# SECTION 1 – FORECLOSURE ALTERNATIVES
# MARKET BACKGROUND

## Market Background

***This may be the worst housing and economic crisis since the Great Depression with over 10 million families affected.***

In order to confirm each student has the most updated information, we've included a market statistics update in your course materials.  This information provides the most current data possible, usually as current as the month prior to our class.  Sources for this information include Making Home Affordable Scorecard, DS News, Lender Processing Services and Mortgage Monitor.

On the Resource page, you will find links to informational websites that can help you in keeping updated on current information.  Once you've completed your course, you'll also have access to AssetPlan®'s website as a resource for you to stay up to date.

## Legislative Help from the Government

### Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648)

In 2007, under the Bush Administration, a major federal tax program to help homeowners in distress was enacted, called the Mortgage Forgiveness Debt Relief Act (H.R. 3648).

The program was created to address "forgiven debt" a borrower may have after a short sale or foreclosure.  Prior to the tax law change, a borrower who was not otherwise exempt would have to claim forgiven debt on their tax return as ordinary income.  The change generally exempts additional borrowers as follows:

- Must be the borrower's qualified principal residence;
- The amount forgiven must have been used for a home purchase or substantial home improvement;
- The income relief provided is capped at $1,000,000 in the case of a married person filing a separate return and $2,000,000 for all others; and
- The program runs through December 31, 2013.

***Remember, do not give tax advice to clients!***

## Making Home Affordable Initiative

In early 2009, under the Obama Administration, the national “Making Home Affordable” program was launched. It was specifically created to assist distressed homeowners (borrowers) facing financial hardship, avoid foreclosure. An additional goal was to create housing market stability through a number of specific programs.

### HARP & FHA Refinances

Although HARP and FHA Refinance Programs will not involve the real estate professional, borrowers may ask questions. You should be prepared with information and provide printed material as a service.

The programs were created with the focus on allowing underwater borrowers to refinance their existing loan reducing the interest rate and therefore their mortgage payment to a more affordable amount.

Among other things, the borrower’s mortgage payment must be a current Fannie Mae or Freddie Mac loan with no late payment in the past six months and no more than one late payment in the past 12 months, and there are other specific criteria. The new guidelines have removed the 125% ceiling for fixed rate mortgages. The maximum loan to value is set at 105% for an adjustable rate mortgage and must be greater than 80% with no cap for a fixed rate mortgage. More information is available at www.makinghomeaffordable.gov.

HARP has been less successful in national market areas where the property value declines have been substantial. Nevertheless, certain homeowners may be interested in pursuing these options. The HARP program has been extended through December 31, 2013.

## HAMP & 2MP Loan Modification Programs

In this case, the goal is to modify the borrower’s first loan under the Home Affordable Modification Program (HAMP) and the borrower’s second lien under the Second Lien Modification Program (2MP) with a new interest rate and payment on both first and second liens when eligible and ultimately keep the borrower in the home. More information will be provided later in the course.

## HAFA Foreclosure Alternatives

The Home Affordable Foreclosure Alternative Program - HAFA was created as the next option for borrowers who did not qualify for a HAMP modification or preferred to go directly to a foreclosure alternative such as a short sale or deeds-in-lieu of foreclosure.

### Short Sale

Borrowers choose to list their home for sale even though the proceeds realized from the sale would not pay off their mortgage(s).

### Deed-in-Lieu

The borrower chooses to return the property back to the servicer rather than going through a short sale or foreclosure. The servicer may require that the property is listed for sale on the open market for a minimum of 120 days prior to agreeing to this option.

## HAMP and HAFA

The HAMP and HAFA programs were created to assist the distressed borrower avoid foreclosure and are the primary programs that may affect the real estate professional. Servicers have committed to contractual obligations through signed Servicer Participation Agreements (SPA). Participation is mandatory for servicers of loans owned or guaranteed by Fannie Mae and Freddie Mac and is involuntary for servicers of non-GSE loans; however, most major servicers have committed. (Source: FAQ, www.makinghomeaffordable.gov)

**List of Servicers available at www.makinghomeaffordable.gov/contact_servicer.html**

# Who is the Program Intended to Help?

In February 2009, the Making Home Affordable (MHA) Program was introduced with the goal of creating housing market stabilization as well as to help struggling homeowners and other entities that were being affected by the national housing and economic market downturn. Details of the program goals are below. Although the MHA Program is primarily intended to help the distressed borrower, there have been residual benefits for investors, servicers and of course, the real estate industry.

## Distressed Borrower

One priority of the MHA program has been the distressed borrower. Many borrowers have depleted their financial reserves and maxed out credit cards, often leaving no way for them to financially support themselves due to the continued economic decline. The Federal Government realized that if they did not step in and find a way to help support individuals in distress, the economic decline would continue.

## Communities and the Housing Market

With properties being abandoned by borrowers, communities have had to deal with vandalism, squatters and lack of maintenance of the homes. Vacant homes are an invitation to problems and have contributed to the decline in value of properties in cities throughout the United States.

The housing market has suffered tremendously due to the reductions in housing values as well as difficulty in getting homes sold. Since the real estate industry has such an important role in the national economy, something needed to be done to facilitate more transactions – more buyers buying and sellers selling to help bring economic stability.

## Investors – Including MI (Mortgage Insurers)

For the investor, the cost of foreclosing on a property may generally be higher than allowing a short sale to go through. The loss of mortgage and interest payments as well as additional costs through the foreclosure process can be astronomical to investors. After a property has been foreclosed upon, the holding costs connected to the property continue until it is listed and sold adding additional expenses to the investor's bottom line.

Furthermore, mortgage insurance companies may favor short sales to avoid paying out the insurance to the investor when a home is foreclosed upon.

## Servicers

Many national lenders are heavily invested in the servicing of not only their own, but other lender's mortgages as well. For each Making Home Affordable (MHA) alternative completed, an income stream has been lost to that servicer. Those income streams can be large portions of operating capital for the lender and/or servicer. Prior to the launch of MHA Program, there were few if any industry standards applicable to the loan servicers' management of loans and borrowers in default. The MHA Program provides certain levels of industry standards for servicing defaulted loans.

## The Real Estate Industry

Changes mandated through the Making Home Affordable program such as mandatory use of real estate agents, protection of commissions, as well as locking the lender/servicer into agreed levels of performance should facilitate the overall process of closing a short sale in a reasonable timeframe.

## The Relationship Between HAMP and HAFA

The Home Affordable Foreclosures Alternative (HAFA) Program complements the Home Affordable Modification (HAMP) Program by making the transition into a short sale easier for the borrower if they do not qualify for a HAMP loan modification. The goal for the borrower is still home retention through either a HAMP or non-HAMP modification.

If the HAMP modification effort fails, HAFA is required to be considered by the participating servicer. Any borrower who meets eligibility criteria for HAMP but is not interested in staying in their home through a loan modification is still able to say 'no' (or not respond) to a modification offer from the servicer and proceed directly to HAFA assuming they are eligible for HAFA. This would pertain to, as an example, a person who may need to relocate to take advantage of a new job opportunity.

### HAMP is First (if desired)

If the borrower is eligible and has the desire to stay in their home, the borrower may apply for a loan modification under the HAMP program. The borrower would be required to provide specific information and documentation to the servicer so the servicer can do its analysis. The initial document used would be the Request for Mortgage Assistance (RMA) which will be described in detail later in the program.

### Payment Reduced/Principal Deferment or Forgiveness

Through HAMP, the borrower may be offered a reduced payment and either principal deferment or principal forgiveness through an interest rate reduction and/or the amortization term would be extended. In deferment, the difference between the borrower's payment including principal, interest and taxes (if paid through the mortgage servicer) would likely be added to the overall first lien balance and therefore payable at a future date when the property is either sold or re-financed. With principal reduction, the overall mortgage balance would be reduced and the amount by which the debt is reduced would be forgiven. (Note - the eligibility criteria is for guidance only and have the borrower contact their mortgage servicer to see if they qualify for HAMP)

## Eligibility - HAMP

The basic eligibility for the Home Affordable Modification Program (HAMP) is as follows:

Principal residence / owner occupied;

- Principal residence / owner occupied;
- The first lien was originated on or before January 1, 2009;
- Borrower has a financial hardship and is either delinquent or in danger of falling behind;
- First lien balance is equal to or less than $729,750 (for one unit property);
- Borrower's PITI (principal, interest, tax and insurance and HOA if applicable) payment must exceed 31% of their gross income ;
- Borrower can prove genuine hardship by a signed Hardship Affidavit or the Request for Mortgage Assistance (RMA) form and has sufficient, documented income to support the modified payment; and
- Borrower must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

The Treasury Department launched an additional website to assist the borrower and is available at www.makinghomeaffordable.gov. Through www.CheckMyNPV.com, a borrower can see if they are indeed eligible for a HAMP modification by researching the Net Present Value (NPV) of their property. This website can also be used if the borrower has received a non-approval notice for a modification because the transaction is "NPV negative" and the borrower disagrees with any of the input values used by the servicer. The borrower must respond within 30 days of a disapproval providing evidence of a disputed value. If the evidence submitted by the borrower is valid and material to the NPV outcome, the servicer must perform the NPV calculation with the corrected input values.

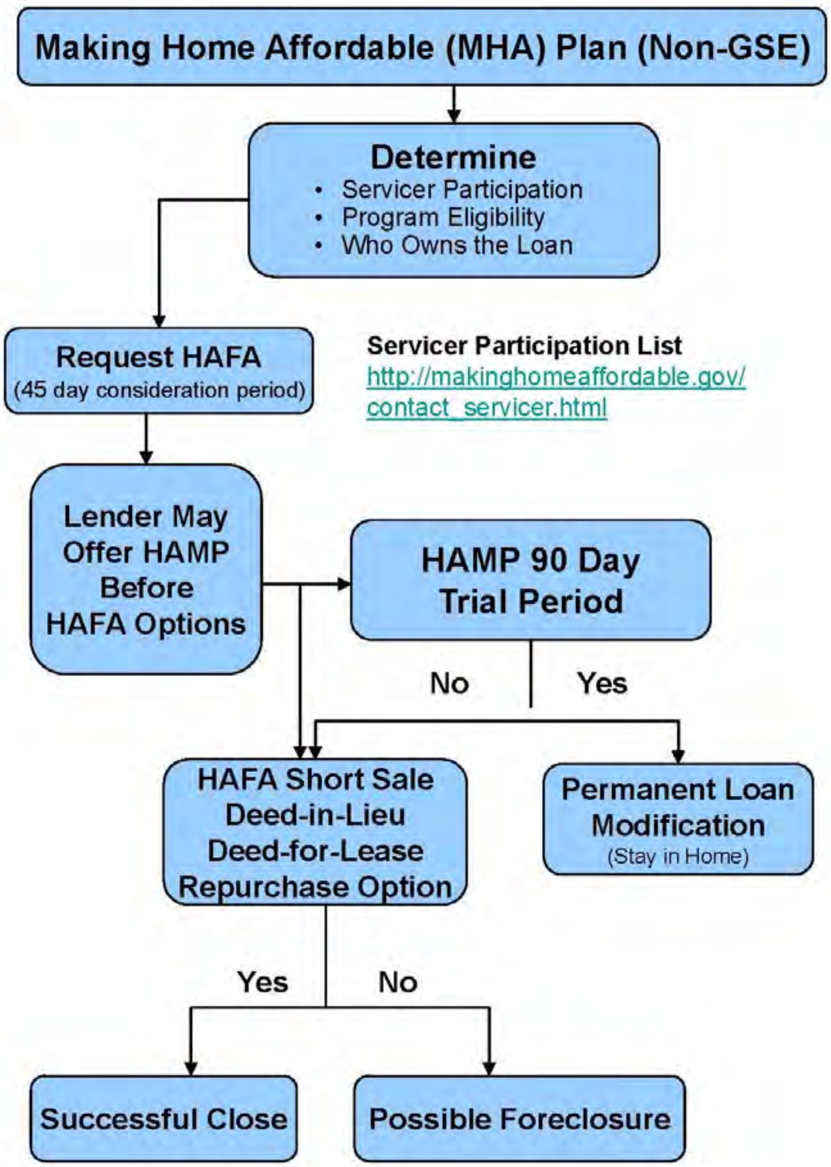
## HAFA – Short Sale or Deed-in-Lieu

If the borrower either does not qualify or chooses not to go forward with a HAMP modification, the servicer is then required to analyze the borrower for a HAFA Short Sale or Deed-in-Lieu.

