

Surmounting the Roadblocks to FHA Conveyance

The inability to adopt and revise procedures that bog down the conveyance process will undoubtedly cost servicers millions of dollars in non-reimbursable expenses.

by **Kellie Chambers**

A recent survey of mortgage servicers completed by the Collingwood Group and Five Star Institute, the Mortgage Industry Outlook Report, revealed that 39% of respondents from various levels of the housing finance industry named fulfillment of Federal Housing Administration (FHA) property preservation and conveyance requirements as their biggest FHA servicing challenge.

The survey explained that “FHA’s program rules are different from Fannie Mae’s and Freddie Mac’s, requiring servicers to dedicate additional resources to property maintenance from the time of foreclosure until the property is conveyed to FHA - a time period that varies depending on the situation. In some markets, preserving and protecting properties for an extended period requires aggressive and diligent surveillance that is expensive and difficult. The additional demands on the servicer are costly and introduce opportunities for noncompliance that don’t exist in the GSE servicing space, where properties are conveyed to the GSEs immediately following foreclosure.”

At the time the survey was distributed, FHA servicers were experiencing an increase in reconveyance letters and

mortgagee neglect denials citing foreclosure delays from the U.S. Department of Housing and Urban Development (HUD) and its mortgagee compliance management (MCM) vendor. Undoubtedly, these sudden increases in reconveyances, and the costs associated with them, are factors reflected in the survey results.



Reconveyances are one of the biggest challenges mortgage servicers face. Coupled with constant changes in leadership, guidelines, HUD vendors and the interpretations of regulations, servicers face some significant hurdles with FHA loans. While these revisions to regulatory requirements keep the servicing and property preservation industry on their toes, the resistance and/or inability to efficiently make changes within the organization tend to halt progress and affect the timely conveyance of properties to FHA.

Partnerships lead to better policies

There are many reasons that organizations resist change - risk, costs, and uncertainty. As is human nature, it is always easier to “do things the way we have always done them.” With recent

guidance from FHA prohibiting reimbursement of property preservation and inspection costs incurred after the convey due date, the inability to adopt and revise procedures that bog down the conveyance process will undoubtedly cost servicers millions of dollars in non-reimbursable expenses. Partnering with your property preservation vendor and adopting best practices communicated by FHA staff and their MCM vendor is crucial in reducing or eliminating out-of-pocket expenses.

To reduce the costs of servicing FHA loans and conveying in a timely fashion, policies regarding personal property removal, the repair of insurable damages, and waiting for bid approval from the MCM are in need of re-examination. Servicers need to adjust their operating policies to complement the expectations of HUD in order to avoid conveyance delays. Additionally, pre-foreclosure-sale FHA loans have historically taken a back seat to the management of post-sale assets within servicers’ shops. Servicers could realize significant cost savings from taking another look at the prioritization of pre-sale assets - specifically in the areas of personal property, insurable repairs, servicing rules and insurance claim settlements.

Personal property matrix

Removing personal property following the foreclosure sale is one area where costs can rise and conveyances can experience delays, but procedures

already exist to manage this issue. According to the most recent eviction matrix published by the USFN, the vast majority of states do not prohibit servicers from self-help to remove abandoned property following foreclosure sale. Despite this, the majority of servicers do not utilize the FHA allowable to remove and store these items following foreclosure sale.

With the release of HUD ML 2010-18, servicers were required prior to HUD conveyance to remove all debris and personals, and place properties into broom-swept condition. This was a significant change from prior conveyance requirements and sparked debate between HUD and servicers with regard to shifting liability and risk of an increase in litigation from borrowers citing missing personal property.

HUD reacted quickly with the release of a frequently asked questions (FAQ) providing servicers with a \$300 allowable for reimbursement to store abandoned personals in lieu of disposal. The FAQ provided guidance to follow local laws with regard to the removal, disposal and/or storage of abandoned personals. This guidance afforded servicers the ability to pursue self-help and remove the items in effort to convey the property to HUD more quickly. Despite the accommodation from HUD, the allowable and guidance are not common practice even today, seven years after the new requirement for broom swept condition.

Alternatively, servicers seek guidance from counsel as to whether or not to pursue an eviction of personal property on a case-by-case basis. This delays conveyance and leaves the property subject to new damages, complaints from neighbors and potential code violations. The absence of a clear, consistently executed matrix regarding the removal, disposal or storage of abandoned personal property leads to unnecessary bids submitted to HUD, ambiguity in the definition of possession, and confusion surrounding the calculation of the conveyance due date.

