

CHAPTER 23: ISSUER DEFAULT - GINNIE MAE REMEDIES

23-1: OVERVIEW OF CHAPTER

The Guaranty Agreements and this Guide set forth grounds on which Ginnie Mae, in its discretion, may declare an issuer in default of its responsibilities under the Ginnie Mae MBS Programs. This chapter describes briefly the remedies available to Ginnie Mae in the event of a default, including termination of issuer status and extinguishment of an issuer's rights in its Ginnie Mae portfolio. The chapter also describes Ginnie Mae's remedies against a document custodian, funds custodian, subcontractor, or other person, including an action for damages or civil money penalties, administrative proceedings, and other legal remedies. In addition, the chapter describes the serious penalties, including imprisonment, that can result from the making of any misrepresentation or false statement to Ginnie Mae or its agents.

Procedures for the declaration of a default, termination of issuer status, and extinguishment of an issuer's right, title, and interest in the pooled mortgages are provided in the applicable Guaranty Agreement, which incorporates by reference this Guide. If there is a conflict between the provisions of the applicable Guaranty Agreement and this Guide, the Guaranty Agreement shall control.

23-2: ISSUER DEFAULT

An event of default by the issuer occurs when Ginnie Mae determines, in its sole discretion, that any of the following events have occurred or conditions exist, as more specifically set forth in the applicable Guaranty Agreement:

(A) Events of Default

- (1) any failure by a Ginnie Mae I MBS issuer to remit to a security holder of certificated securities any payment required under the terms and conditions of the securities, the applicable Guaranty Agreement, or Section 15-2 of this Guide or to have funds in the central P&I custodial account at the time and in the amount required pursuant to Section 15-2 of this Guide. An event of default under this provision will be deemed to have occurred as of the scheduled date of a monthly ACH debit that fails because the deposit of such funds is untimely, insufficient or both;
- (2) any failure by a Ginnie Mae II MBS issuer to have funds in the central P&I custodial account at the time and in the amount required pursuant to Section 15-3 of this Guide. An event of default under this provision will be deemed to have occurred as of the scheduled date of a monthly ACH debit that fails because the deposit of such funds is untimely, insufficient or both;

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- (3) any application by the issuer to Ginnie Mae or the CPTA for an advance of funds in order to pay a security holder or the making of any part or all of an advance by Ginnie Mae or the CPTA;
- (4) any other act or omission by the issuer that causes the required payment to a security holder not to be made in a timely manner;
- (5) any notification to Ginnie Mae by the issuer that it will not meet its deposit or payment obligations in a timely manner;
- (6) any impending or actual insolvency of the issuer;
- (7) any change with respect to the business status of the issuer that materially adversely affects Ginnie Mae or the ability of the issuer to carry out its obligations;
- (8) any unauthorized use of custodial funds;
- (9) any withdrawal or suspension of the issuer's FHA approved mortgagee or lender status or of Fannie Mae or Freddie Mac approved servicer status;
- (10) any submission of a false report, statement, or item of data or information; failure to submit a required report or notice; act of dishonesty; breach of fiduciary duty; or willful misconduct related to the Ginnie Mae MBS Programs; and
- (11) any other failure of the issuer to observe or comply with any term or provision of the applicable Guaranty Agreement or this Guide, or any breach of any warranty set forth in the applicable Guaranty Agreement, provided that any failure or breach under this paragraph (11) shall constitute an event of default only if it has not been remedied or corrected within 30 days of notification by Ginnie Mae. Ginnie Mae reserves the right in its discretion to declare an immediate default if the issuer receives three or more notices under this Section 23-2(A)(11) of failure to comply.

(B) Acts of Subcontract Servicer or Agent

23-3: REMEDIES UPON DECLARATION OF DEFAULT

Ginnie Mae may attribute to the issuer any act by the issuer's subcontract servicer or any agent of the issuer.

In the event of an issuer default, Ginnie Mae, in its sole discretion, will be entitled to avail itself of all remedies under the applicable Guaranty Agreement, any related Cross-Default Agreement, this Guide, or applicable law. Among other things, Ginnie Mae has the right to:

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(A) Termination of Issuer Status

Terminate the issuer's status as an approved Ginnie Mae issuer.

(B) Extinguishment of Interest in Mortgages

Extinguish any redemption, equitable, legal, or other right, title, or interest of the issuer, and anyone claiming through the issuer, in the mortgages in pools and loan packages for which the issuer has issuer responsibility. Issuers, subcontract servicers, creditors, and others should be aware that any and all right, title, and interest of the issuer in and to pooled mortgages, including but not limited to the rights of the issuer (and of any subcontract servicer) to service the pooled mortgages and to earn servicing compensation, are forfeited and cease upon extinguishment by Ginnie Mae.

(C) Recovery by Ginnie Mae

Recover from the issuer all shortfalls in any P&I custodial account (including a central P&I custodial account), any escrow custodial account, any disbursement account, and any clearing account. The issuer remains liable to Ginnie Mae for the restitution of any excess funds withdrawn to cover advances (see Section 15-5). These sums will be assessed to and paid by the defaulting issuer or any successor entity at the time such losses become known.

