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December 2, 2015

Via Regular Mail and Email

David Greene
Associate General Counsel, Legal Department
Fannie Mae
One South Wacker Drive, Suite 1400
Chicago, IL 60606-4667

Re: City of Milwaukee Meeting; Fannie Mae Servicing Guidelines; Escalation; Direction

Dear Mr. Greene:

Thank you very much for meeting with Assistant City Attorney Gregg Hagopian and Deputy City Attorney Adam Stephens in Chicago on November 16, 2015 to discuss Fannie Mae's Servicing Guidelines (the "Guidelines"), mortgage workouts, mortgage foreclosures, and concern that the City of Milwaukee shares with Fannie Mae and with other cities in the United States regarding stalled/ zombie mortgage-foreclosure actions, and the blight that those actions create¹.

Escalation.

Please consider this an "escalation" under the Guidelines².

Common Goals Embodied in Guidelines.

Fannie Mae and the City of Milwaukee share common goals, which goals are embodied in, and required by, the Guidelines, including:

- attempting to have borrower-owners resolve mortgage defaults, if possible, to avoid mortgage foreclosure so owners can stay in their homes³



- if mortgage-foreclosure is unavoidable (i.e. if there are no “allowable delays” like bankruptcy, loan modification, military deployment, probate issues, etc.⁴), ensuring speedy foreclosure litigation, that results in actual finality of the litigation (i.e. a sheriff’s deed issued to the foreclosure-sale buyer or the Court’s dismissal of the case), so that the parcel doesn’t linger in limbo in the foreclosure litigation⁵
- ensuring regular inspections of parcels prior to foreclosure and in foreclosure⁶, and even after foreclosure for REO parcels⁷
- ensuring that, during foreclosure, the parcels are secured, and that matters of concern are promptly reported to Fannie Mae⁸
- ensuring that when parcels in default (pre-foreclosure), or when parcels in foreclosure, are abandoned by their owners, that the mortgage-foreclosure litigation is pursued in a speedy manner to actual finality (i.e. sheriff’s deed issued to the foreclosure-sale buyer or the Court’s dismissal of the case), so that the parcel in its abandoned state doesn’t linger in limbo in the foreclosure litigation⁹
- attempting to thwart the downward degradation and deterioration of parcels in foreclosure so that when Fannie Mae, or another, acquires them at the conclusion of the foreclosure litigation, they may be rehabbed and sold, and be put back into productive re-use, more quickly¹⁰
- ensuring that servicers comply with state and local law, in addition to the Guidelines¹¹.

Issues in Milwaukee

Per our meeting, and this letter, we seek escalation so that, together, we may realize success more fully regarding our shared goals, and because – despite the Guidelines and our shared goals – we do see in the City:

1. Mortgage-foreclosure litigation still taking a long time to progress through the Court system to actual finality - beyond the 540 days that Fannie Mae allows as a maximum from the date of initial default (the Last Paid Installment, or LPI) through finality of the mortgage-foreclosure litigation in the Court, and despite the many provisions in the Fannie Mae Guidelines calling for diligent pursuit of foreclosure absent allowable delay.

The 540 day maximum from LPI through finality of the litigation should be more than enough time.



CATEGORY – WIS. STAT. CH. 846	REDEMPTION PERIOD
Parcel over 20 acres, OR, less than 20 acres and owner-occupied 1-4 family and lender WANTS deficiency.	12 months. Wis. Stat. 846.10.
Parcel less than 20 acres and 1-4 family and lender WAIVES deficiency.	6 months. Wis. Stat. 846.101.
Parcel not owner-occupied 1-4 family and lender WANTS deficiency.	6 months. Wis. Stat. 846.103
Parcel not owner-occupied 1-4 family and lender WAIVES deficiency.	3 months. Wis. Stat. 846.103.
Any parcel that the Court has determined abandoned.	5 weeks. Wis. Stat. 846.102 (1).
Land Contract	Set by Court. As little as 7 days. Wis. Stat. 846.30.

