

Chapter 50 Note Sales

50.1 Purpose

A. This chapter describes how Multifamily Housing (MFH) handles the sale of notes, primarily those associated with projects for which the Secretary is the mortgagee. It covers the factors MFH takes into consideration when determining whether to sell a note or foreclose. It also covers the note sale process.

50.2 Background

A. When a borrower is delinquent for 30 days on a loan insured by the Federal Housing Administration (FHA), the lender has the option to file an insurance claim. If the borrower fails to cure the delinquency within 30 days, then the loan is in monetary default,¹ and the lender will assign the note to HUD.^{2 3}

B. A default may also involve the material violation of a covenant under the provisions of the mortgage (covenant default).⁴ In this case, HUD instructs the lender to accelerate the loan, resulting in the entire loan balance coming due. This triggers a monetary default, which results in the note being assigned to HUD.⁵

C. When a note is assigned to HUD, HUD will pay the claim, then seek to dispose of the note through one of two means: foreclosure or a note sale.⁶

D. Key differences between foreclosure and a note sale are as follows:

1. Foreclosure (which is addressed thoroughly in the Property Disposition chapter) is governed by state law. In a foreclosure, HUD may need to hire a foreclosure commissioner. Foreclosure may be the better option when it enables HUD to pursue goals such as

¹ 24 C.F.R. 207.255(a)(1)(i)

² The FHA Commissioner may ask the lender to accept a partial payment of claim in lieu of assigning the mortgage. Partial payments of claim are covered in chapter 35.

³ If the lender is a Housing Finance Agency (HFA) participating in the Risk-Sharing Program for Insured Affordable Multifamily Project Loans, the HFA will not assign the loan to HUD but will instead foreclose (or accept a deed-in-lieu of foreclosure) and submit a claim to HUD for the amount of their loss.

⁴ 24 C.F.R. 207.255(a)(1)(ii)

⁵ MFH typically instructs the lender to accelerate the loan only in the case of projects with FHA-insured mortgages that are not covered by a rental assistance contract. When there is a Housing Assistance Payments (HAP) contract and a default under that contract, MFH will terminate the HAP, triggering tenant eligibility for Tenant Protection Vouchers.

⁶ MFH will release the property from its Regulatory Agreement prior to foreclosure or a note sale. See chapter 52.

preserving long-term affordability or addressing a property's physical or financial needs.⁷ Foreclosure also enables the Secretary to facilitate sale of the property to a local government entity whose interests align with HUD's goals.

2. A note sale can be quicker and easier than a foreclosure. HUD's Office of Asset Sales (OAS) conducts note sales on HUD's behalf. In a note sale, MFH can rely on OAS and its contractors to obtain an appraisal, advertise, etc.

F. The regulations governing the sale of defaulted multifamily mortgage notes are found at 24 Code of Federal Regulations (C.F.R.) §§ 290.30 through 290.39. These regulations supplement the governing statute⁸ and require HUD to sell HUD-held multifamily mortgage notes on a competitive basis, with certain exceptions (described in section 50.5.B).

G. In addition to selling notes associated with FHA insurance programs, HUD may sell direct loans or Capital Advance notes. Over the 10-year period ending on December 31, 2024, however, OAS has sold notes associated only with the section 207, 221(d)(4), and 223(f) programs.

50.3 Applicability

A. This chapter applies to all MFH projects that are, or were prior to acquisition by the Secretary, assisted or insured under the National Housing Act or subject to a direct loan.

50.4 Terms Used in this Chapter

A. Office of Asset Sales (OAS). The HUD office that conducts note sales on HUD's behalf.

B. National Property Disposition Committee (NPDC). The committee that reviews information on the property and votes on the Asset Management Division Director's property disposition recommendation.

C. Note. A form of written agreement to repay a mortgage loan. Also called a "mortgage note."

D. Sale Project Manager (SPM). The person selected by OAS to manage the sale from inception to closing and post-closing.

E. Transaction Specialist (TS). The person designated by the SPM to assist with the sale execution. As of the date of publication of this chapter, the TS is a contractor.

