HAFA Specialist Certification

Comprehensive Instruction on the Federal Government's Home Affordable Foreclosure Alternatives Program

PartnerFirst
Nationwide Real Estate Network

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Foreword

When real estate markets started to turn negative in 2005 and 2006, there was fear—but not panic. Panic did arrive, however, in 2007—blossoming into full-blown catastrophe in the late summer of 2008 when Lehman Brothers failed, pushing financial markets to the brink of collapse. We had experienced an expansion that proved to be a bubble—which finally popped, causing the greatest economic disruption since the Great Depression.

A Flawed System

The profusion of mortgage-related financial products exposed investors to extraordinary risks—directly and indirectly. The result was a tangled landscape of competing financial interests. At the center of it all was a larger collection of residential mortgages that were failing, or doomed to fail.

Meanwhile, property values seemed destined to rise without end. As borrowers stretched their incomes to buy ever-more expensive homes, new loan programs were required to make such purchases possible. Money was cheap, but the originating, funding and securitizing of mortgages was quite profitable—and few were willing to let common sense stand in the way of short-term profits.

By late 2005, continuing into 2007, real cracks were starting to appear in real estate markets across the country. But mortgage lending continued unabated. There was little concern over the proliferation of badly-flawed mortgage products and nearly-nonexistent underwriting standards.

Historically-low interest rates combined with easily-accessed mortgage money to generate a deluge of dollars coursing through the U.S. economy. The wealth effect of rising home values pushed spending to new heights—which in turn drove both jobs and income upward. Few people noticed that, by any objective measure, many of these new borrowers posed significant default risks.

The dizzying rate of price appreciation allowed many homeowners to monetize their American dream. When they got into financial trouble, they simply refinanced, drawing money out of the seemingly-endless fountain of home equity. The dire financial state of many homeowners was thus masked—for a time. Foreclosures all but disappeared. The cleansing effect of a modest foreclosure rate was missing. Failure rates on mortgages reached numbers so low that in many communities they could not be measured. In retrospect, that should have been seen as a sign of trouble ahead. Instead, the endless bull market made consumers and investors bolder to charge ahead.

The trouble came soon enough. By 2007, foreclosure numbers had reached historically high levels, and went to stratospheric levels in 2008.

The Short Sale Solution

At the same time, irrefutable evidence was available to all that showed that capital recovery rates on failing mortgages were substantially higher if settlements could be reached with defaulting homeowners ahead of foreclosure—usually through short sales.

Real estate professionals across the country were working with distressed homeowners to achieve this. Results, however, were generally poor. The process lacked a consistent structure; rules were made and broken ad hoc by loss mitigation representatives (often new employees with limited experience). Homeowners, agents and buyers could not be sure what to expect from one day to the next.

Meanwhile, subordinate debt was being stacked on top of first mortgages, and that debt was packaged, bought, sold, tranched, securitized, insured and hedged at a dizzying pace. It all made for some strange and complex relationships: financial entities could find themselves representing the interests of both sides in a conflict.

The Homeowners

The real casualties of this unprecedented mess are the homeowners. Addressing their plight will mean facing some hard truths. Sustainable homeownership is still a valid goal. But for millions, that will mean exiting their unmanageable mortgages and re-entering the housing market later.

Short sales are the most common and cost effective alternative to foreclosure, delivering superior net capital recovery results in almost all scenarios. Yet, in recent years, only a small percentage of short sale offers has been approved and closed.

HAFA represents the beginning of a solution to the impasse. By achieving expertise in this dynamic program, you will contribute to that solution while building your own future.

—*Scott Thompson*

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HAFA Defined

Introduction

The *Home Affordable Foreclosure Alternatives* program is just one of many government initiatives designed to address the nationwide mortgage crisis. Like all such initiatives, it is changing as problems surface and conditions evolve. So, why should a real estate professional invest valuable time to learn about it?

In answering that question, consider this: at least 90 percent of mortgages in the United States are now serviced by HAFA participants. If even a small percentage of those loans is HAFA-eligible, it will mean a huge number of properties that *could* end up as HAFA short sales. For that reason alone, a wise agent or broker will want to know everything possible about the program.

Of course, only a portion of HAFA-eligible loans will close as HAFA short sales. But many listings will *begin* as HAFA transactions, and then shift to other disposition alternatives. HAFA will open the door to homeowner engagement, even when the ultimate solution lies elsewhere. So, agents will need a comprehensive knowledge of the program to serve their clients competently—and earn their cooperation.

This course is designed to provide that foundation of expertise. In this first chapter, you will learn about HAFA's essential elements, its beginnings, purpose, and evolution.

1.1 HAFA in a Nutshell

As its name suggests, HAFA is a federal program designed to give defaulting borrowers alternatives to foreclosure. It is part of the *Home Affordable Modification Program* (HAMP), which is part of *Making Home Affordable* (MHA)—all of which are administered by the U.S. Department of Treasury. HAFA offers defaulting homeowners two options: *short sale* and *deed in lieu of foreclosure* (DIL). It provides financial incentives for mortgage investors, servicers and homeowners to pursue these alternatives.

HAFA applies when loan modification is not a viable option. Modification is usually preferable for homeowners *and* mortgage investors, because it allows borrowers to keep their homes, and spares investors the burdens associated with repossession. This is the goal of HAFA's parent initiative, the *Home Affordable Modification Program* (HAMP), which we discuss in detail later.

But sometimes modification is not feasible: the homeowner may be unable to sustain a payment, may have obtained employment in a different location, or may simply no longer want the home. In these cases the next best alternative is a short sale, or if that is not possible, a deed in lieu—the two options offered by HAFA.

Basic features of HAFA:

- Complements HAMP by providing alternatives for borrowers who are HAMP-eligible but unable to keep their homes
- Uses borrower financial information already collected under HAMP (when available)
- Provides pre-approved short sale terms
- Requires borrowers to be fully released from liability on all mortgage debt
- Uses uniform documents, standardized process and time frames
- Provides payments to junior lien holders, up to a maximum aggregate of $6,000
- Provides financial incentives:
    - $3,000 for borrower relocation assistance
    - $1,500 for servicers (increased in Fannie Mae and Freddie Mac versions)
    - $2,000 maximum reimbursement to first mortgage holders for contributions to junior liens, on a one-for-three basis
- Requires all servicers participating in HAMP to implement HAFA, in accordance with their own written policies.

Eligibility Criteria:

- Principal residence (currently or recently—provided the borrower has not purchased another 1-4 unit property in the meantime)
- First lien originated before 2009
- Mortgage delinquent (at least 60 days under Freddie Mac), or default is reasonably foreseeable
- Unpaid principal balance no more than $729,750 (higher limits for two-to-four-unit dwellings)

Which lenders are participating?
All private lenders that received TARP funds are required to be HAFA participants. And all servicers that participate in HAMP are required to participate in HAFA as well. The announcement of Fannie and Freddie's HAFA programs raised HAFA participation to about 90 percent of the servicing capacity in the United States.

This does not mean that any loan handled by these entities is automatically HAFA-eligible. Servicers will determine that on an individual basis.

FHA and VA loans are not candidates for HAFA. But each of these agencies has its own short sale program: the FHA *Preforeclosure Sales* program (PFS), and the VA *Compromise Sale* program.

Additional Provisions:

- **Arm's length.** Sellers may not list property with, or sell to, relatives or anyone else with whom they have a close personal or business relationship.
- **No flipping.** Buyers may not reconvey property for 90 days.

Commissions
Under prodding from the National Association of Realtors® *and* the White House, HAFA has taken an accommodating stance toward real estate sales commissions. Both Fannie Mae and Freddie Mac prohibit their servicers from reducing commissions below six percent. In the Treasury version (for non-GSE loans), servicers must allow the commissions stated in listing agreements, as long as they don't exceed six percent.

Neither buyers nor sellers may earn commissions in connection with a HAFA short sale, even if they are licensed real estate brokers or agents. They also may not have any side deals to receive commission indirectly.

Submission Process
The normal HAFA short sale process begins with a borrower solicitation letter sent by the servicer. This letter describes the features of the program and invites the homeowner to apply using the *Request for Modification and Affidavit* (RMA) which is also used for HAFA's parent program HAMP. The homeowner sends a completed RMA with financial documents to the servicer. If the application meets the investor's requirements, the servicer will send the borrower a *Short Sale Agreement* (SSA) describing the terms of the agreement. This will be accompanied by a *Request for Approval of Short Sale* (RASS), to be held until the homeowner receives an acceptable offer. Within three days of accepting an offer, the homeowner or agent sends it to the servicer with a completed RASS.

If the borrower has already applied for a HAMP modification, the RMA and financial information provided in that application can be used for the HAFA application. (The financial information will often need to be updated.)

Alternative Process

If a homeowner has already listed a property for sale and received an offer, it is possible to apply for a HAFA short sale using a streamlined application process known as *the Alternative Request for Approval of Short Sale* (Alt RASS), which combines the basic features of the SSA and RASS in one document. The Treasury Department's Supplemental Directive 09-09R describes the procedure:

> **Alternative Request for Approval of Short Sale.** If the borrower has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA has been executed, then the borrower must submit the request to the servicer in the form of the Alternative Request for Approval of Short Sale (Alternative RASS), attached as Exhibit B. Upon receipt of the Alternative RASS, the servicer must determine the basic eligibility of the borrower as described in the *HAFA Consideration* section of this Supplemental Directive. If the borrower appears to be eligible and was not previously considered for a Trial Period Plan, the servicer must notify the borrower verbally or in writing of the availability of a HAMP modification 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 for a HAMP modification

The Deed-in-Lieu Option

Most real estate agents are interested HAFA's short sale provisions. But the *deed-in-lieu* option is an important part of the program, and will be attractive to many homeowners. Agents should be prepared to present it in an informed and objective manner. When a deed in lieu is negotiated, the borrower surrenders title to the property to the mortgage investor, avoiding the stress and credit harm of foreclosure.

A deed in lieu is usually not feasible when a property has more than one mortgage. Since it normally involves a simple deed transfer and no exchange of funds (other than the seller's relocation allowance under HAFA), there is little incentive for junior lien holders to cooperate. Thus, the junior liens remain and follow the property. In a foreclosure, junior liens are wiped out. So in these cases, it is more advantageous for the first mortgage holder to foreclose than to accept a deed in lieu.

The tax issues that accompany forgiven debt apply to deeds-in-lieu as well as short sales. The same remedies also apply: *The Mortgage Debt Forgiveness Relief Act of 2007* may exempt the borrower from tax liability (Note that full relief is available only if the amount of forgiven debt does not exceed the debt that was used to acquire, construct, or rehabilitate a principal residence.) As with short sales, a homeowner should seek tax advice from a qualified professional.

Here are the features of a HAFA deed in lieu:

- **Marketable Title**. The borrower must be able to convey clear, marketable title to the servicer or investor.
- **Written Agreement**. The conditions for acceptance of a DIL must be in writing and signed by both the servicer and borrower.
- **Vacancy Date.** The SSA or DIL Agreement will specify the date by which the borrower must vacate the property. This must be at least 30 calendar days from the termination date of the SSA or the date of the DIL Agreement, unless the borrower agrees to an earlier date or a lease-back is arranged.
- **Relocation Assistance**. Borrowers who participate in a HAFA DIL transaction are eligible for $3,000 in relocation assistance.

As we've seen, a deed in lieu has distinct advantages and disadvantages compared to foreclosure. Here is a summary:

Advantages:

- $3,000 relocation allowance
- Less emotional stress
- Smoother legal process
- Qualify more quickly to buy another home (as little as two years under new Fannie Mae vs. three or more after foreclosure)

Disadvantages:

- Possible tax liability on forgiven debt
- Credit is still damaged, though usually less than after foreclosure
- Not possible with multiple liens

1.2 Historical Background

At the beginning of the twenty-first century, America was experiencing a real estate boom that lasted for several years. Low interest rates fed consumer demand for housing, which in turn drove prices up. Ever-rising values made home loans seem like low-risk investments, attracting more players to the mortgage industry.

As the pool of high-quality buyers was depleted, lenders began looking to *subprime* candidates—those with marginal credit—and fashioning loan products for them. This enabled many people to become homeowners who would not have otherwise.

Crisis

By 2006, home prices had finally reached the limit of what many buyers were willing to pay, and the market slowed dramatically. As values began dropping in 2006 and 2007, the equity

that homeowners had counted on to alleviate their financial troubles had evaporated. No one was more vulnerable to this downturn than subprime borrowers. They began to default in alarming numbers. The effects of this wave rippled through financial markets, which had invested heavily in mortgage-backed securities (MBS). This was the beginning of the subprime mortgage crisis.

By 2008, the overall economy was in recession, and Americans of all backgrounds were losing their jobs. Now, even previously-stable prime borrowers began defaulting. Mortgage servicers, deluged with delinquencies, were overwhelmed by the sheer volume of files.

In this environment, short sales became an attractive way for homeowners to escape unsustainable mortgages. But short sales require the cooperation of mortgage servicers and investors, which has been hard to obtain in the chaotic conditions of recent years. Real estate agents listed properties for sale and procured offers—only to wait months for servicers to respond. The servicers' requirements seemed arbitrary, subject to change from day to day. Procedures were confusing or contradictory.

A Treacherous Environment

The slow response of mortgage servicers was partly due to the treacherous legal environment that evolved during the boom years. Many loans had been packaged, *tranched,* and sold as securities—sometimes to multiple investor groups, each of which might own a *portion* of a *group* of loans. To approve a short sale on an individual mortgage, the servicer would have to obtain the approval of the loan investors. But in the dizzying world of securitized mortgages, it could be virtually impossible to determine who owned a particular loan. To proceed with a sale without clear approval from the affected parties was simply too risky. Many servicers balked at the prospect of this unknown liability, and the result was paralysis. This was the landscape that industry leaders confronted in 2008.

1.3 The Genesis of a Solution

In February 2008, the National Association of Realtors® (NAR) formed a work group to address the problems of the short sale market. This led to discussions with major mortgage companies and, ultimately, the U.S. Treasury Department and *Federal Housing Finance Agency* (FHFA).

In these discussions, NAR pursued three goals:

1. A uniform short sale process
2. Model forms
3. Deadlines for servicers as well as homeowners

The HAFA program that eventually emerged addressed all three of these issues. Following a general announcement on May 14, 2009, the Treasury Department formally launched the Home

Affordable Foreclosure Alternatives on November 30, 2009 with *Supplemental Directive 09-09* (SD 09-09). The program went into effect on April 5, 2010.

After HAFA was in effect for several months, its defects became apparent. Some of these issues were addressed in a letter from Beth Peerce, President of the California Association of Realtors® to the federal officials in charge of the program. This letter, dated December 17, 2010, noted that Realtors® were still having trouble completing HAFA sales, and suggested several remedies.

The Treasury Department responded to this and other complaints with a sweeping revision of HAFA's provisions. *Supplemental Directive 10-18*, dated December 28, 2010, streamlined HAFA's provisions and laid the groundwork for its wider implementation.

The involvement of the federal government has allowed servicers to implement policies that would otherwise have been unacceptable to many of their investors. No one imagines that HAFA alone will solve the mortgage crisis, but it does represent a beginning—the genesis of a solution.

1.4 The Goals

In the words of the Treasury Department, HAFA is designed to "simplify" and "streamline" the use of short sales and deeds-in-lieu.

The benefits of a uniform process with standardized forms and timelines should be obvious. But there are many implied benefits to servicers, investors and homeowners, as well as agents.

Servicer Benefits:

- **Standardized documents.** Servicers are permitted to adapt or "brand" treasury's documents, but they must remain substantially similar. The time frames and other essential elements of HAFA must remain in place. This makes the process easier for servicers—as well as the agents who work with them.
- **More predictable outcome.** HAFA is designed to yield results based on objective, consistently applied standards—reducing reliance on subjective evaluation.
- **Preserve property conditi**on and value. Borrowers that have some hope for a reasonable outcome are more likely to remain in their homes—and maintain them. This helps preserve the value of the subject properties, and others in the neighborhood.

Seller Benefits:

- **Graceful transition.** HAFA candidates are typically burdened with unsustainable mortgages. The program helps them exit gracefully and find appropriate housing. They benefit from the release of liability on mortgage debt, and HAFA's $3,000 relocation allowance.

