

## Montana Board of Housing

### Foreclosure Process and Servicer Reimbursement Procedures

August 31, 2010

**Introduction:** It has been a long time since MBOH and its servicers have had to deal with this many foreclosures. Moreover, the foreclosure world has changed and keeps changing as other agencies grapple with the wave of foreclosures nationwide. Article 4 of the Purchase and Servicing Guide specifies the duties and responsibilities involved in servicing MBOH loans. In addition to those terms, conditions, and stipulations, MBOH thought it would be useful to provide this guidance current with the practices of mortgage insurance and guarantee providers and MBOH's procedures concerning servicer reimbursements.

#### **SHORT SALE**

A short sale is a pre-foreclosure sale in which the lender is willing to accept less than what is owed on the note to satisfy the note and allow the borrower to dispose of the property. A short sale is accomplished with the participation of the mortgage insurer. The Short Sale process should be considered when there is an expectation that the loan follows/meets the insurer's Short Sale Criteria and that a sale meets a favorable Homeownership Program outcome such as protecting a borrower's credit rating, subject to the expectation listed below. Otherwise, the Foreclosure Process is followed.

**MBOH Expectation:** MBOH will only consider a Short Sale if no loss of loan principal is incurred by MBOH, taking into account the amount provided by the insurer. **All short sales must be approved by MBOH prior to the servicer approving the transaction.** See end of this memo for who to contact at MBOH for questions about a particular short sale and for pre-approvals.

#### **TRUSTEE SALE**

A trustee's sale is a public auction on the proverbial "courthouse steps," with the property going to the highest bidder, often the lender itself. A "Third-party" sale occurs when the lender is outbid at the time of the Trustee's Sale. If the property is purchased by the lender (MBOH), an insurance settlement takes place and the property is subsequently sold. Trustee sales should not be confused with "foreclosure auctions," in which banks and other property owners dispose of portfolios of land and homes taken back in earlier foreclosure procedures.

**MBOH Expectation:** Servicers will follow federal and state law and insurer's guidelines in foreclosing properties. NOTE: borrowers with FHA insurance must be evaluated for HAMP eligibility prior to foreclosure, including consideration for all other FHA mitigation tools that must be considered before HAMP. See Attachment A memo on FHA HAMP for MBOH loans.

#### **REAL ESTATE OWNED (REO) SALE**

The last disposal option is a post-foreclosure sale of a property that has reverted to the lender (MBOH). A REO Sale differs from a Short Sale in that full value is realized since the loan was extinguished by foreclosure and the property's value is what it sells for.

**MBOH Expectation:** Servicers will work closely with MBOH staffer Doug Jensen on REO sales, taking direction from Doug on all aspects of listing and selling home. Doug's contact information is at the end of this memo.

## **MBOH Reimbursement Requirements**

Servicer Expenses In General – Insurance claims should be an accurate accounting of all transactions. While it may be necessary to summarize amounts on the claim form, each transaction should be individually disclosed or itemized in the claim's supporting documentation so that MBOH staff can identify the amount, purpose, vendor, date, service and/or goods provided, and where the expense is included in the claim form.

MBOH Expectation: Servicers will follow insurer/guarantor guidelines for accurate and timely filing of claims, and submit a copy of claims filed simultaneously to the insurer and to MBOH. Questions about claims filing are to be directed to MBOH staff person listed at the end of this email.

### **Required Supporting Documentation (From the Servicer) showing itemized costs**

- MBOH Cash Disbursement Request Form (Updated August, 2010) and appended to these procedures as Attachment B. (Please disregard previous versions and be sure to use MBOH form when requesting funds)
- Copy of the claim submitted to the insurer:
  - RD – Loss claim input worksheet and form 1980-20
  - VA – print screens of information entered
  - FHA – Part A, B, C, D and E
  - Genworth – Uniform mortgage insurance claim for loss
  - MGIC – MGIC claim form 503
- Copy of advice of payments from the insurer (i.e., HUD, RD, FHA, Genworth, MGIC, VA)
- Copy of the settlement statement
- Copies of all receipts, such as refunds of HIP and MIP premiums
- Copies of bills paid for expenses
- Copies of bills paid for attorney fees
- Printout of Loan History highlighting amounts claimed
- Other proof of payment documents appropriate to the expense
- A spreadsheet tying each receipt to the expense being claimed, including date of payment
- MBOH pre-approval of non-reimbursable expenses form, if claiming non-reimbursable expenses (See Attachment C).

MBOH staff needs thorough documentation as described above in order to identify and verify expenses claimed. Requests for reimbursement that do not have the appropriate documentation will be denied.

## Allowable Expense Determination

If a servicer anticipates an expense not normally reimbursable by the insurer or MBOH, the first step is to request a variance from the insurer. If the variance is not granted or won't cover the entire amount, the servicer must get approval from MBOH in writing before incurring the expense, and submit a copy of the MBOH written approval as part of the reimbursement documentation. Such expenses will not be reimbursed without prior written approval from MBOH staff.

