

Announcement SVC-2010-13**August 31, 2010****Mandatory Pre-filing Mediation Policy for Mortgage Loans in Florida****Introduction**

From time to time, Fannie Mae reviews its default-related policies to evaluate their effectiveness and to identify changes that may be appropriate. Based upon the latest review and the passage of the Florida Supreme Court Administrative Order of December 2009 requiring mediation before a summary judgment or foreclosure sale can be held, Fannie Mae will now require that servicers assign delinquent mortgage loans secured by properties in Florida to an attorney from Fannie Mae's Retained Attorney Network for mediation prior to the initiation of foreclosure proceedings.

All properties located in the State of Florida secured by mortgage loans held in Fannie Mae's portfolio and mortgage loans that are part of an MBS pool that have the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property must be serviced in accordance with the policies and procedures described in this Announcement. Servicers must not use these policies and procedures to handle mediations for mortgage loans in regular servicing option MBS pools, mortgage loans held in Fannie Mae's portfolio and serviced under the regular servicing option, or shared-risk MBS pools for which the servicer is responsible for marketing the acquired properties. Additional exceptions include mortgage loans guaranteed or insured by a government agency (i.e., FHA, HUD, VA, and RD), or mortgage loans subject to bankruptcy proceedings or relief under the Servicemembers Civil Relief Act.

As a result of these new policies and procedures, the servicer shall have additional responsibilities as well as different collection and outreach timeline requirements for mortgaged properties in the State of Florida than for mortgage loans secured by properties in other states where the servicer must continue to follow the standard guidelines outlined in the *Servicing Guide*, Parts VII and VIII.

Effective Dates

The policies set forth in this Announcement and the pre-file mediation process posted on eFannieMae.com ([Process Requirements](#)), including the accelerated timeline for breach letter and HAMP compliance, will be implemented no later than January 1, 2011. However, for mortgage loans that are newly referred on or after September 15, 2010 by the servicer to the Retained Attorney Network to commence foreclosure proceedings, the attorney must screen the mortgage loan for eligibility for pre-file mediation and, if it is eligible, proceed in accordance with this Announcement and the Process Requirements.

In order to follow the procedures outlined in this Announcement, each servicer with mortgage loans secured by properties in Florida must provide Fannie Mae and all retained attorney firms

in Florida with contact information for a primary liaison/team to whom all inquiries and documents should be directed for the mediation process. The contact information must be sent no later than September 15, 2010 via an e-mail to the initial Mediation Program Manager to calebmello@collinsmediation.org. This contact information must include a dedicated toll-free phone number, a dedicated toll-free fax number for documents and inquiries, a dedicated e-mail address for documents and inquiries, and a mailing address. Servicers are strongly encouraged to establish a dedicated team to address the detailed and accelerated timelines required by this Announcement.

Fannie Mae reserves the right to assess the servicer compensatory fees calculated based on the length of the delay and any additional costs that are directly attributable to failure by the servicer to perform the obligations required by this Announcement and the [Process Requirements](#), as updated from time to time. Fannie Mae will notify servicers whenever the Process Requirements are updated so that the servicer can ensure that it is using the current process.

Background

The Florida Supreme Court Administrative Order requires that servicers offer mediation to homestead residential borrowers in the State of Florida before summary judgment can be entered and a foreclosure sale held. The Florida Supreme Court Administrative Order provides for mediation after a foreclosure complaint is filed but encourages mediation to occur before a foreclosure complaint is filed (referred to as “pre-file”). Each judicial circuit in Florida is adopting the Florida Supreme Court Administrative Order by issuing its own circuit court administrative order.

Fannie Mae is implementing a pre-file mediation program across the State of Florida. The intended goals of the new pre-file mediation process are to:

- improve the likelihood of converting delinquent borrowers to performing status by offering mediation and related workout options in earlier stages of delinquency, and
- facilitate a shorter timeline to foreclosure sale where mediation is either not accepted by the borrower or does not ultimately yield an agreement or a workout.

Process Requirements

This Announcement and the [Process Requirements](#) provide instructions for adoption and implementation of the new pre-file mediation requirement and describe how a mortgage loan advances through the various stages of the process. These documents explain the roles and responsibilities of involved parties with a focus on the servicer but also include the borrower, the Fannie Mae-retained attorney, the financial counselor, and the Mediation Program Manager (Mediation PM). Finally, they outline various time frames and due dates required from the servicer and other parties.

Although this Announcement describes some of the responsibilities of others who are integral to the process, such as Mediation PMs and Fannie Mae-retained attorneys, these descriptions are included only for informational purposes for the servicer, and should not be viewed by the servicer as preconditions or requirements to fulfilling its own responsibilities. However, servicers still remain responsible for monitoring and managing the performance of the Retained

Attorney Network attorney selected to handle the mediation and foreclosure to ensure compliance with Fannie Mae's requirements.

