



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

May 31, 2013

Mortgagee Letter 2013-18

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

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**Subject** Updated Clarification Regarding Title Approval at Conveyance

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**Purpose** The purpose of this Mortgagee Letter is to provide updated guidance relating to title approval at conveyance. This Mortgagee Letter addresses the following:

- Unpaid property taxes;
  - Homeowners Association (HOA)/Condominium fees;
  - Unpaid utility bills/assessments; and
  - Unresolved manufactured housing title issues.
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**Effective Date** All requirements are effective for single-family real estate owned (REO) properties conveyed on or after 90 days from the date of issuance.

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**Affected Policy** This Mortgagee Letter rescinds Mortgagee Letter 2012-11, *Clarification Regarding Title Approval at Conveyance* in its entirety. This Mortgagee Letter also supersedes provisions regarding unpaid taxes, HOA/ condominium fees, utility/assessment bills, and unresolved manufactured housing title issues in 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*. All other requirements of Mortgagee Letter 2002-19 remain in effect.

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**Mortgagees Must Pay All Property 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. Therefore, mortgagees must obtain from taxing authorities all available tax bills, including bills due within 30 days of the date of conveyance, prior to conveying a property to HUD. Such bills must be paid by the mortgagee prior to the conveyance of a property to HUD. No available bills from the taxing authorities should remain unpaid as of the date of conveyance.

To ensure that properties being conveyed to HUD have good marketable title, the mortgagee must:

- Certify that all tax bills due within 30 calendar days of conveyance are paid as of the date of conveyance;
- Document such payment and identify the most recent period for which taxes were paid in Section 32, “Schedule of Tax Information,” of Form HUD-27011 Part A; and
- Upload to P260 or its successor system (on or before the Part A claim filing date) any documentation, such as a paid receipt or a copy of the mortgagee’s tax payment history screen, that is necessary to validate 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 of such documents to HUD within 24 hours, if 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 authority/jurisdiction assessing such late payments or penalties.

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

HOA/Condominium Fees. While the payment of condominium and homeowners’ association fees is the mortgagor’s responsibility, mortgagees are responsible for ensuring that properties conveyed to HUD have clear title. FHA requires mortgagees initiating foreclosure to provide notice to HOAs/condominium management companies to help ensure that any outstanding HOA/condominium fees are resolved through the foreclosure process.

The following clarifies the difference between an HOA/condominium “assessment” and a HOA/condominium “fee” as those terms are used in this mortgagee letter. An HOA/condominium assessment refers to the periodic payment required of all property owners. On the other hand, HOA/condominium fees include assessments plus interest, late charges, collection/attorney fees, other penalties, etc.

A mortgagee must take the following actions:

- Notice. As part of the foreclosure proceedings, the mortgagee shall notify and serve all interested parties of the pending foreclosure, pursuant to state law. Interested parties include all condominium management companies and HOAs that are reflected in the mortgage loan/origination documents, recorded covenants/declarations, initial foreclosure referral and/or title search review, or made known to the mortgagee during the foreclosure proceedings;

- Outstanding HOA/Condominium Fees. Unless prohibited by state law, the mortgagee shall ensure that outstanding HOA/condominium fees are included as part of the foreclosure proceedings in the event that the HOA/condominium management company fails to do so;
- Post-foreclosure. After completion of foreclosure proceedings, the mortgagee shall resolve any outstanding HOA/condominium bills (i.e., fees) as outlined in the *Post-Foreclosure HOA/Condominium Fees Chart*.

***Post-Foreclosure HOA/Condominium Fees Chart  
For FHA REO Properties Conveyed Prior to January 1, 2014***

<b>Where there are unpaid condominium/HOA fees...</b>	<b>Then...</b>
<ul style="list-style-type: none"> <li>• That were not included in the foreclosure proceedings and these fees survive foreclosure*</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. <i>HUD will only reimburse the mortgagee for payment of assessments that were incurred from the foreclosure sale date to the date of conveyance.</i></li> <li>• Obtain a release of outstanding HOA/condominium fees</li> <li>• Ensure that the HOA/condominium lien, if any, is removed from the title to the property prior to conveying the property to HUD.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>
<ul style="list-style-type: none"> <li>• The fees were included in the foreclosure,* and</li> <li>• There is a lien on the property that survives foreclosure</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. <i>HUD will only reimburse mortgagees for HOA fees up to the state law mandated amount.</i></li> <li>• Obtain a release of outstanding condominium/HOA fees</li> <li>• Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>
<ul style="list-style-type: none"> <li>• And none of the aforementioned conditions are applicable*</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Pay the HOA/condominium assessment required under applicable law prior to conveying the property to HUD. <i>HUD will reimburse the mortgagee for this amount.</i></li> <li>• Enter the amount on Form HUD-27011 and in P260 or its successor system; and</li> <li>• Upload into P260 or successor system the invoice from the condominium/HOA, reflecting a list of itemized charges, including but not limited to: (a) condominium/HOA assessments required to be paid pursuant to state law; (b) interest; (c) penalties; (d) third party fees, etc. HUD will negotiate any remaining amounts with the HOA or condominium management company.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>

\* Provided state law does not prohibit inclusion of these fees in the foreclosure proceedings. This requirement takes effect 90 days after the publication of this Mortgagee Letter with the commencement of first legal action initiating a foreclosure.

