

1. Pre-Foreclosure Sale Overview

Introduction

This topic contains information on the general guidelines when considering the pre-foreclosure sale option, namely

- the definition of a pre-foreclosure sale
 - period of consideration for a pre-foreclosure sale
 - duration of a pre-foreclosure sale plan
 - loan requirements for a pre-foreclosure sale
 - borrower requirements for a pre-foreclosure sale
 - property requirements for a pre-foreclosure sale
 - documentation requirements for a pre-foreclosure sale, and
 - servicer loss mitigation pre-foreclosure sale incentive for a closed pre-foreclosure sale.
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Change Date

December 1, 2007

a. Definition: Pre-Foreclosure Sale

The **pre-foreclosure sale** (PFS) option allows a borrower in default to sell his or her home and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed.

-  This option is appropriate for a borrower who has experienced an involuntary inability to pay that prevents the borrower from meeting their mortgage obligation.
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b. Period of Consideration for a Pre-Foreclosure Sale

Within six months of the date of default, the Servicer must decide to

- allow a PFS
- commence foreclosure, or
- initiate another loss mitigation option.

-  If the PFS follows a failed special forbearance agreement, the PFS, foreclosure or other option should be initiated within 90 days of the failure.
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1. Pre-Foreclosure Sale Overview, Continued

c. Duration of a Pre-Foreclosure Sale Plan

The pre-foreclosure sale period should be *three months* beginning upon the Servicer's approval.

- Once a pre-foreclosure plan has been approved, the plan should be reviewed every thirty days to evaluate the current market conditions. Maintaining dialogue with the borrower and realtor during the time the subject property is on the market increases the probability of a sale.
 - ⊘ • If 90 days have passed without a scheduled closing, the Servicer should discuss the likelihood of a sale with the real estate broker and document any decision in the servicing notes regarding
 - ending the pre-foreclosure sale period, or
 - extending it for an additional 30 days, if a sale is likely.
 - If the property is under contract at the end of the marketing period, the Servicer may extend the PFS period for 60 days, not to exceed a total of 180 days.
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d. Loan Requirements for a Pre-Foreclosure Sale

In order for a loan to be considered for a pre-foreclosure sale, the loan must be in default (delinquent) for more than 30 days at the time the pre-foreclosure sale is closed.

- 💡 A borrower who successfully sells the property securing the loan using the PFS option is relieved of the mortgage obligation. The borrower shall not be pursued for deficiency judgments by either the Servicer or the Agency.
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e. Borrower Requirements for a Pre-Foreclosure Sale

The PFS option may be extended to a borrower who is in default due to a verified involuntary inability to pay.

- 💡 • Agency pre-approval is required for non-occupant borrowers when it is verified that the need to vacate is related to the cause of the default (job loss, transfer, divorce, death).
 - A Servicer may exercise discretion to accept an application from a borrower who is facing imminent default, and if the loan will be in default by the time the pre-foreclosure sale is completed. The decision must be documented in the servicing file.
 - PFS is not available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.
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1. Pre-Foreclosure Sale Overview, Continued

f. Property Requirements for a Pre-Foreclosure Sale

Acceptable Properties

The following types of properties may be considered for a PFS.

- The property has marketable title and any junior liens have been satisfied or the lien holder has agreed to release their lien as a condition of sale.

Unacceptable Properties

The following types of properties should not be considered for a PFS.

- Properties that have sustained serious damage (from fire, flood, earthquake, tornado, or other man made or natural disasters) should not be considered for PFS if the cost of repair exceeds 10 percent of the As Repaired appraised value.
 - 💡 • Acquisition of the property does not extinguish junior liens or terminate tenancies.
 - The Servicer may exercise discretion to accept or reject a damaged property when the repair costs are less than the 10 percent threshold, but should document the decision in the servicing file.
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g. Documentation Requirements for a Pre-Foreclosure Sale

The documentation requirements for a pre-foreclosure sale differ depending on the type of borrower.

Employee in a private or public organization

- SFHGLP Servicing Plan
- Letter from borrower outlining failure to pay/hardship
- Current pay-stub
- BPO/appraisal
- Sales contract/[HUD-1](#) Settlement Statement, and
- Credit report.

Self Employed

- Year-to-date profit and loss statement
- Previous year's profit and loss statement, and
- Previous year's signed tax return.