**Debt Forgiveness** One of the benefits of the HAFA Program for the borrower is that the first lien debt is forgiven. Additionally, if the subordinate lien holder agrees to accept the offer made by the senior lien holder, the subordinate lien holder must also forgive the debt and future liability for the borrower.

**Relocation Support**

The HAFA Program also provides for a $3,000 relocation benefit paid to the borrower at the close of the transaction from the sale proceeds.



Making Home Affordable (MHA) Plan (Non-GSE)
Determine
• Servicer Participation
• Program Eligibility
• Who Owns the Loan
Request HAFA
(45 day consideration period)
Servicer Participation List
http://makinghomeaffordable.gov/contact_servicer.html
Lender May Offer HAMP Before HAFA Options
HAMP 90 Day Trial Period
No
Yes
HAFA Short Sale
Deed-in-Lieu
Deed-for-Lease
Repurchase Option
Permanent Loan Modification
(Stay in Home)
Yes
No
Successful Close
Possible Foreclosure

## HAFA Borrower Additional Benefits

As mentioned earlier, aside from the avoidance of foreclosure, the elimination of mortgage debt and the $3,000 relocation benefit, HAFA short sales may offer some additional benefits.

Current lending guidelines may allow a "fresh start". A borrower may be eligible to borrow to own a home again sooner through a short sale as compared to foreclosure. Fannie Mae's lending guidelines favor those who proactively address their situation rather than avoiding the situation they are experiencing. Borrowers may be able to buy again by re-establishing a credit history as soon as two years after short sale vs. seven years after foreclosure (but only three years if borrower has extenuating circumstances) under Fannie Mae guidelines.

## Investor Guidelines & Constraints

What is often not understood by borrowers and/or real estate professionals is that many U.S. mortgages are owned by investors. These investors might hold securitized loans or whole loans. The investor is usually not also the servicer.

The loan servicer is effectively the loan contract administrator who works on behalf of the investor and is usually a different entity than the investor. Often, the servicers are large banks who are servicing loans for third party investors versus servicing their own portfolio. The servicer's fiduciary responsibility therefore is to the investor.

The HAMP and HAFA programs are still subject to the investor constraints and must be implemented within the investor guidelines. In some cases, the investor constraints may result in non-qualification even though the servicer has signed up to participate in the program (the investor does not sign the Making Home Affordable Servicer Participation Agreement).

For HAMP, the investor will base their decision for modification approval on a Net Present Value (NPV) test and for HAFA; an analysis will be completed to see if a foreclosure alternative (short sale or deed-in-lieu) is a better economic outcome for the investor.

These additional investor guidelines must be posted on the servicer's website as part of the HAFA matrix that will be explained later in this resource manual.

# SECTION 2 – TREASURY HAFA OVERVIEW

## Treasury Department HAFA Overview

### Making Home Affordable Handbook

***FOREWORD***

***In February 2009, the Obama Administration introduced the Making Home Affordable Program, a plan to stabilize the housing market and help struggling homeowners get relief and avoid foreclosure. In March 2009, the Treasury Department (Treasury) issued uniform guidance for loan modifications across the mortgage industry and subsequently updated and expanded the guidance in a series of policy announcements.***

***The Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Handbook) is intended to provide a consolidated resource for programmatic guidance related to the MHA Program for mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to any relevant guidance issued by the applicable GSE. In addition to the applicable guidance in this Handbook, servicers of mortgage loans insured or guaranted by a federal agency, such as the Federal Housing Administration or Rural Housing Service, should refer to any relevant guidance issued by the applicable agency.***

Published in December 2010, the MHA Handbook is a complete reference guide for servicers and a great asset to the real estate professional in working through the short sale world. www.HMPadmin.com.

## Financial Incentives

One of the most important components to the program is the offering of incentives to the servicer and investor to help in the successful outcome of a HAFA Short Sale or Deed-in-Lieu. Assistance is also offered to borrowers to help them transition into their new housing.

**Borrower:** As mentioned earlier, the borrower receives a $3,000 relocation incentive paid by the settlement agent at the close of the transaction.

**Servicer:** Servicers receive an incentive at the end of a successful short sale or deed-in-lieu for help in the facilitation of the process.

**Investor:** Investors receive an incentive for allowing funds to go to junior lien holders to accomplish a successful closed transaction.

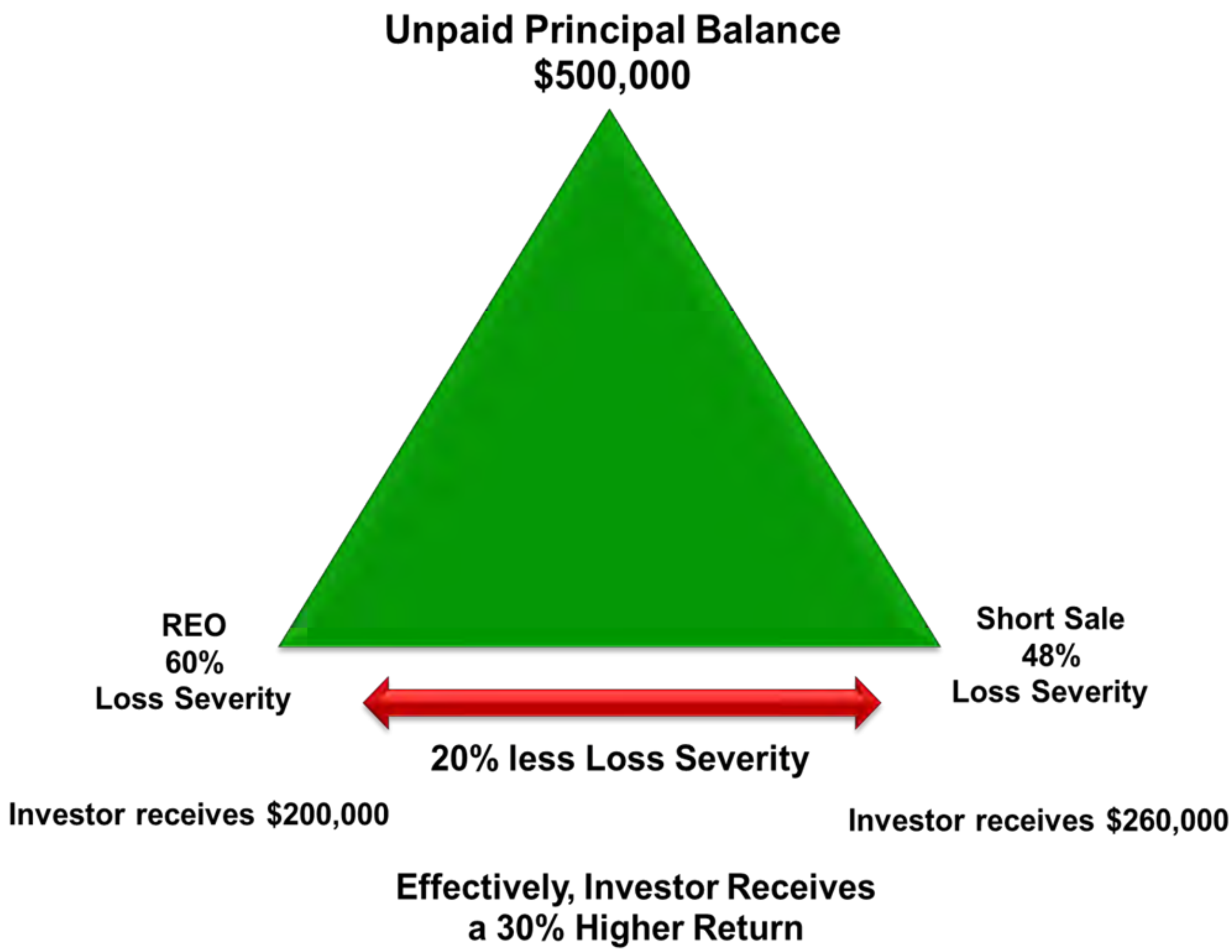
## Investor Benefits

**Foreclosure Expense Reduction:** Expenses to maintain properties after foreclosure are investment driven and can have a very high aggregate number. Cooperation through a short sale or deed-in-lieu eliminates the need for the servicers, as well as investors, to pay for the maintenance of the property if the lender takes the property back through foreclosure.

**Property Condition Maintained:** Due to borrower requirements, pre-foreclosure options typically help maintain the condition of the property and therefore, the preservation and value of the property by minimizing the time a property could be vacant and therefore subject to vandalism and deterioration through lack of maintenance.

**Loss Severities Reduced:** Finally, pre-foreclosure options generally provide a substantially better outcome for investors and communities through lower loss severities for investors and fewer vacant properties for communities.

**Faster Default Resolution:** With the more accelerated process through HAFA, the investor will have an ability to sell the property in less than 90 days through a short sale versus a possible 12 months or longer timeframe for a foreclosure.




As shown above, if a property is taken back through foreclosure, investors may realize as much as 60% loss severity versus 48% through a short sale. Therefore, the investor would potentially receive a 30% higher return.

## Servicer Benefits

The HAFA program simplifies and streamlines short sale and deed-in-lieu options by incorporating the following unique features:

**Standardization:**

- Utilizes borrower financial and hardship information collected in HAMP process, often eliminating the need for additional eligibility analysis;
- Allows the borrower to receive pre-approved short sale terms prior to listing the property using the short sale package including the Request for Mortgage Assistance (RMA);
- Standardized documents;
- Terms are stated throughout the HAFA documents and
- There are very clear timeframes that are to be followed throughout.

**Financial Incentives:**

Very specific incentives are offered to Servicers to facilitate their cooperation through a successful short sale. Incentives are paid upon a successful close of the transaction.

## Borrower and Real Estate Professional Benefits

Section 3 will provide more detail on the benefits mentioned below for borrowers and real estate professionals.

**Foreclosure Prevention:** Since HAFA is meant to give the borrower some control over his or her housing transition, the borrower should have a much easier process than a traditional short sale. Additionally, as long as the borrower performs in accordance with the terms of the HAFA Short Sale Agreement (SSA), the servicer will not complete a foreclosure sale.

**Debt Forgiveness:** Under HAFA, first lien debt is forgiven and incentives are provided to the investor to help in the process of negotiation with subordinate lien holder(s). To receive an incentive, the subordinate lien holder must agree to release its lien and waive all future claims against the borrower.

**Relocation Support:** The borrower will receive a $3,000 relocation benefit at the close of the transaction.

**Pre-Approved Terms Prior to Listing:** When the Short Sale Agreement (SSA) is provided to the borrower, the listing broker will have a pre-approved list price or minimum acceptable net proceeds as well as guidelines on allowable closing costs including the real estate commission being offered.

## Eligibility – HAFA

As stated earlier, the basic HAFA eligibility criteria are similar to those for the HAMP program:

- The property is the borrower's principal residence and can be vacant up to 12 months;
- The mortgage loan is a first lien mortgage originated on or before January 1, 2009;
- The mortgage is delinquent or default is reasonably foreseeable;
- The current unpaid principal balance is equal to or less than $729,750 (one unit). For multi-unit properties, the principal balance amount is higher:
  - 2 Units - $934,200
  - 3 Units - $1,129,250
  - 4 Units - $1,403,400
- Verified Hardship*.

