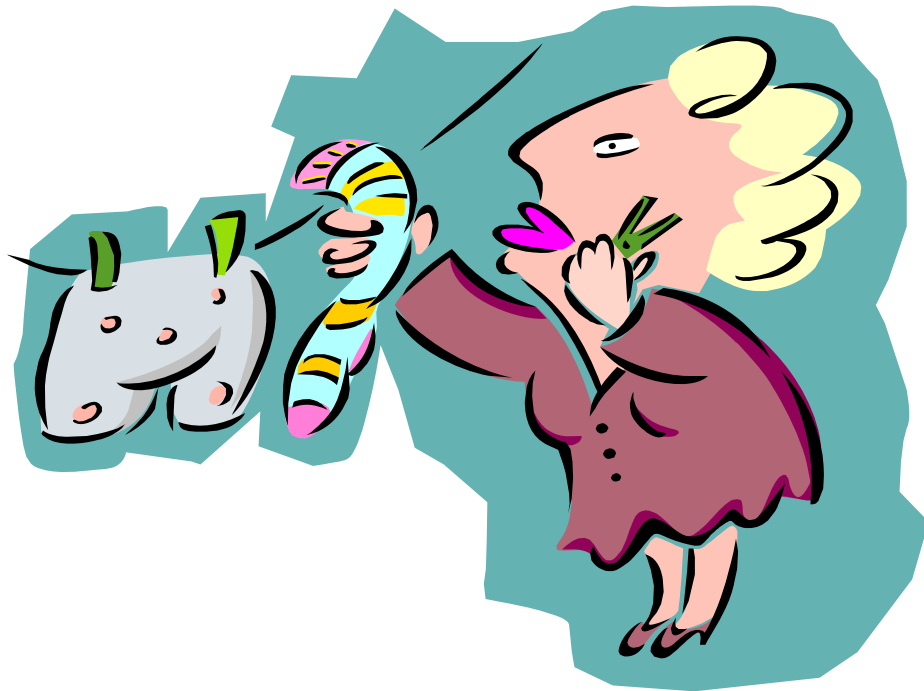


# **PRE-APPROVING THE SHORT SALE**



**By: Kenneth B. Schwartz, Attorney  
555 Westbury Avenue  
Carle Place, N.Y. 11514  
Tel: 516-333-7020**

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For those of you who are bent on selling your house but a bit gun shy because that big ole mortgage comes out to a whole lot more than what you can get from a sale, worry no more. Treasury's on the way. They call the new program, "Home Affordable Foreclosure Alternatives" ("HAFA").

A brand new directive from Treasury says that as of April 5, 2010, and potentially beforehand, the rules will require mortgage servicers on non Fannie Mae and non Freddie Mac Products to issue pre-approvals on short sales – short sale agreements – prior to any listing or sales contract on the property. Big news? Maybe, at least on non Fannie and Freddie loans. As to Fannie and Freddie products,

the word's out - so expect something shortly.

One of the key challenges to getting a short sale done has centered around a lender's unwillingness to say how much of a loss it will take without first seeing a sales contract, studying market values and then deciding together with the investors, insurers and whomever, what's within range and how much of a loss they can take. That whole process has given short sales a bad name since it has generally left everyone up in the air as to what a lender might accept for a selling price. To real estate brokers, that's meant a great deal of uncertainty in being able to market the property for a price that could actually go through.

To buyers it's created mass confusion as to how much or how little to pay and how long it could take for a seller's lender to give an answer. Mortgage commitments and rate locks don't last forever. Buyers often find themselves negotiating and renegotiating with their lenders as commitments and interest rates expire.

For sellers it's meant an overall question mark as to their ability to sell and how long they might have to find a new place to live. And to title companies that ultimately bear the burden of insuring that all mortgages and title issues are clear, it's often meant a series of backflips in mid air to try and keep deals together by working out final approvals and payoffs.

