



April 2010

This month we provide a brief overview of two recent acts which impact the real estate industry: (1) the SAFE Act which must be complied with by January 1, 2011, and (2) Hafa which was recently enacted.

THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT OF 2008

The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (“SAFE Act”) became federal law on July 30, 2008, and California law in October 2009. The California law requires all DRE real estate licensees who conduct residential mortgage loan originator (MLO) activities to meet certain requirements to qualify for a MLO real estate license endorsement by January 1, 2011. The SAFE Act requires completion of 20 hours of pre-licensing education and passing a written qualified test. Currently licensed MLOs must pass both the National component and the California State component of the examination with a test score of not less than 75 percent. Existing MLOs must pass the National and the State component by September 15, 2010 in order to be issued an MLO license endorsement by January 1, 2011.

Besides passing the written qualified test, the SAFE Act requires licensees to submit a set of fingerprints and to pay a \$39.00 fee to have a criminal background check performed. Furthermore, MLOs must demonstrate financial responsibility by authorizing a credit report to be obtained. Finally, MLO endorsements will be issued annually and will expire each year on December 31st. A licensee must complete 8 hours of continuing education each year to renew his or her license.

There are penalty fees if a licensee fails to obtain a license endorsement. Penalties are \$50 per day for the first 30 days the report is not filed and \$100/per day for every day thereafter, not to exceed \$10,000.

The SAFE Act is designed to enhance consumer protection and reduce fraud. For more information please visit our website at www.glawgroupapc.com or visit www.dre.ca.gov to read in detail the steps required under the SAFE Act.

HOME AFFORDABLE FORECLOSURE ALTERNATIVES (HAFA)

Short sales are becoming more and more common in the real estate arena. But as we all know, short sales are time consuming and difficult to close. In response to the market, the federal government implemented the Home Affordable Foreclosure Alternatives (HAFA) on April 5, 2010. Most of the major banks are participating lenders under HAFA.

How it Works

It should first be noted that each lender has its own written guidelines to evaluate whether a borrower qualifies under HAFA. Under the HAFA program, the participating lender essentially pre-approves the short sale before a contract is entered into between the buyer and the seller. Before a borrower can apply for a short sale under HAFA, the borrower must have been denied or been unable to complete a loan modification under the Home Affordable Modification Program (HAMP). The borrower must first submit a Short Sale Agreement to the lender, which the lender has thirty (30) days to reject. If the lender approves, the seller has 120 days to sell the property. The seller must use a licensed real estate agent to list the property. One thing to point out is that in the pre-approval process the lender sets the commission rates the real estate agents will receive. Thus, the real estate agent knows the commission he or she will be receiving before entering into the listing agreement. Upon receiving an acceptable offer, the seller has three days to submit the Request for Approval of Short Sale to the lender. The lender then has 10 business days to approve the short sale. If the lender approves the short sale, the seller has 45 days to close escrow.

Requirements

The property must be the borrower's principal place of residence and must be owner occupied. The first trust deed must have originated before 2009, and the unpaid principal balance must be \$729,750 or less. Finally, the loan must be in default or default is reasonably foreseeable.

Outcome if Successful under HAFA

If the short sale is successful under HAFA, the borrower is fully released from all liability for the loan (regardless of whether loan is purchase money or not). Additionally, any and all monies (even to third party vendors) are now to be paid only through escrow and must be listed on the HUD-1. This will hopefully cut down on the fraud that the market has seen with respect to short sales and payment of funds outside of escrow.

To get banks and borrowers to participate in HAFA, the Federal Government offers several incentives such as: (1) \$1,500 is paid to the servicer for each successful short sale or deed-in-lieu; (2) \$1.00 is paid to an investor for every \$2.00 paid to extinguish junior liens (up to \$2,000); and (3) \$3,000 is paid to the borrowers for relocation expenses.

As with all new laws, it will take time to see how HABA plays out and what impact it will have on the real estate market.

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