



Fannie Mae®

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# Multifamily Selling and Servicing Guide

Effective as of September 25, 2023

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## Chapter 7 Non-Performing Mortgage Loans

### Section 701 Generally

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This Chapter sets forth the policies, procedures and standards for servicing Non-Performing Mortgage Loans through the default resolution process. The provisions of this Chapter apply, unless otherwise noted, to both Secondary Risk Mortgage Loans and Primary Risk Mortgage Loans.

Fannie Mae requires that, at a minimum, each Servicer offer the same standard of care to its Fannie Mae portfolio as it would its own portfolio. Subject to this Chapter, the Servicer must aggressively pursue collection of all amounts due from Borrowers under the Loan Documents to minimize losses. To that end, this Chapter sets forth the roles, duties and responsibilities of the various groups within Fannie Mae, the Servicer, and, if applicable, the Special Servicer charged with resolving delinquencies and defaults in the most efficient and expeditious manner.

The party performing the loss mitigation actions, as outlined in this Chapter 7, is referred to as the "Special Servicer". The Special Servicer will either be the Lender, Fannie Mae, or a contract Special Servicer for the Lender or Fannie Mae, as permitted by this Guide. In this Chapter, any reference to the respective rights or duties of the Lender or Fannie Mae, as the Special Servicer, shall also apply to any approved contract Special Servicer for the Lender or Fannie Mae; however, it is the Lender's responsibility to ensure that any actions taken in its behalf by a contract Special Servicer fully comply with the requirements of this Guide.

The requirements set forth in this Chapter represent only the minimum requirements that Fannie Mae expects from the Servicer. Unusual circumstances may require the Servicer to perform additional servicing duties as directed by Fannie Mae. Fannie Mae requires a high standard of delinquent Mortgage Loan servicing. Failure to service in accordance with that standard may result in Fannie Mae's exercise of its remedies as set forth in the Guide and the Lender's Contract.

**In the event of a conflict between this Chapter, the Lenders Contract, the Transaction Documents, and the Loan Documents, the following is the order of priority regarding governing provisions: (1)Loan Documents, (2)Transaction Documents, (3)Lenders Contract, and (4)this Chapter. To the extent not in contradiction with the Loan Documents, the Lenders Contract or the Transaction Documents, the requirements of this Chapter must be satisfied.**



## **Section 702**      Secondary Risk Mortgage Loans and Primary Risk Mortgage Loans

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### **702.01**    Generally

For certain Lenders, the Lender's Contract with Fannie Mae will specify which party has all of the risk of loss on the Mortgage Loan, or if the Lender and Fannie Mae share the loss. In some Lender Contracts, the Mortgage Loans may be Secondary Risk until the Lender's recourse obligation is deemed exhausted after which the Mortgage Loans will become Primary Risk.

### **702.02**    Secondary Risk Mortgage Loans

#### **702.02A**    Definition

A Mortgage Loan is considered a Secondary Risk Mortgage Loan when all losses incurred on such Mortgage Loan are contractually borne by the Lender until the Lender's specified recourse obligation is deemed exhausted. This obligation to bear all losses is sometimes referred to as a "Top Loss" obligation. Because Secondary Risk Mortgage Loans will convert to Primary Risk Mortgage Loans upon the deemed exhaustion of the Lender's obligation, Fannie Mae and the Servicer must work together to accurately track amounts for any losses that may have occurred.

#### **702.02B**    Lender is Special Servicer

For all Secondary Risk Mortgage Loans, the Lender, or its approved contract servicer, will be the Special Servicer. The Special Servicer will be required to submit to Fannie Mae a Servicer Workout Action Template ("SWAT") (Form 4810) for all Secondary Risk Mortgage Loans as more particularly provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 708.02: Servicer Workout Action Template \("SWAT"\)](#).

#### **702.02C**    Deemed Exhaustion of Recourse Obligation

When the cumulative approved realized losses plus Potential Losses under a Secondary Risk Lender Contract equal or exceed 90% of the Lender's recourse obligation under that Contract, the Lender's recourse obligation under the Contract will be deemed to be exhausted and the remaining Mortgage Loans serviced under that Contract will be deemed to be Primary Risk Mortgage Loans. Fannie Mae will provide notice in writing to the Servicer at the time of such re-designation. Re-designation of a Mortgage Loan from Secondary Risk to Primary Risk does not relieve the Lender of its remaining recourse obligation.

Fannie Mae's estimate of Potential Losses will be calculated as follows:





- the value of each Property (as provided below) securing all then-delinquent Mortgage Loans, less
- the UPB of all then-delinquent Mortgage Loans, plus
- estimated expenses to pursue a foreclosure Course of Action for all then-delinquent Mortgage Loans.

The value of the Property shall be calculated as follows:

- 90% of the Property value of each Property securing each such delinquent Mortgage Loan if the value is established by an appraisal or broker's opinion of value dated six (6) months or less prior to incurring the Potential Loss, or
- 60% of the most recent Property value of each Property securing each such delinquent Mortgage Loan if the value is established by an appraisal or broker's opinion of value dated more than six (6) months prior to incurring the Potential Loss.

## **702.03 Primary Risk Mortgage Loans Defined**

### **702.03A Definition**

A Mortgage Loan is considered a Primary Risk Mortgage Loan when Fannie Mae bears all losses on the Mortgage Loan or when the Lender and Fannie Mae share the losses on the Mortgage Loan. All Mortgage Loans delivered under the DUS and Aggregation product lines and certain other Mortgage Loans where Fannie Mae either bears all the risk of loss or shares in a portion of the risk of loss are Primary Risk Mortgage Loans.

### **702.03B Fannie Mae is Special Servicer**

For all Primary Risk Mortgage Loans, Fannie Mae, or its contract servicer, will be the Special Servicer.

## **Section 703 Mortgage Loan Defaults**

### **703.01 Anticipatory Defaults**

When a Borrower indicates to the Servicer that it is no longer willing or able to continue to make its debt service or other payment obligations as required by the Loan Documents or to perform acts that are required by the Loan Documents, the Servicer must notify its Fannie Mae Representative immediately. The Servicer and Fannie Mae will determine whether such future non-performance is inevitable and whether to treat such a potential breach as immediate and, if repudiatory, to seek immediate relief.





## **703.02** Performance Defaults

### **703.02A** Failure of Borrower to Perform

The Loan Documents will provide acts of the Borrower that are required to be performed, the failure of which may be designated as an event of default. There may be grace periods for curing such a default. The Servicer must provide written notice of the default to Fannie Mae and to the Borrower as required in the Loan Documents. The Servicer must diligently pursue the Borrower's cure thereof within the time permitted. If the Borrower fails to cure the default within the time provided in the Loan Documents to effect such a cure, a Performance Default has occurred. Depending on the severity of the Performance Default, Fannie Mae may permit the Servicer to monitor the default per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 703.02C: Lender Tenders for Minor or Immaterial Defaults](#).

### **703.02B** Service of Process

Often, the Lender, Servicer, or Fannie Mae become aware of a Performance Default through receipt of a complaint, petition, or similar legal document in connection with a lawsuit. While the Servicer has the duty to provide notices of default to the Borrower, neither the Lender nor the Servicer is authorized to accept service of process on behalf of Fannie Mae. Fannie Mae's Legal Department in Washington, DC must accept service of process for Fannie Mae related to any Mortgage Loan or Property.

### **703.02C** Lender Tenders for Minor or Immaterial Defaults

#### **1. Primary Risk Mortgage Loans**

In some instances, for minor or relatively immaterial defaults (like materialmen and mechanics' liens) on Primary Risk Mortgage Loans, Fannie Mae will elect to tender the Performance Default to the Servicer to monitor, engage legal counsel as necessary, and otherwise protect Fannie Mae's security interest in the Property. These "Lender Tenders" will be monitored and special serviced by the Servicer using its customary standard of care for similar Performance Defaults in its own portfolio.

#### **2. Secondary Risk Mortgage Loans**

For Secondary Risk Mortgage Loans, all of the monitoring and special servicing activities for minor or relatively immaterial defaults will be performed by the Servicer.

#### **3. Lender Tenders Not Subject to Requirements of this Chapter**

Lender Tenders are not subject to the terms of this Chapter.



### **703.03** Monetary or Payment Defaults

Payments under the Note evidencing the Mortgage Loan are due on the first day of the month or such other date as may be specified in the Note. Typically, there is no grace period for making payments and payments made after the scheduled due date are past due even if late charges do not attach until some days later. If the Borrower fails to pay monies when due, whether the obligation arises under the Note or other Loan Document, a Monetary or Payment Default has occurred.

### **703.04** Date of Default

#### **703.04A** Definition of Date of Default

The Date of Default is the date of the initial Payment Default or Performance Default.

#### **703.04B** Definition of Non-Performing Mortgage Loan

After the Date of Default and until the default is cured, the Mortgage Loan is considered a "Non-Performing Mortgage Loan."

#### **703.04C** Partial Payments by Borrower Do Not Change Date of Default

For purposes of computing the time period for initiating the Dual Track Approach and electing a Course of Action as described in this Chapter, partial payments made by the Borrower for monies due under the Note or other Loan Document does not advance forward the Date of Default. The last paid installment ("LPI") is the accounting term for indicating the due date of the last payment received. Partial payments may be received over time that advance the LPI date, but the Date of Default of the initial Payment Default or Performance Default will not change.

Per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 704.02: Partial Payments; Late Payments](#), before the Servicer is permitted to apply any partial payment to advance the LPI date, the Servicer must first obtain direction from Fannie Mae Special Asset Management. Fannie Mae may, at its option, require the Servicer to hold all such partial payments in suspense and not advance the LPI date until the Borrower has paid all amounts necessary to cure all Payment Defaults.

### **703.05** Late Charges and Default Interest

#### **703.05A** Timing for Imposition of Late Charges and Default Interest

The imposition of late charges and default interest must be made in accordance with the amounts and at such time as specified in the Note or other Loan Document.



## **703.05B** Late Charges and Default Interest

### **1. Late Charges**

Unless otherwise provided in the Lender Contract, all late charges are wholly retained by the Servicer. Any decision to waive the collection of late charges payable to the Servicer rests with the Servicer.

### **2. Default Interest**

Unless the Lender's Contract specifies otherwise, so long as the Servicer is making Delinquency Advances, the Servicer is entitled to retain that portion of the Mortgage Loan interest rate charged to the Borrower that is attributable to the default and intended to be added to the stated Mortgage Loan interest rate. If the Servicer is not making Delinquency Advances, no amount of the default interest component may be retained by the Servicer. Without regard to whether the Servicer is making Delinquency Advances, Fannie Mae is always entitled to the interest that accrues at the stated Mortgage Loan interest rate.

## **703.05C** No Deduction for Late Charges or Default Interest

Late charges and default interest may not be deducted by the Servicer from the Borrower's P&I payments, T&I deposits, or Collateral Agreement deposits.

## **703.05D** Enforceability of Late Charges and Default Interest

The enforceability of late charges and default interest may depend on the law in the Property jurisdiction. The Servicer must determine, based on the facts and circumstances of any transaction and their legal counsel's advice, whether any such charges are enforceable in the Property jurisdiction prior to making demand.

## **Section 704** Notice of Default; Reservation of Rights

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### **704.01** Notice of Default

#### **704.01A** Notice to Fannie Mae of Payment Default

Using the Multifamily Delinquency System, the Servicer must advise Fannie Mae of a Payment Default or a Performance Default on or before the 17th day of the month (or on the next Business Day if the 17th is not a Business Day) in which the Payment Default occurs or is discovered.

#### **704.01B** Notice to Fannie Mae of Performance Default

By written notice to its Fannie Mae Representative (Multifamily Loss Mitigation for Primary Risk Mortgage Loans, and Maturity Management



Top Loss for Secondary Risk Mortgage Loans), the Servicer must advise Fannie Mae of certain Performance Defaults as provided in this Section. Notice of a Performance Default must be given to Fannie Mae:

- within five (5) days after the Servicer becomes aware of the Performance Default; or
- if the Loan Documents permit a cure period after the Borrower receives written notice of its default or failure to perform any act under the Loan Documents, then within five (5) days after the Borrower's cure period has expired and a Performance Default has occurred. The Servicer shall provide any such notice of the Performance Default to the Borrower per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 703.02: Performance Defaults](#).

If the Borrower's default or failure to perform any act under the Loan Documents has been excused by a waiver given by the Servicer (if permitted pursuant to this Guide) or by Fannie Mae, such default or non-performance is not considered a Performance Default.

After having given Fannie Mae notice of a Performance Default, the Servicer should provide updates at least monthly to its Fannie Mae Representative, to advise of status of the default and the steps being taken by the borrower to cure the Performance Default.

## **704.01C** Types of Performance Defaults

The following Performance Defaults must be reported by the Servicer, as provided in this Section; however, to the extent the Servicer believes that a Performance Default not listed below is material to the Borrower's ability to perform under the Mortgage Loan, or the value of the Mortgage Loan or the Property, the Servicer should report that Performance Default as well:

### **1. Unauthorized Transfers**

To the extent not approved in accordance with [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 418: Credit Enhancement Mortgage Loans and Multifamily Affordable Housing Properties](#), any transfers identified as a Transfer/Assumption in [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 418: Credit Enhancement Mortgage Loans and Multifamily Affordable Housing Properties](#), unless such type of transfer is permitted under the applicable Loan Agreement or Security Instrument for the Mortgage Loan.

### **2. Completion/Repair Defaults**

The Borrower's failure to complete required repairs in the



aggregate in excess of the lesser of \$50,000 or 10% of current UPB under a Loan Agreement, a Completion/Repair Agreement, a Replacement Reserve and Security Agreement, or any other Loan Document or agreement binding upon the Borrower.

### **3. Mechanics', Materialman's or Judgment Liens**

The Borrower's failure to release or bond off a mechanics', materialman's or judgment lien that has been filed against the Property.

### **4. Failure to Maintain Insurance**

The Borrower's failure to maintain all insurance coverages as required by [Part II, Chapter 5: Property and Liability Insurance](#) and the applicable Loan Agreement or Security Instrument for the Mortgage Loan.

### **5. Failure to Maintain the Property**

The Borrower's failure to maintain the Property as required by the applicable Loan Agreement or Security Instrument for the Mortgage Loan, as evidenced by outstanding code violations or municipal code enforcement actions pending against the Property for immediately hazardous conditions (such as inadequate fire exits, rodents, lead-based paint, lack of heat, hot water, electricity, or gas, etc.), uninhabitable units on the Property, the failure to promptly make repairs to the Property following a casualty loss, demolition of Improvements on the Property, or waste or abandonment of the Property or its Improvements. For purposes of reporting under [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 704.01: Notice of Default](#), "uninhabitable units" do not include a unit where a tenant has vacated and the unit is being made ready, so long as the Borrower is promptly addressing the condition of the vacated unit and in the process of making it ready for leasing.

### **6. Change in Use**

The Borrower's alteration of the Property or change in use, unit mix or other characteristics of the Property, or converting any individual dwelling unit to commercial use, or initiating or acquiescing to a change in the zoning classification of the Property, or establishing any condominium or cooperative regime with respect to the Property, or subdividing the Property, without Fannie Mae approval as required by the Loan Documents.