All this together has amounted to iffy deals where stuff goes back and forth until the bitter end – and an unusually long time period between contract and closing that has often exceeded six months. Buyers hang on for dear life as to mortgage financing. And deals

sometimes die a sudden death as property values fall – in this declining market – as buyers and lenders back out.

## **Mortgages that Qualify**

Now Treasury says, get ready for a brand new awakening with new rules to get all lender negotiations done prior to even listing the property. This doesn't cover all first mortgages however. It's limited to only those that meet all of the following requirements:

1. Loans Not Generated by Government Sponsored Entity – Loans that are not owned or guaranteed by Fannie or Freddie.

2. Loan Amount – Loans with an original principal not in excess of \$729,750.

3. Principal Residence – These rules apply to principal residences only.

4. First Mortgage – These rules apply to loans secured by first liens only.

5. Monthly Payments – A borrower's total monthly mortgage payment with taxes and insurance must exceed 31 percent of monthly gross income.

6. Default – Borrowers who are delinquent or who reasonably anticipate being delinquent.

## **Mortgages that Don't Qualify**

If you're one of those who don't qualify, don't panic. You can still move forward on a short sale under the old way of doing things. And if you're selling on terms that are roughly consistent with the market, the chances are that you'll end up in the same place with your lender forgiving any deficiency while allowing for the payments of all liens and closing costs from the proceeds of sale.

## **Benefits of Short Sale Agreement**

There are several advantages to going with a short sale agreement:

1. Avoid Foreclosure Proceedings – Loan Servicers ("Servicers") may not bring foreclosure proceedings until they give consideration to relief under HAFA. Servicers must generally consider HAFA within thirty days after a borrower (a) defaults under a modification agreement or (b) requests HAFA relief. After considering the matter, a servicer may exercise its discretion to either forbear from bringing the lawsuit or to bring the lawsuit and stop short of going through with the sale.

2. Written Agreement - Servicer will issue a short sale agreement that puts all the important terms in writing.

3. Minimum Sales Price – Servicer will establish a minimum sales price and approve the allowable costs so everyone will know, prior to listing the property, the amount of any deficiency the bank will write off.

4. Avoid Foreclosure Sale – No foreclosure sale can take place while a short sale agreement's in effect.

5. Minimize Delays and Uncertainties – The sale can proceed without the delays and uncertainties associated with lender negotiations for short sale approval.

6. Incentive Compensation to Borrower and Servicer – Borrower gets a relocation incentive of \$1,500 when the sale closes. Servicer gets \$1,000 as a reimbursement for administrative costs and a fee for negotiating subordinate liens equal to one third of the settlement, up to a maximum of \$1,000.

7. Waiver of Deficiency – Borrower gets released from any deficiency.

8. Subordinate Liens Satisfied – Subordinate liens get satisfied from closing proceeds for payoffs up to the lesser of three percent of unpaid principal or \$3,000. Borrower gets released from any deficiency.

## **Procedures for Getting a Short Sale Agreement**

Servicers are generally required to consider short sale approval within thirty calendar days after (a) the borrower defaults under a modification agreement, or (b) the borrower submits a request for short sale approval. In those cases where servicers reach out to borrowers, the rules say that you must respond within fourteen days – otherwise, you may lose your right to obtain a short sale agreement.

Beyond that, it's anticipated that folks will go back and forth with any number of things that relate to a borrower's finances and property value, including an appraisal of the property, title search and the amount of any deficiency which a lender, investor, insurer or guarantor may write off.

## **Program Requirements**

Rules are rules and these rules say that servicers must provide as follows in every short sale agreement:

1. Licensed Real Estate Professional - Every property

must get listed with a licensed real estate professional.

2. Broker Commissions – Commissions to real estate brokers may not exceed six percent of the sales price.

3. Arm's Length Sale – All sales done on an arm's length basis only. The sales contract must specifically say that.

4. No Resale for Ninety Days – A short sale purchaser may not re-sell for ninety days after closing.

5. Monthly Payments – To the extent that servicers may require borrowers to make monthly payments under the short sale agreement, those payments may not exceed 31 percent of gross income.

