



Fannie Mae®

Multifamily Selling and Servicing Guide

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TABLE OF CONTENTS

Part V Section 711 Courses of Action	3
711.01 Election and Implementation of a Course of Action	3
711.02 Course of Action – Lender Purchase of Mortgage Loan	4
711.02A Primary Risk Mortgage Loans	4
711.02B Secondary Risk Mortgage Loans	4
711.02C Purchase Price for Mortgage Loans	4
711.02D No Fannie Mae Approval Required	5
711.02E Implementation of Course of Action	5
711.03 Course of Action – Lender Workout Election	6
711.03A Lender Workout Defined	6
711.03B Documentation and Terms of Lender Workout	6
711.03C Lender Workout Has No Impact on Loss Sharing or Recourse Obligation	7
711.03D No Fannie Mae Approval Required	7
711.03E Servicer Makes Delinquency Advances But Fails to Report	
Mortgage Loan Delinquent	8
711.03F Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae	8
711.04 Course of Action – A Joint Workout	8
711.04A Joint Workout Defined	9
711.04B Delinquency Advances Must Be Made During Negotiation of Joint Workout	9
711.04C Joint Workout Process	9
711.04D Modification, Extension, and Forbearance Fees	10
711.04E Triggering Modification Fees; Other Fees	11
711.04F Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae	11
711.05 Course of Action - Foreclosure	11
711.05A Primary Risk Mortgage Loans	12
711.05B Secondary Risk Mortgage Loans	12
711.05C Deed-in-Lieu of Foreclosure	15
711.05D Management of Property Post Title Vesting in Fannie Mae	15
711.05E Deficiency Suits	16
711.06 Course of Action – Note Sale Election or Discounted Loan Payoff	17
711.06A Note Sale and Discounted Loan Payoff Defined	18
711.06B Lender Ability to Bid	18
711.06C Any Note Sale or Discounted Payoff Gives Rise to Loss	
Sharing Event	18
711.06D Note Sale – Secondary Risk Mortgage Loans	18
711.06E Discounted Loan Payoff - Secondary Risk Mortgage Loans	20
GLOSSARY	22



Section 711 Courses of Action

711.01 Election and Implementation of a Course of Action

As described in this Chapter, Fannie Mae is the Special Servicer and performs all loss mitigation activities for Primary Risk Mortgage Loans. As such, Fannie Mae as the Special Servicer will elect a Course of Action (either jointly with the Lender, if applicable, or separately, depending upon the specific Course of Action), and implement the elected Course of Action. For Secondary Risk Mortgage Loans, the Special Servicer shall recommend the Course of Action in the Servicing Workout Action Template (“SWAT”) and, once approved by Fannie Mae, implement such Course of Action.

The Courses of Action are:

- Lender Purchase of Mortgage Loan, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan;
- Lender Workout, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.03: Course of Action – Lender Workout Election;
- Joint Fannie Mae/Lender Workout (a “Joint Workout”), as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04: Course of Action – A Joint Workout;
- Foreclosure, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.05: Course of Action - Foreclosure; and
- Note Sale or Discounted Loan Payoff, as described in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.06: Course of Action – Note Sale Election or Discounted Loan Payoff.

A Lender Purchase of Mortgage Loan and a Lender Workout may be exercised solely by the Lender and in the Lender’s sole discretion, subject to the requirements of Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan and Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.03: Course of Action – Lender Workout Election. A Joint Workout must be agreed to jointly by Fannie Mae and the Lender, and implemented prior to the conclusion of a foreclosure, as provided in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04: Course of Action – A Joint Workout. A Note Sale or Discounted Loan Payoff, as an



alternative to foreclosure, must also be agreed to jointly by Fannie Mae and the Lender, as provided in Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.06: Course of Action – Note Sale Election or Discounted Loan Payoff. Fannie Mae will generally follow the Dual Track Approach and, unless one of the other Courses of Action is being followed, a Foreclosure will be the applicable Course of Action.

711.02 Course of Action – Lender Purchase of Mortgage Loan

LENDER PURCHASE OF A SECURITIZED MORTGAGE LOAN IS NOT PERMITTED UNLESS THE MORTGAGE LOAN HAS BEEN DELINQUENT FOR FOUR CONSECUTIVE MONTHS. ONLY AFTER THE PASSAGE OF SUCH FOUR CONSECUTIVE MONTH DELINQUENCY PERIOD MAY THE MORTGAGE LOAN BE REMOVED FROM THE SECURITY TRUST. A DELINQUENT MORTGAGE LOAN MUST BE REMOVED FROM THE SECURITY TRUST NOT LATER THAN 24 MONTHS AFTER INITIAL DELINQUENCY.

711.02A Primary Risk Mortgage Loans

If the Non-Performing Mortgage Loan is four or more consecutive months delinquent, the Lender, at its option, may purchase the Mortgage Loan from Fannie Mae with its own funds and pursue its own course of action with respect to that Mortgage Loan.