Summary of New Requirements

The following is a summary of the major servicer requirements in connection with pre-file mediation in Florida. For a full description of the process and servicer responsibilities, see the [Process Requirements](#).

Referral

- The servicer will have accelerated outreach and referral timeline requirements for delinquent mortgage loans in the State of Florida as follows:
 - Send first foreclosure prevention solicitation letter on the 31st day of delinquency.
 - Send breach letter as early as the 35th day of delinquency but no later than the 45th day of delinquency. (The servicer is encouraged to send the breach letter as early in this time frame as deemed prudent.), and
 - Refer the mortgage loan to a retained attorney 30 to 34 days after a breach letter is sent in accordance with the *Servicing Guide* Part VIII, Section 102: Initiation of Foreclosure Proceedings. The retained attorney will then make a determination whether the mortgage loan is eligible for mediation.

If prior to the required referral to the retained attorney as provided above, a workout has been completed or a viable and mutually agreed upon workout is in progress (i.e., the borrower has been approved for the workout and the servicer is in the process of processing or awaiting signed documents), the servicer must diligently pursue the workout. In those circumstances, the mortgage loan should not be referred to the attorney for pre-file mediation unless and until the workout is unsuccessful or no longer viable. An agreement to list the property for short sale is not a workout in this context and the mortgage loan should be referred to a Fannie Mae-retained attorney for determination of whether it is eligible for pre-file mediation.

Servicers are reminded that the *Servicing Guide*, Part VIII, Section 105.01: Servicer-Initiated Temporary Suspension of Proceedings, requires the servicer of a delinquent mortgage loan to continue working with the borrower in order to bring the mortgage loan current, develop a workout plan, or finalize some other foreclosure prevention alternative after a mortgage loan is referred to foreclosure—unless the servicer has determined that a workout plan or foreclosure prevention alternative is not feasible. If a workout has been completed or a viable and mutually agreed upon workout is in progress (i.e., the borrower has been approved for the workout and the servicer is in the process of processing or awaiting signed documents), the servicer must diligently pursue the workout.

All referral packages to the Retained Attorney Network must contain all data, information, and documentation provided to the attorney for first legal action, including:

- investor code identifying the mortgage loan as a Fannie Mae loan and the applicable Fannie Mae loan number,
- the servicer's name and servicer loan number,
- all borrower and co-borrower phone numbers and addresses, and

- data indicating the property was known to be vacant at the time of referral.

Note: Though the data indicated above has not always been provided in the past, servicers must provide this data for all referrals in Florida.

Preparation of Retention/Liquidation Offers

- The servicer receives a copy of the borrower's financial worksheet, hardship affidavit, and verifiable income documentation from the financial counselor who is working with the Mediation PM and the borrower.
- The servicer reviews the financial documentation to confirm completeness within three business days of receipt, and in the event of incomplete financial documents, the servicer must advise the Mediation PM within that timeframe that the documentation is unclear or incomplete.
- The servicer must evaluate the borrower for foreclosure alternatives in accordance with the established Fannie Mae workout hierarchy. The servicer shall consider the full array of products allowed by Fannie Mae and if the borrower qualifies for a retention option, shall offer the borrower the most appropriate retention option based on a review of the borrower's financial documents and circumstances.
- The servicer is responsible for the simultaneous preparation of the legal documentation for a retention offer (as set forth above) along with conditional deed-in-lieu of foreclosure (DIL) and conditional short sale offers, to be offered to the borrower in the mediation session in the order set forth in the [Process Requirements](#).

Note: The attorneys will be present at the mediation and will execute the documents on behalf of the servicer. The servicer must ensure that the attorneys have the necessary Powers of Attorney to execute the offer documentation on behalf of the servicer.

- The servicer shall use the retention agreement form prescribed by Fannie Mae, if applicable, or their own form of agreement, both of which must contain the provision set forth below. The servicer shall use the sample [Conditional DIL Agreement](#) and [Conditional Short Sale Agreement](#) which contain the critical provisions for pre-file mediation and are available on eFannieMae.com. The servicer must use these template Agreements or its own DIL and Short Sale Agreements provided that those agreements are substantially similar to the template agreements and contain the following provision (or words to the same effect):

“The borrower(s) recognize that they are in default of their Loan and that this **[Modification/DIL/Short Sale, etc.]** Agreement resulted from a mediation that was conducted substantially in accordance with the applicable Florida circuit court order regarding residential foreclosure mediation. Borrower(s) hereby waive any additional or further mediation in connection with the existing default under the Loan or in connection with any default that may occur under this **[Modification/DIL/Short Sale, etc.]** Agreement.”

