Policy 22: Sale of the Housing Unit

Adoption date: October 2007
Revision date: January 2010
Revision date: July 2015

1.0 Purpose

The purpose of this policy is to provide standards for setting the sale price of a housing unit and for transferring housing units to Habitat homebuyers.

2.0 Policy

2.1 Sale Price

2.1.1 Sale Price

The Sale Price of the housing unit is its Fair Market Value, except when applicable laws or funding program requirements require a different methodology. See Note 4.1 below. Fair Market Value must be established by an independent, third-party appraisal for each housing unit. In no event may the Sale Price exceed Fair Market Value.

2.1.2 Affordability

The affiliate must structure payment of the Sale Price and any financed closing costs through a financing package that is reasonably expected to be affordable for the homebuyer over the life of the loan. See Policy 23: Mortgage Origination.

2.1.3 Finance of Certain Closing Costs

The sum of all mortgages originated in connection with the purchase and sale of a housing unit may not exceed the unit's Fair Market Value except to the extent of customary and reasonable closing costs that are financed. See Note 4.1.3 below.

2.2 Structuring the Sale

2.2.1 Timing of Title Transfer

Title to the completed housing unit must be transferred to the homebuyer upon occupancy or within a specified period of time after occupancy. See Note 4.2.1 below.

2.2.2 Marketable Title

Affiliates must convey marketable title to the homebuyer at closing. The conveyance instrument (typically, a deed) used should be consistent with local residential real estate custom. At a minimum, the conveyance instrument must include a warranty of good title against any claims arising during the affiliate's period of ownership. See Note 4.2.2 below.

2.2.3 First Right to Purchase

Affiliates must include, either in the conveyance document or a separately recorded instrument, the first right to purchase the housing unit in the event of a sale, except when applicable laws or funding program requirements prohibit reserving such a right. See Note 4.2.3 below.

2.2.4 Shared Equity

Affiliates are permitted to use a shared equity structure in the sale of a housing unit. Any such structure should observe recognized practices within the affordable housing industry for perpetual or long-term affordability and homeowner protection, including pricing of the housing unit. See Note 4.2.4 below.

2.2.5 Shared Appreciation

Affiliates are permitted to incorporate into the deed or include as a separate document a shared appreciation provision, allowing the affiliate to claim some percentage of the increase in the appreciation in the value of the housing unit over and above the fair market value of the housing unit at the time of the sale to the Habitat partner family. Any use of shared appreciation must be pursuant to a duly-approved affiliate policy. See Note 4.2.5 below.

2.2.6 Certain Prohibited Transfer Techniques

Contracts for deed, land contracts, installment land contracts and their equivalent are prohibited. See Note 4.2.6 below.

2.3 Closings and Record Retention

2.3.1 Supervision

Closings must be supervised by an attorney licensed to conduct closings in the state, or another competent real estate professional that is licensed or otherwise qualified to conduct residential real estate closings in the state in accordance with all applicable laws and industry standards.

2.3.2 Pre-Closing and Closing Disclosures

Affiliates must take all appropriate steps to ensure the partner family has received and has the reasonable opportunity to understand all relevant information describing the sale and financing of the housing unit, including without limitation, ensuring that the affiliate satisfies all pre-closing and closing disclosure requirements required by applicable laws.

2.3.3 Record Retention

Affiliates must duly adopt a record retention policy governing all closing documentation. See Note 4.3.

3.0 Rationale

3.1

It is essential for the success of the Habitat model that Habitat affiliates establish the sales price in a transparent and uniform manner, recognizing the inherent value of the housing unit, and the manner in which it is financed and subsidized to ensure affordability to the Habitat partner family.

3.2

Habitat affiliates should conduct the sales of the housing units in a professional manner, consistent with industry standards and in compliance with all applicable laws. Habitat affiliates have a responsibility to fully understand any mechanisms that impact future marketability of homes and use them in a manner that is equitable to the homeowner.

4.0 Notes

4.1 Sales Price

4.1.1 Reducing the sales price below Fair Market Value may be required for compliance with certain funding programs.

4.1.2 When resale restrictions are imposed on a housing unit, the Fair Market Value should reflect those restrictions accordingly.