- **Less trauma.** Foreclosure affects borrowers' emotional health and self esteem, as well as their credit. It hinders their ability to participate in the economy, which is bad for everyone.
- **Resolution.** Sometimes unresolved defaults can be just as damaging as foreclosure. When servicers fail to respond decisively to defaults, as in recent years, borrowers remain stuck in a precarious limbo, unable to take the actions that would cure their financial ills; the mortgage investors remain burdened with non-performing assets, and the broader economy suffers from prolonged uncertainty. A smooth short sale mitigates all these effects.

1.5 The Paper Trail

To understand HAFA, we must consider how it evolved. In this section we trace the development of the program through the documents that defined it—starting with its parent programs, *Making Home Affordable* and *HAMP*. The important elements of HAFA—its assessment formulas and eligibility requirements—are identical to those in HAMP. For that reason alone, conscientious agents will want to become familiar with both programs.

Both of these initiatives originate with the U.S. Department of Treasury. The documents pertaining to each are generally available at *www.HMPadmin.com* (although earlier documents can be hard to find as they are supplanted by later ones). Treasury typically communicates new information through *supplemental directives*, which are identified by the suffix *SD*, followed by the year and number of the directive (e.g., SD 09-01).

Other entities such as Fannie Mae and Freddie Mac also play important roles in implementing these programs, which we will explain in subsequent sections.

February 18, 2009—Homeowner Affordability and Stability Plan
In its first effort to address the nationwide foreclosure problem, the Obama Administration introduced a loan modification program, which became known as *Making Home Affordable* (MHA). Its goal was "reducing monthly payments to sustainable levels" for qualified borrowers. The various programs that emerged from MHA would use funds from the *Troubled Asset Relief Program* (TARP), which was signed into law on October 3, 2008.

March 4, 2009—Introduction of HAMP and HARP
Treasury issued "uniform guidance for loan modifications" as part of its newly-dubbed *Home Affordable Modification* program. It also announced the *Home Affordable Refinance* program. Fannie Mae and Freddie Mac issued concurrent press releases announcing their participation in both programs.

April 6, 2009—Launch of HAMP (SD 09-01)
Supplemental Directive 09-01 provides details on the criteria for modifications under HAMP, specifically excluding loans owned or guaranteed by Fannie Mae or Freddie Mac.

SD 09-01 covers the following topics:

- HAMP Eligibility
- Underwriting
- Modification Process
- Reporting
- Requirements
- Fees and Compensation
- Compliance

To maximize HAMP's impact, Treasury required all financial institutions that had participated in TARP to be HAMP participants as well.

April 21, 2009—Fannie and Freddie HAMP Guidelines
Fannie Mae *Announcement 09-05R* gave directions to servicers implementing HAMP on loans owned or guaranteed by Fannie. Freddie followed with *Guide Chapter C65* for its loans.

November 30, 2009—Introduction of HAFA (SD 09-09)
Even with the government's high-profile effort to resolve mortgage defaults through HAMP, it was clear that not all distressed borrowers would be candidates for modification. Treasury addressed this reality with *Supplemental Directive 09-09*, which outlined its new *Home Affordable Foreclosure Alternatives* program stressing short sales and deeds-in-lieu. This original HAFA document, later revised, covered the following topics:

- Foreclosure Alternatives
- HAFA Consideration
- Evaluation
- Short Sale
- Deed-in-Lieu
- General Terms and Conditions
- Incentive Compensation
- Standard Form Documents
- Reporting Requirements
- Compliance

The features of HAFA were summarized as follows:

- Complements HAMP by providing alternatives for HAMP- eligible borrowers.
- Utilizes borrower financial information already collected under HAMP.
- Allows borrower to receive pre-approved short sale terms prior to the property listing.
- Prohibits servicer from requiring commission reduction as condition for approval.
- Requires that borrowers be fully released from future liability for the debt.
- Uses standard processes, documents and timeframes.
- Provides financial incentives to borrowers, servicers and investors.

December 28, 2010—New Guidelines for Non-GSE HAFA Sales (SD 10-18)
In response to problems that surfaced in HAFA's implementation, the Treasury Department issued *Supplemental Directive 10-18,* which made several important changes:

- **Income requirements.** Servicers are no longer required to verify a borrower's financial information or determine if the borrower's monthly mortgage payment exceeds 31 percent of monthly gross income (as the HAMP program requires). Borrowers must still submit a *Request for Modification and Affidavit* (RMA) describing their financial hardship.

- **Vacancy.** Under the original program, only principle residences were eligible for HAFA, with a specific exception for borrowers who had been required to move over 100 miles away for work reasons. Now, the property must be *or recently have been* the borrower's principle residence—allowing for vacancies up to 12 months prior to the date of the Short Sale Agreement, without regard to the reason. As with the original program, the borrower may not have acquired another one-to-four unit property during this period.

- **Junior liens.** The original program capped payments to each individual junior lien holder at six percent of unpaid principle balance. The new directive eliminates this requirement, but still caps the *total* payment to all junior lien holders at $6,000. Payments are made to junior lien holders in order of priority.

- **Timelines.** The initial Treasury version of HAFA established timelines for most events , but gave no deadline for servicers to issue a *Short Sale Agreement* (SSA) after being approached by a homeowner. This gap effectively undermined the program's goal of an orderly, predictable process. SD 10-18 addressed this by requiring the servicer to issue an SSA within *30 days* of a borrower's response to a solicitation. If a borrower requested HAFA consideration without being solicited, the servicer was required to communicate approval or disapproval within 30 days. This also applied to a borrower who requested a HAFA short sale after accepting an offer (using the *Alternative Request for Approval of Short Sale* or Alt RASS). Such a request must be accompanied by the executed sales contract and a *Request for Modification and Affidavit (*RMA). These timelines were later revised *again* in SD 11-02.

- **Commissions.** The new guidelines require servicers to honor commissions as agreed on, as long as they don't exceed six percent of contract sales price. Servicers must also affirm that fees from outside contractors they employ to assist with a transaction will not be charged to the borrower or deducted from the real estate commission.

- **Deed-in-lieu programs.** The new terms allow for deed-in-lieu arrangements which include repurchase or lease-back (*deed-for-lease*) provisions. Servicers must provide descriptions of any such programs in their HAFA policies submitted to Treasury.

- **Borrower notices.** Under existing policy, borrowers who request HAFA sales but have not been evaluated for HAMP modifications must be notified of this option and given 14 days to consider it. The new directive allows them to be considered for HAFA simultaneously —potentially speeding the process.

- **Retroactivity.** Servicers are not *required* to re-evaluate loans deemed ineligible under the original HAFA terms—but *may* do so, in accordance with written policies submitted to Treasury.

- **Reporting and compliance.** The new directive elaborates on servicers' obligations to retain complete updated records, and be prepared to report loan-level data periodically to the Program Administrator.

March 30, 2011—Evaluation period extended (SD 11-02)
The time limits that Supplemental Directive 10-18 imposed on servicers were apparently unrealistic. Three months after SD 10-18 was issued, these limits were revised in SD 11-02. The new guidelines require servicers to respond to borrower HAFA requests in ***45 days*** rather than 30. Further, servicers are *not* required to reach a decision on borrowers' eligibility within that time; only to acknowledge the borrower's request and provide a status notice. If no decision is reached, servicers must send written status updates to borrowers every 15 days.

This effectively nullifies the time limits imposed by SD 10-18, but does impose more stringent communication requirements on servicers. SD 11-02 also requires servicers to verify borrowers' occupancy of the property within the previous 12 months, and to specify their criteria for determining occupancy.

June 1, 2011—New Servicer Handbook (SD 11-05)
This new *Handbook for Servicers Version 3.2* consolidates all the changes made to *Making Home Affordable* through SD 11-02, with some minor additional revisions.

2

The Beginnings: HAMP

HAFA is part of HAMP. When homeowners apply for HAFA consideration, they fill out the *Request for Modification and Affidavit* (RMA) which is also used in HAMP applications. Thus, the same documents used to apply for a modification under HAMP can be used to process a HAFA application if modification fails.

HAFA is a response to the problems that emerged as HAMP was implemented. Specifically, it became clear that many homeowners wouldn't be able to participate in HAMP for various reasons, and needed other options short of foreclosure. Thus, the Home Affordable Foreclosure Alternatives initiative was born.

It should be clear that any agent seeking to implement HAFA needs a thorough knowledge of HAMP. But agents should become familiar with HAMP for another reason: It represents a viable solution for many people. Homeowners who qualify and want to keep their homes deserve a chance to pursue that goal. By becoming expert in the elements of HAMP, you can help them do that.

2.1 HAMP Elements

To make homes affordable, as its name suggests, HAMP offers loan modifications to borrowers. It provides incentives for Fannie Mae, Freddie Mac, and participating servicers to create and implement these modifications.

The goal of every HAMP modification is to reduce first lien mortgage payments to 31 percent of borrowers' gross monthly income. Servicers use a specific set of steps to reach this target, known as the *standard waterfall*.

In practice, recent statistics show that permanent HAMP modifications have involved interest rate reductions in 100 percent of cases, term extensions in 53.7 percent, and principal forbearance in 28.8 percent.

2.2 HAMP Eligibility

The Property
To be eligible, property must be:

- One to four units
- Borrower's primary residence

Vacant property, commercial property, income property and second homes do not qualify.

The Loan
To qualify for a HAMP modification, the loan must:

- Be conventional (not FHA or VA)
- Be owned by Fannie Mae/Freddie Mac or serviced by a participating HAMP servicer
- Be a first lien
- Have been originated on or before January 1, 2009
- Have not been previously modified under HAMP
- Have an unpaid principle balance within certain limits:
    - $729,450 (1 unit)
    - $934,200 (2 units)
    - $1,129,250 (3 units)
    - $1,403,400 (4 units)

The Borrower
To be HAMP-eligible, borrowers must:

- Be in default or in imminent risk of default
- Have mortgage payments in excess of 31 percent of gross monthly income
- Document the reasons for their default
- Be unable to pay their deficiencies with available liquid assets
- Document their gross monthly income
- Be able to sustain a modified mortgage payment

TIP: *Homeowners may be eligible for HAMP even if they are in bankruptcy or foreclosure.*

2.3 Applying

Personal Documents
Servicers require specific financial documents to consider a HAMP modification:

- Most recent tax return
- Two most recent paystubs, and/or proof of *all* other household income.
- Estimated monthly household budget
- Information on other investments or assets

Other required documentation may include:

- Social Security payments
- Pension award letters
- Divorce decrees
- Child support orders

Income for all permanent household residents should be included.

The RMA
Borrowers must complete a *Request for Modification and Affidavit* (RMA) which is available at the Making Home Affordable website: www.makinghomeaffordable.gov).

Also required is a *4506T-EZ* form authorizing third-party access to the borrower's tax returns, which can also be downloaded at the Making Home Affordable site.

Submitting the Package

Applicants should submit the completed RMA, signed 4506T-EZ form, signed tax return, proof of income, recent bank statements, *and* a current utility bill to the servicer, with a cover letter. (The utility bill is not to document the amount of the utility payment, but to verify that the borrower is occupying the property.) *Every page* of the package should have the loan number at the top.

Servicers usually prefer to receive these documents by fax, but wise applicants will also send copies by certified mail, and keep separate copies for personal records. It usually takes a few days for servicers to receive these documents and upload them into their systems. After that, the borrower or agent should call the servicer to confirm receipt and begin discussions.

2.4 Evaluation

The servicer will review the applicant's eligibility and begin evaluating the loan. It will verify the information provided and request additional documents if needed.

NPV
A critical step in the servicer's evaluation process is the *net present value* (NPV) analysis. Borrowers will have little ability to influence this process, but should be aware of its importance and how it works.

Present value is a term that denotes the value of an asset based on estimates of future performance. In this case, the asset is the loan—not the house it is attached to.

When investors need to decide how to deal with an asset they apply a *net present value* test, comparing the projected value for each choice. In the case of a loan being considered for HAMP, the servicer will compare the projected value of the loan *with* modification and *without* modification. These values are computed using specific formulas that take into account the likelihood of various outcomes. For loans being considered under HAMP, servicers use a computer application provided by the Treasury Department to make this calculation.

If the NPV is *positive*—meaning the loan is expected to have greater net value *with* modification—the servicer *must* modify, according to HAMP rules. If NPV is negative, the servicer may still modify, but is not required to.

In response to suspicions that the NPV test was being used capriciously by servicers to deny modifications, the Treasury Department made its NPV program publicly available in May, 2011. Now, consumers can apply their own NPV test at checkmynpv.com, and challenge the conclusion of the servicer if necessary.

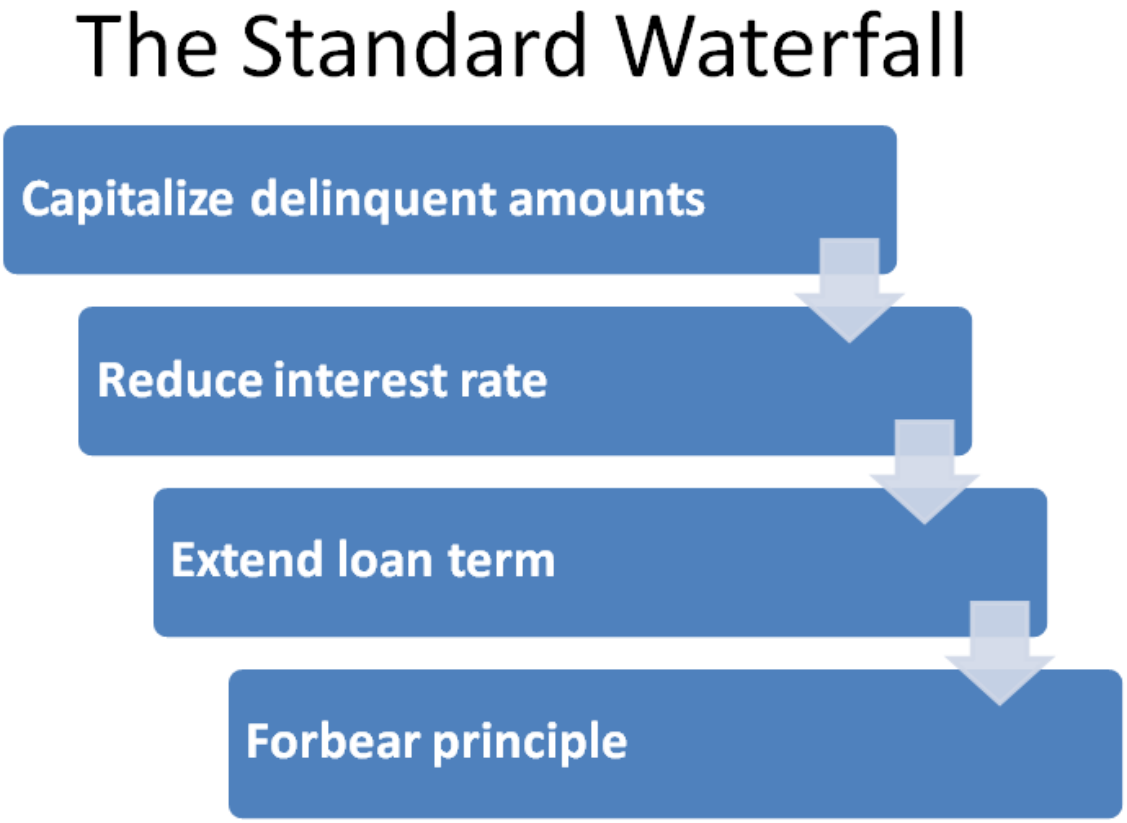
Other Calculations
The servicer will analyze the borrower's credit report and other financial information to determine expenses and debt-to-income ratio (DTI). It will also, if necessary, obtain tax returns from the IRS (using the 4506T-EZ form). Servicers are not permitted to charge borrowers for processing HAMP applications, or for any related costs—such as appraisal fees or tax return fees.

The Waterfall
Once basic eligibility is established, the servicer will consider ways to reduce the monthly payment on the loan, using the *standard waterfall* we mentioned earlier. The goal is to arrive at a payment equal to 31 percent of the borrower's gross monthly income, and the servicer will only take the steps necessary to reach that figure.