As indicated in the endnotes: A1-4.1-01 and A1-4.2-02 require diligent action, and failure to complete foreclosure within the Fannie Mae timeframe (540 days in Wisconsin from LPI [last paid installment, F-4-02] to foreclosure sale) can subject the servicer to a compensatory fee. Per A2-4-01, the servicer must document compliance with the Guidelines and timeline. Per A4-2.2-02, the servicer must oversee its law firm to ensure matters are timely completed per the Guidelines. Per E-1.2-02, generally, the timing of foreclosure referral for a principal residence is no earlier than 121 days after delinquency (sooner if the dwelling is not the borrower's principal residence). Per E-3.2-02 and -05, and E-3.3-02, the servicer must work with its law firm to prevent unnecessary delay. Per E-3.2-15, 540 days in Wisconsin is when Fannie Mae expects routine foreclosure proceedings to be completed. If the maximum days are exceeded without reasonable explanation in monthly delinquency status reports, the servicer must pay Fannie Mae a compensatory fee. Per E-3.3-06, servicers may waive deficiency to help resolve foreclosure delays.

2. Resistance to City efforts to expedite and/or complete foreclosure of abandoned homes as allowed by Wis. Stat. 846.102 and the Wisconsin Supreme Court's decision in *Bank of New York Mellon v. Carson*, 2015 WI 15 (Feb. 17, 2015). Wis. Stat. 846.102 and *Carson* require, for abandoned parcels, expedited foreclosure – the redemption period gets shortened to 5 weeks, and the plaintiff must promptly schedule a foreclosure sale thereafter¹².

3. Good compliance, but not full compliance, with Milwaukee Code of Ordinances ("MCO") 200-22.5, the City's mortgage-foreclosure registry¹³.

4. For the same loan in default, on occasion, duplicate mortgage foreclosure cases being filed – one case by the first servicer, and another case by a new servicer after servicing rights were transferred¹⁴.

Direction Letter.

To avoid legal and reputational risk and systemic, significant, widespread problems, please issue direction letters to the servicers and law firms acting on behalf of Fannie Mae, regarding mortgages in the City of Milwaukee, about this escalated matter¹⁵.

New Legal Developments.

We also call to your attention that:

- Per sections 110m, 111m and 112m, 2015 Wisconsin Act 60 (enacted August 12, 2015 and published August 13, 2015), Wisconsin's mortgage-foreclosure chapter (Ch. 846) was amended to require mandatory recording of sheriff deeds for mortgage foreclosures in Milwaukee County. See, especially, new Wis. Stat. 846.167 and amendments to 846.16 and 846.17. Per section 115 of that 2015 Act 60, subsection (2m), the new foreclosure provisions first apply to foreclosure actions commenced on the "effective date" of this subsection, and per section 116 of 2015 Act 60, subsection (2m), the new foreclosure provisions, and section 115 (2m), take effect on the first day of the 5th month beginning after publication, that is, on January 1, 2016.
- For mortgage foreclosures commenced in Milwaukee County Circuit Court, that Court, on January 15, 2015, issued *Amended Foreclosure Scheduling Practices*¹⁶. See: Item 9 of that Court requirement calling for any motion to reopen and vacate a judgment or sheriff sale, after judgment of foreclosure has been granted, to be, per Wis. Stat. 806.07, by motion with notice to the parties, and with the plaintiff providing specific facts supporting the motion; and Item 10 of that Court requirement mandating calendar calls by the Court, after judgment of foreclosure has been rendered, and within 45-90 days after expiration of the statutory redemption period, in order to determine the status of the case, which calendar call will be removed from the Court's calendar if prior to that date, there has been a confirmed sheriff sale, or a motion referred to in Item 9.
- MCO 200-22.5 (registration of residential properties pending foreclosure) was repealed and recreated by the City's Common Council in File No. 141900 on June 23, 2015. The new MCO 200-22.5 requires registration within 5 working days of filing with the Court of foreclosure proceedings against residential property, and now contains amendment and termination subsections as well, while continuing to require inspections, and notification of abandoned property with certain duties to secure and maintain. For those parcels that will become REO as a result of the mortgage-foreclosure litigation: MCO 200-51.5, continues to require registration of non-owner occupied residential and commercial parcels; and MCO 200-51.7 continues to require registration of vacant buildings by the owner.

