



# Fidelity National Title®

*www.fidelitydesktop.com*

**FHFA: New Standard Short Sale Guidelines  
Fannie Mae and Freddie Mac Announcements**

October, 2012

Barry S. Wolfensohn

Regional Counsel

Fidelity National Title Company

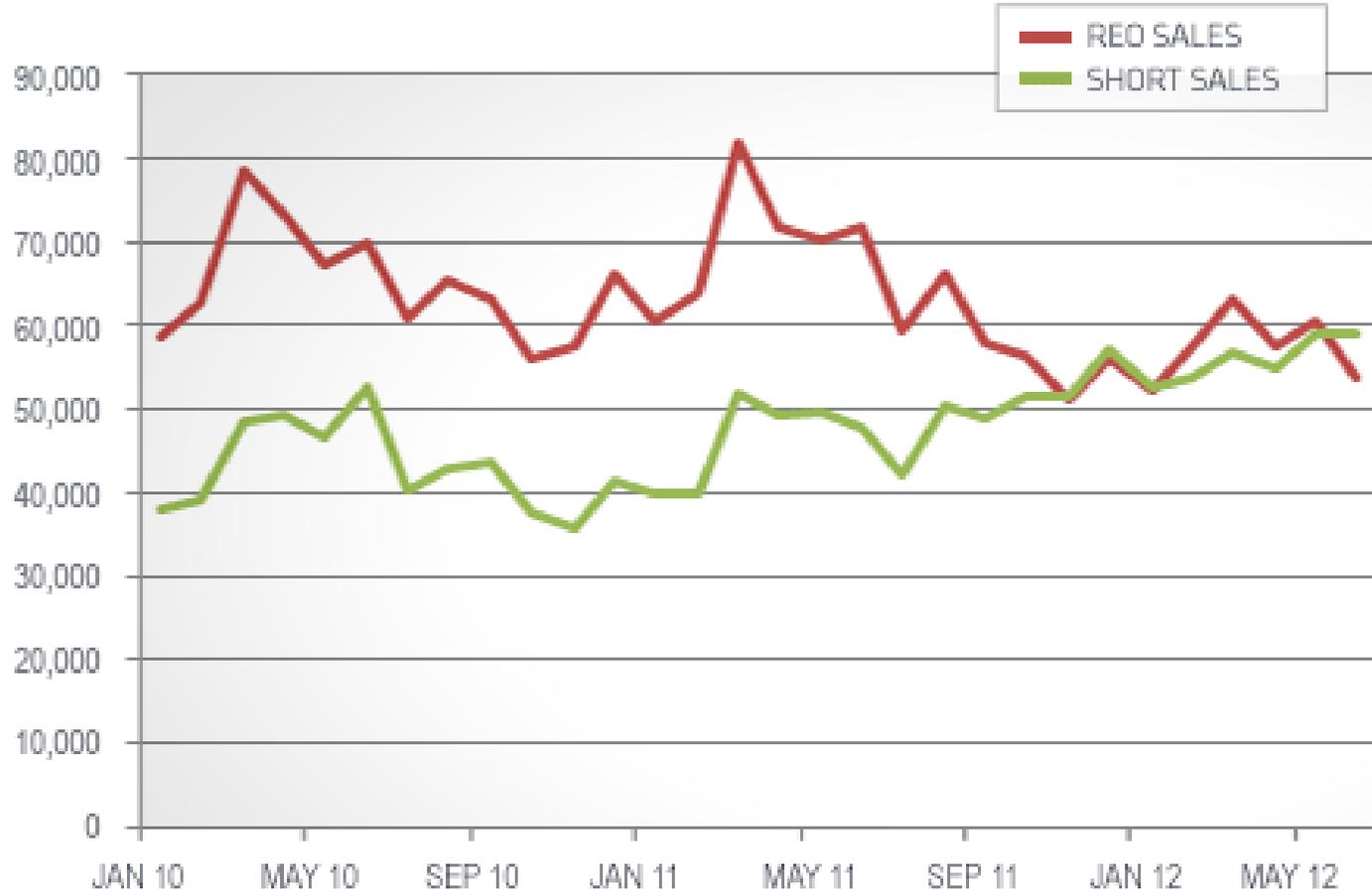
203 N. LaSalle Street, Suite 220

Chicago, IL 60601

312.621.5006

[Barry.Wolfensohn@FNF.com](mailto:Barry.Wolfensohn@FNF.com)