711.02B Secondary Risk Mortgage Loans

For Secondary Risk Mortgage Loans, the Lender must specifically indicate this Course of Action on its SWAT, which will serve as documentation of the Lender's agreement to repurchase the Mortgage Loan. Neither the purchase price nor any losses incurred on a Secondary Risk Mortgage Loan repurchased by the Lender pursuant to this Course of Action will be included in any loss sharing with Fannie Mae or be credited against the Lender's recourse obligation but will be solely for the account of the Lender.

711.02C Purchase Price for Mortgage Loans

For Primary Risk Mortgage Loans and Secondary Risk Mortgage Loans purchased pursuant to this Section, unless otherwise provided in the Lender's Contract, the purchase or repurchase price will be equal to:

- the then unpaid actual principal balance of the Mortgage Loan; plus
- interest as follows:
 - except for any Securitized Mortgage Loan, interest accrued



through the purchase date; or

- for any Securitized Mortgage Loan, interest for the entire month in which the purchase occurs based on the Security Balance remaining after applying the scheduled Mortgage Loan payment due on the first day of that month; plus
- any Prepayment Premium or Yield Maintenance owed to Fannie Mae as of the purchase date pursuant to the terms of the Note; less
- any Delinquency Advance made, but not reimbursed either by Fannie Mae or by or on behalf of the Borrower.

711.02D No Fannie Mae Approval Required

The election and implementation of this Course of Action does not require Fannie Mae's concurrence or approval as long as the Lender complies with the foregoing requirements and exercises this option prior to the foreclosure sale or the conclusion of any other Course of Action.

711.02E Implementation of Course of Action

If this Course of Action is elected by the Lender, then the Lender may purchase the Non-Performing Mortgage Loan by:

- giving written notice to Fannie Mae of such election, or, if a Secondary Risk Mortgage Loan, indicating such election on the initial SWAT or updated SWAT, no later than 10 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan and identifying the anticipated purchase date;
- purchasing the Mortgage Loan on the identified purchase date at the purchase price as calculated in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02C: Purchase Price for Mortgage Loans](#);
- purchasing the Mortgage Loan in the Lender's own name or the name of an affiliate as indicated on the written notice of its election of this Course of Action, and thereafter implementing its own Course of Action with respect to that Mortgage Loan;
- delivering to Fannie Mae on the identified purchase date the purchase price, together with an original assignment of the Mortgage Loan, in recordable form for the applicable property jurisdiction, and such other assignment documents as may be necessary to fully assign, without recourse, representation, or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender; and



- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#).

Within five Business Days following receipt from the Lender of the purchase price and the assignment, Fannie Mae will execute and return to the Lender the original assignment, together with:

- the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
- the original Mortgage Loan file; and
- such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender (or its affiliate).

711.03 Course of Action – Lender Workout Election

711.03A Lender Workout Defined

With any Non-Performing Mortgage Loan in Monetary or Payment Default, the Lender may enter into an arrangement with the Borrower in which the Lender agrees to make its own loan and advance its own funds to the Borrower to cure the defaults (a “Lender Workout”).

Examples of instances where a Lender Workout may be appropriate include:

- Property cash flow shortfall is temporary in nature;
- the Mortgage Loan becomes delinquent within the first year following the sale of the Mortgage Loan to Fannie Mae;
- the cost of the Lender Workout to the Lender may be less than the cost to the Lender of a Joint Workout or foreclosure; or
- Mortgage Loans at Loss Level II or III.

711.03B Documentation and Terms of Lender Workout

A Lender Workout must be documented as a separate loan from the Lender to the Borrower to meet the Property's operating needs and fully cure the Monetary or Payment Default. The Lender may place whatever restrictions it deems appropriate on the disbursement and use of the funds. The Lender Workout loan may be unsecured, secured by a subordinate lien against the Property (with Fannie Mae's prior approval), or secured by other collateral. Any subordinate lien, by its express terms, must be fully subordinated to all Mortgage Loans in favor of Fannie Mae, and must comply with the requirements for junior liens included in Parts I, II, and III. The Loan



Documents evidencing the Lender Workout loan must clearly indicate that the loan does not in any way affect the status of the Mortgage Loans owned by Fannie Mae or any of Fannie Mae's rights or remedies in connection therewith, and that the amount owed under the Lender Workout is owed only and directly to the Lender and is not added to Fannie Mae's Mortgage Loan(s).

711.03C Lender Workout Has No Impact on Loss Sharing or Recourse Obligation

1. Primary Risk Mortgage Loans

Any sums lent by the Lender or expenses incurred by the Lender in a Lender Workout will not be included in the final settlement of loss for the Primary Risk Mortgage Loan.

2. Secondary Risk Mortgage Loans

Any losses incurred on a Secondary Risk Mortgage Loan as a result of the Lender Workout will be the obligation of the Lender but will not be applied as a credit against the Lender's recourse obligation.

