

HUD Temporarily Suspends Seasoning Requirement in Effort to Speed Sales of Foreclosed Properties

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With the housing market still stagnated despite an extension and expansion of the home buyer tax credit, as well as attempts to expedite "short sale" transactions through the Home Affordable Foreclosure Alternatives program, the U.S. Department of Housing and Urban Development ("HUD") has announced its decision to temporarily suspend its "seasoning" rules.

On May 1, 2003, The U.S. Department of Housing and Urban Development ("HUD") imposed a 90 day title "seasoning requirement for all new Federal Housing Administration ("FHA") insured mortgage loans. "Seasoning" refers to the length of time that the seller has owned the property. Home buyers cannot obtain a conforming mortgage if they are putting less than 20% down and the seller hasn't owned the property for at least 90 days. The rule was originally put in place to prevent certain "flipping" transactions where a party would purchase a property and immediately sell the same property at a marked-up price.

On January 15, 2010, HUD temporarily suspended title 24 CFR §203.37a(b)(2), which is the 90 day title seasoning requirement. This is only a temporary suspension. Starting February 1, 2010 and expiring on January 31, 2011, the 90 day title seasoning requirement will not apply where the property is being sold to first time home buyers who apply for an FHA loan.

In announcing the temporary suspension, HUD Secretary Shaun Donovan stated the reasoning behind the suspension; namely, that "as a result of the tightened credit market, FHA-insured mortgage financing is often the only means of financing available to potential homebuyers." Hence, the lack of alternative financing transactions where the seasoning rule does not apply has left a FHA-insured mortgage as the only option for many home buyers, and the seasoning rule has been an impediment to the closing of some home sales.

The suspension is, as mentioned above, only temporary, and is not without certain parameters, including the following:

- The waiver takes effect February 1st, 2010 for a period of one year unless extended;
- Investors are now exempt from the 90-day seasoning rule.
- All transactions must be arms-length.
- No identity of interest can exist between buyer and seller.
- If the sale price is 20% or more of the seller's acquisition cost, the lender must: (a) provide supporting documentation and/or a second appraisal, and (b) order an inspection of the property and provide it to the buyer; and

- The waiver is limited to forward mortgages only (in other words, for reverse mortgages, the seasoning rule still applies).

In practice, HUD's 90 day seasoning requirement has proven to be a significant barrier to the completion of many real estate transactions. Industry professionals – realtors, investors and lenders, to name a few – are hopeful that HUD's recent action in suspending this rule will loosen up the housing market and prompt a further decrease in available housing inventory necessary for permanent market recovery.