Prior to Supplemental Directive 10-18 Policy Update, for the borrower to qualify for HAFA, the total monthly mortgage payment (principal, interest, property taxes, insurance and home owner's association fee, if any) must have exceeded 31% of the borrower's gross monthly income. The servicer's responsibility to verify the 31% payment issue has changed - borrowers are no longer required to prove that the monthly payment exceeds 31% of monthly gross income, but must prove hardship.

This change in the program also creates the opportunity for the servicers to re-evaluate borrowers previously determined to be ineligible for HAFA due to the 31% requirement or residency.

*Hardships are to be verified and are itemized on The Request for Mortgage Assistance (RMA) and/or Hardship Affidavit. In the Affidavit, the borrower attests that he/she is unable to continue making full mortgage payments due to a number of reasons that includes, but is not limited to:

- A reduction in or loss of income that was supporting the mortgage;
- An increase in other expenses;
- Monthly debt payments are excessive and borrower overextended;
- Cash reserves, including all liquid assets, insufficient to pay monthly mortgage payment; and/or
- A change in household financial circumstances

# SECTION 3 – IMPLICATIONS OF NON-GSE HAFA

## Implications for Servicers and Investors

### HAFA Consideration Mandatory before Foreclosure

As mentioned earlier, servicers have incentives and indeed are mandated to consider every potentially eligible borrower for HAFA before pursuing foreclosure. Additionally, if the servicer had originally signed onto the HAMP program, that servicer is mandated to implement HAFA.

Unless prohibited by investor guidance, servicers should utilize HAFA rather than a proprietary short sale or DIL option in all cases where a short sale or DIL is approved by the servicer and the transaction otherwise meets the guidance. If utilization of HAFA is prohibited by investor guidance, servicers must document any applicable investor restriction or prohibition in the servicing system and/or mortgage file.

### Includes Borrowers Attempting Modification

Participating servicers are required to consider all eligible borrowers for HAFA before the borrower's loan is referred to foreclosure or the servicer allows a pending foreclosure sale to be completed.

This includes borrowers who:

- Did not qualify for a HAMP Trial Period Plan;
- Failed to successfully complete a HAMP Trial Period Plan;
- Are delinquent on a HAMP modification by missing at least two consecutive payments; or
- Requests a short sale or deed-in-lieu.

## Implications for the Distressed Borrower

### Borrower Responsibilities

### Cooperation with Real Estate Professional

The borrower must sign a listing contract and cooperate with the process of selling his or her home. Issues that are likely to be important include accessibility, the MLS, lockboxes and cooperation with showing appointments.

**Clear Title**

Additionally the borrower is ultimately responsible for delivering clear and marketable title which means dealing with expenses such as HOA fees, tax issues and so on. This can be a very difficult issue if the borrower has not remained current on their taxes or HOA fees. The borrower must be proactive in working with the lien holders to be able to uphold their responsibilities in this area and may ask their real estate professional for help with negotiations.

**Must Maintain Property**

One of the more important things about HAFA is that the borrower has the responsibility to keep the property in good and habitable condition inside and out to show the property to its best advantage. Anyone who has been working short sales knows the stories of damage that may be done to homes either through vandalism after a property is abandoned by the borrower or possibly by the borrowers themselves. Under HAFA, the borrower must report any damage to the servicer and file a hazard insurance claim for covered damage.

Unfortunately, in some cases, the borrower’s financial situation could be very dire and they are not able to pay to repair something that may have been damaged. In that case, it is recommended that the borrower notify the servicer of the situation putting the servicer on notice that repairs will not be made due to financial constraints.

**Borrower Occupancy**

Prior to Supplemental Directive 10-18, for the borrower to be considered for HAFA, the borrower needed to stay in their property until a successful closing to be eligible to receive the HAFA benefits. Currently, if the property has been vacant or rented to a non-borrower for no more than 12 months prior to the date of the Short Sale Agreement (SSA), Alternative Request of Approval of Short Sale (Alternative RASS) or Deed-in-Lieu Agreement (DIL), the borrower will still be eligible for HAFA. The borrower will be required to provide documentation that the property was the borrower’s principal residence before relocation and that the borrower has not purchased a one-to-four unit property during the 12-month period before the SSA, Alternative RASS or DIL Agreement. The documentation required to prove principal residence will be stated in the servicer’s policy and provided to the borrower.

Another change was the issue of the opportunity for the borrower to remain in the property after a deed-in-lieu as a tenant. Each servicer has the ability to create a policy, following investor guidelines, which would allow the borrower to stay as a tenant (Deed-for-Lease) and possibly repurchase the property back at a future date. Borrowers should ask their servicer if there has been a policy created which would allow them to stay on as tenants if that is their desire (this policy may be found on the servicer’s website under HAFA matrix).

## Implications for the Real Estate Professional

The HAFA program offers a number of benefits to the real estate professional as well as some responsibilities for assisting the borrowers through the process. The listing broker is required to acknowledge the Short Sale Agreement (SSA) prior to the document being returned to the servicer. More information will be discussed in a later section.

### Commission Issues

Under Supplemental Directive 10-18 Policy Update commissions stated in the listing agreement shall be paid, provided that such commission shall not exceed 6%. Additionally, if the servicer chooses to hire an outside vendor to assist in the process, that vendor fee cannot be deducted from the listing broker's commission but will be deducted from the proceeds received by the investor.

### Shorter Timelines

Because of the standardization of HAFA approval and closing timelines, the documents involved and the mandatory nature of HAFA, there may be an increase in short sale closings and overall greater opportunities for the real estate professional. On the charts provided later in the materials, you will have the opportunity to review the standardized timelines offered.

### Lower Failure Rates

HAFA has created uniformity across the board for all servicers who have signed onto the program. Although investors still have the ability to deny the short sale due to their minimum acceptable net proceeds, among other things, each servicer should be using the same basic documents and following the same timeframes as the others involved. This uniformity may create greater success in closing short sale transactions in a much shorter time and may prevent the loss of buyers due to the delays often taken to close a "traditional" short sale.

### Arm's Length Issues

A very important component to HAFA is that the program requires that the sale represents an '*arm's length'* transaction. In simple terms, this means the borrower who has a real estate license cannot earn a commission by listing his or her own property. May not have agreement to sell their property to a relative or anyone else with whom they have a close personal or business relationship and receive a portion of commission or sales price after closing. Nor have an expectation that they can remain in the property as a tenant unless the servicer has offered that option (Deed-for-Lease or Repurchase, discussed later in the materials).

### 90-Day Flipping Ban

The market has experienced a number of investor buyers who are buying to refurbish the property and then resell it after the refurbishment is completed. The only specific guideline under HAFA in this regard is that the buyer must agree not to sell the home within 90 calendar days from when it is sold by the borrower.

**Subordinate Liens / Investor Reimbursement***

As part of a HAFA short sale or DIL, in addition to satisfying the primary mortgage debt, the borrower must be fully released from liability for subordinate liens. A servicer, on behalf of an investor, will authorize the settlement agent to allow a portion of the gross proceeds as payment(s) to subordinate mortgage/lien holder(s) in exchange for a lien release and full release of borrower liability. The aggregate cap of $6,000 available to satisfy subordinate liens applies only to subordinate liens secured by a mortgage on the subject property. The cap is not applicable to non-mortgage subordinate liens such as mechanics' liens or liens associated with assessments owing to homeowner's associations. Servicers will authorize the settlement agent to allow any portion of the gross proceeds to be used as payment(s) to subordinate non-mortgage lien holders in exchange for a lien release and full release of borrower liability.

Investors will be reimbursed up to $2,000 only for that portion of the short sale proceeds paid to subordinate mortgage lien holders and no investor will be reimbursed for short sale proceeds paid to subordinate non-mortgage lien holders.

## Treasury HAFA Incentives

The Treasury will provide incentives as described below upon a successful completion of a short sale or deed-in-lieu, if a Short Sale Agreement (SSA), Alternative Request for Approval of Short Sale (Alternative RASS) or Deed-in-Lieu Agreement (DIL) was executed on or before December 31, 2012:

- $3,000 borrower relocation incentive, which will be deducted from the gross sale proceeds at closing;
- $1,500 servicer incentive to help with administrative and processing costs;
- The investor will be paid a maximum of $2,000* for allowing a portion of the short sale proceeds to be distributed to or paid to subordinate mortgage lien holders. For each three dollars an investor pays to secure release of a subordinate mortgage lien, the investor will be entitled to one dollar of reimbursement up to the maximum reimbursement of $2,000*:
    - The investor allows a portion of gross sale proceeds to be paid to subordinate mortgage lien holders with a $6,000 aggregate cap*;
    - Subordinate mortgage lien holders will be paid in order of priority with the servicer, on behalf of the investor, determining the amount or percentage of the unpaid principal balance of the lien that will be paid to the subordinate mortgage lien holder until the $6,000 cap is reached;
- Servicers have the discretion to accept a HAFA deed-in-lieu which will still require a full release of the debt and the borrower's relocation benefit will still be paid

**EXAMPLE:** Following is an example to help you understand these incentives:

$3,000 paid to **borrower**
$1,500 paid to **servicer**
$2,000 total can be paid to **investor** to allow proceeds to be paid to the subordinate mortgage lien holders.. This payment to the **investor** is $3-to-$1

2nd $50,000 $3,000 offered to subordinate mortgage lien holder to release borrower
$3,000 ($3 to $1) = $1,000 paid to investor for negotiating

3rd $25,000 - $1,500 offered to subordinate mortgage lien holder
$1,500 ($3 to $1) = $ 500 to investor

$4,500 paid total to subordinate mortgage lien holder ($6,000 allowed)
$1,500 paid total to investor ($2,000 allowed)

(Note: $6,000 total aggregate cap available to pay subordinate mortgage lien holders for their agreement to release the debt and borrower's future liability is not an incentive.)

## Use of Borrower Relocation Incentive

HAFA guidelines provide a $3,000 incentive payment to the borrower to assist with relocation expenses. The borrower may use this relocation incentive to pay for transaction costs that the borrower has instructed the closing agent, in writing, to pay on the borrower's behalf, such as the cost of legal representation, overdue utility bills or minor repairs identified during a property inspection. However, borrowers may not use this relocation incentive to pay for the release of subordinate mortgage or non-mortgage liens recorded against the property and may not be required by the servicer, as a condition of sale, to utilize the relocation incentive to pay any transaction expenses. The HUD-1 settlement statement must reflect the full $3,000 relocation incentive as a credit to the borrower and must show any authorized transaction costs paid out of such incentive as charges to the borrower.

# SECTION 4 – TREASURY HAFA ROLES AND RESPONSIBILITIES

## Roles and Responsibilities of Servicers

### Fiduciary to the Investor

The most important role of the servicer is to act in accordance with investor guidelines. It is the servicer's responsibility to develop a written policy which is consistent with investor guidelines. This policy must describe the basis on which the servicer will offer the HAFA program to borrowers. It may incorporate such factors as the severity of the loss (which would include the minimum net proceeds an investor would be willing to accept), local market conditions, the timing of pending foreclosure actions, if applicable, and borrower motivation and cooperation.

### Written HAFA Consideration/Evaluation Policy/Eligibility Matrix

Additionally, servicers must create a written policy following the Making Home Affordable Program Handbook for Servicers of Treasury Mortgages. This document is a resource for guidance to the MHA program for mortgages not owned or guaranteed by Fannie Mae or Freddie Mac.

Each servicer must complete and post to its website a matrix that identifies the servicer's unique HAFA eligibility criteria and program rules (also known as HAFA Matrix). The HAFA Matrix must also include the servicer's process for re-evaluation of property value. The topics and language in the template HAFA Matrix are provided only as an example of what a servicer might include as an aspect of its HAFA Policy that is unique. Each servicer must draft the language in its HAFA Matrix to be consistent with its HAFA Policy and any specific investor requirements or prohibitions.

