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### Recent Developments in Short Sales

#### 13 Important Points About HAFA

The housing crisis has resulted in foreclosures in the United States reaching epidemic proportions. According to Realty Trac, as of February, 2010, there were 5 million households behind on mortgage and at risk of foreclosure. Nationwide, there were 308,000 new foreclosure filings in February. As for Connecticut, as of February there were 2,294 homes in foreclosure which is 1 in every 629 homes. The highest number was for New Haven County which had 645 foreclosures followed by Fairfield County with 561.

Loan modifications under the HAMP program were supposed to stave off these foreclosures, but the modifications have been unsuccessful. Those who fail to obtain a modification typically find themselves in foreclosure. Many of the individuals in foreclosure attempt to avoid foreclosure by selling the property through a short sale. A short sale is where the property is sold for less than the outstanding balances of the mortgages that form liens against the property. The short sale process has not been successful due to the lenders with mortgages encumbering the property either (a) being slow to provide approval of the short sale (thereby allowing the foreclosure to continue or causing frustrated purchasers to walk away from the deal), (b) not being realistic in the net proceeds they want from the short sale or (c) requiring that the borrower/seller remain liable for the difference between the balance of the mortgage and the amount the lender receives in connection with the short sale (deficiency balance). The Home Affordable Foreclosure Alternatives Program (HAFA) was enacted to address this nightmare. HAFA took effect on April 5, 2010. The following is noteworthy about HAFA:

1. HAFA was designed to assist people who either don't qualify for HAMP or who failed to make 2 consecutive payments under a HAMP temporary modification program.
2. It relies on the HAMP financial package so no need to resubmit a new financial and hardship package.
3. Property must be owner occupied and principal residence.
4. Borrower obtains approval of the short sale BEFORE locating a purchaser of the home OR approval of a deed in lieu of foreclosure.
5. Borrower/seller has 120 days to close and find a purchaser once she gets short sale approval from servicer/lender.

6. Mandatory participation by servicers in HAFA if servicers participate in HAMP.
7. No deficiency allowed. This include second lien holders and all other subordinate lien holders Seller/borrower walks away with not only release of lien but release of balance of loan.
8. Realtor commissions are negotiable with servicer unless borrower/seller submits contract of sale to servicer before signing lender's short sale agreement.
9. Government financial incentive to 1<sup>st</sup> mortgage holder if it allows payments of \$6,000 total to all junior lien holders.
10. Does not apply to FHA/VA loans.
11. Property flips discouraged as purchaser must hold property for 90 days before she can transfer or sell.
12. Up to \$3,000 relocation assistance to borrower/seller.
13. Expires December 31, 2012.

The negatives of HAFA include that the borrower/seller who does not complete the short sale with the approved purchaser agrees to a deed in lieu of foreclosure. This may create deficiencies for which the subordinate lien holder may ultimately seek judgments. Also, if the servicers for the second lien holders are not HAMP servicers, they are not required to comply with HAFA. This is one of the problems with the current short sale approval process. When the property is encumbered by junior lien holders, they are difficult to negotiate with and many times refuse to accept the fact that any amount they receive in a short sale is more than they will receive if they allow the primary lien holder to obtain a foreclosure judgment.

There is much more to the HAFA program than covered in this newsletter. The provisions of HAFA should be read in their entirety.

**The above does not constitute legal advice and should not be relied on.**

## Law Offices of James T. Maye LLC Newsletter

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