



## Section 35 — Second Appraisal Requirement – FAQ

### When does a Section 35 loan require a 2nd appraisal?

Unless otherwise exempt, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

- (A) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or
- (B) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

### Why does the borrower need a 2nd appraisal?

In order to protect the consumer from overinflated property values federal regulation requires a 2nd appraisal if the transaction meets the requirements listed above and no exemption exists.

### What are the exemptions?

A second appraisal is not required if:

- Seller is a local, State or Federal government agency;
- Seller acquired title by exercising right as holder of defaulted mortgage loan;
- Seller is non-profit
- Seller inherited the property
- Seller acquired property by divorce decree
- Seller is an employer or relocation agency
- Seller is a service member who received deployment, or permanent change of station order after they obtained the property
- Property is located in a federal disaster area
- Loan amount is less than \$26,000
- Property is located in a "rural" area as defined by 1026.35(b)(2)(iv)(A)

### How long will this take?

It could take the same amount of time as a standard appraisal depending on other factors in that particular market.

### Who pays for it?

First National Bank of America will pay for the 2nd appraisal

### Does a Quit Claim Deed trigger this requirement?

Yes, unless a previous owner remains on title, or it meets one of the regulatory exemptions. A transfer from a legal entity, i.e. LLC to another party, even if that other party owns the LLC still triggers this 2nd appraisal requirement.

### The property transfer in question was from the builder's holding company to the builder, does this count as a transfer?

Unfortunately, yes it does count as a transfer. Business structures are legally separate entities, and so the regulation does not exempt these types of transfers.

### Is this the same type of appraisal as a standard report?

Yes, the report is the same but there are some additional questions that the 2nd appraiser needs to provide in their report to satisfy this requirement.

1. The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;
2. Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and
3. Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property