### **7. Environmental Conditions**

The Borrower's failure to comply with its Operations and Maintenance ("O&M") Agreement for the Property, or the existence of any environmentally hazardous materials that would constitute a Prohibited Activity or Condition under the Loan Agreement, Security Instrument, or other Loan Documents.

### **8. Noncompliance with Laws**

Any violation of laws, ordinances or regulations by the Borrower



and/or the Property, as required by [Part V, Chapter 3: Custodial Accounts, Section 301.04: Investments and Interest](#).

#### **704.01D** Contact with Borrower

The Servicer must contact the Borrower as provided in this Chapter to determine why the payment has not been made and whether the payment will be made before the end of the month. The Servicer must continue to update the Multifamily Delinquency System on its discussions with the Borrower until the Mortgage Loan has been transferred to the Special Servicer (either Fannie Mae for Primary Risk Mortgage Loans, or the Servicer's special servicing area for Secondary Risk Mortgage Loans).

#### **704.01E** Pre-Negotiation Letter

##### **1. Execution**

Prior to entering into any discussions with a Borrower regarding an anticipatory default (per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 703.01: Anticipatory Defaults](#)) or after the Mortgage Loan has been transferred to the Special Servicer and prior to any further discussions with the Borrower regarding the Non-Performing Mortgage Loan and possible resolution of the default, the Borrower, Fannie Mae (if a Primary Risk Mortgage Loan), the Servicer (if a Secondary Risk Mortgage Loan) or the Lender (if the Lender has loss sharing and is not also the Servicer) must execute and send to the Borrower a written Pre-Negotiation Form Letter (NOI and Loan Document Provisions) ([Form 4811](#)) or Pre-Negotiation Form Letter ([Form 4812](#)).

##### **2. Purpose of Pre-Negotiation Letter**

The purpose of the Pre-Negotiation Letter is for all parties to acknowledge in writing that any discussions relating to resolution of the default are not binding on any party until the discussions are documented in a written agreement executed by all parties. Use of the Pre-Negotiation Letter minimizes the risk of a liability claim against Fannie Mae or the Servicer that the Borrower acted in reliance on a verbal representation by Fannie Mae or the Servicer.

### **704.02** Partial Payments; Late Payments

#### **704.02A** Partial Payments

If the Borrower makes a partial payment, within five (5) business days after receipt of the partial payment the Servicer must send a letter to the Borrower, under the Servicer's letterhead, the Multifamily Partial Payment Letter – Fees (Optional) Assessed ([Form 4806](#)).

#### **704.02B** Late Partial Payment





If the Borrower makes a late and partial payment, within five (5) business days after receipt of the late and partial payment the Servicer must send to the Borrower, under the Servicer's letterhead, the Multifamily Partial Payment Letter – Fees (Optional) Assessed ([Form 4806](#)).

#### **704.02C** Full Payment After Expiration of Period Before Assessing Late Charges

If the Borrower makes a full payment after the date late charges are assessed, upon receipt of such payment the Servicer must send within five (5) business days the Borrower, under its letterhead, the Multifamily Late Payment Letter – Fees (Optional) Assessed ([Form 4805](#)).

If the amount of the payment received from the Borrower is not sufficient to cure all Monetary Defaults, the Servicer shall obtain direction from Fannie Mae Special Asset Management prior to applying the amount to past-due payments and advancing the LPI date. Fannie Mae may, at its option, require the Servicer to hold any such payments received in suspense until the Borrower has paid all amounts necessary to cure all Monetary Defaults.

#### **704.02D** Application of Partial Payments

If the amount of the payment received from the Borrower is not sufficient to cure all Monetary Defaults, the Servicer shall obtain direction from Fannie Mae Special Asset Management prior to applying the amount to past-due payments and advancing the LPI date. Fannie Mae may, at its option, require the Servicer to hold any such payments received in suspense until the Borrower has paid all amounts necessary to cure all Monetary Defaults.

#### **704.02E** Failure to Make Any Payment

If the Borrower fails to make any payment at all, within five (5) business days following the date late charges are incurred the Servicer must send to the Borrower, under the Servicer's letterhead, the Multifamily No Payment Received Letter – Fees (Optional) Assessed ([Form 4807](#)).

#### **704.02F** Copies of Letters Sent to Borrower; Correspondence with Borrower

The Servicer must send to its Fannie Mae Representative a copy of any letter sent to the Borrower pursuant to this Chapter at the same time as it sends such letter to the Borrower. After outside counsel is engaged, any correspondence with the Borrower related to the Payment Default or Performance Default, or the Course of Action, must be made by or through the outside counsel.

## **Section 705** Capital Repairs and Protection of Property and Property Income





## **705.01 Funding Capital Repairs During Default Resolution**

### **705.01A Generally**

It is not unusual for a Property securing a Non-Performing Mortgage Loan to be in need of repairs during the default resolution process. Generally, a Payment Default or a Performance Default will result in a default under the Collateral Agreements for Replacement Reserves, Operating Deficit, Completion/Repairs, or other Collateral Agreements. When the Borrower is in default under a Collateral Agreement, the Special Servicer has discretion in applying the reserves or Letter of Credit proceeds either to repairs or replacements or to the payment of amounts due and owing to Fannie Mae under the Loan Documents.

#### **1. Primary Risk Mortgage Loans**

As part of its Asset Review for Primary Risk Mortgage Loans, as provided in this Chapter, the Servicer must advise Fannie Mae Special Asset Management of the type of repairs or replacements that are necessary and recommend whether the repairs should be funded from the Collateral Agreement funds. It is Fannie Mae's decision whether or not to accept the recommendation and use the funds for repairs or replacements for Primary Risk Mortgage Loans.

#### **2. Secondary Risk Mortgage Loans**

For Secondary Risk Mortgage Loans, the Lender must provide a SWAT describing the actions it intends to take to ensure the repair of the Property and to prevent further Property deterioration. The decision whether or not to use Collateral Agreement funds for repairs or replacements is the Special Servicer's. When making the decision whether to use the Collateral Agreement funds for repairs or replacements, the level of cooperation from the Borrower and remitting the monthly net operating income must be a factor to consider.

### **705.01B Health and Safety Repairs**

If in inspecting the Property securing the Non-Performing Mortgage Loan, it is apparent that the Borrower is not making repairs related to the health and safety of the tenants or is allowing the physical condition of the Property to deteriorate, then:

- for Primary Risk Mortgage Loans, the Servicer must immediately notify Fannie Mae Special Asset Management and, if the Mortgage Loan has been transferred to Fannie Mae Special Asset Management for special servicing, Fannie Mae may elect to engage outside counsel to pursue the court appointment of a receiver, as well as enforce other rights and remedies; or
- for Secondary Risk Mortgage Loans, the Lender must provide



a SWAT describing the actions it intends to take to ensure the repair of the Property and to prevent further Property deterioration.

**THE SERVICER MUST NOT ATTEMPT TO MAKE THE REPAIRS, HIRE CONTRACTORS TO MAKE THE REPAIRS, OR OTHERWISE TAKE ANY ACTION THAT COULD RESULT IN A MORTGAGEE-IN-POSSESSION STATUS.**

## **705.02** Protection of Property Income

For all Non-Performing Mortgage Loans, if the Borrower is not accounting for and paying to the Servicer the monthly net operating income from the Property after the Date of Default, then:

- for all Primary Risk Mortgage Loans the Servicer must notify Fannie Mae Special Asset Management as part of the Asset Review or otherwise; or
- for all Secondary Risk Mortgage Loans, the Special Servicer must provide in the SWAT the actions it intends to take to obtain control of the net operating income.

## **705.03** Property Management Changes

### **705.03A** Primary Risk Mortgage Loans

For Primary Risk Mortgage Loans, any proposed changes in the property management for Property securing a Non-Performing Mortgage Loan must be approved in writing by Fannie Mae Special Asset Management.

### **705.03B** Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, the recommendation to change the property management for Property securing a Non-Performing Mortgage Loan must be included in the SWAT.

### **705.03C** Approval Decision Criteria and Timing

The decision to approve the replacement property management must focus on, among other customary underwriting criteria, identifying conflicts of interest between the proposed Property Manager and Fannie Mae, as well as evaluating the Property Manager's ability to maintain the Property's physical condition and improve operating income.



Fannie Mae will communicate its approval or rejection of the proposed replacement of the property management within thirty (30) days after receipt from the Servicer of all information necessary to render its decision. Fannie Mae's approval may be conditioned upon receiving additional documentation or the satisfaction of additional requirements. If Fannie Mae has not approved or conditionally approved the proposed replacement property management within thirty (30) days after the Servicer's request, the proposed change in property management will be deemed to be denied by Fannie Mae.

### **705.03D** Documenting the Property Management Change

Unless the change in property management is through a court-appointed receiver, the Servicer must send an original Assignment of Management Agreement ([Form 4508](#)) for the proposed new property management company executed by the Borrower and information regarding the new property management company to Fannie Mae Special Asset Management to effect a change in Property management.

## **Section 706** Reinstatement; Calculation of Payoff Amount

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### **706.01** Reinstatement

#### **706.01A** Primary Risk Mortgage Loans

For Primary Risk Mortgage Loans, if the Borrower offers to reinstate a Non-Performing Mortgage Loan at any time after the Mortgage Loan has been transferred to Fannie Mae Special Asset Management, the Servicer must notify Fannie Mae Special Asset Management in writing. Fannie Mae will make the determination of whether to allow reinstatement of the Non-Performing Mortgage Loan.

#### **706.01B** Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, if the Borrower offers to reinstate a Non-Performing Mortgage Loan at any time after a SWAT has been provided to Fannie Mae, the Servicer (if not the Lender with the risk of loss) will notify the Lender in writing and the Lender will make the determination of whether to allow reinstatement, subject to applicable law, and provide an updated SWAT to Fannie Mae.

### **706.02** Calculation of Payoff Amount

For either Primary Risk Mortgage Loans or Secondary Risk Mortgage Loans, if in the course of performing loss mitigation actions the Special Servicer requires a computation of the payoff amount for the Mortgage Loan (e.g., for a demand letter to Borrower after acceleration, preparation of litigation pleadings for foreclosure judgment or deficiency suit,



determination of foreclosure bid, etc.), the Servicer shall calculate the full payoff amount and submit it for Fannie Mae's confirmation in accordance with [Part V, Chapter 2: Reporting and Remitting, Section 214.03: Calculating and Obtaining Confirmation of Payoff Amount](#). In those instances, if there is not an actual payoff of the Nonperforming Mortgage Loan expected, the anticipated foreclosure date or the "as of" date for the payoff shall be used as the "payoff date" in the calculation. In addition, the Servicer's request for verification of the payoff amount must be submitted to Fannie Mae for confirmation at least two (2) business days before such payoff amount is needed by the Special Servicer or outside counsel for its demand letter, litigation pleadings, or other use.

## **Section 707** Non-Performing Primary Risk Mortgage Loans – Transfers to Fannie Mae Special Asset Management

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### **707.01** Transfer to Special Servicing

At any time during the first 60 days after the Date of Default, a Non-Performing Primary Risk Mortgage Loan may be transferred to Fannie Mae Special Asset Management, to be the Special Servicer, if the Servicer or Fannie Mae determines that the Borrower is either not cooperating with attempts to resolve the default or it becomes apparent the Borrower will not be able to cure the default. Fannie Mae reserves the right to require any Non-Performing Primary Risk Mortgage Loan be transferred to Fannie Mae Special Asset Management prior to the 60th day after the Date of Default.

Any Non-Performing Primary Risk Mortgage Loan not previously transferred to Fannie Mae, as the Special Servicer, must be transferred to Fannie Mae Special Asset Management no later than the 60th day after the Date of Default.

### **707.02** Asset Review

At the time of the transfer of the Non-Performing Primary Risk Mortgage Loan to Fannie Mae for special servicing, in addition to the Servicing Transfer Memo prepared by the Servicer in accordance with [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 709.02: Servicing Transfer Memo](#), the assigned asset manager for Fannie Mae Special Asset Management and the appropriate representatives of the Servicer will engage in a discussion to determine what documents or additional due diligence may be required to review the status of the Non-Performing Mortgage Loan or the Property. This Asset Review may include:

- the delivery of copies of the Loan Documents to Fannie Mae;
- the review of the third-party reports obtained by the Lender prior to the origination of the Mortgage Loan;
- the review of the Underwriter's Narrative, the Transaction



Approval Memo or other underwriting analyses and materials of the Lender related to the Non-Performing Mortgage Loan;

- the review of various other third-party reports, analyses, studies, proposals or other documents obtained by Fannie Mae or the Servicer subsequent to the origination of the Non-Performing Mortgage Loan;
- obtaining additional third-party reports (including Property appraisal, environmental study or PCA), studies or proposals; or other documents or due diligence related to the Non-Performing Mortgage Loan; or
- assessing the Borrower or Key Principal's financial condition, the operations of the Property, or the current market value and condition of the Property.

## **Section 708**      Non-Performing Secondary Risk Mortgage Loans – Special Servicing

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### **708.01**      Servicer Performs Loss Mitigation Actions

For Secondary Risk Mortgage Loans, the Lender shall be the Special Servicer to perform all approved loss mitigation actions to be taken under the Dual Track Approach as described in this Chapter, including selecting and implementing a Course of Action for resolution of the Non-Performing Mortgage Loan.

### **708.02**      Servicer Workout Action Template (“SWAT”)

#### **708.02A**      Delivery of SWAT

The Special Servicer must submit to Fannie Mae Special Asset Management a SWAT for review and approval not later than:

- 60 days after the Date of Default for any Payment Default; or
- 15 days after the Maturity Date if the Borrower fails to pay off the Mortgage Loan on or before the Maturity Date.

It is expected that the Special Servicer has collected the necessary data and documentation to prepare its loss mitigation plan for the Non-Performing Mortgage Loan and selected a Course of Action prior to submission of its SWAT.

#### **708.02B**      Purpose of SWAT

The purpose for the SWAT is to ascertain Potential Losses associated with the Non-Performing Mortgage Loan and the impact to the



Lender's recourse obligation. The SWAT communicates to Fannie Mae the Lender's selected Course of Action, the underlying collateral value (which may be the Special Servicer's estimate or a broker's opinion of value, prior to obtaining an appraisal), operations and physical condition of the Property, financial condition of the Borrower, and loss mitigation actions proposed to be taken by the Special Servicer. Additionally, the SWAT specifies an anticipated resolution date, the anticipated resolution costs, and, if foreclosure is the selected Course of Action, the timing for the Lender's purchase of the Mortgage Loan from Fannie Mae, as provided in this Chapter.

## **708.02C** Contents of SWAT

The SWAT submission must include:

- a copy of the Note;
- a copy of the recorded Security Instrument; and
- a copy of the recorded Assignment of Security Instrument to Fannie Mae. If the Assignment has not been recorded, the Servicer must, within five (5) Business Days after delivery of the SWAT to Fannie Mae Special Asset Management either:
  - repurchase the Mortgage Loan from Fannie Mae in accordance with this Chapter; or
  - record the original Assignment and deliver to Fannie Mae a file-stamped copy of the recorded Assignment.