⁷ Certain types of mortgages are eligible for non-judicial foreclosure pursuant to the Multifamily Mortgage Foreclosure Act (12 U.S.C. 3701–3707). In a non-judicial foreclosure, HUD may establish certain conditions, such as requiring the purchaser to continue to operate the property in accordance with the terms of regulatory or other agreements in place immediately prior to the foreclosure sale (12 U.S.C. 3706(b)(1)).

⁸ 12 U.S.C. 1701z-11

50.5 Pre-Sale Disposition Decision

A. The Tenant Relocation and Asset Disposition Division (TRAD) and the Account Executives (AEs) in the MFH field offices work collaboratively to identify the multifamily notes to be included in each note sale. In accordance with the applicable regulations, the decision to sell a note is made only after the AEs and TRAD have assessed the available alternatives, including holding the mortgage note or disposing of it through a foreclosure sale.

B. Note sales typically involve competitive auctions. Alternatively, MFH may direct OAS to sell a note on a negotiated (noncompetitive) basis to a governmental entity to preserve or create affordable housing.⁹

50.6 National Property Disposition Committee

A. Based on input from TRAD and the AEs, the field Asset Management Division Director (AMDD) will make a disposition recommendation to the National Property Disposition Committee (NPDC). To support the recommendation, the AMDD provides analysis and background in a 9-point memorandum that follows a format determined by TRAD. The 9 points to be covered are:

1. History of the property;
2. Financial analysis;
3. Physical analysis;
4. Occupant income levels;
5. Property and comparable characteristics;
6. Availability or need for rental housing in the market area;
7. Estimated number of displaced residents;
8. Resident eligibility for rental assistance; and
9. Other factors.

B. Before submitting the disposition recommendation to the NPDC, the AMDD provides notification of the sale to prospective governmental entity purchasers in the relevant jurisdiction to alert such entities of the opportunity to purchase the notes through a negotiated sale. (TRAD has a letter format that the AMDD can use for this purpose.) Sometimes a local government or a not-for-profit entity affiliated with a local government will proactively contact HUD, having learned of the forthcoming sale through other means.

C. The AMDD submits the 9-point memorandum to the NPDC Chairperson and other voting members of the NPDC for their review prior to voting on the AMDD's recommendation to proceed with a note sale. In evaluating the AMDD's recommendation, the NPDC will consider the mission of

⁹ 24 C.F.R. § 290.31(a)(2)

HUD, preservation goals, and the return on investment. The NPDC Chairperson will call a vote; once a quorum is present, the NPDC votes, and the Chairperson informs Multifamily leadership of NPDC's decision.

50.7 Note Sale Process

A. When tasked to sell the note(s) in a competitive or negotiated sale, OAS follows the process described below.

50.7.1 Pre-Sale Activities

A. OAS assigns a Sale Project Manager (SPM) to manage the sale from inception to closing and post-closing. The SPM will establish a sale date and identify an OAS Transaction Specialist (TS) to assist with sale execution. The SPM and TS will then collect note sale documents from the AEs, the office of Multifamily Note Servicing, and the Office of Multifamily Claims.

50.7.1.1 Note Sale Documents

A. Table 50-1, below, shows the documents OAS will request for each note and the parties responsible for providing each document, to the extent the document is available.

Table 50-1: Note Sale Documents

Type of Document	Provided By
Collateral and Servicing files, including Dynaxys ¹⁰ downloads and the Statement of Multifamily Mortgage Account (SMMAs) ¹¹	Office of Multifamily Loan Servicing and its contract Servicer
Claims Files/Schedule As	Office of Multifamily Claims
Audited Financial Statements from iREMS, including: <ul style="list-style-type: none"> • Current Owner details (name, address, phone number, email address); • Current Management company/Operator name, address, phone number, email address; • Property summary; and • Problem statement. 	AEs / sometimes pulled by OAS when iREMS access is available to OAS
Asset Management Files – See Appendix 50-1	AEs in the various multifamily field offices
Property and Management reviews	AEs in the various multifamily field offices
Correspondence	AEs in the various multifamily field offices

50.7.1.2 Sale Approval Memo and *Federal Register* Notice

A. After receipt of the documents listed above, OAS will draft a sale approval memo and *Federal Register* Notice for signature by the FHA Commissioner. The purpose of the *Federal Register* Notice is to make the public aware of the forthcoming sale. (This Notice is published even in the case of a negotiated sale.)

