines and forms. To help everyone better understand the process, below are some frequently asked questions that address the basics.

For more details on HAFA, visit *www.realtor.org/shortsales* for links to the guidance, many additional FAQs, and much more information about short sales.

What is HAFA?

Initially announced on May 14, 2009, with guidance and standard forms issued on November 30, 2009, the program will help owners (referred to below as borrowers) who are unable to retain their home under the Home Affordable Modification Program (HAMP). A borrower (the current owner) may be able to avoid a foreclosure by completing a short sale or a deed-in-lieu of foreclosure (DIL) under HAFA. The guidance and forms released on November 30 do not apply to loans owned or guaranteed by Fannie Mae or Freddie Mac. Those enterprises will issue their own HAFA guidance and forms.

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 2 to 4 unit dwellings).
- Borrower's total monthly payment exceeds 31% of gross income.

continued on reverse side...

Lawyers Title™

~ Continued

Understanding the New Home Affordable Foreclosure Alternatives Program (HAFA)

By Jeff Lischer
Source: rismedia.com

How is the program being implemented?

Supplemental Directive 09-09 (November 30, 2009) gives servicers guidance for carrying out the program. All servicers participating in HAMP must also implement HAFA in accordance with their own written policy, consistent with investor guidelines. The policy may include such factors as the severity of the loss involved, local market conditions, the timing of pending foreclosure actions, and borrower motivation and cooperation.

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 3 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 DIF.
3. Use of borrower financial information from HAMP. (May require updates or documentation).
4. Property valuation.
5. Review of title.
6. Borrower notice if short sale or DIL not available (to borrowers that 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. The SSA states that the servicer will pay the commission as stated in the listing agreement, up to 6%. If the servicer has retained a vendor to assist the listing broker, the vendor must be paid a specified amount from the commission. 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 commission indirectly.

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, the tax may not apply. Forgiven debt will not be taxed if the amount of forgiven debt does not exceed the debt that was used to acquire, construct, or rehabilitate 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. There will be a negative effect on credit scores.
- Buyers may not reconvey the property within 90 days after closing.

When does the program end?

Short Sale Agreements must be executed and returned to the servicer no later than December 31, 2012.

Jeff Lischer is the Managing Director for Regulatory Policy, NAR. For more information, please visit *www.realtor.org/shortsales*.

Shalynn Ostendorf
Marketing Assistant
10801 W. Charleston Suite 200
Las Vegas, NV 89135
Shalynn.Ostendorf@LTIC.com
702.385.4141

Lawyers Title™