In addition, if foreclosure is the selected Course of Action, the SWAT must include justification for a bid at the foreclosure sale that is less than an amount calculated as follows:

- the actual UPB of the Mortgage Loan;
- accrued interest, plus default interest, to the date of foreclosure sale;
- sums advanced pursuant to the Security Instrument (e.g., taxes, legal costs and fees, etc.);
- the Yield Maintenance or Prepayment Premium; and
- accrued late charges;

Less the following amounts:

- funds held by the Servicer for taxes and insurance deposits, and Collateral Agreement deposits;
- funds collected or received as rents or net operating income;



and

- proceeds from any insurance loss settlement.

#### **708.02D** Fannie Mae Approves SWAT

If Fannie Mae approves the SWAT, the Special Servicer will be granted a limited power of attorney to take all actions on behalf of Fannie Mae, as the noteholder and record lien holder, in accordance with the approved SWAT. In addition, if the Special Servicer or its legal counsel determines that, with respect to a specific Non-Performing Mortgage Loan, a waiver of actions otherwise required in this Chapter is required by local law or a waiver will result in a more effective default resolution, then the Special Servicer must document the appropriate action through the SWAT.

#### **708.02E** Fannie Mae does not Approve SWAT

If Fannie Mae and the Special Servicer are not in agreement with the recommended Course of Action and the SWAT is not approved by Fannie Mae:

- the Lender may purchase the Non-Performing Mortgage Loan from Fannie Mae without expectation or ability to utilize the Lender's recourse obligation, as provided in this Chapter; or
- Fannie Mae may select or implement a Course of Action of its choosing. In such an event, the Lender must reimburse Fannie Mae, within one (1) month following written demand with supporting documentation of the amounts expended, for all costs incurred by Fannie Mae in connection with its implementation of the Course of Action. Fannie Mae may require settlement of any claims at any time before completion of the Course of Action, based on a valuation process and reasonable estimates of its future costs. All sums paid by Lender pursuant to this provision shall not be deemed Actual Losses and shall not be reimbursed to Lender or credited against the Lender's recourse obligation.

#### **708.02F** Updating SWAT

It is essential for the Special Servicer and Fannie Mae to have open and timely communication throughout the SWAT process. Therefore, all SWATs must be updated and resubmitted to Fannie Mae Special Asset Management until final disposition of the Non-Performing Mortgage Loan at the following intervals:

- within three (3) Business Days after the Special Servicer's receipt of new information impacting the approved SWAT that





changes its elected Course of Action, including granting any forbearance, changing any listing prices or sales strategies for the Property;

- at least ten (10) Business Days prior to a Non-Performing Mortgage Loan repurchase by Lender in accordance with this Chapter;
- at least five (5) Business Days prior to foreclosure sale, with a foreclosure strategy and bid justification to be determined as provided above in this Chapter;
- at least five (5) Business Days prior to the execution of any purchase and sale agreement for the Property; and
- at least every six (6) months after the initial SWAT submission even if no changes have been made.

#### **708.02G** Failure to Timely Deliver SWAT

If Fannie Mae notifies the Special Servicer that it has failed to submit a SWAT in accordance with this Section, the Special Servicer must prepare and submit the SWAT within fifteen (15) Business Days following Fannie Mae's notification. Any continued failure to submit a required SWAT may result in Fannie Mae selecting or implementing a Course of Action of its choosing. In such an event, within one (1) month following written demand with supporting documentation of the amounts expended, the Lender must reimburse Fannie Mae for all costs incurred by Fannie Mae in connection with its implementation of the Course of Action. Fannie Mae may require settlement of any claims at any time before completion of the Course of Action, based on a valuation process and reasonable estimates of its future costs. All sums paid by Lender pursuant to this provision shall not be deemed Actual Losses and shall not be reimbursed to Lender or credited against the Lender's recourse obligation.

#### **708.02H** No Credit Against Recourse

No credit against a Lender's recourse obligation will be given without an approved SWAT.

### **Section 709** Special Servicing of Primary Risk Mortgage Loans

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#### **709.01** Fannie Mae Performs Loss Mitigation Actions

For all Non-Performing Primary Risk Mortgage Loans, Fannie Mae or its contracted third-party special servicer shall be the Special Servicer and will make all decisions regarding loss mitigation and actions to be taken under the Dual Track Approach, including selecting and implementing a Course of Action. Therefore, the Servicer must remain in close contact with



Fannie Mae Special Asset Management or the contracted third-party special servicer regarding all Primary Risk Mortgage Loans. Because of the loss sharing between Fannie Mae and the Lender, Fannie Mae or its contracted third-party special servicer will:

- provide the Lender with copies of correspondence and pleadings related its loss mitigation;
- include the Lender in discussions regarding the selection and implementation of the Course of Action; and
- provide the Lender with regular updates regarding the status of the Non-Performing Primary Risk Mortgage Loan.

Notwithstanding the foregoing, if the Lender or any of its subsidiaries or affiliates holds any equity interest in the Borrower (either as a direct investment or as a mezzanine lender), any correspondence or communications will not be given to the Lender regarding the Non-Performing Primary Risk Mortgage Loan, other than copies of any correspondence required to be given to the Borrower.

Fannie Mae Special Asset Management or its contracted third-party special servicer will be the Servicer's primary point of contact during default resolution. While Fannie Mae or its contracted third-party special servicer will make all decisions on Primary Risk Mortgage Loans, including application of payments, handling of reserves, and reinstatement of the Mortgage Loan, the Servicer must comply with those determinations as part of its servicing duties. If a Servicer takes any action on a Non-Performing Primary Risk Mortgage Loan without the prior approval of Fannie Mae or its contracted third-party special servicer, such action will constitute a breach of the Servicer's obligations to Fannie Mae.

## 709.02 Servicing Transfer Memo

The Dual Track Approach requires a more formal relationship with the Borrower during the default resolution process. The Servicer and Fannie Mae must work together to collect the data and documentation needed to engage counsel and commence foreclosure proceedings. The Servicer is required to prepare a Servicing Transfer Memo ([Form 4808](#)). The Servicing Transfer Memo must be timely completed by the Servicer and delivered to Fannie Mae per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 707.01: Transfer to Special Servicing](#). Following the transfer of the Non-Performing Mortgage Loan to Fannie Mae, the Servicer must have no conversations or communication with the Borrower regarding the defaults, the Property condition, possible workouts or reinstatement, or other matters typically handled by the Special Servicer.

## Section 710 Engagement of Legal Counsel



### **710.01 Fannie Mae Retains Legal Counsel**

All legal counsel, whether for Primary Risk Mortgage Loans or Secondary Risk Mortgage Loans, must be retained by Fannie Mae. An Engagement of Counsel Letter will be used to document the contractual engagement and a copy will be provided to the Servicer and Special Servicer.

### **710.02 Primary Risk Mortgage Loans**

For Primary Risk Mortgage Loans, Fannie Mae will refer the matter to legal counsel in the Property jurisdiction. The legal counsel will provide copies of all correspondence, pleadings and documents to the Servicer, the Lender (if different from the Servicer) and Fannie Mae, unless Fannie Mae's attorney-client privilege requires otherwise. Neither the Lender nor the Servicer (if different from the Lender) is permitted to have any conversations with legal counsel on Primary Risk Mortgage Loans, without also including a representative of Fannie Mae's Special Asset Management.

### **710.03 Secondary Risk Mortgage Loans**

For Secondary Risk Mortgage Loans, the Special Servicer must refer the matter to Fannie Mae's legal counsel in the Property jurisdiction pursuant to the approved SWAT. Fannie Mae will provide a listing of legal counsel on retainer with Fannie Mae in the Property jurisdiction for the Special Servicer's choice or Fannie Mae will provide a recommendation to the Special Servicer based upon the nature of the default and other facts unique to the Non-Performing Mortgage Loan. Prompt completion and approval of the SWAT will give legal counsel sufficient time to complete its conflicts check and to begin the foreclosure process as described in this Chapter by commencing legal action to enforce the assignment of rents and initiating a foreclosure action. The legal counsel will provide copies of all correspondence, pleadings and documents to both the Lender and Fannie Mae, unless Fannie Mae's attorney-client privilege requires otherwise. For Secondary Risk Mortgage Loans, legal counsel will provide its invoices for fees and expenses to the Special Servicer for payment.

### **710.04 Payment of Legal Counsel Fees**

#### **710.04A Primary Risk Mortgage Loans**

Fannie Mae will pay all legal counsel fees for Primary Risk Mortgage Loans, which counsel fees will be included in the calculation of final settlement of loss. If the Lender or Servicer chooses to retain separate legal counsel on Primary Risk Mortgage Loans, the fees and costs of the Lender's or Servicer's legal counsel will not be included in the final settlement of loss.



## 710.04B Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, the Special Servicer shall pay all legal counsel fees; however, prior to the Lender's repurchase of the Secondary Risk Mortgage Loan as provided in this Chapter, the outside counsel represents Fannie Mae as the noteholder. Notwithstanding the payment of legal fees by the Special Servicer, so long as Fannie Mae is the noteholder, Fannie Mae is the client to outside counsel pursuant to the Engagement of Counsel Letter, and the payment of legal fees by the Special Servicer shall not be deemed to have created an attorney-client relationship between the Special Servicer and outside counsel. For Secondary Risk Mortgage Loans, the Special Servicer must provide Fannie Mae Special Asset Management with a copy of all invoices for legal services paid on behalf of Fannie Mae, and those legal counsel fees will be included in the calculation of the final settlement of loss.

## Section 711 Courses of Action

### 711.01 Election and Implementation of a Course of Action

As described in this Chapter, Fannie Mae is the Special Servicer and performs all loss mitigation activities for Primary Risk Mortgage Loans. As such, Fannie Mae as the Special Servicer will elect a Course of Action (either jointly with the Lender, if applicable, or separately, depending upon the specific Course of Action), and implement the elected Course of Action. For Secondary Risk Mortgage Loans, the Special Servicer shall recommend the Course of Action in the Servicing Workout Action Template (“SWAT”) and, once approved by Fannie Mae, implement such Course of Action.

The Courses of Action are:

- Lender Purchase of Mortgage Loan, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan;
- Lender Workout, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.03: Course of Action – Lender Workout Election;
- Joint Fannie Mae/Lender Workout (a “Joint Workout”), as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04: Course of Action – A Joint Workout;
- Foreclosure, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.05: Course of Action - Foreclosure; and
- Note Sale or Discounted Loan Payoff, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section



## 711.06: Course of Action – Note Sale Election or Discounted Loan Payoff.

A Lender Purchase of Mortgage Loan and a Lender Workout may be exercised solely by the Lender and in the Lender's sole discretion, subject to the requirements of [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan](#) and [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.03: Course of Action – Lender Workout Election](#). A Joint Workout must be agreed to jointly by Fannie Mae and the Lender, and implemented prior to the conclusion of a foreclosure, as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04: Course of Action – A Joint Workout](#). A Note Sale or Discounted Loan Payoff, as an alternative to foreclosure, must also be agreed to jointly by Fannie Mae and the Lender, as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.06: Course of Action – Note Sale Election or Discounted Loan Payoff](#). Fannie Mae will generally follow the Dual Track Approach and, unless one of the other Courses of Action is being followed, a Foreclosure will be the applicable Course of Action.

### **711.02** Course of Action – Lender Purchase of Mortgage Loan

**LENDER PURCHASE OF A SECURITIZED MORTGAGE LOAN IS NOT PERMITTED UNLESS THE MORTGAGE LOAN HAS BEEN DELINQUENT FOR FOUR CONSECUTIVE MONTHS. ONLY AFTER THE PASSAGE OF SUCH FOUR CONSECUTIVE MONTH DELINQUENCY PERIOD MAY THE MORTGAGE LOAN BE REMOVED FROM THE SECURITY TRUST. A DELINQUENT MORTGAGE LOAN MUST BE REMOVED FROM THE SECURITY TRUST NOT LATER THAN 24 MONTHS AFTER INITIAL DELINQUENCY.**

#### **711.02A** Primary Risk Mortgage Loans

If the Non-Performing Mortgage Loan is four or more consecutive months delinquent, the Lender, at its option, may purchase the Mortgage Loan from Fannie Mae with its own funds and pursue its own course of action with respect to that Mortgage Loan.

#### **711.02B** Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, the Lender must specifically indicate this Course of Action on its SWAT, which will serve as documentation of the Lender's agreement to repurchase the Mortgage Loan. Neither the purchase price nor any losses incurred on a Secondary Risk Mortgage Loan repurchased by the Lender pursuant to this Course of Action will be included in any loss sharing with Fannie Mae or be credited



against the Lender's recourse obligation but will be solely for the account of the Lender.

### **711.02C** Purchase Price for Mortgage Loans

For Primary Risk Mortgage Loans and Secondary Risk Mortgage Loans purchased pursuant to this Section, unless otherwise provided in the Lender's Contract, the purchase or repurchase price will be equal to:

- the then unpaid actual principal balance of the Mortgage Loan; plus
- interest as follows:
  - except for any Securitized Mortgage Loan, interest accrued through the purchase date; or
  - for any Securitized Mortgage Loan, interest for the entire month in which the purchase occurs based on the Security Balance remaining after applying the scheduled Mortgage Loan payment due on the first day of that month; plus
- any Prepayment Premium or Yield Maintenance owed to Fannie Mae as of the purchase date pursuant to the terms of the Note; less
- any Delinquency Advance made, but not reimbursed either by Fannie Mae or by or on behalf of the Borrower.

### **711.02D** No Fannie Mae Approval Required

The election and implementation of this Course of Action does not require Fannie Mae's concurrence or approval as long as the Lender complies with the foregoing requirements and exercises this option prior to the foreclosure sale or the conclusion of any other Course of Action.

### **711.02E** Implementation of Course of Action

If this Course of Action is elected by the Lender, then the Lender may purchase the Non-Performing Mortgage Loan by:

- giving written notice to Fannie Mae of such election, or, if a Secondary Risk Mortgage Loan, indicating such election on the initial SWAT or updated SWAT, no later than 10 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan and identifying the anticipated purchase date;
- purchasing the Mortgage Loan on the identified purchase date at the purchase price as calculated in [Part V, Chapter 7: Non-](#)





### Performing Mortgage Loans, Section 711.02C: Purchase Price for Mortgage Loans;

- purchasing the Mortgage Loan in the Lender's own name or the name of an affiliate as indicated on the written notice of its election of this Course of Action, and thereafter implementing its own Course of Action with respect to that Mortgage Loan;
- delivering to Fannie Mae on the identified purchase date the purchase price, together with an original assignment of the Mortgage Loan, in recordable form for the applicable property jurisdiction, and such other assignment documents as may be necessary to fully assign, without recourse, representation, or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender; and
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#).

Within five Business Days following receipt from the Lender of the purchase price and the assignment, Fannie Mae will execute and return to the Lender the original assignment, together with:

- the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
- the original Mortgage Loan file; and
- such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender (or its affiliate).

## **711.03** Course of Action – Lender Workout Election

### **711.03A** Lender Workout Defined

With any Non-Performing Mortgage Loan in Monetary or Payment Default, the Lender may enter into an arrangement with the Borrower in which the Lender agrees to make its own loan and advance its own funds to the Borrower to cure the defaults (a "Lender Workout").

Examples of instances where a Lender Workout may be appropriate include:

- Property cash flow shortfall is temporary in nature;
- the Mortgage Loan becomes delinquent within the first year following the sale of the Mortgage Loan to Fannie Mae;





- the cost of the Lender Workout to the Lender may be less than the cost to the Lender of a Joint Workout or foreclosure; or
- Mortgage Loans at Loss Level II or III.