6. Offers of Sale – Offers for sale must get submitted to a

servicer within three days after receipt. Servicers then have ten days to approve or disapprove of an offer.

7. Deeds in Lieu – Servicers will only consider a deed in lieu of foreclosure, after all good faith efforts are exhausted to market and sell a property.

8. No Administrative Fees – Servicers may not charge administrative processing fees for short sale approval.

9. Compliance Agent – Freddie Mac will act as compliance agent to make sure that all the rules are being followed.

10. Effective Dates – The rules will generally apply to all short sale agreements signed between April 5, 2010 and December 31, 2012.

## **About the Author**

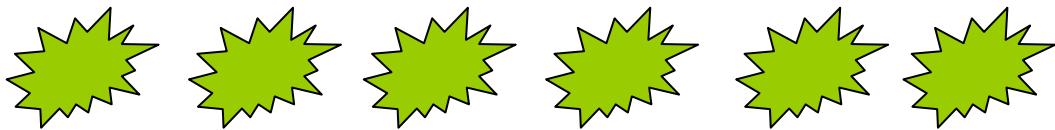
The author Kenneth B. Schwartz is a practicing attorney who maintains offices at 555 Westbury Avenue, Carle Place, N.Y. (Tel. 516-333-7020). After becoming a certified public accountant in 1980, Mr. Schwartz earned his JD in Law from St. John's University Law School in 1983, and a Masters in Tax Law from New York University in 1991. Mr. Schwartz now devotes his law practice to the representation of buyers, sellers and lending institutions in connection with real estate closings.

Mr. Schwartz resides on Long Island together with his wife and three children.

Mr. Schwartz's prior publications on the real estate industry include *Mortgages to Music* (Morris Publishing, 2004), *CEMA's*, *a Tale of Two Mortgages* (XTreme Publishing, 2006); *Cooperatives and Sandcastles in the Sky* (XTreme Publishing, 2007); *CEMA's and Darwinian Evolution* (Mortgage Press, October 2007); *Short Sales, Our Secret to the Universe* (Mortgage Press, December 2007); *Mortgage Closing Resolutions for 2008* (Mortgage Press, January 2008); *The Shady Short Seller* (Mortgage Press, February 2008); *Should Have Done A Short Sale, Bankruptcy vs. Short Sale* (Mortgage Press, March 2008); *Short Sale Scams Alive and Well and Living in Scamsville USA* (Mortgage Press, June 2008), *Let's Talk the F Word*, an unabridged Crisis (XTreme Publishing, 2008); *Just a Glimmer – Short Refi's*, *Hope for Homeowners under the New Housing Bill* (Mortgage Press, 2008); *Just a Few Bil* (XTreme Publishing, 2008); *Thou Shall not Pump and Dump* (Mortgage Press, 2008); *Stuck in the Spirit of Holiday Giving* (XTreme Publishing, 2008); *In Search of the Perfect Deal* (XTreme Publishing, 2009).

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AND NOW FOR THE NEXT OFFICIAL ACT OF TREASURY TO TRY AND DO THE RESPONSIBLE THING AND GET A HANDLE ON ALL THE SHORT SALES THAT ARE BRINGING DOWN THE MARKETS WITH ENDLESS RED TAPE AND DEADLINES THAT NOBODY CAN EVER SEEM TO MEET – IT'S TREASURY SUPPLEMENTAL DIRECTIVE 9-09, THE DIRECTIVE TO END ALL DIRECTIVES AND SET THE PACE FOR YEARS TO COME.

PRE-APPROVALS ON SHORT SALES. THE KEY TO GETTING DEALS CLOSED WITHOUT MONTHS OF ENDLESS NEGOTIATIONS.

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