

Lender Letter LL-2015-04

September 16, 2015

To: All Fannie Mae Single-Family Servicers

Nevada HOA Litigation

Servicer Reliance on HERA: Nevada Properties

On September 18, 2014, the Nevada Supreme Court held that a homeowners association's non-judicial foreclosure of a "super-priority" lien could extinguish an existing first deed of trust. *See SFR Investments v. U.S. Bank* (Nev. 2014). In response, the Federal Housing Finance Agency (FHFA), Fannie Mae, Freddie Mac, and various GSE servicers have asserted in litigation that the Housing and Economic Recovery Act of 2008 (HERA), prohibits the extinguishment of GSE liens absent FHFA's consent as conservator of the GSEs.

FHFA's Statement on Servicer Reliance on HERA

For reference, attached is the Servicer Reliance on HERA in Foreclosures Involving Homeownership Associations statement issued by FHFA on August 28, 2015, regarding servicers' reliance on HERA in connection with Nevada "super-priority" lien foreclosures and related HOA litigation.

Servicer Obligation to Escalate All Non-Routine Litigation

Fannie Mae reminds the servicer to escalate via submission of the *Non-Routine Litigation Form* ([Form 20](#)) as specified in *Servicing Guide E-1.3-01, General Servicer Responsibilities for Non-Routine Matters all non-routine litigation involving actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or that seek to impair Fannie Mae's interest in an acquired property.*

Additionally, *Servicing Guide E-1.3-02, Reporting Non-Routine Litigation to Fannie Mae* specifies servicers must report non-routine litigation to Fannie Mae within two business days of the servicer receiving notice of the litigation.

The servicer should contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's Credit Portfolio Management's Servicer Support Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Lender Letter.

Malloy Evans
Vice President
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Federal Housing Finance Agency

August 28, 2015

Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations

As noted in the December 22, 2014 and April 21, 2015 statements on certain super-priority liens, the Federal Housing Finance Agency has an obligation to protect Fannie Mae's and Freddie Mac's property rights. FHFA will aggressively do so by bringing or supporting actions to contest common ownership association (commonly known as HOAs) foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

This statement confirms that FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of the Enterprises to preclude the purported involuntary extinguishment of an Enterprise's property interest by an HOA foreclosure sale.

Alfred M. Pollard
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Federal Housing Finance Agency