### **711.03B** Documentation and Terms of Lender Workout

A Lender Workout must be documented as a separate loan from the Lender to the Borrower to meet the Property's operating needs and fully cure the Monetary or Payment Default. The Lender may place whatever restrictions it deems appropriate on the disbursement and use of the funds. The Lender Workout loan may be unsecured, secured by a subordinate lien against the Property (with Fannie Mae's prior approval), or secured by other collateral. Any subordinate lien, by its express terms, must be fully subordinated to all Mortgage Loans in favor of Fannie Mae, and must comply with the requirements for junior liens included in Parts I, II, and III. The Loan Documents evidencing the Lender Workout loan must clearly indicate that the loan does not in any way affect the status of the Mortgage Loans owned by Fannie Mae or any of Fannie Mae's rights or remedies in connection therewith, and that the amount owed under the Lender Workout is owed only and directly to the Lender and is not added to Fannie Mae's Mortgage Loan(s).

### **711.03C** Lender Workout Has No Impact on Loss Sharing or Recourse Obligation

#### **1. Primary Risk Mortgage Loans**

Any sums lent by the Lender or expenses incurred by the Lender in a Lender Workout will not be included in the final settlement of loss for the Primary Risk Mortgage Loan.

#### **2. Secondary Risk Mortgage Loans**

Any losses incurred on a Secondary Risk Mortgage Loan as a result of the Lender Workout will be the obligation of the Lender but will not be applied as a credit against the Lender's recourse obligation.

### **711.03D** No Fannie Mae Approval Required

Before committing to a Lender Workout with the Borrower, the Lender must obtain the written approval of Fannie Mae Special Asset Management. Fannie Mae Special Asset Management will have 10 Business Days from receipt of written notice from the Lender, containing the terms of the Lender Workout to approve or disapprove the Lender Workout Course of Action. With its notice of its intention to enter into a Lender Workout, the Lender must deliver a copy of the proposed Lender Workout documents, including subordinate lien documentation, if applicable, to Fannie Mae Special Asset Management for review and approval prior to execution. The purpose of this review is to determine that:



- the Lender Workout and related documents:
  - do not modify or waive any of the terms of the Mortgage Loan(s), including the Note rate, term, or amortization;
  - do not modify or waive any of the terms of the Collateral Agreements;
  - do not limit, waive, or lessen Fannie Mae's rights, claims, or remedies under its Security Instrument including, but not limited to, obtaining a priority claim in a bankruptcy proceeding as a result of lending money to the Borrower;
  - do not prevent, or otherwise limit, Fannie Mae from enforcing its rights under the Mortgage Loan Documents in the event the Lender defaults under its workout with the Borrower; or
  - do not violate any bond documentation or Security rules, if applicable;
- the term of the Lender Workout loan does not exceed 24 months; and
- Fannie Mae is satisfied with the performance of any previous Lender Workouts and the total of all Lender Workouts does not materially impact the Lender's financial condition.

If the Non-Performing Mortgage Loan has been accelerated prior to notice of the Lender Workout, it is in Fannie Mae's sole discretion to agree to accept less than the full payoff and reinstate the Mortgage Loan.

If Fannie Mae approves the Lender Workout, the Lender must deliver a copy of the executed Lender Workout documents, including a Subordination Agreement, if applicable, to Fannie Mae Special Asset Management and to Fannie Mae Asset Acquisition and Custody. If the Borrower subsequently defaults under the Mortgage Loan after the Lender Workout, then the Servicer must follow the procedure outlined in this Chapter for a Non-Performing Mortgage Loan as if no Lender Workout occurred.

### **711.03E** Servicer Makes Delinquency Advances But Fails to Report Mortgage Loan Delinquent

If a Servicer advances P&I payments on a Mortgage Loan with a Monetary or Payment Default, but the Mortgage Loan has not been reported as delinquent on the Multifamily Delinquency System as required in this Chapter, such advances will be considered an unauthorized Lender Workout and will not be considered a Delinquency Advance.

### **711.03F** Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae



If a Lender Workout is approved, the foreclosure process will continue until the earlier of the curing of the defaults by the Lender Workout or the foreclosure sale. If Fannie Mae approves the Lender Workout, the Lender must fully implement the Lender Workout on the approved terms, and thereby cure all defaults, prior to any scheduled foreclosure sale or the conclusion of any other Course of Action by Fannie Mae. If the Lender Workout is proceeding and is likely to be consummated, Fannie Mae may agree to reschedule (but not cancel) the foreclosure sale. Any agreement to delay a foreclosure sale or any other Course of Action to allow the implementation of the Lender Workout will be solely in Fannie Mae's discretion.

#### **711.04** Course of Action – A Joint Workout

**JOINT WORKOUTS ARE NOT AVAILABLE FOR SECURITIZED MORTGAGE LOANS WHILE THE MORTGAGE LOAN REMAINS IN THE SECURITY TRUST.**

##### **711.04A** Joint Workout Defined

Either the Lender or Fannie Mae may propose that the Lender and Fannie Mae attempt to negotiate a Joint Workout with the Borrower with respect to a Non-Performing Mortgage Loan. A refinancing of the Non-Performing Mortgage Loan under Fannie Mae's In Place Loan execution as described in [Part V, Chapter 8: In Place Loans](#) is a Joint Workout under this Chapter.

##### **711.04B** Delinquency Advances Must Be Made During Negotiation of Joint Workout

If Fannie Mae and the Lender agree upon a Joint Workout, then during the negotiation of the workout agreement, the Servicer must continue to make Delinquency Advances to Fannie Mae in accordance with the Lender's Contract. (See the Checklist of Issues to Consider in Doing a Workout Analysis ([Form 4809](#)) to review the specific tasks to be completed prior to electing a Joint Fannie Mae/Servicer Workout.)

##### **711.04C** Joint Workout Process

The following is a general description of how a Joint Workout process might work.

###### **1. Fact-Finding Meeting**

The first contact between the Borrower, Fannie Mae and the Lender will be a fact-finding meeting and will focus on:

- explaining the Dual Track Approach and, if the Pre-Negotiation Letter has not been signed, executing the letter;



- reviewing the documents necessary for the Servicer or Fannie Mae to complete its due diligence and the Asset Review (for a Primary Risk Mortgage Loan) or Asset Audit (for a Secondary Risk Mortgage Loan); and
- the Borrower's explanation of its requested relief.

## **2. Fannie Mae and Lender Meeting**

A separate meeting between Fannie Mae and the Lender will focus on:

- reviewing the Lender's and Fannie Mae's due diligence;
- reviewing the Borrower's request;
- formulating a response to the Borrower's request with emphasis on the source and use of funds necessary to implement the Joint Workout; and
- the impact of the Joint Workout on the Lender's servicing and loss sharing obligations to Fannie Mae and any modifications to each that need to be made.

It is important that any differences between Fannie Mae and the Lender be resolved at this meeting. If the Lender's contribution to the Joint Workout or a modification to its servicing or loss sharing obligations must be documented, this must be included in a separate document between Fannie Mae and the Lender.

## **3. Workout Meeting with Borrower**

If a Joint Workout appears feasible, Fannie Mae and the Lender will schedule a workout meeting with the Borrower. All parties, including Fannie Mae, the Lender, the Borrower, and their respective legal counsel, must attend and must allow enough time to facilitate a workout. Those in attendance must have authority to execute documents pursuant to a signed Pre-Negotiation Letter. Experience indicates that to be most productive, the workout meeting should start early in the morning and continue until a deal is reached or the parties agree to disagree.

## **4. Letter of Intent**

If agreement is reached on all of the terms of the Joint Workout, counsel will draft a non-binding letter of intent, to be executed during the workout meeting. This letter of intent will set forth each party's agreements and obligations until the formal, written modification documents are completed. The letter of intent must be specific enough to fully reflect the intent of the parties (other than any modifications to the Lender's servicing or loss sharing obligations). Until the formal modification documents are completed and executed by all parties, there has been no modification of the terms of the Non-Performing Mortgage Loan or the Borrower's obligations.



#### **711.04D** Modification, Extension, and Forbearance Fees

The Lender is not permitted to charge or collect from the Borrower a fee for any modification, extension, or forbearance of a Mortgage Loan without the prior written consent of Fannie Mae. If the Lender has a loss sharing obligation to Fannie Mae, then Fannie Mae and the Lender may jointly elect to charge the Borrower a modification, extension or forbearance fee. If Fannie Mae and the Lender elect to charge such fee, and so long as the Lender has a loss sharing obligation to Fannie Mae, Fannie Mae will share such fee with the Lender on the basis of:

- if the applicable Mortgage Loan is a Pre-Review Large Mortgage Loan under Fannie Mae's Multifamily Underwriting Standards (Form 4660), then pro rata between the Lender and Fannie Mae in accordance with their respective loss sharing percentages for such Mortgage Loan (taking into account any Modified Risk Loss Sharing (as defined in the Loss Sharing Addendum) applicable to the Mortgage Loan); or
- if the applicable Mortgage Loan is not a Pre-Review Large Mortgage Loan, then 40 percent to the Lender and 60 percent to Fannie Mae.

#### **711.04E** Triggering Modification Fees; Other Fees

If a Triggering Modification has occurred, a Triggering Modification Interim Loss Sharing calculation was made and a reserve was established against the Lender's Operational Liquidity (as provided in the Loss Sharing Addendum), any fees other than those provided for in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04D: Modification, Extension, and Forbearance Fees](#) shall be split between Fannie Mae and the Servicer in accordance with their respective loss sharing percentages at the time of the Triggering Modification (taking into account any Modified Risk Loss Sharing applicable to the Mortgage Loan). Except as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04D: Modification, Extension, and Forbearance Fees](#) with respect to modification, extension and forbearance fees, and any fees required by Fannie Mae in connection with a Triggering Modification, no other fees required by Fannie Mae in connection with a Mortgage Loan modification, extension or forbearance shall be split between the Lender and Fannie Mae.

#### **711.04F** Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae

The discussions with the Borrower in attempting to reach agreement on a Joint Workout are part of Track One of the Dual Track Approach (maintaining dialogue with the Borrower to attempt to resolve the defaults) as outlined in this Chapter. Accordingly, Track Two, the Foreclosure Track, of the Dual Track Approach will continue and will not be



postponed or delayed until agreement with the Borrower has been reached and the Joint Workout has been documented. If the Joint Workout is proceeding and is likely to be consummated, Fannie Mae may agree to reschedule (but not cancel) the foreclosure sale. If the parties are unable to agree on a Joint Workout, the parties shall continue to pursue the Track Two approach and proceed to foreclosure or such other Fannie Mae-approved course of action.

## **711.05** Course of Action - Foreclosure

**LENDER PURCHASE OF A SECURITIZED MORTGAGE LOAN IS NOT PERMITTED UNLESS THE MORTGAGE LOAN HAS BEEN DELINQUENT FOR FOUR CONSECUTIVE MONTHS. ONLY AFTER THE PASSAGE OF SUCH FOUR CONSECUTIVE MONTH DELINQUENCY PERIOD MAY THE MORTGAGE LOAN BE REMOVED FROM THE SECURITY TRUST. A DELINQUENT MORTGAGE LOAN MUST BE REMOVED FROM THE SECURITY TRUST NOT LATER THAN 24 MONTHS AFTER INITIAL DELINQUENCY.**

### **711.05A** Primary Risk Mortgage Loans

Unless one of the other Courses of Action described in this Section has been selected, Fannie Mae will instruct outside counsel to vigorously pursue a foreclosure, following the foreclosure process described under Track Two of the Dual Track Approach in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 712: Dual Track Approach](#).

### **711.05B** Secondary Risk Mortgage Loans

Unless one of the other Courses of Action described in this Section has been selected and, if part of a SWAT approved by Fannie Mae, the Special Servicer will instruct outside counsel to vigorously pursue a foreclosure, following the foreclosure process described under Track Two of the Dual Track Approach in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 712: Dual Track Approach](#).

If foreclosure is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender must purchase the Mortgage Loan from Fannie Mae. Such purchase of the Mortgage Loan from Fannie Mae is not considered to be the exercise of the Course of Action set forth in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan](#), but is part of the foreclosure Course of Action under this [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.05: Course of Action - Foreclosure](#) and is to permit the Lender to credit bid at the foreclosure sale





and/or if the winning bidder, to permit the Lender to hold title to and operate the Property in the name of the Lender or its designee. In connection with exercising the foreclosure Course of Action, the Lender must purchase the Mortgage Loan under one of the following options, either of which must be identified in the SWAT submitted to Fannie Mae.

### 1. Purchase Prior to Foreclosure

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan prior to foreclosure by:

- indicating on the initial SWAT, or updated SWAT received by Fannie Mae no later than 10 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan prior to foreclosure, and identifying the anticipated purchase date;
- purchasing, on the identified purchase date, the Mortgage Loan from Fannie Mae at the purchase price as calculated below in this Part V, Section 711.05.B;
- purchasing the Mortgage Loan in the Lender's own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter implementing the foreclosure process in its own name;
- within five Business Days following receipt from the Lender of the purchase price together with an original assignment of the Mortgage Loan, in recordable form, Fannie Mae will execute and return the original assignment, together with:
  - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
  - the original Mortgage Loan file; and
  - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender (or its affiliate);
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- after completion of the foreclosure, the Lender or its affiliate will hold title to the Property until disposition;
- the Lender will continue to submit updated SWATs for Fannie Mae's approval until disposition of the Property, at which time the Lender will submit its Loss Notification Form ([Form 4817](#)) (as provided in the Lender's Contract) to Fannie Mae; and



- if the Non-Performing Secondary Risk Mortgage Loan reinstates by the Borrower following the Lender's purchase but prior to the foreclosure sale, the Lender will not be entitled to credit any future losses on the Mortgage Loan against its recourse obligation.

## 2. Purchase Immediately After Foreclosure

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan immediately following foreclosure by:

- indicating on the initial SWAT, or updated SWAT received by Fannie Mae no later than 60 Business Days before the foreclosure sale date, that Lender has elected to purchase the Mortgage Loan immediately following foreclosure (assuming Fannie Mae is the winning bidder at the foreclosure sale), and identifying the anticipated foreclosure sale date;
- including with such SWAT an initial Asset Audit prepared no later than 60 days following the Date of Default, and providing to Fannie Mae a final and complete Asset Audit at least 60 Business Days prior to foreclosure;
- no later than 10 Business Days prior to the foreclosure sale date, prepare and deliver to Fannie Mae an original Special Warranty Deed, in recordable form, and an escrow letter as provided below. Fannie Mae will execute and deliver to an agreed-upon escrow agent, pursuant to escrow instructions also prepared by the Lender, the Special Warranty Deed, together with (i) the original Note endorsed, without recourse, representation or warranty, to the Lender, and (ii) the original Mortgage Loan file. Such escrow letter must contain instructions that require the escrow agent, within five Business Days following the foreclosure sale date, to either (a) deliver the Special Warranty Deed and other required documentation to Lender upon Fannie Mae's confirmation of receipt of the purchase price or (b) return the original Special Warranty Deed and all other documentation to Fannie Mae;
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- on the foreclosure sale date, the Lender purchases the Property from Fannie Mae at the purchase price as calculated below in this Part V, Section 711.05.B;
- the Lender purchases the Mortgage Loan in its own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter owns, operates and manages the Property until



disposition;

- the Special Warranty Deed from Fannie Mae must be filed of record immediately following the recording of the foreclosure or trustee's deed into Fannie Mae; and
- the Lender will continue to submit updated SWATs for Fannie Mae's approval until disposition of the Property, at which time the Lender will submit its Loss Notification Form ([Form 4817](#)) to Fannie Mae.