4.1.3 Some funders may request their subsidies to be secured by mortgage liens on the property, which, combined with mortgages securing financing of the home for the partner family could result in total encumbrances exceeding Fair Market Value, but this should be avoided if at all possible. Please contact HFHI for more information as needed.

4.2 Structuring the Sale

4.2.1 Timing of Title Transfer

Exceptions to conveying title upon occupancy are appropriate under limited, unforeseen circumstances. Such circumstances include securing the property (through occupancy) while awaiting final processing of development or homeowner subsidies. In such events, occupancy should be permitted only under a written agreement between the affiliate and the prospective homeowner that clarifies their respective rights and obligations and provides a process for termination, and closing should be held as soon as reasonably possible after third party subsidies have been approved.

4.2.2 Marketable Title

At a minimum, affiliates should engage a local professional to examine title to any property prior to acquisition, and update that exam prior to conveyance to homebuyer. To ensure marketable title is conveyed, affiliates are strongly encouraged to obtain for the benefit of each Habitat homeowner an owner's title insurance policy, or, in states where such insurance is not available, the local equivalent. Affiliates must comply with all applicable state and federal laws regarding the allocation of the cost for such a policy.

4.2.3 First Right to Purchase

Customary types of first rights to purchase include:

(a) A Right of First Offer, which establishes the affiliate's initial right to repurchase the housing unit at its fair market value; or

(b) A Right of First Refusal, which establishes the affiliate's right to repurchase the housing unit by matching the material terms of a bona fide third party offer.

Affiliates are not required to exercise any right to repurchase at the time of a proposed resale by a partner family.

4.2.4 Shared Equity Ownership Structures

Recognized models of shared equity ownership include:

(a) Land Trust Model, where housing units are constructed on land owned by a community land trust and the housing unit is sold separately. When partnership with a local community land trust is not an available or desirable option, affiliates may sell housing units using the land trust "model," utilizing a long-term ground lease structure.

(b) Deed Restrictions, where resale restrictions or restrictive covenants that preserve long-term affordability of the housing unit are included in the deed or other instrument recorded in the public record. Affiliates using deed restrictions should ensure that they have the long-term capacity to monitor and assist with subsequent sales.

(c) Limited Equity Co-Op, where the land and housing units are owned by a nonprofit legal entity in which the residents own shares and hold leasehold title to their unit through a proprietary lease.

4.2.5 Shared Appreciation

Shared appreciation is not a pricing or financing mechanism. Affiliate policies regarding shared appreciation must provide for an equitable allocation of the increase in market value between the affiliate and homeowner, taking into account the overall benefits provided to the homeowner through the Habitat program, including without limitation the total subsidies provided to the homeowner to make the housing unit affordable. The homeowner should still have the opportunity to access some of the appreciated value, if any, and the mechanism should be designed to enable the homeowner to be in a better position as a result of the Habitat program than the homeowner would have been in by acquiring and financing the housing unit using conventional financing outside of the Habitat program. Pursuant to such a policy, sharing in appreciation can support the sustainability of an affiliate's programs and also enhance the affiliate's ability to repurchase a housing unit under a first right to purchase.

4.2.6 Prohibited Conveyance Techniques

Contracts for deed, land contracts, installment land contracts and their equivalent lack many protections afforded to borrowers accessing financing through mortgage loans and have, historically, been used as a predatory lending practice.

4.3 Record Retention

Each affiliate's policy should provide that the original, recorded conveyance document must be provided to the homeowner once returned from the real estate records. At closing, the affiliate should maintain, and homeowner should receive, a duplicate original or copy of all other documents executed at the closing. See also Policy 23 (Mortgage Origination), regarding documentation related to the application for and financing of the sale.

Supporting resources:

[PAFO Resources on My.Habitat]

Policy 23: Mortgage Origination

Adoption date: October 2007
Revision date: January 2010
Revision date: July 2015

1.0 Purpose

The purpose of this policy is to outline requirements for origination of mortgages by a Habitat affiliate, and any subsequent leveraging of such mortgages. The term "mortgage" means mortgages, deeds of trust, deeds to secure debt and other state specific equivalents. "First mortgage" means the primary mortgage instrument used to finance the sale of a housing unit. A "subordinate mortgage" is any junior mortgage that is used to finance the sale.

Additionally, the policy will also guide affiliate leadership and Boards in adopting written policies for mortgage origination.