50.7.2 Sale Activities

50.7.2.1 Borrower Notification

A. After the sale has been publicly announced, the SPM or TS drafts borrower notification letters for signature by the Deputy Assistant Secretary for MFH. The SPM or the TS sends these letters to inform the borrower(s) that their mortgage is being sold and of any obligations still due under the Regulatory Agreement with HUD. The letters also inform the borrowers of any expected property inspections by third-party vendors. Borrower notification letters are sent by overnight mail so that notice is sent by HUD to borrowers at least 30 days prior to the bid date for the sale (or the sale date, in the case of a negotiated sale).

50.7.2.2 Sale Project Plan and Sale Timeline

A. Once tasked, the TS prepares a sale project plan and a sale timeline. The plan will recommend such things as third-party reports, and the sale timeline will set dates for deliverables leading up to the bid date (or date of sale, in the case of a negotiated sale).

¹⁰ Dynaxys is MFH's servicer for note sales.

¹¹ This is the title of the billing letters that are mailed out monthly to borrowers of assigned mortgage notes.

1. Third-Party Reports. Third-Party Reports (TPRs) are included in the due diligence package prepared by the TS and provided to potential bidders or to purchasers in a negotiated sale. These reports provide additional details on the condition of the properties that secure each loan included in the sale. Typical third-party reports include:
 - a. Site inspection;
 - b. Appraisal;
 - c. Physical Needs Assessment (as needed); and
 - d. Environment Report (as needed).
2. Official Sale Kick-off/Weekly Conference Calls. In the run-up to the sale, the following parties hold weekly conference calls:
 - a. OAS;
 - b. The TS;
 - c. Subcontractors (typically marketing, bid due-diligence platform¹², and Bid Evaluation Model (BEM)¹³ team members);
 - d. The OAS Program Financial Advisor contractor;
 - e. Multifamily Notes Servicing and its servicing contractor;
 - f. Multifamily Claims;
 - g. Multifamily Accounting;
 - h. The Office of General Counsel;
 - i. TRAD;
 - j. The Office of Risk Management and Regulatory Affairs; and
 - k. The AEs from the various field offices.

Together these offices constitute the team that will provide input as necessary throughout the sale process leading to bid day.

50.7.2.3 Marketing Plan

A. The TS develops a marketing plan for each competitive (i.e., not negotiated) sale as follows:

1. Marketing Campaign. The TS prepares a marketing campaign for each sale that details how they will market the mortgage loans included in the sale to prospective bidders. The marketing campaign typically involves market outreach to past sale participants, prospective bidders, investors, and industry stakeholders. Announcements and/or

¹² The due-diligence platform is an online platform where due diligence reports are housed.

¹³ The BEM is associated with the bidding site. Once all of the bids have been submitted, the BEM runs the results for HUD.

advertisements of multifamily loan sales are posted in several public locations in order to inform interested market participants and increase transparency.

2. Sale announcement and advertisement. Sale announcements and advertisements are typically published to:
 - a. The *Federal Register*;
 - b. The HUD OAS Web site;
 - c. The Transaction Specialist Web site;
 - d. National publications (e.g., the *Wall Street Journal*); and
 - e. Local trade and business publications.

50.7.2.4 Due Diligence Data

A. Loan documents, Selected Attributes Loan Database (SALD/ALD),¹⁴ and additional due diligence materials, as outlined in the table below, are typically released to bidders one month prior to bid day. This data provides relevant information about the mortgage notes included in the sale; however, potential bidders are advised to perform their own due diligence in order to make an informed buying decision. Questions about the marketing materials or HUD due diligence data are to be referred to the TS.

