

Multifamily Seller/Servicer Guide

Chapter 44

Delinquency, Default and Loss Mitigation Strategies



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44.1 Overview (12/14/23)

Chapter 44 sets out requirements for Servicers with respect to Borrowers who have failed to comply with the provisions of the applicable Loan Documents, whether such noncompliance consists of either or both of the following:

- Failure to pay principal and interest and/or Reserves when due (referred to as a monetary default or a Delinquency)
- Failure to comply with other requirements of the Loan Documents (other default)

44.2 Monetary defaults (Delinquencies) (12/14/23)

The Servicer must react quickly and diligently when the Borrower is not promptly paying all Mortgage installments when due.

The Servicer must treat each Delinquency individually, based on its knowledge of the Borrower, the location and type of Property, and the extent and circumstances of the Delinquency.

a. Contact with the Borrower (12/14/23)

The Servicer must contact the Borrower by telephone, in person or in writing (including via email) on or before the 10th day after a payment is due and remains unpaid, without regard to any grace period, to ascertain the reason for the nonpayment and the Borrower's intentions to cure.

When contacting a delinquent Borrower, the Servicer must try to obtain, if not already provided by Borrower, the following documents:

- A current rent roll, with the names of all tenants, the amount of rent for each unit, the date to which rent has been paid and the details of all leases
- The prior year's income and expense statement
- A year-to-date income and expense statement
- Financial statements from any Guarantor(s)

The Servicer must contact the Borrower immediately if the Borrower does not make required payments or other cures when promised. If the Borrower does not cure a Mortgage Delinquency when promised, the Servicer must notify *Multifamily Loan Accounting* in writing within two Business Days after the missed deadline.

b. Reporting to Freddie Mac (12/14/23)

1. Monthly report of Delinquencies and Foreclosures

Every Servicer must submit a Monthly Report of Delinquencies and Foreclosures via myOptigoSM for Investor Reporting. The Servicer must transmit the report even if the Servicer has no delinquent Mortgages or Mortgages in foreclosure.



The Servicer must perform the automated transmission of the Monthly Report of Delinquencies and Foreclosures via myOptigo for Investor Reporting by 3:00 p.m. Eastern time on the third Business Day of each month. The Servicer is responsible for ensuring the accuracy and integrity of the data submitted to Freddie Mac. Transmissions must be usable, accurate and timely. For details on the applicable programming requirements and transmission instructions, the Servicer must contact *Multifamily Loan Accounting*.

The Servicer must fulfill all Freddie Mac requests for further information regarding the Delinquency within three Business Days after the request.

2. Multifamily Delinquency reporting noncompliance fees

Freddie Mac may assess Delinquency reporting noncompliance fees against the Servicer if the Servicer fails to provide timely, complete and accurate reports. Any Servicer that fails to comply with the reporting requirements set forth in this section is subject to the following Delinquency reporting noncompliance fees:

Fee type	Cause/description	Amount
Delinquency	Late, omitted or unusable monthly Mortgage Delinquency reporting data	1 st month - \$250
		2 nd month - \$550
		3 rd month - \$1,000
		Each additional month - \$1,000

Freddie Mac will assess only one Delinquency reporting noncompliance fee per month regardless of the number of violations that occur in that month. Freddie Mac will send the Servicer a written notification of each violation. Fees are due to Freddie Mac no later than the fifth Business Day after the first accounting cutoff date following the missed reporting due date specified in such notice. The Servicer must remit the fee using the myOptigo® Servicer Remittance system described in Section 53.7. The cash statement for the accounting cycle in which the fee is due will reflect the fee.

