



Multifamily Selling and Servicing Guide

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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.



Glossary

B

Borrower Person who is the obligor under the Note.

Synonyms

- Borrowers
- Borrower's

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

Course of Action For Non-Performing Mortgage Loans, loss mitigation activities 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](#).

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



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

Synonyms

- Lenders
- Lender's

Lender Contract Program Documents per the Mortgage Selling and Servicing Agreement.

Synonyms

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

Loan Documents All documents evidencing, securing, or guaranteeing the debt obligation executed for a Mortgage Loan and approved by Fannie Mae.

Synonyms

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents

M

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

N



Non-Performing
Mortgage Loan

Mortgage Loan that is subject to an uncured default.

Synonyms

- Non-Performing Mortgage Loans
- Non-Performing

Note

Current instrument evidencing a Mortgage Loan obligation, including [Form 6010 series](#), any other note approved by Fannie Mae, 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

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.

Synonyms

- Performance Defaults



Property

Multifamily residential property securing the Mortgage Loan and including the land (or Leasehold interest in land), Improvements, and personal property (as defined in the Uniform Commercial Code).

Synonyms

- Properties
- Property's

S

Servicer

Primary Person responsible for servicing the Mortgage Loan (e.g., the originator, the selling Lender, or a third-party servicer).

Synonyms

- Servicers

Special Asset Management

Team that performs the work of the Special Servicer for Fannie Mae that can be contacted at sam_legal_mailbox@fanniemae.com.

Synonyms

- SAM
- Multifamily Special Asset Management