In addition to posting its HAFA Matrix to its website, each servicer must provide the Program Administrator (Fannie Mae) with the web address where the completed matrix can be located. Treasury will identify to the public the web location of each servicer's HAFA Matrix on www.MakingHomeAffordable.gov.

Each servicer must keep the information in its HAFA Matrix up to date, including any changes in the servicer's HAFA Policy. Sample HAFA Matrices can be found in Section 7 Forms of this Resource Manual.

**Evaluate for HAMP Prior to HAFA Options**

Servicers must evaluate the borrower for a HAMP modification before considering HAFA options for that borrower. If a borrower not previously evaluated for HAMP requests a short sale or DIL, the servicer must communicate with the borrower either verbally or in writing of the availability of HAMP and give the borrower 14 calendar days for consideration. The 14 calendar day response period is only intended to establish a minimum requirement on a servicer's obligation to consider a borrower for HAFA. Servicers may still consider a borrower for HAFA whether or not that borrower responds to the HAFA solicitation within the 14 calendar day response period. Borrower may respond verbally.

Communication responsibilities for the servicer are greater in that the servicer must consider possible HAMP-eligible borrowers for HAFA within 30 calendar days from the date the borrower has been deemed not qualified for a HAMP modification, does not successfully complete a HAMP trial period plan or misses two consecutive payments of the trial period plan.

If a borrower requests a short sale or deed-in-lieu, then the servicer must consider the borrower for HAFA and send the SSA, DIL Agreement, a written notification that the borrower will not be offered a SSA or DIL or a written response to the Alternative RASS within 45 days.

Note: Servicer must send written confirmation within 10 days of receipt of request for HAFA short sale, DIL or Alternative RASS including servicer's HAFA evaluation process and decision timeline no later than 45 days from date of request.

**Evaluate Title**

A review of available information provided by the borrower will take place which would include the borrower's credit report, the loan file or other sources to identify subordinate liens and other claims on title to determine if the borrower will be able to deliver clear and marketable title.

**Determine Current Market Value**

An assessment of the current value of the property will be done with the servicer following investor guidelines. The assessment will be completed independently of the borrower and any other parties to the transaction prior to approving a HAFA transaction. Because accuracy of property value is critical to obtaining a successful purchase offer, each servicer must develop and implement, as part of its HAFA Policy, procedures it will follow to periodically re-evaluate property value and to reconcile discrepancies between the servicer's independent assessment of value and market value data provided by the borrower or the borrower's real estate professional. Such procedures must be listed in each servicer's HAFA Matrix.

### List Price / Acceptable Sale Proceeds

To the extent the new value determination is less than the value determination used in the Short Sale Agreement (SSA), the servicer is not required to amend the SSA, but must notify the borrower and/or the borrower's real estate professional either in writing or verbally of the new value determination and confirm the new list price or acceptable sale proceeds based on the new value determination. Servicers must honor the new value determination and document it in the servicing system and/or mortgage file together with the updated list price or acceptable sale proceeds, and the communication(s) to the borrower about such changes. Servicers after signing an SSA may not increase the minimum acceptable net proceeds required until the initial SSA termination date is reached (minimum 120 day period).

Current guidelines require the servicer to accept a purchase offer if the net sales proceeds available for payment to the servicer equal or exceed the minimum acceptable net proceeds determined by the servicer prior to approving the SSA or in connection with the re-evaluation process. Servicers are not prohibited from accepting a purchase offer that results in net proceeds that are lower than the minimum acceptable net proceeds when the servicer determines that the proposed sale is in the best interest of the investor.

### Mortgage Insurance

Servicers are also responsible to obtain mortgage insurer approval for HAFA options, if applicable.

### Report Results

At the end of the process, the servicer will notify the borrower as to approval or disapproval, report the HAFA data to Fannie Mae and ultimately complete credit bureau reporting.

## Roles and Responsibilities of the Distressed Borrower

### Respond According to Timelines

If the servicer determines that a borrower is eligible for a HAFA offer, and the borrower did not initiate the request for a short sale or DIL, the servicer must notify the borrower in writing of the availability of HAFA and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration under HAFA. If the borrower initiated the request for a short sale by either forwarding a Request for Mortgage Assistance (RMA) or Hardship Affidavit to the servicer and has then received a Short Sale Agreement (SSA) from the servicer, the borrower must sign and return that document to the servicer within 14 calendar days from the SSA Effective Date along with a copy of the real estate broker listing agreement and information regarding any subordinate liens.

### Financial / Hardship Information

The borrower will need to provide financial and hardship documentation, if they had not already done so through the HAMP modification program. That documentation can be created through the RMA or Hardship Affidavit. These forms will be discussed in detail later in the program.

### List According to Short Sale Agreement (SSA) Guidelines

Always remember that the borrower (seller) still owns the home. The borrower should select a local, licensed real estate professional and sign the listing agreement following servicer guidelines regarding list price or minimum net proceeds provided in the SSA. The borrower must also agree to cooperate with the listing broker to actively market the property and provide access to potential buyers.

### Comply with Terms Spelled Out in SSA

By signing the SSA, the borrower agrees to maintain the interior and exterior of the property in a manner that facilitates marketability and to work to clear any liens or other impediments to title that would prevent conveyance. The borrower must comply with these and all the other terms spelled out
in the SSA.

## Roles and Responsibilities of the Real Estate Professional

### HAFA Education and Compliance Assistance

A listing broker assists the borrower through the process of selling his or her home and acknowledges he or she has reviewed the terms and conditions of the SSA. The process can be challenging and the borrower may often feel overwhelmed. You should be a good communicator with all parties – the borrower, the servicer and when a contract is presented, with the cooperating agent.

You can reinforce the borrower's responsibilities under HAFA to provide cooperation in the marketing process and to maintain the property in good and marketable condition.

### Servicer Communication

Also, as with a "traditional short sale", you may be handling the process of short sale negotiations with the servicer and the cooperating agent keeping all informed and dealing with servicer inquiries throughout the process.

### Market and Sell the Property

A listing broker's primary job may be marketing the property to find a ready, willing and able buyer. The vital part in this case is that the guidelines stated in the SSA in terms of list price or minimum net proceeds must be followed, otherwise the servicer may not approve the short sale.

### Borrower Relocation Support

Obviously, one of the biggest concerns of the borrower is will they have a place to move to. "Where will I go?" Depending on the circumstances, a real estate professional could have a very important role in assisting the borrower in their transition into a new property. You may also need to be sure the borrower understands his or her responsibilities in terms of vacating the property according to guidelines spelled out in the Short Sale Agreement (SSA) and Request for Approval for Short Sale (RASS). Also remember, the servicer may have created a policy that would allow the borrower to stay in the property as a tenant as part of a Deed-in-Lieu Agreement.

### Subordinate Lien Negotiation Support (if requested)

If you agree to assist in negotiations with subordinate lien holders, you should be prepared to act in that role to facilitate a successful closed transaction.

## Roles and Responsibilities of the Government and GSE's

Although the original program involved the Treasury HAFA program, both Fannie Mae and Freddie Mac have important roles in Treasury HAFA.

### Fannie Mae

The Servicer Participation Agreements for HAMP were signed with Fannie Mae in its capacity as financial agent of the United States. HAFA loan level data is then reported to Fannie Mae in its capacity as program administrator. In the Resource Section of this manual, you'll find links to the Fannie Mae website.

**Freddie Mac**

Freddie Mac is the compliance agent for HAFA and Freddie Mac has the ability to audit servicers on compliance with HAFA including:

- Assessment of the process being used to evaluate and approve borrowers for a HAFA short sale or deed-in-lieu;
- Adherence to standard policies and guidelines;
- Determining fair market value, recommended list price, approved minimum net proceeds, etc.;
- Guidelines being used for allowable payoffs to subordinate lien holders; and
- Confirmation of the use of standard documents and document retention following the conclusion of the transaction.

In the area of compliance, you'll find in the Resource Section of this manual, a link to an e-mail address which was created to help the individual real estate professional in dealing with the HAFA short sale issues.

**Treasury**

Treasury originally created HAFA guidelines and although there are differences in the GSE programs, overall the guidelines to be followed to assist the distressed borrower through the process of transitioning out of the property come from Treasury.

Additionally, Treasury still carries responsibility to monitor the overall success of the Making Home Affordable Program and make adjustments as needed to bring greater overall success through this difficult real estate market.

# SECTION 5 – TREASURY HAFA PROCESS AND DOCUMENTS

## There are two major ways in which a HAFA transaction can be initiated and completed -- Standard and Alternative

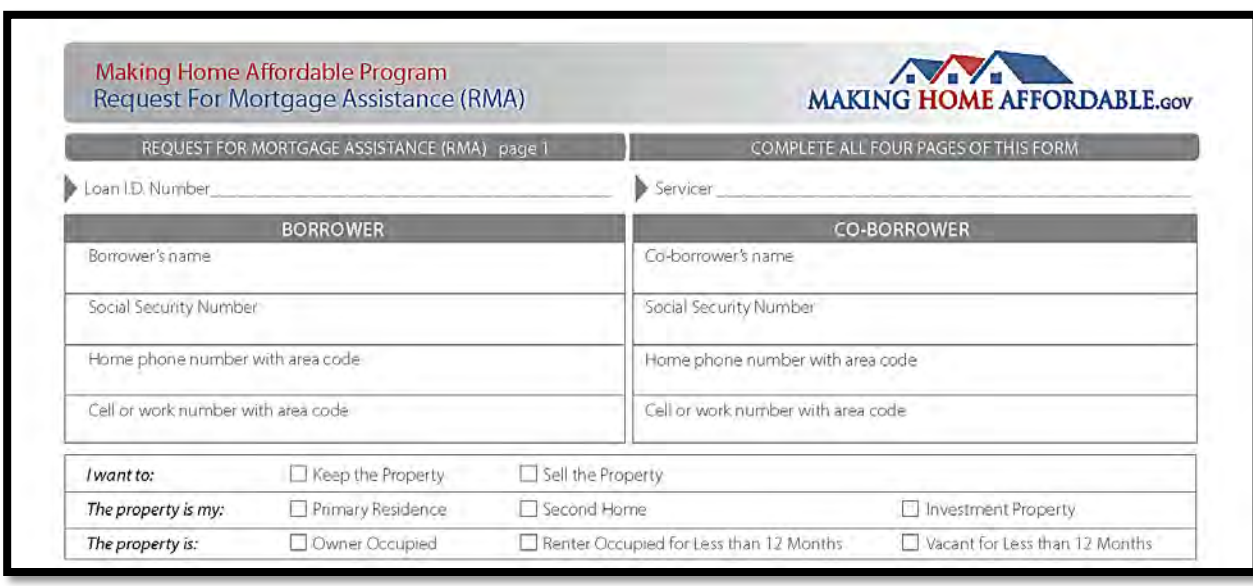
### <u>The Treasury HAFA Process – Standard</u>

**<u>Standard process documents:</u>**

**Request for Mortgage Assistance - RMA**
**Short Sale Agreement – SSA**
**Request for Approval of Short Sale – RASS**

**<u>Request for Mortgage Assistance – RMA</u>**

Under the standard process, one of the initial documents is the Request for Mortgage Assistance (RMA). (Previously named Request for Modification and Affidavit) This document is used to start either the modification or short sale process. The borrower – not the real estate professional – completes the form and forwards it to the servicer either requesting consideration for a modification or informing the servicer that the borrower would like to initiate a short sale. Basic questions are asked of the borrower which should be answered honestly and completely.


