

Multifamily Seller/Service Guide

Chapter 47

Repurchases; Indemnification



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47.1 Remedies (10/21/21)

a. Remedies applicable to all Mortgages that are not Delegated TAH Mortgages (10/21/21)

In addition to any other remedies it may have at law or in equity, for any Mortgage it purchased, Freddie Mac may take additional remedial actions, including, without limitation:

- Engage in more frequent dialogue, audits, and/or require the Seller/Servicer to provide additional information or data
- Require the Seller/Servicer to provide an action, business continuity or remediation plan acceptable to Freddie Mac to address specific requirements not met
- Demand further reasonable assurances or information
- Issue a demand for any other specific corrective action
- Limit the risk characteristics of loans to be acquired by Freddie Mac from the Seller/Servicer
- Limit variances to loans acquired by Freddie Mac from the Seller/Servicer
- Limit or deny the acceptability of Seller/Servicer's and affiliate's products or services in connection with Freddie Mac's business
- Restrict or deny participation in new products, initiatives or programs offered by Freddie Mac
- Impose additional fees upon loans acquired by Freddie Mac from the Seller/Servicer
- Require posting of collateral, in cash or cash equivalent
- Impose business volume limits for loans to be acquired by Freddie Mac from the Seller/Servicer
- Limit additional Servicing that can be acquired by the Seller/Servicer
- Add Seller/Servicer's Senior Management to the Freddie Mac Exclusionary List
- Require engagement of a Servicing Agent or replacement of an existing Servicing Agent
- Require Transfer of Servicing
- Suspend Seller/Servicer
- Terminate Seller/Servicer

Also, in any of the cases or events stated in Section 47.2, in addition to any other remedies it may have at law or in equity, for any Mortgage it has purchased, Freddie Mac may require the Seller or Servicer to:



- Indemnify Freddie Mac from and hold it harmless for any loss, damage or expense (including court costs, costs of investigation and reasonable attorney fees) that it may sustain which may arise in connection with the Mortgage or related documents, or
- Repurchase Freddie Mac's interest in the Mortgage at any time, including after a Securitization of a Mortgage

The decision whether to require repurchase or indemnification will be made by Freddie Mac. For purposes of this chapter, the term “interest in a Mortgage” will include an interest in the Real Estate Owned (REO) that previously secured the Mortgage (see Section 47.4).

Freddie Mac will not assign its indemnification rights under this section as part of any Securitization.

b. Remedies applicable to Delegated TAH Mortgages (09/28/18)

The capitalized terms in this chapter are defined in the Glossary or in each Seller/Service's Delegated TAH Master Agreement.

In any of the cases or events stated in Section 47.2, in addition to any other remedies it may have at law or in equity, for any Delegated TAH Mortgage it has purchased, Freddie Mac may require the Seller/Service of the Delegated TAH Mortgage to:

1. Correct the case or event stated in Section 47.2 within the period of time as specified by Freddie Mac,
2. Increase the Seller's share of Loss for any Mortgage that has given rise to the case or event stated in Section 47.2 from a Standard Loss to an Enhanced Loss as provided in the Seller/Service's Delegated TAH Master Agreement,
3. Terminate the Service's right to service any or all of the Mortgages and transfer all servicing responsibilities to another Service acceptable to Freddie Mac. In the event of such a termination, the Seller's right to the Risk Sharing Fee will not terminate; but any right to any future portion of the Servicing Fee will terminate. The Seller/Service must agree to cooperate fully in any such Transfer of Servicing,
4. To the extent that Freddie Mac has suffered loss, liability, damage or expense, submit an invoice to the Seller for such loss, liability, damage or expense and, if not paid within 10 Business Days after submission, draw upon the Letter of Credit or other security pursuant to the Seller/Service's Delegated TAH Master Agreement as to which any case or event stated in Section 47.2 relates,
5. Exercise any and all rights and remedies under any Guaranty as provided in the Seller/Service's Master Agreement,
6. Indemnify Freddie Mac and hold it harmless for any loss, damage, or expense (including court costs, costs of investigation and reasonable attorney fees) that Freddie Mac may sustain which may arise in connection with the Delegated TAH Mortgage or related documents, or
7. Repurchase Freddie Mac's interest in the Delegated TAH Mortgage at any time



