

Date: February 15, 2013

To: All Texas Agents

From: Ellen Wied, Underwriting Counsel

RE: SHORT SALE DEED RESTRICTIONS

New short sale guidelines were enacted by the Federal Housing Finance Agency (FHFA), effective November 1, 2012. The FHFA is a federal agency that is the regulator for Fannie Mae and Freddie Mac, and the federal home loan banks. These new requirements were set out in the servicing guidelines provided by Fannie Mae and Freddie Mac for loan servicers and have generated new concern among lenders to meet all of the conditions set out for servicers.

The new guidelines for short sales provide that the deed to the short sale purchaser must contain a restriction on the resale of the property, which will read as follows:

**“Grantee herein is prohibited from conveying captioned property for any sales price for a period of 30 days from the date of this deed. After this 30 day period, Grantee is further prohibited from conveying the property for a sales price greater than \$\_\_\_\_ (120% of short sale price) until 90 days from the date of this deed. These restrictions shall run with the land and are not personal to the Grantee.”**

In plain language, this means that a short sale buyer is completely prohibited from selling the property for 30 days from the date of the short sale deed. After that 30 day period and up until 90 days after the date of the short sale deed, there is a limitation on the amount of profit that can be realized on a resale.

- Escrow personnel should be careful to review all short sale lender communications, letters and instructions to see if the deed restriction is required. If escrow personnel will be ordering the deed, they should verify that the deed is prepared correctly. If the short sale lender provides the deed, it should be reviewed to determine if the restriction is contained therein.
- Schedule C requirements for a short sale transaction should be revised to include a notification that an exception for the restriction will be made in all title policies to be issued on the short sale transaction if the deed contains the restriction.
- Schedule B of all policies issued on a short sale transaction should contain an exception for the restriction if it is contained in the deed.
- If examination locates this restriction in a deed in the chain of title, it may be disregarded if the plant certification date is more than 90 days after the recording of the short sale deed and there have been no further conveyances in the 90 day period. If there has been a conveyance within the 90 day period, please contact underwriting to see if a determination can be made as to whether the conveyance constituted a violation (i.e. we may not be able to ascertain the sales price of the conveyance, and thus cannot calculate if the sales price exceeded 120% of the short sale price).
- Also be aware that other lenders are using a similar deed restriction and may have a 180 day period in the restriction, rather than 90 days. In which case, all of the requirements set out above will apply for the 180 day period rather than 90 days. If any deed in the chain of title contains a restriction on resale that has not expired, exception must be made for the restriction.