

# Multifamily Seller/Servicer Guide

## Chapter 6SBL

### SBL Legal Services for Mortgage Origination and Servicing

#### **6SBL.1 Freddie Mac reliance on Single Counsel (06/30/16)**

Although many decisions in connection with the structuring of an SBL Mortgage or a Transfer of Ownership or other Special Servicing Request for an SBL Mortgage may require Freddie Mac's approval, Freddie Mac, in making such decisions, may rely on the expertise of the Seller/Servicer and Single Counsel regarding legal matters.

#### **6SBL.2 Limited joint representation for origination, purchase, delivery and Servicing (06/30/16)**

Single Counsel will represent Freddie Mac and Seller/Servicers jointly in the origination, delivery and purchase of SBL Mortgages. Additionally, Single Counsel will jointly represent Freddie Mac and Seller/Servicers in servicing matters related to those SBL Mortgages prior to securitization by Freddie Mac. Freddie Mac and Seller/Servicer must agree as to Single Counsel. Freddie Mac, Seller/Servicer and Single Counsel must enter into a joint representation letter.

#### **6SBL.3 Single Counsel selection (06/30/16)**

Seller/Servicer may select Single Counsel from a list of Single Counsel that Freddie Mac will maintain. From the list, Seller may select which Single Counsel originates its SBL Loans so long as it informs Freddie Mac of its choice. Sellers must identify a Seller contact person for communications regarding Single Counsel.

Freddie Mac may remove a Single Counsel from the list at any time in its sole discretion.

#### **6SBL.4 Single Counsel legal fees (06/30/16)**

Each Seller/Servicer will determine the amount of legal fees to be paid to Single Counsel. Seller and Single Counsel must receive the Freddie Mac Multifamily Attorney's prior written permission before incurring any legal fees that Seller/Servicer would like Freddie Mac to pay for or to split with Seller.

#### **6SBL.5 Additional counsel (06/30/16)**

If Single Counsel is not licensed to practice law in the State in which the Property is located or lacks experience with the laws of that State, Single Counsel must have available local counsel who is both licensed and experienced in that State. The Seller/Servicer or Single Counsel must consult with that local counsel as necessary to satisfy each of the following requirements:

- In accordance with Section 6SBL.7 or Section 6SBL.8, identify for Freddie Mac any legal issues affecting the proposed SBL Mortgage that arise under the laws of that State

- Respond in accordance with Section 6SBL.9 to any questions Freddie Mac might have about those issues

The Seller/Servicer and Single Counsel, unless instructed otherwise, need not seek confirmation from local counsel that the SBL Loan Documents (as they appear on FreddieMac.com) are enforceable under the laws of that State, but must consult local counsel to satisfy each of the following requirements:

- In accordance with Section 6SBL.10, determine whether enforceability will be affected adversely by any negotiated changes to the SBL Loan Documents or by the structure of the Borrower or the transaction
- Identify whether, since the issue date of each SBL Loan Document, the law of that State has changed in a way that would adversely affect enforceability of that document

If Single Counsel lacks expertise regarding special features of the transaction, Single Counsel must have available special counsel who has the necessary expertise. The Seller/Servicer and Single Counsel must consult that special counsel as necessary to satisfy each of the following requirements:

- Identify for Freddie Mac (in accordance with Section 6SBL.7 or Section 6SBL.8) any legal issues affecting the proposed SBL Mortgage that arise from those features of the transaction
- Respond in accordance with Section 6SBL.9 to any questions Freddie Mac may have about those issues

Both the Seller/Servicer and Single Counsel may use paralegals to perform appropriate tasks if the paralegals are supervised by an experienced attorney and their written work product is reviewed by that attorney before being submitted to Freddie Mac. An attorney, rather than a paralegal, must conduct the legal aspects of any negotiations with a Borrower regarding transaction structure or the content of documents.

## **6SBL.6 Availability of Single Counsel (10/12/17)**

For each SBL Mortgage that it sells to Freddie Mac, the Seller/Servicer must have Single Counsel available at all times. This availability must continue from and after the commencement of consideration of the proposed transaction (including before Freddie Mac's issuance of a Letter of Commitment). Freddie Mac may need Single Counsel to assist Freddie Mac with the structuring and negotiation of the proposed transaction. Among other things, Single Counsel must be available to satisfy each of the following requirements:

- Participate in discussions about the proposed structure of the Borrower or transferee and of the transaction
- Identify legal issues presented by nonstandard features of the proposed transaction (see Sections 6SBL.7 and 6SBL.8)
- Respond to Freddie Mac's questions concerning legal issues (see Section 6SBL.9)

- Provide analysis of certain legal documents affecting the Property (see Section 6SBL.10), if requested
- Participate in and assist Freddie Mac with any negotiations with the Borrower or transferee (see Section 6SBL.11)

### **6SBL.7 Preliminary legal analysis and preliminary legal issues memorandum (PLIM) (10/12/17)**

Based on the information available to the Seller/Servicer and Single Counsel, Single Counsel must perform a legal analysis of all legal risks or issues presented by the characteristics of a proposed transaction (“nonstandard features or provisions”), including issues that arise under the laws of the State in which the Property is located.