# SHORT SALES V. FORECLOSURE SALES



SOURCE: LPS APPLIED ANALYTICS



- ▶ The Federal Housing Finance Agency is seeking public comment on a proposal to raise the guarantee fees Fannie Mae and Freddie Mac charge lenders in five states where costs related to foreclosure practices are significantly higher than the national average.
- ▶ These five states are Connecticut, Florida, Illinois, New Jersey and New York. According to the proposal, lenders would have to pay an upfront fee of between 15 and 30 basis points -- 0.15 to 0.3 percent -- for each single-family mortgage originated in those states and later acquired by Fannie Mae or Freddie Mac.
- ▶ That increase means that a borrower in an affected state obtaining a 30-year, fixed-rate mortgage of \$200,000 could see his or her monthly mortgage payment rise by about \$3.50 to \$7, the regulator said.
- ▶ The FHFA chose the five states based on three factors: the expected number of days it takes Fannie or Freddie to foreclose and obtain title to a property; the average per-day carrying costs Fannie and Freddie incur in a state; and the expected national average default rate on a single-family mortgage acquired by Fannie and Freddie. The size of the fee increase will depend on how much a particular state deviates from the national average.

- - *Inman News, 9/23/2012 (emphasis added)*



# – DISCLAIMER –

- ▶ THIS PRESENTATION IS NOT INTENDED TO GIVE LEGAL ADVICE OR CREATE AN ATTORNEY–CLIENT RELATIONSHIP
- ▶ For the best in legal counsel, please consult with one of our excellent Attorney Agents!



# New Short Sale Guidelines

- ▶ Creates a uniform program for short sales
- ▶ New Guidelines effective November 1, 2012
  - Updates old HAFA Short Sale guidelines in effect since February 1, 2011



# First – how to tell if you have a Fannie/Freddie Loan

## ▶ Resources:

- <http://loanlookup.fanniemae.com/loanlookup>
- <https://www.FreddieMac.com/corporate>



# Prior FNMA guidelines – “preforeclosure sale”

- ▶ Borrower had to be seriously delinquent
- ▶ Under prior guidelines, servicers couldn't consider borrower for short sale when Borrower was not yet delinquent but faced “imminent default”
- ▶ Borrower could have been required to contribute cash or execute note (based on financial condition)
- ▶ Property had to be free of second liens
- ▶ Fannie approval required

