

ABOUT THE TRN PMA NON-FLIP ALTERNATIVE

The latest language in the short sale affidavit that must be complied with states, “All amounts to be paid to any person or entity, including holders of other liens on the property in connection with the short sale, have been disclosed to and approved by the servicer and will be reflected on the HUD-1 settlement statement.”

Amounts to be paid to any person in connection with the short sale would include someone who is getting paid a release fee, termination fee, or option cancellation fee, etc.

Many people have tried and even taught various ways to get paid from a short sale without actually buying the house. The most popular has been to get a commission or fee for facilitating or negotiating the short sale. This does not work. The recent FNMA Standard Short Sale and Deed-in-Lieu of Foreclosure Requirements state as follows:

Unacceptable Short Sale Transaction Costs

Fannie Mae does not allow the following transaction costs:

Fees paid to a third party to negotiate a short sale with the servicer (commonly referred to as “short sale negotiation fees” or “short sale processing fees”) must not be deducted from the sales proceeds or charged to the borrower. Additionally, the servicer, its agents, or any outsourcing firm it employs must not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with any Fannie Mae loan; Real estate sales commission paid to the borrower or the purchaser; or Buyer’s discount points or mortgage loan origination costs.

With the Release and Termination of Contract form that discloses the fee or profit for getting out of the deal, but you also include it on the HUD-1 as being paid outside of closing. The preliminary HUD-1 shows this on the buyer’s side as part of the cash amount that the buyer is paying for the property, specifically the release and termination. This HUD-1 will need to be approved by all the parties, their respective lenders, and possibly others.

Putting this information on the buyer’s side of the HUD-1 is both an important and a delicate process.

Do we show it as funds paid outside of closing? YES.

Do we break it into 2 or 3 different sums and put it on different parts of the buyer’s part of the HUD-1? NO.

Do we show it all in one lump sum? YES.

When there is only a first lien and no junior liens, do we show it as paying off a second lien? NO.

Even if it has been properly recorded by using an open-end mortgage good up to \$6,000? NO AGAIN.

Do we show it as a buyer’s premium or extra commission? NO.

Do we call it a “release fee”, “lien release fee,” “property stabilization and security fee,” or “facilitation and negotiation fee?” NO, to all of these.

We show it as costs paid outside of closing by the buyer as part of this transaction but documented on the HUD-1 in order to completely and accurately establish the buyer’s tax basis in the property. We reference 26 USC Section 121 and American Taxpayer Relief Act of 2012 (H.R. 8) pursuant to which the buyer is establishing these various sums as a component to acquisition basis in the property and is memorializing the same on the HUD-1 to document their true starting basis.

A buyer who is actually documenting everything that goes into their acquisition basis of a new property, even if it is their principle residence, will want to consider any mileage that is relevant (as well as parking fees, tolls or costs associated with going to and from the Realtor’s office, title company’s office, and travel to and from the property, lender’s offices, travel to view other houses etc), postage for mailing things relative to the loan application, and any other expenses that were actually incurred relative to buying the property. These other expenses could include things such as classes and seminar training; meetings with accountants, tax advisors or financial planners; and costs for architects, contractors, landscapers, designers or home decorators with whom you have consulted relative to making this house your home.

The rationale for going in this direction is two-fold. First of all, it is accurate as to the fact that the fee paid to an investor pursuant to the Release and Termination Agreement is truly part of the buyer’s acquisition basis in the property. Secondly, by urging the buyer to fully and better document their basis in the property when considering what was paid to the investor plus **all of their other expenses**, it will clearly add up to something other than a round or even number. You are helping the buyer better establish their beginning basis in the property and creating a situation where they will have a better chance of fully enjoying their Section 121 exemption from taxation when they ultimately resell the property.

Not only is everything fully disclosed and documented and set forth for the approval of the servicer / lender / mortgage investor, it is also done in a way that assists the buyer with their long-term tax planning. In states where the buyer is represented by an attorney, a thoughtful buyer’s attorney should clearly appreciate this.

The basic “Non-flip Alternative” has been created by Attorney Jeff Watson and Brian Meara. (Now with the addition of TR Network PMA foreclosure negotiations techniques) Jeff has been a real estate investor since 1993. The Jeffery S. Watson Law Firm primarily deals with established real estate investors, particularly those who are using self-directed retirement accounts.

As a frequent and popular guest speaker he has become a recognized thought leader and innovator in the field of real estate investing. From 2010 to present Jeff has led the Distressed Property Coalition; a Washington DC lobbying effort in bringing about several changes in government regulation of distressed property purchases and re-sales.

The new Standard National Short Sale Policy instituted by FHFA, effective Nov. 1st 2012 is

due in part to the DPC and Jeff's efforts. This means that Jeff and the DPC just changed the rules; for the better, on how investors and others buy and sell real estate.

Basic Overview of the Non-Flip Alternative

We are a Negotiating Firm that negotiates short sales for listing agents and homeowners. Investors routinely purchase the homes we negotiate. They sometimes flip them right away, rehab some and then sell, or hold in our inventory as rentals. Most new short sale listings do not have a buyer/contract right away and this is one of the advantages of working with us. We have investors that are able to put in an immediate cash offer so that we can begin the negotiations with the bank (as you know the process cannot begin unless there is a buyer/contract). Investor contract (A-B) with the owner of record grants them "equitable interest" which allows them to list, market for sale, and the like, prior to taking ownership. If we negotiate a good spread and there are no re-selling restrictions of 30, 60 or 90 days, we close.

If those restrictions are in the short sale approval, the Investor as buyer (B), will contract with an end-buyer(C), and then execute a Release & Termination of that (B-C) contract with the end buyer (C), terminate the (A-B) contract with the owner of record. Then a new contract (A-C) is created directly with the owner of record (A) and new (C) end-buyer. We then present the new (A-C) contract to the bank, with the POF, HUD, and our Release and Termination of Contract to receive the approval letter issued in the (C) buyer's name and proceed to the closing table. That is done in a way that the investor involvement does not cost the end-buyer 1 extra penny. Many times the Bank a little extra, then the final negotiated price, and sometimes give the new (C) end-buyer a better price then their original offer, which would come out of our Release and Termination of Contract Fee.

Simple example; Investor under contract (B-C) to sell the home for an agreed upon price for \$160k, and we achieved the approval in the name of the Investor (A-B) for \$155k, they would simply collect a fee \$5k paid to their LLC for the Release and Termination of Contract (Personal Property Transaction). The new contract (A-C) is for the \$155k that the bank wants. Therefore, the total purchase price of \$160k for the end-buyer did not change, just the structure. This process is 100% legal, ethical, and completely DISCLOSED TO ALL PARTIES to the transaction including the bank.

See Realtor Investor Short Sale Solutions Power Point Presentation

About TRN Non Flip Alternative 2020