David Greene
Associate General Counsel, Legal Department
Fannie Mae
December 2, 2015
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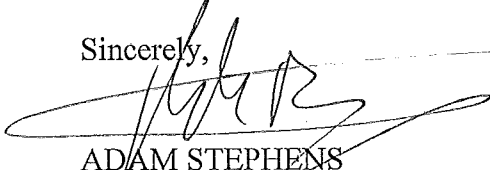
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Thank you very much. It was a pleasure meeting with you. We look forward to collaborating further with you and Fannie Mae on steps to reduce blight and to improve conditions in our neighborhoods.

We will also be sending to you a follow-up letter with some case-specific examples.

If you have questions, please contact Gregg Hagopian (414-286-2620, ghagop@milwaukee.gov).

Sincerely,



ADAM STEPHENS
Deputy City Attorney



GREGG HAGOPIAN
Assistant City Attorney

C (via email):

Mario Higgins, Mayor's Office
Common Council President Murphy
Sarah Zarate, Ald. Murphy's Office
City Clerk Jim Owczarski
DCD Commissioner Rocky Marcoux
Deputy DCD Commissioner Martha Brown
Maria Prioletta, DCD
Tom Mischefske, DNS
Emily McKeown, DNS
Jennifer Gonda, DOA-IRD
Kimberly Montgomery, DOA-IRD
April Hartman, Legal Action of Wisconsin, Inc.
Catherine Doyle, The Legal Aid Society of Milwaukee, Inc.
Amanda Adrian, The Legal Aid Society of Milwaukee, Inc.
Cheryl Parker Rose, Asst. Director, Office of Intergovernmental Affairs, Consumer Financial
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Kim Graziani, Center for Community Progress
Sara Toering, Center for Community Progress
Hon. Nancy Margaret Russo, Cuyahoga County Ohio Court of Common Pleas
Gwendolyn Cooley, Wisconsin Attorney General's Office

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1 Andrea Clarke, "Amidst the Walking Dead: Judicial and Nonjudicial Approaches for Eradicating Zombie Mortgages," *Emory Law Journal*, Vol. 65 No. 3 (2/16/15); U.S. Government Accountability Office, GAO 11-93 Report, "Mortgage Foreclosures: Additional Mortgage Servicer Actions Could Help Reduce the Frequency and Impact of Abandoned Foreclosures (2010); Center for Community Progress' Reclaiming Vacant Properties Conference, Detroit (May 2015); etc.

2 A4-2.2-02 (notification to Fannie Mae required for local government inquiry involving legal or reputational risk, or systemic issues, including widespread foreclosure delay and default-related practices; Fannie Mae may issue direction to servicers and law firms regarding escalated matters); A4-2.2-04 (Fannie Mae can direct servicers to initiate investigations or Fannie Mae may conduct investigations regarding escalated matters); E-1.3-01 (servicer duties for non-routine litigation matters include those that present an issue that may pose a significant legal or reputational risk to Fannie Mae).

3 A4-1-01 (servicer quality control measures include considering workout options before deciding to foreclose and having a foreclosure monitoring system); A4-2.1-01 (servicers must employ foreclosure-prevention strategies designed to bring loans current, and refer borrowers to counseling agencies when appropriate); D2-1-01 (servicer must communicate desire to help with borrower, ask about delinquency and whether borrower vacated parcel or plans to, and discuss workout options); D2-2-04 (sending borrower solicitation package for workout plan prior to referral to foreclosure; and law firm must send communication to borrower within 5 business days after loan referred for foreclosure saying workout may still be possible); E-3.1-02 (servicer due diligence prior to considering foreclosure includes making reasonable efforts to cure delinquency through workout options before referring loan to foreclosure, and inspecting the parcel); E-3.2-06 (servicer continues efforts to work with borrowers on workout options during foreclosure).