For additional information on documentation, LMG 4.5.

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1. Pre-Foreclosure Sale Overview, Continued

h. Servicer and Documentation Requirements for a closed Pre-Foreclosure Sale

Servicer must obtain approval for a pre-foreclosure sale from the Agency by submitting a loan servicing plan outlining loss mitigation workout. Prior approval from the Agency must be obtained before the servicer can authorize the settlement of the workout transaction.

The following documentation is required for a Pre-Foreclosure Sale Incentive. This documentation should be included with the servicer's loss claim filing:

- Copy of the final HUD-1
 - Copy of the sales contract/agreement
 - Copy of the BPO/Appraisal used for property valuation
 - Copy of the SFHGLP Servicing Plan with the authorized approval from the Agency, and
 - Copy of the letter from the borrower outlining failure to pay/hardship.
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2. Pre-Foreclosure Sale Procedure

Introduction This topic contains information on

- pre-foreclosure request evaluation
- pre-foreclosure sale procedure
- obtaining a market value appraisal
- obtaining a title report
- pre-foreclosure sale failure, and
- agency action for a pre-foreclosure sale.

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a. Pre-Foreclosure Request Evaluation The PFS process must be initiated by the borrower, who must submit an application to exercise the PFS option.

Follow the steps outlined below to evaluate the PFS request.

Step	Action
1	Request for the borrower’s financial information such as <ul style="list-style-type: none"> • a credit report • detailed budget, and • income verification.  <ul style="list-style-type: none"> • The Servicer should retain this in the file should the Agency require them for approval. • The Servicer is encouraged to proactively solicit participation by a borrower who is in default on an SFHGLP first mortgage and who is unable to cure the default.
2	Provide the defaulted borrower with a copy of the Servicer’s PFS criteria, which may specify that <ul style="list-style-type: none"> • the property should be owner occupied • the borrower must maintain the property, utilities, and so on, and • the property must be listed for no longer than 90 days.  If there are no contracts on the subject property after 30 days, but no more than 90 days, the sales price should be reviewed and lowered to reflect current market conditions if appropriate.

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2. Pre-Foreclosure Sale Procedure, Continued

a. Pre-Foreclosure Request Evaluation (continued)

Step	Action
3	<p>Ask the borrower to sign and return the application with the required financial information. This acknowledges the receipt of housing counseling, and documents that the borrower agrees to</p> <ul style="list-style-type: none"> • list the property with a licensed real estate broker unrelated to the borrower • make a good faith effort to aggressively market the property, and • perform all normal property maintenance and repairs until closing of the pre-foreclosure sale. <p> The listing agreement should include a specific cancellation clause in the event the terms of a sale are not acceptable.</p>
4	<p>Obtain a recent market value appraisal and preliminary title report to determine the feasibility of the PFS.</p> <p> For additional information on</p> <ul style="list-style-type: none"> • market value appraisals, see LMG 3.C.1.2.c. • title reports, see LMG 3.C.1.2.d.
5	<p>Determine the borrower’s capacity to support the mortgage debt by</p> <ul style="list-style-type: none"> • reviewing the borrower’s present and anticipated financial condition, and • projecting the borrower’s surplus monthly income.
6	<p>Use good business judgment to decide whether to approve or reject the PFS request.</p> <p>If the request is <i>approved</i>, go to LMG 3.C.1.2.c. If the request is <i>denied</i>, inform the borrower of the decision.</p>

-  • The Servicer is responsible for inspection, protection, and preservation of the property between the 45th day of default and the date it approves the borrower’s PFS request.
- Funds spent for preservation and protection may be reimbursed.

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2. Pre-Foreclosure Sale Procedure, Continued

b. Pre-Foreclosure Sale Procedure

The table below outlines the steps to be followed if the pre-foreclosure sale is approved.