The issuer shall be liable to Ginnie Mae for: (1) restitution, from the issuer's own funds, for the issuer's use of any funds in violation of the applicable Guaranty Agreement, including but not limited to any unscheduled recoveries of principal that the issuer fails to handle, apply, and remit in accordance with the applicable Guaranty Agreement, any excess funds withdrawn from and not replaced in a P&I custodial account, or any other funds that the issuer improperly handles, fails to place in, or removes from, a P&I custodial account (including a central P&I custodial account), the escrow custodial account, or any other escrow account maintained or required to be maintained with respect to the mortgages; and (2) all loss, damage, cost, expense, and liability suffered by Ginnie Mae as a result of the issuer's breach of, failure to carry out, or default under the applicable Guaranty Agreement.

(D) Cross-Default

Upon declaring the issuer in default under the applicable Guaranty Agreement, declare without further cause a default on all other pools and loan packages of that same issuer and all pools and loan packages of any affiliated issuer that has executed a Cross-Default Agreement.

(E) Civil Money Penalties

Seek civil money penalties against the issuer, document custodian, or funds custodian in accordance with Section 23-4 below.

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(F) No Recovery of Advances, Expenses or Other Items

Deny issuers recovery from Ginnie Mae for any advances, expenditures, or losses of the issuer in connection with the pooled mortgages. In addition, if Ginnie Mae declares an issuer in default, the issuer automatically loses any right to recover advances, expenditures, or losses from all other sources (including, but not limited to, mortgage insurance or loan guaranty claim payments) related in any way to the pooled mortgages.

(G) Denial of Reentry

Deny reentry into the Ginnie Mae MBS Programs to any former issuer and its principals if Ginnie Mae determines, in its sole discretion, that approval would create an undue risk to Ginnie Mae or to the integrity of a Ginnie Mae MBS Program.

(H) Administrative Proceedings

Institute administrative enforcement proceedings against an issuer, document custodian, or funds custodian, including actions before the FHA Mortgagee Review Board seeking suspensions and debarments, and refer misconduct to the HUD Inspector General.

(I) Other Remedies

Exercise, in its sole discretion, one or more of the following if an issuer fails to observe or comply with any term or provision of the applicable Guaranty Agreement or this Guide, or breaches any warranty or fiduciary duty set forth in the applicable Guaranty Agreement, or commits any other event of default that does not result in termination of issuer status or extinguishment of the issuer's rights in its Ginnie Mae portfolio:

- (1) deny the purchase of commitment authority;
- (2) deny the use of existing commitment authority;
- (3) deny or rescind approval for transfer of issuer responsibility;
- (4) deny or rescind approval to serve as a subcontract servicer;
- (5) seize control from the issuer of P&I custodial accounts (including any central P&I custodial account), disbursement accounts, and escrow custodial accounts;
- (6) direct the issuer to cure the circumstances giving rise to the breach or default;
- (7) take the default into account in deciding whether to grant or approve any request or submission by the issuer; and
- (8) deny or rescind approval to act in any capacity under a Pledge of Servicing Agreement.

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23-4: CIVIL MONEY PENALTIES

Ginnie Mae may impose a civil money penalty whenever in Ginnie Mae's judgment an approved issuer, document custodian, or funds custodian knowingly and materially violates a relevant program statute, regulation, or handbook requirement or when a false statement is submitted to HUD. A civil money penalty may be imposed in addition to other administrative sanctions and other civil or criminal penalties or remedies.

The Ginnie Mae President may propose civil money penalties for any issuer, document custodian, or funds custodian for a knowing and material violation as described in 24 CFR § 30.50. In determining whether civil money penalties should be imposed, the Ginnie Mae President will follow the procedures described in 24 CFR Part 30.

23-5: NO LIMITATION ON REMEDIES

Ginnie Mae may exercise the full range of remedies available to it at law or in equity. Nothing in this chapter limits the remedies available to Ginnie Mae in proceeding against issuers, document custodians, funds custodians, and other parties.

23-6: FALSE STATEMENTS

Each statement, report, and compilation of data or information submitted in connection with a Ginnie Mae MBS Program by an issuer, funds custodian, document custodian, subcontract servicer, or other person or entity, directly or indirectly, to Ginnie Mae, its employees, its agents or its contractors (including, without limitation, the Ginnie Mae Reports Group) is deemed a submission to the United States that is relied upon by Ginnie Mae in the operation of a Ginnie Mae MBS Program. Submission of a statement, report, or compilation of data or information is deemed to be a certification by the person making the submission that each matter stated therein is true, correct, complete, and in accordance with the instructions issued by Ginnie Mae in connection with the statement, report, or compilation.

CAUTION: The submission of a false or misleading statement, report, or item of data or information to the United States may result in the imposition of severe criminal and civil liabilities, sanctions, and penalties, including, without limitation, fines and imprisonment.