



U.S. Treasury: Putting the ‘Short’ Back in Short Sales?

Written on December 15, 2009 by [Donna Seyle](#)

I had planned on writing about the current state of short sales and then read this post by my friend, [Kathleen Scanlon](#) of Scanlon & Pinto, PLLC, a New York real estate law firm. Since I couldn't have written it better myself, I asked her to be my guest blogger for this week. Following the post is information about Kathleen and her firm.

Any real estate professional, who engages in short sale negotiations, is fully aware of just how frustrating the process can be or even downright impossible. There are financial incentives for mortgage servicers to drag out the process as long as possible. It takes weeks, sometimes months, to get a response from the banks, who often misplace packages and request that they be faxed over and over again. This past Monday, however, the U.S. Treasury has issued guidance in its new Home Affordable Foreclosure Alternatives Program (HAFA) which takes effect April 5, 2010 (supposedly, many servicers are already modifying their programs to be compliant). In short, HAFA provides incentives in accepting a short sale or a deed-in-lieu of foreclosure (DIL) on a loan **eligible for modification under the HAMP program**. HAFA applies to loans not owned or guaranteed by Fannie Mae or Freddie Mac (they will be implementing their own versions of HAFA shortly).

Highlights of the HAFA program are as follows:

- Servicers have 10 days to approve or disapprove a request for short sale.
- Uses borrower financials and other documents already submitted for a loan modification.
- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds).
- Prohibits servicers from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6 percent).
- Requires borrowers to be fully released from future liability for the first mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed).
- Uses standard processes, documents, and timeframes/deadlines.
- Provides financial incentives: \$1,500 for borrower relocation assistance; \$1,000 for servicers to cover administrative and processing costs; and up to \$1,000 for investors (note holders).
- Caps proceeds to second lien holders at \$3,000.00. (interesting but I wonder at how those lien holders in the second position feel about this)

Requirements:

- Loan must be HAMP eligible - Services must evaluate a buyer for a HAMP modification first before giving any consideration for a HAFA short sale or Deed in Lieu (DIL);
- Property is borrower's principal residence;
- the mortgage is a first lien and was originated before January 1, 2009;
- the loan must be delinquent or default reasonably foreseeable;
- loan amount limit is 729,750 (on 1 family units);
- borrower's total monthly payment exceeds 31 percent of the home owner's income and **attested to by affidavit;**
- Sale must be an arm's length agreement and the buyer must agree not to sell the property for 90 days (problematic and I believe will diminish the potential of this program);
- Requires property to be listed with a real estate broker (I wonder who lobbied for this...so this has to be added on to the servicer's Minimum Net Proceeds and thus increases the cost to Purchaser)

While I admire the government's attempt at alleviating the short sale log jam, as usual, they overstep their bounds. The American people are being asked to yet again foot the bill for the banks' irresponsible lending practices to the tune of \$3,000 per closing. Further, mandating that properties be listed with a real estate broker across the board is excessive and will, in effect, add to the purchase price paid by the prospective buyer. The arm's length rule eliminates family attempting to save the home and the 90 day prohibition against resale will chill real estate investor participation which plays a major role in moving houses (I find this restraint on alienation to be disturbing as well and question its enforceability). Lastly, I question how many second lienholders are going to participate with their payments limited to \$3,000.00. Without their participation, it will be an exercise in futility as many of these homeowners have 2 loans.

ABOUT SCANLON & PINTO:

Scanlon & Pinto, PLLC concentrates its practice in real estate and mortgage banking law. Our unmatched expertise in the field of residential and commercial real estate transactions, investments, loan workouts including short sales and lender negotiations, construction projects and Lender representation is without peer. We provide personalized service with a cost conscious approach. As transactional attorneys, our focus is on the solution rather than the argument. We look for creative and innovative ways to provide solutions and reduce costs to our clients.

Currently, we are working on structuring transactions in new and exciting ways to adapt to the changing market. Land Trusts, Lease Options, Purchase CEMAs are just some of the tools we use on a day to day basis to accomplish our clients' needs.