Fannie Mae®

Multifamily Selling and Servicing Guide

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Section 218 Defeasance

218.01 Mortgage Loan Documents Must Permit Defeasance

A Borrower may elect to defease its Mortgage Loan only if the Loan Documents permit defeasance. If the Borrowers Mortgage Loan Documents do not permit defeasance, defeasance of the Mortgage Loan is not permitted.

218.02 Borrower's Election to Defease

Prior to the Mortgage Loans Maturity Date and during the Mortgage Loan's Defeasance Period, the Borrower may defease the entire outstanding balance of the Mortgage Loan in accordance with the applicable terms and conditions of the Borrower's Loan Documents and the provisions of this Section.

218.03 Defeasance Option Procedures

To accomplish the defeasance, the following procedures must be followed:

218.03A Defeasance Documents

Servicer must obtain the most current Defeasance documents from the Fannie Mae website. The Defeasance documents consist of the Defeasance Notice (Form 4622) and other closing documents required by Fannie Mae in order for the defeasance to occur.

218.03B Defeasance Notice

The Servicer must complete the Defeasance Notice (Form 4622) after verifying the Mortgage Loan is eligible for defeasance and obtaining from the Borrower the date on which the Borrower desires to consummate the Defeasance. The Defeasance Close Date may not be more than 45 calendar days nor less than 30 calendar days after the date on which the Defeasance Notice is received by the Servicer. The Servicer must use the Defeasance Calculator application on the Fannie Mae web site to estimate the Defeasance Deposit and the estimated Defeasance Deposit must be inserted in the appropriate box in the Defeasance Notice. The information on the Defeasance Notice will not be final until it is confirmed by Fannie Mae. Until then, the Defeasance Deposit and other information are estimates. The Defeasance Notice will specify (a) whether a Fannie Mae debt instrument will be offered for use as the substitute collateral and, if not, that U.S. Treasury Securities will be the substitute collateral; and (b) whether

the successor entity will be designated by Fannie Mae or Borrower, and (c) the amount of the Defeasance Commitment Fee.

To be effective, the Borrower must execute and send the Defeasance Notice to the Servicer so that the Servicer receives the Defeasance Notice no earlier than 11:00 a.m. and no later than 3:00 p.m. ET on a Business Day.

The Servicer must then sign and execute the Defeasance Notice and fax the Defeasance Notice and a copy of the Note to be defeased to its Fannie Mae Representative.

Fannie Mae must receive the fax by 5:00 p.m. ET on the same day that the Defeasance Deposit was calculated for verification by Fannie Mae.

218.03C Defeasance Commitment Fee

A Defeasance Commitment Fee equal to 1% of the scheduled balance of the Mortgage Loan as of the Defeasance Close Date, must be paid by the Borrower to the Servicer no later than the date and time when the Servicer receives the executed Defeasance Notice from the Borrower. The Servicer must wire the Defeasance Commitment Fee to Fannie Mae within 24 hours after receipt of the Borrower's executed Defeasance Notice.

218.03D Verification of the Defeasance Notice

Fannie Mae will verify the Mortgage Loan information contained in the Defeasance Notice as well as the Mortgage Loan's eligibility for defeasance. After verification and within two (2) Business Days after the initial receipt of the Defeasance Notice from the Servicer, Fannie Mae will sign the Defeasance Notice and fax it back to the Servicer along with an Exhibit that details the monthly cash flows of the Fannie Mae debt instrument that will replace the Property as collateral for the Mortgage Loan.

The Servicer will then fax the verified Defeasance Notice to the Borrower on the same day that the Servicer receives the verified Defeasance Notice from Fannie Mae. In the event that Fannie Mae made changes to the Defeasance Notice, the Borrower must initial the changed portions of the Defeasance Notice and fax it back to the Servicer on that same day. The Servicer must then immediately fax the Borrower-initialed Defeasance Notice to Fannie Mae.

If the Servicer does not

- receive the Defeasance Commitment Fee, and
- provide confirmation of the Defeasance Notice to the Borrower,

then the Borrower's right to obtain Defeasance pursuant to that Defeasance Notice shall terminate. If the Borrower still wishes to defease the Mortgage Loan, the Borrower must submit a new Defeasance Notice and repeat the

process outlined above.

218.03E Substitute Collateral

On or before the Defeasance Close Date, the Borrower must deliver to the Servicer a Defeasance Pledge Agreement (Form 4529), creating a perfected security interest in the substitute collateral in favor of Fannie Mae.

218.03F Assignment and Assumption

The Borrower must assign all its obligations and rights under the Note, together with the substitute collateral, to a successor entity designated by Fannie Mae or, if not so designated by Fannie Mae, designated by Borrower and acceptable to Fannie Mae. The Borrower and the successor entity shall execute and deliver to the Servicer a Defeasance Assignment and Assumption Agreement (Form 4528).