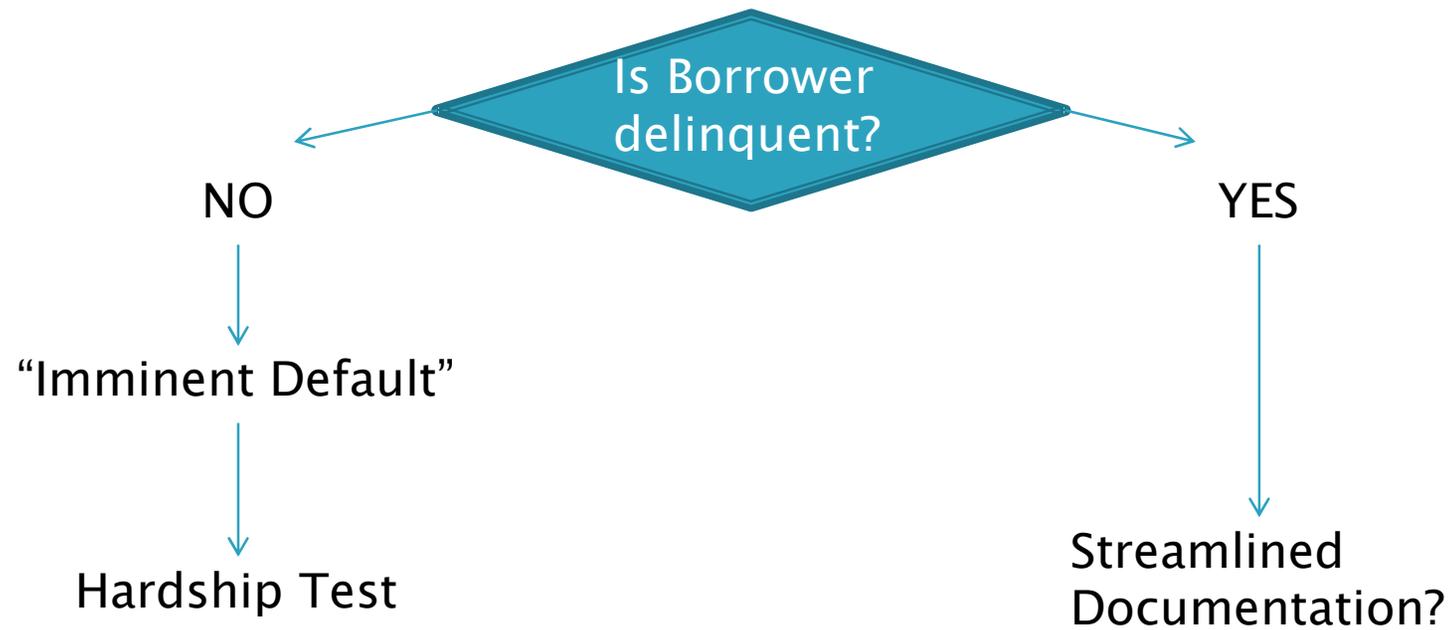


# What has changed?

- ▶ FHFA Announcement August 21, 2012
- ▶ Effective date November 1, 2012 – HAFA II
- ▶ Highlights:
  - Streamlines approach to short sales
  - Enables borrowers to qualify for short sales even if they are current on mortgage if they can show hardship
  - Special provisions for military personnel
  - More flexibility as to deficiencies
  - Makes funds available to satisfy second lienholders
  - Quicker turnaround – servicers must review and respond within 30 days and communicate final decision within 60 days



# *Basic Test:*



# “Imminent Default”

- ▶ Borrower who is current or less than 31 days delinquent, and meets the standards:
  - Eligible Hardship (see requirements)
  - Must be borrowers principal residence
  - Debt ratio must be  $> 55\%$ 
    - (military w/PCS exempt from this requirement)
    - Details of expenses in servicing announcement
      - (see *infra*)



# New Hardship Standards

- ▶ KEY – new “hardship” standard
  - 4.63 million loans in Fannie’s/Freddie’s combined portfolios are underwater, per Acting FHFA director Edward J. DeMarco
  - DeMarco: Approximately 4/5 of those are current on payments



# Requirements – Hardships

- ▶ Even if a borrower is current, they may qualify under the new Short Sale guidelines if they can demonstrate “hardship” (see form 710 and exhibit):
  - Death of a borrower or co-borrower
  - long-term or permanent illness or disability of borrower, co-borrower or dependent family member
  - Divorce or legal separation of a borrower or co-borrower
  - Employment transfer/relocation (including PCS order) greater than 50 miles from current primary residence
  - Unemployment (no doc req’d)
  - Reduction in Income (no doc req’d)
  - Increase in Housing Expense (no doc req’d)
  - Disaster
  - Business failure
  - Other hardship



## Hardship – Special provision for Military with Permanent Change of Station orders

- ▶ The employment transfer noted previously includes Military personnel with Permanent Change of Station (PCS) order
- ▶ Also, most active duty military servicemembers will be under no obligation to contribute funds via note or cash to cover shortfall between outstanding loan balance and sale price on their homes



# Other requirements

- ▶ Property must be borrower's principal residence
- ▶ Total debt ratio must be over 55%, including:
  - Mortgage payment
  - MIP
  - Taxes
  - Insurance
  - HOA/condo assessments/fees
  - monthly payment on HELOC
- ▶ Active military with PCS are exempt from debt ratio requirement if house purchased on/before 6/30/2012

