



Credit after Foreclosure or Short Sale

One of the concerns a consumer has after experiencing a bankruptcy, foreclosure, or short sale (referred to as a "preforeclosure sale" by Fannie Mae) is the ability to obtain credit to purchase another home. Fannie Mae has updated its credit guidelines. This legal article summarizes those guidelines.

Q 1. How long is the time period after a foreclosure before a consumer can be eligible to obtain credit to purchase a home?

A. Five years from the date the foreclosure sale was completed. Additional requirements that apply after 5 years and up to 7 years following the completion date are as follows:

- . The purchase of a principal residence is permitted with a minimum 10 percent down payment and minimum representative credit score of 680.
- . Purchase of a second home or investment property is not permitted.
- . Limited cash-out refinances are permitted for all occupancy types pursuant to the eligibility requirements in effect at that time.
- . Cash-out refinances are not permitted for any occupancy type.

(Source: FNMA Announcement 08-16, 6-25-08)

Q 2. Why do the additional requirements for foreclosures in Question 1 only apply from 5 to 7 years following the foreclosure completion date?

A. According to Fannie Mae policy in Part X, Section 103 of the Selling Guide, Fannie Mae requires only a 7-year history to be reviewed for all credit and public record information. The 7-year timeframe also aligns with the information provided by the borrower on the loan application relative to disclosure of a past foreclosure action. (Source: FNMA Selling Guide, 4-1-09.)

Q 3. Does a shorter time period apply if the borrower has "extenuating circumstances" that led to the foreclosure?

A. Yes. Three years from the date the foreclosure sale was completed. The same additional requirements apply as listed in Question 1 except the minimum credit score of 680 is not required. (Source: FNMA Announcement 08-16, 6-25-08.)

Q 4. What are "extenuating circumstances?"

A. Fannie Mae describes "extenuating circumstances" as follows:

Extenuating circumstances are nonrecurring events that are beyond the borrower's control that result in a sudden, significant, and prolonged reduction in income or a catastrophic increase in financial obligations.

If a borrower claims that derogatory information is the result of extenuating circumstances, the lender must substantiate the borrower's claim. Examples of documentation that can be used to support extenuating circumstances include documents that confirm the event (such as a copy of a divorce decree, medical bills, notice of job layoff, job severance papers, etc.) and documents that illustrate factors that contributed to the borrower's inability to resolve the problems that resulted from the event (such as a copy of insurance papers or claim settlements, listing agreements, lease agreements, tax returns (covering the periods prior to, during, and after a loss of employment), etc.).

The lender must obtain a letter from the borrower explaining the relevance of the documentation. The letter must support the claims of extenuating circumstances; confirm the nature of the event that led to the bankruptcy or foreclosure-related action, and illustrate the borrower had no reasonable options other than to default on their financial obligations.

(Source: FNMA Selling Guide, 4-1-09 at 391.)

Q 5. How long is the time period after a deed-in-lieu of foreclosure before a consumer can be eligible to obtain credit to purchase a property?

A. Four years from the date the deed-in-lieu was executed.

Additional requirements that apply after 4 years and up to 7 years following the completion date are as follows:

- . Borrower may purchase a property secured by a principal residence, second home, or investment property with the greater of 10 percent minimum down payment or the minimum down payment required for the transaction.

- . Limited-cash-out and cash-out refinance transactions secured by a principal residence, second home, or investment property are permitted pursuant to the eligibility requirements in effect at that time.

(Source: FNMA Announcement 08-16, 6-25-08.)

Q 6. Does a shorter time period apply if the borrower has "extenuating circumstances" that led to the deed-in-lieu of foreclosure?

A. Yes. Two years from the date the deed-in-lieu was executed. The same additional requirements apply as listed in Question 4 after 2 years up to 7 years. (Source: FNMA Announcement 08-16, 6-25-08.)

See Question 4 for the definition of "extenuating circumstances."

Q 7. How long is the time period after a "preforeclosure sale" before a consumer can be eligible to obtain credit to purchase a property?

A. Two years from the completion date. No exceptions are permitted to the 2-year period due to extenuating circumstances. (Source: FNMA Announcement 08-16, 6-25-08.)

Q 8. What is a "preforeclosure sale" mentioned in Question 6 and is that the same as a short sale?

A. "A preforeclosure sale involves the sale of the property by the borrower to a third party for less than the amount owed to satisfy the delinquent mortgage, as agreed to by the lender, investor, and mortgage insurer" (Source: FNMA Announcement 08-16, 6-25-08).

Although the terms preforeclosure sale and short sale have been used interchangeably, there is a significant difference for purposes of obtaining credit. For Fannie Mae purposes, a preforeclosure assumes that the borrower has been delinquent in paying his or her mortgage and the lender agrees to accept a lesser amount to avoid the time and expense of a foreclosure action. A short-sale, however, can also refer to situations in which the lender of the mortgage agrees to a payoff of a lesser amount than is actually owed, even on a current mortgage, to facilitate the sale of the property to a third party. (Source: FNMA Announcement 08-16 Q&A, 8-13-08.)

Q 9. Does a shorter time period apply if the borrower has "extenuating circumstances" that led to the preforeclosure (short) sale?

A. No. There are no exceptions to the 2-year time period. (Source: FNMA Announcement 08-16, 6-25-08.)

Q 10. If a borrower sold his or her property as a short sale but was never delinquent on that mortgage and is now attempting to purchase a new primary residence, will Fannie Mae purchase the loan?

