Section 1.28 - Short Sale and Restructured Mortgage Loan Standard

In This Section This section contains the following topics.

Overview

General

The requirements outlined in this document apply to any new application for the scenarios outlined below:

- a borrower who has a short sale in their credit history,
- a borrower buying a short sale property, as reflected in their sales contract; and/or
- a borrower who is refinancing a restructured mortgage loan.

Notes:

- The short sale standards outlined in this document apply to all Truist non-Agency loan programs. For Agency loan programs guidance, see "Short Sales" in the "Credit Requirements" and/or "Occupancy/Property Types" topics outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for standards.
- The restructured mortgage loan standards outlined in this document apply to all Truist non-Agency loan programs. For Agency loan programs guidance, see "Refinance of a Restructured Loan" in the "Refinances" topic outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for guidelines.
- For non-agency loan programs with existing published short sale or restructured mortgage loan standards, the more restrictive of the loan program standards or those outlined in this section should be followed.

Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- 2022
- 2020

Note: There were no related bulletins published in 2019 or 2021.

Borrowers with a Short Sale in Credit History

Short Sales - General	• A *short sale,* sometimes referred to as a *short payoff* or a *preforeclosure sale,* is defined as a transaction wherein a mortgage lender agrees to accept a lesser amount than is currently owed to satisfy an existing mortgage.
	• Indicators that may be disclosed that would identify a short sale include, but are not limited to:
	  ◦ a 1099-C from the mortgage lender, mortgage insurance company or third party investor,
	  ◦ the borrower's credit report indicates wording such as, "*Settled for less than amount owed,"* or "*PIF" (Paid In Full) - not as agree,* or
	  ◦ the borrower's credit report indicates Remarks Codes associated with the credit report tradeline of E0047, R0107, or T0140.
	• Once a short sale is completed, the loan balance is charged off.
	• Depending on state law or the mortgage legal documents, the lender or the investor may have a right to file a deficiency judgment after the completion of the short sale, to collect the losses incurred.

Short Sales – Agency Loan Programs	Reference: See "Short Sales" in the "Credit Requirements" topic outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for standards.

Short Sales – Non-Agency Loan Programs	• The short sale non-Agency standards below apply to the Key Loan Program.
	  ◦ A minimum, of five (5) years must have elapsed since the short sale occurred and all of the following re-established credit standards must be met:
	    ▪ A minimum of three (3) credit references (one must be a traditional credit reference and one must be housing related),
	    ▪ No more than two (2) 30 day late payments in the 24 months preceding the loan application,
	    ▪ No late payments on housing debt since completion of short sale, and
	    ▪ No new public records for bankruptcies, foreclosures, deeds-in-lieu, unpaid judgments, unpaid collections, garnishments, liens, etc. since completion of short sale.
	• If there is evidence of a deficiency judgment by the lender, mortgage insurance company or investor against the borrower for the charged-off amount and there is a secured or unsecured promissory note for the deficiency balance, the payment must be included in the debt ratio calculation.
	
	Note: Non-traditional credit history is not allowed.

Borrowers Buying a Short Sale Property

Agency Loan Programs

Reference: See "Short Sales" in the "Occupancy/Property Types" topic outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for standards.

Non-Agency Loan Programs

- Borrowers may pay additional fees and payments in connection with purchasing a short sale property that are typically the responsibility of the seller. Examples of short sale fees and payments include, but are not limited to, the following:
  - short sale processing fee (i.e., short sale negotiation fees, buyer discount fees, short sale buyer fees),

    Note: The short sale processing fee is not a common and customary charge and must be treated as a sales concession if any portion is reimbursed by an interested party to the transaction.

  - negotiated short payoff to a subordinate lien holder, and
  - payment of delinquent taxes or delinquent homeowner association (HOA) dues.

  Note: The above referenced fees are non-loan estimate fees.

- These fees and payments cannot be financed into the loan amount and must be included on the Settlement statement. Borrowers must fund the cost of the additional fees and payments with their own funds. The additional funds to complete the transaction must be documented.
- The sales contract will identify if the property being purchased is a short sale property.
- The transaction **must** be an arm's length transaction (i.e., all parties are unaffiliated and unrelated).

  Reference: See the *Documentation Requirements* subtopic subsequently presented in this topic for additional information.

- Purchase transactions where Truist or another lender is the servicer, who is agreeing to the short sale, are eligible provided the transaction meets the standards outlined in this document.
- Correspondent Lenders must diligently review these purchase transactions for unusual fees, payments, and other possible red flags that could indicate fraudulent activity related to the short sale.

  Reference: See the *Potential Red Flags* subtopic subsequently presented in this topic for additional information.

