



*A Division of Ohio Bar Title Insurance Company
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TITLE ALERT

Title Alert 2012-18

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Fannie Mae & Freddie Mac Short Sale/ FHFA II Requirements

**Re-publication of Home Office Underwriting Communication authored by Kenneth R. Jannen & Justin Lischak Earley

Purpose:

To communicate an underwriting standard relating to revised Fannie Mae and Freddie Mac short sale guidelines, effective November 1, 2012.

Background:

On July 3, 2012, the Federal Housing Finance Agency ("FHFA") issued its Directive to Fannie Mae and Freddie Mac to develop and implement consistent policies to simplify and streamline the short sale process. In response, Freddie Mac modified provisions of Chapter B65 of its Single Family Seller/ Servicer Guide, and Fannie Mae modified provisions of its Servicing Guide.

These changes were announced by Freddie Mac in its Bulletin No. 2012-16 on August 21, 2012 and by Fannie Mae in its Servicing Guide Announcement SVC-2012-19 on August 22, 2012.[i]

To quote the FHFA's announcement of August 21:

The new guidelines, which go into effect Nov. 1, 2012, will permit a homeowner with a Fannie Mae or Freddie Mac mortgage to sell their home in a short sale even if they are current on their mortgage if they have an eligible hardship. Servicers will be able to expedite processing a short sale for borrowers with hardships such as death of a borrower or co-borrower, divorce, disability, or relocation for a job without any additional approval from Fannie Mae or Freddie Mac.[ii]

[i] <http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1216.pdf>
<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2012/svc1219.pdf>
[ii] <http://www.fhfa.gov/webfiles/24211/Shortsales82112Final.pdf>

The new Freddie Mac guidelines may be found at Sections B65.35 through B65.41 of the Freddie Mac Seller/Servicer Guide at <http://www.freddiemac.com/sell/guide/> (click on "All Regs" under "**Access The Guide**").

For Fannie Mae, only the aforementioned Announcement sets forth the new requirements, as the Fannie Mae Servicing Guide has not been modified at the time of issuance of this Standard. However, for your reference, the Fannie Mae Servicing Guide can be found at <https://www.efanniemae.com/sf/guides/ssg/svcgpdf.jsp>

Re-Sale Deed Restriction:

Section B65.40 (i) of the Freddie Mac Seller/Servicer Guide mandates a "Re-sale deed restriction" as follows:

Grantee herein is prohibited from conveying captioned property for any sales price for a period of 30 days from the date of this deed. After this 30 day period, Grantee is further prohibited from conveying the property for a sales price greater than \$ [120% of short sale price] until 90 days from the date of this deed. These restrictions shall run with the land and are not personal to the Grantee.

The guideline further provides that the foregoing language may be amended as necessary to comply with applicable law.

Fannie Mae mandates a re-sale deed restriction identical to that of Freddie Mac.

Post-Closing Servicer Validation Requirements:

Note that both the Fannie Mae and Freddie Mac guidelines require that the servicer review the HUD-1 settlement statement and the deed post-closing (Freddie Mac within five business days; and Fannie Mae within 48 hours) to validate compliance with the Freddie Mac and Fannie Mae guidelines and the servicer's approval instructions, including that "the deed has been recorded in the name of the buyer" and contains the re-sale restriction language.

Freddie Mac's and Fannie Mae's legal departments have explained that it is not Freddie Mac's nor Fannie Mae's intention to require that the deed be recorded within the five business day/48 hour period.

The requirements pertain to the need for the servicer to verify that the HUD-1 information is consistent with the purchase contract, the preliminary HUD-1 and the closing instructions, and that the deed is to the grantee named in the purchase contract and includes the re-sale restriction. Fannie Mae indicated that it will address this issue in "FAQ's" currently being developed.

Also, note that there is a requirement for review of a preliminary HUD-1 pre-closing and that both Freddie Mac and Fannie Mae's guidelines provide limitations on payments to and requirements relating to waivers of deficiency judgments by subordinate lien holders. Pay close attention to the servicer's closing instructions and seek help when confronted with conflicts or ambiguities.

Title Practice:

If your title search and examination discloses such a re-sale deed restriction, in the chain of title, **or the current transaction**, you should specifically report this as a matter that affects title. The Schedule B exception will be formulated accordingly, for example:

Deed restriction, prohibiting certain subsequent resale transactions for up to 90 days, contained in the deed made by _____ to _____, dated _____.

In instances where the loan policy to be issued to the new lender is on a short form product, the "Addendum" box will be checked and an Addendum with the exception will be attached to the policy.

If you have any questions, please feel free to contact us.

Note: Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Advisory is being provided to you with those considerations in mind.

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