2.0 Policy

2.1 Who may originate and hold mortgages on Habitat housing units?

2.1.1 The first mortgage may be originated by (a) the affiliate or (b) a third-party lender, as authorized by Policy 29.

2.1.2 Deferred subordinate mortgages originated by the affiliate (typically called "soft" mortgages) should be retained by the affiliate and not sold, pledged, discounted or assigned.

2.1.3 Third-party subsidy providers are permitted to originate and hold deferred subordinate mortgages on the housing unit.

2.2 Mortgage Origination Legal Requirements and Governance

2.2.1 All affiliates are subject to the jurisdiction and oversight of the Consumer Financial Protection Bureau (CFPB) and must be familiar with the most current Supervision and Examination procedures published by the CFPB.

2.2.2 Affiliates must at all times understand and be aware of their eligibility for, and the compliance requirements under, any exemptions to certain CFPB regulations, including the "Ability to Repay" rule.

2.2.3 Affiliates are subject to numerous laws and regulations in addition to those administered by the CFPB. In the marketing of Habitat finance programs to prospective homebuyers, the origination of all mortgages and the referral of potential borrowers to third-party lenders, affiliates must comply with all applicable federal, state and local laws regarding mortgage origination, including Loan Originator Qualification requirements of the affiliate and/or appropriate members of its staff and key volunteers*, and the Real Estate Settlement Procedures Act (RESPA).

* Key Volunteer - generally refers to any individual who works eight (8) or more hours each month and/or has contact with vulnerable populations such as children, the elderly or persons with disabilities. For the purposes of Loan Originators, a key volunteer includes personnel who interact with families through the selection process regardless of the number of hours worked.

2.2.4 Adopt comprehensive written board approved policies for origination, covering all activities from outreach/marketing to loan closing. Policy must include record retention for loan/mortgage documents.

2.3 Origination of First Mortgages

First priority mortgages originated by an affiliate must adhere to the following standards:

2.3.1 Affiliates shall not be permitted to charge interest on any first mortgage, or any other financing they provide directly to a Habitat homebuyer. First mortgage loans may provide for default interest if a delinquency remains uncured after any notice and cure period set forth in the mortgage instrument.

2.3.2 It is strongly recommended that the term of the first mortgage not be more than 30 years, and in no event may the term be more than 40 years.

2.3.3 The loan secured by the first mortgage must fully amortize (i.e., pay off completely) over the stated term of the mortgage. Loans with a "balloon" payment are prohibited.

2.3.4 The first mortgage should require that the homeowner use the house as their principal/primary residence, and the mortgage should include as an event of default the use of the house as rental housing.

2.3.5 The affiliate should not subordinate its first mortgage to any other mortgage on the housing unit.

2.3.6 Affordability. Affiliates must have a written policy, approved by the affiliate board, to determine, in good faith, that each homebuyer has the reasonable ability to pay the affiliates' mortgage loans. At a minimum, such policy must include provisions addressing the following industry standard ratios:

(a) Front End Ratio: The initial periodic payment (monthly payment) under the first mortgage may not exceed 30% of the applicant's gross income. Included in the monthly payment amount are principal, escrow payments for property taxes, insurance and other obligations and any other regular recurring payments, such as monthly HOA or condominium association dues. Mortgage insurance premiums, if any, and mortgage servicing charges, if passed through by the affiliate under the mortgage, are also included.

(b) Back End or "Debt to Income" Ratio (DTI): The DTI upon the affiliate's origination of each mortgage loan may not exceed 43%. DTI is the ratio that compares the total of all monthly debt payments that are expected to take more than 10 months to pay off (that is, the mortgage, real estate taxes and insurance premiums, plus car loans, and other consumer loans) to gross monthly income of the applicant. The affiliates' policies must include any process and standards that the affiliate would follow to approve exceptions to the general DTI requirement.

2.4 Mortgage Origination of Deferred Subordinate Mortgages ("Soft" Mortgages)

2.4.1 If the sale price of the housing unit (Fair Market Value-see Policy 22) is more than the sum of the first mortgage plus any third-party subordinate mortgages plus any cash down payment paid by the homebuyer, the affiliate must utilize a deferred subordinate mortgage (commonly called a "soft" mortgage). If required by a third-party subsidy provider, the deferred subordinate mortgage may be subordinate to the mortgage of the third-party subsidy provider.