The standard waterfall includes the following steps:

1. Adding the total past-due amount (arrearage)—including interest, attorney costs and escrow shortages—to the principal of the loan. (Late fees should be waived and *not* capitalized as part of the arrearage.)
2. Reducing the interest rate. Servicers can lower the existing rate by increments of .125 percent, up to two percent. The modified rate will apply for the duration of the loan, unless it is below the current market rate. In that case, the rate will adjust over five years until it reaches the market rate, and will then be fixed.
3. Extending the term of the mortgage. A mortgage can be extended up to 480 months (40 years).
4. *Forbearing* the delinquent amount. This amount is *not* forgiven, but is due when the loan matures or is paid off. In the meantime, it is not amortized and does not accrue interest.

Applicants should contact the servicer regularly during this process, and keep records of all interactions, noting the names of representatives, times, dates, and information discussed. They should submit additional documents promptly when asked, and keep copies.



2.5 Decision

Approval
A borrower who is approved will be given a three-month *trial modification* with reduced monthly payments that include an escrow for taxes and insurance (even if the borrower previously waived this option). The borrower will receive a letter explaining the terms of the trial period.

At this point, it is important for homeowners to assess their ability to abide by the terms of the modification. *There is no grace period for trial period payments, and borrowers will be disqualified for making late payments.* Borrowers who agree to a proposed modification should follow any instructions from the servicer and be diligent to make their trial period payments *on time*.

Denial
Servicers must notify borrowers by mail when they are denied, and must specify the reasons for denial. This notice should also provide information about other loss mitigation options. Borrowers who want more information or seek to dispute the servicer's determination should call the servicer and ask for a supervisor.

Another option is to call the *Making Home Affordable* Help Team (MHA HELP) at 1-888-995-HOPE or 1-888-995-4673 to speak to a counselor. These counselors are trained to answer questions and intervene with servicers on behalf of borrowers.

2.6 Developments

As with any new program, HAMP has evolved as problems have surfaced. By the end of July 2010, almost half of the homeowners who entered HAMP trial modifications had dropped out (616,839 out of 1,307,489). On the bright side, more than half of the dropouts received alternative modifications, became current, or paid off their loans. Less than ten percent were unable to avoid foreclosure.

To improve its success rate, Treasury has adopted several changes in HAMP:

Fully Verified Documentation
In HAMP's initial stages, borrowers could apply for modifications over the phone with oral statements regarding their financial circumstances. This created problems, as many borrowers misrepresented their income levels. When the required documentation later failed to support their statements, these applicants were forced to drop out of the program.

Treasury moved to address this problem, and as of June 1, 2010, a borrower's eligibility for a modification must be fully verified before the borrower enters the trial period. Applicants now must supply hard documents, as we've described earlier. Servicers must send written

confirmation of receipt of these documents within ten business days, along with a description of the evaluation process and a projected timeline, and must maintain evidence of the date the Initial Package was received. Servicers then have 30 days to review the package and notify the borrower of any missing data. The directive also establishes deadlines for *borrowers* to supply missing information.

If the package is complete, the servicer must then either send the borrower a Trial Period Plan Notice, or advise the borrower that he or she is not eligible for HAMP and provide information on any other mitigation possibilities.

New Standards for Principal Forbearance

Under a recent directive, servicers have two ways of calculating the amount they may be required to forbear:

1. 30 percent of the unpaid principal balance of the mortgage loan
2. An amount resulting in a modified interest bearing balance that would create a current mark-to-market loan-to-value ratio equal to 100 percent.

The servicer must use the greater of these two calculations. If a borrower's monthly mortgage payment cannot be reduced to the target monthly mortgage payment using either of these options, the servicer *may* consider the borrower ineligible for a modification. This does not, however, bar servicers from exceeding those amounts to achieve the target 31 percent ratios for both NPV-positive and NPV-negative loans. The directive also clarifies the way *net present value* is determined to ensure consistent results at both the beginning and end of the trial period.

The directive also sets out firm guidelines for current trial participants who were admitted to the programs before their eligibility was determined.

Help for the Unemployed

On March 25, 2010, the Obama Administration, including Federal Housing Administration (FHA) Commissioner David H. Stevens, announced changes to the Home Affordable Modification Program (HAMP) and enhancements to the FHA's refinance program. The Federal cost of these changes will be funded through the $50 billion allocation for housing programs under the Troubled Asset Relief Program (TARP).

Under the HAMP enhancements, unemployed borrowers meeting eligibility criteria may have their mortgage payments temporarily reduced to an affordable level for at least 3 months (up to six months for some borrowers) while they seek employment.

Principal Forgiveness

Many homeowners have been reluctant to embrace the HAMP program because it failed to address the loss of equity so prevalent in today's market. The original HAMP program allowed for *forbearance* of principle, but not *forgiveness*—leaving many homeowners owing more than their homes were worth.

The HAMP program finally addressed this issue through its *Principal Reduction Alternative* (PRA), announced June 3, 2010. *Supplemental Directive 10-05* requires servicers to *consider* reducing principle on loans with a *mark-to-market loan to value* (MTMLTV) greater than 115 percent.

This means that if the balance owed is more than 115 percent of the home's real current market value, servicers are authorized to forgive, (i.e., eliminate) principal to reach the 115 percent figure.

2.7 Modifying Second Liens: 2MP

Critics of the HAMP program have pointed out that unless junior lien holders cooperate with the modification process, the national foreclosure problem in the U.S. will not improve substantially. The supplemental *2MP* program was designed to address this problem. Meanwhile, second lien holders have become more willing to consider modifying or extinguishing their loans which are no longer supported by any equity in the properties. Under the 2MP program, participants must contact all their borrowers who have received HAMP modifications on their first loans, notifying them of the new payment relief options for second liens.

Participating servicers may:

1. *Modify* the loan according to a defined protocol
2. *Cancel* the loan, in which case the servicer receives a lump sum payment from the Treasury Department as compensation.

The 2MP modification or cancellation would be made based on the financial information provided by the borrower when applying for a modification of the first loan under HAMP—without additional evaluation by the second lien servicer.

Modification and Extinguishment Eligibility
2MP has several guidelines and eligibility restrictions:

- Only second liens with corresponding first liens that have been modified under HAMP are eligible.
- Second liens originated on or before January 1, 2009 are eligible for a modification or extinguishment under 2MP.
- A second lien may be modified only once under 2MP.
- A mortgage loan that is subordinate to a second lien (i.e., third, fourth position) is ineligible under 2MP. However, modification or extinguishment of such a subordinate mortgage lien *in place of* the second lien will not satisfy the servicer's obligation under 2MP to modify or extinguish the second lien.

- If a second lien is *modified* under 2MP, the servicer is not eligible for extinguishment incentives.
- A mortgage lien that would be in second lien position but for a tax lien, mechanic's lien or other non-mortgage related lien that has priority, *is* eligible under 2MP.
- A second lien on which no interest is charged and no payments are due until the first lien is paid in full (e.g., FHA partial claims liens; equity appreciation loans) is *not* eligible under 2MP.
- Borrowers may be accepted into the program if a fully-executed 2MP modification agreement or trial period plan is in the servicer's possession on December 31, 2012.

All servicers of eligible second liens may participate in 2MP. A servicer need not service the related first lien or participate in HAMP in order to participate in 2MP. As we've discussed, 2MP provides two options for servicers. We will now examine these in detail.

Modification
The 2MP modification offer may be prepared during the HAMP trial period, or after the permanent HAMP modification becomes effective. However, the final terms of the HAMP modification are necessary to determine the terms of the 2MP modification.

As with HAMP, junior lien servicers must follow standard modification steps, including:

1. Capitalization
2. Interest rate reduction
3. Loan tem extension
4. Principal forbearance
5. Trial period requirements

Cancellation
When the 2MP extinguishment option is utilized, the second lien servicer, investor, and any mortgage or other insurer must relinquish all rights and remedies against the borrowers related to the second lien obligation, and the borrower may not be required to sign a promissory note or be charged a fee. This is very important, as large numbers of *recourse loans* would become *non-recourse loans* under these terms, regardless of their prior status. After the extinguishment of the second lien, servicers must take all necessary action to cancel the indebtedness, release the second lien in a timely manner, and promptly send the cancelled documents to the borrower.

2.8 HAMP and the Future

The effectiveness of HAMP is the subject of much debate, within the mortgage industry and in the halls of government. Skeptics note the alarming re-default rate, which has improved with more stringent eligibility requirements, but remains a concern. The tighter entrance

requirements that have improved HAMP's *internal* success statistics make it *less* effective in addressing the larger mortgage problem: many homeowners remain unreached.

Observers have noted several areas where changes could improve HAMP's performance:

Effective Homeowner Outreach
Years after its inception, many distressed homeowners remain unaware of what HAMP offers them. Mailers and phone calls—the traditional outreach methods employed by loan servicers—have proven ineffective. The solution lies in sending trained representatives to visit homeowners *in person*, explaining the options and encouraging them to act. This has begun to happen, and will accelerate as other servicer efforts are exhausted.

Improved Servicer Performance
The mortgage crisis has placed extraordinary demands on industry resources. As servicers have tried to respond to the deluge of defaults, some borrowers have fallen between the cracks. Stories abound of lost paperwork, mislabeled files, even mistaken foreclosure sales.
The "robo-signing" scandal of 2010 highlighted the perils of processing too many foreclosure files at once. Meanwhile, other borrowers have received no response at all: promised modification documents never arrive; repeated inquiries remain unanswered.

Behind the scenes, servicers have hired new employees to handle the unprecedented file volume, and worked to streamline the process. But the obstacles remain formidable. Congressional leaders have exerted pressure on the major servicers to improve accountability; strict enforcement of reporting requirements for HAMP and HAFA could help bring that about.

Addressing Negative Equity
To many observers, *upside-down* mortgages remain the largest impediment to a healthy housing market. As long as borrowers know they have little hope of regaining equity, they will resist efforts to modify their loans. The HAMP *Principal Reduction Alternative* addresses this dilemma, but critics dismiss it as insufficiently aggressive. As originally formulated, it was optional for servicers and investors, which are understandably reluctant to incur deliberate losses. But in today's market, the question is often not *whether* investors will lose money, but when and how much. A vigorous approach to principal reduction could have a dramatic effect on this standoff.

HAMP Opens the Door
As we've noted, many homeowners who apply for HAMP will not be eligible. The program attempts to provide guidelines that will be acceptable to a broad range of mortgage investors, with the result that many borrowers are excluded.

But HAMP is merely the entry point for many homeowners. When they are denied HAMP modifications, they can then work with their servicers to find other in-house solutions. According to the mortgage industry group HOPE NOW, 3.7 million Americans received loan modifications from 2007 and 2010. But only about a half-million of those were accomplished

under HAMP—less than 14 percent. The rest were servicer-initiated private programs.

HAMP could be viewed as priming the pump for these more pragmatic solutions. At the very least, it is performing a valuable function by opening the door for homeowner engagement.

3

The Three Faces of HAFA

Introduction
When the U.S. Treasury Department announced the launch of HAFA in November 2009, it specifically excluded *GSE* loans—those owned or guaranteed by *government-sponsored enterprises* Fannie Mae and Freddie Mac. Instead, the program was targeted at the many private investors that were already HAMP participants. The writers of the HAFA program recognized that each of these investors would have different priorities and procedures, so the guidelines were broadly drawn, allowing the participants to tailor them more specifically to their needs while maintaining the essential parameters.

But a program seeking nationwide impact could not exclude the entities that represent over half the mortgage loans in the country. The long-awaited announcements of Freddie and Fannie's participation in HAFA came on June 1, 2010. Their versions of the program resembled the original treasury version in most respects—but with some distinctions that have important implications for homeowners. In this chapter we'll examine those distinctions, providing you with a detailed understanding of the three faces of HAFA.

3.1 Original Treasury Version

Mortgage servicers act according to *pooling and servicing agreements* (sometimes referred to as *master servicing agreements)* with their investor clients. These contracts define the procedures servicers must follow in managing their clients' assets. The major servicers handle loans owned by many different investors, so they must consult the pooling and services agreement (PSA) for each client before proceeding with actions on their loans. PSA's are not publicly available, and can vary widely in the procedures they prescribe.

The original Treasury HAFA program implicitly recognizes this diversity of practices among private investors; it provides basic guidelines, but leaves some issues unaddressed. Those issues would presumably be covered by the PSA of each individual investor.

Under the revised provisions issued at the end of 2010 with *SD 10-18*, Treasury afforded wide latitude for servicers of non-GSE loans. They are no longer bound by the eligibility restrictions established under HAMP. But, they must submit written policies for each of their investors to the Treasury Department, describing how they will implement HAFA.

Fannie and Freddie's Involvement
Although Treasury's original program specifically excludes loans owned or guaranteed by Fannie and Freddie, these entities are vitally involved in the implementation of HAFA: Fannie Mae is the HAFA *program administrator*, and Freddie Mac is the *compliance agent*. Visible or not, these agencies play important roles in all HAFA transactions.

3.2 Fannie Mae Version

(Find out if a loan is owned by Fannie Mae at www.fanniemae.com/loanlookup.)

Fannie Mae performs many functions in the mortgage industry. As we've already noted, it is the program administrator of Treasury's HAFA program. In this role, Fannie Mae does not pursue its own interests, but acts as an agent of the United States. But Fannie also *owns* mortgage loans, and guarantees others. These loans were deliberately excluded from the original HAFA program so Fannie could formulate its own version reflecting its interests as a mortgage *investor*.

Fannie Mae's HAFA program, introduced on June 1, 2010, is identical to Treasury's original version in most respects. But it also deals specifically with some issues left unaddressed in that version—just as private investors would address them in their pooling and servicing agreements. In that light, there are several important things to note about Fannie's program:

Continuation of foreclosure
In Fannie's program, foreclosure action *must* continue while a HAFA sale is being pursued, if it is scheduled, *or could be completed,* within 60 days. This could effectively rule out HAFA short sales for many borrowers. To obtain an exception to this rule, the *servicer* must obtain Fannie's written approval beforehand. Thus, borrowers and their agents have limited power to secure HAFA transactions when default is in advanced stages.

Delinquency
To be considered for HAFA, a Fannie Mae borrower must be either delinquent or *in imminent risk of default.* This language is ambiguous enough to include many borrowers as potential

candidates. It would fall on individual homeowners to document their *imminent risk of default*, but this provision could be helpful to some prospective HAFA applicants.

Borrower's Financial Status
Consistent with its role as an investor, Fannie Mae scrutinizes borrowers for their ability to make payments. It excludes borrowers from HAFA if they:

- Could make mortgage payments, but choose not to
- Have substantial unencumbered assets
- Have cash reserves exceeding three monthly mortgage payments or $5,000 (whichever is greater)
- Have high surplus income

Marketing Oversight
An unusual provision in Fannie's program is its requirement that servicers closely oversee the marketing of HAFA properties. This puts servicers in the role of sales agent, or sales manager—a role they may be uncomfortable fulfilling. Agents may also chafe at the stringent reporting requirements.

Servicers must:

- Review and approve listing agent's marketing plan
- Obtain monthly marketing update from listing agent
- Obtain updated comparables monthly
- Instruct agents to adjust list price as necessary

This close monitoring of listing agents resembles that of REO agents who must report their activities to asset managers.

All Options Considered
Fannie Mae's HAFA guidelines contain a minor clause that could have enormous ramifications: "Once a borrower has met all of the eligibility criteria for HAMP, the borrower must be considered for a HAFA short sale or DIL (*after all home retention options have been considered*) … (emphasis added)" This parenthetical stipulation *could* require homeowners to go through the HAMP application process—and more—before HAFA becomes an option. This could drastically alter the timeframe for HAFA sales on Fannie Mae loans.

Disclosure of MANP
Servicers are prohibited from disclosing their minimum acceptable net proceeds to the buyer, seller or agents. Only the acceptable list price is disclosed, on Fannie Mae's SSA Form 184.

Summary of Fannie Mae HAFA's Distinctive Features:

- Continuation of foreclosure required if feasible within 60 days
- Borrower must be delinquent or *in imminent risk of default*
- Restrictions on borrower's financial status
- Requires servicer to oversee marketing of property
- Available after all home-retention options considered
- Prohibits disclosure of MANP

3.3 Freddie Mac Version

(Find out if a loan is owned by Freddie Mac at www.freddiemac.com/corporate.)

