



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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## **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.



## Glossary

### B

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

**Synonyms**

- Borrowers
- Borrower's

### C

**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

### L



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

**Synonyms**

- Lenders
- Lender's

## 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

**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

**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 Balance

For each MBS Pool, the Issue Date Principal Balance less any MBS principal distribution amounts included in previous MBS monthly remittances.

**Synonyms**

- Security Balances

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.