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**GENERAL REQUIREMENTS FOR PRESERVATION AND PROTECTION OF  
PROPERTIES SECURING FHA INSURED MORTGAGES**

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**Mortgagee Responsibility**

Mortgagees should preserve and protect properties securing FHA-insured mortgages in accordance with the requirements of 24 CFR 203.377, which provides that “the mortgagee shall take reasonable action to protect and preserve such security property when it is determined, or should have been determined, to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass”. In the event that a property securing an FHA mortgage is conveyed damaged to the Secretary without prior approval, the Department may, at its discretion, require the property to be re-conveyed or may require a reduction to the claim proceeds for the greater of the insurance recovery or HUD’s estimate of the cost of repairing the damage.

Generally, the more diligent a Mortgagee is in completing timely foreclosure and conveying a property, the lower the expenditure for preservation and protection will be. A Mortgagee may use any individual or firm to perform preservation and protection services on properties securing FHA-insured mortgages; however, the Mortgagee remains fully responsible to HUD for its actions and the actions of its agents. As a cautionary note, the Department reminds Mortgagees that in addition to the surcharges discussed in this Mortgagee Letter, HUD may pursue enforcement action, including debarment, civil money penalties and actions under the Program Fraud Civil Remedies Act.

**I. Unit Pricing**

HUD has established an overall maximum cost limit (see **Attachment 1**) that establishes the maximum amount that will be reimbursed for all preservation and protection expenses on an individual property. Additionally, HUD has established maximum allowable costs for individual types of expenses such as lawn mowing and lock-changes. Any expenses exceeding the cost allowable or exceeding the overall maximum cost limit per property are not considered approved by HUD unless a Mortgagee has obtained prior written approval from HUD’s designated Management and Marketing Contractor (“M&M”). HUD will require the repayment of claimed reimbursement amounts if it determines that:

- Amounts paid for reimbursement were unnecessary and excessive;
- The Mortgagee obtained bids that were not independent and competitive;
- Services claimed were not performed or not performed properly; or
- The amount claimed exceeded the cost allowable or overall maximum allowable limit and the Mortgagee did not obtain advance written approval.

To facilitate the timely securing of abandoned properties, HUD has pre-authorized Mortgagees to spend up to a set amount per property for expenses directly related to initial securing. This maximum securing limit is included within the overall maximum allowable limit as further described in **Attachment 3**.

Some types of expenses such as the cost of boarding, inspections, securing swimming pools, sump pumps, demolition, vacant/abandoned property registration fees and utilities are not included in the maximum cost limit per property. These services, with the exception of vacant/abandoned property registration fees, will be reimbursed, provided costs stay within the cost allowable listed in **Attachments 2, 3, 4, and 7**. Property registrations fees are set by the local jurisdictions.

A Mortgagee should support all expenditures, including costs associated with the aforementioned exceptions, with receipts, photographs or other documents to support the expenditure. For the purpose of claiming reimbursement, HUD considers actions identified in this Mortgagee Letter to be pre-approved, provided these actions meet all applicable cost limits and are performed in accordance with the work requirements identified in this Mortgagee Letter.

## **II. Claim Submission and Documentation**

HUD will reimburse Mortgagees for preservation and protection actions in accordance with the provisions of this Mortgagee Letter upon receipt of form HUD-27011 Parts A&B via Electronic Data Interchange (EDI) or via the FHA Connection. For instructions on claim processing and document submission see HUD Handbook 4330.4, rev.-1, change 1, which is available on “[www.hudclips.org](http://www.hudclips.org)”. Documentation to support each claimed expense must be maintained in the Mortgagee’s case file and must be provided to HUD or its M&M contractor upon request. The documentation should support the expenditures and illustrate that the Mortgagee took appropriate action to preserve and protect the property from the time of default to conveyance. Examples of appropriate documentation include copies of all inspections, photographs, receipts, applicable law or ordinance with respect to vacant property registration and over-allowable approval requests.

If the property suffered surchargeable damage and the mortgagee has received permission to convey the property un-repaired, Mortgagees shall note “yes” on the Part A form, Item 24, “Is the property conveyed damaged?” Where item 24 is marked “yes”, Mortgagees must also include the date that HUD gave permission to convey damaged in item 25 and also include greater of the insurance recovery or HUD’s estimate of the cost of repairs in item 27.