As with Fannie Mae, Freddie Mac's version of HAFA protects its interests as a mortgage investor. There are several points that an agent should take note of:

Eligibility
In contrast to Fannie Mae, Freddie Mac requires borrowers to be more than *60 days delinquent* to be considered for HAFA. This could be an effort to weed out opportunists who aren't facing real hardship, but hope to take advantage of HAFA's generous provisions. Borrowers who become 60 days late experience severe credit damage. Presumably, few would deliberately incur that damage just to gain favorable terms in a short sale.

No Alternative RASS
One of the important benefits of the HAFA program is the ability to obtain *preapproval* of a short sale. This is conveyed through a *Short Sale Agreement* (SSA) issued by the servicer. The agent and homeowner can then seek offers, and submit the one they select using a *Request for Approval of Short Sale* (RASS).

Most versions of the program also provide an avenue for submitting offers received *before* an SSA is issued: the *Alternative RASS* (Alt RASS). But Freddie Mac does not allow this option. A borrower who submits an offer before receiving an SSA is *excluded* from the program. Any such short sale would have to take place under Freddie's *B65* short sale program.

The implications of this provision can be serious for the homeowner or agent who is unaware of it. If a homeowner hopes to complete a HAFA sale and is excluded because of ignorance and poor timing, the agent will likely be blamed. If that oversight results in foreclosure or financial loss for the homeowner, the agent could be exposed to liability.

To preempt these issues, an agent dealing with a Freddie Mac borrower should explain that HAFA will only be available after the borrower has completed a HAMP application—which may take a long time to process. The alternative is to explore non-HAFA options with the servicer.

Borrower's Financial Status
As with Fannie Mae, Freddie Mac borrowers cannot have cash reserves in excess of $5,000 or three times the monthly mortgage payment.

Partial Mortgage Payments
Freddie Mac *requires* HAFA sellers to make partial mortgage payments during the sale period. This could reduce the incentive for borrowers to participate. One of the primary attractions of HAFA is the $3,000 seller relocation allowance. If this benefit is nullified by several months of mortgage payments, homeowners may opt out. However, failure to make these payments will not result in termination unless combined with another breach of the agreement.

Designation
Freddie Mac's HAFA sales are designated as *D65 Sales* (Non-HAFA short sales are B65).

Summary of Freddie Mac HAFA's Distinctive Features:

- Borrower must be at least 60 days delinquent
- No Alternative RASS
- Restrictions on borrower's financial status
- Partial mortgage payments required

3.4 The Three Programs Compared

At first glance, Fannie and Freddie's HAFA programs may seem restrictive. But the policies of private investors may be just as restrictive—or more so. The difference is that with Fannie and Freddie, the policies are publicly available. This allows homeowners and their agents to strategize beforehand and assess their chances of succeeding with a HAFA transaction.

The policies of private investors are not public. As we've discussed, they are contained in the pooling and servicing agreements investors have with their servicers, and more specifically in the written HAFA policies which servicers must submit to Treasury for each investor. Homeowners generally won't know what these policies are until they submit offers—and receive approval or rejection.

Chapter Three: The Three Faces of HAFA

The following chart is a condensed summary of the differences between the three versions of HAFA. Specific topics may not be addressed under a particular program—especially the original Treasury version, for reasons we've discussed. In these cases, you must deal with the policies of the individual servicer and investor.

Three Versions of HAFA Compared

	Treasury	**Fannie**	**Freddie**
Continuation of foreclosure	***May*** continue, but must not be initiated or completed during process	***Required*** if possible in 60 days	***Must*** continue, but not be initiated or completed during process
Delinquency	Must be delinquent, or default foreseeable	Not specified	Borrower must be 60 days delinquent
Borrower financial status	Not specified	Cannot have cash reserves of $5,000, or three times monthly payment	Cannot have cash reserves of $5,000, or three times monthly payment
Partial mortgage payments	Specified in SSA	Specified in SSA	**Yes**
Alternative RASS	Acceptable, no time period specified	Acceptable, within three days of accepted offer	**Not accepted**

As we've discussed there are *many* details on which the three programs differ. These seemingly minor points can affect a transaction when they appear unexpectedly. To avoid surprises, consult the exhaustive comparison of the three programs in the Appendix of this course.

4

HAFA and the Homeowner

For the real estate agent, HAFA represents potential income. But in this chapter, we put that aside for awhile to consider the implications of a HAFA sale for the party most affected by it—the homeowner. We'll discuss the agent's relationship with the distressed homeowner, outline HAFA eligibility requirements, and anticipate questions the homeowner is likely to have.

4.1 Engaging the Homeowner

Whether you approach homeowners at the request of a servicer, or as part of a general canvassing effort, your goal should be to guide each one toward the best individual solution. You should also resist the urge to draw quick conclusions. Take the time to *listen*. Become familiar with the homeowners' financial state, but also their goals, dreams, disappointments and frustrations. Remember, the homeowners may have been misled, antagonized, and even duped by unscrupulous operators before your arrival. You must work hard to earn their trust.

4.2 Determining Eligibility

The basic eligibility requirements of HAFA are simple and clear. You should be able to determine quickly whether a homeowner fits these criteria. A simple checklist will help:

- Principal residence (now or recently)?
- First lien originated before 2009?
- Loan balance under $729,750?

A *yes* answer to all these questions means the homeowner fits the basic eligibility requirements. But *confirming* eligibility requires some deeper investigation.

Who owns the loan?
As quickly as possible, identify the investor on the homeowner's loan. This will give you further guidance on whether HAFA is a viable option. As we've noted, private investors have individual policies regarding their level of participation in HAFA, which you'll need to find out. And, Fannie and Freddie have specific requirements that may exclude a particular homeowner.

- To find out if a loan is owned by Freddie Mac, visit www.freddiemac.com/corporate. (Click on: "Does Freddie Mac own your mortgage?")
- To find out if a loan is owned by Fannie Mae, visit www.fanniemae.com/loanlookup.
- To find the owner and servicer of *any* loan, visit https://www.mers-servicerid.org/sis/.

4.3 Finding the Right Fit

In some cases HAFA will not be the best choice—even for homeowners who are eligible. The home may be encumbered with multiple liens, which would not disqualify it, but could lessen its chances of succeeding as a HAFA sale. Or, the property may only have one, non-recourse mortgage—making HAFA's *release of liability* provision irrelevant. The homeowner would then have to weigh HAFA's $3,000 relocation allowance against other considerations.

Any number of scenarios could make HAFA a bad fit for your homeowner. To recognize when this is so, you must have a thorough knowledge of HAFA's provisions. Research the property status, and consider the borrower's aims and financial circumstances. Be direct in conveying your assessment to the homeowners, then leave the final choice to them.

4.4 Homeowner Questions

The homeowners you encounter will have plenty of questions about the HAFA program. As a HAFA specialist you should be prepared with clear, understandable answers. Here are a few queries you're likely to encounter, with suggested responses:

How will a HAFA short sale affect my credit? Your credit will suffer, but usually not as severely as after a foreclosure. Often, the worst credit damage results from the late payments that *precede* a short sale. These entries remain on a credit report for seven years, but eventually recede in importance; loan underwriters are usually most interested in recent activity. By

contrast, foreclosure remains as a *current entry* via source codes for seven years. This subtle distinction can make a huge difference.

Will foreclosure action stop during a HAFA short sale? Servicers may initiate or continue foreclosure activities while a short sale is being pursued, but will not *complete* it:

- While determining the borrower's eligibility and qualification for HAFA
- While awaiting the timely return of a fully executed SSA
- During the term of a fully executed SSA
- Pending transfer of property ownership

What if I declare bankruptcy? In that case, foreclosure activity stops and control of your property reverts to a bankruptcy trustee. HAFA guidelines in SD 09-09R specifically instruct HAFA servicers to cooperate with borrowers in bankruptcy. This represents a departure from the historical norm; in the past, short sales were all but impossible when the homeowners were in bankruptcy. Still, bankruptcy has serious credit consequences, and should not be undertaken without advice from a qualified attorney.

Will I be required to make partial mortgage payments during the sale? Possibly. This will be specified in the Short Sale Agreement or Alternative RASS. Policies vary according to investor. Private investors determine their own policies, which must be submitted to Treasury.

Fannie Mae's HAFA program leaves open the *possibility* of partial mortgage payments. Freddie Mac *requires* HAFA sellers to make partial payments during the sale. Under Freddie's program, partial payments will not exceed 31 percent of total monthly household income. But borrowers who fail to fulfill this requirement won't automatically be dropped from the program: Freddie Mac states that HAFA transactions will be only halted if this violation of terms is combined with another violation.

(On a practical level, homeowners usually seek short sales because they are unable to make mortgage payments. Servicers understand this, and may accommodate agents who make an effective case for their clients.)

Does every "eligible" homeowner receive a Short Sale Agreement? No. Servicers will determine this based on a number of factors. Here are some reasons an eligible homeowner might be denied:

- If the loan is owned by Fannie Mae, the servicer may determine that the time to foreclosure is too short (Fannie's guidelines prohibit a HAFA sale if foreclosure is scheduled or could be completed within 60 days).

- If the loan is owned by Freddie Mac, the borrower's financial information may not pass Freddie's stringent verification requirements.

- A short sale or deed in lieu may not be in the investor's financial interests. Servicers are permitted, even "expected" to perform a financial analysis to determine this.

- HAFA applicants must go through the same eligibility process as those seeking HAMP modifications. Homeowners who have not done this may not receive an SSA in time to avert foreclosure.

4.5 Homeowner Scenarios

The situations you face in the field will be as varied and numerous as the homeowners themselves. In this section, we address several scenarios you're likely to encounter, and suggest ways to deal with them.

I'm Not Eligible
It may become clear that a homeowner does not qualify for HAFA. Here are a few conditions that might make HAFA a non-starter:

- **Income too high**. The requirement to demonstrate financial hardship will disqualify many would-be applicants.
- **Jumbo loans.** For those relatively few borrowers on single-family homes with mortgages exceeding $729,750, HAFA is ruled out.
- **Non-owner occupied.** Second homes and income property don't qualify.
- **Non-participating junior lien holder.** If any holders of junior liens will not participate in HAFA, a HAFA sale is not possible. Unfortunately, this will not usually be evident until extensive research is completed.

These borrowers won't complete transactions under HAFA, but may qualify for any number of other options. Most servicers have an array of alternatives for homeowners in addition to the government-sponsored ones. These in-house programs sometimes offer *more* hope for borrowers, since their requirements can be more flexible. Homeowners who are not HAFA-eligible should ask their servicers about other options that may be suitable.

I Want a Mod
The first impulse of most homeowners is to search for ways to keep their homes—even when this is not a realistic goal. As a conscientious agent, you should honor these desires and help them pursue all home retention options. A good first step is to apply for a HAMP modification. The information compiled in this process can be used to request a HAFA short sale later should the modification attempt fail.

In dealing with borrowers' mortgage issues, you will become intimately acquainted with their goals and financial circumstances. This knowledge will help you serve them should they retain you as an agent. If a modification succeeds, you will have earned the gratitude of the

homeowner, which will likely lead to referrals and future business. If it doesn't work out, your selfless efforts will make you the obvious candidate for a short sale listing.

An unacknowledged flaw in many modification programs is their failure to address borrowers' loss of equity. Today's homeowners are often severely *underwater*, owing more than their homes are worth. Modifications typically restructure loans to ensure recovery of capital for investors, while making payments affordable for the borrowers. But they don't readily reduce *principal* balances. When homeowners consider these offers in light of their negative equity, they may be inclined to reject them—and embrace the short sale option.

I've Just Learned About HAFA—And I Want It

This positive scenario can also carry potential problems. If the homeowner has not begun the process by applying for a HAMP modification, the resulting delays could discourage buyers—or leave the homeowner vulnerable to foreclosure during the wait. As we've noted, Fannie Mae requires that "all home retention options" be considered before HAFA is offered. This *could* mean that borrowers must apply for HAMP, wait for the servicer's evaluation, and begin a trial payment plan if approved—before HAFA becomes an option.

When dealing with enthusiastic prospects who haven't done any preliminary work, it's important to determine quickly who owns and services their loans. This will shed light on the best strategies to pursue:

- **Fannie Mae.** By requiring that all home retention offers be considered**,** Fannie Mae has potentially extended the timeline for HAFA transactions drastically. Fannie borrowers who haven't begun the process of applying for modification must be alerted to the possibility of a long wait. If the delinquency is advanced, there may not be time to pursue a HAFA sale before foreclosure.
- **Freddie Mac.** For Freddie borrowers, danger may come from the opposite direction: If they are already in process on other workout options, this could frustrate efforts to pursue a HAFA sale. Freddie Mac's *HAFA Fact Sheet* states that "Borrowers cannot be offered a *HAFA Short Sale Agreement* if they are in an active HAMP Trial Period Plan, performing on a HAMP modification, or being evaluated for a Freddie Mac Short Payoff." When working with HAFA candidates whose loans are owned by Freddie Mac, find out if the borrower has initiated *any* workout efforts with the servicer. These efforts would have to be brought to some conclusion before HAFA could be considered.
- **Non-GSE Investors.** Determine the investor's level of participation in HAMP and HAFA. Find out if the servicer will require a loan mod attempt before considering HAFA.

The delays and exposure to foreclosure that would accompany a loan modification application may make HAFA impractical for borrowers that have not begun the process. This is why it's

important to know if the servicer will require this as a prerequisite. But as we've noted, when HAFA is not viable, servicers often have other short sale programs that are.

I Want To Sell Now
For real estate agents, an eager seller is a rare and welcome find. Feel free to sign the listing agreement in these cases, but be aware of possible pitfalls: If the homeowner's loan is owned by Freddie Mac, presenting an offer without an SSA will cause the borrower to be dropped from HAFA. Of course, the homeowner can entertain offers without immediately accepting one, but few buyers will want to wait indefinitely for the seller to receive an SSA. Once the homeowner accepts an offer, the agent must present it to the servicer within three days.

In any case, accepting an offer before obtaining the servicer's cooperation can lead to frustrating delays. Move deliberately: lay the groundwork with servicers on *all* the homeowner's loans before aggressively marketing the home.

I Just Want Out
After the grueling ordeal of a prolonged delinquency homeowners may be tempted to simply give up. In these cases, your role as an objective counselor and advocate becomes invaluable. Traumatized borrowers may be unaware of the long-term damage foreclosure can cause. You can point out the relative benefits of a short sale or deed-in-lieu. Then, you can shoulder some of that psychological burden and resume the efforts they may be too exhausted to continue.

I'm Bankrupt
As we've noted, HAFA guidelines specifically instruct servicers to cooperate when a bankruptcy trustee requests HAFA consideration. It further instructs servicers to "work with borrower or borrower's counsel to obtain any court and/or trustee approvals" that may be necessary, and to extend HAFA timeframes as needed. Completing a HAFA sale with a homeowner in bankruptcy can be challenging and time-consuming, but is definitely possible.

I Have My SSA
On rare occasions, you may encounter homeowners who have already begun the HAFA process and are ready to sell. They may have taken the necessary steps on their own, or listed their homes previously with another broker. If they did have a listing agreement, make sure it is no longer active; then find out why the house did not sell. You may find the previous listing agent candid and helpful in this regard. In either case, note the Termination Date on the SSA. The homeowner may be well into the 120-day marketing period, which would require you to request an extension from the servicer. HAFA terms allow for an extension up to a total of 12 months.

I'm in Limbo
Most homeowners you encounter will be in some stage of uncertainty. They may have had some interaction with the mortgage servicer, but no definite outcome. Likewise, they may be vaguely aware of their options, but have no clear idea on how to proceed. Your task will be to

proceed quickly on two tracks: educating the homeowner, and establishing communication with the servicer.

You should take several actions immediately:

- Obtain the name and contact information of the mortgage servicer
- Determine who owns the loan
- Find out the status of the loan:
  - Has a Notice of Default been filed?
  - Has a foreclosure sale been scheduled?
  - Have any workout options been pursued?
  - Is any paperwork in process?