Step	Action
1	Obtain a commitment from the borrower to actively market the property for a period of at least three months.  Foreclosure action must be delayed when the property is on the market.
2	Review the marketing efforts with the borrower each month.  The borrower’s participation in the PFS option may be terminated for any of the following reasons: <ul style="list-style-type: none"> • unresolvable title problems • determination that the borrower is not acting in good faith to market the property, or • voluntary withdrawal by the borrower.
3	Is the property going to be sold? <ul style="list-style-type: none"> • If <i>no</i>, go to Step 4. • If <i>yes</i>, go to Step 5.
4	Encourage the borrower to convey the property through a deed-in-lieu of foreclosure.
5	Review the signed Contract for Sale within five calendar days. <ul style="list-style-type: none">  <ul style="list-style-type: none"> • The transaction is an outright sale of the premises. No sale by assumption may be considered, regardless of provisions for release of liability. • There can be no hidden terms or special understandings between any of the parties involved in the transaction; that is the buyer, seller, appraiser, sales agent, closing agent, and Servicer.

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2. Pre-Foreclosure Sale Procedure, Continued

b. Pre-Foreclosure Sale Procedure (continued)

Step	Action
6	<p>Approve the sale contract if the net sales proceeds are at least 82 percent of the home’s “As-Is” appraised value.</p> <p> “Net Sales Proceeds” is defined as the contract price less</p> <ul style="list-style-type: none"> • sales commission (usually six percent or less) • property repairs required by the appraisal, and • local/state transfer tax stamps and other customary closing costs including the seller’s costs for a title search and title insurance.
7	<p>Provide the closing agent with a list of all amounts payable out of the sale proceeds.</p> <p> Settlement costs which may not be included in the net sales proceeds calculation are</p> <ul style="list-style-type: none"> • tax service fees and other property transfer costs normally paid by the buyer • home warranty fees • repairs not stipulated in the appraisal • survey costs, and • lawyer’s fees for representing the seller (apart from conducting the settlement or review of documents).
8	<p>Before the final approval for closing, review the HUD-1 to ensure that it complies with earlier closing cost estimates.</p>
9	<p>On closing the sale</p> <ul style="list-style-type: none"> • report the pre-foreclosure sale to national credit bureaus as a “short sale,” and • file Form 1099-A with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.

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2. Pre-Foreclosure Sale Procedure, Continued

c. Obtaining a Market Value Appraisal

Follow the steps in the table below to obtain a market value appraisal.

Step	Action
1	<p>Obtain a standard market value appraisal from an appraiser that</p> <ul style="list-style-type: none"> contains both “As Is” and “As Repaired” values for the property, and is valid for six months. <p> • The appraiser must not share any interest with the borrower or borrower’s agent.</p> <ul style="list-style-type: none"> Appraisals or opinions of value provided by the borrower, or borrower’s real estate agent are not acceptable.
2	Share a copy of the appraisal with the homeowner or sales agent, if requested.
3	<p>Review the appraisal and confirm that it represents the fair market value of the subject property.</p> <p> The original list price of the property must reflect its fair market value.</p>
4	Reimburse the cost of the appraisal in the loss claim.

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2. Pre-Foreclosure Sale Procedure, Continued

d. Obtaining a Title Report Follow the steps outlined below to obtain a title report on the property.

Step	Action
1	Obtain a title search or preliminary title report to check for <ul style="list-style-type: none"> • unresolvable title problems, or • junior liens that cannot be discharged.
2	Did the search yield any issues? <ul style="list-style-type: none"> • If <i>yes</i>, go to Step 3. • If <i>no</i>, approve the borrower’s PFS application.
3	Can the junior liens and other title issues be resolved? <ul style="list-style-type: none"> • If <i>yes</i> <ul style="list-style-type: none"> – approve the borrower’s PFS application, and – pursue a resolution of the title issues concurrently with the marketing effort. • If <i>no</i>, the loan must be referred to foreclosure.

e. Pre-Foreclosure Sale Failure

Commence foreclosure or obtain a deed-in-lieu of foreclosure if a closing of an approved PFS has not occurred within

- 90 days of the expiration of the pre-foreclosure sale period, or
- 180 days from the date of default (whichever is later).

If the borrower’s financial condition improves significantly to the point that a cure of the delinquency is a viable option, a special forbearance agreement or a loan modification may be provided. In this case

- complete the action within the 90-day period, and
- fully justify the decision in the claim review file.