711.03D No Fannie Mae Approval Required

Before committing to a Lender Workout with the Borrower, the Lender must obtain the written approval of Fannie Mae Special Asset Management. Fannie Mae Special Asset Management will have 10 Business Days from receipt of written notice from the Lender, containing the terms of the Lender Workout to approve or disapprove the Lender Workout Course of Action. With its notice of its intention to enter into a Lender Workout, the Lender must deliver a copy of the proposed Lender Workout documents, including subordinate lien documentation, if applicable, to Fannie Mae Special Asset Management for review and approval prior to execution. The purpose of this review is to determine that:

- the Lender Workout and related documents:
 - do not modify or waive any of the terms of the Mortgage Loan(s), including the Note rate, term, or amortization;
 - do not modify or waive any of the terms of the Collateral Agreements;
 - do not limit, waive, or lessen Fannie Mae's rights, claims, or remedies under its Security Instrument including, but not limited to, obtaining a priority claim in a bankruptcy proceeding as a result of lending money to the Borrower;
 - do not prevent, or otherwise limit, Fannie Mae from enforcing its rights under the Mortgage Loan Documents in the event the Lender defaults under its workout with the Borrower; or
 - do not violate any bond documentation or Security rules, if



applicable;

- the term of the Lender Workout loan does not exceed 24 months; and
- Fannie Mae is satisfied with the performance of any previous Lender Workouts and the total of all Lender Workouts does not materially impact the Lender's financial condition.

If the Non-Performing Mortgage Loan has been accelerated prior to notice of the Lender Workout, it is in Fannie Mae's sole discretion to agree to accept less than the full payoff and reinstate the Mortgage Loan.

If Fannie Mae approves the Lender Workout, the Lender must deliver a copy of the executed Lender Workout documents, including a Subordination Agreement, if applicable, to Fannie Mae Special Asset Management and to Fannie Mae Asset Acquisition and Custody. If the Borrower subsequently defaults under the Mortgage Loan after the Lender Workout, then the Servicer must follow the procedure outlined in this Chapter for a Non-Performing Mortgage Loan as if no Lender Workout occurred.

711.03E Servicer Makes Delinquency Advances But Fails to Report Mortgage Loan Delinquent

If a Servicer advances P&I payments on a Mortgage Loan with a Monetary or Payment Default, but the Mortgage Loan has not been reported as delinquent on the Multifamily Delinquency System as required in this Chapter, such advances will be considered an unauthorized Lender Workout and will not be considered a Delinquency Advance.

711.03F Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae

If a Lender Workout is approved, the foreclosure process will continue until the earlier of the curing of the defaults by the Lender Workout or the foreclosure sale. If Fannie Mae approves the Lender Workout, the Lender must fully implement the Lender Workout on the approved terms, and thereby cure all defaults, prior to any scheduled foreclosure sale or the conclusion of any other Course of Action by Fannie Mae. If the Lender Workout is proceeding and is likely to be consummated, Fannie Mae may agree to reschedule (but not cancel) the foreclosure sale. Any agreement to delay a foreclosure sale or any other Course of Action to allow the implementation of the Lender Workout will be solely in Fannie Mae's discretion.

711.04 Course of Action – A Joint Workout



JOINT WORKOUTS ARE NOT AVAILABLE FOR SECURITIZED MORTGAGE LOANS WHILE THE MORTGAGE LOAN REMAINS IN THE SECURITY TRUST.

711.04A Joint Workout Defined

Either the Lender or Fannie Mae may propose that the Lender and Fannie Mae attempt to negotiate a Joint Workout with the Borrower with respect to a Non-Performing Mortgage Loan. A refinancing of the Non-Performing Mortgage Loan under Fannie Mae's In Place Loan execution as described in [Part V, Chapter 8: In Place Loans](#) is a Joint Workout under this Chapter.

711.04B Delinquency Advances Must Be Made During Negotiation of Joint Workout

If Fannie Mae and the Lender agree upon a Joint Workout, then during the negotiation of the workout agreement, the Servicer must continue to make Delinquency Advances to Fannie Mae in accordance with the Lender's Contract. (See the Checklist of Issues to Consider in Doing a Workout Analysis ([Form 4809](#)) to review the specific tasks to be completed prior to electing a Joint Fannie Mae/Servicer Workout.)

711.04C Joint Workout Process

The following is a general description of how a Joint Workout process might work.

1. Fact-Finding Meeting

The first contact between the Borrower, Fannie Mae and the Lender will be a fact-finding meeting and will focus on:

- explaining the Dual Track Approach and, if the Pre-Negotiation Letter has not been signed, executing the letter;
- reviewing the documents necessary for the Servicer or Fannie Mae to complete its due diligence and the Asset Review (for a Primary Risk Mortgage Loan) or Asset Audit (for a Secondary Risk Mortgage Loan); and
- the Borrower's explanation of its requested relief.

2. Fannie Mae and Lender Meeting

A separate meeting between Fannie Mae and the Lender will focus on:

- reviewing the Lender's and Fannie Mae's due diligence;
- reviewing the Borrower's request;



- formulating a response to the Borrower's request with emphasis on the source and use of funds necessary to implement the Joint Workout; and
- the impact of the Joint Workout on the Lender's servicing and loss sharing obligations to Fannie Mae and any modifications to each that need to be made.

It is important that any differences between Fannie Mae and the Lender be resolved at this meeting. If the Lender's contribution to the Joint Workout or a modification to its servicing or loss sharing obligations must be documented, this must be included in a separate document between Fannie Mae and the Lender.