Making Home Affordable Program
Request For Mortgage Assistance (RMA)

MAKING HOME AFFORDABLE.gov

REQUEST FOR MORTGAGE ASSISTANCE (RMA) page 1 | COMPLETE ALL FOUR PAGES OF THIS FORM

Loan I.D. Number ______ Servicer ______

| BORROWER | CO-BORROWER |
|---|---|
| Borrower's name | Co-borrower's name |
| Social Security Number | Social Security Number |
| Home phone number with area code | Home phone number with area code |
| Cell or work number with area code | Cell or work number with area code |

| | | | |
|---|---|---|---|
| *I want to:* | ☐ Keep the Property | ☐ Sell the Property | |
| *The property is my:* | ☐ Primary Residence | ☐ Second Home | ☐ Investment Property |
| *The property is:* | ☐ Owner Occupied | ☐ Renter Occupied for Less than 12 Months | ☐ Vacant for Less than 12 Months |

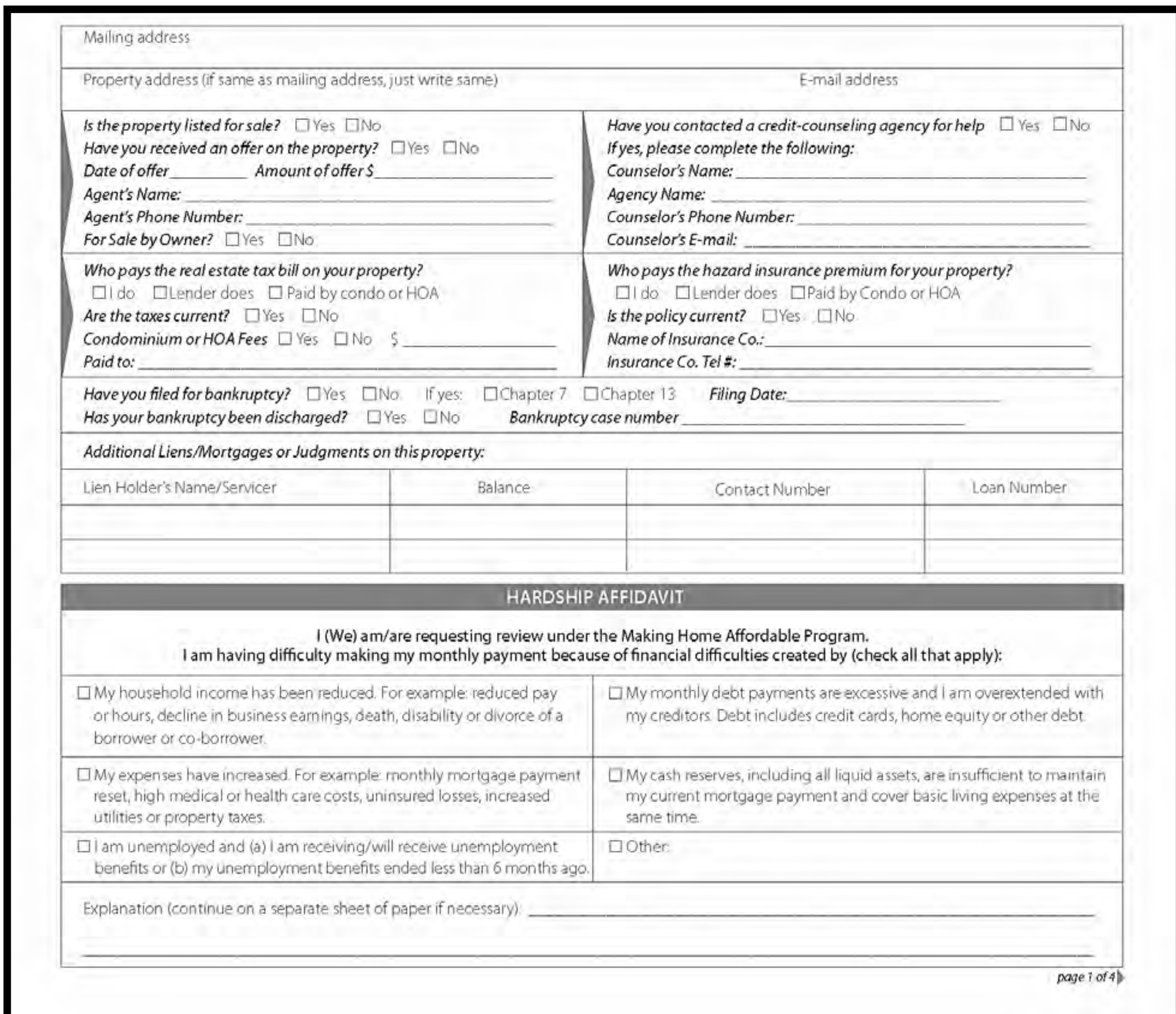
The next section of the RMA deals with questions regarding the sale of the property;

**Is the Property Listed?     Are There Offers?     Other Permanent Details such as:**

How property taxes and hazard insurance payments are being paid.  Has the borrower filed for bankruptcy?  Have they spoken to a credit counselor?  Additional points of clarification are needed to help the servicer do a complete analysis of the potential short sale if a modification is not an option.

**RMA Hardship Affidavit**

The next part of the RMA deals with hardship information.  The borrower needs to indicate why they are in the financial situation they are in and include additional hardship details.



Mailing address

Property address (if same as mailing address, just write same)     E-mail address

*Is the property listed for sale?* ☐ Yes ☐ No
*Have you received an offer on the property?* ☐ Yes ☐ No
*Date of offer* ________ *Amount of offer $* ____________
*Agent's Name:* ____________
*Agent's Phone Number:* ____________
*For Sale by Owner?* ☐ Yes ☐ No

*Have you contacted a credit-counseling agency for help* ☐ Yes ☐ No
*If yes, please complete the following:*
*Counselor's Name:* ____________
*Agency Name:* ____________
*Counselor's Phone Number:* ____________
*Counselor's E-mail:* ____________

*Who pays the real estate tax bill on your property?*
☐ I do ☐ Lender does ☐ Paid by condo or HOA
*Are the taxes current?* ☐ Yes ☐ No
*Condominium or HOA Fees* ☐ Yes ☐ No $ ____________
*Paid to:* ____________

*Who pays the hazard insurance premium for your property?*
☐ I do ☐ Lender does ☐ Paid by Condo or HOA
*Is the policy current?* ☐ Yes ☐ No
*Name of Insurance Co.:* ____________
*Insurance Co. Tel #:* ____________

*Have you filed for bankruptcy?* ☐ Yes ☐ No If yes: ☐ Chapter 7 ☐ Chapter 13 *Filing Date:* ____________
*Has your bankruptcy been discharged?* ☐ Yes ☐ No *Bankruptcy case number* ____________

*Additional Liens/Mortgages or Judgments on this property:*

| Lien Holder's Name/Servicer | Balance | Contact Number | Loan Number |
|---|---|---|---|
| | | | |
| | | | |

**HARDSHIP AFFIDAVIT**

I (We) am/are requesting review under the Making Home Affordable Program.
I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply):

☐ My household income has been reduced. For example: reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower.

☐ My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.

☐ My expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.

☐ My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.

☐ I am unemployed and (a) I am receiving/will receive unemployment benefits or (b) my unemployment benefits ended less than 6 months ago.

☐ Other:

Explanation (continue on a separate sheet of paper if necessary): ____________

*page 1 of 4*

## Financial Information

Financial information detailing income, expenses and assets is completed next. Borrowers should try to be as accurate as possible in terms of their household expenses. A borrower may overlook an important issue and neglect to include it in his or her true financial picture.

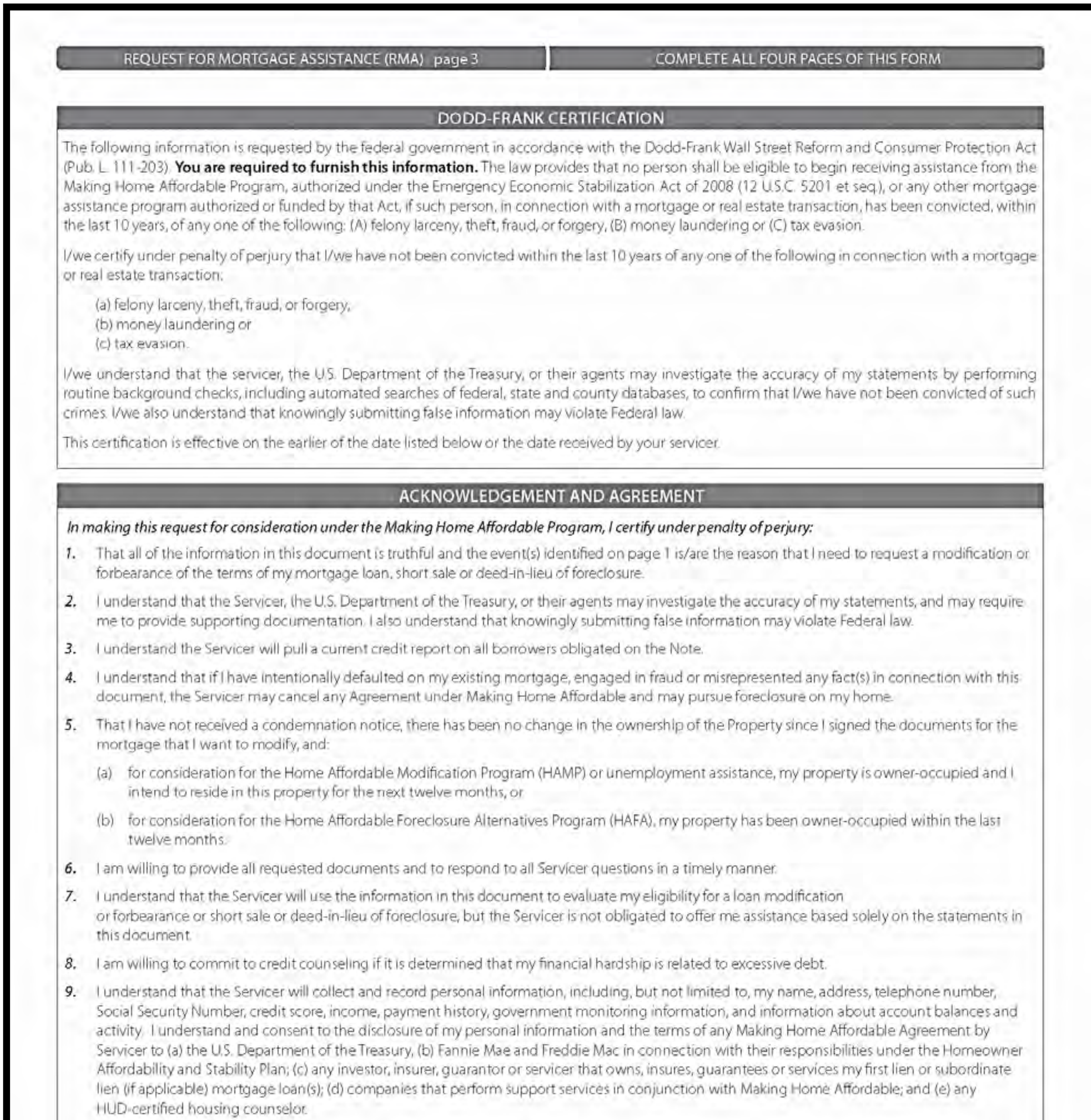
REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 2 | COMPLETE ALL THREE PAGES OF THIS FORM

**INCOME/EXPENSES FOR HOUSEHOLD[1]** | *Number of People in Household:*

| *Monthly Household Income* | | *Monthly Household Expenses/Debt* | | *Household Assets* | |
|---|---|---|---|---|---|
| Monthly Gross Wages | $ | First Mortgage Payment | $ | Checking Account(s) | $ |
| Overtime | $ | Second Mortgage Payment | $ | Checking Account(s) | $ |
| Child Support / Alimony / Separation[2] | $ | Insurance | $ | Savings/ Money Market | $ |
| Social Security/SSDI | $ | Property Taxes | $ | CDs | $ |
| Other monthly income from pensions, annuities or retirement plans | $ | Credit Cards / Installment Loan(s) (total minimum payment per month) | $ | Stocks / Bonds | $ |
| Tips, commissions, bonus and self-employed income | $ | Alimony, child support payments | $ | Other Cash on Hand | $ |
| Rents Received | $ | Net Rental Expenses | $ | Other Real Estate (estimated value) | $ |
| Unemployment Income | $ | HOA/Condo Fees/Property Maintenance | $ | Other ____________ | $ |
| Food Stamps/Welfare | $ | Car Payments | $ | Other ____________ | $ |
| Other (investment income, royalties, interest, dividends etc.) | $ | Other ____________ ____________ | $ | Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.) | |
| ***Total (Gross Income)*** | ***$*** | ***Total Debt/Expenses*** | ***$*** | ***Total Assets*** | ***$*** |

## Dodd-Frank Certification, Acknowledgment and Agreement

Required by the federal government to participate in MHA Program to certify the borrower has not been convicted within the last 10 years of felony larceny, theft, fraud or forgery. This form is used for both modification and/or alternatives to foreclosure – HAMP and HAFA.