44.3 Non-monetary defaults and adverse matters (12/14/23)

The Servicer must notify *Multifamily Asset Management, Borrower Transactions* by email at MF_Borrower_Transactions@freddiemac.com within two Business Days following the Servicer’s discovery or receipt of notification of any of the following conditions with respect to a Mortgage or a Property:

1. Any lien that attains or may attain priority over the Mortgage lien
2. Any subordinate lien that is placed on the Property without Freddie Mac’s prior consent (The Servicer must also follow the procedures in Section 41.9 regarding a subordinate lien.)
3. Any state insolvency or federal bankruptcy proceeding in which a Borrower or Guarantor is seeking relief or in which an involuntary petition has been filed against a Borrower or Guarantor



4. Deterioration, waste or lack of repair of the Property
5. A catastrophic event affecting the Property
6. The presence of an environmental problem on the Property
7. A material and imminent Life Safety Hazard on the Property
8. A serious building code violation or similar citation involving the Property
9. Vacancy or collection loss that materially impairs the value of the Property
10. Any event that materially adversely affects the credit or managerial ability of the Borrower
11. Litigation involving the Property that may adversely affect its value or the lien of the Mortgage
12. Termination or reduction of insurance coverage for the Borrower or the Property
13. Any evidence that the Borrower has transferred ownership or management of the Property without Freddie Mac's prior approval (The Servicer must also follow the procedures in Section 41.9 regarding an unauthorized transfer of the Property or an interest in a Borrower entity.)
14. Any other default under the terms of the Loan Documents
15. Any other situation, including adverse publicity, that may have an adverse impact on the Mortgage or the Property

If any of these conditions arise, the Servicer must maintain complete and accurate records of the circumstances, including any evidence necessary to support enforcement action based on the defaults under the Loan Documents described above or other action against the Borrower. When notifying Freddie Mac of any of the defaults or adverse matters listed in this section, the Servicer must also advise Freddie Mac in writing of relevant surrounding facts.

44.4 Property condition considerations (12/14/23)

When assessing an appropriate asset resolution strategy with respect to Borrower noncompliance or other Property issues identified in this chapter, Freddie Mac emphasizes imminent life and safety matters affecting the tenants' wellbeing and the condition of the Property as well as preserving the collateral serving as security for the Mortgage. The Servicer must be alert to such issues and report them promptly to Freddie Mac.

44.5 Enforcement actions – roles of Servicer and Freddie Mac (12/14/23)

a. Servicer involvement and reporting (12/14/23)

Freddie Mac will direct all enforcement action with respect to a Mortgage default or Delinquency. The Servicer must carry out Freddie Mac's instructions and work closely with Freddie Mac in handling enforcement actions. When delaying protective action might result in impairment of the Property or the lien of the Mortgage, the Servicer must immediately notify *Multifamily Surveillance* of the situation.



Upon the occurrence of a default or Delinquency or at the request of Freddie Mac, the Servicer must provide a default analysis to *Multifamily Asset Resolution* containing the items listed below and fulfill all other requests by Freddie Mac for further information within ten days after any such request.

1. [Form 1101, Legal Referral Form](#)

The Form must include the current, verified, address and other contact information for each of the following:

- Borrower
 - Borrower Principals, including general partner, or managing member, or president
 - Guarantor or individual with liability for Mortgage amounts,
2. A summary of any oral communications with the Borrower regarding the Delinquency
 3. A copy of written correspondence about the Delinquency between the Servicer and the Borrower
 4. A written analysis of any Reserves or any other form of Custodial Account, with current balances (The amounts paid for the most recent annual taxes and annual insurance premiums and the next required payment dates must also be provided.)
 5. The Borrower's payment history for the Mortgage
 6. A list of any Freddie Mac Mortgages related to the Borrower or Affiliates of the Borrower that are 30 days delinquent or have been 30 days delinquent in the last 12 months
 7. A general financial analysis of the current Property operations
 8. A Servicer's certificate regarding OFAC/FHFA SCP compliance regarding the Borrower and any Borrower Principals or Non-U.S. Equity Holders (See Section 41.1(d) and 41SBL.1(d) for a description of the certificate.)

b. Servicer responsibilities (12/14/23)

It is the Servicer's responsibility to act in the most timely, efficient and responsible manner to protect the interests of Freddie Mac. The Servicer must exercise diligence to prevent any losses.

Freddie Mac will advise the Servicer who will manage enforcement actions and provide instruction for any protective action if needed.