For any case or event stated in Section 47.2 related to any representation or warranty set forth in Section 5.13, Freddie Mac may require the Seller to repurchase the Delegated TAH Mortgage only if the event results in material detriment to Freddie Mac.

The remedies provided in the Guide will be cumulative. The decision whether and which remedy to require or exercise will be made by Freddie Mac. For purposes of this chapter, the term “interest in a Mortgage” will include an interest in the Real Estate Owned (REO) that previously secured a Delegated TAH Mortgage.

47.2 Grounds for requiring repurchase or indemnification (05/01/14)

Freddie Mac may require repurchase or indemnification if the Seller or Servicer has done any of the following:

1. Not underwritten and/or documented a Mortgage in accordance with the requirements of the Purchase and Servicing Documents.
2. Not serviced a Mortgage in accordance with the requirements of the Purchase and Servicing Documents.
3. Breached any term of the Purchase and Servicing Documents.
4. Been unable to supply satisfactory evidence of compliance with the Purchase and Servicing Documents.
5. Made inaccurate warranties or representations under Chapter 5, as applicable, or in any Purchase and Servicing Document.
6. Breached any of the following representations and warranties, which breach results in Freddie Mac being required to repurchase the Mortgage under the applicable mortgage loan purchase agreement or the applicable pooling and servicing agreement, or under any other Purchase and Servicing Document:
 - For any Mortgage originated using Loan Documents with a revision date on or after March 1, 2014, the Seller/Servicer Representations and Warranties
 - For any CME Mortgage originated using Loan Documents with a revision date prior to March 1, 2014, the Seller’s Capital Markets Execution Representations and Warranties
7. Violated or failed to comply with any applicable law designed to protect the health and safety of the Property’s occupants (including failure to take any action available to the Seller or Servicer that would relieve the Mortgage holder from liability under such law or regulation).
8. Been involved in a conflict of interest as discussed in Section 36.18.
9. Failed to meet its obligations regarding the Freddie Mac Exclusionary List (see Section 2.18).
10. For Delegated TAH Mortgages, failed to pay a Loss Statement in accordance with the Seller/Servicer’s Delegated TAH Master Agreement.



11. For Delegated TAH Mortgages, filed a Bankruptcy Proceeding or failed to dismiss, within 90 days, an involuntary Bankruptcy proceeding brought against the Seller/Servicer by others.

If Freddie Mac reviews a Mortgage as described in Section 2.18 and subsequently elects to purchase the Mortgage, it will waive its right to seek repurchase of the Mortgage based on item 9 above. All other requirements of the Purchase and Servicing Documents relating to the sale of the Mortgage, however, will remain in full force and effect.

Subject only to the appeal provisions of Section 47.3, Freddie Mac's decision to require the Seller or Servicer to repurchase a Mortgage or indemnify Freddie Mac will be conclusive. The Seller or Servicer must repurchase Freddie Mac's interest in the identified Mortgage or indemnify Freddie Mac within 30 days of Freddie Mac's request. Failure to comply with Freddie Mac's repurchase or indemnification requirement may result in suspension or termination of selling and/or Servicing privileges or termination of Servicing. Suspension or termination will not limit Freddie Mac's right to take other action to enforce its rights or protect its interests.

47.3 Appealing a repurchase or indemnification request (04/30/19)

If a Seller or a Servicer has additional supporting information and/or documentation that may affect Freddie Mac's decision, one appeal may be filed either by the Seller (if the liability for representations and warranties has been retained by the Seller) or by the Servicer.