**Post-Foreclosure HOA/Condominium Fees Chart  
For FHA Properties Conveyed On or After January 1, 2014**

Where there are unpaid condominium/HOA fees...	Then...
<ul style="list-style-type: none"> <li>• That were not included in the foreclosure proceedings and these fees survive foreclosure*</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. <i>HUD will only reimburse the mortgagee for payment of assessments that were incurred from the foreclosure sale date to the date of conveyance.</i></li> <li>• Obtain a release of outstanding HOA/condominium fees</li> <li>• Ensure that the HOA/condominium lien, if any, is removed from the title to the property prior to conveying the property to HUD.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>
<ul style="list-style-type: none"> <li>• The property is located in a state in which HOA/condominium liens can take priority over the mortgagee's/HUD's 1<sup>st</sup> lien and these fees were included in the foreclosure and survived foreclosure*</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Negotiate the amount required to obtain a release of outstanding HOA/condominium fee. <i>HUD will only reimburse mortgagees for HOA fees up to the total value of the periodic HOA/condominium assessments due and paid from the date the mortgagor defaulted on his/her HOA assessment to the date of conveyance.</i></li> <li>• Obtain a release of outstanding HOA/condominium fees</li> <li>• Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>
<ul style="list-style-type: none"> <li>• The property is <u>not</u> located in a state in which HOA/condominium fees can take priority over the mortgagee's/HUD 1<sup>st</sup> lien,</li> <li>• The fees were included in the foreclosure,* and</li> <li>• There is a lien on the property that survives foreclosure</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Negotiate the amount required to obtain a release of outstanding HOA/condominium fees. <i>HUD will only reimburse mortgagees for HOA fees up to the state law mandated amount.</i></li> <li>• Obtain a release of outstanding condominium/HOA fees</li> <li>• Ensure that the HOA/condominium lien, if any, is removed from the title to the property, prior to conveying the property to HUD.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>
<ul style="list-style-type: none"> <li>• And none of the aforementioned conditions are not applicable*</li> </ul>	<p>The mortgagee must:</p> <ul style="list-style-type: none"> <li>• Pay the HOA/condominium assessment required under applicable law prior to conveying the property to HUD. <i>HUD will reimburse the mortgagee for this amount.</i></li> <li>• Enter the amount on Form HUD-27011 and in P260 or its successor system; and</li> <li>• Upload into P260 or successor system the invoice from the condominium/HOA, reflecting a list of itemized charges, including but not limited to: (a) condominium/HOA assessments required to be paid pursuant to state law; (b) interest; (c) penalties; (d) third party fees, etc. HUD will negotiate any remaining amounts with the HOA or condominium management company.</li> </ul> <p>Note: HUD's Schedule of Allowable Attorney Fees is included in ML 2005-30.</p>

\* Provided state law does not prohibit inclusion of these fees in the foreclosure proceedings.

Mortgagees must pay fees that become due within 30 days of the date of conveyance. Since HOA/condominium billing cycles may vary, mortgagees are responsible for determining whether any HOA/condominium fees will be due within 30 days of the date of conveyance and for paying these fees before

conveying a property to HUD.<sup>1</sup> The mortgagee may claim reimbursement for this additional HOA/condominium amount on Part B of Form HUD-27011.

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**Documentation Requirements for Payment of HOA Fees**

In the “Comments” section of Form HUD-27011, mortgagees must document the payment of all final bills and liens (including pre-foreclosure liens) for HOA/condominium fees.

Within 15 calendar days of conveyance, the mortgagee must upload to P260 or its successor system the paid HOA/condominium invoice and any other documentation necessary to verify that the mortgagee made such payments prior to conveyance. In addition, if applicable, the mortgagee must document any common area requirements associated with gaining access to the property securing an FHA-insured loan.

