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STATEMENT OF THE

NATIONAL ASSOCIATION OF REALTORS®

SUBMITTED FOR THE RECORD TO THE

UNITED STATES HOUSE

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HEARING REGARDING

MORTGAGE SERVICING: AN EXAMINATION OF THE ROLE OF FEDERAL REGULATORS IN SETTLEMENT NEGOTIATIONS AND THE FUTURE OF MORTGAGE SERVICING STANDARDS

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INTRODUCTION

On behalf of the 1.1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, thank you for holding this very important hearing on the future of mortgage servicing standards.

A mortgage servicing issue that REALTORS® have a vested interest in is short sales. REALTORS® are invested in this issue because it impacts their business, their clients, and their communities. Over two years ago, NAR came before the full House Financial Services Committee to bring short sale related concerns to the attention of Congress. During that time span, NAR has reached out to both the prior and current Administrations, federal agencies, regulators, Congress and financial institutions about this issue, yet consumers and REALTORS® continue to experience significant failures in this area. So again, we are reaching out to Congress to ensure that consumer concerns regarding this valuable foreclosure mitigation tool are adequately addressed.

The credit crisis has taken a toll on countless thousands of Americans. Many have lost jobs, lost their businesses, and lost their homes. As the number of homeowners experiencing financial difficulties increases due to the prolonged recession, many look for alternative options to foreclosure including selling their homes. A short sale is one instrument at the disposal of homeowners who owe more than their home is worth that will help relieve them of the overwhelming financial burden that their mortgage has become. Due to the nation's continuing economic malaise, the number of short sale properties in the marketplace is extremely high. According to May 2011 data from the National Association of REALTORS®, Nevada, California, Hawaii and Florida are states where significant shares of all properties sold are short sales: 37%, 25%, 25%, and 21%, respectively.

Unfortunately, the ability of the consumer to execute a short sale remains severely hampered by the inability of the lender and/or loan servicer to decide whether to approve a short sale. Too often, short sales are still a story of delay and unrealistic views of current home values, resulting in the potential buyer cancelling the contract and the property going into foreclosure. Enormous amounts of time are spent by distressed homeowners on potential short sales, only to have them result in foreclosures due to obstacles within the cumbersome short sale process.

Homeowners continue to complain that potential homebuyers are walking away from their short sale because the lender has taken many months and still not responded to their request for an approval of a proposed short sale price. Though some efforts have led to modest improvements, many consumers have mentioned that the delay in short sale price approval still exceeds 90 days; in many cases the approval does not arrive prior to the beginning of foreclosure proceedings. While the lending community has worked to improve the size and training of their short sales staffs, improvements in response times have been marginal.

We need lenders to streamline the short sales process in order to reduce the amount of time it takes to sell the property, improve the likelihood the transaction will close, and help reduce the total number of foreclosures. This effort will benefit the lender, the seller, the buyer, and the community.

NAR respectfully requests that as you begin your review of servicing standards that consideration is given to improving the short sales process, especially focusing on issues related to the disposition of second lien positions and the facilitation of negotiations between multiple servicers. Multiple liens divided amongst multiple servicers make the approval process for the sale much more difficult. Second lien holders often hold up the transaction to extract the largest possible payment, in exchange for releasing their lien, even though in foreclosure they will get nothing. Holding the short sale approval process hostage usually ends with this result.

SHORT SALES – A VALUABLE FORECLOSURE MITIGATION TOOL

A short sale is a transaction that occurs when the sales price for a property is insufficient to pay the total of all mortgages, liens and costs of sale, and where the seller cannot bring sufficient liquid assets to the closing to cure all deficiencies. A short sale can occur when an individual is in arrears on a mortgage and headed toward foreclosure. We note, too, that a short sale can also occur when an individual is current on his/her payments but the value of the house has fallen below the outstanding balance on the mortgage. Some home owners who bought at the height of the housing boom may find that they need to sell because of divorce, job transfer or other unforeseen circumstance but find themselves upside down, owing more than the home is currently worth.

A short sale is one tool that can help all of these categories of borrowers. It has particular utility as a mechanism that can be used to avoid a foreclosure. A short sale allows the borrower to sell a property that they can no longer afford. If a borrower can avoid the foreclosure process through a short sale, the consumer is able to rebuild their credit history more quickly and the lender is able to avoid the even higher losses that occur with a foreclosure.

A lender can also benefit from a short sale by avoiding the liabilities it assumes by owning the property after foreclosures. The bank's funds are not tied up while it holds the property after the foreclosure and until resale, and the bank avoids the additional costs associated with a bank-owned property such as attorneys' fees and maintenance expenses. If the bank can avoid foreclosure, then it will not need to accumulate the additional capital reserves it would need if the number of foreclosed properties increases in the bank's portfolio. According to May 2011 data from Lender Process Services (LPS), the average cost of a foreclosure is $60,000 and takes 19.3 months to close. Thus, even though the bank will incur a loss in a short sale, the bank's overall position remains more stable than would occur if it carried out a transaction to foreclosure and ultimate resale of the property. Also, title problems that persist in foreclosure proceedings are avoided in short sales transactions with agreement by all parties on the sale of the home.