The servicer will have access to most of this information, but to obtain it you will need a third party *letter of authorization* signed by the borrower. If the loan is in foreclosure status, it may have been referred to a foreclosure attorney, whose contact information the servicer should provide. This attorney will usually have up-to-date information on any scheduled foreclosure action. If a sale has been scheduled, call the servicer and request a postponement. Servicers will often postpone a sale if any prospect of an alternative appears. Do not approach the attorneys on this matter; they only act at the direction of their clients.

After these urgent initial steps, you can begin researching the history of the loan, and the borrower's interactions with the servicer. Request any records of such communications the borrower may have. As you begin assembling the information, a picture will emerge that will dictate the best course of action.

5

HAFA and the Real Estate Professional

HAFA promises great benefits for agents and homeowners—but great risks as well. This chapter addresses both in a candid, thorough way. We begin at the agent level, and conclude with the broker/manager's perspective. You'll learn to recognize the hidden dangers—and how to navigate through them to achieve success.

5.1 The Agent

The mortgage morass of recent years has been particularly frustrating for real estate professionals. Those who earn their living interacting with homeowners bring a unique perspective to the housing crisis—one that has been too often ignored. Most agents are acutely familiar with these issues because they deal with them every day. As much as anyone, they welcome the prospect of a streamlined, uniform short sale process. The fact that HAFA was formulated with input from the National Association of Realtors ® is a positive sign. The agent's voice will be an important part of any lasting solution.

Opportunities
Presenting HAFA to homeowners will bring you into contact with people and issues you might never have dealt with otherwise. You'll have the chance to greatly expand your client base. As you help distressed borrowers, they may refer you to friends and family.

Moreover, mastering the details of HAFA and other programs will make you an invaluable resource. You will distinguish yourself from agents who failed to adapt to the new environment and didn't bother to learn about this complex field.

Risks
On the other hand, poses liabilities which you must recognize and protect against. Much of your activity will be *non-traditional*, that is, not normally associated with the role of a sales agent. That may exclude it from coverage under the typical *errors and omissions* insurance policy (E&O). This exposes you as an agent to potential liability.

Short sales involve complex technical and financial issues, and the stakes are high for everyone involved. That creates a field ripe with potential liability, which attorneys can exploit for years afterward. Clients can become adversaries, despite your earnest efforts to serve them well.

Here are a few client complaints you could encounter—after the fact:

- You told me a short sale wouldn't hurt my credit!
- You didn't tell me about the tax liability!
- You didn't tell me the benefits I *could* have had with HAFA!
- You submitted an offer to Freddie without an SSA—and I lost my HAFA deal!
- You didn't submit my offer to the servicer in time!
- You didn't work to get my HAFA deal approved—and now I'm liable for all my debts!
- You misrepresented my financial information to the servicer—and they denied me!

Protecting Yourself
How can an agent avoid these potential minefields? Here are three ways:

1. Direct the client—orally and in writing—to seek the advice of an *attorney* regarding all legal issues.
2. Direct the client—again, orally and in writing—to seek the advice of a qualified *financial expert* regarding all tax and financial issues.
3. Ask the client to sign a statement acknowledging these instructions, and the potential negative outcomes of pursuing a short sale.

5.2 The Broker/Sales Manager

If the problems described in the previous section are sobering, imagine them multiplied ten, fifty or a hundred times. This is the situation real estate brokers and managers face as they send agents into the field.

Short sales will be a major part of the real estate market for the foreseeable future, and HAFA sales should represent a large percentage of *those* sales. And as we've noted, the activities *preceding* an actual HAFA transaction are fraught with their own perils. It would be unconscionable for brokers or managers to allow their agents to conduct these activities without proper training. Beyond that, those in positions of responsibility must take proactive steps to protect themselves, their agents, and their clients.

Here are some policies all brokers and sales managers should implement:

1. Provide mandatory, ongoing agent training in short sales, HAFA, and risk management
2. Require agents to obtain signed disclaimers from clients (as described previously)
3. Require agents themselves to sign statements affirming their completion of these tasks
4. Apply stringent file review policies
5. Update policy manuals to reflect these changes
6. Review *errors and omissions* policies to determine coverage limits

Lawsuit Scenarios

Legal liability issues may appear long after a transaction has occurred. And they can present dilemmas that were unimaginable when the agent was working in good faith to close a deal. The complexity of a HAFA transaction implies significant liability exposure, but there is also risk in *failing* to secure a HAFA sale when one might have been possible.

Borrowers who lose their homes but remain liable for their debts may be unmolested by creditors at first, only to be surprised by collection actions years later. Creditors who file suit must act within state statutes of limitations. But they often wait till the limits are about to expire—when consumers are likely to have regained their financial stability—and then sue.

Consumers targeted by these actions are likely to seek someone to blame—especially if their liability resulted from a home sale that went wrong. Agents who worked hard to serve their clients may find themselves defending against lawsuits years later. Along with the agents, such lawsuits will also name the parties presumed to have deep pockets—their brokers.

And, it cannot be assumed that these lawsuits will be covered by the standard *errors and omissions* policy. Attorneys in such cases often file two sets of claims—one intended to fall under *E and O* protection, and another which does not. This is a common strategy designed to extract the maximum settlement amounts from all parties. In such scenarios, the agent and broker will usually pay—one way or another.

The best protection against these nightmare scenarios is education, and proactive policies backed up by airtight documentation.

Opportunities

Some of the issues presented here may seem to paint a bleak picture. But difficulty creates opportunities for those who are not intimidated by it.

Many agents will view the problems surrounding short sales— and HAFA in particular—and decide they're not worth the trouble. This provides an opening for the agent who takes the time to master this subject. As a HAFA expert, you can increase your revenue opportunities while helping people who truly need it. Short sales will play a major role in the real estate market for the foreseeable future. As a HAFA specialist, you'll be positioned to seize the opportunity.

6

HAFA and the Investor/Servicer

Introduction
You now know how HAFA impacts the homeowner, and you as an agent. But there's another party with a vital interest in the program: the mortgage investor. The investor's intentions are carried out by the loan servicer, so for practical purposes they are a united entity.

You will interact with the servicer from the initial listing agreement through closing. Your success depends on a good relationship, so it's vital that you understand the servicer's perspective—and what's going on behind the scenes.

In this chapter, we examine the relationship between investor and servicer, and the implications of HAFA for both.

6.1 The Investor-Servicer Relationship

As we've discussed, mortgage servicers are bound by *pooling and servicing agreements* with their clients. These contracts describe in detail the actions servicers must take in managing investor assets. When you as an agent or homeowner become exasperated with a servicer's conduct, it is usually futile to complain to the representative on the phone. The servicer is almost certainly complying with the guidelines imposed by the investor.

These requirements will not be disclosed to you. But you will know when you have bumped against them!

Many servicers and investors are required to participate in HAFA, but the *terms* of their participation may vary widely. They must merely submit written statements of their HAFA policies to Treasury, which deliberately grants them wide latitude.

In the case of loans owned by Fannie or Freddie, the agent and homeowner have a glimpse into this normally hidden world. They can scrutinize the pertinent documents and know beforehand exactly what their mortgage investor requires.

6.2 Dealing with the Servicer

When a mortgage file is seriously delinquent, it is handled by the servicer's *loss mitigation* department, which may be called *Home Retention*, or some other innocuous-sounding name. This is the department you will work with in pursuing a HAFA short sale. Major servicers also have sub-departments especially for short sales.

Your initial contact will be with a processor, who is responsible for assembling documents and making sure your package is complete. Do not attempt to negotiate with these people; that is not their role. Be accommodating and help them do their jobs: Assemble a complete, well-organized file, and submit it precisely as they direct you. After that, accommodate any requests for additional documents promptly.

Your file will be scrutinized by underwriters, who will consider all disposition options and indicate which ones best serve the investor's interests. These people play a pivotal role in the success of your transaction, but you will not interact with them directly.

Eventually you will be assigned a negotiator or loss mitigator. This is your point of contact with the servicer, and you should cultivate a cooperative, cordial professional relationship with this person.

Delegated—or not?
In pursuing a short sale, it is important to find out if the servicer has *delegated authority*. If it does, the representative can make decisions on the investor's behalf—without going back to seek approval. This can greatly expedite the progress of a short sale. If not, the process can be severely delayed. And it will do no good to harass the servicer; the investor is not obligated to respond to short sale requests, and the servicer cannot act until it does.

Escalating the File
Asking for an *escalation* can sometimes provoke movement on a short sale request. This brings the file to the attention of a supervisor or team leader, and will often lead to a quicker response.

This tactic must be used sparingly, however. Overused, it can become an annoyance to the service representative whose cooperation you need. And escalation itself can be a source of delay: servicers often allow themselves several days to respond to an escalation request. This can put a hold on other actions that might have happened without it.

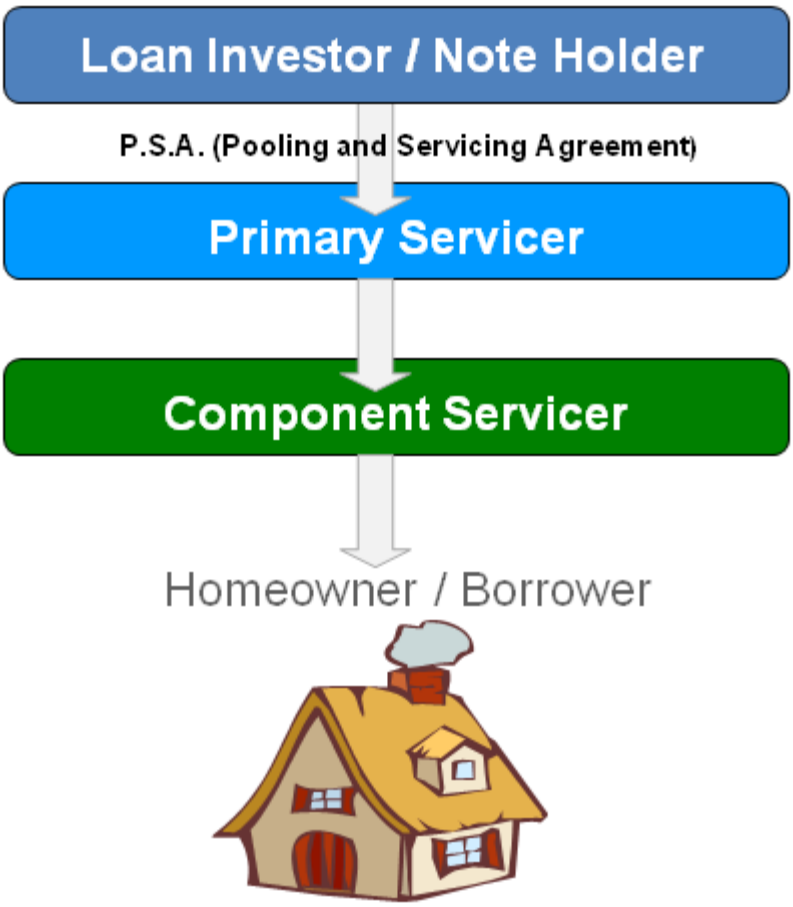
Component Servicers

Another player in the complex mortgage field is the *component mortgage servicer*—a third party that conducts activities on behalf of the primary servicer. These entities typically handle tasks that primary servicers are ill-equipped for, such as:

- Homeowner solicitation and outreach
- Short sale and loan modification processing
- Technical support

Component servicers are an important part of the mortgage servicing industry, and their impact is growing as homeowner outreach assumes a critical role in resolving the mortgage crisis. They represent a fertile opportunity for agents seeking a connection with distressed homeowners.

The precise role of these entities has also been a source of confusion in the industry: Some agents conducting outreach on behalf of component servicers have failed to comply fully with the *Fair Debt Collection Practices Act* (FDCPA). Primary servicers have also been reluctant to rely completely on component servicers for fear of legal liability. These ambiguities have contributed to the backlog of unresolved defaults across the country. That very backlog makes it inevitable that component servicers will eventually be part of the solution: primary servicers simply lack the capacity to handle the volume of defaulted loans they are faced with.



7

Managing the Sale

Introduction
You've learned the elements of HAFA—and may already have encountered someone interested in the program. You're ready to tackle your first HAFA transaction!

But, there are important steps you must take *from the beginning* to ensure your success. We'll outline those steps here, and cover tricky topics such as commissions and pricing. We also provide a timeline, and describe the responsibilities of agent and homeowner in a HAFA sale.

7.1 Listing the Property

When you encounter a viable HAFA prospect, your impulse will be to sign a listing agreement right away. Nothing prevents this, but consider a few things first:

- Are you ready to market the property *immediately*?
- Has the homeowner exhausted all home retention options?
- Will the homeowner need to submit a HAMP application?
- Are you ready to receive—and submit—offers?
- Will your MLS allow you to upload a listing—*before* you're ready to receive offers?
- Have you done your homework regarding title, first mortgage, junior liens, and mortgage insurance?

Difficulty with any of these issues could make it more expedient to wait and lay some groundwork before taking the listing.

7.2 Pricing

Your approach to pricing should be simple: Aim as close as possible to fair market value (FMV). If you have already received an SSA, it will indicate a price the servicer finds acceptable—or the minimum acceptable net proceeds, from which you can determine the appropriate price. This makes the task of setting an *initial* price much easier.

If you are setting a price without servicer guidance, assemble comps of similar age, size and amenities, in the same neighborhood. Adjust the values to account for differences. And let the numbers tell the story. Don't try to overprice—or underprice to attract offers.

Anticipate the BPO
With an SSA, you know beforehand what the servicer considers an appropriate price. Without it, you must estimate based on your own research. Remember, one of the servicer's first actions on receiving an offer will be to order a broker price opinion (BPO) from a third party. The price indicated in this report will largely determine the minimum acceptable net proceeds (MANP), on which all the servicer's subsequent calculations will be based. Set your price as close as possible to what you think this BPO figure will be. Your credibility and the servicer's inclination to cooperate will depend in large part on your diligence and expertise at this stage.

Price Adjustments
If the home does not sell immediately, it will be normal to consider price reductions. According to the original HAFA specifications (SD 09-09R), the MANP specified in the SSA cannot be *increased* during the 120 marketing period. But there's no prohibition against *decreases* in MANP. It may be assumed that the minimum net—and therefore the price—can be adjusted downward if the home does not sell. The only stated requirement is that "Subsequent changes to the minimum net … must be documented." Make any price changes with the written consent of the seller, and the cooperation of the servicer.

7.3 Timeline

The standardized timelines HAFA provides are a welcome change from the uncertainty of the past. Sellers and agents have experienced such long waits that *short sale* has become a term of irony. The deadlines provided in the original Treasury version have been left largely intact in the Fannie and Freddie versions—with some exceptions. These time limits affect sellers as well as servicers, so agents should become thoroughly familiar with them.

