

HAFAs Commissions Policy

September 7, 2010

What are the Home Affordable Foreclosure Alternatives Program (HAFAs) rules on real estate commissions?

- Under the Treasury Department’s HAFAs guidelines for non-Fannie Mae/Freddie Mac loans, commission policy is dependent on when the sales contract is executed.
 - If a sales contract has not been executed, the servicer specifies the amount of commission in the Short Sale Agreement (SSA) as a “reasonable and customary” closing cost not to exceed 6 percent of the contract sales price. The servicer transmits the SSA to the borrower for consideration of its terms. The SSA requires the borrower to list the home with a real estate broker. The borrower and the prospective real estate broker may negotiate with the servicer on the terms of the SSA. If the borrower and the listing broker decide to participate, both must sign the SSA, agreeing to its terms.
 - There is a different commission policy for non-Fannie Mae/Freddie Mac loans if the borrower submits an executed sales contract to the servicer for approval before a SSA is executed. In that case, the sales contract is submitted to the servicer along with an Alternative Request for Approval of Short Sale (ARASS). The amount of the commission in such a case is the amount negotiated in the listing agreement, not to exceed 6 percent. This policy recognizes that the real estate professional has already done the work of marketing the property and obtaining an executed sales contract, so it is not appropriate for the servicer to reduce the commission below the already negotiated amount.
- The Fannie Mae and Freddie Mac HAFAs programs provide that servicers will pay a commission as contracted in the listing agreement, up to 6 percent of the final sale price.
- At the urging of NAR, in March 2010, the Treasury Department rescinded the November 30, 2009, HAFAs policy authorizing the servicer to reduce the real estate commission by a specified amount to pay a vendor/negotiator hired by the servicer to assist the listing broker. This was a major improvement.
- Neither buyers nor sellers may earn a commission in connection with the short sale, even if they are licensed real estate brokers or agents. They may not have any side deals to receive a commission indirectly. A broker or agent may only earn a commission if the represented party is unrelated and unaffiliated.