

## Servicing Guide Announcement SVC-2011-22

December 28, 2011

### Documentation Requirements for Foreclosure and Bankruptcy Referral Packages

***Servicing Guide, Part VIII, Section 104.01: Fannie Mae–Retained Attorneys; Section 104.03: Servicer-Retained Attorneys/Trustees and Special Rules for Nevada; Chapter 1, Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings; Exhibit 2: Expected Servicer/Attorney (or Trustee) Interaction***

Fannie Mae is reminding servicers of their obligations to provide attorneys (or trustees) with complete referral packages, clarifying certain requirements, and imposing more specific requirements to ensure that its cases are processed in an efficient and timely manner.

A servicer must provide the foreclosure attorney (or trustee) with a complete foreclosure referral package and work with the attorney (or trustee) to determine the documents required in the particular jurisdiction and determine whether the documents may be photocopies or must be the originals.

Currently, a servicer is required to provide all appropriate documentation and mortgage loan status data for each case that is referred to a Fannie Mae-retained foreclosure attorney. These same requirements apply to servicer-retained foreclosure attorneys (or foreclosure trustees) utilized by servicers. Servicers must respond to requests from attorneys (or trustees) for additional information or documents promptly, but no later than three business days after the request is made by the attorney (or trustee).

*Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings* itemizes the mortgage loan status data that the servicer must provide. *Exhibit 2: Expected Servicer/Attorney (or Trustee) Interactions* includes a list of key instances of required servicer-attorney/trustee interactions (although it is not all-inclusive).

NOTE: *Mortgage Loan Status Data for Foreclosure Proceedings* and *Expected Servicer/Attorney (or Trustee) Interaction and Required Documents for Foreclosure Proceedings* are being removed from the *Servicing Guide* and posted to [eFannieMae.com](http://eFannieMae.com). Servicers should go to [eFannieMae.com](http://eFannieMae.com) to access this information in the future.

Effective for foreclosure referrals on and after March 1, 2012:

- In all circumstances in which an assignment of mortgage to the party in whose name the foreclosure will be conducted is required, servicers must ensure that, no later than the time of the foreclosure referral to an attorney (or trustee), the mortgage has been validly assigned (that is, it is legally effective and enforceable) to the party in whose name the foreclosure will be conducted. The execution of the assignment must be completed no later than the time of the foreclosure referral.
- If the property is located in a jurisdiction that recognizes the effectiveness of executed, but unrecorded, assignments, the foreclosure may be initiated prior to recordation of the assignment. In these cases, the

assignment should be recorded as soon as possible, in compliance with the laws of the jurisdiction where the property is located.

- If the jurisdiction requires recordation of the assignment to the party in whose name the foreclosure will be conducted before proceeding with foreclosure, the assignment must be recorded before the foreclosure begins.

Fannie Mae requires servicers to institute a process to verify the status of the mortgagee of record at least as early as the 90<sup>th</sup> day of delinquency if necessary to enable them to ensure that the mortgage has been validly assigned to the party in whose name the foreclosure will be conducted no later than the time of referral. If the review of the status of the mortgagee of record indicates that the mortgage loan needs to be assigned out of the Mortgage Electronic Registration Systems, Inc. (MERS<sup>®</sup>) to either the servicer or Fannie Mae, that assignment should be undertaken as quickly as possible. If, as of the date of the foreclosure referral, the assignment of the mortgage has been executed but not recorded or sent for recording, the original must be included in the referral package sent to the attorney (or trustee). If applicable law requires that there be an assignment of mortgage to the servicer or Fannie Mae at an earlier point in time, for example, prior to the sending of a notice of default or right to cure, servicers must continue to comply with applicable law.

As part of, and at the time of, the referral, servicers must provide the attorney (or trustee) with:

- a true, correct, and complete copy of the note, including any allonge, produced from the original held by the document custodian,
- the original note, including any allonge, or
- a lost note affidavit.

Whether a copy or the original of the note is provided will depend on whether the applicable law of the jurisdiction in question requires the original note or merely a copy. Lost note affidavits should only be used after a thorough and diligent search has been made for the original note.

In order to ensure that these documents are available at the time of referral in the ordinary course, a servicer must institute a process to request from the document custodian, no later than the 95<sup>th</sup> day of delinquency, as applicable, either:

- a true, correct, and complete copy of the note, including any allonge, or
- the original note, including any allonge.

As a reminder, Fannie Mae does not reimburse servicers for the cost to obtain original notes or lost note affidavits.

***Servicing Guide*, Part VII, Section 501.01: Fannie Mae–Retained Attorneys; Section 501.02 Servicer-Retained Bankruptcy Attorneys; Chapter 5, Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents; Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals**

Servicers must provide the bankruptcy attorney with appropriate documentation and mortgage loan status data for each bankruptcy case it refers to a bankruptcy attorney.

Currently, a servicer is required to provide all appropriate documentation and mortgage loan status data for each case it refers to a bankruptcy attorney. Servicers must respond to requests from attorneys for additional information or documents promptly, but no later than three business days after the request is made by the attorney.

*Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents* includes a description of key servicer/attorney interactions during bankruptcy proceedings. *Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals* includes a list of mortgage loan status data that the servicer must provide to the bankruptcy attorney. Once a case has been referred to a bankruptcy attorney, the servicer must keep the attorney informed about any change in the status of the mortgage loan.

NOTE: *Expected Servicer/Attorney Interactions and Required Documents for Bankruptcy Referrals* and *Mortgage Loan Status Data for Bankruptcy Referrals* are being removed from the *Servicing Guide* and posted to [eFannieMae.com](http://eFannieMae.com). Servicers should go to eFannieMae.com to access this information in the future.

Effective for bankruptcy referrals on and after March 1, 2012:

As part of, and at the time of, the referral, servicers must provide the attorney with:

- a true, correct, and complete copy of the note, including any allonge, produced from the original held by the document custodian,
- the original note, including any allonge, or
- a lost note affidavit.

Whether a copy or the original of the note is provided will depend on whether the applicable law of the jurisdiction in question requires the original note or merely a copy. Lost note affidavits should only be used after a thorough and diligent search has been made for the original note.

As a reminder, Fannie Mae does not reimburse servicers for the cost to obtain original notes or lost note affidavits.

## **Noncompliance**

If a servicer fails to provide the appropriate documentation and information as part of the foreclosure or bankruptcy referral package or does not respond promptly to requests from the foreclosure or bankruptcy attorney for additional information or documents, Fannie Mae may pursue any of its available remedies, which may include, but are not limited to, indemnification, "make whole," repurchase, or compensatory fees.

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Servicers should contact their Servicing Consultant, Portfolio Manager, Investor Reporting Business Analyst, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans  
Vice President  
Chief Risk Officer for Credit Portfolio Management