



Fannie Mae®

Multifamily Selling and Servicing Guide

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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.



Glossary

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

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

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

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

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

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

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