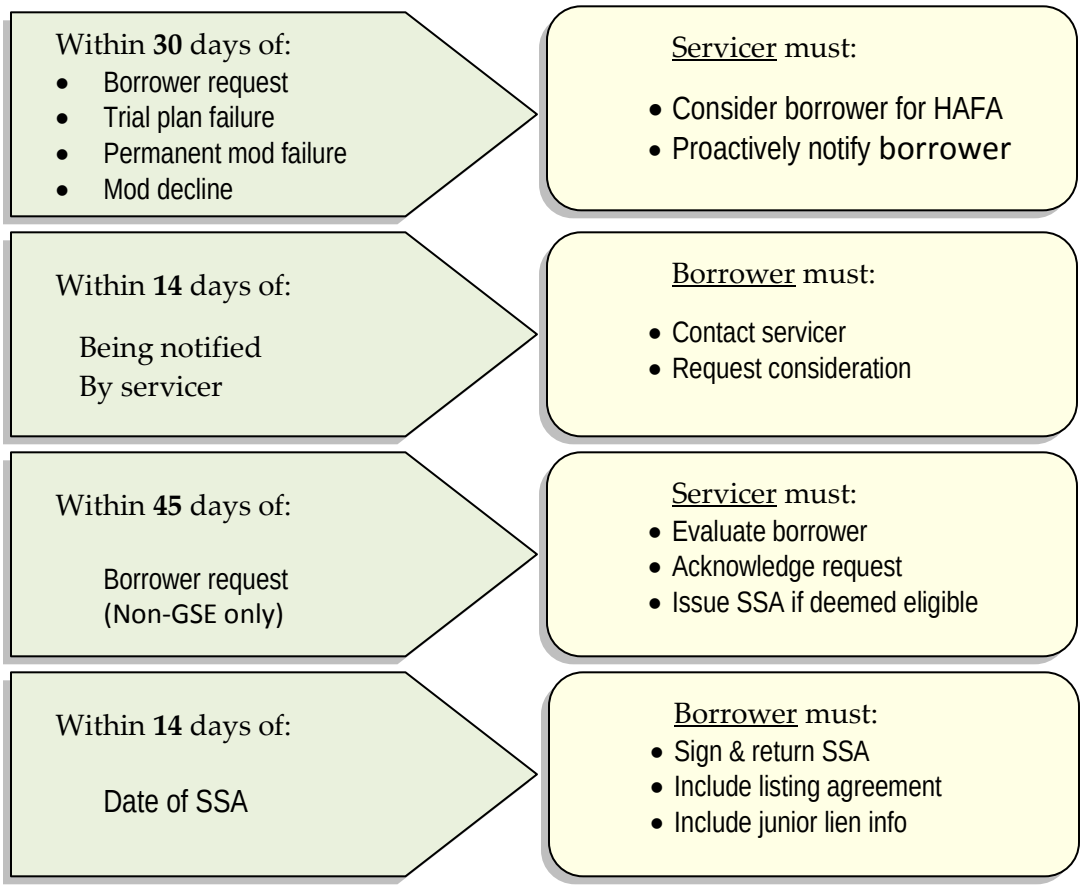
Determination of Eligibility and Notification
Under the Treasury version of HAFA, servicers must consider borrowers for HAFA **within 30 days** after the borrower does at least one of the following:

- Does not qualify for a HAMP trial period plan

- Does not successfully complete a HAMP trial period plan
- Is delinquent on a HAMP modification (misses at least 2 consecutive payments)
- Requests a short sale or deed-in-lieu (Treasury version only)

Freddie Mac alters this provision, requiring the servicer to respond within 14 days after a borrower's eligibility is confirmed. If the borrower does not respond to a solicitation, the servicer has no further obligation to pursue the HAFA option.

HAFA Eligibility Timeline



Evaluation Period

Under the original HAFA terms, servicers were not obligated to *decide* on a borrower's HAFA request within 30 days, only to respond. This was followed by an evaluation phase, which could last for an indeterminate period.

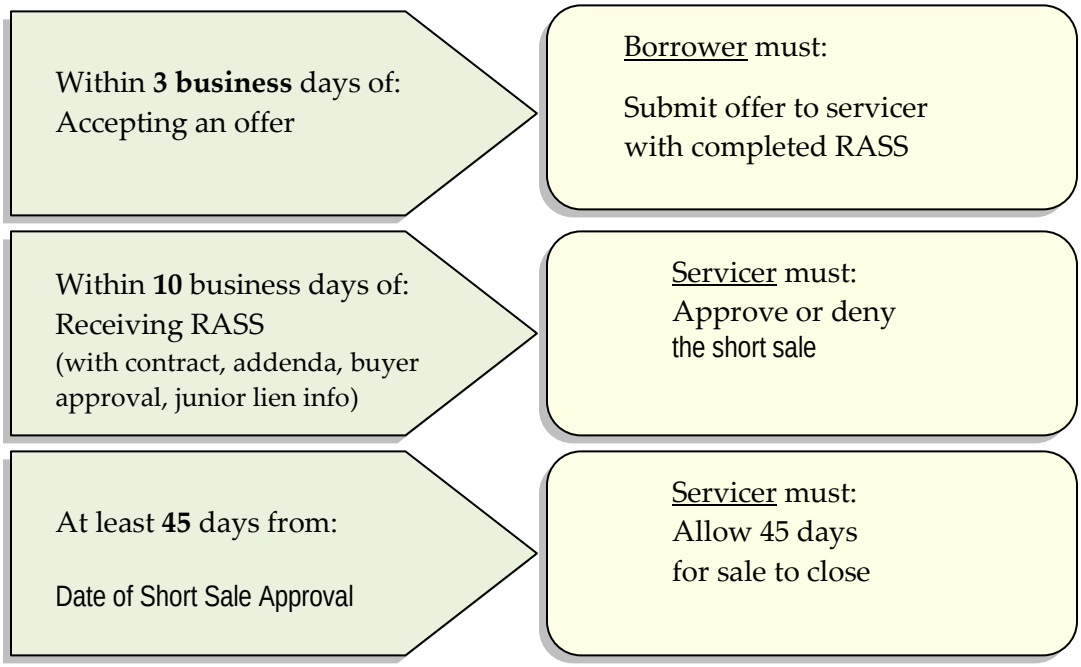
The guidelines included in *Treasury Supplemental Directive 10-18* addressed this flaw by requiring servicers to issue a *Short Sale Agreement* (SSA) within 30 days to any eligible borrower who requested a HAFA sale.

This provision was amended again in *Supplemental Directive 11-02,* which extended the evaluation period to 45 days, and required servicers only to provide notice of status by that time, with periodic updates every 15 days thereafter. This applies to servicers of non-GSE loans. Loans owned by Fannie Mae and Freddie Mac have no such restrictions.

If the borrower is declined, the servicer must offer an explanation and provide a toll-free number for further help.

Short Sale Agreement
A borrower who is approved for HAFA will receive a S*hort Sale Agreement* (SSA) from the servicer. This document sets in motion the strict timeframes that characterize HAFA. The borrower has *14 calendar days* from the date of the SSA to sign and return it to the servicer. The SSA allows an initial period of *120 days* to market the property, which can be extended for a total of 12 months at the borrower's request.

SSA and RASS Timeline



Purchase Offer
Within 3 business days of accepting a purchase offer, the borrower (or agent) must submit a completed *Request for Approval of Short Sale* (RASS) to the servicer, including:

- A copy of the sale contract and all addenda
- Buyer documentation of funds or pre-approval/commitment letter from a lender
- All information on the status of subordinate liens and any negotiations regarding them

Servicer Approval
Within 10 business days after the servicer receives the RASS and all required attachments, the servicer must approve or deny the request and advise the borrower (with an explanation if the request is denied).

Closing and Lien Release
The servicer may require the closing to take place within a reasonable period after it approves the RASS, but *not sooner than 45 days from the date of the sales contract* unless the borrower agrees. Note that this 45-day period does not begin when the servicer approves the sale! In practice, the time allowed for completion could be significantly shorter: The homeowner or agent has three calendar days to submit the offer after accepting it. The servicer then has another ten business days to respond—which means two weeks. That could shorten the allowed time to closing to *28 days*! A wise agent will pay close attention to this timeline.

The servicer must follow local or state laws to time the release of its first mortgage lien. If local or state law does not require release within a specified time, the servicer must release its first mortgage lien within 30 days. Investors must waive rights to seek deficiency judgments and may not require a promissory note for any deficiency. These rules also apply to participating junior lien holders.

8

Junior Liens and Other Hurdles

Introduction
One of the unique features of HAFA is its treatment of subordinate liens. The program allows for a limited payoff of these liens—in exchange for total release of borrower liability. This poses advantages as well as problems for the agent seeking to negotiate a deal.

This topic is so intricate—and so important—that it calls for its own chapter. Junior liens can scuttle a transaction, often at the very end. They must be addressed quickly, aggressively, and skillfully.

We also deal here with other topics that often crop up in HAFA transactions: mortgage insurance and homeowners' association dues.

8.1 Second Mortgages

HAFA allows for payments to junior lien holders up to a maximum *aggregate* of $6,000. That means only $6,000 is available to satisfy *all* junior lien holders. Borrowers must also be released from all liability regarding these liens.

This is a positive development in that it provides a standardized formula for resolving mortgage issues, backed by the considerable clout of the federal government. It implicitly acknowledges a harsh fact: that many second mortgages have little equity value in today's market. HAFA encourages second lien holders to accept this bitter medicine in the interest of resolving the standoff of recent years, creating a clean break for borrowers and creditors alike.

These rigid provisions may seem arbitrary, but could also be seen as necessary for the predictable environment HAFA seeks to create. If lienholders knew the requirements were flexible they would be tempted to push relentlessly for concessions—creating more delays and uncertainty.

Challenges

However, HAFA's junior lien provision does create challenges. Few creditors will be eager to forfeit their money—and the right to recover it, forever. Many will be more inclined to take their chances with a foreclosure, or a non-HAFA short sale that has less stringent junior-lien requirements. They can also keep trying to collect as long as the first mortgage remains in default. These factors can make it difficult to obtain cooperation in a HAFA short sale.

Another challenge is HAFA's prohibition on other contributions beyond those provided for in the $6,000 limit. In conventional short sales, junior lien holders can be persuaded to cooperate by securing cash contributions from first mortgage holders, sellers, buyers, or even agents. They can also convert liens to promissory notes, obligating borrowers to pay in the future. None of these tactics is available with HAFA.

Off the HUD

HAFA guidelines further require that all exchanges pertinent to the transaction be included on the HUD-1; in other words, no side deals are permitted. This excludes a questionable practice that has become common in some sectors of the real estate market: securing a deal with unacknowledged transactions. A second lien holder may agree to accept a low payoff—supplemented by cash contributions from the seller, buyer or agents that are "off the HUD". This allows a deal to proceed based on one set of terms acceptable to the primary stakeholders – typically the first mortgage holder—while the real terms are negotiated with the other parties behind the scenes. HAFA forbids this practice.

Charged-off Debt

Some types of loans reach may be *charged off* when they reach a certain stage of delinquency—commonly 180 days. This is true of unsecured debts such as credit cards, but also home equity lines of credit (HELOC's). These delinquent debts are deemed uncollectible, and can become tax-deductible expenses. But the debtor's obligation to pay remains. And the debts are sent to a collection agency or in-house collection department, where practices can be very aggressive and ruthless.

Such debts are often purchased by collection agencies at pennies on the dollar. But if an agency has just paid more for the debt than it would receive with a HAFA sale, it has little incentive to cooperate. Needless to say, negotiating a HAFA sale when a loan has been charged-off can be challenging.

To avoid this, find out the delinquency status of all loans as soon as possible—especially HELOC's. Advise the borrower to take all possible action to avoid having these loans charged off. Most lenders are prepared to negotiate payment plans in these cases.

8.2 Releasing Liens—and Liability

HAFA requires junior lien holders to release borrowers from all liability on their debt. This means the creditors forfeit the right to pursue unpaid amounts through deficiency judgments. This is a high hurdle, which many HAFA prospects will be unable to clear.

If these lienholders believe they can recoup even part of their unpaid balances without agreeing to a HAFA sale, they will have little reason to cooperate. That decision will depend in large part on the nature of the debt.

Recourse or Non-recourse?
Debts can be *recourse* or *non-recourse*. With a non-recourse debt, the creditor can seize the collateral—in this case, the house—to satisfy the debt when the borrower defaults, but may not pursue further action. Holders of recourse debts can pursue debtors for unpaid balances even after the collateral has been liquidated.

These differences are established by state statutes. Some states are known as *non-recourse states*, but this may only be true regarding certain types of loans (e.g. purchase-money first mortgages on owner-occupied property).

The homeowner or agent must identify the type of debt a home is encumbered with as soon as possible. Most importantly, never assume that because the property is in a non-recourse state, a particular loan is non-recourse. The provisions of state statutes on this subject can be very complex and must be studied in reference to each loan.

The nature of the debt will greatly affect the lienholder's response to a HAFA proposal. With a recourse loan, the lienholder is being offered a reduced payoff now, and giving up the chance to collect on the debt later. Even if this collection were to take years, it might seem more attractive than the six percent of unpaid balance that HAFA offers.

A non-recourse debt, on the other hand, offers few options for the lienholder. If foreclosure were to occur, given today's depressed home values, the junior lien holder might receive nothing. HAFA offers a very reasonable alternative in these cases.

8.3 Other Liens

Beyond the second mortgages or home equity lines of credit (HELOC) that many homeowners take on, homes can be encumbered by a wide assortment of other liens.

Other types of liens:

- Mechanic's liens
- Child support liens
- Tax liens
- Judgment liens

The presence of any of these on a property can pose serious problems for a HAFA transaction. Most of these lienholders will have little incentive to agree to the terms HAFA requires. They may consider releasing the lien from a property, but resist releasing the debtor from liability. This is understandable: these are often general liens attached to the *person*, which extend to all assets including the person's home. The liens have no intrinsic relationship to the property, and the lienholders have no reason to relinquish their recourse because the debtor couldn't make mortgage payments. Furthermore, the lienholders know they can pursue collections whether the property is sold or not.

In these cases, the agent might need to pursue non-HAFA short sale options, which offer the opportunity for creative negotiation and hold more promise for success.

8.4 HOA's

Homeowner's Associations (HOA's) can pose hidden dangers for short sales, especially if a homeowner has become delinquent on HOA dues. When people default on their first mortgages, other obligations often suffer too. But with HOA dues, this can have far-reaching consequences that most homeowners never imagine.

Homeowner's associations often file liens when dues reach a certain stage of delinquency. If a homeowner in this situation decides to pursue a short sale under HAFA, the HOA becomes one of the junior lien holders subject to the six percent rule. This limit on payouts is not likely to be attractive to the HOA, so this alone can scuttle a HAFA transaction.

Ironically, if the HOA does *not* file a lien, its dues can sometimes be included in the "reasonable and customary closing costs" allowed in HAFA. (Fannie's version specifically allows this.)

Super Liens
Some states have *super lien* statutes which give HOA liens precedence over all others—including first mortgages. In these cases, delinquent HOA dues must be paid from any sale proceeds before the other lienholders. This allows HOA's to be very bold in pursuing their delinquent members, in some cases even *initiating* foreclosure. Needless to say, these situations complicate the prospects of completing a HAFA short sale.

Proactive Steps
As a proactive measure with prospective clients who are HOA members, ask them early on about the status of their HOA dues. Then, ask for a copy of the latest HOA statement. This should confirm what they have said, but will at least provide a realistic view of their HOA status. When homeowners are delinquent—urge them to do whatever they can to bring their HOA dues current. And with all homeowners, stress the importance of *remaining* current.

If a homeowner is delinquent but no lien has been filed, *contact the HOA immediately* to show them the wisdom of holding off. Then work closely with them to achieve a resolution.

8.5 Mortgage Insurance

Mortgage insurance is another issue which can complicate HAFA transactions. The insurance carriers must sign off on any short sale transaction, and their willingness to do this depends on their potential exposure. Insurance policies may cover only a portion of the loan balance, which limits any potential payout. It also means that any claim is likely to be a full claim. The insurance carrier then has little incentive to agree to a short sale, since its exposure will not increase—even in a foreclosure. By refusing to sign off on a sale, it can potentially delay paying a claim for a long time.

Pool Insurance
This problem is multiplied in the case of *pool insurance*, which exists on many second mortgages (especially subprime fixed-rate loans with high loan-to-value). These policies are issued on *groups of loans*, so obtaining approval on a single transaction can be difficult. Often, even the loan servicer is not aware such a policy exists—until a transaction is ready to close. It will fall to you, as the agent for the homeowner, to investigate these matters early in the process.

Solutions
Insurers do understand the distressed state of the housing market, and recognize that they will inevitably have to face some losses, along with other affected parties. To facilitate their cooperation, individual mortgage servicers, along with Fannie and Freddie, have sought *delegated authority* from the major insurance carriers, which would allow them to approve short sales on the insurers' behalf. This could greatly expedite the short sale process.

8.6 Strategies

It should be clear that early, proactive steps are essential to succeeding with HAFA short sales. In light of the issues raised in this chapter, several steps are advisable:

1. Ask the homeowner about the existence and delinquency status of any junior liens
2. Find out if the loans involved are recourse or non-recourse

3. If any junior liens—especially HELOC's—are seriously delinquent, advise the borrower to make payments or other arrangement to avoid charge-offs
4. Ask about the existence and status of HOA dues
5. Ask for the most recent HOA statement
6. Advise the homeowner to stay current on HOA dues while pursuing a HAFA sale
7. Ask the servicers on all loans if a mortgage or pool insurance policy exists
8. If the homeowner seems like a viable HAFA candidate, order a title report
9. Develop a plan for dealing with junior liens
10. Contact all lien holders immediately to determine their participation in HAFA, and readiness to negotiate
11. Manage the client's expectations—especially when junior liens are involved
12. Stay engaged at every stage to ensure the delivery of clear and marketable title

9 Closing

Introduction
Problems often show up just when a transaction is about to close. You can anticipate some of these problems and deal proactively—if you know what they are. In this chapter we address some common issues surrounding the final HUD-1, its treatment of closing costs, and how to handle the unexpected.

