

Multifamily Seller/Servicer Guide

Chapter 33

Warehousing, Secured Advances and Other Secured Lending Arrangements

33.1 Overview (04/30/13)

This chapter addresses arrangements between the Seller and Freddie Mac, in cases where the Seller has entered into a loan agreement with a warehouse lender. Such an agreement allows the Seller to grant the warehouse lender a security interest in a Mortgage (known as a "pledged Mortgage") as security for the payment-in-full of the indebtedness by the Seller to the warehouse lender. Subsequently, the Seller offers these pledged Mortgages for sale to Freddie Mac.

The warehouse lender that has the security interest holds the Note and, at times, other Loan Documents for the pledged Mortgage. The warehouse lender delivers the Note (and any other Loan Documents it holds) to Freddie Mac pursuant to the Seller's Purchase Contract with Freddie Mac. Subject to certain conditions, Freddie Mac will act as the custodian of those instruments for the warehouse lender prior to purchasing the pledged Mortgage or determining not to purchase the pledged Mortgage.

This chapter sets forth the relationship among the Seller, the warehouse lender and Freddie Mac. It also describes the conditions under which Freddie Mac will act as the custodian of a pledged Mortgage.

33.2 Defined terms for purposes of this chapter (10/07/02)

For the purposes of this chapter, the following terms have the meanings indicated:

a. Indebtedness (10/07/02)

Indebtedness is the debt or obligation that the Seller owes to the warehouse lender and that is incurred under the terms of the Mortgage warehousing loan agreement.

b. Mortgage warehousing loan agreement (10/07/02)

The Mortgage warehousing loan agreement is the agreement between the warehouse lender and the Seller pursuant to which a security interest is granted in a Mortgage that is subsequently offered for sale to Freddie Mac.

c. Pledged Mortgage (10/07/02)

A pledged Mortgage is a Mortgage in which the Seller has granted to the warehouse lender a continuing lien and security interest, as security for the Seller's payment-in-full of its indebtedness to the warehouse lender.

d. Purchase proceeds (10/07/02)

The purchase proceeds are the proceeds (cash or PCs) payable to the Seller by Freddie Mac as a result of Freddie Mac's purchase of a pledged Mortgage from the Seller.

e. Warehouse lender (06/06/03)

A warehouse lender is the bank or other financial institution that has entered into a Mortgage warehouse lending agreement with the Seller. This agreement allows the warehouse lender to receive a security interest in a pledged Mortgage that is subsequently offered for sale to Freddie Mac. For these purposes, a warehouse lender includes a Federal Home Loan Bank or other lender that has made a loan or advance secured by a Mortgage intended for sale to Freddie Mac.

33.3 Delivery of pledged Mortgages and acceptance as custodian (04/30/13)

If the requirements of this chapter have been met, Freddie Mac will receive the Note, Security Instrument and other Loan Documents for a pledged Mortgage, subject to the lien and security interest in favor of the warehouse lender created under the Mortgage warehousing loan agreement. While Freddie Mac is determining whether to purchase a pledged Mortgage, Freddie Mac will hold the Note, Security Instrument and other Loan Documents on behalf of the warehouse lender as its custodian, subject to the lien and security interest of the warehouse lender.

Freddie Mac recognizes no other statement of the condition of its receipt of these documents, including any trust receipt, bailee letter or other purported statement of a continuing security interest.

33.4 Wire transfer instructions (04/30/19)

The Seller must submit to Freddie Mac *Multifamily Cash Management* the authorization documentation required by Section 32.12(b). Settlements cannot be made if such authorization documentation is not on file with Freddie Mac *Multifamily Cash Management*.

With each delivery of a pledged Mortgage to be purchased by Freddie Mac under a cash program or product, the Seller must include a completed Form 987M, Wire Transfer Authorization – Cash Warehouse Delivery, attached to a properly completed and executed Form 996M, Warehouse Lender Release of Security Interest. These forms must give Freddie Mac complete and accurate wire transfer instructions, so that Freddie Mac may credit the purchase proceeds of the pledged Mortgage (including applicable refunds) to the proper account.

If Freddie Mac does not receive such wire transfer instructions on Form 987M in sufficient time to process payments, Freddie Mac may postpone the Freddie Mac Funding Date until it receives and has processed Form 987M.

The instructions on Form 987M are final for that particular Mortgage delivery and binding on the Seller/Servicer and Freddie Mac. All wire instruction changes may be made only by submitting new Forms 987M and 996M. The warehouse lender and the Seller must each fully execute each

form. A properly executed Form 987M will override a Form 483M, Wire Transfer Authorization (see Section 32.12).

33.5 Reserved

33.6 Delivery procedures (02/27/15)

In addition to the documentation (including Form 996M, Warehouse Lender Release of Security Interest) required for delivery of a pledged Mortgage, the Seller must include or cause to be included in the delivery an Appendix I to Form 996M, showing the Freddie Mac loan number, the Borrower's name and the property address.