### **3. Purchase Price for Purchase Immediately Prior To or After Foreclosure**

For Secondary Risk Mortgage Loans purchased pursuant to this Section, unless otherwise provided in the Lender's Contract, the purchase or repurchase price will be equal to:

- the then unpaid actual principal balance of the Mortgage Loan; plus
- interest as follows:
  - except for any Securitized Mortgage Loan, interest accrued through the purchase date; or
  - for any Securitized Mortgage Loan, interest for the entire month in which the purchase occurs based on the Security Balance remaining after applying the scheduled Mortgage Loan payment due on the first day of that month; less
- any Delinquency Advance made, but not reimbursed either by Fannie Mae or by or on behalf of the Borrower.

#### **711.05C** Deed-in-Lieu of Foreclosure

Fannie Mae, in its sole discretion, may or may not elect to take a deed-in-lieu of foreclosure for any Primary Risk or Secondary Risk Mortgage Loan.

#### **711.05D** Management of Property Post Title Vesting in Fannie Mae

If Lender has made a Deferred Asset Valuation Date Election under its Loss Sharing Addendum, and title to a Property has vested in Fannie Mae, its affiliate or nominee as a result of a Foreclosure Event (as defined in the Loss Sharing Addendum) or other judicial process, Fannie Mae shall, except for matters relating to life/safety at the Property, consult with the Lender for purposes of making joint decisions with the Lender with respect to major decisions regarding the management and disposition of the Property, including but not limited to:



- the timing and terms of listing the Property for sale;
- the acceptance of terms of sale of the Property;
- any financing of the Property;
- approval of any business plan with respect to the Property;
- approval of each annual budget for the Property;
- any deviation from the approved budget by more than 20 percent with respect to any line item on a semi-annual basis;
- approval and implementation of any rehabilitation or renovation plan with respect to the Property;
- any decision to and implementation of a plan to develop any or all of the Property;
- any capital expenditures in excess of \$50,000 with respect to the Property;
- engagement of any professional advisors, other than in the ordinary course of business;
- entering into any Material Commercial Lease of any space within a Property, other than in the ordinary course of business;
- commencement, institution or settlement of any legal proceedings with respect to the Property, other than eviction and termination proceedings in respect of tenant leases and other non-material legal proceedings for the collection of amounts due and owing from third parties and tenants undertaken in the ordinary course of business; and
- the decision and implementation of any plan not to rebuild or restore the Property following any casualty or condemnation.

Any request by Fannie Mae with respect to a major decision shall be responded to in writing by the Lender within two Business Days of the making of such request. Any request with respect to a major decision not responded to by the Lender within two Business Days shall be deemed approved.

## **711.05E**      Deficiency Suits

### **1. General**

If a foreclosure sale is conducted with respect to a Property, Fannie Mae shall determine whether to pursue a deficiency against the Borrower or pursue any guarantor who may have liability with respect to such Mortgage Loan post-foreclosure or other final disposition of the Mortgage Loan (a "Deficiency Suit"), if such action is available under applicable state law.



Nothing in this Section E shall be deemed to relieve either Lender or Fannie Mae from any claims of indemnification under the terms of their Contract.

## **2. Fannie Mae Deficiency Suit Election**

If Fannie Mae elects to pursue a Deficiency Suit, and the Lender's Allocable Percentage per the Loss Sharing Addendum with respect to the relevant Mortgage Loan is greater than zero, the Lender may elect to share in the cost and recovery related to such Deficiency Suit. If the Lender elects to participate in such Deficiency Suit, Fannie Mae shall bear 67 percent of the costs and expenses of such Deficiency Suit, and the Lender shall bear 33 percent of the costs and expenses of such Deficiency Suit. Likewise, any recovery resulting from the Deficiency Suit shall be shared 67 percent to Fannie Mae and 33 percent to the Lender.

If Fannie Mae elects to pursue a Deficiency Suit, whether or not the Lender elects to participate in such Deficiency Suit, Fannie Mae shall make all decisions in its sole and absolute discretion regarding such Deficiency Suit, including but not limited to, selection of counsel, election of venue, relief to be sought, and the settlement of the Deficiency Suit.

## **3. Lender Deficiency Suit Election**

If Fannie Mae elects not to pursue a Deficiency Suit following foreclosure, at the Lender's request, Fannie Mae shall assign the Deficiency Suit to the Lender, to the extent permitted by law and provided that such assignment shall be at no cost to Fannie Mae, and the Lender may thereafter pursue such Deficiency Suit in its own name. If the Lender does pursue the Deficiency Suit, Fannie Mae may elect to participate in the cost and recovery of such Deficiency Suit. All costs and expenses of such Deficiency Suit will be shared equally between the Lender and Fannie Mae, and likewise, any recovery resulting from such Deficiency Suit shall be shared equally between the Lender and Fannie Mae.

If Fannie Mae elects not to pursue a Deficiency Suit, and the Lender elects to pursue such Deficiency Suit in its own name, Lender shall make all decisions in its sole and absolute discretion regarding such Deficiency Suit, including but not limited to selection of counsel, election of venue, relief to be sought, and the settlement of the Deficiency Suit.

## **4. Costs and Expenses; Loss Sharing**

If the Lender and Fannie Mae are sharing the costs and expenses of any Deficiency Suit, the party prosecuting such Deficiency Suit shall submit copies of all invoices to the other party for reimbursement of the other party's share of all costs and expenses incurred in connection with such Deficiency Suit. Such invoices shall be submitted no more frequently than every three months and shall be paid within 30 days of receipt.

Any recovery resulting from a Deficiency Suit, regardless of whether Fannie Mae or the Lender has participated in such Deficiency Suit,



shall not affect the determination and payment of loss sharing pursuant to the Loss Sharing Addendum.

### **5. Withdrawal from Deficiency Suit**

If Fannie Mae and the Lender are participating in a Deficiency Suit, either party may elect at any time to withdraw from the Deficiency Suit, in which case the withdrawing party shall be obligated to share the costs and expenses in the percentages set forth above through the date of its withdrawal. The withdrawing party shall not participate in any recovery.

## **711.06 Course of Action – Note Sale Election or Discounted Loan Payoff**

**NOTE SALES OR DISCOUNTED LOAN PAYOFFS ARE NOT AVAILABLE FOR SECURITIZED MORTGAGE LOANS WHILE THE MORTGAGE LOAN REMAINS IN THE SECURITY TRUST.**

### **711.06A Note Sale and Discounted Loan Payoff Defined**

As an alternative to foreclosure of the Property, it may be the best exit strategy for Fannie Mae and the Lender to agree to sell Fannie Mae's interest as the Noteholder. A sale of the Non-Performing Mortgage Loan to a third party is a "Note Sale", and accepting less than the full payoff from the Borrower is a "Discounted Loan Payoff". Such sale of the Non-Performing Mortgage Loan or acceptance of a Discounted Loan Payoff must be on terms mutually-agreeable to Fannie Mae and Lender.

### **711.06B Lender Ability to Bid**

If Fannie Mae and the Lender agree to consider a Note Sale as the Course of Action for a Non-Performing Primary Risk Mortgage Loan, the Lender will have the option to participate in the Note Sale bidding process with other potential third-party purchasers after Fannie Mae and the Lender have mutually-agreed upon the Note Sale terms and pricing floor. The Lender's bid will be considered by Fannie Mae on the same basis as any other third-party bids received for the Note Sale. If the Lender is the successful bidder, the Lender will purchase the Non-Performing Mortgage Loan on the same terms as published to all bidders by Fannie Mae or, if utilized, the Note Sale broker. Any such sale of the Non-Performing Mortgage Loan to the Lender shall be without recourse, representation or warranty by Fannie Mae, except as otherwise agreed by Fannie Mae.

### **711.06C Any Note Sale or Discounted Payoff Gives Rise to Loss Sharing Event**

Any loss incurred by Fannie Mae in connection with a Note Sale or Discounted Payoff is a loss sharing event as contemplated by the Lender's





Contract.

## **711.06D** Note Sale – Secondary Risk Mortgage Loans

For Non-Performing Secondary Risk Mortgage Loans, the selection of a Note Sale as the Course of Action must be included in the SWAT submitted to Fannie Mae for approval. The approved Note Sales price will be the Asset Value for purposes of determining the reduction in the Lender's recourse obligation.

If a Note Sale is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender must purchase the Mortgage Loan from Fannie Mae under one of the following options, either of which must be identified in the SWAT submitted to Fannie Mae.

### **1. Purchase Prior to Consummation of the Note Sale with the Third-Party Note Purchaser**

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan from Fannie Mae prior to consummation of the Note Sale by:

- indicating such election on the initial SWAT or updated SWAT, received by Fannie Mae no later than 15 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan prior to the Note Sale closing and identifying the anticipated purchase date;
- purchasing, on the identified purchase date, the Mortgage Loan from Fannie Mae at the purchase price as calculated in Part V, Section 711.05.B.3;
- purchasing the Mortgage Loan in the Lender's own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter consummating the Note Sale with the third-party Note purchaser;
- within five Business Days following receipt from the Lender of the purchase price together with an original assignment of the Mortgage Loan, in recordable form, Fannie Mae will execute and return the original assignment, together with:
  - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
  - the original Mortgage Loan file; and
  - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to Lender (or its affiliate); and
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan](#)



Document Administration, Section 404.01: Submission of Documents to Fannie Mae.

## **2. Purchase Simultaneously with Consummation of the Note Sale with the Third-Party Note Purchaser**

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan from Fannie Mae simultaneously with its consummation of the Note Sale by:

- indicating such election on the initial SWAT or updated SWAT, received by Fannie Mae no later than 30 calendar days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan simultaneously with the Note Sale closing and identifying the anticipated purchase date;
- no later than 10 Business Days prior to the purchase date, prepare and deliver to Fannie Mae an original assignment of the Mortgage Loan, in recordable form, and an escrow instruction letter as provided below. Fannie Mae will execute and deliver to an agreed-upon escrow agent, pursuant to the escrow instruction letter, the original assignment, together with:
  - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
  - the original Mortgage Loan file; and
  - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to Lender (or its affiliate). Such escrow instruction letter must contain instructions that require the escrow agent, within five Business Days following the closing of the Note Sale, to either (a) deliver the original assignment and other required documentation to Lender upon Fannie Mae's confirmation of receipt of the purchase price, or (b) return the original assignment and all other documentation to Fannie Mae;
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- on the date of closing of the Note Sale with the third-party purchaser, the Lender will purchase the Mortgage Loan from Fannie Mae at the purchase price as calculated in Part V, Section 711.05.B.3;
- the Lender purchases the Mortgage Loan in its own name (or in the name of an affiliate as indicated on the approved SWAT),



and thereafter simultaneously closes the Note Sale with the third-party purchaser; and

- the assignment of the Mortgage Loan from Fannie Mae must be filed of record prior to the recording of the assignment from the Lender (or its affiliate) to the third-party purchaser of the Note.

## **711.06E** Discounted Loan Payoff - Secondary Risk Mortgage Loans

For Non-Performing Secondary Risk Mortgage Loans, the selection of a Discounted Loan Payoff as the Course of Action must be included in the SWAT submitted to Fannie Mae for approval. The approved Discounted Loan Payoff amount will be the Asset Value for purposes of determining the reduction in the Lender's recourse obligation.

If a Discounted Loan Payoff is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender shall implement the Course of Action by:

- indicating in the initial SWAT, or updated SWAT received by Fannie Mae no later than 10 Business Days before the proposed payoff date, that Lender has elected such Course of Action and identifying the anticipated payoff date;
- delivering to Fannie Mae on the identified payoff date the payoff amount as calculated in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02C: Purchase Price for Mortgage Loans](#); and
- the Lender must follow the post-payoff actions as described in [Part V, Chapter 2: Reporting and Remitting, Section 215: Post-Payoff Actions](#).

## **Section 712** Dual Track Approach

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**The Dual Track Approach and other requirements of this Part V, Section 712 apply to all Non-Performing Primary Risk Mortgage Loans and Non-Performing Secondary Risk Mortgage Loans.**

**For Secondary Risk Mortgage Loans, the Special Servicer must follow the Dual Track Approach as outlined here, unless revised by an approved SWAT. Unless the Lender has previously elected either the Lender Purchase or Lender Workout Course of Action, the Dual Track Approach (including the foreclosure process) must be immediately commenced by the Special Servicer following the transfer of the Non-Performing Mortgage Loan to the Special Servicer for default resolution.**

#### **712.01 Dual Track Approach Generally**

The most effective and efficient approach to resolving a Non-Performing Mortgage Loan requires pursuing dual tracks concurrently:

- dialogue with the Borrower; and
- foreclosure process.

To be effective, both tracks of the Dual Track Approach must be pursued aggressively to ensure the Borrower understands the gravity of its default. The Dual Track Approach must be implemented immediately for all reported defaults, regardless of the Special Servicer's subsequent election of remedy to resolve the default. While the Dual Track Approach is described in detail in this Chapter, the default resolution process remains a case-specific process and not every case will fit perfectly into this approach.

#### **712.02 Waiver of Dual Track Approach**

For Secondary Risk Mortgage Loans, exceptions to the Dual Track Approach require a written waiver from Fannie Mae Special Asset Management, in the approved SWAT submitted pursuant to [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 705.01: Funding Capital Repairs During Default Resolution](#). If the outside counsel determines that a waiver to the Dual Track Approach is required by local law or if the Special Servicer determines that a waiver will result in more effective resolution of the default, then the Special Servicer must submit a written waiver request to Fannie Mae Special Asset Management in the SWAT, providing the reasoning for the waiver.



## **712.03** Track One: Dialogue with the Borrower

### **712.03A** Purpose of Track One

Track one involves maintaining a dialogue with the Borrower during calendar days two (2) through 60, beginning immediately after the initial Payment Default or discovery of a non-monetary default that may become a Performance Default if not timely cured. When there is a default under a Mortgage Loan, it is absolutely essential that the Servicer immediately contact the Borrower to determine the cause of the default and to begin discussion on how the default will be cured. Until the Non-Performing Mortgage Loan is transferred to special servicing, the Servicer must maintain a dialogue with the Borrower and Fannie Mae Special Asset Management about an acceptable resolution of the Mortgage Loan's default.

The first 30 calendar days of the Dialogue Track are focused on working with the Borrower to collect all sums due and owing or curing any possible Performance Default. While calendar days 31 through 60 continue to focus on collections or curing the default, the focus also includes preparing a Non-Performing Mortgage Loan for default resolution.

### **712.03B** First 30 Calendar Days after a Default

During this stage of the Dialogue Track, a Servicer must act quickly and aggressively to establish contact with the Borrower to determine:

- the cause of the Performance Default or Payment Default;
- whether the Borrower will cure the Performance Default within the prescribed cure period or the Payment Default prior to the end of the month in which the missed payment occurred;
- the likelihood of the Borrower making the next month's payment; and
- if the missed payment will not be made, whether the Borrower will voluntarily turn over the monthly net operating income of the Property.