Single Counsel must bring to Freddie Mac’s attention all of the following nonstandard features or provisions (also known as a “transaction legal issue”), along with the potential impact of each on the proposed or existing SBL Mortgage and any associated risks to Freddie Mac:

1. Those that are not contemplated by the Guide, or, for a Transfer of Ownership or other Special Servicing Request, were not contemplated by the original SBL Loan Documents, and that, unless addressed in the transaction structure or in the legal documents could result in any of the following:
  - Materially limit document enforceability.
  - Materially impede foreclosure.
  - Following foreclosure, result in title to the Property being subject to encumbrances or interests that would materially impede the sale of the Property or would materially reduce the sale price.
  - Materially increase the risks that would result from the Borrower or a guarantor becoming the subject of a bankruptcy or insolvency proceeding.
2. Those that:
  - Do not satisfy the requirements of Freddie Mac, are not generally accepted by Ratings Agencies or would be likely to negatively impact the ratings of any certificates, notes or other securities to be issued in connection with securitization.
  - Could result in an Exception to the SBL Seller/Servicer Representations and Warranties.
3. For a Transfer of Ownership or other Special Servicing Request, any nonstandard features or provisions that materially change management or control of the Borrower.

A preliminary legal issues memorandum (PLIM) detailing the transaction legal issues is only required to be delivered to Freddie Mac (i) for Transfers of Ownership, (ii) certain other Special Servicing Requests as specified in the applicable provisions of this Guide, or (iii) when otherwise requested by Freddie Mac. For Transfers of Ownership or other Special Servicing

Requests, the PLIM must be prepared using the most current applicable version of the Preliminary Legal Issues Memorandum Form – Servicing available on FreddieMac.com.

To assist Single Counsel, a list of examples of transaction legal issues is available on FreddieMac.com and as part of the Preliminary Legal Issues Memorandum Form – Servicing.

**a. Reserved (06/30/16)**

**b. Reserved (06/30/16)**

**c. Disclosure of information by Seller/Servicer (06/30/16)**

The Seller/Servicer must provide Single Counsel with all pertinent information about the proposed transaction then in the possession of the Seller/Servicer in order to enable Single Counsel to consider such issues and, if required, to prepare the PLIM.

**d. Delivery of the PLIM to Freddie Mac (when requested) (06/30/16)**

When Freddie Mac requests a PLIM on a particular transaction legal issue, the Seller/Servicer or Single Counsel must do each of the following:

- Identify the transaction legal issue being addressed by the PLIM with specificity
- Deliver the PLIM electronically to DMS
- Email the PLIM to the Small Balance Loan Team and applicable Freddie Mac Multifamily Attorney
- Include the PLIM in the underwriting package and in the Final Delivery Package

**e. PLIM for Servicing requests (06/30/16)**

If the application is for the approval of a Transfer of Ownership or other Special Servicing Request, the PLIM must include all of the information required by the most current version of the Preliminary Legal Issues Memorandum Form – Servicing available on FreddieMac.com.

**f. Freddie Mac request for additional analysis or information (06/30/16)**

After considering Single Counsel's recommendations, Freddie Mac may request that Single Counsel provide further information or analysis (in writing, if required) with regard to any of the identified transaction legal issues.

**g. PLIM not a legal opinion (06/30/16)**

Freddie Mac does not consider the PLIM to be a legal opinion.

**h. Title and UCC matters (06/30/16)**

A title search and Uniform Commercial Code (UCC) search are not required to be completed before the PLIM is prepared, but Single Counsel must identify any transaction legal issues arising from title or UCC matters of which the Seller/Servicer or Single Counsel have actual knowledge at that time.