50.7.2.5 Legal Documents

A. An overview of the various legal documents is provided in Table 50-2 below.

Table 50-2: Legal Documents

#	Document	Description
1	Confidentiality Agreement (CA) Prepared by: OGC Reviewed by: TS, OAS, and PFA	Bidders must sign the CA, agreeing to the confidentiality terms of the sale to gain access to the due diligence materials on the bid site. In signing the CA, bidders agree not to disclose confidential information related to the mortgage notes included in the sale.
2	Qualification Statement (QS) Prepared by: OGC Reviewed by: TS, OAS, and PFA	Bidders must complete and sign the <i>Qualification Statement</i> (QS) (form HUD-90092), self-certifying that they meet the qualification requirements of the sale to bid. By executing the QS, bidders confirm the validity of the information provided. The TS reviews the QS to confirm that bidders provide all the information required by HUD.
3	Loan Sale Agreement (LSA) Prepared by: OGC Reviewed by: OAS and PFA	The LSA details the terms of the sale agreed to by HUD and the purchaser. It is by and between the Secretary of HUD and the purchaser; outlines the terms of each sale, including HUD's Representations and Warranties to the Purchaser; Purchaser's

¹⁴ This database includes extensive information about each individual note included in a sale.

#	Document	Description
		Representations and Warranties to HUD; settlement details; and post-sale requirements.

50.7.3 Bid Evaluation

A. The TS is responsible for preparing the Bidder Information Package, which establishes bidder qualifications and includes bidder documents and the market valuation of the notes. HUD's Office of Risk Management establishes a floor price for the sale, which is also included in the Bidder Information Package. The floor price is the price HUD would expect to receive through foreclosure rather than a loan sale.¹⁵

B. Bids are evaluated and awards are made based upon comparison of bid prices versus floor prices. Awards are approved by the FHA Commissioner, and Award Letters are issued to the Awardees.

C. HUD reserves the right to remove a loan from the sale or not award the loan.

50.8 Awards

A. Following the sale:

1. TS notifies borrowers via "Goodbye Letters";
2. The Multifamily Notes Servicing Branch closes accounts associated with the sold notes; and
3. The mortgages associated with the sold notes are assigned to the winning bidders and/or entities involved in negotiated sales.

B. Servicing transfer of the sold and awarded assets is completed at the time of closing, usually within two weeks from the bid day.

¹⁵ The market valuation and floor price are shared with the Office of Management and Budget (OMB).

Appendix 50.1

Asset Management Files

A. Asset management files may contain the following:

Volume I	Volume II
Loan Sale Agreement	Latest Audited Financial Statements
Note and any Related Riders or Modifications	Monthly Operating Statements and Interim/Unaudited Financial Statements
Mortgage or Deed of Trust and Assignments	Latest Appraisal
Letter Agreements	Payment History and Statement of Multifamily Mortgage Account
Consolidation Agreement	Amortization Schedule
Transfer of Physical Assets	Correspondence During the Most Recent 5 Years Period
Final Firm Commitment of Insurance	Tenant Estoppels
Assignment of Rents and Leases	Property Management Information
Security Agreements/Chattel Mortgages	Management Review Summary
UCC Financing Statements	Property Inspection Report /Market Rent Study
Title Policy(s)	Environmental Phase 1 Report
Senior/Subordinate Loan Documents	Physical Needs Assessment Report
Ground Lease	Insurance Policies/Certificates
Leasehold Subordinate Agreement	Rent Rolls
Regulatory Agreement	Property Tax Statement
Provisional Workout Agreement and Management Improvement	Other/Miscellaneous Forms
Indemnification Agreement	
Assignments to Secretary of HUD (form HUD-289)	
Documents Related to Litigation or Bankruptcy	
Notice of Default/Intent to Foreclose	
Other Legal Documents and HAP Information	