33.7 Acceptance for purchase or rejection of pledged Mortgages (02/27/15)

Upon receiving a delivery of a pledged Mortgage, Freddie Mac, as part of its normal purchase activities, will review the pledged Mortgage. Freddie Mac may find it necessary to return certain Loan Documents to the Seller for the Seller to correct any deficiency in those documents. In such cases, Freddie Mac will deliver to the Seller any documents that are deficient, as appropriate, except the Note.

If Freddie Mac determines that a Note is deficient, it will deliver the Note to the warehouse lender indicated on Form 996M, Warehouse Lender Release of Security Interest, and will advise the Seller of such deficiency so that the Seller may cure the defect.

If Freddie Mac determines not to purchase a pledged Mortgage, it will

- Deliver the originals of the Note and any other Loan Documents for the pledged Mortgage to the warehouse lender specified on Form 996M
- By written instrument, reassign to the warehouse lender the Security Instrument and the interests in any other Loan Documents that have been assigned by the Seller to Freddie Mac as part of the pledged Mortgage delivery
- Notify the Seller of such determination and delivery

33.8 Warehouse lender's security interests (06/06/03)

Freddie Mac will not purchase a pledged Mortgage if the Seller has assigned the Mortgage to the warehouse lender unless the warehouse lender assigns the Mortgage to the Seller effective on or before the Freddie Mac Funding Date of the pledged Mortgage.

- If the assignment of the pledged Mortgage to the warehouse lender was recorded in the public records of any jurisdiction, the Seller must record the assignment to the Seller in the public records of the appropriate jurisdiction after the Freddie Mac Funding Date.
- If the assignment of the pledged Mortgage to the warehouse lender was not recorded, the return of that unrecorded assignment to the Seller will satisfy the requirements of this section.

Freddie Mac will not purchase a pledged Mortgage if the warehouse lender has filed a financing statement relating to the pledged Mortgage in the public records of any jurisdiction unless the warehouse lender executes a termination statement. The Seller must file the termination statement in the public records of the appropriate jurisdiction after the Freddie Mac Funding Date.

33.9 Release of warehouse lender's security interest (12/05/03)

The Seller must take, or to cause the warehouse lender to take, such further action as may be reasonably necessary to ensure and confirm to Freddie Mac that each pledged Mortgage purchased by Freddie Mac is free and clear of any security interests as of the Freddie Mac Funding Date. Such further action may include preparing, executing and filing additional documents and instruments.

33.10 Freddie Mac's obligations (02/27/15)

If Freddie Mac postpones the Freddie Mac Funding Date as a result of the Seller's failure to deliver Form 987M, Wire Transfer Authorization – Cash Warehouse Delivery; Form 939M, Negotiated Transactions Program Security Settlement Information and Delivery Authorization; or Form 996M, Warehouse Lender Release of Security Interest, as required, Freddie Mac will not be liable to the Seller or the warehouse lender for any losses, costs, expenses or damages that the Seller or the warehouse lender may incur as a result of such postponement.

33.11 Indemnification (02/27/15)

The Seller must indemnify and hold Freddie Mac, its successors, assigns and transfer agents harmless from and against any losses, claims, demands, actions, suits, damages, costs and expenses (including attorney fees) of every nature and character that may arise or be made against or incurred by Freddie Mac as a result of any of the following:

1. Freddie Mac's role as custodian of the Note and other Loan Documents while determining whether to purchase the pledged Mortgage (and any subsequent return of the rejected Note and other Loan Documents to the warehouse lender)
2. Freddie Mac or its transfer agent delivering or transferring any PC or purchase proceeds to any person if
 - Such PC is delivered or transferred in accordance with the terms of the Purchase and Servicing Documents and Form 939M, Negotiated Transactions Program Security Settlement Information and Delivery Authorization, or
 - Such purchase proceeds are delivered or transferred in accordance with the Purchase and Servicing Documents and the Seller's wire transfer instructions on Form 987M, Wire Transfer Authorization – Cash Warehouse Delivery
3. Security interests, claims or encumbrances of any third party, including the warehouse lender

33.12 Reimbursement by the Seller (06/06/03)

With respect to a delivery of a pledged Mortgage, Freddie Mac does not charge any fees in addition to those associated with specific Mortgage programs and products described elsewhere in the Guide. However, the Seller must reimburse Freddie Mac for any reasonable expenses incurred by Freddie Mac in connection with the delivery of a pledged Mortgage by any warehouse lender to Freddie Mac. Freddie Mac will specify the nature and amount of such expenses in a written notice to the Seller. The Seller must reimburse Freddie Mac for the amount of any such expenses within 10 Business Days of Freddie Mac's request.