

**Marked to show changes 11/18/11, effective 01/01/12 (unofficial markup)**

Single-Family Seller/Servicer Guide, Volume 2  
Chs. 64-69: Servicing Nonperforming Mortgages  
Chapter B65: Workout Options  
B65.40: Approval conditions (10/01/11)

**B65.40: Approval conditions (10/01/11)**

**Changes to these requirements have been announced and will become effective on 01/01/12.**

If Freddie Mac approves the Servicer's recommendation to allow a short payoff, the Servicer must ensure that all conditions listed on Freddie Mac's approval letter are met and send the appropriate Borrower Evaluation Notice in accordance with the requirements of Section 64.6. Additionally, the Servicer must ensure that the following requirements are met:

The Servicer must:

1. Pay any delinquent real estate taxes, or, for Manufactured Homes taxed as personal property, delinquent personal property taxes and assessments and ground rent prior to and outside of the transaction. Freddie Mac will reimburse the Servicer for these expenses in accordance with Chapter 71.
2. Ensure that the Borrower pays all cash contributions in the form of cash or certified funds at settlement
3. Ensure that the title is conveyed directly from the Borrower to the buyer
4. Complete the short payoff within 60 calendar days of Freddie Mac's approval
5. Waive its rights to any accrued late fees or property inspection costs
6. Document all offers and counter offers in the Mortgage file that the Servicer negotiated with the Borrower

In addition, the Servicer must obtain an a short sale affidavit wherein the parties to the transaction attest that the sale constitutes an "arm's length" transaction. An "arm's length transaction" is a transaction between parties who are independent of one another, and unrelated and unaffiliated by family, marriage or commercial enterprise, other than the purchase and sale of the Mortgaged Premises between the Borrower(s) and the purchaser(s) that is the specific subject of the proposed short sale as disclosed to the Servicer. This affidavit is to be executed before or at the time of closing of the sale of the Mortgaged Premises by all Borrower(s), purchaser(s), real estate brokers representing any of the parties, the escrow/closing agent performing the closing of the sale, and the transaction facilitator facilitating the sale (if any) certifying under penalty of perjury that to the best of each signatory's knowledge and belief:

- (a) The sale of the Mortgaged Premises is an "arm's length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
- (b) There are no agreements, understandings or contracts between the parties that the Borrower will remain in the Mortgaged Premises as a tenant or later obtain title or ownership of the Mortgaged Premises, except to the extent that the Borrower is permitted to remain as a tenant on the Mortgaged Premises for a short term, as is common and customary in the market but no longer than ninety (90) days, in order to facilitate relocation;
- (c) Neither the Borrower(s) nor the purchaser(s) will receive any funds or commissions from the sale of the Mortgaged Premises. The Borrower may receive a payment if it is offered by the Servicer, approved by Freddie Mac and reflected on the [HUD-1 Settlement Statement](#);

- (d) There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the Mortgaged Premises that have not been disclosed to the Servicer;
- (e) All amounts to be paid to any party, including holders of other liens on the Mortgaged Premises, in connection with the short payoff transaction have been disclosed to and approved by the Servicer and will be reflected on the HUD-1 Settlement Statement;
- (fe) Each signatory understands, agrees and intends that the Servicer and Freddie Mac are relying upon the statements made in the affidavit as consideration for the reduction of the payoff amount of the Mortgage and agreement to the sale of the Mortgaged Premises;
- (gf) ~~Each~~ A signatory who makes a negligent or intentional misrepresentation agrees to indemnify the Servicer and Freddie Mac for any and all loss resulting from ~~any negligent or intentional the misrepresentation made in the affidavit~~ including, but not limited to, repayment of the amount of the reduced payoff of the Mortgage;
- (hg) The certification will survive the closing of the transaction; and
- (ih) Each signatory understands that a misrepresentation may subject the ~~responsible~~ party making the misrepresentation to civil and/or criminal liability

The affidavit must contain the name of the Servicer, Servicer loan number for the subject Mortgage, the mailing address of the Mortgaged Premises and the date the sales contract that is the subject of the short sale was ratified by the parties.

All signatures to the affidavit must be notarized and dated. The affidavit must contain the printed name and signature of each signatory. The signature of a real estate agent or settlement agent signing in a representative capacity for the brokerage or settlement service provider is acceptable so long as the representative capacity is clearly identified. The Servicer may modify and integrate its own requirements into the affidavit form so long as the minimum requirements contained in this section are present. The short sale affidavit may be included with the sales contract, an addendum, or must be a separately identifiable document, distinct from other pre-closing or pre-closing documents, such as the sales contract, as long as all signatures are obtained before or at the time of closing.

In the event the closing agent to the sale is prohibited from signing the affidavit by applicable local, State, or federal law, the Servicer may waive the closing agent's signature requirement upon request. The Servicer must condition the waiver upon the closing agent's agreement that it will not also act as the closing agent on a subsequent transaction involving the Mortgaged Premises within one year of closing the short payoff transaction. In all other circumstances, signatures from all parties identified above are required as a condition to Freddie Mac's agreement to accept a short payoff of the Mortgage.

If a party reveals an agreement, understanding or contract relating to the current sale or subsequent sale of the Mortgaged Premises that indicates the transaction is not an "arm's length" transaction, that the purchaser intends to re-sell the Mortgaged Premises in 120 days or less without having substantially refurbished or added value to the Mortgaged Premises, or otherwise indicates bad faith, collusion or fraud on the part of the parties, the Servicer must withdraw agreement to the short payoff of the Mortgage and immediately notify Freddie Mac at **[mortgage\\_fraud\\_reporting@freddiemac.com](mailto:mortgage_fraud_reporting@freddiemac.com)**.

The Servicer must:

- Maintain the original arm's length affidavit in the Mortgage file in accordance with the requirements of Section 52.3
- Provide Freddie Mac with a copy of the arm's length affidavit upon Freddie Mac's request.