

Freddie Mac Amends Short Sale Affidavit Policy - 12/1/2011

On Nov. 18, 2011, at the request of NAR and the American Land Title Association (ALTA), Freddie Mac amended its policy regarding its mandatory short sale affidavits.

The purpose of the affidavit is to prevent fraud by requiring the buyer, the seller, the real estate brokers, the escrow/closing agent, and any transaction facilitator to make various certifications (including that the short sale is an arm's length transaction and the buyer will not resell within 120 days unless there are substantial improvements). Servicers are required to implement the changes by Jan. 1, 2012, but are encouraged to do so immediately. Each servicer covered by the policy must update its forms to comply with the revised policy.

NAR members are encouraged to make sure they are signing an updated form and, if presented with an old form, are well-advised to request the servicer to update or allow amendments to the form before they sign, to avoid potential liability issues.

Here are the key changes:

- The certification is made based on "the best of each signatory's knowledge and belief." Freddie has retained the statement that a signatory making "a negligent or intentional misrepresentation" agrees to indemnify the servicer and Freddie Mac for losses. The addition of the knowledge standard significantly reduces this liability.
- Only a signatory who makes a negligent or intentional misrepresentation, based on the best of his or her knowledge and belief, is responsible for indemnifying the servicer and Freddie Mac for any loss. No signatory is responsible for the certification of any other signatory.
- Although Freddie Mac is requiring all signatories to sign one affidavit, the amended policy no longer allows the affidavit to be an addendum to the sales contract. NAR members are advised not to sign a document implying they are parties to the sales contract.

NAR appreciates Freddie Mac's willingness to listen to the serious concerns raised by REALTORS®.

For additional information, go to - http://www.realtor.org/law_and_policy/shortsale_affadavit