9.1 Closing Costs

The amount and distribution of acceptable closing costs are indicated in the Short Sale Agreement (SSA) issued by the servicer. This amount may be expressed as a dollar amount, or a percentage of the sale price. These allowable costs are a function of the servicer's *minimum acceptable net proceeds* (MANP). If problems arise regarding closing costs, they probably began when that number was determined.

Three Approaches
Each version of HAFA handles closing costs in a slightly different way. Here is a breakdown of specifications for Treasury, Fannie and Freddie:

Closing Costs under Treasury:

- Based on minimum acceptable net proceeds (MANP)
- Allowable costs specified in Paragraph 5.a of the SSA
- May be limited by:
  1. Specific dollar amount
  2. A percentage of the list price
  3. A list of expense items provided by servicer
- Servicer must consider customary practices in the area where the property is located.

- Must be consistent with investor policy
- Must be applied similarly to all the investor's loans
- Homeowner must itemize proposed closing costs on page 2 of the RASS

Closing Costs under Fannie Mae:
Allowed transaction costs must be specified in the SSA. They should account for local laws and customs, and be "reasonable and customary" for the market area.

They may include:

- Title search and escrow expenses usually paid by seller
- Reasonable settlement escrow/attorney's fees
- Transfer taxes and recording fees usually paid by the seller
- Termite inspection and treatment as required by law or custom
- Pro-rated real property taxes
- Real estate commissions up to six percent
- Past due HOA dues (Mentioned in Fannie's original HAFA document, but *not* in SSA)

Regarding HOA dues, it is wise to notify the servicer early on about this expense, and confirm that it will be allowed as a necessary transaction cost. If this is going to pose a problem, you don't want to find out late in the transaction. Fannie Mae's closing cost guidelines are itemized on page 3, paragraph 7 of the Fannie Mae SSA form. As in the Treasury version, homeowners must complete the Terms of Sale section in the RASS including an estimate of proposed transaction costs.

Closing Costs Under Freddie Mac
Freddie will pay closing costs that are "customarily paid by the seller" in the area the where the property is located—up to three percent of final sale price. Commission is considered separately, and Freddie will pay up to six percent of sale price.

Closing Costs by Investor

Treasury	Fannie Mae	Freddie Mac
As customary for area	As customary for area	As customary for area
Based on MANP	Specified in SSA	Based on sale price
Percentage, amount, or itemized	Itemized	Up to 3 percent

9.2 Handling the Unexpected

Short sales are extraordinarily complex transactions because of all the stakeholders which must be satisfied. HAFA sales are even more so, because the program overlays strict requirements on an already-difficult process.

Uncooperative Lienholders
One of the potential dangers is the sudden withdrawal of a junior lien holder. These parties must agree to accept a small portion of their unpaid balance and release the borrower from all liability. This means they forfeit all possibility of collecting further on the debt. Many of these lienholders may ultimately decide this is not in their interests, and withdraw. Such a development can be devastating when it occurs near the close of a transaction. When a property is encumbered with multiple liens, the likelihood of this scenario increases.

What then?
When any participating parties refuse to abide by HAFA's specific requirements, the transaction is excluded as a HAFA sale—but not necessarily dead altogether. The agent and homeowner must regroup, approach the stakeholders again and negotiate new terms.

One challenge with this scenario is that the government incentives no longer apply. This reduces the motivation for the investor, the servicer, the homeowner, and even the agent—since the commission is no longer protected.

Moreover, HAFA makes no provision for this possibility. It instructs settlement agents to verify that all junior lien holders are in compliance before disbursing funds—but provides no direction on how to proceed if they aren't. In these cases, it may be necessary to cancel the transaction and open a new one specifying new terms; at the very least it will be necessary to redraw the HUD-1.

Plan B
Realizing that many transactions will begin as HAFA deals, and ultimately shift to some other course, a wise agent will have backup plans in place. In pursuing your HAFA transaction, you will have cultivated relationships with the various players, becoming familiar with their postures and priorities. You can now use those relationships to forge a new agreement.

Toward Success
As you close your first HAFA transaction, you will gain the confidence to take on more—and there will be more. Stories of successful HAFA sales are already plentiful. The program is working, if not yet on the huge scale envisioned by its originators. The expertise you have acquired in this course will be a boon to your business, and a comfort to those who need it.

10

Dissecting the Documents

Introduction
The essence of the HAFA program lies in its documents. To master its many facets, you should study the RMA, SSA, RASS, Alt RASS, and other forms until you are completely familiar with them.

In this chapter, we help you in that process by examining the documents in detail, pointing out the important features that might escape casual notice.

The original versions of these forms are issued by the Treasury Department's *Making Home Affordable* program, and are available at www.hmpadmin.com . These are intended to be used as templates for servicers, which may brand them with company logos and amend them "in accordance with investor requirements, applicable laws or local real estate practice." Otherwise, the forms must remain "substantially similar" to the original versions.

You should seek the pertinent forms as provided by the specific servicer you are working with, either by accessing the servicer's website or by requesting them.

10.1 Request for Modification and Affidavit (RMA)

HAFA uses the same form for borrower information as HAMP: the *Request for Modification and Affidavit* (RMA). This can be confusing, since the HAFA applicant is not seeking a modification. But both programs require the same information, and use much of the same process to determine eligibility by the same process. So, using the same form is convenient for the servicer. Furthermore, servicers may encourage HAFA applicants to pursue the modification option first, so the RMA facilitates that purpose as well.

Certain mortgage investors may *require* borrowers to apply for modification before considering a short sale, so agents should be thoroughly familiar with the RMA, and encourage homeowners to complete this form early in the process.

The borrower should fill out the RMA with complete information regarding household income, expenses, assets and liabilities, all of which will be used to determine the borrower's eligibility for HAMP or HAFA. The servicer can be expected to verify this information, so it is important to be thorough and accurate. Providing misleading information can jeopardize the borrower's eligibility.

Some things to remember when completing the RMA:

- Income from *all* household members should be included.
- Income is *gross income*—before any payroll deductions.
- Expenses should be realistic—and backed up with documentation.
- Self-employed borrowers must submit a current *profit and loss statement.*
- Have insurance and property tax information ready.
- Investigate additional liens and have information ready.
- If homeowner is in active bankruptcy, have information ready.

Income from alimony, child support or separation maintenance *may* be included, but is not required. The hardship section provides several checkboxes to describe the reasons for the homeowner's default. Check the one that most accurately describes the situation, then consider attaching a detailed hardship letter to amplify this. Indicate in the *Explanation* field that a letter is attached.

RMA Page 1

Page one solicits basic information regarding the property and borrower, as well as the hardship that led to default.

Making Home Affordable Program
Request For Modification and Affidavit (RMA)

MAKING HOME AFFORDABLE.GOV

REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 1 | COMPLETE ALL THREE PAGES OF THIS FORM

Loan I.D. Number_____ Servicer _____

BORROWER	CO-BORROWER
Borrower's name	Co-borrower's name
Social Security number / Date of birth	Social Security number / Date of birth
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

The property is: ☐ Owner Occupied ☐ Renter Occupied

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: unemployment, underemployment, 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.

☐ Other:

Explanation (continue on back of page 3 if necessary): _____

Be careful to note accurately homeowner's intentions regarding property.

Home must be owner's principal residence

Should be owner-occupied

Indicate inclusion of additional hardship letter here.

RMA Page 2

On page two, the borrower provides detailed information regarding income and expenses. The bottom section solicits demographic information for government monitoring purposes, and is optional.

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 (e.g. pension funds, annuities, IRAs, Keogh plans, etc.)	
Total (Gross Income)	$	*Total Debt/Expenses*	$	*Total Assets*	$

INCOME MUST BE DOCUMENTED

[1] Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower, please specify using the back of this form if necessary.

[2] You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER	☐ I do not wish to furnish this information	CO-BORROWER	☐ I do not wish to furnish this information
Ethnicity:	☐ Hispanic or Latino ☐ Not Hispanic or Latino	*Ethnicity:*	☐ Hispanic or Latino ☐ Not Hispanic or Latino
Race:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White	*Race:*	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White
Sex:	☐ Female ☐ Male	*Sex:*	☐ Female ☐ Male

To be completed by interviewer

This request was taken by:	*Interviewer's Name (print or type) & ID Number*	*Name/Address of Interviewer's Employer*
☐ Face-to-face interview ☐ Mail ☐ Telephone ☐ Internet	*Interviewer's Signature* *Date*	
	Interviewer's Phone Number (include area code)	

page 2 of 3

Be prepared to identify non-borrowers whose income or expenses are included.

Alimony and child support need not be included.

RMA Page 3

The last page contains a list of acknowledgements which should be read carefully. If the borrowers can truthfully affirm all the points enumerated here, they should sign and date the RMA at the places indicated.

REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 3 | COMPLETE ALL THREE PAGES OF THIS FORM

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 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: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
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 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.

▶ _____ _____

Borrower Signature | Date

▶ _____ _____

Co-Borrower Signature | Date

HOMEOWNER'S HOTLINE

If you have questions about this document or the modification process, please call your servicer.

If you have questions about the program that your servicer cannot answer or need further counseling, you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.

888-995-HOPE™
Homeowner's HOPE™ Hotline

NOTICE TO BORROWERS

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

THE DEPARTMENT OF THE TREASURY 1789

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10.2 Short Sale Agreement (SSA)

In pursuing a HAFA short sale through the normal procedure, the first substantive document a homeowner receives from the servicer is the *Short Sale Agreement* (SSA). This describes the short sale process for the homeowner, and states the specific terms of approval. When it is signed by the homeowner and the real estate agent ("Broker"), it constitutes a legal agreement.

Every SSA must include:

- A fixed termination date at least 120 calendar days from the effective date of the SSA
- A requirement that the property be listed with a licensed real estate professional
- Either a list price approved by the servicer or acceptable sale proceeds
- Acceptable closing costs or other expenses
- Amount of real estate commission, not to exceed 6% of the contract sales price
- Notification if the servicer retained a contractor to assist the listing broker with the transaction, with payment amount if paid from sale proceeds
- Statement by borrower authorizing servicer to communicate borrower's personal financial information to other parties as necessary
- Cancellation and contingency clauses that must be included in listing and sale agreements stating that sale is subject to approval by the servicer and/or third parties
- Notice that the sale must represent an arm's length transaction and that the purchaser may not sell property within 90 calendar days of closing, including language regarding the arm's length transaction that must be included in the sales contract
- An agreement that upon successful closing of a short sale acceptable to the servicer, the borrower will be released from all liability for repayment of the first mortgage debt
- Agreement that upon successful closing of a short sale acceptable to the servicer the borrower will be entitled to a relocation incentive of $3,000, which will be deducted from the gross sale proceeds at closing
- Notice that the servicer will allow a portion of gross sale proceeds to be paid to subordinate lien holders in exchange for release and full satisfaction of their liens
- Notice that a short sale may have income tax consequences and/or a derogatory credit impact, and a recommendation that the borrower seek professional advice
- Amount of monthly mortgage payment, if any, that borrower will be required to pay during the term of the SSA, not to exceed 31 percent of gross monthly income
- Agreement not to complete foreclosure sale as long as borrower upholds SSA terms
- Terms under which the SSA can be terminated

The most important variables that homeowners and agents should note are:

1. Acceptable list price or net proceeds
2. Termination date
3. Amount of partial mortgage payment (if any)

SSA Page 1

The first page is a cover letter, stating the contact information for servicer and borrower, and explaining the short sale agreement in simple terms.

HELP FOR AMERICA'S HOMEOWNERS.

MAKING HOME AFFORDABLE

[Name of Servicer]
[Address of Servicer]

[Loan #]
[Servicer FAX]
[Servicer Email]

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

[Borrower Phone]
[Borrower Email]

[Date]

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.

Note the $3,000 allowance to the client.

If sale proceeds exceed loan balance and expenses, $3,000 is unavailable.

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]

Supplemental Directive 09-09 Revised Page A-1

SSA Page 2

Page 2 instructs the borrower on how to complete the SSA, and states the basic terms, including termination date and required partial mortgage payments (if any).

Make sure to have *all* owners sign the SSA.

You, the agent, must sign the SSA.

Discuss pages 2-4 with the homeowner!

Obtain a signed listing agreement before receiving the SSA.

Investigate other liens early on, and have documents ready.

Note time deadline, 14 days *from date of SSA.*

Note termination date.

Note partial mortgage payment (if any).

Note postponement of foreclosure sale, if borrower complies.

Important Program Information

MAKING HOME AFFORDABLE

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*].

Short Sale Program—Your Responsibilities

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:

❶ Keep your house and your property in good condition and repair and cooperate with your broker to show it to potential buyers.

❷ [*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.

❸ 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.

❹ We may allow up to 6% of the unpaid principal balance of each loan (not to exceed an aggregate of $6,000 for all the loans in total) to be paid from the sale proceeds to help get a lien release. 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.

❺ 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.

Supplemental Directive 09-09 Revised Page A-2

SSA Page 3

This page itemizes several important points: the "arm's-length" requirement, *anti-flipping* provision, third-party authorization, tax consequences of forgiven debt, and credit reporting protocol. The second section describes the deed-in-lieu option.

Important Program Information MAKING HOME AFFORDABLE

Short Sale Program—Additional Information

- 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.
- We will need to talk to your broker and others involved in the sale. By signing this Agreement, you are authorizing us to communicate and share personal financial information about your mortgage, credit history, subordinate liens, and plans for relocation with your broker and other third parties that could be involved in the transaction including employees of the United States Treasury and its financial agents, Fannie Mae and Freddie Mac.
- 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

[*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*]. 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 up to six percent (6%) of the unpaid principal balance of each subordinate lien, in order of priority, not to exceed $6,000 in aggregate for all subordinate liens, to be deducted from the sale proceeds to pay 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.

By signing this letter, you are agreeing not only to a short sale but also to a deed-in-lieu of foreclosure if a short sale is not successful. If you have any questions about the deed-in-lieu of foreclosure, please call us before signing and returning this letter.]

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Note: $3,000 seller allowance may be reported as income.

Note date to vacate in case of deed in lieu.

Borrower *agrees to accept* deed in lieu if short sale fails.

Seller must verify that junior liens release liability.

SSA Page 4

Page four describes the timeline after acceptance of an offer: three days to send the executed offer with completed *Request for Approval of Short Sale* (RASS) to the servicer, which then has ten days to render a decision.

Be sure to have buyer proof of funds ready.

Note, servicer *will approve* sale if within agreed terms

Note *full satisfaction* language.

Important Program Information

MAKING HOME AFFORDABLE

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.

We hope you decide to take advantage of this short sale option. If you or your broker have any questions about this Agreement please call us at [insert servicer phone number].

If you would like to speak with a counselor about this program, call the Homeowner's 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.

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SSA Page 5

Page five itemizes Terms and Conditions, beginning with list price, or minimum acceptable net proceeds; required language for listing agreement; seller duty to maintain the property, and acceptable expenses.

Servicer may specify list price *or* MANP.