3. Workout Meeting with Borrower

If a Joint Workout appears feasible, Fannie Mae and the Lender will schedule a workout meeting with the Borrower. All parties, including Fannie Mae, the Lender, the Borrower, and their respective legal counsel, must attend and must allow enough time to facilitate a workout. Those in attendance must have authority to execute documents pursuant to a signed Pre-Negotiation Letter. Experience indicates that to be most productive, the workout meeting should start early in the morning and continue until a deal is reached or the parties agree to disagree.

4. Letter of Intent

If agreement is reached on all of the terms of the Joint Workout, counsel will draft a non-binding letter of intent, to be executed during the workout meeting. This letter of intent will set forth each party's agreements and obligations until the formal, written modification documents are completed. The letter of intent must be specific enough to fully reflect the intent of the parties (other than any modifications to the Lender's servicing or loss sharing obligations). Until the formal modification documents are completed and executed by all parties, there has been no modification of the terms of the Non-Performing Mortgage Loan or the Borrower's obligations.

711.04D Modification, Extension, and Forbearance Fees

The Lender is not permitted to charge or collect from the Borrower a fee for any modification, extension, or forbearance of a Mortgage Loan without the prior written consent of Fannie Mae. If the Lender has a loss sharing obligation to Fannie Mae, then Fannie Mae and the Lender may jointly elect to charge the Borrower a modification, extension or forbearance fee. If Fannie Mae and the Lender elect to charge such fee, and so long as the Lender has a loss sharing obligation to Fannie Mae, Fannie Mae will share such fee with the Lender on the basis of:

- if the applicable Mortgage Loan is a Pre-Review Large Mortgage Loan under Fannie Mae's Multifamily Underwriting Standards (Form 4660), then pro rata between the Lender and



Fannie Mae in accordance with their respective loss sharing percentages for such Mortgage Loan (taking into account any Modified Risk Loss Sharing (as defined in the Loss Sharing Addendum) applicable to the Mortgage Loan); or

- if the applicable Mortgage Loan is not a Pre-Review Large Mortgage Loan, then 40 percent to the Lender and 60 percent to Fannie Mae.

711.04E Triggering Modification Fees; Other Fees

If a Triggering Modification has occurred, a Triggering Modification Interim Loss Sharing calculation was made and a reserve was established against the Lender's Operational Liquidity (as provided in the Loss Sharing Addendum), any fees other than those provided for in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04D: Modification, Extension, and Forbearance Fees](#) shall be split between Fannie Mae and the Servicer in accordance with their respective loss sharing percentages at the time of the Triggering Modification (taking into account any Modified Risk Loss Sharing applicable to the Mortgage Loan). Except as provided in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.04D: Modification, Extension, and Forbearance Fees](#) with respect to modification, extension and forbearance fees, and any fees required by Fannie Mae in connection with a Triggering Modification, no other fees required by Fannie Mae in connection with a Mortgage Loan modification, extension or forbearance shall be split between the Lender and Fannie Mae.

711.04F Foreclosure Process Continues Unless Otherwise Agreed to by Fannie Mae

The discussions with the Borrower in attempting to reach agreement on a Joint Workout are part of Track One of the Dual Track Approach (maintaining dialogue with the Borrower to attempt to resolve the defaults) as outlined in this Chapter. Accordingly, Track Two, the Foreclosure Track, of the Dual Track Approach will continue and will not be postponed or delayed until agreement with the Borrower has been reached and the Joint Workout has been documented. If the Joint Workout is proceeding and is likely to be consummated, Fannie Mae may agree to reschedule (but not cancel) the foreclosure sale. If the parties are unable to agree on a Joint Workout, the parties shall continue to pursue the Track Two approach and proceed to foreclosure or such other Fannie Mae-approved course of action.

711.05 Course of Action - Foreclosure



LENDER PURCHASE OF A SECURITIZED MORTGAGE LOAN IS NOT PERMITTED UNLESS THE MORTGAGE LOAN HAS BEEN DELINQUENT FOR FOUR CONSECUTIVE MONTHS. ONLY AFTER THE PASSAGE OF SUCH FOUR CONSECUTIVE MONTH DELINQUENCY PERIOD MAY THE MORTGAGE LOAN BE REMOVED FROM THE SECURITY TRUST. A DELINQUENT MORTGAGE LOAN MUST BE REMOVED FROM THE SECURITY TRUST NOT LATER THAN 24 MONTHS AFTER INITIAL DELINQUENCY.

711.05A Primary Risk Mortgage Loans

Unless one of the other Courses of Action described in this Section has been selected, Fannie Mae will instruct outside counsel to vigorously pursue a foreclosure, following the foreclosure process described under Track Two of the Dual Track Approach in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 712: Dual Track Approach](#).

711.05B Secondary Risk Mortgage Loans

Unless one of the other Courses of Action described in this Section has been selected and, if part of a SWAT approved by Fannie Mae, the Special Servicer will instruct outside counsel to vigorously pursue a foreclosure, following the foreclosure process described under Track Two of the Dual Track Approach in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 712: Dual Track Approach](#).