Where the damage to the property is non-surchargeable, item 25 should be marked “no”, and the Mortgagee shall include an explanation of the non-surchargeable damage in the Mortgagee’s Comment Section of Part A. See additional guidance in HUD Handbook 4330.4, rev.-1, change 1, which is available on [www.hudclips.org](http://www.hudclips.org).

Mortgagees are prohibited from performing or claiming preservation and protection services after the deed has been recorded. However, payment of certain utility bills may be considered an exception to this guideline (see **Attachment 7**).

### **III. Conveyance of Damaged Properties**

#### **A. Surchargeable Damage**

All properties conveyed to HUD should be undamaged by fire, flood, earthquake, tornado, hurricane, or boiler explosion (for condominiums) or damage resulting from Mortgagee neglect. Costs resulting from these types of damage are considered surchargeable and are excluded from the claim for insurance benefits. The Mortgagee must repair the damage or obtain prior written permission from HUD to convey a property with surchargeable damage.

#### **1. Damage Due to Failure to Preserve and Protect (Mortgagee Neglect)**

HUD will hold a Mortgagee liable if its failure to take reasonable action to preserve and protect property that it determined or should have been determined to be vacant or abandoned results in property damage or destruction. Examples of Mortgagee neglect include but are not limited to a Mortgagee's failure to:

- a. Initiate foreclosure within the required timeframe;
- b. Obtain timely and accurate property inspections;
- c. Promptly secure and continue to protect all abandoned properties; or
- d. Promptly notify HUD's M&M contractor of receipt of code violations and demolition notices and take appropriate action.

#### **2. Limitation on Fire Damage**

Mortgagees are liable for the full cost to repair fire damage whether or not the damage was the result of Mortgagee neglect. However, if the property is damaged by fire and is not covered by fire insurance or the amount of insurance coverage was inadequate to fully repair the damage, the Mortgagee's liability may be limited to the amount of the insurance recovery received by the Mortgagee, if any, provided that the Mortgagee certifies that all of the circumstances specified in 24 CFR 203.379(a)(2) exist.

#### **3. Damage Due to Mold**

A property may be conveyed with mold if the mold was not caused by a surchargeable condition, including Mortgagee neglect, fire, flood, earthquake, hurricane, or for condominiums, by boiler explosion. However, even if the mold was not caused by a surchargeable condition, the failure by the Mortgagee to take reasonable action to remediate the cause of the mold and complete any other required preservation and protection actions related to minimizing further mold damage prior to conveyance of the property, qualifies as Mortgagee neglect and, is surchargeable.

#### **4. Requesting Approval to Convey with Surchargeable Damage**

Mortgagees may not convey properties that have surchargeable damage unless the Department provides prior written approval. Until further notice, such

approval shall be provided by the appropriate M&M Contractor having jurisdiction over the subject property. (24 CFR 203.379 (b)).

Such requests for approval should be sent by facsimile or email to the appropriate M&M contractor. The M&M contractor should review and respond in writing to the request either by fax or e-mail no later than 10 business days following receipt. HUD, at its sole discretion, may require that the Mortgagee repair the damage prior to conveyance or may elect to accept conveyance of the property in damaged condition and require that the claim for insurance benefits be reduced by the greater of the insurance recovery or by the government's estimate of the cost of repairs. If HUD requires the Mortgagee to repair property damages before conveyance, HUD will not reimburse the cost of these repairs.

If the claim is adjusted for damages, the Mortgagee should mark item 24 of Part A, form HUD-27011, "yes" and complete items 26 and 27. Please note that HUD's claim system will suspend the claim, delaying payment, if the mortgagee has noted "yes" in item 24 without providing the date of approval in item 26 and the amount of the claim reduction in item 27.

As a matter of administrative practice, HUD generally will not deny conveyance of properties if the government's estimate of the cost to repair the surchargeable damage is equal to or less than \$2,500.

