



Fannie Mae®

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# 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: 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.



# Glossary

## 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

**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

## 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 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).

## L

Lender

Person Fannie Mae approved to sell or service Mortgage Loans.

### **Synonyms**

- Lenders
- Lender's

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



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

## 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 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**

## 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

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.

**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

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