Because Fannie Mae requires Servicers to report all delinquent Mortgage Loans as of the 17th day of the month, Servicers must begin calling and corresponding with delinquent Borrowers as early as a few days after the Payment Due Date or the day before the Late Fee becomes due. These practices facilitate accurate and timely delinquency reporting to Fannie Mae. Waiting until the Late Fee becomes due to begin contacting delinquent Borrowers jeopardizes the Servicer's ability to report and certify delinquent Mortgage Loans on a timely and complete basis.

### **712.03C** Calendar Days 31 through 60 after a Payment Default or Performance Default



### **1. Primary Risk Mortgage Loans**

During calendar days 31 through 60 after a Payment Default or Performance Default, or until the Non-Performing Primary Risk Mortgage Loan is transferred to Fannie Mae Special Asset Management as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 707.01: Transfer to Special Servicing](#), the Servicer must remain focused on aggressively pursuing the Borrower to collect all amounts due or assure a cure of the Performance Default. The Servicer must continue to call and correspond with the Borrower and make every attempt to resolve the Payment Default or Performance Default.

### **2. Secondary Risk Mortgage Loans**

For Secondary Risk Mortgage Loans, Fannie Mae expects aggressive communication with the Borrower to attempt to resolve the Payment Default or Performance Default quickly, before the need to transfer the Non-Performing Mortgage Loan to its special servicing to prepare the SWAT.

## **712.03D** Cessation of Dialogue with the Borrower

### **1. Cessation of Negotiations with the Borrower**

Continuing an open dialogue with the Borrower is premised on the Borrower providing documentation necessary to complete:

- the Servicing Transfer Memo for Primary Risk Mortgage Loans; or
- the SWAT for Secondary Risk Mortgage Loans.

It is expected that the Borrower will account for and remit the monthly net operating income from the Property to the Servicer. If the Borrower is not willing to account for and remit the monthly net operating income to the Servicer, then further negotiations with the Borrower must cease immediately.

### **2. Primary Risk Mortgage Loans**

Upon transfer of the Primary Risk Mortgage Loan to Fannie Mae Special Asset Management, the Servicer must cease any further dialogue or correspondence with the Borrower regarding the status of the Non-Performing Mortgage Loan or the Borrower's efforts to cure the default. If the Servicer must engage in further discussions with the Borrower, a representative of Fannie Mae Special Asset Management must be included in the discussions.

### **3. Secondary Risk Mortgage Loans**

Upon transfer of the Secondary Risk Mortgage Loan to the Servicer's special servicing unit, the Servicer must document any further





dialogue or correspondence with the Borrower regarding the status of the Non-Performing Mortgage Loan or the Borrower's efforts to cure the default in its SWAT.

## **712.04** Track Two: Foreclosure Process

### **712.04A** The Foreclosure Process

#### **1. Generally**

Track two involves initiating the foreclosure process. Experience has shown that if the foreclosure process is delayed until the parties know whether a workout is achievable or an alternative Course of Action is preferred, valuable time is lost. Initiating the foreclosure process has the added benefit of keeping the parties focused on the problem. This overall approach necessarily requires:

- more formal communication with the Borrower; and
- use of outside counsel to document the relationship.

While relationships do not have to be hostile, the Special Servicer's relationship with the Borrower must be based with a view toward loss mitigation. If the Non-Performing Mortgage Loan is non-recourse to the Borrower, immediate action is necessary to ensure that the Property is not allowed to deteriorate and that net operating income is accounted for and paid each month. Depending on the jurisdiction, the monthly net operating income (gross monthly income after payment of ordinary and customary operating expenses – exclusive of capital expenditures, repairs, or payments to Borrower's affiliates) should be paid directly to the Servicer for remittance to Fannie Mae or held by a receiver until the delinquency is resolved.

#### **2. Engagement of Counsel**

The foreclosure process begins with the engagement of outside counsel in the Property jurisdiction as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 710: Engagement of Legal Counsel](#); however, some of the preliminary notices prior to foreclosure (for example, notice of default, intent to accelerate, or acceleration) may be prepared by the Special Servicer's in-house counsel. Generally, the Special Servicer will direct outside counsel to:

- send or cause to be sent to the Borrower a formal written notice of default or other preliminary notices required prior to foreclosure;
- take immediate action to get control of the net operating income; and
- commence foreclosure.



Outside counsel must furnish the Special Servicer with copies of all documents that are sent to the Borrower or filed with a court (with copies to the Servicer on Primary Risk Mortgage Loans, and to Fannie Mae on Secondary Risk Mortgage Loans) in connection with the foreclosure and any related bankruptcy or other litigation, so that all parties may stay apprised of the status of the foreclosure.

### **3. Appraisal**

If an Appraisal is required as part of the foreclosure process or any related bankruptcy or litigation, the Special Servicer will engage the appraiser using the Form Letter of Engagement for Appraiser ([Form 4814](#)). If the Special Servicer determines that the Appraisal should be covered by the attorney-client privilege and kept confidential, the Special Servicer should request either outside counsel or its in-house counsel to send the Engagement Letter for Appraiser. Prior to engaging the appraiser under the attorney-client privilege, the Special Servicer should confirm with outside counsel whether the privilege is likely to apply and what, if any, additional steps would be required to better ensure the protection of the attorney-client privilege. For Secondary Risk Mortgage Loans, if the Special Servicer elects to change the instructions to the appraiser, such request must be included in the SWAT. The cost for this Appraisal is a Delinquency Resolution Cost.

### **4. Postponement of Foreclosure Sale**

Because a foreclosure sale may be postponed due to an impending workout or other alternative Course of Action, or a bankruptcy or other litigation, the Special Servicer must notify outside counsel to confirm the foreclosure sale prior to the scheduled foreclosure date. If the foreclosure sale is to be postponed, the Special Servicer will provide outside counsel with a new sale date, place, and time of the sale.

## **712.04B** REO Management

### **1. Maximization of Value of REO**

Following foreclosure or other acquisition of title to the Property, the Special Servicer must diligently attempt to maximize the value of any REO acquired with an objective of ensuring that the physical and economic occupancy of the REO is at or above that of comparable property located in the same market as the REO.

### **2. “Walk Through” Report**

To maximize the value of an REO, the Special Servicer must prepare a "walk-through" report detailing the rental status and condition of each unit with recommendations for repair and cost estimates for such repair. (With respect to individual units in a cooperative property, the Special Servicer will not be required to inspect any unit that is not sponsor-owned, vacant, or otherwise permitted to be inspected pursuant to applicable Loan Documents.) This report will be the basis for a management and marketing



plan to be prepared by the Special Servicer (for Secondary Risk Mortgage Loans, this will be part of a SWAT submission).

### **3. Management and Market Plan**

The management and marketing plan must include, at a minimum:

- staffing requirements;
- policies regarding tenant applications;
- due diligence;
- credit and previous history;
- late charges;
- returned checks;
- collection of delinquent rents;
- advertising;
- maintenance procedures;
- security deposits;
- rental collections and make-ready procedures;
- comparable rental data;
- information regarding target markets;
- tenant profiles and updated reports when necessary; and
- plans for repairing and restoring the REO to marketable condition, with improvements carefully underwritten to avoid over-improvements to the REO in comparison with similar property in the same market as that in which the REO is located.

### **4. Timing of “Walk Through” Report and Management and Marketing Plan**

It is expected that under ordinary circumstances, the time frame for maximizing the value must not exceed more than six (6) months from the date of acquisition of title to the REO.

The "walk-through" report and management and marketing plan must be in writing and part of the Special Servicer's Servicing File. The report and plan must be completed within one (1) month after the date of acquisition of title to the REO and become a part of Fannie Mae's files for Primary Risk Mortgage Loans or contained in a SWAT submitted with respect to a Secondary Risk Mortgage Loan. The Special Servicer must manage and dispose of the REO in accordance with such management and marketing plan. The REO management and marketing plan must be updated as changed circumstances require and, if a Secondary Risk



Mortgage Loan, resubmitted to Fannie Mae as an updated SWAT, either upon the earlier of:

- as new information is available to the Special Servicer as to the management or marketing of the REO; or
- every six (6) months.

## **712.05** Description of Contractual Relationships

### **712.05A** Two Contractual Relationships

In resolving delinquencies, two distinct and separate contractual relationships are involved, as follows:

- One is the Borrower/noteholder (Fannie Mae) relationship evidenced by the Loan Documents.
- The other is the Fannie Mae/Lender relationship evidenced by the Lender's Contract and the Guide.

When the Borrower is in default on the Mortgage Loan, the Borrower is in default under its contractual relationship with Fannie Mae as the noteholder. The Lender's Delinquency Advance of the scheduled Mortgage Loan payments is based on the Lender's Contract with Fannie Mae and does not cure any default under the Mortgage Loan nor advance the LPI date. The difference between the actual payment made by the Borrower and the scheduled payment made by the Lender is part of the final settlement of loss that is governed by the Lender's Contract.

### **712.05B** No Disclosure of Lender's Contract Terms to Borrower; Borrower Not a Third-Party Beneficiary of Lender Contract

Neither the Lender nor the Servicer (if not the same) must discuss the Fannie Mae/Lender contractual relationship with the Borrower. If the Borrower does not make a payment, regardless of whether the Lender makes a Delinquency Advance of the scheduled payment to Fannie Mae as part of its contractual obligation, the Mortgage Loan must be reported as delinquent by the Servicer and Fannie Mae's records will reflect the Mortgage Loan as delinquent. The Borrower is not a party to, nor a beneficiary of, the Lender's Contract between Fannie Mae and the Lender. The Lender's obligation to make Delinquency Advances to Fannie Mae has no impact on the Borrower's obligation to make its payments under the terms of the Note.

### **712.05C** Primary Risk Mortgage Loans

Because the Lender does not retain an interest in the Mortgage Loan after selling the Mortgage Loan to Fannie Mae, for Primary Risk



Mortgage Loans the Lender does not have the authority to take any actions that may impair Fannie Mae's rights or remedies, without Fannie Mae's prior written approval, including, but not limited to:

- making representations on behalf of Fannie Mae;
- waiving rights or remedies of Fannie Mae under the Loan Documents;
- modifying or altering the Loan Documents; or
- voting or making elections for Fannie Mae in any bankruptcy court proceeding.

#### **712.05D** Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, the scope of the Special Servicer's authority to take any actions on behalf of Fannie Mae shall be expressly provided in the limited power of attorney granted by Fannie Mae.

### **712.06** Asset Audits for Secondary Risk Mortgage Loans

#### **712.06A** Purpose of Asset Audits

An Asset Audit involves much of the same due diligence as the Lender performs during underwriting. This "re-underwriting" is essential to determine:

- the cause of the default;
- the current financial condition of the Borrower;
- the condition of the Property;
- the current market;
- the current condition of the Property management; and
- the cost of curing the default, including sources and uses of funds.

#### **712.06B** Personnel Performing Asset Audits

The Asset Audit must be conducted by experienced workout staff of the Servicer who are not the same personnel as those who inspected the Property and prepared any asset review for the Lender when the Mortgage Loan was originated.

#### **712.06C** Timing of Asset Audits

Simultaneously with pursuing the Dual Track Approach, the



Servicer must submit an Asset Audit to Fannie Mae Special Asset Management within 60 calendar days after the Date of Default as part of the SWAT.

Portions of the Asset Audit may take longer than 60 days, such as an environmental assessment and a lead-based paint risk assessment for any Property built before December 31, 1978. If this is the case, all of the information available by the 60th day after the Date of Default must be given to Fannie Mae Special Asset Management. The Servicer may submit a supplement to the Asset Audit as soon as the incomplete items are received. This process will enable Fannie Mae Special Asset Management to become aware of the major issues related to the Mortgage Loan default.

If the Servicer fails to timely provide a completed Asset Audit to Fannie Mae, Fannie Mae reserves the right to perform the Asset Audit itself or through a third party and assess the Servicer for the cost of the Asset Audit.

#### **712.06D** Content of Asset Audits

The Asset Audit must contain, at a minimum, the following:

- a determination of whether the default was economic-related or management-related;
- an on-site inspection to determine the physical condition and occupancy-level of the Property;
- photographs of the Property, improvements, and surrounding properties;
- an income and expense analysis of the Property, including a review of rent collection performance, historical expense levels, and contributions of capital by the Borrower (or its partners, members or shareholders);
- an analysis of the Property relative to the market;
- a thorough analysis of the original underwriting file and the executed Loan Documents;
- an interview of the Key Principals or Principals of the Borrower and the Property management agent to determine the reason for the default and the likelihood and timing of a cure of the default by the Borrower;
- an assessment of the physical condition of the Property to determine whether maintenance of the Property has been deferred that would result in safety or liability concerns and the cost of necessary repairs;
- an environmental assessment, if applicable (see special requirements for environmental assessment in this Section);





- a review of the Borrower's payment history to determine compliance with the terms of the Note;
- a review of the Collateral Agreements for Completion/Repair, Replacement Reserves, Achievement, and Deficit Operation and payment activity to determine whether the reserves were adequately funded and whether the Borrower attempted to maintain the Property in marketable condition;
- a review of the tax and insurance deposits to ensure that payments are current;
- a title insurance update or bring-down to determine whether unauthorized second mortgages or other unauthorized encumbrances exist, or unauthorized transfers have occurred;
- a review of the ability of the Property management agent or of the ability of the Borrower to manage the Property, if owner-managed; and
- a review of the financial capability of the Key Principals or Principals to determine if additional capital is available.

The results of the Asset Audit must be documented in a concise memorandum format for use by all those involved in the selection of a Course of Action.

## **712.06E** Pre-Negotiation Letter

Attached as an exhibit to the Pre-Negotiation Form Letter (NOI and Loan Document Provisions) ([Form 4811](#)) or Pre-Negotiation Form Letter ([Form 4812](#)) is a checklist of items and documents to request from the Borrower that will assist the Servicer in conducting the Asset Audit. An Asset Audit may, in the Servicer's discretion, be dispensed with if the Performance or Payment Default is reasonably determined to be technical in nature or readily susceptible of cure. For example, if the Payment Default results from an inadvertent administrative error in mailing the monthly payment, or if the monthly payment is lost in the mail, an Asset Audit would not be required if the Payment Default is cured within 60 days after the Date of Default. If the Payment Default is not cured within 60 days, the Asset Audit is due as soon as possible after the end of the 60-day period.

## **712.06F** Special Requirements for the Environmental Assessment

### **1. Required Statement in Asset Audit**

After reviewing the environmental assessment performed at Mortgage Loan origination and conducting a current on-site inspection to review any items noted in the original assessment done at Mortgage Loan origination, the Asset Audit must contain either:



- a statement that there is no material, adverse change in the results of the Phase I ESA or Phase II ESA, if applicable, or no noncompliance with any O&M requirements; or
- a statement that there is a material, adverse change in the results of the Phase I ESA or Phase II ESA, if applicable, or noncompliance with any O&M requirements and a description thereof.

## **2. Asset Audit Shows Material, Adverse Change**

If the Asset Audit reflects a material, adverse change in the environmental condition of the Property, the Servicer must obtain another Phase I ESA or Phase II ESA, if applicable. Even if the Asset Audit does not reflect a material, adverse change, upon review of the Asset Audit by Fannie Mae, Fannie Mae may require the Servicer to obtain another Phase I ESA or Phase II ESA.

