

original sales contract with the same price as shown on the amendatory clause, along with the revised or amended sales contract. The Amendatory Clause is not required on HUD REO sales, sales where the seller is Fannie Mae, Freddie Mac, the Department of Veterans Affairs, Rural Housing Services, other Federal, State and local government agencies, mortgagees disposing of REO assets, or sellers at foreclosure sales and those sales where the borrower will not be an owner-occupant (e.g., sales to non-profit agencies).

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PROPERTY FLIPPING

Per ML 2006-14: On 6/7/06, HUD published a final rule in the Federal Register amending regulations at 24 CFR 203.37a prohibiting property flipping in HUD's single-family mortgage insurance programs by providing additional exceptions to the time restrictions on sales [Editor's Note: See Exceptions to 90-Day Restriction further on in this Mortgagee Letter]. The rule and this mortgagee letter become effective for mortgages endorsed for insurance on or after 7/7/06. This mortgagee letter also rescinds, in their entirety, Mortgagee Letters 2003-07 and 2005-05.

Prohibition on Property Flipping Described. Property flipping is a practice whereby a property is resold a short period of time after it is purchased by the seller for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. FHA's policy prohibiting property flipping eliminates the most egregious examples of predatory flips of property within the FHA mortgage insurance programs.

Overview of FHA's Property Flipping Policy. FHA requires that: a) only owners of record may sell properties that will be financed using FHA-insured mortgages; b) any resale of a property may not occur 90 or fewer days from the last sale to be eligible for FHA financing; and c) that for resales that occur between 91 and 180 days where the new sales price exceeds the previous sales price by 100 percent or more, FHA will require additional documentation validating the property's value. FHA also has flexibility to examine and require additional evidence of appraised value when properties are re-sold within 12 months.

Sale by Owner of Record. To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract. This requirement applies to all FHA purchase money mortgages regardless of the time between resales. The mortgage lender must obtain documentation verifying that the seller is the owner of record and submit this to HUD as part of the insurance endorsement binder; it is to be placed behind the appraisal on the left side of the case binder. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation such as a copy of a property tax bill, title commitment or binder, demonstrating the seller's ownership of the property and the date it was acquired. Mortgagees participating in the Lender Insurance program (see ML 2005-36) are to retain this documentation and provide it to FHA upon request.

Resales Occurring 90 Days or Less Following Acquisition. If the owner sells a property within 90 days after the date of acquisition, that property is not eligible security for a mortgage insured by FHA unless it falls within one of the exceptions to the time restrictions on resales set forth in 203.37a(c) of the regulations. FHA defines the seller's date of acquisition as the date of settlement on the seller's purchase of that property. The resale date is the date of execution of the sales contract by the buyer that will result in a mortgage to be insured by FHA.

As an example, a property acquired by the seller is not eligible for a mortgage to be insured for the buyer unless the seller has owned that property for at least 90 days. The seller must also be the owner of record.

Resales Occurring Between 91 and 180 Days Following Acquisition. If the resale date is between 91 and 180 days following acquisition by the seller, the lender is required to obtain a second appraisal made by another appraiser if the resale price is 100% or more over the price paid by the seller when the property was acquired. *As an example, if a property is resold for \$80,000 within 6 months of the seller's acquisition of that property for \$40,000, the mortgage lender must obtain a second independent appraisal supporting the \$80,000 sales price. The mortgage lender may also provide documentation showing the costs and extent of rehabilitation that went into the property resulting in the increased value, but must still obtain the second appraisal.* The cost of the second appraisal may not be charged to the homebuyer. FHA also reserves the right to revise the resale percentage level at which this second appraisal is required by publishing a notice in the Federal Register.

Resales Occurring Between 91 Days and 12 Months Following Acquisition. If the resale date is more than 90 days after the date of acquisition by the seller but before the end of the 12th month following the date of acquisition, FHA reserves the right to require additional documentation from the lender to support the resale value if the resale price is 5% or greater than the lowest sales price of the property during the preceding 12 months. At FHA's discretion, such documentation may include, but is not limited to, an appraisal from another appraiser. FHA will announce its determination to require the additional appraisal and other value documentation, such as an automated valuation method (AVM), through a Federal Register issuance. This requirement may be established either nationwide or on a regional basis, at FHA's discretion.

Exceptions to 90-day Restriction. The following sales are exempt from the time restrictions provided by 203.37a:

- * sales by HUD of its Real Estate Owned
- * sales by other United States Government agencies of single family properties pursuant to programs operated by these agencies.
- * sales of properties by nonprofits approved to purchase HUD-owned single-family properties at a discount with resale restrictions
- * sales of properties that are acquired by the sellers by inheritance
- * sales of properties purchased by employers or relocation agencies in connection with relocations of employees

- * sales of properties by state and federally chartered financial institutions and Government Sponsored Enterprises
- * sales of properties by local and state government agencies
- * Upon FHA's announcement of eligibility in a notice (i.e., MI), sales of properties located in areas designated by the President as federal disaster areas, will be exempt from the restrictions of the property-flipping rule. The notice will specify how long the exception will be in effect and the specific disaster area affected.

Inapplicability of 203.37a to New Construction. The restrictions in 203.37a are not applicable to a builder selling a newly built home or building a home for a homebuyer wishing to use FHA-insured financing.

Date of Property Acquisition Determined by Appraiser. Mortgage lenders may rely on information provided by the appraiser in compliance with the updated Standard Rule 1-5 of the Uniform Standards of Professional Appraisal Practice (USPAP). This rule requires appraisers to analyze any prior sales of the subject property that occurred within specific time periods, now set for the previous 3 years for 1- to 4-family residential properties.

As a result, the information contained on the Uniform Residential Appraisal Report or other applicable appraisal report form describing the Date, Price and Data for prior Sales is to include all transactions for the subject property within 3 years of the date of the appraisal and the comparable sales within 12 months of the date of the comparable sale. Appraisers are responsible for considering and analyzing any prior sales of the property being appraised within 3 years of the date of the appraisal and the comparables that are utilized within 12 months of the date of the comparable sale.

Therefore, provided that the URAR completed by the appraiser shows the most recent sale of the property to have occurred at least one year previously, no additional documentation is required from the mortgage lender. The mortgage lender remains accountable for verifying that the seller is the owner of record and may rely on information developed by the appraiser for this purpose, if provided. However, if the lender obtains conflicting information before loan settlement, it must resolve the discrepancy and document the file accordingly.

If you have any questions regarding this Mortgagee Letter, please call 1-800-CALL-FHA.