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Documentation Requirements

Agency Loan Programs	Non-Agency and VA Loan Programs
Reference: See "Short Sales" in the "Occupancy/Property Types" topic outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for standards.	The following documentation must be included in the loan file: • full appraisal based on an interior/exterior inspection of the subject property, **Note**: Reduced appraisals, Freddie Mac Form 2055, appraisal waivers [i.e., DU appraisal waivers and LPA Automated Collateral Evaluation (ACE)], and automated valuation models (AVMs) are not eligible. • the sales contract executed by all parties with details of the additional fees and payments, • a copy of the executed arm's length affidavit(s) verifying all parties (borrower, seller, Listing and Buying Agents) are unaffiliated and unrelated, • the Settlement Statement that includes all borrower paid short sale fees and payments, and • source of client's funds used to cover the short sale fees and payments.

Potential Red Flags

Outlined below are examples of possible red flags associated with properties purchased through a short sale transaction.

If . . .	Possible Red Flag	Then . . .
Borrower's offer to purchase the subject property is within 72 hours of the property being listed at a short sale price.	Possible indicator that the borrower and offer were pre-arranged prior to the property being listed at the short sale price.	When validating the appraisal: • Ensure the property is listed within the market range. • Compare the purchase offer date against the days on market (DOM) information in Subject section of the appraisal. • Confirm borrower is not in the real estate industry. • Confirm transaction is an arm's length transaction.
Borrower is related or associated with the seller or listing agent.	If association exists: • There is an increased risk for straw buyer. • The family member that currently owns the home continues to write checks to the lender.	• Review credit documents for similar last names, addresses, phone numbers, employers, etc. • If review identifies loan is a straw buyer, loan is **not eligible**.

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Potential Red Flags, (continued)

If . . .	Possible Red Flag	Then . . .
Borrower is a real estate professional (realtor, investor, etc.).	Increased risk of: • Straw Buyer, • Foreclosure, • Bail out, or • Occupancy misrepresentation	• Review credit documents for any evidence of borrower being a real estate professional. • If borrower is a real estate professional, must obtain two years tax transcripts. • If misrepresentation exists, loan is **not eligible**.
Borrower's assets have accumulated rapidly and recently.	Possible straw buyer	• Request explanation for unusual bank statement activity. • Document source of large deposits.
Borrower lives in different state than subject property	Many short sale/foreclosure bailout schemes recruit out-of-state investors. High risk of: • Straw Buyer, • Foreclosure, • Bail out, or • Occupancy misrepresentation	• Ensure property is on MLS listing. • Obtain letter of explanation from borrower as to how they found the property. • Confirm transaction is an arm's length transaction. • If misrepresentation exists, loan is **not eligible**.

Borrowers Refinancing a Restructured Mortgage Loan

Agency Loan Programs	Reference: See "Refinance of a Restructured Loan" in the "Refinances" topic outlined in Section 2.01 Agency Loan Standard of the *Correspondent Seller Guide* for standards.

Conventional Non-Agency Loan Programs	• A *restructured* mortgage loan is sometimes referred to as a "short pay loan" or "short pay refinance" and is defined as a mortgage loan in which the terms of the original transaction have been changed resulting in either absolute forgiveness of the debt or a restructure of the debt through either a modification of the original loan or origination of a new loan that results in:
	  ◦ forgiveness of a portion of principal and/or interest on either the first or second mortgage,
	  ◦ application of a principal curtailment by or on behalf of the investor to simulate principal forgiveness,
	  ◦ conversion of any portion of the original mortgage debt from secured to unsecured, or
	  ◦ conversion of any portion of the original mortgage debt to a "soft" subordinate mortgage.
	
	Notes:
	  ◦ A "soft" subordinate mortgage is defined as a mortgage that is fully forgiven over a period of time or due upon the sale of the subject property.
	  ◦ Typically there are no regularly scheduled payments required for a "soft" subordinate mortgage.
	
	• If the transaction involves refinancing of an outside lender's mortgage that has previously been restructured, as defined above, the mortgage is NOT ELIGIBLE for refinancing with Truist.
	• If the transaction involves the refinancing of a Truist mortgage that has previously been restructured or is currently being processed or serviced by the Truist Loss Mitigation Group, the refinance is eligible to proceed provided that transaction meets the following specific loan program standards:
	  ◦ borrower must have made at least 24 consecutive months of payments on the restructured loan to be eligible for refinancing, and
	  ◦ borrower's payment history must reflect 0x30 in the most recent 24 months.
	• Cash-out refinance transactions are not eligible if the existing mortgage is a restructured mortgage.
	• Indicators that may be disclosed that would identify a prior restructure of a mortgage include, but are not limited to:
	  ◦ tax returns that indicate income from a 1099C from the mortgage lender, mortgage insurance company or third party investor,
	  ◦ loan payoff amount is significantly less than the credit report balance or the current monthly payment disclosed on the 1003 varies from the payment reported on the credit report, or
	  ◦ the borrower's credit report indicates wording such as, *"Settled for less than amount owed,"* or *"PIF" (Paid In Full)* - not as agreed.