

MEMORANDUM

To: Fannie Mae

1 Overview

The process for repossessing and reselling manufactured home (“Home”) securing a chattel loan (“Loan”) requires:

- sending the borrower (“Borrower”) a notice of default and right to cure (“Notice of Default”);
- gaining possession of the Home either by voluntary surrender or court order;
- sending the borrower a notice of repossession, notice of right to reinstate, notice of right to redeem and notice of private or public sale;
- re-marketing the Home;
- conducting the sale;
- documenting the sale;
- retitling the Home; and
- sending the borrower an Explanation of Calculation of Surplus or Deficiency or a waiver of deficiency.

2 Notice of Default

A Notice of Default is required by state law in thirty (30) states and by federal law for loans made under the authority of Section 501(a) of the Depository Institutions Deregulation and Monetary Control Act, 12 U.S.C. § 1735f-7a and 12 C.F.R. Part 190 (“DIDA”). (DIDA preempts state law usury ceilings and, subject to conditions, limits on any fees that would be classified as finance charges under the Truth in Lending Act.) DIDA is available in thirty six states and the District of Columbia. Fourteen states exercised the right to opt out. Virtually all chattel lenders lend under DIDA where it is available. As a result, every state except Hawaii, Idaho, Nevada, North Carolina and South Dakota requires a Notice of Default before repossession.

Virtually all chattel lenders send a Notice of Default in every state. It is a collection tool and a uniform procedure reduces the risk of error. Typically, a lender will send the Notice of Default following the expiration of the late charge grace period. If the Borrower fails to cure, and will not agree to a voluntary surrender of the Home, the lender must obtain possession by court order executed by the local sheriff. Some Borrowers abandon their Homes.

3 Notices to the Borrower

Once in possession of a Home securing a defaulted Loan, in twenty (20) states the lender must send the borrower a notice of repossession, in twelve states a notice of right to reinstate and in every state a Notice of Disposition (notice of sale) and right to redeem the repossessed Home in accordance with the Uniform Commercial Code (“UCC”). These four notices can be combined

into one document, so long it is timely sent. Virtually all chattel lenders afford Borrowers in every state the right to reinstate, preferring to avoid a repossession sale.

4 The Borrower’s Rights to Cure, Reinstate and Redeem

Borrower's Rights to Cure a Default	Arises	Must be Exercised	How	Ends
Cure	Before repossession	Before any legal action to repossess the Home or accelerate the balance due on the Loan; but the Notice of Default and the Right to Cure is excused in some circumstances.	By curing the default(s) described in the Notice of Default	31 days after the date of the postmark on the Notice of Default (varies by state).
Reinstate	After repossession	Any time after the Notice of Sale is sent	By curing the default(s) described in the Notice of Sale	Upon completion of the repossession sale
Redeem	After repossession	Any time after the Notice of Sale is sent	By paying entire balance due on the Loan	Upon completion of the repossession sale

5 Timing of a Sale

Some states establish a minimum period of time that must elapse between the date a Notice of Disposition (Notice of Sale) is given and the date the repossession sale may occur. In any event, the UCC “reasonableness” requirement and the time it may take for the notice to reach the Borrower should be kept in mind when setting the sale date (*e.g.*, set the sale date for at least ten days after the date the lender mails the Notice of Disposition (Notice of Sale).

If the Borrower has paid at least sixty percent (60%) of the original cash price for the Home, the sale must be held within 90 days of the date of repossession. Alternatively, all persons potentially liable on the Loan must waive the right to a sale within 90 days and consent to extending time for sale by signing a written waiver of his or her rights.

6 Notice of Disposition

The UCC provides a safe harbor form of Notice of Disposition (Notice of Sale) for both private sales and public sales. Use of this form without significant variation affords a presumption of compliance with the notice of sale requirements of the UCC. This presumption is important because the penalty provisions for violating the UCC include payment to the Borrower of an amount equal to the originally scheduled finance charge and ten percent (10%) of the principal financed.

7 Re-Marketing the Home

The lender (“Secured Party”) may remarket a repossessed Home in a variety of ways. If it has a remarketing department it may advertise and sell the Home itself. Thirty seven (37) states allow the Secured Party to act as retailer for the sale of the repossessed Homes without a retailer license. If the Home is in a community, a retailer affiliate of the community may assist with the resale. Typically the Secured Party and the community will enter into a “Park Agreement” whereby the Secured Party pays site rent, and refurbishes and maintains the Home until it is sold in place. If the Home is located on private land and the secured Party does not have a lien on the land, typically the Home is removed to the sales lot of the retailer that originally sold the home, and consigned for resale. A prudent lender will get a landlord lien waiver when installing a Home on private land. Finally, many Secured Parties list the Home for resale on www.mhvillage.com.

8 Repossession Sale

A repossessed Home may be resold either at a public sale or a private sale as long as the sale is conducted in a commercially reasonable manner.

A public sale is an auction open to the public, held at a specified date, time and place. The Secured Party may bid on the Home, but the price must be the fair market value of the Home. Public sales, conducted by a licensed auctioneer, are required in Ohio, and in Georgia, if requested by the Borrower.