During the enforcement period, Freddie Mac may require the Servicer to provide such items as arrearage calculations, prior property inspections, original Loan Documents and recommendations for action. The Servicer must assist Freddie Mac when necessary to obtain third-party property inspections, title reports, title endorsements, Uniform Commercial Code (UCC) searches and



recorded documents in connection with any enforcement action. Freddie Mac may also require the Servicer to conduct a current property inspection.

c. Legal representation (12/14/23)

Counsel selected by Freddie Mac will conduct the legal representation of Freddie Mac in connection with any actions in response to Delinquencies and defaults. Freddie Mac will supervise the conduct of litigation and other actions. If the Servicer retains its own legal counsel in connection with the matters described in this section, the fees and expenses of such counsel will be the obligation of the Servicer and not of Freddie Mac.

44.6 Enforcement actions – workouts (12/14/23)

The Servicer must refer all Borrower written requests for any type of workout, including Mortgage modifications or repayment plans, to *Multifamily Asset Resolution*. Freddie Mac will negotiate the workout plan, have all necessary documents prepared, and notify the Servicer of any changes to the Mortgage.

44.7 Enforcement actions – foreclosure and receivership (12/14/23)

a. Roles of Servicer and Freddie Mac (12/14/23)

Freddie Mac or Freddie Mac retained counsel will commence and pursue any receivership or foreclosure action. To ensure prompt and efficient completion of the foreclosure proceedings, Freddie Mac expects the Servicer to work closely with the foreclosure attorney, trustee or substitute trustee selected by Freddie Mac. Such services may include the following:

1. Having appropriate officers of the Servicer appear as witnesses in discovery or court proceedings
2. Providing reports and documentation to be used in the receivership or foreclosure proceeding
3. Executing pleadings and affidavits

b. Appointment of receiver and/or managing agent (08/30/13)

Freddie Mac reserves the right to seek the appointment of a receiver and/or managing agent for the Property. The fee for the receiver and/or managing agent will ordinarily be paid from income generated from the Property. If the income generated from the Property is not sufficient to pay all normal operating expenses (including the fee for the services of the receiver and/or managing agent), the Servicer must, when requested by Freddie Mac, advance funds as and when necessary to pay that deficit. Freddie Mac will reimburse advances made by the Servicer in accordance with Section 45.3(b). However, for Delegated TAH Mortgages, any such advances are governed by the Seller/Servicer's Delegated TAH Master Agreement.

c. Demand and acceleration (12/14/23)

If Freddie Mac determines to pursue a foreclosure action, Freddie Mac will prepare and send the demand and acceleration letters to the Borrower, unless Freddie Mac provides other instructions to the Servicer.



44.8 Servicing during enforcement action (12/14/23)

a. Third party report reimbursement (12/14/23)

With the approval of Freddie Mac, the Servicer will advance the cost of any required Appraisal, environmental assessment or property condition report. Except for Delegated TAH Mortgages, Freddie Mac will reimburse the Servicer in accordance with Section 45.3(b).

b. Establishment of bid amount (06/30/15)

The Servicer must provide the UPB, arrearages, advances, default interest and/or late charges, Yield Maintenance or other breakage fee, [Form 104, Loan and Real Estate Owned \(REO\) Expenses and Income](#), and all other amounts necessary to compute the total Mortgage debt to Freddie Mac upon request. Freddie Mac will determine the amount of the bid at a foreclosure sale and the bid will be entered by Freddie Mac's employee, its representative, or the attorney handling the foreclosure sale.

c. Reimbursement of costs advanced by Servicer (12/14/23)

The Servicer must request in writing and receive approval from Freddie Mac before incurring any expense reimbursable under this section. The Servicer must attach to its approval request a copy of the Reserve and suspense account balances with a description of the source and reason for any suspense account funds.

All fees and expenses discussed in this section that are approved by Freddie Mac, including the cost of the legal counsel selected by Freddie Mac, must be billed to and paid by Freddie Mac. The Servicer must seek all reimbursements in accordance with the provisions of Section 45.3.