REQUEST FOR MORTGAGE ASSISTANCE (RMA) page 3 | COMPLETE ALL FOUR PAGES OF THIS FORM

**DODD-FRANK CERTIFICATION**

The following information is requested by the federal government in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203). **You are required to furnish this information.** The law provides that no person shall be eligible to begin receiving assistance from the Making Home Affordable Program, authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following: (A) felony larceny, theft, fraud, or forgery, (B) money laundering or (C) tax evasion.

I/we certify under penalty of perjury that I/we have not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction:

(a) felony larceny, theft, fraud, or forgery,
(b) money laundering or
(c) tax evasion.

I/we understand that the servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements by performing routine background checks, including automated searches of federal, state and county databases, to confirm that I/we have not been convicted of such crimes. I/we also understand that knowingly submitting false information may violate Federal law.

This certification is effective on the earlier of the date listed below or the date received by your servicer.

**ACKNOWLEDGEMENT AND AGREEMENT**

***In making this request for consideration under the Making Home Affordable Program, I certify under penalty of perjury:***

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification or forbearance of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand that the Servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements, and may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law.
3. I understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home.
5. That I have not received a condemnation notice, there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify, and:
   (a) for consideration for the Home Affordable Modification Program (HAMP) or unemployment assistance, my property is owner-occupied and I intend to reside in this property for the next twelve months, or
   (b) for consideration for the Home Affordable Foreclosure Alternatives Program (HAFA), my property has been owner-occupied within the last twelve months.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or forbearance or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
9. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, Social Security Number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD-certified housing counselor.

## Request for Mortgage Assistance (RMA) Benefits

The benefit of the RMA is that the servicer has all the information necessary at the start so the analysis of the borrower for HAMP can proceed. Then if the borrower is deemed not eligible for HAMP, the servicer can then offer a short sale through the Short Sale Agreement (SSA) containing a pre-set list price or minimum net proceeds for the sale of the property. This fact sheet should make the entire sale process run more smoothly.

Important Details:

- The RMA is submitted at the start of the overall process;
- The servicer then has the ability to review the borrower for HAMP at the early stages;
- If the servicer denies HAMP to the borrower, HAFA can then be offered through the SSA;
- If the borrower chooses to move forward with a short sale, the SSA is generated by the servicer and returned by the borrower within 14 calendar days from the SSA Effective Date;
- The SSA contains the pre-set list price or acceptable sales proceeds and additional terms of the sale.

## Short Sale Agreement – SSA

### Generated by the Servicer

If the borrower has submitted the Request for Mortgage Assistance (RMA) to initiate the evaluation process or the servicer has contacted the borrower indicating the borrower may be eligible, once the HAMP analysis is completed, the borrower would be notified of their HAMP eligibility. If the servicer deems that the borrower is not eligible for HAMP, they could then offer a HAFA short sale by sending the Short Sale Agreement (SSA) to the borrower along with the Request for Approval of Short Sale (RASS).

In this case, the property would be listed after the servicer provides the SSA to the borrower indicating either the list price or the minimum acceptable net proceeds.

## Short Sale Agreement Overview

Generated by servicer giving:

- Program details;
- Pre-Approved terms and conditions;
- Borrower agrees;
- Property listed after SSA received;
- Real estate professional acknowledges.

## SSA Cover Letter

The SSA begins with a cover letter written in "plain English" so it is easy for the borrower to understand. The cover letter gives basic details on how the entire process will take place and gives some specific descriptions on the overall program. Additionally, detail is given on the relocation benefit and guidance on what the agreement means to both the borrower and servicer.

**HELP FOR AMERICA'S HOMEOWNERS.**

MAKING HOME AFFORDABLE

[Name of Servicer]
[Address of Servicer]
[Loan #]
[Servicer FAX]
[Servicer Email]
[Date]

[Name of Borrower]
[Name of Co-Borrower]
[Address of Borrower]
[Borrower Phone]
[Borrower Email]

Dear [borrower and co-borrower name(s)]:

If you are looking for help selling your home and avoiding foreclosure, the federal government has introduced the **Home Affordable Foreclosure Alternatives** (HAFA) Program to help you. As your mortgage servicer, we are offering you the opportunity to participate in this program by utilizing HAFA's short sale option.

**Home Affordable Foreclosure Alternatives Program – Short Sale**
A "short sale" is specifically designed to help borrowers who are unable to afford their first mortgage and want to sell their home to avoid foreclosure, even if the sale price may not pay off the amount owed on their mortgage. A short sale requires a number of parties (you, the buyer, your real estate broker, and sometimes mortgage insurance companies and other lenders) to work together to make this option successful. However, it could be a good solution for your current situation.

**How Does a Short Sale Work?**

- **Pre-Sale**—We will start by approving a list price for your home or give you the acceptable sale proceeds (the minimum amount that we must receive after sales costs) from the sale of your home. We will also identify the sales costs (broker commissions and closing costs) that may be deducted from the final sales price. You then list your property (like any home sale) with a local real estate broker at the approved price.
- **Offer**—When you get an offer on your home, you will submit the required documentation and we will approve the sale if it is in line with what we agreed to.
- **Closing**—Once the sale closes, we will release you from all responsibilities for repaying your mortgage. Plus, you will receive $3,000 to help pay some of your moving expenses. (The check will be paid to you by the settlement agent as part of the closing.) In the event there is any money left over from the sale after paying the entire amount you owe on the mortgage plus the approved sale costs, you will not be eligible to receive the $3,000.

**To Participate in the Short Sale Program**
Please note, there is no guarantee that your home will sell under this program, and you are responsible for determining whether you want to sell your home for the price and terms described in this letter. The following pages detail your responsibilities, additional information on the short sale process and the Terms and Conditions. **Additionally, this letter constitutes an agreement between us and you ("Agreement") so please read it carefully and completely.**

If you agree to the terms of the Agreement and want to proceed with a short sale, you must complete, sign and return the Agreement back to us. If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,
[Servicer Name]

## Borrower Responsibilities

### Short Sale Agreement (SSA) Program Details

The standard SSA is an agreement between the borrower and the servicer with very clear program details. If the borrower chooses to move forward, they are instructed to sign the agreement and return it within 14 calendar days from the SSA Effective Date.

**To Accept This Offer**

- Please sign and return this Agreement. All owners of the property must sign this Agreement.
- Obtain your broker's signature to acknowledge this Agreement, because your broker plays an important role selling your property. The Short Sale Program sections (pages 2-4) contain important information that you and your broker will need to review and discuss.
- Include a copy of your signed listing agreement.
- Include information on other liens secured by your home (such as home equity loans, homeowner association liens, tax liens or judgments).
- [*Insert only if applicable:*] Complete and sign the Hardship Affidavit form.

We must have these documents by [*insert date 14 calendar days from this request*]. Please send us these documents at the following address: [*insert servicer address*].

## Borrower Responsibilities (Cont'd)

### Initial Term of SSA

Borrower has a minimum of 120 calendar days from SSA Effective Date to sell their home.

### Maintain Property Condition

There is a requirement for the borrower to maintain the property in a manner that facilitates marketability.

### Partial Mortgage Payments

The servicer may require that the borrower make partial mortgage payments during the short sale process. The payment cannot exceed 31% of the borrower's gross monthly income.

### Subordinate Lien Negotiation Status

It is also important that details regarding subordinate liens are given to the servicer. The servicer will need to inform the investor of the status of subordinate lien negotiations so the offer made by the investor to subordinate lien holders to accomplish full release and ultimately forgiveness for the borrower can be accomplished in a timely way.

You have until [*insert date 120 calendar days from the date of this letter*] to sell your house. After that date, this Agreement terminates, unless it is extended by us. During this time you have certain responsibilities. You must:

1. Keep your house and your property in good condition and repair and cooperate with your broker to show it to potential buyers.
2. [*Insert only if applicable:*] Make partial mortgage payments of $________ by the first day of each month beginning on _________ 1, 20___ until your house is sold and title is transferred. While you are selling your house, you still legally owe the full amount of your current monthly mortgage payment. However, as part of this Agreement, we will accept this reduced payment until the house is sold and closes or this Agreement expires. These payments do not constitute a modification of your mortgage.
3. Be able to provide the buyer of your home with clear title. To start, determine if you have other loans, judgments or liens secured by your home, such as a home-equity line of credit or a second mortgage. If there are such liens, you will need to either pay these loans off in full or negotiate with the lien holders to release them before the closing date. Under this program, you must make sure other lien holders will agree not to pursue other legal action related to the pay off of their lien, such as a deficiency judgment. You can get help from your broker to negotiate with the other lien holders.
4. We may allow an aggregate of up to $6,000 to be paid from the sale proceeds to help get subordinate mortgage lien releases and an aggregate of up to [*choose one as applicable*] [$_______] OR [_____% of gross sales proceeds] [*insert amount or percentage, as applicable and as determined by servicer*] to be paid from sale proceeds to help get subordinate non-mortgage lien releases. If you have these types of liens or loans on your home, please gather any paperwork you have (such as your last statement) and send it to us when you return this signed Agreement. Remember, clearing these other liens and delivering clear and marketable title is your responsibility.
5. At several stages of the short sale process, such as after an offer is received, you will need to complete some paperwork. You are responsible for returning all documents within the time allowed in this Agreement.

If you fulfill these responsibilities, we will postpone any foreclosure sale during the period of this Agreement.

## Additional Information

## Arm's Length Transactions

Borrowers are not permitted to list their property themselves if they are a real estate licensee or sell the property to someone they have a close personal or business relationship with.

- You can't list the property with or sell it to anyone that you are related to or have a close personal or business relationship with. In legal language, it must be an "arm's length transaction." If you have a real estate license you can't earn a commission by listing your own property. You may not have any agreements to receive a portion of the commission or the sales price after closing. Any buyer of your property must agree to not sell the home within 90 calendar days of the date it is sold by you. You may not have any expectation that you will be able to buy or rent [*servicer may delete "or rent" in accordance with investor guidelines*] your house back after the closing. Any knowing violation of the arm's length transaction prohibition may be a violation of federal law.

## Debt Forgiveness

The difference between the remaining amount of principal owed and the amount that the servicer receives from the sale is reported to IRS on Form 1099C, as debt forgiveness that could be taxed as income. Please advise borrower to contact their tax and legal professionals. Do not give tax or legal advice.

## Credit Reporting

The mortgage settled for less than full payment and will be reported to major credit reporting agencies.

- The difference between the remaining amount of principal you owe and the amount that we receive from the sale must be reported to the Internal Revenue Service (IRS) on Form 1099C, as debt forgiveness. In some cases, debt forgiveness could be taxed as income. The amount we pay you for moving expenses may also be reported as income. We suggest that you contact the IRS or your tax preparer to determine if you may have any tax liability.
- We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over, or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm.

## Deed-in-Lieu Options

The paragraph below would only be inserted into the SSA if a deed-in-lieu is being offered to the borrower at the end of the initial term of the Short Sale Agreement.