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**Unresponsive/Uncooperative HOAs**

On a case-by-case-basis, at its sole discretion, HUD will consider accepting conveyances in instances where the HOA/condominium has been unresponsive or uncooperative. Mortgagees must request a variance through HUD’s Mortgagee Compliance Monitor (MCM) and must submit:

- A certification stating that it has exhausted all methods of obtaining and paying the outstanding HOA/condominium assessments, and
- Documentation evidencing its attempts to obtain and pay these assessments. These attempts include, but are not limited to:
  - repeated phone contacts (at least 3 calls);
  - certified mail notices to HOA/condominium contacts from mortgagees’ attorneys; and
  - documentation validating the pursuit of available legal remedies (this documentation must evidence the resolution or final decisions resulting from arbitration or court proceedings).

To help reduce the volume of these variance requests, FHA expects servicers to: (a) implement procedures that will result in them being notified when mortgagors default on HOA fees; and/or (b) establish escrows for HOA fees.

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**Mortgagees Must Pay All Unpaid Water and Sewer Bills or Other Assessments**

Mortgagee Letter 2010-18 states that utility accounts including electricity, gas, home heating oil and water should be in the mortgagee's name until conveyance of the property to HUD. Utilities are to be turned off unless they are required to protect the property. For instance, some states require the heat to remain on. Prior to the conveyance of a property to HUD, mortgagees must research, obtain and pay all available utility bills (including, but not limited to, water and sewer) that may become a lien attached to a property following foreclosure.

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<sup>1</sup> For example, a foreclosure sale occurs in a jurisdiction where condominium/HOA fees survive foreclosure and the mortgagee is scheduled to convey a property to HUD on February 2nd. The mortgagee has paid all condominium/HOA fees prior to conveyance, and additionally, due to the HOA’s billing cycle, a \$150 payment is required for the period of March 1st through June 30th. In this scenario, because these March-June fees are due within 30 days of the February 2nd conveyance date, the mortgagee must also pay the \$150 fee. The \$150 fee is a post-conveyance expense where HUD has ownership of the property and as such is fully reimbursable, unless the property is subsequently reconveyed.

In states where utilities are not required to remain on to protect the property, mortgagees must obtain a final bill up to the date of conveyance. Utilities are to be turned off no later than the date of conveyance. No later than 60 days after conveyance, the mortgagee must upload to P260 or its successor system the paid invoice and any other documentation necessary to verify that the mortgagee made such payments. Mortgagees may request reimbursement for these final bills by itemizing them in Section 305 of Part D of Form HUD-27011.

In states where utilities are required to remain on, mortgagees should pay available bills that are due prior to conveyance. In addition, mortgagees should contact each utility provider within 60 days after conveyance and request and pay the final bill (i.e., calculated to the day in which the utilities are transferred to HUD) and upload to P260 or its successor system the paid invoice and any other documentation necessary to verify that the mortgagee made the payment for the final bill. Mortgagees may request reimbursement for these final bills by itemizing them in Section 305 of Part D of Form HUD-27011.

**Title Evidence  
for  
Manufactured  
Housing**

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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 title to the manufactured home, 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 title to the manufactured home has been surrendered or purged.

Mortgagees should review each property at the time of foreclosure referral to determine if the collateral for the mortgage is a manufactured home. If the property is a manufactured home, mortgagees must certify in the “Mortgagee Comments” section of Form HUD-27011 Part A that the required additional title work has been completed and that the title evidence has been uploaded into P260 or its successor system on or before the Part A filing date. Title evidence that is deemed insufficient to convey title to both the manufactured home and the land may be rejected by HUD.

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.

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**Penalties for Unpaid/ Outstanding Property Taxes, HOA fees, and Utility Bills, and Failure to Provide Title Evidence for Manufactured Homes**

Mortgagees that fail to pay taxes, HOA/condominium fees, or utilities bills when payment is due will be considered in violation of HUD's requirements. Therefore, HUD may refer mortgagees to the Mortgagee Review Board for administrative sanctions, including but not limited to civil money penalties, based on noncompliance with these requirements.

**Taxes**

Where taxes, late fees and/or interest penalties are owed to the taxing authority/jurisdiction when a property is conveyed to HUD, HUD may elect to re-convey the property back to the mortgagee or refuse to accept the conveyance of said property.

**Utility Bills**

If a mortgagee fails to pay utility bills and other assessments, HUD, at its sole discretion, may:

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

**Manufactured Homes**

HUD may, at its discretion, re-convey the property or accept the conveyance despite the mortgagee's failure to provide the appropriate title evidence for the manufactured home.

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**Information Collection Requirements**

The information collection requirements contained in this document have been approved by the office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

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**Questions**

Any questions regarding this Mortgagee Letter may be directed to William Collins of HUD's National Servicing Center on (405) 609-8466. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339. For additional information on this Mortgagee Letter, please visit [www.hud.gov/answers](http://www.hud.gov/answers).

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**Signature**

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