Establishing a personal property matrix and providing guidance to your property preservation vendor to execute is a prerequisite for timely conveyance. Likewise, a well-researched, defined policy serves as a defense if legal complaints ensue.

Insurable repairs

Delaying repair of insurable damages until after foreclosure sale is another missed opportunity for timely conveyance. When I joined the industry in 2001, it was standard practice to hold insurance proceeds in escrow and not commence repairs until after the foreclosure sale. Following several industry working group discussions in 2011 and 2012 and a reevaluation of the FHA servicing regulations, HUD staff and their MCM vendor effectively instituted parameters and expectations for servicers to commence repairs upon receipt of insurance funds and not wait for foreclosure sale.

The MCM vendor continues to deny extension requests submitted for more time to repair when supporting documentation does not support repairs commencing immediately upon settlement of the insurance claim. Furthermore, most insurance policies require repairs to be initiated within six months of settlement for recoverable depreciation to be paid to the insured party. Recoverable depreciation ranges from 10% to 33% of the cost to repair the property. Initiating repairs upon insurance claim settlement will improve the approval rates for extensions of time to convey and will improve the ability to recoup repair costs through recoverable depreciation.

Servicing rules

Servicing rules within organizations also can stall the conveyance of files in an effort to obtain written approval of expenses to avoid out-of-pocket costs. This is true in waiting for the insurance company to issue a check, as well as waiting for MCM approval of over-allowable requests.

While some files deserve prudent review and follow-up for large expenses, many files can efficiently move through the process with the establishment of a standard cost-benefit analysis. We have worked with several clients to establish standard cost forms that account for unpaid principal balance, cost of repairs for conveyance condition, pending insurance funds, possibility of HUD reimbursement, and expenditures-to-date. Utilization of a standard template can empower front-line staff to make decisions faster and avoid bottlenecks of management reviews required within the servicing shop.

HUD staff have verbalized the expectation that maintenance services and the over-allowable processes are independent functions, and thus, the need for over-allowable approval is not required to proceed with work necessary for conveyance condition. The over-allowable process may be prudent for exceptional cases, where the repairs are extensive and/or may exceed the outstanding principal balance or demolition may be in order. However, the vast majority of over-allowable requests are for routine property preservation items often approved by the MCM. Awaiting HUD approval for routine property preservation expenses leads to new vandalism, newly dumped debris, and even neighbor and code officer complaints. HUD staff recommends completing necessary work and asking for over-allowable approval as an independent function, which will lead to more timely conveyance.

Insurance claim settlements

Another missed opportunity for timely conveyance is awaiting insurance claim settlement before repairing to conveyance condition. While exceptions may be at play, it is highly recommended to file the insurance claim and grant access to the insurance adjuster and then commence repairs for conveyance condition.

Your property preservation vendor should be utilizing the same insurance tools to estimate the costs of repairs

and photos of repairs in progress and of completed repairs. This will expedite the supplemental process, if needed. Additionally, commencing repairs immediately following the adjuster's inspection will inhibit further deterioration for many perils, including storm damage, roof damage, sewer back-up, sump pump failure, etc. - ultimately leading to a cost savings. Servicers should establish a standard for perils, costs and timelines for their preservation vendors to utilize as delegated authority to repair to conveyance condition, further reducing the number of exceptions their leadership needs to review and approve.

Servicers should reevaluate the time frames of when to begin management of post-foreclosure sale files. With the expansion of the Claims Without Conveyance of Title (CWCOT) program, al-

lowing servicers to bid market value at the scheduled sale, appraisals are requested well in advance of the scheduled sale and properties reviewed for inclusion in the CWCOT program.

This is the time to review the file for outstanding impediments to conveyance condition and status of over-allowable requests, in addition to hazard insurance recovery or repairs. The single largest driver of denied over-allowable requests from HUD is missed due diligence time frames causing the property to be overdue for conveyance.

Assessing the property conditions and denied over-allowable requests 60 days prior to scheduled foreclosure sale and providing authorization to your property preservation vendor will result in 20 or more days shaved off the time frame to place in conveyance condition and greatly reduce out-of-pocket costs as-

sociated with missing the due date for conveyance.

Adoption of change is often a lengthy and difficult process when significant dollars are at stake. However, as President Bill Clinton once said, "The price of doing the same old thing is far higher than the price of change." Implementing the best practices verbalized by FHA staff and their MCM vendor and partnering with your property preservation vendor is crucial in reducing or eliminating out-of-pocket expenses related to FHA conveyances. In doing so, we can tackle the other challenges we face as an industry. **SM**

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