



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 20, 2012

Mortgagee Letter 2012-11

To **All FHA-Approved Mortgagees, Single Family Servicing Managers**

Subject **Clarification Regarding Title Approval at Conveyance**

Purpose The purpose of this Mortgagee Letter is to provide changes relating to title approval at conveyance. Title approval issues include:

- Unpaid Taxes;
- Condominium (Condo)/Homeowners' Association (HOA) Fees;
- Unpaid Utility Bills; and
- Manufactured Housing Titles.

Effective Date All requirements and changes are effective on August 1, 2012.

Affected Policy The policies set forth in this Mortgagee Letter supersede those portions of Mortgagee Letter 2002-19, *Clarification Regarding Title Approval Issues, Property Condition at Conveyance, Administrative Offsets and a New Process for Lender Appeal of Conveyance Issues*, regarding unpaid taxes, condominium/HOA fees, unpaid utility bill, and manufactured housing home title issues. All other requirements of Mortgagee Letter 2002-19 remain in effect.

Mortgagees Must Pay All Taxes Prior to Conveyance Because taxes are generally paid in arrears, they effectively constitute a lien on a property even when they are not yet due and payable. In some states, unpaid taxes are given priority over first mortgages of record, so mortgagees must request and pay all available tax bills prior to conveyance. Upon conveyance of good marketable title to the property to HUD, the mortgagee must:

- Certify that all taxes are paid as of the date of conveyance;
- Document such payment and identify the most recent period for which taxes were paid in the Mortgagee Comments section of Form HUD-27011 Part A; and
- Provide any documentation, such as a paid receipt, that is necessary to verify that such payment was made.

Mortgagees are reminded that in accordance with 24 CFR § 203.365 they must also retain invoices and paid bill receipts in the claim file and provide hard copies to HUD within 24 hours, if so requested.

Because the payment of taxes is the responsibility of the mortgagee, HUD will not reimburse late fees and/or interest penalties charged by the taxing jurisdiction for the late payment of taxes.

Additionally, mortgagees are on notice that failure to pay taxes when due is a violation of HUD requirements. The National Servicing Center will track and monitor reported violations and refer lenders who exhibit a pattern of non-compliance to the Office of Lender Activities for appropriate action including possible referral to the Mortgagee Review Board.

**Reconveyance
for Unpaid/
Outstanding
Taxes**

Where taxes, late fees and/or interest penalties are owed to the taxing jurisdiction when a property is conveyed to HUD, FHA may:

- Reconvey the property (if doing so is in the best interest of HUD), and
- Require the mortgagee to pay the unpaid taxes before resubmitting its claim for insurance benefits, including any deductions as a result of the delayed conveyance.

FHA may also reconvey a property if the mortgagee fails to properly document payment of such items on Form HUD-27011 Part A as provided above.

**Mortgagees
Must Pay HOA
Fees Prior to
Conveyance**

At this time, condominium and homeowners' association fees are not required escrow items for FHA-insured single-family mortgages. Therefore, payment of these fees as they become due is the mortgagor's responsibility. When a mortgagor defaults and a foreclosure action is necessary, the mortgagee must:

- Name and properly serve the condo/HOA in the foreclosure proceedings in order to eliminate or minimize HUD's responsibility for unpaid condo/HOA fees; and
- Upon completion of a foreclosure sale, notify the condo/HOA of the mortgagee's interest in the property and, prior to conveyance to HUD, pay condo/HOA assessments not extinguished by the foreclosure.

Further, mortgagees must take any action necessary to protect HUD's interest when foreclosure actions are brought by a condo/HOA on a property securing an FHA-insured mortgage.

In addition, mortgagees must ensure that any pre-foreclosure condo/HOA fees/liens are removed from the property prior to conveyance to HUD.

If the mortgaged property is in a jurisdiction where pre-foreclosure unpaid Condo/HOA fees...	Then the mortgagee must ensure that...
Survive the foreclosure	Such fees/liens are either paid or removed from the property.
Are extinguished by foreclosure	Any pre-foreclosure Condo/HOA fees/liens that the Condo/HOA claims are due are resolved.

HUD will reimburse mortgagees 100 percent of payments of Condo/HOA fees incurred between the date of foreclosure and the date of transfer of title to HUD. Mortgagees may also claim reimbursement for penalties, interest, and other related fees and charges incurred by the former mortgagor and paid by the mortgagee. However, HUD will not reimburse any penalties, interest and/or late fees incurred after the foreclosure sale.

Reconveyance for Unpaid HOA Fees

All final bills, lien payments and/or removal of pre-foreclosure liens for Condo/HOA fees must be documented in the Mortgagee Comments section of Form HUD-27011 Part A, and the mortgagee must provide such documentation necessary to verify that these payments were due and paid by the mortgagee.

In addition, if applicable, the mortgagee must document any common area access requirements needed to gain access to the FHA-insured property. Absent this information on Form HUD-27011 Part A, FHA may reconvey the property.

Mortgagees Must Pay All Unpaid Water, Sewer, or Other Assessments

Mortgagees must research and pay water, sewer, and other assessments against the property securing an FHA-insured mortgage prior to the conveyance of the property to HUD. All final bills and/or lien payments for water/sewer/utility or other assessments must be documented in the Mortgagee Comments section of Form HUD-27011 Part A, and the mortgagee must provide such documentation necessary to verify that these payments were due and paid by the mortgagee. Absent this information on Form HUD-27011 Part A, FHA may re-convey the property.

However, where a contract for sale has been consummated, upon receipt of a work order from the Asset Manager (AM) or Government Technical Representative (GTR) the Mortgagee Compliance Manager (MCM) shall:

- Issue a Notice of Non-compliance, and
- Demand payment from the mortgagee in an amount sufficient to satisfy any lien or encumbrances, including penalties and interest, which prevent or delay a sale.

**Title Evidence
for
Manufactured
Housing**

Conveyance problems occur when a manufactured home has not been included in the title to the land and is therefore not being taxed as real estate. If the manufactured home title issued by the jurisdictional Department of Motor Vehicles has not been purged or surrendered by the mortgagor, subsequent owners of the property might find that they have title to the land but not to its improvements (*i.e.*, the manufactured home).

HUD requires additional documentation in the title evidence for all manufactured homes. Specifically, there must be evidence that:

- The manufactured home is attached to the land,
- The manufactured home is classified and taxed as real estate, and
- In accordance with the jurisdictional requirements, the manufactured home title has been surrendered or purged.

Such evidence must be documented in the Mortgage Comments section of Form HUD-27011 Part A. Title evidence that is insufficient to convey title to both the manufactured home and the land may be rejected by FHA, if doing so is in HUD's best interest.

Mortgagees should seek the advice of their legal counsel whenever a manufactured home is securing an FHA-insured loan and is being foreclosed upon, as there may be additional requirements that must be met in properly conducting the foreclosure.

Questions

Any questions regarding this Mortgagee Letter may be directed to James McGee, (202) 402-2287. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339.

Signature

Carol J. Galante
Acting Assistant Secretary for Housing-Federal Housing Commissioner

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