2.4.2 A deferred subordinate mortgage originated by an affiliate must adhere to the following standards:

(a) Affiliates shall not be permitted to charge interest on any deferred subordinate mortgage. This will include any period of time when the mortgage is in default.

(b) No periodic payments shall be payable under the mortgage. The mortgage should be payable in full only in the event of sale, default under the first mortgage, transfer of title, maturity of the mortgage note or refinancing of the first mortgage by a third-party lender.

(c) The mortgage should have a clearly stated maturity date, with a term not longer than 40 years. If the mortgage is not forgivable, then (i) the maturity date may not be sooner than the maturity date of the first mortgage, and (ii) the mortgage must provide for end of term options in addition to any lump sum payment.

2.4.3 Forgiveness Requirements

(a) Affiliates must have a written policy addressing forgiveness. The policy must be equitable and applied consistently to all homebuyers. If the policy provides for forgiveness of all or any portion of the principal, then it must be explicitly stated in the note.

(b) Affiliates must have a mechanism in place to track and report the balances of forgivable subordinate mortgages.

2.5 Loan to Value Ratio

The Combined Loan to Value Ratio (CLTV) may not exceed 100%, except to the extent of customary and reasonable closing costs that are financed.

2.6 Mortgage Insurance

Affiliates are permitted to require homebuyers to pay for mortgage insurance if the amount of the total indebtedness (including all amortizing and deferred mortgages) the homebuyer may have on the property exceeds a loan-to-value ("LTV") ratio of 80 percent. Affiliates are not permitted to require mortgage insurance if the loan-to-value ratio falls below 80 percent, and are required to cancel such insurance when the LTV ratio reaches the 80-percent level.

2.7 Leveraging

2.7.1 Affiliates are permitted to sell (also called "discount" or "assign") their first mortgages to a commercial bank, thrift, credit union, CDFI, state housing finance agency or other regulated financial institution. Whenever a third-party lender holds the senior mortgage on a housing unit sold through Habitat (whether through the sale of a Habitat mortgage or through direct financing to the partner family under Policy 29), the Affiliate must endeavor to include in the transaction documents a provision that permits the Affiliate to intervene on behalf of the borrower, or to repurchase or purchase the mortgage, in the event of a default by the borrower. The Affiliate should also implement internal practices designed to enhance the likelihood that the Affiliate will be promptly notified (whether by the borrower or the lender) of a default by the borrower under the mortgage.

2.7.2 If an affiliate is leveraging any portion of its mortgage portfolio, the Affiliate must have a written policy establishing (a) the percentage of mortgages in the Affiliate's portfolio that may be leveraged and (b) cash reserve requirements to be maintained in connection with recourse requirements, if any.

3.0 Rationale

It is essential that Habitat affiliates (a) comply with all federal, state and local legal requirements relating to the origination of mortgages by the affiliate, (b) comply with additional "Habitat specific" mortgage origination requirements that are more restrictive than applicable legal requirements or are unique to Habitat mortgages and (c) set mortgage amounts to ensure affordability.

Supporting resources:

PAFO Resources on My.Habitat

Policy 24: Mortgage Loan Servicing

Adoption date: October 2007
Revision date: January 2010
Revision date: July 2015

1.0 Purpose

The purpose of this policy is to outline requirements for mortgage servicing of a Habitat mortgage originated by an affiliate and held in its portfolio, or any other mortgage on a Habitat housing unit that is serviced by an affiliate. Mortgage loan servicing means all activities undertaken with respect to the mortgage loan after the loan closes until the mortgage loan is paid in full.

This policy, along with supporting resources referenced below, will also guide affiliate leadership and Boards in adopting written policies for full loan servicing.

2.0 Policy

2.1 Legal Requirements and Governance

Affiliates shall not be permitted to charge interest on any mortgage financing they provide directly to Habitat homebuyers.

2.1.1 Affiliates that outsource the servicing function must ensure that (a) they have a complete understanding of their servicer's delinquency, default, loss mitigation and foreclosure policies and procedures, (b) the affiliate is entitled to receive, and actually receives, timely notifications regarding the status of all Habitat homeowners, and (c) the affiliate has policies and procedures to coordinate and implement reasonable and legally compliant enforcement practices.