## **3. Engagement of Environmental Consultant**

If another environmental assessment is required to be obtained, the Servicer must engage the environmental consultant using the Form Letter of Engagement for Environmental Consultant ([Form 4815](#)) unless the Servicer determines that the new Phase I ESA or Phase II ESA should be covered by the attorney-client privilege and kept confidential. If attorney-client privilege is desired, the Servicer must request either outside counsel or its in-house counsel to send the Engagement Letter for Environmental Consultant. Prior to engaging the environmental consultant under the attorney-client privilege, the Servicer must confirm with outside counsel whether the privilege is likely to apply and what, if any, additional steps would be required to better ensure the protection of the attorney-client privilege.

## **4. Cost of Environmental Assessment**

The cost of the environmental assessment is considered a Delinquency Resolution Cost.

### **712.07 Dual Track Timeline**

This timeline is hypothetical and represents the typical time frames that should be followed for all Non-Performing Mortgage Loans. Specific defaults may require action to be taken sooner or be delayed. For example, the Borrower may have filed for bankruptcy protection and, therefore, the Dual Track timeline must be implemented on an accelerated basis or delayed basis. As provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 710.01: Fannie Mae Retains Legal Counsel](#), the default resolution process remains a case-specific process and not every case will fit perfectly into this approach and timeline; however, to the extent this Chapter or the Guide requires certain actions to be taken within a



specific time period, those specific time periods are required.

Date	Track 1	Track 2
March 1	<ul style="list-style-type: none"> <li>• Borrower's Mortgage Loan payment is due. Servicer could technically send out a default notice on the 2nd; but, as a practical matter would not unless Servicer knew Borrower was not going to pay.</li>   <li>• <u>Or</u>, Lender becomes aware of Borrower default in performance of its non-monetary obligations under the Mortgage Loan.</li> </ul>	
March 2 - 31	<ul style="list-style-type: none"> <li>• Servicer calls Borrower to find out cause of missed payment or default and whether default will be cured by the end of the month or if default will continue into the 2nd month [April].</li>   <li>• If non-monetary default requires notice to Borrower to begin cure time, Servicer sends written notice of default to Borrower.</li> </ul>	<p>The Servicer may contact Fannie Mae Special Asset Management or its Fannie Mae Representative at any time prior to charging the Late Fee to discuss default resolution and whether the Borrower will be able to cure the default. The recommendation of an early transfer to Special Servicing may be discussed.</p>
March 11  (or day when Late Fee can be assessed)	<p>If payment is not received, Borrower is subject to a Late Fees.</p>	



Date	Track 1	Track 2
March 11  (or day after Late Fee can be assessed)	If no payment is received, then, under Servicer's letterhead, send out Multifamily No Payment Received Letter Fees (Optional) Assessed (Form 4807).	
March 11 - 30	If full payment received after Late Fee can be assessed, under Servicer's letterhead, send out Multifamily Late Payment Letter Fees (Optional) Assessed (Form 4805).	
	If partial payment received after Late Fee is incurred, under Servicer's letterhead, send out Multifamily Partial Payment Letter Fees (Optional) Assessed (Form 4806).	
March 17	Servicer reports status of defaulted Mortgage Loans via Multifamily Delinquency System and certifies that all Non-Performing Mortgage Loans have been reported.	
	Before meeting with Borrower to discuss a potential workout, have Pre-Negotiation Form Letter (NOI and Loan Document Provisions) (Form 4811) or Pre-Negotiation Form Letter (Form 4812) executed by Borrower, Servicer, Fannie Mae or Lender.	



Date	Track 1	Track 2
March 18 - 31		<p>If Primary Risk, the Mortgage Loan will be special serviced by Fannie Mae.</p> <p>If Secondary Risk, the Servicer will perform the special servicing.</p>
March 31	<p>If full payment is not received by end of month, and if permitted by the Mortgage Loan documents, default interest starts and is imposed from the Date of Default [March 1].</p>	
April 1	<p>Borrower's next Mortgage Loan payment is due.</p>	
April 1 - 30	<p>Servicer continues dialogue with Borrower to assess whether default will be cured by end of month or if default will continue into the 3rd month [May].</p>	<p>Fannie Mae remains in contact with the Servicer to discuss collection efforts and whether the Borrower will be able to cure the default. The recommendation of an immediate transfer to Special Servicing may be discussed.</p>
April 15	<p>Due diligence begins for Servicing Transfer Memo/SWAT; will likely involve meeting with Borrower to obtain factual information and documents.</p>	



Date	Track 1	Track 2
April 10 - 30	<p>For Primary Risk Mortgage Loans Servicer completes Servicing Transfer Memo and forwards to Fannie Mae Special Asset Management. Fannie Mae Special Asset Management and Servicer complete Asset Review.</p> <p>For Secondary Risk Mortgage Loans Servicer completes SWAT and forwards to Fannie Mae Top Loss Special Asset Management.</p> <p>An Asset Audit should be completed and forwarded to Fannie Mae Top Loss Special Asset Management if the Course of Action selected on the SWAT is Foreclosure.</p>	
May 1		<p>If payment is not received, Engagement of Counsel Letter is executed.</p> <p>Once legal counsel is engaged, all written correspondence with Borrower must be from legal counsel.</p>





Date	Track 1	Track 2
May and June	For Primary Risk Mortgages, Fannie Mae will select Course of Action, unless Lender elects a Lender Purchase or Lender Workout. For Secondary Risk Mortgages, Servicer will select Course of Action in accordance with the approved SWAT.	Legal counsel starts process to enforce assignment of rents and begins foreclosure process.
	Election of remedies implemented.	<p>Primary Risk Mortgage Loans: Foreclosure action continues regardless of Course of Action unless Joint Workout is elected by Fannie Mae and Lender. In that case foreclosure sale would be rescheduled until workout is completed (subject to applicable law).</p> <p>Secondary Risk Mortgage Loans: SWAT is approved and unless a Joint Workout is approved, the Foreclosure action continues. The Lender purchases the Secondary Risk Mortgage Loan from Fannie Mae either prior to or immediately following the foreclosure sale.</p>

**Section 713**      Loss Sharing and the Appraisal Process in connection with a Foreclosure Event

**713.01**      General

**713.01A**      Appraisal Required; Defined Terms

An Appraisal of the Property is required in connection with any



Foreclosure Event for a Mortgage Loan that is subject to Loss Sharing. Capitalized terms in this Section not otherwise defined in the Glossary, shall have the meanings ascribed to them in the Loss Sharing Addendum. In the event of a conflict between the Loss Sharing Addendum and the Guide, the Loss Sharing Addendum will control.

### **713.01B** Compliance with Loss Sharing Addendum

Each Appraisal must comply with the requirements of the Guide and the Loss Sharing Addendum. As used in this Section with regard to any required Appraisal, a “manifest error of fact” refers solely to a factual error or omission by the appraiser (such as a math error or an inaccurate reference to the county or other jurisdiction of the Property location), and not to any disagreement with the appraiser’s discretionary decisions or determinations (such as the appraiser’s use of a particular capitalization rate, comparable properties, or market adjustments).

### **713.01C** Approved Appraisers

Each appraiser engaged to prepare an Appraisal pursuant to this Section must be approved by Fannie Mae. Periodically, the Lender must submit the names and, if requested by Fannie Mae, qualifications of its preferred appraisers to Fannie Mae for approval. Fannie Mae and the Lender each will maintain a current list of all approved appraisers who may provide an Appraisal under this Section.

### **713.01D** Appraisal Requirements

The following applies to any Appraisal obtained pursuant to this Section.

- Each Appraisal and appraiser must comply with [Part II, Chapter 2: Valuation and Income, Section 201: Market and Valuation](#).
- The Lender must provide the Appraiser Engagement Instruction Form ([Form 4825](#)) when engaging an appraiser to perform an initial Appraisal.
- Fannie Mae will use Engagement Letter for Appraiser ([Form 4823](#) or [Form 4826](#)) or Engagement Letter for Review Appraiser ([Form 4824](#)) to engage an appraiser performing an initial Appraisal or a subsequent Appraisal (as applicable).
- All communication with a jointly engaged appraiser regarding the valuation of the Property must include joint participation by members of the appraisal review groups from both Fannie Mae and the Lender.
- If the Property has unused Low-Income Housing Tax Credits or



other tax credits that transferred to Fannie Mae as a result of a Foreclosure Event, the Asset Value as of the Asset Valuation Date will be the greater of (i) the value of the Property “as restricted”, plus the value of the unused tax credits, or (ii) the “as-is” market value of the Property. Fannie Mae and the Lender will engage either the appraiser or another third party to value such unused tax credits.

- Both Fannie Mae and the Lender must use an independent appraisal review group to allow appropriate communication with the appraisers, and to ensure consistent valuation practices and quality control. The appraisal review group may be either:
  - employees of Fannie Mae or the Lender, such as multifamily mortgage underwriters, who are not required to hold state appraisal licenses or certifications, but who are independent from their employers’ asset management and special servicing functions; or
  - an independent third-party appraisal firm.
- Fannie Mae and the Lender will provide to each engaged appraiser the most recent of the Property’s engineering, environmental, and Property Condition Assessment reports; each of which will be obtained jointly using the standard Engagement Letter for Engineering Consultant ([Form 4821](#)) or Engagement Letter for Environmental Consultant ([Form 4822](#)).
- If the Foreclosure Event is delayed, or if the Asset Valuation Date is not within 90 days after the date of the Appraisal that determines the Asset Value for Loss Sharing, either Fannie Mae or the Lender may require that the Appraisal be updated to reflect the Property’s value as of the Asset Valuation Date. Any Property Condition Assessment or Phase I Environmental Site Assessment used for the first Appraisal may be updated if either Fannie Mae or the Lender requires the Appraisal to be updated.

Following the receipt by the Lender of the Appraisal Notice referred to in this Section, if the Lender fails to cause an Appraisal to be conducted in accordance with the applicable timeline for the Single Appraisal Approach or the Dual Appraisal Approach, the Property’s Appraised Value will be determined exclusively by an appraiser selected by Fannie Mae, and the Lender will be deemed to have waived any right to challenge such valuation. Updates required due to material changes in market or Property conditions, including, but not limited to, changes in access and control of the Property, will be addressed on a case by case basis.

Nothing shall prohibit Fannie Mae from ordering its own Appraisal, Property Condition Assessment, or Phase I Environmental Site Assessment



in conjunction with its activities as the Special Servicer for the Mortgage Loan (e.g., for litigation contesting the Property's Appraised Value, to determine foreclosure bidding strategy, in connection with a Borrower's bankruptcy action, or other similar needs). However, any Appraisal, Property Condition Assessment, or Phase I Environmental Site Assessment obtained to determine the Asset Value must be obtained in accordance with this Section.

### **713.01E** Appraisal Notice and Election of Appraisal Methodology

If an Appraisal is required to determine the Property's Asset Value for any reason, including the commencement of the process described in [Part V, Chapter 7: Non-Performing Mortgage Loans](#) in connection with a Foreclosure Event, Fannie Mae will notify the Lender (the "Appraisal Notice").

Within 4 Business Days after receipt of the Appraisal Notice from Fannie Mae, the Lender must elect, by written notice (e.g., e-mail) to its Fannie Mae Representative in Special Asset Management, to use either the Single Appraisal Approach or the Dual Appraisal Approach. Once made, the Lender's election will be binding on the Lender and Fannie Mae with respect to that Property and Mortgage Loan, and may not be changed unless mutually agreed upon in writing.

If the Lender fails to elect an Appraisal approach within the allotted time period, the Single Appraisal Approach will be used. However, if the Lender elects the Single Appraisal Approach, and Fannie Mae and the Lender are unable to jointly select and engage an appraiser as required by this Section, the Dual Appraisal Approach will be used.

### **713.02** Single Appraisal Approach

This Section outlines the recommended timeline and process to obtain an Appraisal using the Single Appraisal Approach, as further described in the Loss Sharing Addendum. Several variables may alter this timeline; however, the objective is to obtain a final Appraised Value as of the Asset Valuation Date.

#### **713.02A** Single Appraisal Approach Timeline

1. Fannie Mae will order any required Property Condition Assessment or Phase I Environmental Site Assessment within 4 Business Days after the Appraisal Notice, using the Engagement Letter for Engineering Consultant ([Form 4821](#)) or the Engagement Letter for Environmental Consultant ([Form 4822](#)).
2. The Lender will submit to Fannie Mae a short list of 2 or 3 preferred appraisers from the Lender's list of approved



appraisers.

3. Fannie Mae will select an appraiser from the Lender's short list within 8 Business Days after its Appraisal Notice, and the appraiser will be engaged jointly by Fannie Mae and the Lender pursuant to the standard Engagement Letter for Appraiser (Joint Engagement) ([Form 4823](#)). Fannie Mae and the Lender will provide the appraiser with all appropriate information reasonably required to complete the Appraisal in a timely fashion.
4. The appraiser should be instructed to deliver the draft Appraisal within 20 Business Days after engagement.

### **713.02B** Draft Appraisal Review

1. Fannie Mae and the Lender will each complete a review of the draft Appraisal within 10 Business Days after receipt. A joint conference call may be held with the appraiser, if requested by either Fannie Mae or the Lender. If either Fannie Mae or the Lender determines it is necessary, review comments and pertinent factual information will be provided to the appraiser and the other party. The joint conversation and information delivery are expected to occur within 15 Business Days after receipt of the draft Appraisal.
2. The appraiser should be instructed to deliver the revised draft Appraisal within 5 Business Days of receipt of comments and information.
3. Fannie Mae and the Lender will each complete a review of the revised draft Appraisal within 5 Business Days after receipt.

### **713.02C** Acceptable Draft Appraisal

If the draft Appraisal is acceptable to both Fannie Mae and the Lender, the draft Appraisal will be finalized and the final Appraised Value will be the Asset Value. Prior to issuing the final Appraisal, the appraiser may address any factual errors or other issues that both parties agree should not materially impact the Appraised Value. The appraiser will be expected to deliver the final Appraisal within 5 Business Days of the request for the final Appraisal.

### **713.02D** Non-Acceptable Draft Approach

1. If either Fannie Mae or the Lender does not accept the draft Appraisal and believes that discussions with the appraiser would not result in an acceptable Appraisal, notice will be given



to the other party that the Appraisal is unacceptable. Within 8 Business Days after either party receives such notice:

- a second appraiser will be selected by Fannie Mae from the Lender's list of approved appraisers;
  - the second appraiser will be engaged jointly by Fannie Mae and the Lender pursuant to the standard Engagement Letter For Review Appraiser (Joint Retention) ([Form 4824](#)); and
  - the first Appraisal, written comments by Fannie Mae and the Lender (if any), and pertinent Property information will be shared with the second appraiser.
2. The second appraiser will examine the first Appraisal, and then initiate a joint call with representatives of Fannie Mae and the Lender within 10 Business Days after delivery of the first Appraisal and supplemental information.
  3. The second appraiser will develop an independent opinion of the Asset Value as of the Asset Valuation Date, and prepare an Appraisal consistent with the Engagement Letter for Review Appraiser (Joint Retention) ([Form 4824](#)). The second appraiser should be instructed to deliver the Appraisal within 15 Business Days after the joint conference call.
  4. The second Appraisal will be accepted, and the Appraised Value will be the Asset Value for Loss Sharing, without further review or consent by either Fannie Mae or the Lender, unless there is a manifest error of fact in the second Appraisal.
  5. If either Fannie Mae or the Lender determines that the second appraiser has made a manifest error of fact, the correct factual information will be provided to the appraiser and the other party within 10 Business Days after receiving the second Appraisal.
  6. The second appraiser will be expected to deliver a corrected final Appraisal within 5 Business Days after being advised of a manifest error of fact in the second Appraisal.
  7. The corrected final Appraisal will be accepted, and the final Appraised Value will be the Asset Value for Loss Sharing, without further review or consent by either Fannie Mae or the Lender.