**i. Reserved (06/30/16)**

**j. Reserved (05/05/17)**

**k. Reserved (06/30/16)**

**l. Notices to third parties of origination of SBL Mortgage and assignment to Freddie Mac (06/30/16)**

Single Counsel must analyze whether, upon the origination of the SBL Mortgage by Seller and/or the subsequent assignment of the SBL Mortgage to Freddie Mac and/or the subsequent assignment of the SBL Mortgage to a subsequent party in connection with a Securitization, written notice to a third party under any document, instrument or agreement, recorded or unrecorded, affecting the Property would be required and/or generally advisable, including for the purpose of entitling the Seller and/or Freddie Mac and/or such subsequent party, each in its capacity as a mortgagee of the Property, to any legal rights under such documents, instruments or agreements. Examples of such documents that Single Counsel must review to make this determination include ground leases, commercial leases, condominium declarations, reciprocal easement agreements, shared use agreements, homeowners' association documents, subordinate loan documents, and HAP contracts.

**6SBL.8 Identification of legal issues as they arise (06/30/16)**

If, during work on a proposed SBL Mortgage or Transfer of Ownership or other Special Servicing Request, Single Counsel becomes aware of any transaction legal issues that have not previously been identified to Freddie Mac, Single Counsel must identify such issues to Freddie Mac and briefly describe the possible impact of each such issue on the proposed transaction.

Freddie Mac may request that Single Counsel provide further information or analysis with regard to any such additional transaction legal issue.

**6SBL.9 Freddie Mac legal questions (06/30/16)**

Single Counsel must provide any additional information that Freddie Mac may request regarding any transaction legal issue, the substance of the law that applies to the proposed transaction, the practical results of applying that law or alternatives for mitigating risks arising from that law.

## 6SBL.10 Document analysis by Single Counsel (10/12/17)

If the Guide, the Letter of Commitment, the Approval Letter for a Transfer of Ownership or other Special Servicing Request requires that Freddie Mac approve a legal document affecting the Property, the Borrower or the SBL Mortgage, or if Freddie Mac requests further written information about or analysis of a document, then the Seller/Servicer or Single Counsel must submit such a document to Freddie Mac.

Delivery of a document to Freddie Mac does not relieve the Seller/Servicer of its obligation to provide a document analysis or of its responsibility for the accuracy of any such analysis.

Single Counsel must review the document and bring to the attention of Freddie Mac the following:

- Whether the document contains any provisions that do not satisfy the general requirements of Freddie Mac, are not generally accepted by Rating Agencies, or would be likely to negatively impact the ratings of any certificates, notes or other securities to be issued in connection with a securitization
- Any provision that would result in an Exception to the SBL Seller/Servicer Representations and Warranties and provide a proposed Exception to be set forth in the Letter of Commitment
- The parties to the document (and their relationship to the Borrower, where applicable)
- A summary of the document in enough detail that Freddie Mac need not read the document itself
- If the document departs from local law, generally accepted local practice or any applicable standards in the Guide
- The advantages and disadvantages of approving the document
- Options for mitigating any such disadvantages

Single Counsel must provide Freddie Mac with the degree of detail that a prudent mortgage lender originating the SBL Mortgage for its own portfolio would need in order to make an informed decision about the document. Based on the information that Single Counsel brings to Freddie Mac's attention, Freddie Mac will determine whether or not Single Counsel must deliver a written analysis with respect to the document or one or more issues in connection with the document. If a document contains provisions that are either so important or so difficult to analyze that Single Counsel believes Freddie Mac's attorneys should read those provisions themselves, rather than rely solely on the analysis, Single Counsel must provide a written analysis that identifies such provisions and their significance. If a written analysis is required under this Section 6SBL.10, Single Counsel must send the document and the analysis to the applicable Freddie Mac Multifamily Attorney.

If a written analysis is required to be delivered to a Freddie Mac Multifamily Attorney, Single Counsel may prepare each document analysis on the assumption that the individuals reading and relying upon it will be Freddie Mac's attorneys; and, therefore, the document analysis need

not be written in a manner that would be understandable by non-attorneys. A document analysis may omit analysis of sections that have no relevance to the Property or the proposed transaction if the document analysis identifies the applicable sections and notes why they have no application. For example, an analysis of restrictive covenants for a planned unit development in which a property is located might note that specified sections of the document contain architectural restrictions applicable only to single family homes and omit any analysis of those inapplicable restrictions.

Documents for which Freddie Mac may require written document analysis include

- Ground leases (See Chapter 30 for the required format of ground lease documentation.)
- Subordinate Financing documents
- Preferred equity structures
- Merger agreements
- Any other document for which Freddie Mac requests an analysis

No written document analysis is required for

- An SBL Loan Document
- A title insurance commitment or policy
- A document affecting title that falls within one of the safe harbors stated in Section 29SBL.2, unless Freddie Mac specifically requests such an analysis

Each document analysis required pursuant to this section must be updated to include all information later conveyed to Freddie Mac and all written analyses must be included in the SBL Final Delivery Package along with copies of the documents that are analyzed.