As stated earlier, servicers may include program conditions in their own HAFA policy to allow a borrower to stay as a tenant after a Deed-in-Lieu. If the borrower is offered a Deed-in-Lieu that includes the option for the borrower to continue to occupy the property on a rental basis under a deed-for-lease agreement or provides an opportunity for the borrower to repurchase the property at some time in the future, the borrower would still be eligible for the HAFA financial incentives so long as other program requirements are met. The borrower relocation incentive may be paid either upon a successful closing of the DIL or at a future time when the borrower moves out of, or repurchases the property.

[*Insert optional Deed-in-Lieu language if applicable:*

If by the termination date of this Agreement, you have complied with all your responsibilities but are unable to sell your home, we will allow you to convey ownership of your home and all real property secured by your mortgage loan (your "Property"). While this action, called a deed-in-lieu of foreclosure, will not allow you to keep your Property, it will prevent you from going through a foreclosure sale and it will release you from all responsibility to repay the mortgage debt. Additionally, you will still be eligible to receive $3,000 to help with your moving expenses.

You and all other occupants must vacate your Property and provide clear and marketable title with a general warranty deed or local equivalent by [[*insert date at least 30 days after the date of this Agreement if a deed-for-lease is not applicable*] or [*insert date that the applicable deed-for-lease terminates if applicable*]]. You must leave the house in broom clean condition, free of interior and exterior trash, debris or damage, and all personal belongings must be removed from the Property. The yard must be clean and neat and you must deliver all the keys and controls, such as garage door openers, to us. You may be required to sign standard pre-closing documents as well as attend a closing of the conveyance of your Property where all borrowers on the mortgage must be present.

You must also be able to deliver marketable title free of any other liens. We will allow (i) up to $6,000 in aggregate for all subordinate mortgage liens and (ii) up to [*choose one as applicable*] [$_______] OR [____% of gross sales proceeds] [*insert amount or percentage as applicable and as determined by servicer*] in aggregate for all subordinate non-mortgage liens, in each case to be deducted from sales proceeds to pay, in order of priority, such subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.

# Other Terms

## List Price or Acceptable Sale Proceeds

**Short Sale Agreement Terms and Conditions**

1. **List Price or Acceptable Sale Proceeds.** [*Choose one and delete unnecessary text.*] [You agree to list the property in "as is" condition for [dollar amount].] OR [We will accept a sales contract where the proceeds from the sale, less the expenses stated in paragraph 5. *Allowable Costs*, nets [dollar amount].] We are not responsible for the accuracy of the list price and have no responsibility to you in the event the property is not sold. We may require you to adjust the list price or other offer terms.

## Allowable Closing Costs

Deducted from gross sale proceeds must be reasonable and customary to the market and may include title, escrow, settlement escrow/attorney's fees, transfer taxes, termite inspection/treatment, pro-rated real property taxes and other closing costs may be included.

## Real Estate Commission

Commission from sales proceeds not to exceed 6% of contract sales price.

If the servicer chooses to hire an outside vendor to assist through the short sale process, the servicer cannot charge that back to the borrower or reduce the real estate commission. These vendors are not those hired by real estate companies as negotiators, but in fact organizations hired by the servicers to facilitate the process.

## Relocation Assistance

The SSA addresses the relocation assistance offered at the end of the transaction.

c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions of _____ percent [*note - not to exceed 6%*] of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. [*Insert if applicable:* Please note: We have retained a vendor to assist your listing broker with the sale. The vendor and your listing broker will work together on your behalf to facilitate the sale process. Vendor fees or charges will not be charged to you and will not be deducted from the real estate commission. Additionally, any outsourcing firm or third party retained as an agent for us may not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with the short sale.]

d. **Borrower Relocation Assistance.** If the closing of the short sale occurs in accordance with this Agreement, you will be entitled to an incentive payment of $3,000 to assist with relocation expenses. We will instruct the settlement agent to pay you from the sale proceeds at the same time that all other payments, including the payoff of our first

## Timing of Closing Date

The SSA will dictate when the closing must take place and is tied to the date the sales contract was executed.

## Foreclosure Sale Suspension

The foreclosure process may be initiated or continue per the mortgage documents, however the foreclosure sale date will be suspended until the date of closing of an approved short sale or expiration of this agreement whichever is later, provided that the borrower continues to abide by the terms of the agreement.

8. **Closing.** The closing must occur within ____ calendar days of the Sales Contract execution date.
9. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the expiration date of this Agreement or the date of closing of an approved short sale, whichever is later, provided you continue to abide by the terms and conditions of this Agreement.
10. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Agreement are met, upon sale and settlement of the property, servicer will prepare and send for recording a lien release in full satisfaction of the mortgage, foregoing all rights to personal liability or deficiency judgment.

## Receiving an Offer

The listing broker should understand his or her responsibilities in terms of the timing of submitting an offer and accompanying addenda – within 3 business days of receipt of fully executed purchase offer.

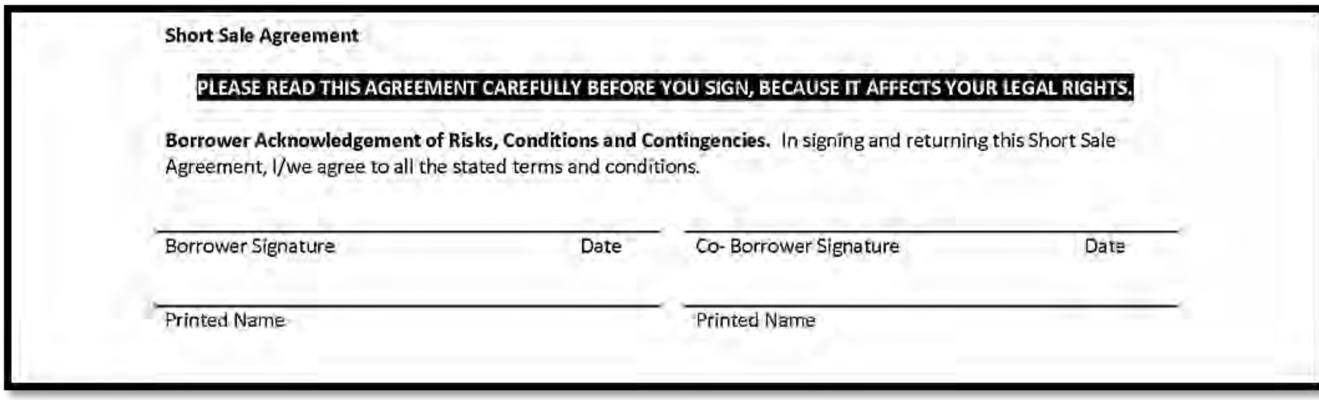
**Short Sale Program—Receiving/Accepting an Offer**

When you receive an offer on your home, within the next 3 business days, you will send us a Request to Approve a Short Sale (RASS) form, a copy of which is attached to this Agreement as Exhibit A1. You will also need to send along a copy of the signed purchase offer and evidence that the buyer has funds to purchase the home, such as a letter that the buyer is approved for a mortgage loan. Within 10 business days of our receipt of these documents, we will approve the sale if it is within the terms and conditions of this Agreement and any other liens are released.

When the sale closes in accordance with this Agreement, we will accept the net sale proceeds (all the funds that remain after the approved sales costs have been paid) in full satisfaction of your mortgage with us and will release you from all future liability.

## Borrower Agrees and Signs

With terms indicating that there are risks involved in the short sale process, the borrower signs the agreement.



**Short Sale Agreement**

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN, BECAUSE IT AFFECTS YOUR LEGAL RIGHTS.**

**Borrower Acknowledgement of Risks, Conditions and Contingencies.** In signing and returning this Short Sale Agreement, I/we agree to all the stated terms and conditions.

Borrower Signature Date | Co- Borrower Signature Date

Printed Name | Printed Name

## Listing Broker Acknowledgement

Listing brokers may carry certain responsibilities in facilitating the short sale transaction. The SSA requires acknowledgement by the listing broker.

**Acknowledgement by Listing Broker**

The undersigned listing broker ("Broker") is not a party of the Short Sale Agreement ("Agreement") above, but acknowledges that the Broker:

1. Has been retained by the borrower for the sale of the property.
2. Has reviewed the terms and conditions of the Agreement above.
3. Agrees that in the event of a conflict between the terms of the listing agreement and the terms agreed to by the borrower in the Agreement above, the listing agreement will be deemed amended to conform to the terms of the Agreement.
4. Acknowledges that pursuant to the Agreement, the Servicer will not review a sales contract unless a Request for Approval of Short Sale, attached as Exhibit A1, is completed.

Listing Broker Name | Listing Broker Signature

Address: | License #:

Office Phone:

Cell Phone:

Date: | E-mail Address:

When the SSA is returned to the servicer, the listing agreement between the borrower and the listing broker must be included.

## Request for Approval of Short Sale - RASS

### Generated by the Servicer

When the servicer forwards the Short Sale Agreement (SSA) to the borrower, it will also send the RASS document which will be pre-populated with contact information for the servicer, the property address and the loan number.

### Completed by Borrower and Real Estate Professional

The borrower will complete the requested information at the time an offer is received. The borrower or listing broker should forward the completed RASS to the servicer within three business days following receipt of an executed purchase offer along with a copy of the executed sales contract and all addenda, the buyer's preapproval or commitment letter and proof of funds to close and all information regarding the status of subordinate liens and/or negotiations with subordinate lien holders.

### Re-States Relevant SSA Terms

The Request for Approval of Short Sale (RASS) document will reiterate some of the SSA terms and conditions. Issues such as arm's length transaction, monthly mortgage payments and so on that were detailed and signed off on by the borrower, will be re-stated in the RASS document.

### Final Transaction Details

One of the most important parts of the RASS is the transaction details. Information about the sales contract and closing date, as well as other terms of sale are given through the RASS. Settlement agent information is requested so the servicer has the ability to be in contact throughout the transaction process.

## RASS Terms of Sale

The transaction details are completed on the RASS document. The real estate professional or borrower should provide a HUD-1 Settlement Statement to the Servicer not later than one business day before the Closing Date.

**Terms of Sale [All blanks to be completed by Borrower]:**

| | | |
|---|---|---|
| 1. Contract Sales Price | $ | 6. Closing Date: |
| 2. Less Total Allowable Closing Costs | $ | 7. Approved Buyer(s): |
| a. Commissions | $ | |
| b. Settlement Escrow/Attorney Fees | $ | |
| c. Seller's Title and Escrow Fees | $ | 8. Settlement Agent: |
| d. Subordinate Lien Payoff | $ | |
| e. Transfer taxes/stamps/recording fees | $ | |
| f. Real Property Taxes | $ | 9. Settlement Agent's Address: |
| g. Termite Inspection/Repair | $ | |
| h. Borrower Relocation Assistance | $ 3,000 | |
| i. Other (attach explanation) | $ | |
| 3. Net Proceeds to Servicer | $ | |
| 4. Earnest Money Deposit | $ | 10. Settlement Agent's Office Phone: |
| 5. Down Payment | $ | 11. Settlement Agent's Office Fax: |

As required by the Short Sale Agreement, copies of the following documents are attached:

- ☐ Sales contract and all addenda
- ☐ Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from lender

The Borrower represents that the information provided in this Request is true and accurate and authorizes the Servicer to disclose to the U.S. Department of the Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided in connection with the Making Home Affordable program.

Borrower Signature Date Co- Borrower Signature Date

Printed Name Printed Name

If you would like to speak with a counselor about this program, call the Homeowners HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

**If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]**

## RASS – Approval of Short Sale

If the servicer approves the short sale, the approval section of the RASS will be returned to the borrower with confirmation of the details. Within 10 business days of receipt of the RASS and all required attachments, the servicer must indicate its approval or disapproval of the proposed sale by signing the appropriate section of the RASS and mailing it to the borrower. The servicer must approve a RASS if all sales terms and conditions of the SSA are met.

