



Multifamily Selling and Servicing Guide

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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.



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

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

Synonyms

- Completion/Repair

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](#).

L



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

Synonyms

- Lenders
- Lender's

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
- LOC
- LOCs

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

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

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

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.