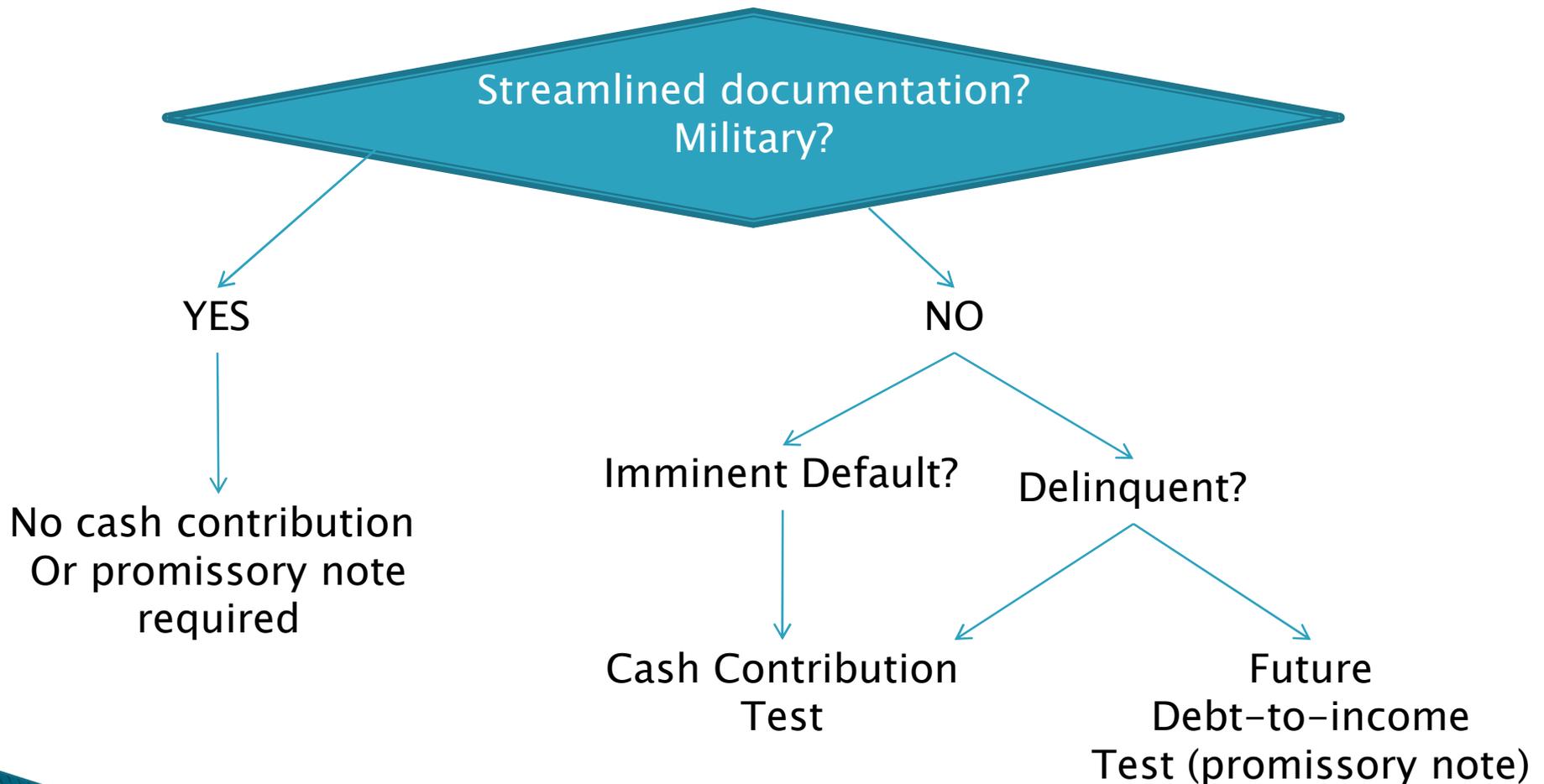


# If Borrower is in default – Streamlined Documentation

- ▶ If the following applies, borrower need not verify hardship or complete Borrower Response Package:
  - 90 days or more delinquent; and
  - Credit score less than 620



# *Overview of Basic Test – deficiency/borrower contribution:*



# Borrower Contribution – evaluation

- ▶ No requirement of borrower contribution or note if borrower:
  - Qualifies for Streamlined Documentation; or
  - Is active duty military with PCS orders relocating from primary residence (if purchased prior to 6/30/2012)



# Borrower Contribution evaluation: Cash contribution Test

- ▶ If delinquent or imminent default, borrower will be reviewed for cash contribution if
  - Cash reserves in excess of the greater of:
    - \$10,000; or
    - 6X monthly payment (PITI)
  - if > \$50,000, must get approval of FNMA for amount
  - If has ability, initial amount requested will be 20% of cash reserves
  - If delinquent and unwilling/unable, servicer may negotiate
  - If imminent default and unwilling/unable, must get approval of FNMA for less than 20% (unless hardship is death of primary wage earner)