### **713.03** Dual Appraisal Approach

This Section outlines the recommended timeline and process to obtain an Appraisal using the Dual Appraisal Approach, as further described in the Loss Sharing Addendum. Several variables may alter this timeline;



however, the objective is to obtain a final Appraised Value as of the Asset Valuation Date.

### **713.03A** Dual Appraisal Approach Timeline

1. Fannie Mae will order any required Property Condition Assessment or Phase I Environmental Site Assessment within 4 Business Days after the Appraisal Notice, using the Engagement Letter for Engineering Consultant (Form 4821) or the Engagement Letter for Environmental Consultant (Form 4822).
2. The Lender and Fannie Mae will each select and engage an appraiser from their individual lists of approved appraisers within 8 Business Days after the Appraisal Notice. The Lender will engage its appraiser pursuant to the standard Appraiser Engagement Instruction Form (Form 4825), and Fannie Mae will engage its appraiser pursuant to the standard Appraiser Engagement Letter for Appraiser (Fannie Mae Retention) (Form 4826).
3. Each appraiser should be instructed to deliver a final Appraisal within 35 Business Days after both appraisers have been engaged. Fannie Mae and the Lender will share copies of their respective final Appraisals with each other.

### **713.03B** Average of Appraised Values

If the 2 Appraised Values differ by 10% or less, the average of the 2 Appraised Values will be the Asset Value for Loss Sharing.

### **713.03C** Third Appraisal

1. If the 2 Appraised Values differ by more than 10%, within 4 Business Days after receipt of the final Appraisals:
  - a third appraiser will be selected by Fannie Mae from the Lender's list of approved appraisers;
  - the third appraiser will be engaged jointly by Fannie Mae and the Lender pursuant to the standard Engagement Letter for Review Appraiser (Joint Retention) (Form 4824); and
  - the first 2 Appraisals, written comments by Fannie Mae and the Lender (if any), and pertinent Property information will be shared with the third appraiser.
2. The third appraiser will initiate a joint conference call with





representatives from Fannie Mae and the Lender to discuss the first 2 Appraisals within 10 Business Days after delivery of the first 2 Appraisals and Fannie Mae's and the Lender's comments.

3. The third appraiser will develop an independent opinion of the Asset Value as of the Asset Valuation Date, and prepare an Appraisal consistent with the Engagement Letter for Review Appraiser (Joint Retention) (Form 4824). The third appraiser should be instructed to deliver the Appraisal within 15 Business Days after the joint conference call.
4. The third Appraisal will be accepted and the Appraised Value will be the Asset Value for Loss Sharing, without further review or consent by either Fannie Mae or the Lender, unless there is a manifest error of fact in the third Appraisal.
5. If either Fannie Mae or the Lender determines that the third appraiser has made a manifest error of fact in its Appraisal, the correct factual information will be provided to the third appraiser and the other party within 10 Business Days after receiving the third Appraisal.
6. The third appraiser will be expected to deliver a corrected final Appraisal within 5 Business Days after being advised of a manifest error of fact.
7. The corrected final Appraisal will be accepted, and the final Appraised Value will be the Asset Value for Loss Sharing, without further review or consent by either Fannie Mae or the Lender.



## Glossary

### A

**Actual Losses** Net dollar amount of the loss on a Mortgage Loan as calculated on the Multifamily Loss Notification Form and approved by Fannie Mae.

**Appraisal** Written statement independently and impartially prepared by a qualified appraiser stating an opinion of the market value of the Property as of a specific date, supported by the presentation and analysis of relevant market information.

**Synonyms**

- Appraisals

**Appraisal Notice** As defined in the Loss Sharing Addendum.

**Appraised Value** Appraiser's opinion of the market value of the Property documented in the Appraisal, on an "as is" basis, unless use of an "as completed" basis is specifically permitted by the Guide.

**Synonyms**

- Appraised Values

**Asset Valuation Date** As defined in the Loss Sharing Addendum.

**Asset Value** As defined in the Loss Sharing Addendum.

### B

**Borrower** Person who is the obligor per the Note.

**Synonyms**

- Borrowers
- Borrower's



## Business Day

Any day other than a

- Saturday,
- Sunday,
- day when Fannie Mae is closed,
- day when the Federal Reserve Bank of New York is closed, or
- for any MBS and required remittance withdrawal, day when the Federal Reserve Bank is closed in the district where any of the MBS funds are held.

### **Synonyms**

- Business Days

## C

## Collateral Agreement

Agreement under which collateral (other than the Property) may be pledged, transferred, or otherwise provided to secure the Borrower's obligations under a Mortgage Loan.

### **Synonyms**

- Collateral Agreements

## Completion/Repair Agreement

The 4000 series Completion/Repair Security Agreement (Form 4505), or other agreement approved by Fannie Mae, that evidences the:

- Borrower's agreement to perform Completion/Repairs and other identified capital improvements;
- terms for funding the repairs, maintenance, or capital items; and
- disbursement of Completion/Repair Escrow funds.

### **Synonyms**

- Completion/Repair Agreements



**Completion/Repairs** Immediate Repairs identified by the Property Condition Assessment and required by the Lender to be included in the Completion/Repair Schedule or Completion/Repair Agreement (or a Certificate of Borrower, if applicable).

**Synonyms**

- Completion/Repair

**Course of Action** For Non-Performing Mortgage Loans, loss mitigation activities per per [Part V, Chapter 7: Non-Performing Mortgage Loans](#).

**Synonyms**

- Courses of Action

## D

**Date of Default** Date of the initial Payment Default or Performance Default, per [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 703: Mortgage Loan Defaults](#).

**Delinquency Advance** For Primary Risk Mortgage Loans and Secondary Risk Mortgage Loans, an amount advanced by a primary servicer in respect of regularly scheduled monthly interest or principal due on 1 or more Mortgage Loans, to the extent required under its Lender Contract. For Secondary Risk Mortgage Loans only, in addition to the above, any amount advanced by a primary servicer in respect of all accrued but unpaid interest and principal due on 1 or more Mortgage Loans at the applicable Maturity Date of each relevant Mortgage Loan.

**Synonyms**

- Delinquency Advances

**DUS** Delegated Underwriting and Servicing

## E



## Environmental Site Assessment

Report (either a Phase I ESA or a Phase II ESA) identifying whether a Property is subject to Recognized Environmental Conditions or Business Environmental Risks.

### **Synonyms**

- ESA

## **F**

### Fannie Mae Representative

Fannie Mae personnel who assist you with various business matters (e.g., Fannie Mae Deal Team, pricing, delivery, servicing, asset management, etc.).

### Foreclosure Event

Any of the following:

- Foreclosure under the Security Instrument;
- any other exercise by the Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which the Lender (or its designee or nominee) or a third-party purchaser becomes owner of the Property;
- delivery by the Borrower to the Lender (or its designee or nominee) of a deed or other conveyance of the Borrower's interest in the Property in lieu of any of the foregoing; or
- in Louisiana, any dation en paiement.

### Form 4660

Multifamily Underwriting Standards identifying Pre-Review Mortgage Loans and containing the minimum underwriting requirements (e.g., debt service coverage ratio, loan to value ratio, interest only, underwriting floors, etc.) for all Mortgage Loans.

### **Synonyms**

- Multifamily Underwriting Standards

## **G**



**Guide** Multifamily Selling and Servicing Guide controlling all Lender and Servicer requirements unless a Lender Contract specifies otherwise.

**Synonyms**

- DUS Guide

## I

**Improvements** Buildings, structures, improvements, and alterations, including the multifamily housing dwellings, now constructed or hereafter constructed or placed on the land upon which the Property is located, together with all fixtures (as defined in the Uniform Commercial Code).

**In Place Loan** Mortgage Loan refinancing a Portfolio Mortgage Loan that does not meet Tier 2 underwriting requirements.

**Synonyms**

- In Place Loans

## K

**Key Principal** Any Person who controls and/or manages the Borrower or the Property, is critical to the successful operation and management of the Borrower and the Property, and who may be required to provide a Guaranty.

**Synonyms**

- Key Principals

## L

**Lender** Person Fannie Mae approved to sell or service Mortgage Loans.

**Synonyms**

- Lenders
- Lender's



## Lender Contract

Program Documents per the Multifamily Selling and Servicing Agreement.

### **Synonyms**

- Lender's Contract
- Lender Contracts
- Contract
- MSSA

## Letter of Credit

Letter of Credit approved by Fannie Mae per Part I, Chapter 2: Mortgage Loan, Section 204: Letters of Credit.

### **Synonyms**

- Letters of Credit
- Letter of Credit's
- LOC
- LOCs

## Loan Documents

All executed Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan.

### **Synonyms**

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents

# M





## Material Commercial Lease

Lease, sublease, license, concession, grant, or other possessory interest for commercial purposes that comprises 5% or more of the Property's annual EGI, or relates to:

- solar power, thermal power generation, or co-power generation, or for the installation of solar panels or any other electrical power generation equipment, and any related power purchase agreement; or
- any Property dwelling units leased to any
  - Key Principal,
  - Principal, or
  - Affiliate.

### **Synonyms**

- Material Commercial Leases

## Maturity Date

Date all amounts due and owing per the Mortgage Loan become fully due and payable per the Loan Documents.

### **Synonyms**

- Maturity Dates

## Maturity Management Top Loss

Team that can be contacted at [TopLoss\\_SAM@fanniemae.com](mailto:TopLoss_SAM@fanniemae.com).

## Mortgage Loan

Mortgage debt obligation evidenced, or when made will be evidenced, by

- the Loan Documents, or
- a mortgage debt obligation with a Fannie Mae credit enhancement.

### **Synonyms**

- Mortgage Loans
- Mortgage Loan's



Multifamily Loss Mitigation

Team that can be contacted at [lm\\_watch@fanniemae.com](mailto:lm_watch@fanniemae.com).

**Synonyms**

- Multifamily Watchlist

## N

Non-Performing Mortgage Loan

Mortgage Loan that is subject to an uncured default.

**Synonyms**

- Non-Performing Mortgage Loans
- Non-Performing

Note

Instrument evidencing a Mortgage Loan obligation, including

- [Form 6010 series](#),
- any other Fannie Mae-approved note, and
- all applicable
  - addenda,
  - schedules, and
  - exhibits.

**Synonyms**

- Notes

## P

P&I

Principal and interest

Payment Default

Failure of a Borrower to pay when due and in full any payment required for the Mortgage Loan, including, but not limited to, principal, interest, late charges, default interest, fees, prepayment premium, escrows, or other collateral accounts for taxes, insurance premiums, and assessments, other collateral accounts, and the Replacement Reserve.

**Synonyms**

- Payment Defaults



Performance Default	<p>Failure of a Borrower to perform any promise or covenant within any applicable grace periods under the related Mortgage Loan other than a failure that constitutes a Payment Default.</p> <p><b>Synonyms</b></p> <ul style="list-style-type: none"><li>• Performance Defaults</li></ul>
Phase I ESA	<p>Environmental report and site assessment performed according to the process described in current ASTM E 1527, including any report summarizing the conclusions of the assessment.</p> <p><b>Synonyms</b></p> <ul style="list-style-type: none"><li>• Phase I Environmental Site Assessment</li><li>• Phase I ESAs</li></ul>
Phase II ESA	<p>Investigation performed according to current ASTM E 1903, or investigation other than a Phase I ESA, that may include analyzing soil, ground water, or building materials for contaminants, including any report summarizing the conclusions of the assessment.</p> <p><b>Synonyms</b></p> <ul style="list-style-type: none"><li>• Phase II Environmental Site Assessment</li></ul>
Pre-Review	<p>Requirement that the Lender obtain Fannie Mae's approval before Rate Lock of a Mortgage Loan.</p>
Prepayment Premium	<p>For a Mortgage Loan prepayment, amount the Borrower must pay in addition to the prepaid principal and accrued interest per the Loan Documents.</p> <p><b>Synonyms</b></p> <ul style="list-style-type: none"><li>• Prepayment Premiums</li></ul>



Primary Risk Mortgage Loan

Mortgage Loan where Fannie Mae bears all losses or where the Lender and Fannie Mae share losses.

**Synonyms**

- Primary Risk Mortgage Loans
- Primary Risk

Property

Multifamily residential real estate securing the Mortgage Loan, including the

- fee simple or Leasehold interest,
- Improvements, and
- personal property (per the Uniform Commercial Code).

**Synonyms**

- Properties
- Property's

Property Condition Assessment

Assessment of the current physical condition and historical operation of the Property.

**Synonyms**

- PCA
- PNA
- Physical Needs Assessment
- PCAs

## R

Replacement Reserve

Custodial Account funded during the Mortgage Loan term for major maintenance and replacing capital items per the Loan Documents.

**Synonyms**

- Replacement Reserves

## S



Secondary Risk  
Mortgage Loan

Mortgage Loan where the Lender bears all losses until the Lender's recourse obligations are exhausted.

**Synonyms**

- Secondary Risk Mortgage Loans
- Secondary Risk

Securitized Mortgage  
Loan

Mortgage Loan backing an MBS, PFP MBS, or REMIC.

**Synonyms**

- Securitized Mortgage Loans

Security

MBS, PFP MBS, or REMIC.

Security Balance

For each MBS Pool, the Issue Date Principal Balance less any MBS principal distribution amounts included in previous MBS monthly remittances.

**Synonyms**

- Security Balances

Security Instrument

Instrument creating a lien or encumbrance on 1 or more Properties and securing the obligations under the Loan Documents.

**Synonyms**

- Security Instruments
- Security Instrument's

Servicer

Primary Person servicing the Mortgage Loan, including

- the originator,
- seller, or
- a third party.

**Synonyms**

- Servicers
- Servicer's



**Servicing File** Your file for each Mortgage Loan serviced.

**Synonyms**

- Servicing Files

**Servicing Transfer Memo** Document containing the data and documentation needed to engage counsel and commence foreclosure proceedings (e.g., [Form 4808](#)).

**Special Asset Management** Team performing Fannie Mae's Special Servicing that can be contacted at [multifamily\\_sam@fanniemae.com](mailto:multifamily_sam@fanniemae.com).

**Synonyms**

- SAM
- Multifamily Special Asset Management

**Special Servicer** Servicer (which may be Fannie Mae, the Servicer, or a third-party special servicer contracted by Fannie Mae) responsible for implementing the loss mitigation actions for a Non-Performing Mortgage Loan.

## T

**Transfer/Assumption** Transaction resulting in a change in the ownership of the Borrower or Property.

**Synonyms**

- Transfers/Assumptions

## U

**UPB** Unpaid Principal Balance