Program Terms And Conditions MAKING HOME AFFORDABLE

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.
2. **Listing Agreement.** The listing agreement must include the following clauses:
   a. **Cancellation Clause.** "Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the broker, and without payment of a commission or any other consideration, if the property is conveyed to the mortgage insurer or the mortgage holder."
   b. **Listing Agreement Contingency Clause**. "Sale of the property is contingent on written agreement to all sale terms by the mortgage holder and the mortgage insurer (if applicable)."
3. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses during the listing period including utilities, assessments, association dues and costs for interior and exterior upkeep required to show the property to its best advantage. Additionally, until ownership is transferred, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses as provided in the mortgage documents, we may require that they be applied to reduce the mortgage debt.
4. [*Insert only if applicable:*] **Partial Mortgage Payments.** Beginning on _____ 1, 20__, you will be required to make partial mortgage payments of $_____ by the first day of each month during the term of the Agreement and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the house is sold or this Agreement expires. The partial mortgage payments do not constitute a modification of your mortgage.
5. **Allowable Costs that May be Deducted from Gross Sale Proceeds**
   a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. [*Choose one and delete unnecessary text.*] [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed $_____.] *OR* [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed ____% of the list price.] *OR* [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney's fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, real estate commissions of ____ percent of the contract sales price [add other closing costs that may be included].]
   b. **Subordinate Liens.** We will allow up to six percent (6%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of $6,000, to be deducted from the gross sale proceeds to pay 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.
   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. [Optional text:] 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

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Be sure to include this language in listing agreement.

Owner must maintain property, and stay current on HOA dues.

Servicer may deny damage repairs, and use funds to pay down mortgage.

Closing costs must be "reasonable and customary."

Seller must verify release of liability on junior liens!

Outside vendor fees will not be paid by seller or deducted from commission.

Note: Commission up to 6% allowed.

SSA Page 6

Page six contains more Terms and Conditions, including the three-day submission deadline, *arm's-length* and *no-flip* language that must be in the sales contract, closing deadline, agreement to suspend foreclosure sale, *satisfaction* and *release of liability* language, mortgage insurance proviso, grounds for termination, and possibility of foreclosure if short sale fails.

Note documents which must be sent *within three days*.

Note closing deadline.

Full release of borrower liability

Note termination date, and other grounds for termination.

Only one relocation assistance payment per household!

Be sure to include this language in sales contract.

Suspends foreclosure if sale period is extended.

Must have approval of mortgage insurer!

Foreclosure still possible if sale fails

Program Terms And Conditions MAKING HOME AFFORDABLE

mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.

6. **Sales Contracts.** Within three business days of a bona-fide purchase offer, you must submit a Request for Approval of a Short Sale, which is attached as Exhibit A1, along with a copy of a fully executed Sales Contract, all addenda and Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from a lender.
7. **Parties to the Sale**. The Sales Contract must contain the following clauses: "Seller and Buyer each represent that the sale is an "arm's length" transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise." "The Buyer agrees not to sell the property within 90 days of closing of this sale."
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.
11. [*Insert only if applicable.*] **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the sale are subject to the written approval of the mortgage insurer or guarantor.
12. **Termination of this Agreement.** Unless otherwise agreed by the parties, this Agreement will terminate on [*insert date*]. We may also terminate this Agreement at any time if:
    a. Your financial situation improves significantly, you qualify for loan modification, you bring the account current or you pay off the mortgage in full.
    b. You or your broker fails to act in good faith in marketing and /or closing on the sale of the property, or otherwise fails to abide by the terms of this Agreement.
    c. A significant change occurs to the property condition or value.
    d. There is evidence of fraud or misrepresentation.
    e. You file for bankruptcy and the Bankruptcy Court declines to approve the Agreement.
    f. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
    g. [*Insert only if applicable:*] You do not make the payments required under this Agreement.
13. **Settlement of a Debt**. The proposed transaction represents our attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this Agreement even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, we may exercise our remedies under the mortgage, including foreclosure.

Signature of Servicer Representative | Title

Printed Name of Servicer Representative | Date

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SSA Page 7

The last page is where *all* borrowers sign the SSA. It also includes an acknowledgement section which the listing agent (Broker) must sign.

Make sure *all* borrowers sign.

Be sure to include completed RASS.

SSA provisions supersede listing agreement.

Listing agent signs.

Program Agreement MAKING HOME AFFORDABLE

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	

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:

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

If you would like to speak with a counselor about this program, call the Homeowner's 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.

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that:" Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

10.3 Request for Approval of Short Sale (RASS)

When the mortgage servicer sends the borrower a Short Sale Agreement (SSA), it will also send a Request for Approval of Short Sale (RASS). The borrower holds this form until an offer is accepted, then fills it out and sends it to the servicer with the executed offer and all associated documents.

The RASS reiterates the *arm's-length* provision of the SSA, and also states some more specific requirements:

- The seller must have no "agreements or understandings" with buyer to remain in the property as a tenant, or obtain title or ownership.
- Neither seller or buyer may receive funds or commissions from the sale
- There must be no agreements or offers relating to the property that have not been disclosed to the servicer.

The common thrust of all these provisions is to protect the servicer and investor from fraud. Short sales are particularly vulnerable to manipulation by unscrupulous people; these elements of the RASS are designed to address some of the most common deceptions. By signing the RASS, the seller certifies "under penalty of perjury" that there are no such undisclosed arrangements.

Pages three and four are *not* filled out by the seller; these are used by the servicer after receiving the completed RASS. If the sale is approved, the servicer will send page three of the RASS back to the borrower, filled out with the pertinent information. If the sale is disapproved, the servicer will return page four to the borrower, indicating the reasons for disapproval. A wise agent will study this page to make sure and avoid potential causes for disapproval.

The inclusion of these pages in the RASS package can be a source of confusion; homeowners may wonder why the servicer is sending them forms that they will send back untouched, only to have the servicer fill them out and send them again. But their inclusion in the package does make it convenient for the servicer to quickly assess and respond to each RASS.

Freddie Mac avoids this confusion, dividing the documentation into the basic RASS, and separate forms for approval and disapproval.

RASS Page 1

This initial cover letter immediately addresses the issues of concern to the servicer: the integrity and transparency of the transaction.

Confirm servicer contact information.

Seller may not remain as tenant or buy back property.

No undisclosed agreements or offers

Restatement of *arms-length* requirement

Neither buyer nor seller may receive commissions or funds .

HELP FOR AMERICA'S HOMEOWNERS.

MAKING HOME AFFORDABLE

[Name of Servicer]
[Address of Servicer]

[Loan #]
[Servicer FAX]
[Servicer Email]

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

[Borrower Phone]
[Borrower Email]

[Date]

RE: Request for Approval of Short Sale Pursuant to Agreement Dated [Date of SSA]

This is a Request for Approval of the Short Sale Pursuant to Agreement Dated [Date of SSA] between the above referenced Servicer ("Servicer") and the borrower and co-borrower ("Borrower" or "you"). Under penalty of perjury you certify that:

1) the sale of the property is an "arm's length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
2) there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
3) neither you nor the Buyer will receive any funds or commissions from the sale of the property; and
4) there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

Please complete, sign and return the Terms of Sale on the following page.

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RASS Page 2

On page two, the homeowner or agent fills in specific Terms and Conditions of the sale—items which would normally appear on a HUD-1. The only pre-determined amount is the $3,000 seller relocation assistance payment. The settlement agent's contact information must also be provided here, along with borrowers' signatures.

Program Terms And Conditions

MAKING HOME AFFORDABLE

Make sure expenses are in accordance with SSA.

include complete sales contract and proof of buyer funds.

Be sure to have *all* borrowers sign.

Provide complete contact information for settlement officer.

Information provided here may be reported to government agencies.

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.]

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that:" Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

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RASS Page 3

Page three is a statement of approval of the short sale. If the servicer verifies that the offer meets its prerequisites, its representative signs this page and returns it to the homeowner.

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*]

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

Signature of Servicer Representative | Title

Printed Name of Servicer Representative | Date

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Must get written servicer approval for any changes to terms

Must provide HUD-1 to servicer at least one day before closing.

Closing agent responsible for obtaining written release from junior lien holders before releasing funds

Short sale reported to credit bureaus as "settled for less than full payment"

RASS Page 4

This page is only used if the short sale is disapproved. It serves as a checklist, allowing the servicer's representative to quickly dispose of a RASS if required conditions are not met. In this case, the representative will fill out page four, itemizing the reasons for disapproval, and return it to the homeowner.

Incomplete documents can lead to disapproval. Include completed RASS.

Stay compliant with price and expense requirements in SSA.

Avoid rejection by confirming approval from mortgage insurer early in process.

Servicer Use Only

MAKING HOME AFFORDABLE

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:

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

Signature of Servicer Representative	Title
Printed Name of Servicer Representative	Date

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10.4 Alternative Request for Approval of Short Sale (Alt RASS)

A homeowner may accept a short sale offer before receiving an SSA from the servicer. This offer may still be considered for HAFA (unless the investor is Freddie Mac), but must be submitted using the *Alt RASS.*

On this form the borrower provides personal information that would normally appear on the SSA, as well as specific terms of the sale that would normally be part of the completed RASS. The Alt RASS thus combines the functions of the RASS and SSA in one document, and uses much of the language from these forms.

In using the Alt RASS, the homeowner is seeking confirmation of eligibility, and approval of the actual offer, in one submission. It is therefore all the more important for the borrower and agent to attend to details, and submit a complete, well-prepared package.

Since the Alt RASS process is not initiated by the servicer, the homeowner or agent must obtain the form at the servicer's website, or by requesting it.

On the first page of the Alt RASS, the homeowner is encouraged to seek a HAMP modification, and a completed *Request for Modification and Affidavit* (RMA) may be one of the documents required. Thus, servicers still promote loan modification as an option even when a short sale is requested.

As with the RASS, the final two pages of this form are included for the servicer to indicate approval or disapproval.

Alt RASS Page 1

This is a brief cover letter acknowledging the borrower's request for a HAFA short sale.

HELP FOR AMERICA'S HOMEOWNERS.

MAKING HOME AFFORDABLE

[Name of Servicer]
[Address of Servicer]

[Loan #]
[Servicer FAX]
[Servicer Email]

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

[Borrower Phone]
[Borrower Email]

Note : Borrower is encouraged to seek HAMP modification.

[Date]

RE: Request for Approval of Short Sale

You have taken an important step toward selling your home and avoiding foreclosure by participating in the federal government's **Home Affordable Foreclosure Alternatives** (HAFA) Program. This letter is a Request for Approval of a Short Sale and contains important information.

Read the following pages carefully and complete, sign and return the Terms and Conditions.

If you have not previously contacted us regarding eligibility for a loan modification, you should consider this alternative. Under the Home Affordable Modification Program (HAMP), you may qualify for a modification with affordable and sustainable monthly payments that would allow you to keep your home. Please contact us by [*insert date 14 calendar days from date of this request*] if you wish to be considered for a loan modification.

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

Sincerely,

[Servicer Name]

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Alt RASS Page 2

Page two reiterates the nature of the short sale being requested, and Terms and Conditions similar to those in the SSA.

Program Terms And Conditions

MAKING HOME AFFORDABLE

The borrower and co-borrower, if applicable ("Borrower" or "you"), of the above loan contacted the Servicer ("Servicer" or "we") because your mortgage payments are no longer affordable and you would like to avoid foreclosure. After listing your house for sale, an offer was received. However, the sale may not be sufficient to pay off the loan. This is a Request for Approval of a Short Sale ("Request") of the subject property, the net sale proceeds from which we agree to accept as the payoff of the mortgage loan even though the proceeds are expected to be less than the full amount due.

Short Sale Program—Terms and Conditions of the Request are as follows:

1. **Allowable Costs that May be Deducted from Gross Sale Price**
   a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. [Choose one and delete unnecessary text.] [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed $_____.] OR [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed ____% of the list price.] OR [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney's fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, negotiated real estate commissions not to exceed six percent (6%) of the contract sales price [add other closing costs that may be included].]

   b. **Subordinate Liens.** We will allow up to six percent (6%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of $6,000, to be deducted from the gross sale proceeds to pay 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.

   c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions as stated in the listing agreement between you and your broker, not to exceed six percent (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. [Optional text:] 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 mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.

1. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses of your home until you convey your Property to us, including utilities, assessments, association dues, and costs for interior and exterior maintenance. Additionally, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses, we may require that they be applied to reduce the mortgage debt.
2. [*Insert only if applicable:*] **Partial Mortgage Payments**. Beginning on _____ 1, 20___, you will be required to make partial mortgage payments of $_____ by the first day of each month during the term of the Request and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the

Note : Commission up to 6 % allowed. Outside vendor fees will not be paid by seller or deducted from commission.

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Alt RASS Page 3

This page itemizes more Terms and Conditions, as found also in the SSA. The last section mirrors language in the RASS: The borrower certifies "under penalty of perjury," that the transaction is arm's-length, with no understandings that the borrower will remain in the property or re-obtain title after the sale, and neither buyer or seller will receive funds.

Program Terms And Conditions

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4. **Parties to the Sale**. The Sales Contract must include the following clauses: "Seller and Buyer each represent that the sale is an "arm's length" transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise." "The Buyer agrees not to sell the property within 90 days of closing of this sale."
5. **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 Request or the date of closing of an approved short sale, whichever is later, provided that you abide by its terms and conditions.
6. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Request are met, upon sale and settlement of the property, we will prepare and send to the settlement agent for recording, a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency judgment.
7. [*Insert only if applicable.*] **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the purchase contract are subject to the written approval of the mortgage insurer or guarantor.
8. **Termination of This Request.** Unless otherwise agreed by the parties, this Request will terminate on [*insert date*] if the sale does not close. This Request may be terminated earlier if:
   a. You fail to provide all the required documents listed above.
   b. Your financial situation improves significantly, you qualify for a modification, you bring the account current or you pay off the mortgage in full.
   c. You or your broker fails to act in good faith in closing on the sale of the property or otherwise fails to abide by the terms of this Request.
   d. A significant change occurs to the property condition or value.
   e. There is evidence of fraud or misrepresentation.
   f. You file for bankruptcy and the Bankruptcy Court declines to approve the Request.
   g. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
   h. [*Insert only if applicable:*] You do not make the payments required under this Request.
9. **Settlement of a Debt**. The proposed transaction represents the Servicer's attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this transaction even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, the Servicer may exercise all remedies under the mortgage, including foreclosure.

Under penalty of perjury, you certify that:

1. the sale of the property is an "arm's-length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
2. there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
3. neither you nor the Buyer will receive any funds or commissions from the sale of the property; and
4. there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

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Alt RASS Page 4

On this page the borrower or agent itemizes the details of the transaction, including buyer information, settlement agent information, sale price and expenses. There is also a document checklist, which can serve as a helpful reminder of essential components of the submission package.

Program Terms And Conditions MAKING HOME AFFORDABLE

Include complete contact information for settlement agent.

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:

Be sure to include completed RMA as required.

Make note of all required documents.

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

- ❒ Signed Request;
- ❒ Copy of a signed listing agreement with a real estate broker, if applicable;
- ❒ Executed copy of the sales contract and all addenda;
- ❒ Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from a lender;
- ❒ Information about other liens secured by your home such as home-equity loans;
- ❒ [*Insert only if applicable:*] Completed and signed Hardship Affidavit form; and
- ❒ Servicer must have these documents no later than [*insert date 14 calendar days from date of this request*] or we will not be able to respond to this request. Please send us these documents at the following address: [*insert servicer address*].

Make sure *all* borrowers sign.

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 Homeowner's 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.]

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that:" Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."
If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sigtarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

Alt RASS Page 5

As with the RASS, this page is only used if the servicer approves the short sale.

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 approval is subject to the following:

A. **Terms** – The sale and closing comply with all terms and conditions of the Request as well as all terms and representations provided herein by the Borrower.
B. **Changes** – Any change to the terms and representations contained in the Request 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*]

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

Signature of Servicer Representative | Title

Printed Name of Servicer Representative | Date

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Alt RASS Page 6

This page is only used if the servicer does *not* approve the short sale, and provides check boxes for the representative to indicate the reasons for disapproval.

Servicer Use Only MAKING HOME AFFORDABLE

Confusing language, as RASS is not used with Alt 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 Request for Approval of Short Sale 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, investor or guarantor of the loan did not approve the short sale.
❒	Other:

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

Signature of Servicer Representative _____ Title _____

Printed Name of Servicer Representative _____ Date _____

Conclusion

By completing this course, you gain a level of specialized knowledge that few real estate professionals will attain. Our hope is that you will use it to expand your business horizons, but also to provide help and hope to the homeowners who need it.

HAFA represents the cutting edge of nationwide efforts to solve the mortgage crisis. Expertise in this program will open doors for you in many areas of the real estate industry, and position you for success in the coming years.

Congratulations.