



# Multifamily Selling and Servicing Guide

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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: Asset Management for 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: Asset Management for 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. Non-compliance with Laws**

Any violation of laws, ordinances or regulations by the Borrower and/or the Property, as required by [Part V, Chapter 3: Custodial Account Requirements, Section 306: Interest-Bearing Accounts](#).

#### **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.



## Glossary

### B

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

**Synonyms**

- Borrowers
- Borrower's

**Business Day** Any day other than a

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

**Synonyms**

- Business Days

### C

**Completion/Repair Agreement** Document evidencing the Borrower's agreement to undertake Completion/Repairs and other identified capital improvements, the terms for funding the repairs, maintenance, or capital items, and the disbursement of funds from the Completion/Repair Escrow (e.g., Form 4505, or the applicable parts of the Multifamily Loan Agreement (Form 6001 series), including the Required Repair Schedule to the Multifamily Loan Agreement).

**Synonyms**

- Completion/Repair Agreements



## Custodial Account

Accounts established by the Servicer for depositing P&I payments, T&I funds, Collateral Agreement deposits, and other similar funds.

### **Synonyms**

- Custodial Accounts

## **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.).

## **G**

### Guide

Multifamily Selling and Servicing Guide and Delegated Underwriting and Servicing Guide, including any exhibits, appendices, or other referenced forms, as updated, amended, restated, modified, or supplemented by any lender memo; provided, however, if a topic is covered in the Multifamily Selling and Servicing Guide, that Guide shall control unless a Lender Contract specifically requires use of another Guide.

### **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).

## **L**





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

**Synonyms**

- Lenders
- Lender's

**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

**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

**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

## P

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

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 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

## **R**

**Replacement Reserve** Custodial Account established by the Lender and funded by deposits from the Borrower over the term of the Mortgage Loan to fund the replacement of capital items at the Property.

**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

**Security** MBS, PFP MBS, or REMIC.

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



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

**Synonyms**

- Servicers

**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