If foreclosure is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender must purchase the Mortgage Loan from Fannie Mae. Such purchase of the Mortgage Loan from Fannie Mae is not considered to be the exercise of the Course of Action set forth in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02: Course of Action – Lender Purchase of Mortgage Loan](#), but is part of the foreclosure Course of Action under this [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.05: Course of Action - Foreclosure](#) and is to permit the Lender to credit bid at the foreclosure sale and/or if the winning bidder, to permit the Lender to hold title to and operate the Property in the name of the Lender or its designee. In connection with exercising the foreclosure Course of Action, the Lender must purchase the Mortgage Loan under one of the following options, either of which must be identified in the SWAT submitted to Fannie Mae.

1. Purchase Prior to Foreclosure

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan prior to foreclosure by:



- indicating on the initial SWAT, or updated SWAT received by Fannie Mae no later than 10 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan prior to foreclosure, and identifying the anticipated purchase date;
- purchasing, on the identified purchase date, the Mortgage Loan from Fannie Mae at the purchase price as calculated below in this Part V, Section 711.05.B;
- purchasing the Mortgage Loan in the Lender's own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter implementing the foreclosure process in its own name;
- within five Business Days following receipt from the Lender of the purchase price together with an original assignment of the Mortgage Loan, in recordable form, Fannie Mae will execute and return the original assignment, together with:
 - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
 - the original Mortgage Loan file; and
 - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to the Lender (or its affiliate);
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- after completion of the foreclosure, the Lender or its affiliate will hold title to the Property until disposition;
 - the Lender will continue to submit updated SWATs for Fannie Mae's approval until disposition of the Property, at which time the Lender will submit its Loss Notification Form ([Form 4817](#)) (as provided in the Lender's Contract) to Fannie Mae; and
- if the Non-Performing Secondary Risk Mortgage Loan reinstates by the Borrower following the Lender's purchase but prior to the foreclosure sale, the Lender will not be entitled to credit any future losses on the Mortgage Loan against its recourse obligation.

2. Purchase Immediately After Foreclosure

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan immediately following foreclosure by:



- indicating on the initial SWAT, or updated SWAT received by Fannie Mae no later than 60 Business Days before the foreclosure sale date, that Lender has elected to purchase the Mortgage Loan immediately following foreclosure (assuming Fannie Mae is the winning bidder at the foreclosure sale), and identifying the anticipated foreclosure sale date;
- including with such SWAT an initial Asset Audit prepared no later than 60 days following the Date of Default, and providing to Fannie Mae a final and complete Asset Audit at least 60 Business Days prior to foreclosure;
- no later than 10 Business Days prior to the foreclosure sale date, prepare and deliver to Fannie Mae an original Special Warranty Deed, in recordable form, and an escrow letter as provided below. Fannie Mae will execute and deliver to an agreed-upon escrow agent, pursuant to escrow instructions also prepared by the Lender, the Special Warranty Deed, together with (i) the original Note endorsed, without recourse, representation or warranty, to the Lender, and (ii) the original Mortgage Loan file. Such escrow letter must contain instructions that require the escrow agent, within five Business Days following the foreclosure sale date, to either (a) deliver the Special Warranty Deed and other required documentation to Lender upon Fannie Mae's confirmation of receipt of the purchase price or (b) return the original Special Warranty Deed and all other documentation to Fannie Mae;
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- on the foreclosure sale date, the Lender purchases the Property from Fannie Mae at the purchase price as calculated below in this Part V, Section 711.05.B;
- the Lender purchases the Mortgage Loan in its own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter owns, operates and manages the Property until disposition;
- the Special Warranty Deed from Fannie Mae must be filed of record immediately following the recording of the foreclosure or trustee's deed into Fannie Mae; and
- the Lender will continue to submit updated SWATs for Fannie Mae's approval until disposition of the Property, at which time the Lender will submit its Loss Notification Form ([Form 4817](#)) to Fannie Mae.

3. Purchase Price for Purchase Immediately Prior To or After



Foreclosure

For Secondary Risk Mortgage Loans purchased pursuant to this Section, unless otherwise provided in the Lender's Contract, the purchase or repurchase price will be equal to:

- the then unpaid actual principal balance of the Mortgage Loan; plus
- interest as follows:
 - except for any Securitized Mortgage Loan, interest accrued through the purchase date; or
 - for any Securitized Mortgage Loan, interest for the entire month in which the purchase occurs based on the Security Balance remaining after applying the scheduled Mortgage Loan payment due on the first day of that month; less
- any Delinquency Advance made, but not reimbursed either by Fannie Mae or by or on behalf of the Borrower.

711.05C Deed-in-Lieu of Foreclosure

Fannie Mae, in its sole discretion, may or may not elect to take a deed-in-lieu of foreclosure for any Primary Risk or Secondary Risk Mortgage Loan.