A private sale is negotiated by the Secured Party using whatever means it reasonably believes will bring the highest net price for the Home. A private sale does not have to take place at any particular time or place; however, the law requires a reasonable period of time following repossession before the private sale can take place. The Secured Party may NOT purchase a repossessed Home at a private sale.

9 Transferring Title

After either a public sale or a private sale the Home a “Transfer Statement” and an affidavit of private sale or affidavit of public sale should be completed, and delivered to the buyer.

9.1 Home Subject to a UCC Financing Statement

If the Home is in Alabama (1989 Model Year and Older), Connecticut, District of Columbia, Hawaii, Massachusetts, Maine (multi-section homes), Mississippi (1998 Model Year and Older), New Hampshire, New York (1994 Model Year and Older), Rhode Island, Louisiana, Vermont, or Wyoming and subject to a UCC-1 Financing Statement, file a UCC-3 termination statement in the Secretary of State’s office. Homes in Louisiana and Wyoming are covered by both a certificate of title and a UCC-1 financing statement.

9.2 Home Subject to a Certificate of Title

The method of processing an application for title for a repossessed Home depends on three factors, which vary by state.

1. Who has the original certificate of title, the Borrower or the lender Secured Party?
 - The Secured Party has possession of the original certificate of title in twenty eight (28) states.

- The Borrower has possession of the original certificate of title in nine (9) states. However, in Michigan and in Minnesota, the Secured Party may require the Borrower to elect, when applying for a title, to give the Secured Party possession of the original certificate of title.
- In seven (7) states titles are kept in electronic format in a database maintained by the state – the state does not issue paper titles.
- Seven (7) states do not title manufactured Homes
- ☛ If the Borrower holds the original certificate of title the Secured Party probably won't be able to get possession of it, but every state has a process for applying for a new title without it.

2. Was the Home sold at a private sale or a public sale?

- ☛ The law provides that the lien holder can purchase a repossessed Home at a public sale, but NOT at a private sale.

3. Does the state issue repossession titles? If so, are they mandatory?

A repossession title, where available is issued to the Secured Party when it takes possession of the Home, and submits the paperwork required by the state to prove the regularity of the repossession.

- Twenty one (21) states do not issue repossession titles.
- Fourteen (14) states require the lien holder to take title to the Home upon repossession.
- Sixteen (16) states allow but do not require the lien holder to take title to the Home upon repossession.
- In the fourteen (14) states where repossession title is mandatory the Secured Party must take title in its name. In the sixteen (16) states where repossession title is optional the Secured Party may take title in its name. However, if the repossession sale was a private sale, the Secured Party does not become the owner of the Home. Obtaining the repossession title is merely a step in conveying the Home to an eligible purchaser. Additional titling work is required.

4. Retailer Licensing Requirements

- Thirty seven (37) states allow the Secured Party to act as retailer for the sale of the repossessed Homes without a retailer license. Fourteen (14) states do not allow the Secured Party to act as retailer without a license.
- Repossession title is mandatory in three of the states (Indiana, Montana and Pennsylvania) that require a retailer license to sell a repossessed Home. In those states, the Secured Party must consign the repossessed Homes to a licensed retailer for resale and the retailer will retitle the Home in the name of the ultimate purchaser. In the other eleven (11) states where repossession title is mandatory, the Secured Party does not need a retailer license to sell a repossessed Home and may convey the Home directly to the ultimate purchaser.

- Repossession title is available (but not mandatory) in five of the states (Colorado, Kansas, Mississippi, Texas and West Virginia) that require a retailer license to sell a repossessed Home. In those states, the Secured Party must use a licensed retailer for resale of the repossessed Homes. The Secured Party may avoid paper work, expense and delay by not applying for repossession title.

10 Explanation of Calculation of Surplus or Deficiency

If the repossession sale brings more than enough money to pay the Secured Party's repossession and resale expenses and accelerated Loan balance, the Secured Party must send a check for the surplus and an explanation of the calculation of the surplus to the Borrower. If the repossession sale does not bring enough money to pay the Secured Party's repossession and resale expenses and the accelerated Loan balance, the Borrower is liable for a deficiency and the Secured Party is required to send an Explanation of Calculation of Surplus or Deficiency to the Borrower no later than when the Secured Party first makes written demand on the Borrower for payment of the deficiency. The Secured Party also must provide the Explanation of Calculation of Surplus or Deficiency within fourteen (14) days after receipt of a request from the Borrower, unless, in the case of a deficiency, the Secured Party sends the Borrower a letter waiving the deficiency within fourteen (14) days after receipt of a request.

If the Secured Party takes possession of a Home securing a defaulted Loan and the Borrower signs a form of Voluntary Surrender Agreement that includes a waiver of the deficiency, neither a Waiver of Deficiency Letter nor an Explanation of Calculation of Surplus or Deficiency is required.

If an Explanation is required, it must state the amount of the debt secured by the Home; the amount received from the repossession sale; the amount still due after applying the proceeds of the repossession sale; the amount of fees and charges involved in repossessing and selling the Home (including attorney's fees); any credit to which the Borrower is entitled, if not already reflected in the Explanation; the amount of the surplus or deficiency; and a telephone number or mailing address from which the Borrower can receive additional information. If the Secured Party fails to provide the Explanation, it is liable for any loss caused plus \$500.00.