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FAQs – Sales of Delinquent Loans by HUD, Fannie Mae and Freddie Mac

- For all of your mortgage default cases, it is imperative to identify the investor or determine whether the loan is an FHA, VA or USDA loan so that you know which loss mitigation guidelines apply for each client.
- HUD, Fannie Mae and Freddie Mac have been selling seriously delinquent loans through auctions for purchase by private for-profit and non-profit investors.
- After the loan is sold, the purchaser will no longer apply FHA 's loss mitigation options.
- **How do I know whether my client's loan has been sold?** Besides hearing from the lender that there is a new investor, there are steps you can take to get the information.

Truth in Lending Act - TILA Notice of New Creditor (AKA investor)

- For a mortgage loan secured by the borrower's principal residence:
TILA requires that written notice must be sent to the borrower containing the identity and contact information for the new investor. This notice can be sent by the new investor or the new servicer. The notice must be sent to the borrower within 30 days after the investor acquires the loan. The notice must include the date the loan was sold and information how to reach an agent or party having authority to act on behalf of the new investor - this agent is also likely to be the new mortgage servicer.

Notice of Transfer of Servicing

- The borrower's mortgage servicer will also change. The Real Estate Settlement Procedures Act (RESPA) requires the prior and new servicer to send a Notice of Transfer of Servicing to the borrower to inform the borrower of the date that the current servicer will no longer accept mortgage payments, the date that payments should be sent to the new servicer and the contact information for the new servicer. RESPA allows either the current or new servicer to send one notice combining all of this information.

- Remember – servicing can be transferred even if the investor does not change, (for example Wells Fargo uses ASC to service some of their most delinquent loans)so you should not assume the loan has been sold to a new investor unless you see a copy of the TILA Notice of New Creditor, the new servicer informs you or your client that the former loss mitigation guidelines (FHA, Fannie/Freddie) no longer apply, or you have information in writing from the new servicer regarding the identity of a new owner of the loan. See next section immediately below.
- **New CFPB Regulations - Request for Information for Identity of Owner/Investor**
 - Another way to find out who owns your client’s loan is for you or your client to send a “Request for Information” (RFI) to the current servicer asking for the identity of the owner/investor on the loan. A template RFI is included in this packet. The RFI (also known as a “Qualified Written Request”) must be sent to the servicer’s correspondence address which is usually shown on the back or on some other page of the monthly mortgage statement.
 - Under this CFPB Regulation, the servicer must respond in writing no later than 10 business days after receipt of the request and provide information about the owner of the loan.
- **Why is this information about sale of mortgage loans important?**
 - HUD, Fannie and Freddie are selling seriously delinquent loans because they believe their servicer has done everything it can to assist the borrower under their guidelines but foreclosure is inevitable. These loans are sold at a deep discount. Selling the loans is viewed as an additional opportunity for the new servicer to review the borrower again to determine whether foreclosure can be avoided. HUD, Fannie Mae and Freddie Mac have imposed minimal loss mitigation requirements on the new servicers as a condition of the sales, such as prohibiting proceeding to foreclosure sale for a certain number of months after the loan is purchased by the new investor.
- **Programs to Sell Delinquent Loans**
 - HUD’s program to sell delinquent loans is known as the “Distressed Asset Stabilization Program” (DASP). To be eligible for a DASP sale, the servicer of the FHA loan must certify to HUD it has exhausted all FHA loss mitigation options. Consumer advocates believe that many of the loans sold through DASP do not meet this criterion. For example, Caliber is the servicing arm of Lone Star, an investor that has purchased a large quantity of these distressed assets from HUD, Fannie and Freddie. The NYS OAG is currently investigating the servicing practices of Caliber based upon numerous advocate complaints.
 - Fannie Mae and Freddie Mac expect that their servicers have reviewed the borrower under their guidelines before submitting the loan for sale by the GSEs. Consumer advocates are interested in reviewing loss mitigation offers on loans sold by Fannie Mae and Freddie Mac.

- You may receive requests for examples from consumer advocates for cases where the FHA loan was sold in DASP when the borrower was being reviewed for loss mitigation; was performing under a trial period plan or loan modification, or otherwise complying with requests from the servicer. You may also receive a similar request regarding loans sold by Fannie Mae and Freddie Mac.
- You may also receive requests for examples of the loss mitigation offered to your client by the new servicer. Many of the offers by servicers of previously FHA insured loans are not affordable (such as requiring thousands of dollars up front) or are not long-term sustainable (such as offering only a temporarily reduced interest rate).

Listing of the servicers most often being used.

Participating in HAMP:

Bayview, Carrington, Fay Servicing, Roundpoint, Seneca, SPS,SLS

DASP servicers not participating in HAMP:

BSI, Caliber, RMS, Rushmore, Selene

Resources

Progress report on DASP:

http://portal.hud.gov/hudportal/documents/huddoc?id=sflscreport_updated_rev.pdf

Empire Justice Center report on Foreclosures: Chapter 4 and 5 describe the problem with zombies and Non Performing Pools.

<http://www.empirejustice.org/publications/reports/new/in-the-eye-of-the-storm.html#.VtTM1-b1LDs>

Pew Trusts story on zombies:

<http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/02/29/zombie-houses-multiply-in-some-states>

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