company says, for single-family mortgages (including condos) serviced by Fannie Mae lenders in areas affected by the floods. Holders of Fannie Mae mortgage securities will be paid as usual during the relief period.

Mortgage lenders doing business with Fannie Mae will, according to Fannie's guidelines, determine appropriate relief steps by considering any uninsured losses, extended unemployment and extraordinary expenses related to the floods that affect mortgage payments.

GINNIE MAE

Changes For Multifamily

Under existing reimbursement procedures, Ginnie Mae reimburses issuers 85% of the excess, if any, of the interest paid to security holders after a loan defaults, less the net interest paid to the issuer by FHA, and for the fee to assign the mortgage to FHA.

The claim for reimbursement procedures require issuers to elect to receive cash insurance benefits for a mortgage insurance claim if FHA provides an option to choose either cash or debenture settlement. If the issuer elects to receive settlement of insurance benefits in debentures, the issuer must tender the debentures to Ginnie Mae, which will purchase the debentures, as they are received by the issuer, for cash at a price of par.

Effective for reimbursement claims submitted on or after Dec. 1, 2003, Ginnie Mae says it will not reimburse an issuer for the 1% FHA mortgage assignment fee and the 85% excess of the interest paid to the security holders after a loan defaults if the issuer elects to receive its FHA mortgage insurance claim in the form of debentures.

For reimbursement claims submitted prior to Dec. 1, 2003, where FHA insurance benefits have been paid in the form of debentures, the issuer must comply with Mortgage-Backed Securities Guide 5500.3, REV-1, Section 31-5(D)(4) to transfer the debentures to Ginnie Mae, as a condition for Ginnie Mae to reimburse the issuer pursuant to Section 31-15(3)(a) and (b). SM

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FORECLOSURE

Still Confusion With The Letter

The 30-day breach letter hurts lenders and servicers as it is, and the pain is only exacerbated by sending unnecessary, successive notices.

BY BRUCE J. BERGMAN

Although it will be highlighted in a moment, the obligation imposed by many mortgage forms upon a lender or servicer to send a 30-day cure (or breach) letter as a prerequisite to acceleration and foreclosure is a regular source of delay, cost and damage.

As unfortunate as this is, a new layer of delay and confusion has lately emerged involving the possible necessity to send successive breach letters. In fact, it appears that some servicers are doing just that, which assures yet further delay in the mortgage collection and foreclosure process.

Why successive breach letters can and should be avoided is the focus here.

But first, perspective can be enhanced by recapping some of the mischief caused by the necessity to send even one breach letter. Here are but a few of the immediate problems with the breach letter requirement:

- It automatically adds 30 days to

the process, even though sending the letter would otherwise be wholly unnecessary. (Of course, that translates into 30 days of interest accrual.)

■ It presents an excuse to too many defaulting borrowers to interpose an answer in a foreclosure action, claiming that the cure letter was never sent.

■ It affords a dilatory borrower the chance to put in an answer claiming that while the letter may have been sent, it did not contain the required language.

■ Particularly in judicial foreclosure states, the use of these "defenses" has the potential to add many months to the case. Sometimes there may even be merit to the arguments, and that could - and does - defeat the foreclosure.

■ Where the borrower has died (and in instances where there is only one borrower), there is obvious futility in sending the letter, but it wastes 30 days nonetheless.

■ Where a borrower has already revealed a complete inability to cure a default, such as when a job is lost, savings have been exhausted and no friends or family are available to help, the cure letter will be useless in any event.

■ If a forbearance agreement is entered into, it raises an issue of what happens when a borrower defaults under that agreement. Must there be a re-breach?

■ When a borrower claims never to have received a cure letter, the burden shifts to a lender or servicer to actually prove its mailing - something which can be very difficult to do without well-honed procedures. Even a skilled servicer could simply make a mistake, and the letter might not be sent.

■ There is confusion in the realm of a balloon mortgage or a mortgage which has matured by the passage of time. Must a 30-day cure letter be sent as a prerequisite? The standard clause needs some fancy interpreting to reach a conclusion in this regard. (Skilled foreclosure lawyers might believe that the standard provision does not require a breach letter when a mortgage has matured, but who would dare take the chance?)

Partial payment

In addition to all the recited detriments, there is a question being asked in servicing circles about having to send a new breach letter when some partial payment is received after the initial letter is sent.

Here is an example of the scenario which is puzzling some servicers. Suppose the monthly mortgage payment is $1,000, and the borrower is three months in arrears. Having concluded that affirmative action is necessary, the servicer sends a 30-day cure letter. The borrower responds in 20 days by sending $2,000.

The question then asked is, should the servicer wait for the original 30 days to expire before sending a new cure letter, or should it immediately send a new cure letter?

An alternative scenario proposed is that 10 days after the cure letter is sent, the borrower remits all the arrears by check, but the check bounces. Again, it is asked, should the lender send the new cure letter immediately or await conclusion of the first 30 days?

A good argument can be made that neither question should even be asked - and here is why. When the borrower sent $2,000 (with $3,000 due), the proper inquiry is: Was the default cured? The answer is no, it was not cured. If there were no further remittances from borrower to servicer by expiration of the 30-day period, the borrower remained in default - a lesser level of default to be sure, but default nevertheless.

So why send a new cure letter at all? It is really the same as if the borrower had completely ignored the breach letter. (And in that case, the servicer would have proceeded to accelerate and foreclose.)

The point is the same in the bounced check scenario. When the check was returned for insufficient funds, it rendered the check void as a tender. It is the same as if no money was ever sent, the equivalent of the borrower ignoring the breach letter. So again, there is no reason to send a new cure letter.

That sending successive cure letters should be avoided becomes even more apparent when contemplating this possible scheme. The borrower gets a cure letter requiring payment of $3,000 in arrears. In response, the borrower sends $500.

The servicer waits until the end of the 30-day period and sends a new cure letter. Another month is now due, so the sum in arrears is $4,000, less the $500 previously paid, for a net due of $3,500. The borrower responds with a payment of $250.

The servicer waits 30 days and sends yet another cure letter, and on and on, ad infinitum. Acceleration and foreclosure is therefore postponed forever - not a proper way to address the default.

Ultimately, servicers may wish to revisit the breach letter provision of the mortgage, which is the source of all this agitation. In essence, that clause provides that when a borrower is in default, that borrower needs to be given notice of the default and an opportunity to cure within the time provided (typically 30 days).

Either they cure or they do not. The provision does not say that a partial cure necessitates a new notice.

For all the reasons mentioned here (and some others), imposition of the 30-day breach letter requirement hurts lenders and servicers. Food for thought is that the delay, detriment and damage of the breach letter mandate should not be extended and exacerbated by self-imposing a custom of sending successive cure letters. It isn't necessary. SM

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