The appeal process is as follows:

1. Within 30 days from the date of Freddie Mac's letter requiring repurchase or indemnification, the Seller or the Servicer may submit a written appeal. If no written appeal is received within the 30-day period, the procedures in this section will be unavailable to the Seller or the Servicer for that particular repurchase or indemnification request.
2. An appeal of a multifamily Mortgage repurchase or indemnification request must be sent to Freddie Mac, Director, *Multifamily Asset Management, Asset Performance and Compliance*.
3. The appeal package must contain:
 - A statement of all relevant facts concerning the underwriting and/or the Servicing of the Mortgage
 - An explanation of why these facts were not disclosed in the file during the origination of the Mortgage
 - A statement of why Freddie Mac's decision should be reversed
 - Supporting documentation, if any
4. Freddie Mac will review all appeals and advise the Seller or the Servicer in writing of the appeal decision.
5. If the appeal is denied, the Seller or the Servicer must complete the repurchase of the Mortgage or indemnification of Freddie Mac within 15 days from the date of Freddie Mac's denial letter.
6. Freddie Mac's decision on the appeal is conclusive.

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47.4 Repurchase price and other expenses (05/01/14)

a. Repurchase price (05/01/14)

The repurchase price will equal Freddie Mac's repurchase price prescribed in the mortgage loan purchase agreement or applicable pooling and servicing agreement for the Securitization into which the Mortgage was placed.

If not prescribed in the applicable mortgage loan purchase agreement or the applicable pooling and servicing agreement, the repurchase price is calculated as follows:

1. For a Mortgage

The amount of Freddie Mac's interest in the unpaid principal balance (UPB) of the Mortgage, plus accrued interest at the Accounting Net Yield rate from the Due Date of the Last Paid Installment through the day before repurchase, plus any expenses reimbursed by Freddie Mac to the Servicer and any expenses incurred directly by Freddie Mac.

If the Servicer is obligated to advance installments not paid by the Borrower in a timely manner, Freddie Mac will credit against the repurchase price any such advances made by the Servicer.

2. For an REO Property

The amount of Freddie Mac's interest in the UPB of the Mortgage as of the acquisition date or the date of acceptance of a deed in lieu of foreclosure, plus accrued interest at the Accounting Net Yield rate from the Due Date of the Last Paid Installment through the day before repurchase, plus any expenses reimbursed by Freddie Mac to the Servicer and any expenses incurred by Freddie Mac in marketing the REO, minus any sale proceeds, and other proceeds or refunds remitted to Freddie Mac by or on behalf of the Servicer.

Rental proceeds remitted or due to Freddie Mac must not be deducted from the repurchase price.

b. Other expenses (12/05/03)

In the event of repurchase, the Seller/Servicer must pay all documentary stamp taxes, recording fees, transfer taxes and all other expenses payable in connection with the transfer of the Mortgage to the Seller/Servicer.

At Freddie Mac's discretion, the repurchase price will include an amount equal to any loss, damage or expense, including court costs, costs of investigation and reasonable attorney fees, incurred by Freddie Mac in connection with its purchase, ownership and resale to the Seller of Freddie Mac's interest in the Mortgage.

47.5 Repurchases requested by the Seller (10/07/02)

In general, Freddie Mac does not permit the Seller/Servicer to repurchase a Mortgage voluntarily. Under exceptional circumstances, however, the Seller/Servicer may be allowed to do so. Freddie Mac will review individually each request to repurchase made by a Seller/Servicer. Each repurchase must



have Freddie Mac's prior written approval and be supported by appropriate documentation in the applicable Mortgage File.

47.6 Reporting of repurchases (10/07/02)

A repurchase is not completed until the Seller/Servicer has satisfied the remittance and reporting requirements of Chapters 53 and 54.

