



Fannie Mae®

Multifamily Selling and Servicing Guide

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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.



Glossary

B

Borrower Person who is the obligor per the Note.

Synonyms

- Borrowers
- Borrower's

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

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