- The goal of the mediation session is for the servicer to be prepared with all offers available pursuant to this Announcement and have the borrower agree to one of the offers in the

mediation session and sign the legal documentation evidencing the offer in the mediation session.

- The servicer is encouraged to use the full offering of foreclosure prevention alternatives prior to the mortgage loan being referred to the attorney for pre-file mediation. Servicers are reminded that if the borrower has satisfied the conditions established in the Conditional DIL Agreement, and the servicer then determines that the borrower is interested in remaining in the property, then the borrower could be considered for the Deed-for-Lease Program in accordance with the terms of the *Servicing Guide*, Part VII, Section 606.01: Deed-for-Lease Program.

Mediation

The servicer's representatives must:

- attend mediation sessions by phone (or in person, at the servicer's sole cost and expense);
- continuously be on the phone or in attendance, if in person, throughout the entire mediation session. (If multiple servicer representatives are needed to have the full spectrum of authority to offer and settle retention and liquidation options, then all such representatives must attend the mediation session by phone or in person.);
- have full and complete authority to execute the workout with the borrower;
- present the retention option (if available) first and discuss fully with the borrower. A servicer must not present the conditional DIL or conditional short sales option until it is clear that the borrower is not amenable to a retention option; and
- be fully prepared to explain the offers or why the borrower is not qualified to receive certain offers and must maintain that position and explain why that is the case.

If the servicer fails to appear for the mediation, the cost of the mediation session that the servicer failed to attend will be borne by the servicer and the servicer shall not seek reimbursement for the invoiced cost of the mediation session. The servicer may be charged additional compensatory fees for the delay caused by the servicer's failure to attend the mediation session.

Following a successful mediation session in which the borrower accepts an offer and executes the applicable documents (i.e., the retention or liquidation documents), the attorney shall send, via a reliable overnight delivery service, the executed documents to the servicer.

The servicer must:

- execute the workout on its servicing system within one business day of receiving the executed documents from the attorney, and
- report the appropriate Delinquency Status Code when required. The attorney present at the mediation session will execute the documents on behalf of the servicer and/or Fannie Mae.

For non-delegated cases, if the mediation session does not result in a retention offer that was entered into the HomeSaver Solutions® Network (HSSN), the servicer must cancel the case in HSSN and document the justification, as applicable, immediately following the mediation session.

- The *Borrower's Request for Lender Documentation* is provided to the borrower by the Mediation PM. Pursuant to the various circuit court orders, the borrower can request the following documentation:
 - Documentary evidence that the lender is the owner and holder in due course of the note and mortgage sued upon.
 - A history showing the application of all payments by the borrower during the life of the mortgage loan (i.e., a loan payment history for the borrower).
 - A statement of the servicer's position on the current net present value of the mortgage loan. If the servicer can calculate net present value in accordance with HAMP methodology for calculating net present value (regardless of whether a borrower is eligible for HAMP), then the servicer shall provide the net present value from this calculation to the borrower. If the servicer cannot calculate net present value in accordance with HAMP methodology (regardless of whether a borrower is eligible for HAMP), the servicer must explain in writing that the net present value calculation requires the borrower's financial documents and cannot be calculated until the financials have been received. Upon receipt of the borrower's financial documents, the servicer shall calculate the net present value and send the calculation to the borrower and attorney.
 - The most current appraisal of the property available to the servicer. (**Note:** If an appraisal was required pursuant to the underwriting performed at origination and no other appraisal was subsequently obtained, the servicer shall provide the origination appraisal. The servicer does not need to obtain a new appraisal. If no appraisal was ever obtained, the servicer must explain in writing to the borrower that an appraisal was never obtained.)

The servicer must provide all documents requested by the borrower pursuant to the *Borrower's Request for Lender Documentation* to both the borrower and the Fannie Mae-retained attorney within 15 calendar days of receipt of the request from the Mediation PM.

Servicers must refer to the [Process Requirements](#) for a full description of servicer responsibilities.

Mortgage Insurance

Servicers are reminded that pursuant to the *Servicing Guide*, Part II, Section 102: Conventional Mortgage Insurance, the servicer must keep in effect any borrower-purchased mortgage insurance that existed when Fannie Mae acquired the mortgage, unless the conditions Fannie Mae imposes for replacing or canceling the coverage are met. In addition, the servicer must keep in effect any lender-purchased mortgage insurance that existed when Fannie Mae acquired the mortgage until the mortgage is paid in full.

In the context of the Florida pre-file mediation process, this may require actions such as notice to and/or consent of the mortgage insurer if mediation will preclude adherence to the time frames for various actions (e.g., the initiation of foreclosure proceedings) under the mortgage insurance policy, or otherwise render the servicer unable to meet policy requirements. If the mediation process results in a workout (e.g., modification, short sale, deed-in-lieu) notice to and/or consent of the mortgage insurer must be obtained as required by the mortgage insurance policy.