#### **5. Surchargeable Damage Conveyed Without Approval**

When a property with surchargeable damage is conveyed without prior approval, HUD may, at its sole discretion, either re-convey the property to the Mortgagee or seek reimbursement from the Mortgagee for HUD's estimate of the cost of the repairs (24 CFR 203.379(c)). If HUD's estimate is equal to or less than \$2,500, HUD will generally reduce the claim payment by the cost to repair the property damage rather than exercise its right to re-convey. Only a HUD Government Technical Representative (GTR) has authority to approve a re-conveyance demand. The M&M contractor will provide a preliminary e-mail notification that a property may be re-conveyed as a result of property damage within 30 days of the date of conveyance.

The e-mail will identify the reason(s) for the proposed re-conveyance, a cost estimate of the property damage and provide the Mortgagee an opportunity to respond with additional information. If additional information is received from the Mortgagee within 10 business days from the date of the e-mail, it will be included in the package provided to the GTR for a decision. The GTR will, no later than 60 calendar days of the date of conveyance, make the final decision to take no action, issue a Notice to Re-convey or issue a Demand Letter.

The process for appealing the decision of the GTR is described in **Attachment 10**, Mortgagee Appeal Process.

**B. Properties Conveyed with Non-Surchageable Damage**

If a property has sustained non-surchageable damage, the Mortgagee is not required to obtain pre-approval before conveyance. However, the Mortgagee must include a description of the damage in the “Mortgagee’s Comments” section of form HUD-27011, Part A. Item 24 of Part A, “Is the property conveyed damaged?” should be marked “no”. (Note: marking “yes” in item 24, triggers HUD’s claim system to look in item 26 for the date of HUD’s approval to convey the property damaged and to item 27 for the amount that the claim is to be reduced. Mortgagees must indicate “yes” for surchageable damage and “no” for non-surchageable damage.) Inspection reports and photo documentation should support the damage assessed.

Additionally, the Mortgagee must include, along with the copy of the claim sent to HUD’s M&M Contractor, documentation supporting the preservation and protection work performed on the property. At a minimum, this documentation should include evidence of the date of vacancy, validation of the property condition at vacancy and a chronology of actions performed by the Mortgagee to preserve and protect the property.

If a Mortgagee fails to provide the required explanation in the Mortgagee’s Comments section of Part A or fails to provide the required documentation of P&P actions performed, required documentation that clearly identifies the date of vacancy and documentation to clearly identify property condition, the M&M Contractor will notify the Mortgagee in writing that the Mortgagee has 10 business days to provide the information. If no documentation or inadequate documentation is received from the Mortgagee the damage will be considered surchageable.

**V. Permits and Vacant Property Registration**

Each Mortgagee and/or field service provider should be familiar with the state and/or jurisdictional requirements related to city ordinances (such as vacant/abandoned property registration) or local law. The fee associated with registration of a vacant/abandoned property is reimbursable and must be included on your claim. Documentation to support such a claim for registration fees must be included in the claim review file along a receipt for payment. If and when a building permit is required by local law prior to performing preservation and protection services, then the Mortgagee must obtain the permit. If code violations are related to health and safety and/or costs to resolve the violation is less than \$250.00 the mortgagee shall complete the work without prior approval from the M&M unless the repair causes mortgagee to exceed the overall cap for preservation and protection. Otherwise, the mortgagee shall contact the M&M contractor. If vacant property registration fee is less than \$250.00 the mortgagee shall pay the fee without prior approval from the M&M otherwise the mortgagee shall contact the M&M contractor. The M&M contractor should intercede with the community on municipal liens (i.e., on properties such as those being placed in the ACA program) or approve the repairs.

**VI. Quality Control**

In accordance with 24 CFR, Part 202.5(h) all FHA approved Servicers are required to implement a written quality control plan covering all aspects of loan origination and servicing and to conduct regular quality assurance reviews in accordance with the plan. Servicing quality control plans should incorporate quality assurance reviews of preservation and protection responsibilities including a review of work performed by third party field service contractors and other vendors. A Servicer is required to provide a copy of its quality control plan as well as results of quality assurance reviews to HUD staff either during regularly scheduled servicing and post claim audit reviews or upon request. All information collections in quality control are covered under the Office of Management and Budget (OMB) Control Number 2502-0005.

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