In addition, all the parties benefit from a quick sale and a higher short sale price. A short sale provides the added bonus of providing more support for home values in the associated neighborhood than a price derived from the sale of the foreclosed property. Unfortunately, our membership continues to encounter road blocks that are preventing troubled homeowners from utilizing the short sale process. The theme that continues to be mentioned regularly by our members is that lenders take an extraordinary amount of time to decide if they are willing to accept a short sale purchase offer. This "waiting period" can extend 45, 60 or even more than 90 days after submission of an offer and all the requested documentation.

Given these lender delays, too often, the property moves to foreclosure, and eventually the bank finds itself forced to sell it for much less than they could have if they had approved the short sale. This is disastrous for everyone involved – the homeowners, their neighborhoods and communities, and the lender.

CURRENT SHORT SALE ISSUES

REALTORS® have identified two factors that contribute to the problems consumers encounter during the short sale process. The two are: 1) servicer valuations that do not reflect the distressed nature of the sale, and 2) a second mortgage that necessitates two lender/servicer approvals for the sale, and/or the approval of the entity that holds the pool of loans if the mortgage has been securitized.

Unrealistic Servicer Property Valuation

An issue that consumers frequently encounter is that lenders are commonly rejecting legitimate offers. In these situations, the bank's internal property valuations come in much higher than the proposed short sales prices. In many cases, the servicer's valuation system has not taken into account that the sale is a duress sale, that there may be many foreclosed homes in the neighborhood and/or that the property is often times in poor or less than optimal condition.

Second Trust Holders

Consumers with junior trust obligations (e.g., second mortgages or home equity lines of credit) are being hampered in their quest for a quick resolution to their financial burden because the borrower or the first mortgage lender must negotiate with the holder of the second trust to approve the short sale. In most instances, NAR is being informed that junior trust holders are unwillingly to accept the first lender's proposed settlement to facilitate the short sale. Extended negotiations between the first and junior trust holders increases the time required to sell the home, which often forces the potential homebuyer to search for another, non-short sale, property.

Actions like this are leading our members to ask, "If I have a seller who needs to sell their home and a qualified buyer that wants to make the purchase, why does it take so long for the lender to review the information and make a decision? Why does the lender counter these offers with unrealistic requests only to lose the buyer and eventually have to resort to an expensive foreclosure proceeding and an even less lucrative foreclosure sale? Why don't the lenders, who made the loans that put the borrower in this tenuous position initially, want to resolve these negative issues that are in their books in a timely manner?"

By thwarting the short sale, the lender sets off a negative cascade effect that hurts everyone from the borrower, who loses the property and has damaged his / her credit report; the lender, who loses money by bearing the expense of foreclosing on and then reselling the property well below the offered short sale price; the neighborhood, where home values recede due to the artificially low sales price of the foreclosed property; and the community, where the property tax base and collections suffer.

NAR'S EFFORTS TO ADDRESS MEMBER CONCERNS WITH SHORT SALES

In support of our members calls for assistance, NAR has worked on several fronts to help resolve issues encountered during the short sales process. In 2008, NAR established a Short

Sale Working Group composed of REALTORS® from across the country to examine what was occurring in the marketplace, why it is occurring, and what NAR could do to address these issues.

The Working Group's findings led NAR to recognize that there was a need to educate REALTORS® about the short sale process. As a result, NAR has designed a number of materials to help our members understand the key components of the short sale process and how to work with clients in these situations. In addition, NAR has worked with a few of the large financial institutions, as well as Fannie Mae and Freddie Mac, to develop short sales tools focused on real estate professionals to help them better serve consumers as they pursue short sales.

Also, NAR is continuing our outreach to the real estate finance industry to:

- Make contact information for lender/servicer loss mitigation personnel easily available to borrowers. Troubled borrowers need to be able to easily locate, online, the correct department and the individual who will be responsible for processing the short sale application.

- Garner commitments by lenders and their servicers to keep the listing agent and seller regularly informed of the status of the short sale application throughout the process and respond to reasonable requests for information, and

- Obtain a commitment by lenders and their servicers to deliver a clear answer, in writing (yes or no), within a reasonable time frame (i.e. 45 days).

CONCLUSION

Our efforts alone, though many and beneficial, are limited in their impact. In order to ensure that distressed homeowners have access to all of the foreclosure mitigation tools possible, short sales must be viewed as a positive, viable option by all parties.

NAR thanks you for this opportunity to share our thoughts on improving the short sale process as part of reforming mortgage servicing standards. As always, the National Association of REALTORS® is at the call of Congress, and our industry partners, to help continue the housing and national economic recovery.