



PRE FORECLOSURE SALES FAQ'S

from hud.gov

The Preforeclosure Sale (PFS) Program allows the mortgagor in default to sell his/her home and use the net sale proceeds to satisfy the mortgage debt even though these proceeds are less than the amount owed.

Question 1 : Can a mortgagee utilize the buyer's appraisal to review the property that is accepted into the PFS or must the mortgagee acquire an independent one?

Answer: If the buyer has secured an FHA-insured appraisal, use of the buyer's appraisal would be allowed.

Question 2: Mortgagee Letter 2008-43 incorporates guidelines for varying minimum net sales proceeds based on the length of time a property has been competitively marketed for sale. Please advise the correct Tiered Net Proceeds Requirements and the length of time the ratio is valid.

Answer: The mortgagor(s) must be willing to make a commitment to actively market their property for a period of four (4) months.

- For the first 30 days of marketing, mortgagees may only approve offers that will result in a minimum net sale proceeds of 88% of the "as-is" appraised Fair Market Value (FMV).
- 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 FMV.
- For the duration of the marketing period (60 days), mortgagees may only approve offers that will result in minimum net sale proceeds of 84% of the "as-is" appraised FMV.

Question 3: Mortgagor is deceased, his father has been making the payments, property was tenant-occupied for eight months, and now the father wants to know if he can acquire the property under the PFS Program?

Answer: Mortgagee Letter 2008-43, Paragraph I, bullets 1 and 5 state respectively:

Use of Real Estate Broker - . . . "The broker/agent selected should have no conflict of interest with the mortgagor, the mortgagee, the appraiser or the purchaser associated with the PFS transaction. Any conflict of interest, appearance of a conflict, or self-dealing by any of the parties to the transaction is strictly prohibited. A broker/agent shall never be permitted to claim a sales commission on a PFS of his or her own property or that of an immediate family member (e.g., spouse, sibling, parent, or child)."

Arms-Length Transaction - "Mortgagors and mortgagees must adhere to ethical standards of conduct in their dealings with all parties involved in a Preforeclosure Sale transaction. The Preforeclosure must be between two unrelated parties and be characterized by a selling price and other conditions that would prevail in a typical real estate sales transaction."



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Question 4: If a mortgagee is the holder of both the first and second mortgages can the mortgagee utilize the \$1,500 that is available to pay towards the settlement of the second mortgage?

Answer: Yes, Mortgagee Letter 2008-43, page 13, paragraph J, Contract Approval, states, "5. Up to \$2,500 to be used for the discharge of junior liens if closing occurs within 90 days, Within 90 days, the first \$1,000 represents the mortgagor's consideration and the additional \$1,500 represents FHA's consideration for a total of \$2,500. If settlement occurs after 90 days, the first \$750 represents FHA's consideration for a total of \$2,250."

Question 5: Is it possible to do a PFS after the mortgagee has already completed a Partial Claim?

Answer: PFS may follow a Partial Claim if there is a new reason for default and the mortgagor lacks the financial ability to cure the present default. The Partial Claim amount must be added to the Unpaid Principal Balance and the Accrued Interest amount to correctly calculate total outstanding mortgage indebtedness.

Question 6: Can a buyer utilize Nehemiah-type financing programs in conjunction with the purchase of a house that has been approved to participate in the PFS Program?

Answer: No, Nehemiah mortgages are disallowed when the buyer is obtaining FHA financing to purchase a house that is participating in the PFS Program.

Question 7: What kind of hardships does a mortgagor has to have experienced in order to qualify for the PFS Program?

Answer: Mortgagee Letter 2000-05, Paragraph B. Cause of Default, page 4, states "HUD does not have a "hardship" test. Mortgagees may offer FHA relief options to mortgagors who have experienced a verifiable loss of income or increase in living expenses to the point where the mortgage payments are no longer sustainable."

Question 8: Is it the responsibility of the mortgagee to acquire marketable title?

Answer: Mortgagee Letter 2008-43, Paragraph G. Condition of Title, Page 9, states in part, "All properties sold under the PFS Program must have marketable title."