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2. Pre-Foreclosure Sale Procedure, Continued

f. Agency Action for a Pre-Foreclosure Sale

The loss claim under the loan note guarantee must be submitted to the Agency within 30 days after the date of the PFS closing. The Agency will reimburse

- reasonable and customary costs of the appraisal
- title search (if not included in the settlement statement),
- allowable percentage of legal fees for a foreclosure postponed pending completion of PFS (if applicable)
- reasonable costs of preservation and protection, and
- disbursements for
 - taxes
 - assessments
 - hazard insurance, and
 - other allowable items payable before the date of the PFS closing.



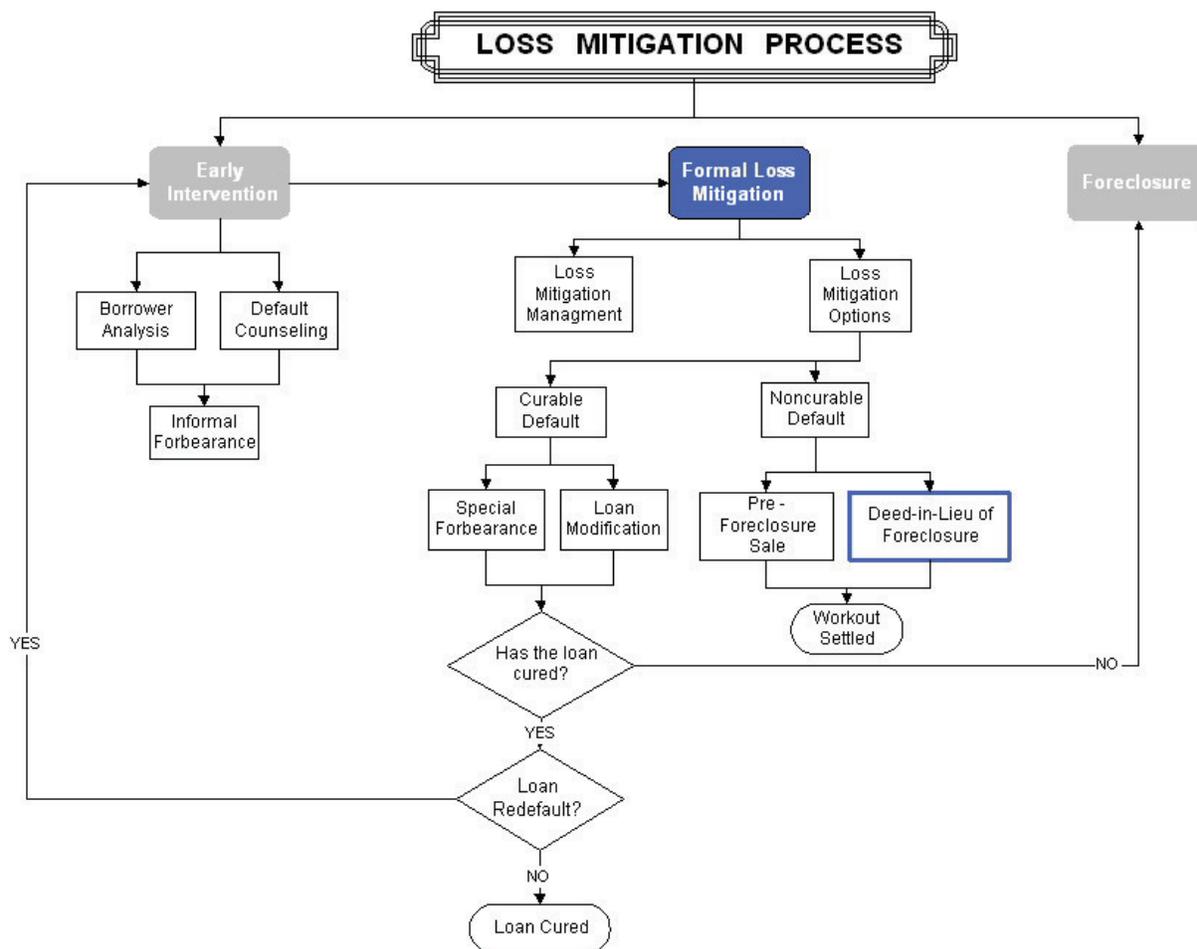
The Agency will not pay costs related to the property incurred after the closing date.

Chapter 3. Section C. Noncurable Defaults

Part 2. Deed-in-Lieu of Foreclosure

Overview

Introduction Deed-in-lieu of foreclosure is another option available under Noncurable default as illustrated in the process below.



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