



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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## **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 Value As defined in the Loss Sharing Addendum.

## 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

## 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

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

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