4 E-3.2-15 (reasonable explanations for foreclosure delay include bankruptcy, probate, military indulgence, contested foreclosure, loan modification trial plan and unemployment forbearance). Per E-3.2-15, an example of an explanation for reasonable delay beyond the 540-day maximum imposed by Fannie Mae for Wisconsin also includes "recent legislative, administrative, or judicial changes to existing state foreclosure laws, provided that the servicer is diligently working toward resolution of the delay to the extent feasible." Emphasis added. See, also, endnote 12.

5 E.g. A1-4.1-01 (servicers must take diligent action with respect to foreclosure and loans in default); A1-4.1-01 (if the servicer, absent allowable delay, fails to complete a foreclosure action within the Fannie Mae timeframe for Wisconsin, Fannie Mae may levy a compensatory fee); A2-4-01 (servicers must document compliance with Guidelines including compliance with Fannie Mae's timeline for foreclosure); A4-2.2-02 (servicers must manage their outside law firms to ensure that matters are completed in a timely manner per the Guidelines, including delivery of title to Fannie Mae following foreclosure; servicers must monitor timeline performance, and must ensure that law firms process foreclosure "in a timely and efficient manner..."; servicers must conduct periodic law firm compliance reviews, and Fannie Mae can review and require changes); E-1.2-02 (for loans secured by a principal residence, timing of foreclosure referral is no earlier than 121 days of delinquency, but sooner if property is no longer borrower's principal residence; and foreclosure is considered to have begun on date servicer refers matter to law firm); E-3.2-05 (there must be interaction throughout the course of the foreclosure action between the servicer and the law firm; and the law firm must notify the servicer of the scheduled foreclosure sale date; and the servicer must provide the law firm with bidding instructions at least 5 business days before the scheduled sale date); E-3.2-15 (maximum number of allowable days within which to complete routine foreclosure proceedings in Wisconsin is 540 days from LPI [Last Paid Installment, per F-4-02, Fannie Mae acronyms], thus including pre-foreclosure delinquency, to foreclosure sale; and, "[i]f the number of actual days to complete the foreclosure proceedings exceeds the maximum number of allowable days, and no reasonable explanation for the delay is provided to Fannie Mae through monthly delinquency status reporting or other information exchange protocols, Fannie Mae will require the servicer to pay a compensatory fee..." per A1-4.2-02); E3.3-02 (servicer must work with law firm to prevent

unnecessary delays); F-2-04 (compensatory fee calculation); E-3.3-04 (servicer provides bidding instructions to law firm, and must request property valuation for the bidding instructions when the servicer knows of the foreclosure sale date, but not earlier than 90 days before the sale); E-3.3-06 (servicer can waive deficiency judgment rights "if so doing will help resolve foreclosure delays..."); F-2-05 (law firms must understand the jurisdiction's legal processes and requirements; the servicer must confirm that the firm is able to track, monitor and complete foreclosure in compliance with applicable law and "Fannie Mae timeline requirements;" and the servicer must review the firm's completion timelines).

6 D2-2-11 (requirements for property inspections); E-3.3-03 (inspecting prior to foreclosure); D2-2-11 and Form 30 (requirements for property inspections, including completing inspection by 60th day of delinquency, and inspecting every 30 days thereafter; and, requiring immediate inspection if servicer has information that the value of the parcel may be in jeopardy due to its condition); also D2-2-11 (if inspection reveals the property is vacant, pre-foreclosure, servicer must complete an inspection every month; and the servicer must obtain a signed copy of the inspection report that first reported the vacancy signed by the person who completed the report certifying that he/she personally went to the property and that it's vacant); also D2-2-11 (once servicer confirms the property is abandoned, servicer must also complete an interior inspection every calendar month until the foreclosure sale date); E-3.3-03 (inspection required before foreclosure sale – including interior inspection 30 days before foreclosure sale date; and servicer must ensure completion of thorough property inspection before it decides to liquidate the mortgage loan by initiating foreclosure).

7 E-3.5-03 (post-foreclosure inspection).

8 E-3.2-12 (servicer must secure vacant property by changing exterior locks, securing all windows and exterior doors, repairing fences, securing against entry potentially dangerous areas like swimming pools). See also endnote 10.