Delinquency Status Reporting

Servicing Guide, Part VII, Chapter 7, Exhibit 1: Delinquency Status Codes

As a result of the policies and procedures described in this Announcement, a referral to the attorney to take legal action to initiate the foreclosure proceedings will be considered to have begun on the date the servicer refers the matter to the attorney for evaluation of mediation eligibility, even if the referral results in mediation and not the first legal action required to foreclose. Upon referral to an attorney of any mortgage loan secured by property located in Florida, the servicer must report to Fannie Mae a Delinquency Status Code 43 – Foreclosure, into HSSN for each month that the mortgage loan is with the attorney.

Fees and Administrative Costs

The servicer shall not require the borrower to pay the pre-file mediation costs out of pocket. Mediation fees shall be paid in accordance with the section below. The servicer shall add the amount paid for all mediation fees charged for a particular borrower's loan to the outstanding indebtedness of that mortgage loan.

Form 571 Process

Mediation PM Invoices: The Mediation PM will invoice the attorneys for the cost of pre-file mediation, charging the appropriate fees based on the amount of work actually performed. Accordingly, if the borrower attends mediation (regardless of the outcome), the fee that can be charged by the Mediation PM for mediation services cannot exceed \$750. The attorneys must promptly pay each invoice to the Mediation PM and in no event later than 30 days after receipt of the invoice. The attorneys will submit these invoices to the servicer for reimbursement.

Attorney Fees for Mediation: The following is the allowable fee schedule for the attorneys' participation in pre-file mediation:

- Step 1. \$100 for screening of the mortgage loan and referring the mortgage loan to the Mediation PM. This fee does not apply to mortgage loans that do not go to the Mediation PM (i.e., mortgage loans that go directly to foreclosure).
- Step 2. \$200 for all work subsequent to screening and prior to attending a mediation session.
- Step 3. \$250 for attending one mediation session. If the attorney fails to attend the mediation session, the attorney shall not charge for attendance at the session.
- Step 4. \$200 in total for attending both a second and third mediation session, where necessary.

The maximum amount that Fannie Mae will allow for attorney fees for work related to the mediation with one mediation session is \$550.

All attorneys must submit their statements for all attorney fees and expenses directly to the servicer. The servicer is responsible for reviewing, approving, and paying all attorney and Mediation PM fees and expenses in compliance with Fannie Mae guidelines. The servicer must promptly pay the attorney within 45 days after receipt of the invoice. The servicer may request reimbursement from Fannie Mae when the aggregate of expenses for an individual case have surpassed \$500 or when its advance has been outstanding for at least six months.

Servicers are reminded that they must submit their final Form 571 for reimbursement within 30 days after:

- a foreclosure prevention alternative is completed;
- the date the claim was filed, if the property will be conveyed to the insurer or guarantor;
- a third party acquires the property at the foreclosure sale; or
- Fannie Mae disposes of an acquired property.

Borrower Incentive: The borrower will be entitled to an incentive payment of \$3,000 to assist with relocation expenses following successful completion of a short sale or a DIL as a result of the Florida pre-file mediation process. Note: For a borrower approved for the Deed for Lease™ program, the incentive must not be paid by the servicer but will be paid by Fannie Mae at the expiration of the lease period.

- For a short sale, the servicer must instruct the settlement agent to pay the borrower the relocation incentive at closing from the sales proceeds at the same time that all other payments are disbursed, including the payoff to the servicer. The borrower incentive payment amount must be reflected on the HUD-1 Settlement Statement as \$3,000 in line 403 with a note to indicate "Relocation Assistance from [Servicer Name]" and the settlement agent must adjust line 504 (Payoff of first mortgage loan) to reflect a reduction for the same amount. In all cases, the cash to the borrower in line 603 (Cash to Seller) must be exactly \$3,000.
- For DILs, the servicer will be reimbursed by Fannie Mae for the borrower incentive payment by entering a case into HSSN with the borrower incentive identified as a "Relocation Assistance Expense" or "Cash for Keys Amount" (for non-delegated cases).

Allowable Subordinate Lien Payments: Allowable payments from the sales proceeds to all subordinate mortgage lienholders to facilitate lien releases for short sales and DILs must not exceed \$6,000 in aggregate. Each lienholder in order of priority may be paid no more than 6 percent of the unpaid principal balance of its loan, until the aggregate \$6,000 cap is reached.

The servicer must not authorize the settlement agent to allow more than an aggregate of \$6,000 of sale proceeds as payment(s) to subordinate mortgage or lienholder(s) in exchange for a lien release and full release of liability. Payment made from the sales proceeds must be reflected on the HUD-1 Settlement Statement.

Servicers should contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicer Support Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

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