2.1.2 Affiliates must at all times understand and be aware of their eligibility for, and the compliance requirements under, any exemptions to certain CFPB regulations, including the "Small Servicer" exemption.*

* You are a small servicer if you service 5,000 or fewer mortgage loans, and you own or originate all of them. Additionally, an Affiliate could meet the nonprofit small servicer exemption if they service for a fee loans on behalf of other HFH Affiliates as long as they service fewer than 5000 loans that are owned or originated by the servicer or the affiliate(s).

2.1.3 Affiliates are subject to numerous laws and regulations in addition to those administered by the CFPB. In servicing mortgages, affiliates must comply with all applicable federal, state and local laws regarding mortgage servicing.

2.1.4 Affiliates must adopt comprehensive written board approved policies for servicing, covering all activities from payment processing to loan pay off, including all loss mitigation options and foreclosure.

2.1.5 Affiliates that outsource their servicing to a third party must have a policy that includes handoff to the servicer and all processes that the affiliate performs related to servicing. NOTE: Affiliates must be aware of the servicing regulations that their servicer is governed by and ensure that there is no duplication of process between servicer and affiliate.

2.2 Servicing Mortgages

2.2.1 Servicing of mortgage loans may be conducted by (a) the affiliate or (b) by a licensed/registered (as applicable by state law) third-party servicer and must meet professional industry standards, as well as all applicable regulatory requirements.

2.2.2 Servicers (includes affiliates that service in-house) must comply with the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) provisions for mortgage servicing, as well as all other applicable federal, state and local laws regarding mortgage servicing.

2.2.3 A mortgage servicing file must be maintained for each homeowner's loan account for 1 year after the mortgage has been paid in full or servicing of the loan is transferred to a successor servicer. The file must include all records that document actions taken with the loan and must be adequately protected to prevent intentional / unintentional misuse of homeowner's information.

2.2.4 Affiliates must provide, or ensure that third party servicers provide, an accurate mortgage balance for all mortgages to Habitat homeowners at least annually. This can be in the form of a monthly mortgage statement, coupon book, or an annual mortgage statement.

2.3 Escrow Account Management

2.3.1 Escrow accounts must be managed in accordance with RESPA and all other applicable laws.

2.3.2 A separate bank account must be maintained for Escrow funds collected from homeowners. The account must be held in a federally insured financial institution/credit union, and funds are only to be used for property related expenses (e.g. flood insurance, property taxes, and hazard insurance etc.) as agreed to by the homeowner and servicer.

2.3.3 Initial and annual escrow analysis must be completed and associated statements provided to homeowners within the RESPA timelines. The statements must itemize the charges to be paid by the borrower and what is paid out of the account by the servicer.

2.4 Delinquency and Enforcement

2.4.1 Affiliates must have and observe written board-approved delinquency, default, loss mitigation (i.e., foreclosure alternatives) and foreclosure procedures that comply with all federal, state and local legal requirements.

2.4.2 Affiliate policies must categorize delinquent accounts accurately to ensure timely risk management (i.e. 1-29 days; 30-59 days; 60-89 days; and over 90 days) and include, without limitation, procedures for delivering past due and default notices.

2.4.3 Forbearance or trial modification agreements must be documented and executed by all parties, and an ability to pay determination must be undertaken to qualify the homeowner for any modified payment amount.

2.4.4 Foreclosure is permitted when loss mitigation is not reasonable under the circumstances. Federal law requires that the first notice or filing required to foreclose cannot be made unless a consumer's mortgage loan is more than 120 days delinquent. NOTE: Refer to state laws, as they may differ.

2.4.5 Affiliates that outsource the servicing function must ensure that (a) the delinquency, default, loss mitigation and foreclosure policies and procedures of the servicer are consistent with those of the affiliate, (b) the affiliate is entitled to receive, and actually receives, timely notifications regarding the status of all Habitat homeowners, and (c) the affiliate has policies and procedures to coordinate and implement reasonable and legally compliant enforcement practices.

3.0 Rationale

Mortgage Servicing is critical to the success and sustainability of both the Affiliate and the homeowner. It is important for affiliates to ensure proper loan servicing practices that comply with applicable regulations / laws and industry standards.

Supporting Resources:

[PAFO Resources on My.Habitat]