

# WORRIED ABOUT FORECLOSURE?

## HAFAs May Be Able to Help (Home Affordable Foreclosures Program)

### About HAFAs

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

HAFAs is primarily designed for homeowners with a documented hardship who are unable to stay in their home even with a loan modification under the Home Affordable Modification Program (HAMP) or other loan modification program.

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

### HAFAs:

- Provides financial incentives: \$3,000 for homeowner relocation assistance; \$1,500 (GSEs pay \$2,200) for mortgage servicers to cover administrative and processing costs; and up to a \$2,000 match for the owner of the first mortgage for allowing a total of up to \$6,000 in short sale proceeds to be distributed to subordinate lien holders (on a one-for-three matching basis; up to 6% of the unpaid principal balance of any lien).
- Requires all servicers participating in HAMP to implement HAFAs in accordance with their own written policy, consistent with mortgage investor guidelines. The policy may include factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, and homeowner motivation and cooperation.

### SUMMARY OF TERMS

**Servicer:** A servicer represents the mortgage investors that now own the homeowner's mortgage. Ordinarily home-owners send their monthly payments to the servicer and the servicer collects their payments and maintains financial records related to the loans. If the homeowner is late, the servicer is the one responsible for working with the homeowner to resolve the problem if possible.

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

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

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

# TIMELINE

	<b>SERVICER RESPONSIBILITIES</b>	<b>HOMEOWNER RESPONSIBILITIES</b>
<b>CONSIDERATION</b>	<p>The servicer must consider a homeowner for HAFA within <b>30 calendar days after</b> the homeowner:</p> <ol style="list-style-type: none"> <li>1. Does not qualify for a trial mortgage modification under the HAMP,</li> <li>2. Does not successfully complete the HAMP trial period,</li> <li>3. Misses at least two consecutive payments if your loan was modified under HAMP, or</li> <li>4. Requests a short sale or deed-in-lieu of foreclosure (DIL).</li> </ol>	<p>If the homeowner requests and is eligible for HAFA, the servicer must still notify the homeowner of the availability of HAMP. The homeowner will have <b>14 calendar days</b> from the date of notification to contact the servicer and request or decline consideration for HAMP.</p>
<b>NOTIFICATION</b>	<p>If a homeowner requests a short sale or DIL and the servicer has not already discussed a short sale or DIL with the homeowner, it must notify homeowner in writing about these options. If the homeowner asks for consideration but a short sale or DIL is not available, the servicer must inform the homeowner with an explanation and provide a toll-free number.</p>	<p>A homeowner has <b>14 calendar days</b> to respond either orally or in writing. If they do not respond, this lack of action ends the servicer's duty to consider the homeowner for the HAFA program.</p>
<b>SHORT SALE AGREEMENT</b>	<p>The servicer sends the homeowner a Short Sale Agreement (SSA) if it determines the homeowner qualifies for HAFA. The SSA sets the terms including required minimum net proceeds and approvable closing costs as required by the mortgage investor.</p>	<p>A homeowner has <b>14 calendar days</b> from the date of the SSA to sign and return it to the servicer. The real estate broker must also sign the SSA.</p>
<b>MARKETING PERIOD</b>	<p>The SSA must give the homeowner an <b>initial period of 120 calendar days</b> to sell the house.</p>	<p>The servicer, with homeowner approval, may extend the period the homeowner has to sell the house for <b>up to a total of one year</b>.</p>

## TIMELINE (Continued)

SALES CONTRACT		Within <b>3 business days</b> of receiving an executed sales contract, the homeowner must sign and submit a Request for Approval of Short Sale (RASS) to the servicer, along with the sales contract, and other documents. A homeowner may submit an Alternative RASS if they already have an executed sales contract before the SSA is executed (not permitted for Freddie Mac loans).
CLOSING	Within <b>10 business days</b> after receiving the RASS, the servicer must approve or deny the request based on mortgage investor guidelines and advise the homeowner of the reasons for denial. If approved, the servicer may require the closing to take place within a reasonable period but not sooner than <b>45 calendar days</b> from the date of the sales contract.	The closing may take place <b>sooner than 45 calendar days</b> if the homeowner agrees.

## WHO IS ELIGIBLE FOR HAFA?

### TREASURY PROGRAM (NON-GSE LOANS)

Mortgage servicers who participate in HAMP are required to determine if a homeowner meets the basic eligibility requirements for a loan modification under HAMP in conjunction with a request for a short sale or DIL under HAFA. To qualify for HAFA, a homeowner must meet these basic eligibility requirements:

- The property must be the homeowner's primary residence (unless qualifying employment exception applies).
- The first lien (the first loan on the home) must have been originated before January 1, 2009.
- The mortgage must be delinquent or default must be reasonably foreseeable.
- The current unpaid principal balance may not be more than \$729,750 (there are higher limits for 2 to 4 unit dwellings).
- The total monthly payment must exceed 31% of gross income.

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

## FANNIE MAE PROGRAM

Same as non-GSE, except:

- A homeowner is ineligible if the homeowner has:
  - The ability to make mortgage payments, but chooses not to do so (strategic default).
  - Substantial unencumbered assets or significant cash reserves equal to or exceeding 3 times the homeowner's total monthly mortgage payment of \$5,000, whichever is greater.
  - High surplus income.
- A homeowner cannot be within 60 days of foreclosure sale date without Fannie approval.

## FREDDIE MAC PROGRAM

Same as non-GSE, except:

- A homeowner must be more than 60 days delinquent.
- A homeowner's cash reserves must be less than the greater of \$5,000 or 3 times the current monthly payment.

## **WHAT ELSE SHOULD I KNOW?**

- The sale of the property must be an "arm's length" transaction between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise.
- The seller may not list the property with anyone with whom they are related or have a close personal or business relationship, nor may the buyer be represented by such a person.
- Neither the seller nor the buyer will receive any funds or commissions from the sale of the property. They may not have any agreements to receive a portion of the commission or the sales price after closing.
- Homeowners must be fully released from future liability for all mortgage debt. No cash contribution, promissory note, or deficiency judgment is allowed. A lien holder may not require the real estate agent to agree to a lower commission as a condition for releasing its lien or releasing the borrower from personal liability.
- The amount of debt forgiven might be treated as income for tax purposes. Under a law expiring at the end of 2012, however, forgiven debt will not be taxed if the amount does not exceed the debt that was used for acquisition, construction, or rehabilitation of a principal residence. Check with a tax advisor or the IRS.
- The servicer will report to the credit reporting agencies that the mortgage was settled for less than full payment, which may hurt credit scores.
- A buyer may not reconvey the property for 90 days (no "flipping").
- HAFA allows for a broker commission of up to 6 percent to be paid out of sale proceeds as a "reasonable and customary" closing cost as specified by the servicer in the Short Sale Agreement (SSA). The GSEs' HAFA programs provide that servicers will pay a commission as contracted in the listing agreement, but not more than 6 percent of the final sale price.
- The program sunsets on December 31, 2012.

## **FIND OUT MORE ABOUT HAFA**

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

## **ABOUT NAR**

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

## **USEFUL LINKS**

National Association of REALTORS® - [www.realtor.org/shortsales](http://www.realtor.org/shortsales)

HouseLogic (NAR's consumer web site) - [www.houselogic.com](http://www.houselogic.com)

Making Home Affordable - [www.makinghomeaffordable.gov](http://www.makinghomeaffordable.gov)

Fannie Mae - <https://www.efanniemae.com/sf/servicing/hafa/>

Freddie Mac - <http://www.freddiemac.com/singlefamily/service/hafa.html>

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