### **6SBL.11 Negotiation of legal documents (06/30/16)**

In general, the SBL Purchase Product is not intended to accommodate negotiations of the SBL Loan Documents. For any SBL Mortgage, if the Borrower requests permission to make one or more changes in an SBL Loan Document (including an Assumption Agreement), the Seller/Servicer and Single Counsel must

- Identify the advantages and disadvantages of granting each request
- Identify options for mitigating any such disadvantages
- Explain any feature of local law from which the need for a change arises or that has a material impact on a requested change
- Identify and explain whether such change generally satisfies the requirements of Freddie Mac, is generally accepted by the Ratings Agencies or would be likely to negatively impact

- the ratings of any certificates, notes or other securities to be issued in connection with a securitization
- Identify any change that would result in an Exception to the SBL Seller/Servicer Representations and Warranties and provide the wording of the proposed Exception to be set forth in the Letter of Commitment

Freddie Mac may charge a fee to the Seller/Servicer for any legal work its attorneys must perform in responding to such requests. The Seller/Servicer may require that the Borrower reimburse it for any such fee.

## **6SBL.12 Reserved (06/30/16)**

## **6SBL.13 SBL Mortgages purchased by Freddie Mac**

### **a. Attorney review requirements (06/30/16)**

In connection with each SBL Mortgage submitted to Freddie Mac for purchase, Single Counsel must

- Perform the tasks and provide the assistance described in this chapter, and
- Prepare and/or review all legal documents.

### **b. Documents to be reviewed (06/27/19)**

The documents that Single Counsel must review or prepare include the following items, as applicable, together with all applicable exhibits, attachments and amendments:

1. Note
2. Security Instrument
3. Guaranty
4. Loan Agreement
5. Financing statements
6. Any other legal document required by the Letter of Commitment or executed in connection with the loan
7. Title insurance commitment and/or policy
8. Documents cited as exceptions in Schedule B of the title insurance commitment and/or policy
9. Organizational documents of each entity identified in Section 9SBL.7

10. If required by the Commitment, opinion of the Borrower's and/or guarantor's legal counsel

The Servicer must not obtain an Assignment of Management Agreement and Subordination of Management Fees for loans purchased under the Freddie Mac Small Balance Loan Program.

## **6SBL.14 Transfers of Ownership (06/30/16)**

### **a. Attorney review requirements**

In connection with any Transfer of Ownership or other Special Servicing Request, Single Counsel must do each of the following:

- Perform the tasks and provide the assistance described in Sections 6SBL.6 through 6SBL.11.
- Prepare and/or review all legal documents in connection with the proposed Transfer of Ownership or other Special Servicing Request in accordance with the approval letter.

### **b. Documents to be reviewed (06/27/19)**

The documents that Single Counsel must review or prepare include the following items, as applicable, together with all applicable exhibits, attachments and amendments:

1. Freddie Mac's standard Assumption Agreement for SBL Mortgages (for a Transfer of Ownership involving a change in ownership of the Property)
2. Guaranty
3. Easement Agreement
4. Partial Release Agreement
5. Any other legal document required by the Approval Letter issued in connection with the transaction
6. Title insurance commitment and/or policy
7. Organizational documents of each entity specified in Section 9SBL.7
8. If required by the Approval Letter, opinion of the new Borrower's and/or new guarantor's legal counsel
9. Subordination Agreement
10. Purchase Contract
11. Deed

12. Affirmation by Borrower or guarantor

The Servicer must not obtain an Assignment of Management Agreement and Subordination of Management Fees for loans purchased under the Freddie Mac Small Balance Loan Program.

**c. Scope of Servicer and Single Counsel review (06/30/16)**

The Servicer and Single Counsel must ensure that

- They have reviewed the documents in detail
- The documents fully reflect all terms of Freddie Mac's approval and do not otherwise change any of the terms of the SBL Mortgage
- All statements set forth in the documents are accurate
- The documents comply with all applicable federal, State and local laws

**d. Payment of Single Counsel fees (06/30/16)**

To the extent that the Loan Documents obligate the Borrower to reimburse the lender for legal fees or expenses in connection with the servicing or enforcement of the SBL Mortgage, the Servicer must require that the Borrower reimburse it for the fees and expenses of Single Counsel unless Freddie Mac waives any portion of the fees or expenses.

**6SBL.15 Reserved (06/30/16)**