# Borrower Contribution evaluation: Promissory Note Test

- ▶ Applicable only for delinquent borrowers
- ▶ TEST: If future debt-to-income ratio is  $< 55\%$  based on future housing expense
- ▶ If borrower qualifies, initial request will be 5- or 10-year note at 0% with payment up to  $\frac{1}{2}$  difference between future debt-to-income ratio and 55%:
  - $(55\% - (\text{future monthly debt ratio})) / 2 \times \text{Gross Monthly Income}$
  - Note not required if amount is  $< \$5000$



# Promissory note test (cont'd)

- ▶ Example:

- $(55\% - 49\%) / 2 \times \$4,000 = \$120$
- $\$120 \times 60 \text{ months} = \$7200$

- ▶ If borrower unwilling/unable, servicer may negotiate but servicer must provide explanation in servicing file of specific circumstance limiting borrower's ability to contribute
- ▶ Calculating income and expense is explained in the FNMA Servicing Guide announcement



# FNMA Short Sale Evaluation

- ▶ FNMA starts from the property valuation and arrives at a Minimum Net Required (MNR)
- ▶ Proceeds of proposed short sale must meet or exceed the MNR
- ▶ Allowable transactions costs, subordinate lien and relocation assistance are deducted from the short sale offer



# Short sale evaluation (cont'd)

▶ Example:

- Short sale purchase offer     \$100,000
- Acceptable transaction costs    (9,000)
- Subordinate lien                    (6,000)
- FNMA relo incentive                      (3,000)
- *Value to compare to MNR:    \$ 82,000*

- ▶ Closing must be within 60 days of servicer's approval (unless FNMA approves additional time)



# Acceptable Short Sale Transaction Costs

- ▶ Real estate commission not > 6%
- ▶ Taxes & assessments prorated through closing
- ▶ Transfer taxes/stamps
- ▶ Title and settlement charges typically paid by seller
- ▶ Seller attorney fees for settlement services typically provided by a title/escrow company
- ▶ Pest inspection/treatment when required locally
- ▶ HOA fees past due
- ▶ Buyer closing costs typically paid by seller per local market custom
- ▶ Any other amounts approved by FNMA



# Unacceptable Short Sale Transaction Costs

- ▶ “Fannie Mae does not allow the following transaction costs”:
- ▶ “Fees paid to a third party to negotiate a short sale with the servicer (commonly referred to as “short sale negotiation fees” or “short sale processing fees”) must not be deducted from the sales proceeds or charged to the borrower. Additionally, the servicer, its agents, or any outsourcing firm it employs must not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with any Fannie Mae Loan.”
- ▶ Real estate sales commission paid to the borrower or the purchaser
- ▶ Buyer’s discount points or mortgage loan origination costs

# Payoffs to Second Lienholders

- ▶ FNMA will allow up to \$6,000 to second lienholders to facilitate a short sale
- ▶ Can be divided among multiple subordinate lienholders
- ▶ Subordinate lienholders must agree to release their liens and all claims against the borrower
- ▶ Lienholders may not require contributions from real estate agents or borrower as a condition for releasing lien and personal liability



# Miscellaneous

- ▶ Deficiency Waiver:
  - FNMA will release borrower from liability for deficiency upon completion of short sale or deed-in-lieu
  - Tax consequences – see IRS Publications 4681 & 544
- ▶ Relocation incentive of \$3,000, unless:
  - Borrower contributes \$ or signs note
  - Military PCS orders and gets Dislocation Allowance or other government assistance
  - Borrower getting relo assistance from another source



# Links – more information

- ▶ FHFA announcement:
  - <http://www.fhfa.gov/webfiles/24211/ShortSalesPRFactFinal.pdf>
- ▶ Form 710:
  - <https://www.efanniemae.com/sf/formsdocs/forms/pdf/servicingtransactions/710.pdf>
- ▶ Hardship Documentation Requirements for Foreclosure Prevention Alternatives:
  - <https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/exhibits/pdf/hardshipdocreqs.pdf>
- ▶ Fannie Mae announcement SVC-2012-19:
  - <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/svc1219.pdf>
- ▶ Freddie Mac Bulletin 2012-16:
  - <http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1216.pdf>
- ▶ 4-11-2012 Fannie Mae Loan Workout Hierarchy, including older HAFA specs:
  - <https://www.efanniemae.com/sf/servicing/pdf/loanworkoutfactsheet.pdf#nameddest=HAFA>



▶ Questions?

▶ Thank you!