711.05D Management of Property Post Title Vesting in Fannie Mae

If Lender has made a Deferred Asset Valuation Date Election under its Loss Sharing Addendum, and title to a Property has vested in Fannie Mae, its affiliate or nominee as a result of a Foreclosure Event (as defined in the Loss Sharing Addendum) or other judicial process, Fannie Mae shall, except for matters relating to life/safety at the Property, consult with the Lender for purposes of making joint decisions with the Lender with respect to major decisions regarding the management and disposition of the Property, including but not limited to:

- the timing and terms of listing the Property for sale;
- the acceptance of terms of sale of the Property;
- any financing of the Property;
- approval of any business plan with respect to the Property;
- approval of each annual budget for the Property;
- any deviation from the approved budget by more than 20 percent with respect to any line item on a semi-annual basis;
- approval and implementation of any rehabilitation or renovation plan with respect to the Property;



- any decision to and implementation of a plan to develop any or all of the Property;
- any capital expenditures in excess of \$50,000 with respect to the Property;
- engagement of any professional advisors, other than in the ordinary course of business;
- entering into any Material Commercial Lease of any space within a Property, other than in the ordinary course of business;
- commencement, institution or settlement of any legal proceedings with respect to the Property, other than eviction and termination proceedings in respect of tenant leases and other non-material legal proceedings for the collection of amounts due and owing from third parties and tenants undertaken in the ordinary course of business; and
- the decision and implementation of any plan not to rebuild or restore the Property following any casualty or condemnation.

Any request by Fannie Mae with respect to a major decision shall be responded to in writing by the Lender within two Business Days of the making of such request. Any request with respect to a major decision not responded to by the Lender within two Business Days shall be deemed approved.

711.05E Deficiency Suits

1. General

If a foreclosure sale is conducted with respect to a Property, Fannie Mae shall determine whether to pursue a deficiency against the Borrower or pursue any guarantor who may have liability with respect to such Mortgage Loan post-foreclosure or other final disposition of the Mortgage Loan (a “Deficiency Suit”), if such action is available under applicable state law.

Nothing in this Section E shall be deemed to relieve either Lender or Fannie Mae from any claims of indemnification under the terms of their Contract.

2. Fannie Mae Deficiency Suit Election

If Fannie Mae elects to pursue a Deficiency Suit, and the Lender’s Allocable Percentage per the Loss Sharing Addendum with respect to the relevant Mortgage Loan is greater than zero, the Lender may elect to share in the cost and recovery related to such Deficiency Suit. If the Lender elects to participate in such Deficiency Suit, Fannie Mae shall bear 67 percent of the costs and expenses of such Deficiency Suit, and the Lender shall bear 33 percent of the costs and expenses of such Deficiency Suit. Likewise, any recovery resulting from the Deficiency Suit shall be shared 67 percent to



Fannie Mae and 33 percent to the Lender.

If Fannie Mae elects to pursue a Deficiency Suit, whether or not the Lender elects to participate in such Deficiency Suit, Fannie Mae shall make all decisions in its sole and absolute discretion regarding such Deficiency Suit, including but not limited to, selection of counsel, election of venue, relief to be sought, and the settlement of the Deficiency Suit.

3. Lender Deficiency Suit Election

If Fannie Mae elects not to pursue a Deficiency Suit following foreclosure, at the Lender's request, Fannie Mae shall assign the Deficiency Suit to the Lender, to the extent permitted by law and provided that such assignment shall be at no cost to Fannie Mae, and the Lender may thereafter pursue such Deficiency Suit in its own name. If the Lender does pursue the Deficiency Suit, Fannie Mae may elect to participate in the cost and recovery of such Deficiency Suit. All costs and expenses of such Deficiency Suit will be shared equally between the Lender and Fannie Mae, and likewise, any recovery resulting from such Deficiency Suit shall be shared equally between the Lender and Fannie Mae.

If Fannie Mae elects not to pursue a Deficiency Suit, and the Lender elects to pursue such Deficiency Suit in its own name, Lender shall make all decisions in its sole and absolute discretion regarding such Deficiency Suit, including but not limited to selection of counsel, election of venue, relief to be sought, and the settlement of the Deficiency Suit.

4. Costs and Expenses; Loss Sharing

If the Lender and Fannie Mae are sharing the costs and expenses of any Deficiency Suit, the party prosecuting such Deficiency Suit shall submit copies of all invoices to the other party for reimbursement of the other party's share of all costs and expenses incurred in connection with such Deficiency Suit. Such invoices shall be submitted no more frequently than every three months and shall be paid within 30 days of receipt.

Any recovery resulting from a Deficiency Suit, regardless of whether Fannie Mae or the Lender has participated in such Deficiency Suit, shall not affect the determination and payment of loss sharing pursuant to the Loss Sharing Addendum.

5. Withdrawal from Deficiency Suit

If Fannie Mae and the Lender are participating in a Deficiency Suit, either party may elect at any time to withdraw from the Deficiency Suit, in which case the withdrawing party shall be obligated to share the costs and expenses in the percentages set forth above through the date of its withdrawal. The withdrawing party shall not participate in any recovery.

711.06 Course of Action – Note Sale Election or Discounted Loan Payoff



NOTE SALES OR DISCOUNTED LOAN PAYOFFS ARE NOT AVAILABLE FOR SECURITIZED MORTGAGE LOANS WHILE THE MORTGAGE LOAN REMAINS IN THE SECURITY TRUST.