A. The loan will be eligible for delivery to Fannie Mae provided that the borrower's previous mortgage history complies with Fannie Mae's excessive prior mortgage delinquency policy--that is the borrower does not have one or more 60-, 90-, 120-, or 150-day delinquencies reported within the 12 months prior to the credit report date--and the borrower has not entered into any agreement with the short sale lender to repay any amounts associated with the short sale, including a deficiency judgment. (Source: FNMA Announcement 08-16 Q&A, 8-13-08 ; FNMA Selling Guide, Part X, Chapter 3, Section 302.09. .)

Q 11. Are preforeclosure (short) sales and deed-in-lieu of foreclosure actions identified on a credit report?

A. Preforeclosure sales may be reported as "paid in full" with a "settled for less than owed" remarks code, and the mortgage tradeline would indicate any recent delinquency. A deed-in-lieu may be reported by a remarks code indicating a deed-in-lieu. (Source: FNMA Announcement 08-16 Q&A, 8-13-08.)

Q 12. How long is the time period after a bankruptcy (all except Chapter 13) before a consumer can be eligible to obtain credit to purchase a property?

A. Four years from the discharge or dismissal date of the bankruptcy action (Source: FNMA Announcement 08-16, 6-25-08).

Q 13. How long is the time period after a Chapter 13 bankruptcy before a consumer can be eligible to obtain credit to purchase a property?

A. Two years from the discharge date and four years from the dismissal date (Source: FNMA Announcement 08-16, 6-25-08).

Q 14. Does a shorter time period apply if the borrower has "extenuating circumstances" that led to the bankruptcy (all actions)?

A. Yes. Two years from the discharge or dismissal; however, no exceptions are permitted to the 2-year time period after a Chapter 13 discharge (Source: FNMA Announcement 08-16, 6-25-08).

See Question 4 for the definition of "extenuating circumstances."

Q 15. How long is the time period after multiple bankruptcy filings before a consumer can be eligible to obtain credit to purchase a property?

A. Five years from the most recent dismissal or discharge date for borrowers with more than one bankruptcy filing within the past 7 years (Source: FNMA Announcement 08-16, 6-25-08).

Q 16. Does a shorter time period apply if the borrower has "extenuating circumstances" that led to the multiple bankruptcies?

A. Yes. Three years from the most recent discharge or dismissal date. The most recent bankruptcy filing must have been the result of extenuating circumstances. (Source: FNMA Announcement 08-16, 6-25-08.)

See Question 4 for the definition of "extenuating circumstances."

Q 17. What is the difference between a Chapter 13 bankruptcy and a Chapter 7 bankruptcy?

A. Chapter 13 permits a borrower with a regular income to propose a plan to repay some or all of his or her obligations over a period of up to five years. A borrower who files a Chapter 7 is permitted to retain exempt assets and receive a discharge of the borrower's debts. Chapter 7 is a relatively quick liquidation process that is generally completed within 120 days. Chapter 7 cases are rarely dismissed. (Source: FNMA Announcement 08-16 Q&A, 8-13-08.)

Q 18. What is the difference between a Chapter 13 dismissal and a Chapter 13 discharge?

A. A borrower who files a Chapter 13 can dismiss the case at any time (voluntary dismissal) or the case may be dismissed by the court based on the borrower's failure to comply with the requirements of the Bankruptcy Code or to make the required payments. If the borrower who files a Chapter 13 case makes all of the payments required by the plan, the borrower receives a discharge at the end of the plan. A borrower who doesn't make all the payment required by the plan may still receive a discharge if the court finds, among other things, that the borrower made a certain amount of the payments and the borrower's failure to make all of the payments was due to circumstances beyond the borrower's control. (Source: FNMA Announcement 08-16 Q&A, 8-13-08.)

Q 19. What are the requirements to re-establish a credit history?

A. After a bankruptcy or foreclosure-related action, a credit history must meet the following requirements to be considered re-established:

- . It must meet the requirements for elapsed time (as discussed in this article).
- . It must reflect that all accounts are current as of the date of the mortgage application.
- . It must include a minimum of four credit references. At least one of the references must be a traditional credit reference, and one of the references must be housing-related.

A. housing-related reference must cover the period following the bankruptcy discharge or dismissal, foreclosure, or deed-in-lieu, and can be in the form of mortgage payments or rental payments.

If rental payments were not reported to the credit repositories, the lender must obtain copies of bank statements, money orders, or canceled checks for the most recent 12-month period as a supplement to the rent verification.

- . It must reflect three of the four credit references, including rental housing references, as active in the 24 months preceding the date of the mortgage application.
- . It must include no more than two installment or revolving debt payments 30 days past due in the last 24 months.
- . It must include no installment or revolving debt payments 60 or more days past due since the discharge or dismissal of the bankruptcy or the completion of the foreclosure-related action.
- . It must include no housing debt payments past due since the discharge or dismissal of the bankruptcy or the completion of the foreclosure-related action.
- . It must include no new public records since the discharge or dismissal of the bankruptcy or the completion of the foreclosure-related action. Public records include bankruptcies, foreclosures, deeds-in-lieu, preforeclosure sales, unpaid judgments or collections, garnishments, liens, etc. (Source: FNMA Selling Guide, 4-1-09 at 392.)

Q 20. Where can I get more information?

A. This article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit C.A.R. Online at www.car.org.