218.03G Closing Documents

The Servicer must deliver to Fannie Mae by no later than 10 a.m. ET, five (5) Business Days before the Defeasance Close Date, the following documents:

- a Borrower's Counsel Opinion Letter (Form 6618) affirming:
  - that each Defeasance Document constitutes the valid and legally binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms;
  - that the defeasance is not subject to avoidance under any applicable federal or state laws;
  - that, if the Note is held by a REMIC Trust, then the defeasance has been effected in such a way that does not adversely affect the REMIC Trust; and
  - such other opinions, certificates, documents or instruments as Servicer may reasonably request;
- the Defeasance Assignment and Assumption Agreement (Form 4528); and
- the Defeasance Pledge Agreement (Form 4529).

Transmittal of these documents shall be accompanied by a completed Multifamily Defeasance Transmittal Form (Form 4631).

218.03H Amounts Payable by Borrower

On or before the Defeasance Close Date, the Borrower must pay

to the Servicer an amount equal to the sum of:

- the next scheduled P&I payment due under the Note;
- all other sums then due and payable under the Note, the Security Instrument and any other Loan Document; and
- all costs and expenses incurred by the Servicer in connection with the defeasance, including any out-of-pocket fees and disbursements of the Servicer's legal counsel.

218.03I Defeasance Deposit

If a Fannie Mae investment security will be the substitute collateral, then, on or before 3:00 p.m. ET on the Defeasance Close Date, the Borrower must pay the Defeasance Deposit (reduced by the Defeasance Commitment Fee) to the Servicer to be used by the Servicer, as the Borrower's agent, to purchase the Fannie Mae Investment Security.

The Borrower or Closing Agent must wire the Defeasance Deposit to Servicer by 3:00 p.m. ET on the Defeasance Closing Date. The Servicer must wire the Defeasance Deposit (reduced by the Defeasance Commitment Fee) to Fannie Mae for receipt by 5:00 p.m. ET on the Defeasance Closing Date.

218.03J Release

Upon the Borrower's compliance with the Defeasance requirements, the Property will be released from the lien of the Security Instrument. Upon release of the Property, the Note will be secured by the pledge of the Substitute Collateral.

218.03K Fannie Mae Security Liquidated Damages

If the Borrower timely pays the Defeasance Commitment Fee and the Servicer and the Borrower timely transmit a signed facsimile copy of the Defeasance Notice, but the Borrower fails to consummate the defeasance, Fannie Mae shall have the right to retain the Defeasance Commitment Fee as liquidated damages for the Borrower's default and, subject to the terms and conditions of the Note, the Borrower shall be released from all further obligation to defease the Note under the given Defeasance Notice.

218.03L Third-Party Costs

In the event that the Defeasance is not consummated on the Defeasance Closing Date for any reason, the Borrower must reimburse the Servicer for all third-party costs and expenses incurred by the Servicer in its reliance on the Defeasance Notice executed by the Borrower, within five (5) Business Days after the Borrower receives a written demand for this

reimbursement.

218.03M Post Defeasance Closing Date

Fannie Mae will transfer the defeased Mortgage Loan from the Servicer's servicing portfolio effective on the first day of the second month following the Defeasance Closing Date. The Servicer will be required to report and remit payments for the next scheduled P&I payment collected as part of the Defeasance Closing. Thereafter, the Servicer will no longer be required to perform other servicing requirements for the defeased Mortgage Loan. Beginning on the 18th calendar day of the second calendar month after the Defeasance Closing Date (or the next Business Day if such day is not a Business Day) until the maturity of the Mortgage Loan, the Servicer will receive the remaining scheduled servicing fee for the Mortgage Loan minus five (5) basis points provided the Authorization for ACH Remittance (Form 4630) has been submitted.

Glossary

A

ACH	Electronic Automated Clearing House network for processing U.S. banking transactions. **Synonyms** • Automated Clearing House

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	Property, Personal Property, or other property securing a Mortgage Loan.



Commitment	Contractual agreement between you and Fannie Mae where Fannie Mae agrees to buy a Mortgage Loan at a future date in exchange for an MBS, or at a specific price for a Cash Mortgage Loan, and you agree to Deliver that Mortgage Loan. **Synonyms** • Committed • Commitments

D

Defeasance	Transaction where a Property is released from the lien of the Security Instrument and the Lender receives a valid and perfected lien and security interest in substitute collateral acceptable to Fannie Mae and the cash flows thereunder.
Delivery	Submission of all correct, accurate, and certifiable documents, data, and information with all applicable documents properly completed, executed, and recorded as needed, and any deficiencies resolved to Fannie Maes satisfaction. **Synonyms** • Deliver • Delivered • Deliveries

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.).

L

Lien	Lien, mortgage, bond interest, pledge, security interest, charge, or encumbrance of any kind. **Synonyms** • Liens
Loan Documents	All Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan. **Synonyms** • Loan Document • Mortgage Loan Document • Mortgage Loan Documents

M

Maturity Date	Date all Mortgage Loan amounts become fully due and payable per the Loan Documents. **Synonyms** • Maturity Dates
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

N

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
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

R

REMIC	Real Estate Mortgage Investment Conduit

S

Security	MBS, PFP MBS, or REMIC. **Synonyms** • Securities

Security Instrument	Instrument creating a lien or encumbrance on 1 or more Properties and securing the Loan Document obligations. **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 Fee	Fee a Servicer receives for collecting payments, managing operational procedures, and assuming your portion of credit risk for a Mortgage Loan, and which may be expressed as a percentage. **Synonyms** • Servicing Fees