711.06A Note Sale and Discounted Loan Payoff Defined

As an alternative to foreclosure of the Property, it may be the best exit strategy for Fannie Mae and the Lender to agree to sell Fannie Mae's interest as the Noteholder. A sale of the Non-Performing Mortgage Loan to a third party is a "Note Sale", and accepting less than the full payoff from the Borrower is a "Discounted Loan Payoff". Such sale of the Non-Performing Mortgage Loan or acceptance of a Discounted Loan Payoff must be on terms mutually-agreeable to Fannie Mae and Lender.

711.06B Lender Ability to Bid

If Fannie Mae and the Lender agree to consider a Note Sale as the Course of Action for a Non-Performing Primary Risk Mortgage Loan, the Lender will have the option to participate in the Note Sale bidding process with other potential third-party purchasers after Fannie Mae and the Lender have mutually-agreed upon the Note Sale terms and pricing floor. The Lender's bid will be considered by Fannie Mae on the same basis as any other third-party bids received for the Note Sale. If the Lender is the successful bidder, the Lender will purchase the Non-Performing Mortgage Loan on the same terms as published to all bidders by Fannie Mae or, if utilized, the Note Sale broker. Any such sale of the Non-Performing Mortgage Loan to the Lender shall be without recourse, representation or warranty by Fannie Mae, except as otherwise agreed by Fannie Mae.

711.06C Any Note Sale or Discounted Payoff Gives Rise to Loss Sharing Event

Any loss incurred by Fannie Mae in connection with a Note Sale or Discounted Payoff is a loss sharing event as contemplated by the Lender's Contract.

711.06D Note Sale – Secondary Risk Mortgage Loans

For Non-Performing Secondary Risk Mortgage Loans, the selection of a Note Sale as the Course of Action must be included in the SWAT submitted to Fannie Mae for approval. The approved Note Sales price will be the Asset Value for purposes of determining the reduction in the Lender's recourse obligation.

If a Note Sale is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender must purchase the Mortgage Loan from Fannie Mae under one of the following options, either of



which must be identified in the SWAT submitted to Fannie Mae.

1. Purchase Prior to Consummation of the Note Sale with the Third-Party Note Purchaser

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan from Fannie Mae prior to consummation of the Note Sale by:

- indicating such election on the initial SWAT or updated SWAT, received by Fannie Mae no later than 15 Business Days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan prior to the Note Sale closing and identifying the anticipated purchase date;
- purchasing, on the identified purchase date, the Mortgage Loan from Fannie Mae at the purchase price as calculated in Part V, Section 711.05.B.3;
- purchasing the Mortgage Loan in the Lender's own name (or the name of an affiliate as indicated on the approved SWAT), and thereafter consummating the Note Sale with the third-party Note purchaser;
- within five Business Days following receipt from the Lender of the purchase price together with an original assignment of the Mortgage Loan, in recordable form, Fannie Mae will execute and return the original assignment, together with:
 - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
 - the original Mortgage Loan file; and
 - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to Lender (or its affiliate); and
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#).

2. Purchase Simultaneously with Consummation of the Note Sale with the Third-Party Note Purchaser

The Lender may purchase the Non-Performing Secondary Risk Mortgage Loan from Fannie Mae simultaneously with its consummation of the Note Sale by:

- indicating such election on the initial SWAT or updated SWAT, received by Fannie Mae no later than 30 calendar days before the proposed purchase date, that Lender has elected to purchase the Mortgage Loan simultaneously with the Note Sale



closing and identifying the anticipated purchase date;

- no later than 10 Business Days prior to the purchase date, prepare and deliver to Fannie Mae an original assignment of the Mortgage Loan, in recordable form, and an escrow instruction letter as provided below. Fannie Mae will execute and deliver to an agreed-upon escrow agent, pursuant to the escrow instruction letter, the original assignment, together with:
 - the original Note endorsed, without recourse, representation or warranty, to the Lender (or its affiliate);
 - the original Mortgage Loan file; and
 - such other documents as necessary to fully assign, without recourse, representation or warranty, Fannie Mae's interest in the Mortgage Loan to Lender (or its affiliate). Such escrow instruction letter must contain instructions that require the escrow agent, within five Business Days following the closing of the Note Sale, to either (a) deliver the original assignment and other required documentation to Lender upon Fannie Mae's confirmation of receipt of the purchase price, or (b) return the original assignment and all other documentation to Fannie Mae;
- all documents delivered to Fannie Mae for execution shall be pursuant to [Part V, Chapter 4: Asset Management: Loan Document Administration, Section 404.01: Submission of Documents to Fannie Mae](#);
- on the date of closing of the Note Sale with the third-party purchaser, the Lender will purchase the Mortgage Loan from Fannie Mae at the purchase price as calculated in Part V, Section 711.05.B.3;
- the Lender purchases the Mortgage Loan in its own name (or in the name of an affiliate as indicated on the approved SWAT), and thereafter simultaneously closes the Note Sale with the third-party purchaser; and
- the assignment of the Mortgage Loan from Fannie Mae must be filed of record prior to the recording of the assignment from the Lender (or its affiliate) to the third-party purchaser of the Note.

