Pre-Foreclosure Sales Program

The Pre-foreclosure Sale Program allows a Mortgagor in default to sell his or her home and use the sales proceeds to satisfy the mortgage debt, even if the proceeds are less than the amount owed. Ref: Mortgagee Letters 2003-19 and 2008-43.

FACTS

- Outright sale of mortgaged property to a third party and must be an "arms length" transaction.
- Outstanding indebtedness includes; unpaid principal balance + delinquent interest + Partial Claim (if applicable).
- HUD will pay up to $1,000 incentive to the Mortgagor if closed within 3 months from the date of application; thereafter, the incentive is reduced to $750.
- HUD will pay an additional amount up to $1,500 for the discharge of junior liens after the Mortgagor's incentive has been applied.
- HUD allows all reasonable cost of the sale including up to 6% sales commission, local/state transfer tax stamp and other customary closing cost.
- HUD allows up to 1% of the buyer's mortgage amount for closing costs to be included in the "Seller's Costs" on the HUD-1 for all transactions that involve a new FHA-insured mortgage.
- Tiered Net Sales Proceeds requirement is applicable as follows:
  - For the first 30 days of marketing, Mortgagees may only approve offers that will result in minimum net sale proceeds of 88% of the "As-Is" appraised Fair Market Value.
  - During the next 30 days of marketing, Mortgagees may only approve offers that will result in minimum net sale proceeds of 86% of the "As-Is" appraised Fair Market Value.
  - For the duration of the Pre-foreclosure Sale marketing period, Mortgagees may only approve offers that will result in minimum net sale proceeds of 84% of the "As-Is" appraised Fair Market Value.
- Unacceptable Settlement Costs:
  - Repair reimbursements or allowances;
  - Home Warranty Fees;
  - Discount points or loan fees for non FHA-financing; and
  - Lender's title Insurance fee.

CORPORATE | 423 SOUTH SECOND STREET, ST. CHARLES, IL 60174 | PHONE (630) 584-9330 FAX (630) 377-6768
OFFICES | SYCAMORE, IL (815) 899-3333 – CRYSTAL LAKE, IL (815) 455-4146 – NAPERVILLE, IL (630) 584-9330

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- Property Condition:
    - Properties that have sustained damage may be eligible for the PFS option.
    - If the cause of the damage is fire, flood, earthquake, tornado, boiler explosion (for condominium's only) or mortgagee neglect (i.e., surchargeable damages as defined in 24 CFR Part § 203.378) mortgagees must obtain prior approval from the NSC at the address above.
    - Prior to seeking this approval, the mortgagee must obtain the government's estimate of the cost to repair the surchargeable damage by contacting the HUD Management and Marketing (M&M) Contractor with jurisdiction for the geographic area where the property is located.
    - A list of M&M Contractors can be found on the Internet at: www.hud.gov/offices/hsg/sfh/reo/mm/mminfo.cfm.
- **Under no circumstance** should the Mortgagor be encouraged to default on their mortgage for the purpose of participating in the Pre-foreclosure Sale Program.

ELIGIBILITY

- The property must be owner-occupied, no "walk-a ways" or investment properties. Exceptions: when it is verifiable that the need to vacate was related to the cause of default (job loss, transfer, divorce, death), and the subject property was not purchased as rental investment, or used as a rental for more than 18months.
- The Mortgagor must be 31 days or more delinquent at the time of the Pre-foreclosure Sale closing.
- The Mortgagor must provide documentation substantiating a reduction in income or an increase in living expense, and documentation that verifies the Mortgagors need to vacate the property (if applicable).

PROCEDURES

1. Mortgagors who express an interest in the Pre-foreclosure Sale Option or who have been identified by the Mortgagee as a qualified candidate for the Pre-foreclosure Sale Program must be mailed a copy of the revised *Information/Disclosure* Form HUD-90035.
2. The Mortgagee must obtain a standard "As Is" FHA appraisal which has been completed in accordance with the requirements of HUD Handbook 4150.2 (Valuation Analysis for Single Family One-to Four-Unit Dwellings). To this end, Mortgagees must:

- Obtain a standard electronically-formatted appraisal from an appraiser on FHA's Appraiser Roster. The selected appraiser must not share any business interest with the Mortgagor or the Mortgagor's agent. Appraisals obtained by the buyer, seller, real estate agent, or other interested parties may not be used to establish the Fair Market Value of the property for the Pre-foreclosure Sale Program. It is also important to note that:
  - The appraisal must contain an "As-Is" Fair Market Value for the subject property;
  - The appraisal will be valid for six (6) months; and
  - Distress sales may not be used by the appraiser to establish comparable values unless they represent the only comparables within reasonable proximity of the subject property.

- Provide a copy of the appraisal to the homeowner, sales agent, or HUD, upon request. Mortgagees are reminded that in accordance with HUD regulations at 24 CFR Part §203.365 (c) they are responsible for the accuracy of all documentation used in the PFS decision, including accurate and complete appraisal information.

In an effort to ensure that the most current Fair Market Value is used for the Pre-foreclosure Sale, a Mortgagee may obtain a new FHA appraisal, even if the property was appraised by an FHA Roster Appraiser within the preceding six (6) months.

To be reimbursed through HUD's claim filing process, the cost of the appraisal must be reasonable and customary for the market area where the appraisal is performed. The appraisal must be retained in the claim/servicing file, even if the Pre-foreclosure Sale is not approved or completed.

3. The Mortgagee must obtain a title search or preliminary report verifying that the title is not impaired with un-resolvable title problems or with junior liens that cannot be discharged as permitted by HUD.

4. (4) When an application is accepted an *Approval to Participate* form is used. The date of this form becomes the starting date of the PFS participation. The *Approval to Participate* form must include the date by which a signed contract for sale must be obtained and minimum acceptable net sales price.

   - The Mortgagor agrees to show good faith in attempting to market and sell the property.
   - The Mortgagor must perform all normal property maintenance and repairs until closing of the Pre-foreclosure Sale.
   - The Mortgagor must list the property with a licensed real estate broker, unrelated to the Mortgagor. The listing agreement must include a specific cancellation clause in the event the terms of the sale are not acceptable to HUD.

5. The Mortgagee delays foreclosure to allow pursuit of the Pre-foreclosure Sale.

6. The Pre-foreclosure Sale period shall be four (4) months beginning upon Mortgagee approval (automatically extended two months for Mortgagees in Tier 1; or there is a signed Contract of Sale, but settlement cannot occurred by the end of the fourth month).

7. The Mortgagee should review marketing efforts with the Mortgagor and/or the Real Estate Broker/Agent on a monthly basis.

8. The sale closing must occur within six months (6), eight (8) months if Mortgagee is in Tier 1, from the date the Mortgagee notified the Mortgagor in writing of approval to participate in the Pre-foreclosure Sale Program.

If you have any question you may contact NSC at:

National Servicing Center

- www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm
- E-mail: hsg-lossmit@hud.gov
- 888-297-8685

Frequently Asked Questions:

- http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm
- PFS Forms: http://www.hud.gov/offices/hsg/sfh/nsc/lmmltrs.cfm