The servicer may require the closing of the transaction to take place within a reasonable period, but in no event may the servicer require closing in less than 45 calendar days from the date of the sales contract without the consent of the borrower. This provision was presumably added to prevent what was seen in some “traditional” short sales where the approval letter would require the sale to close in as little as seven days.

Additional commentary is made relative to timing for the final settlement statement, bankruptcy issues, tax issues and credit reporting by the servicer.

**Servicer Use Only** MAKING HOME AFFORDABLE

***To be Completed by Your Servicer***

**Approval of Short Sale -** The Servicer consents to this Request for Approval of Short Sale and agrees to accept all net proceeds from the settlement as full and final satisfaction of the first mortgage indebtedness on the referenced property. This agreement is subject to the following:

A. **Terms** – The sale and closing comply with all terms and conditions of the Short Sale Agreement between the Servicer and the Borrower as well as all terms and representations provided herein by the Borrower.
B. **Changes** – Any change to the terms and representations contained in this Request for Approval of Short Sale or the attached sales contract between you and the buyer must be approved by the Servicer in writing. The Servicer is under no obligation to approve such changes.
C. **Subordinate Liens** – Prior to releasing any funds to holders of subordinate liens/mortgages, the closing agent must obtain a written commitment from the subordinate lien holder that it will release Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount.
D. **HUD-1** – A HUD-1 Settlement Statement, which will be signed by you and the buyer at closing, must be provided to the Servicer not later than one business day before the date indicated in Line 4, *Closing Date*.
E. **Bankruptcy** – If you are currently in bankruptcy or you file bankruptcy prior to closing, you must obtain any required consent or approval of the Bankruptcy Court.
F. **Tax Consequences** – A short payoff of the mortgage may have tax consequences. You are advised to contact a tax professional to determine the extent of tax liability, if any.
G. **Credit Bureau Reporting** – We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm.
H. **Payment Instructions** – Payoff funds and a final HUD-1 Settlement Statement must be received by the Servicer within 48 hours of closing in accordance with the attached wiring instructions. [*include instructions*]
I. **Closing Instructions** – [*include proprietary closing instructions, if any*]

## RASS – Disapproval of Short Sale

If the short sale is disapproved, the servicer will indicate reasons for disapproval by checking the appropriate box on the last page of the RASS.

*To be Completed by Your Servicer*

**Disapproval of Short Sale** - The Servicer disapproves this Request for Approval of Short Sale, for the following reasons (check all applicable reasons):

- ☐ You did not comply with all terms and conditions of the Short Sale Agreement between Servicer and Borrower dated _____/_____/______ as it relates to section/s: ______________________________
- ☐ The Request for Approval of Short Sale was not complete and/or fully executed.
  - ☐ Failure to provide executed sales contract or addenda
  - ☐ Failure to provide buyer's documentation of funds to close or buyer's pre-approval or commitment letter on letterhead from lender
- ☐ The net proceeds available to pay off the first mortgage loan are insufficient, due to:
  - ☐ Contract sales price is below list price stated in Short Sale Agreement
  - ☐ Net proceeds amount is less than acceptable net proceeds stated in Short Sale Agreement
  - ☐ Excessive financial concessions
  - ☐ Excessive commissions
  - ☐ Excessive closing costs
  - ☐ Excessive payments to subordinate liens/mortgages OR release of subordinate liens did not occur
- ☐ The mortgage insurer did not approve the short sale.
- ☐ Other:

## Why Disapproved?

### Didn't Comply

If the borrower did not comply with all of the terms and conditions of the RASS, the servicer could disapprove the short sale. The servicer should state what area the RASS was not followed.

### Documents Not Included

The servicer may disapprove the short sale if the borrower fails to provide an executed sales contract or addenda or the buyer's documentation of funds to close or buyer's preapproval or commitment letter on the lender's letterhead.

### Proceeds Insufficient

The SSA states what minimum proceeds will be acceptable or what list price will be acceptable to the servicer. If the details regarding the financials are not followed, it will be cause for disapproval of the short sale.

## Alternative Request for Approval of Short Sale – Alternative RASS

### Property Already Listed- Executed Contract Received

The Alternative program is applicable for borrowers who have already listed their property for sale and have an executed sales contract. In this case, the SSA step would be skipped and the transaction would be submitted for approval utilizing the Alternative Request for Approval of Short Sale (Alternative RASS).

The borrower would then request the servicer to approve a short sale under HAFA before an SSA has been executed. The borrower must submit the request in the form of the Alternative RASS for the servicer to evaluate.

### Submitted by Borrower as Part of HAFA Package

Just as with the RASS, the borrower would submit the Alternative RASS along with the sales contract and other documents, including the listing agreement if applicable, buyer's pre-approval or commitment letter, and buyer's proof of funds. A HUD-1 settlement statement must also be submitted no later than one business day before the closing date.

### Borrower Still Analyzed for HAMP

A borrower submitting an Alternative RASS may or may not have been evaluated for a HAMP modification and may have chosen to list their home as a short sale prior to contacting their servicer. This method would be more like the traditional short sale. However, if the borrower would be eligible for a HAMP modification and has not already exhausted this option, the servicer must notify him or her of eligibility for a HAMP modification and provide them 14 days to request consideration. The borrower is not required to accept the modification offer, but the servicer must do that analysis.

If, after the analysis by the servicer, the borrower has indicated that they are not interested in a HAMP modification or that borrower does not qualify for a HAMP modification, the short sale should be approved if the transaction fits within servicer's own guidelines (similar to RASS). In other words, under the Treasury HAFA, the use of the Alternative RASS does not trigger a non-approval. The servicer may consider the Alternative RASS without first using a SSA.

### Servicer to Respond to Borrower Within 30 Days

The servicer must send written confirmation to the borrower within 10 business days to acknowledge receipt of the Alternative RASS documentation and respond with the evaluation process and timeline for decision no later than 45 calendar days of receipt of an executed sales contract, Alternative RASS and signed Hardship Affidavit or RMA. If the servicer is unable to respond within 45 calendar days, the servicer must send a written status notice to the borrower on or before the 45$^{th}$ calendar day with written updates every 15 calendar days thereafter, until the servicer is able to provide a written response to the Alternative RASS . The response may be approval, disapproval or counter-offer.

If the servicer approves the short sale using an Alternative RASS, the loan will still qualify for the HAFA incentives.

**Both RASS and Alternative RASS Provide Settlement Instructions**

The last page of each document requires the borrower, using the buyer's information among other things, to complete the settlement information and forward back to the servicer. The borrower will provide the settlement agent's contact information so communication can be opened between the servicer and the settlement agent.

**If Terms and Conditions Met, Must Approve**

If a proposed sale meets with the investor's minimum acceptable net proceeds and other sales terms and conditions, the servicer must approve a RASS/ Alternative RASS and move forward to closing.

**Commissions Cannot be Negotiated**

Under either the RASS or Alternative RASS, the servicer cannot require the commission agreed to in the listing agreement between the borrower and listing broker be reduced to less than 6%.

## The Deed-In-Lieu Agreement - DIL

### Borrower Voluntarily Transfers the Property

A Deed-in-Lieu Agreement allows a borrower to voluntarily transfer ownership of their home and all real property secured by the first lien back to the servicer. A servicer has the discretion to accept a HAFA DIL, which requires full release of the borrower from the debt.

### If Available – Offered in SSA or DIL Agreement

The DIL Agreement could be offered as a part of the Short Sale Agreement (SSA) as an option to the borrower, which would be executed if the borrower was unable to sell the property by the termination date. Servicers, in accordance with investor guidelines, may also offer the Deed-in-Lieu Program without having a prior SSA or marketing period.

Typically, servicers require a borrower make a good faith effort to sell the property by requiring a 120 day marketing time before agreeing to a deed-in-lieu. However, the servicer, if acceptable to the investor, can make this exception.

**Alternative Deed-in-Lieu Programs** are available in some cases under the Deed-in-Lieu Agreement, offering an opportunity for the borrower to stay in the property as a tenant (deed-for-lease) or provide an opportunity for the borrower to purchase the property back at some time in the future. At the discretion of the servicer following investor guidelines, the relocation incentive may still be paid at the time of a successful closing or at a time in the future when the borrower ultimately moves or repurchases the property. Servicers who choose to offer these components of the program must have terms and conditions in writing in their own HAFA policies.

### Incentives Still Available

HAFA incentives may still be available under a Deed-in-Lieu if the borrower meets HAFA eligibility requirements.

### Full Release of Debt

Just as in a HAFA Short Sale, the HAFA Deed-in-Lieu still requires full release of first lien debt and allows the same criteria for subordinate lien negotiations.

### Clear & Marketable Title

A point to remember is that within the DIL program, the borrower is still responsible for delivering clear and marketable title as well as leaving the property in broom clean condition. Acceptance of a DIL still requires a full release of debt and a waiver of all claims against the borrower.

# HAFA PROCESS AND DOCUMENTS: STANDARD

## HAFA PROCESS: *STANDARD*

| HAFA SHORT SALE STANDARD PROCESS | TIMELINE | TRIGGER / COMMENT |
|---|---|---|
| • Servicer solicitation or Borrower solicitation<br>• Servicer must give written response to request in 10 business days | 45 calendar days | • Borrower requests HAFA consideration<br>• Borrower fails HAMP Trial Period or HAMP Modification<br>• Lender/Servicer offers program |
| • Borrower receives SSA<br>• Broker and Borrower Sign and return SSA with stipulated documents | 14 calendar days | • Lender/Servicer sends Borrower an SSA for Short Sale during the 45 day consideration period |
| • Short Sale Agreement Duration | 120 - 365 days | • Effective Date is date the SSA is mailed to Borrower |
| • Submittal of a Sales Contract, RASS and stipulated documents | 3 business days | • Borrower executes a Sales Contract for the sale of their property (contract is bilateral) |
| • Lender/Servicer mandated response with approval or disapproval | 10 business days | • Lender/Servicer receives the executed Sales Contract, RASS and stipulated documents<br>• Must approve if SSA terms are met<br>• Approval or Disapproval must be in writing |
| • Closing | 45 calendar days (minimum) | • Transaction is approved<br>• May be shortened with Borrower's consent |

# HAFA PROCESS AND DOCUMENTS: ALTERNATE

## HAFA PROCESS: *ALTERNATE*

| HAFA SHORT SALE ALTERNATE PROCESS | TIMELINE | TRIGGER / COMMENT |
|---|---|---|
| • Borrower requests HAFA using the Alternative RASS<br>• Servicer must give written response to request in 10 business days | 45 calendar days | • Borrower requests HAFA consideration after an offer has already been submitted for approval |
| • Transaction approval, disapproval or counteroffer | 10 business day approval | • Lender/Servicer approves Borrower for the HAFA Alternative RASS transaction |
| • Closing | 45 calendar days (minimum) | • Transaction is approved<br>• May be shortened with Borrower's consent |

***Effective June 1, 2011, as of Supplemental Directive 11-02**

## Termination of the Short Sale Agreement (SSA)

The following events taking place may be cause for the servicer to terminate the SSA prior to the expiration of its term:

**Financial Situation Changes**

The borrower's financial situation may improve significantly, the borrower qualifies for a modification or the borrower brings the account current or pays the mortgage in full;

**Failure to Abide by the SSA Terms**

The borrower or listing broker fails to act in good faith in listing, marketing and/or closing the sale, or otherwise fails to abide by the SSA terms;

**Property Condition and/or Value Changes**

A significant change occurs in the property condition and/or value;

**Fraud or Misrepresentation**

There is evidence of fraud or misrepresentation;

**Bankruptcy Filing with Court Denial**

The borrower files for bankruptcy and the Bankruptcy Court declines to approve the short sale;

**Litigation**

Litigation is initiated or threatened that could affect title or interfere with a valid conveyance; or

**Failure to Make Payments**

The borrower fails to make monthly payments as per the SSA, if applicable.