9 C-4.2-01 (IRS requires filing when Fannie Mae believes the property is abandoned, when servicer has reason to know that the borrower has discarded the property from use); D2-2-06 (even prior to foreclosure, there is a quicker timeframe for the servicers sending breach or acceleration letters to borrowers in default, when the parcel is vacant/abandoned); E-3.2-02 (upon expiration of the breach letter, the servicer must "expedite foreclosure proceedings to the greatest extent allowable under applicable law, and without exploring any workout options..." if "the property has been abandoned or vacated by the borrower and it is apparent the borrower does not intend to make the monthly payments"); E-3.2-12 (servicer must secure vacant property by changing exterior locks, securing all windows and exterior doors, repairing fences, securing against entry potentially dangerous areas like swimming pools).

10 See endnotes 6 and 7: inspections are required by the Guidelines, and swift foreclosure is required by the Guidelines absent allowable delay. Also: D2-2-11 (if borrower refuses to make repairs of emergency nature, servicer must arrange to have repairs performed; servicer must protect property from vandalism and the elements to the extent allowed by local law). Milwaukee Code of Ordinances 200-22.5 requires securing the parcel, mowing, shoveling, pool-covering, etc. E-3.2-12 (throughout the foreclosure proceedings, the servicer must perform property preservation, and property maintenance functions as necessary to ensure that the condition and appearance of the property are satisfactorily maintained; and servicer must take action to protect the value of the property, including making sure that no violations of laws relating to narcotics are occurring on the property and that the property is protected against vandals and the elements); E-4.1-01 (servicer must notify Fannie Mae about acquired property within 24 hours after date of foreclosure sale); E-4.3-01 (Fannie Mae designates broker, agent or management company to oversee management and marketing of REO parcels); E-4.3-02 (broker, agent, management company manages maintenance and repair of REO parcels, and servicer reports to Fannie Mae issues about which it is aware).

11 A2-1-08 (servicers must comply with federal, state and local law, and monitor legal developments to stay in compliance; and if state or local law conflicts with the Guidelines, servicers must advise Fannie Mae). See “New Legal Developments” section of this letter. See, also, endnotes 4, 5, 9, 11, 13.

12 Per E-3.2-15, an example of an explanation for reasonable delay beyond the 540-day maximum imposed by Fannie Mae for Wisconsin is “recent legislative, administrative, or judicial changes to existing state foreclosure laws, provided that the servicer is diligently working toward resolution of the delay to the extent feasible.” Emphasis added.

13 F-2-05 (law firms must understand the jurisdiction’s legal processes and requirements; the servicer must confirm that the firm is able to track, monitor and complete foreclosure in compliance with applicable law and “Fannie Mae timeline requirements;” and the servicer must review the firm’s completion timelines). See endnotes 11 and 12.

14 Assignment of servicing rights shouldn’t result in duplicate foreclosure litigation actions. CFPB Bulletin 2014-01 and 12 CFR 1024.33 (b)(4)(vi). See endnote 16. Per Judge Russo Standing Orders, Item 5, in a foreclosure case, to have standing, plaintiff must be able to prove, at the time it filed the case, that: (i) it had the mortgage assigned to it; or (ii) it is the holder of the note.

15 See endnote 2.

16 E0-3.4-01 recognizes that, in some states, a Judge may dismiss a foreclosure case for lack of prosecution, and that if a foreclosure case is delayed because of a loan workout, the Court may require the filing of the workout plan with the Court. See also Judge Nancy Margaret Russo’s “Standing Orders for Foreclosure Cases,” Cuyahoga County, Ohio, Common Pleas Court. In the Standing Orders: Item 3, if the debtor enters a forbearance, modification or workout agreement, the plaintiff must notify the Court within 14 days of entering the agreement; and, Item 12, the defendant must submit to the plaintiff, within 60 days of the filing of the foreclosure complaint, a complete loss mitigation packet if the defendant intends to pursue loss mitigation.