711.06E Discounted Loan Payoff - Secondary Risk Mortgage Loans

For Non-Performing Secondary Risk Mortgage Loans, the selection of a Discounted Loan Payoff as the Course of Action must be included in the SWAT submitted to Fannie Mae for approval. The approved Discounted Loan Payoff amount will be the Asset Value for purposes of determining the reduction in the Lender's recourse obligation.



If a Discounted Loan Payoff is the approved Course of Action for a Non-Performing Secondary Risk Mortgage Loan, the Lender shall implement the Course of Action by:

- indicating in the initial SWAT, or updated SWAT received by Fannie Mae no later than 10 Business Days before the proposed payoff date, that Lender has elected such Course of Action and identifying the anticipated payoff date;
- delivering to Fannie Mae on the identified payoff date the payoff amount as calculated in [Part V, Chapter 7: Non-Performing Mortgage Loans, Section 711.02C: Purchase Price for Mortgage Loans](#); and
- the Lender must follow the post-payoff actions as described in [Part V, Chapter 2: Reporting and Remitting, Section 215: Post-Payoff Actions](#).



Glossary

A

Asset Valuation Date As defined in the Loss Sharing Addendum.

Asset Value As defined in the Loss Sharing Addendum.

B

Borrower Person who is the obligor per the Note.

Synonyms

- Borrowers
- Borrower's

C

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

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](#).



Delinquency Advance For Primary Risk Mortgage Loans and Secondary Risk Mortgage Loans, an amount advanced by a primary servicer in respect of regularly scheduled monthly interest or principal due on 1 or more Mortgage Loans, to the extent required under its Lender Contract. For Secondary Risk Mortgage Loans only, in addition to the above, any amount advanced by a primary servicer in respect of all accrued but unpaid interest and principal due on 1 or more Mortgage Loans at the applicable Maturity Date of each relevant Mortgage Loan.

Synonyms

- Delinquency Advances

F

Foreclosure Event

Any of the following:

- Foreclosure under the Security Instrument;
- any other exercise by the Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which the Lender (or its designee or nominee) or a third-party purchaser becomes owner of the Property;
- delivery by the Borrower to the Lender (or its designee or nominee) of a deed or other conveyance of the Borrower's interest in the Property in lieu of any of the foregoing; or
- in Louisiana, any dation en paiement.

Form 4660

Multifamily Underwriting Standards identifying Pre-Review Mortgage Loans and containing the minimum underwriting requirements (e.g., debt service coverage ratio, loan to value ratio, interest only, underwriting floors, etc.) for all Mortgage Loans.

Synonyms

- Multifamily Underwriting Standards

I



In Place Loan

Mortgage Loan refinancing a Portfolio Mortgage Loan that does not meet Tier 2 underwriting requirements.

Synonyms

- In Place Loans

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

Material Commercial Lease

Lease, sublease, license, concession, grant, or other possessory interest for commercial purposes that comprises 5% or more of the Property's annual EGI, or relates to:

- solar power, thermal power generation, or co-power generation, or for the installation of solar panels or any other electrical power generation equipment, and any related power purchase agreement; or
- any Property dwelling units leased to an Affiliate of the Borrower, any Key Principal, or any Principal.

Synonyms

- Material Commercial Leases



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

Non-Performing Mortgage Loan Mortgage Loan that is subject to an uncured default.

Synonyms

- Non-Performing Mortgage Loans
- Non-Performing

Note 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



Pre-Review

Requirement that the Lender obtain Fannie Mae's approval before Rate Lock of a Mortgage Loan.

Prepayment Premium

For a Mortgage Loan prepayment, amount the Borrower must pay in addition to the prepaid principal and accrued interest per the Loan Documents.

Synonyms

- Prepayment Premiums

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

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

Securitized Mortgage Loan

Mortgage Loan backing an MBS, PFP MBS, or REMIC.

Synonyms

- Securitized Mortgage Loans



Security	MBS, PFP MBS, or REMIC.
Security Balance	<p>For each MBS Pool, the Issue Date Principal Balance less any MBS principal distribution amounts included in previous MBS monthly remittances.</p> <p>Synonyms</p> <ul style="list-style-type: none">• Security Balances
Security Instrument	<p>Instrument creating a lien or encumbrance on 1 or more Properties and securing the obligations under the Loan Documents.</p> <p>Synonyms</p> <ul style="list-style-type: none">• Security Instruments
Servicer	<p>Primary Person responsible for servicing the Mortgage Loan (e.g., the originator, the selling Lender, or a third-party servicer).</p> <p>Synonyms</p> <ul style="list-style-type: none">• Servicers
Special Asset Management	<p>Team that performs the work of the Special Servicer for Fannie Mae that can be contacted at sam_legal_mailbox@fanniemae.com.</p> <p>Synonyms</p> <ul style="list-style-type: none">• SAM• Multifamily Special Asset Management
Special Servicer	<p>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.</p>