47.7 Interest reimbursement fee (10/07/02)

If the Seller/Servicer fails to remit repurchase proceeds within the time frame specified, Freddie Mac will charge the Seller/Servicer an interest reimbursement fee as provided in Section 53.11.

47.8 Indemnification (05/01/14)

Freddie Mac may require the Seller/Servicer to indemnify Freddie Mac and hold it harmless for any loss, damage or expense (including court costs, costs of investigation and reasonable attorney fees) that Freddie Mac may incur as a result of its purchase or ownership of a Mortgage. Freddie Mac will prepare an indemnification agreement setting forth the Seller/Servicer's indemnification obligations, which must be executed by the Seller/Servicer within 30 days following Freddie Mac's request.

Freddie Mac may, in its sole discretion, require the Seller/Servicer to secure its indemnification obligation by pledging certain collateral in an amount and in a manner acceptable to Freddie Mac. The indemnification agreement prepared by Freddie Mac and signed by the Seller/Servicer will:

- Prescribe the acceptable collateral
- Give Freddie Mac the power to determine the value of the collateral at any given time
- Permit Freddie Mac, if the value of the collateral falls below a specified level, to either
 - Require the Seller/Servicer to post additional collateral, or
 - Liquidate the existing collateral

If the Seller/Servicer fails to execute the required indemnification agreement within 30 days following Freddie Mac's request, the Seller/Servicer must repurchase the Mortgage for which Freddie Mac had required indemnification.

Any indemnification provided by the Seller/Servicer to Freddie Mac will not be deemed to run to the benefit of any other third parties in connection with any Securitization of a Mortgage.

47.9 Survival of Freddie Mac's remedies; misrepresentations by the Seller or Servicer (10/07/02)

Freddie Mac's decision to require or allow a repurchase in no way diminishes its right to pursue further action such as suspension or termination of Seller status or Servicing under the provisions of Chapter 4 and/or Chapter 48. Freddie Mac may also exercise these remedies when its inspection of the documentation of a voluntarily repurchased Mortgage reveals facts materially different from those for which Freddie Mac originally approved the repurchase.



47.10 Waivers by Seller/Servicer (10/07/02)

With respect to any Mortgage for which Freddie Mac has required a Seller/Servicer to repurchase Freddie Mac's interest in the Mortgage or indemnify Freddie Mac, the Seller/Servicer waives any right it may have to:

- Require Freddie Mac to mitigate damages, or
- Object to any of Freddie Mac's:
 - Loss mitigation efforts, or
 - Property management activities, or
 - REO disposition efforts

47.11 Risk sharing for Delegated TAH Mortgages (08/30/13)

The terms and conditions for risk sharing between the Seller/Servicer and Freddie Mac are memorialized in each Delegated TAH Master Agreement. Freddie Mac will manage loss mitigation activities while reporting the results of those efforts to the Seller/Servicer. The Seller/Servicer must continue to perform its customary Servicing responsibilities for any Delinquent Mortgages as outlined in Chapter 44.

Freddie Mac's and the Seller/Servicer's responsibilities are summarized below:

1. Freddie Mac will handle all loss mitigation and special Servicing for Delegated TAH Mortgages.
2. Each Delegated TAH Master Agreement will specify the Seller's share of Loss.
3. Freddie Mac will report to the Seller/Servicer periodically on the status of Freddie Mac's loss mitigation efforts and any amounts expended in that effort.
4. Freddie Mac expects that there will be ongoing dialogue between Freddie Mac and the Seller/Servicer concerning any loss mitigation efforts and that the Seller/Servicer will provide Servicing information and support as needed and requested by Freddie Mac.
5. Freddie Mac will prepare a Loss Statement detailing all costs incurred in resolving a default, including foreclosure and REO disposition or other loss mitigation strategy employed by Freddie Mac.
6. At the conclusion of the loss mitigation process, Freddie Mac will submit the Loss Statement to the Seller for reimbursement pursuant to the requirements of its Delegated TAH Master Agreement.