- When servicer expenses are paid - MBOH will make no payments to servicers for defaulted/foreclosed loan expenses until MBOH is compensated by the insurer for the mortgage insurance claim. Exception: Servicers may request advance payment for sizable out-of-ordinary expenses incurred prior to claim settlement. Servicers must have written approval from an MBOH program manager and submit this approval along with documentation of the expense before MBOH staff will issue reimbursements prior to receiving payment from the insurer.
- Accumulated (accrued) but unpaid expenses: Servicers need to include account balances for utilities, services, taxes, at the claim date. Note: this should be done at the claim date rather than in a subsequent filing.
- Expenses denied categorically by insurer: MBOH will not pay servicer expenses ineligible to be covered by the insurer. If a servicer must incur expenses not covered by the insurer, the servicer must get prior written approval from an MBOH program manager. See attachment C to this memo that provides a form for requesting advance permission for expenses not covered by the insurer. Forms will be reviewed and approval/denial made generally within 24 hours of receipt by MBOH during the work week.

- Utilities expenses:

Servicers have the responsibility to preserve and protect the value of the home. Once a servicer discovers a problem with a home, whether abandoned or not, in a delinquent or foreclosure situation, utilities provision becomes a part of that responsibility to preserve and protect the property. In order to simplify the claims process with the mortgage insurer, MBOH prefers servicers put property utilities under the name of the servicer. Servicers should use good judgment concerning time of year to conserve energy and avoid damage where appropriate by setting thermostats at appropriate levels and disconnecting water supply as needed for winterization. If utility expenses on a property exceed \$2,500, the servicer may request a partial claim payment from MBOH for the amount expended and not wait for the final claim. Expenses for utilities are reimbursable by MBOH. However, servicers are expected to document and submit all utility expenditures to meet insurer claim filing requirements, including those already reimbursed by MBOH. MBOH will not reimburse a servicer for utility expenses that could have been covered by proper claim filing, and will reduce a final claim accordingly.

MBOH Expectation: In the absence of specific protection and preservation guidelines by any insurer or guarantor, Servicers will generally follow protection and preservation guidelines as set out by FHA.

- Expenses partially covered by insurer: MBOH will pay a servicer expense in its entirety that is typically only partially allowed and compensated by the insurer, as long as the expense amount is typical for that expense. An example is appraisals.
- Servicer Errors In General – Servicers are responsible for their errors and will not recover amounts from MBOH. MBOH staff suggests servicers with errors such as

bid form errors file a subsequent claim and seek to recover expenses from the insurer.

- Attorney's Fees – Servicer must select an attorney from the MBOH-approved foreclosure attorney list. Eligible attorneys have agreed to provide services at pre-determined rates consistent with insurer reimbursements (See attached list of providers and approved charges, Attachment D). Legal services provided by attorneys other than those identified on the list, or charges other than the identified rates, must be approved by MBOH program staff in writing prior to incurring expense, otherwise the servicer will not be reimbursed.
- Expenses to Initiate a Foreclosure – MBOH will not pay a servicer for any expenses related to starting a foreclosure when the foreclosure process is terminated by the borrower bringing the loan to current status. The servicer is permitted to recover expenses from the borrower.
- Servicing Fees – Servicing Fees for defaulted/foreclosed loans will be paid based on the amount of interest recovered from the insurer.
- Taxes – Expenses for unpaid taxes are paid consistent with Insurer's Allowable Coverage with unrecovered amounts paid by MBOH.
- Hazard Insurance – Hazard Insurance expense is paid consistent with insurer's allowable coverage as recovered through the claim. Servicer is responsible for terminating coverage the day of the foreclosure sale and recovering unexpired policy amount and refunding the same to the insurer or MBOH, determined by the status of claim processing. If MBOH becomes the owner of a property, the property is covered by the State of Montana policy and should no longer be covered by the borrower or a force-place policy.
- Late Fees – Late Fees assessed by the servicer will not be paid by MBOH. However, any late fees recovered by the servicer from a third party are retained by the servicer.
- Mortgage insurance fees –servicers should maintain coverage on loans until such time as the insurer's regulations expire.

### **Communications between MBOH and Servicers on delinquent and foreclosed loans:**

MBOH expectation: Servicers will communicate with MBOH staff throughout the foreclosure and claims process, in the following order:

Questions concerning foreclosure, Short Sale, pre-approvals to incur expenses, and REO management process:

Primary contact: Doug Jensen 406-841-2854 [dojensen@mt.gov](mailto:dojensen@mt.gov)

Second: Jeannene Maas 406-841-2851 [jmaas@mt.gov](mailto:jmaas@mt.gov)

Third: Nancy Leifer 406-841-2849 [nleifer@mt.gov](mailto:nleifer@mt.gov)

Questions concerning Cash Disbursements and reimbursements:

Primary contact: Christine Mitchell 406-841-2857 [cmitchell3@mt.gov](mailto:cmitchell3@mt.gov)

Second: Vicki Bauer 406-841-2856, [vibauer@mt.gov](mailto:vibauer@mt.gov)

Third: Charles Nemec 406-841-2855, [cnemec@mt.gov](mailto:cnemec@mt.gov)

**Attachment A:** HAMP guidelines for MBOH Loans

December 2, 2009

To: Servicers of Montana Board of Housing FHA loans  
From: Nancy Leifer, Homeownership Program Manager  
Re: Implementation of FHA HAMP with MBOH Variances

MBOH has been granted two variances by FHA regarding implementation of the FHA HAMP program on MBOH loans. The first variance is that MBOH FHA loans are exempt from changing the interest rate on the loan. The second variance is that MBOH will be exempt from the 360 payment re-amortization requirement once MBOH has modified \$67 million of loan principal.

MBOH requested these variances from FHA because our projections showed that changing the interest rate on MBOH loans affected MBOH's ability to repay our bondholders, and that changing the amortization period on more than \$67 million of MBOH FHA loans also affected our ability to repay our bondholders.

As noted in the previous email of October 27, FHA will impose sanctions on those who do not comply with FHA HAMP regulations, including removal from Tier 1 ranking. MBOH does not want to put our servicers at risk. Now that MBOH has clear guidance from FHA, all MBOH FHA loan servicers must comply with FHA and MBOH variance HAMP requirements. **In order to protect yourself as a servicer from future audits, you should print put a copy in every MBOH loan file that you screen for HAMP eligibility.** A copy of the HUD variance can be obtained by contacting MBOH.

**Effective December 2, 2009, New Procedures to implement FHA HAMP modifications and MBOH variances:**

1. Any HAMP modification must be approved by MBOH before the servicer initiates the trial period. MBOH will not approve any HAMP modification plan that changes the original interest rate on the loan. Please send potential HAMP modifications to Brandon Whitaker at [bwhitaker@mt.doc](mailto:bwhitaker@mt.doc) Phone: 841-2847
2. Once approved by MBOH, servicers must work closely with Vicki Bauer of the MBOH accounting staff prior to making any changes in loan payments. It is vital that servicers and MBOH accounting coordinate the timing and calculation of any changes to be sure that trial balances remain in sync. Vicki can be reached at [vibauer@mt.gov](mailto:vibauer@mt.gov) phone 406-841-2856
3. Servicers should use all of the other FHA modification programs to the full extent allowed prior to considering HAMP modifications. Just a reminder that MBOH allows forbearance plans up to 12 months, and longer under certain circumstances.
4. The maximum 55% back end ratio underwriting HAMP requirement should be applied after calculating the proposed modified payment. Servicers cannot exclude borrowers whose back end ratio, before considering HAMP modifications, is higher than 55%.

5. Servicers should consider all HAMP modifications except changing the interest rate according to FHA requirements for loans that are currently in foreclosure.
6. Going forward, servicers should consider all HAMP modifications except changing the interest rate according to FHA requirements for all loans when they reach the point of consideration for commencement of foreclosure proceedings.
7. If a servicer is approached by a borrower seeking to use HAMP prior to foreclosure, the servicer should follow all FHA requirements for use of the HAMP program except changing the interest rate. A borrower can use the HAMP trial period to become delinquent and qualify for the final HAMP modification, as long as the borrower has a legitimate hardship and has reasonably exhausted their assets.
8. When the volume of modified MBOH FHA loans reaches \$67 million, MBOH will notify lenders that future HAMP modifications cannot include re-amortization to 360 payments. Until this volume is reached, MBOH FHA loans should be modified by re-amortizing to new set of 360 payments.

MBOH has a copy of the FHA Power-Point presentation on HAMP. MBOH also has an auto-fill spread sheet for calculating HAMP modifications. If you would like a copy of these, please contact Nancy Leifer at [nleifer@mt.gov](mailto:nleifer@mt.gov).

**Attachment B: Please use the Excel document attached as your working form.**

<b>CASH DISBURSEMENT REQUEST</b>		
SERVICER CODE NUMBER (3 digits)	SERVICER LOAN NUMBER <hr/> MBOH LOAN NUMBER <hr/>	MORTGAGOR NAME/ADDRESS <hr/> <hr/> <hr/>
<b>FORECLOSURE AND ACQUISITION COSTS</b>		
ATTORNEY/TRUSTEE FEES	001	\$ _____
ATTORNEY/TRUSTEE NAME	_____	
ADDRESS	_____	
FORECLOSURE, ACQUISITION, CONVEYANCE & OTHER COSTS	005	\$ _____
BANKRUPTCY FEE	009	\$ _____
<b>TOTAL FORECLOSURE AND ACQUISITION COSTS</b>		<b>\$ _____</b>
<b>OTHER CLAIMED EXPENSES AND ADVANCES</b>		
PROTECTION AND PRESERVATION	013	\$ _____
HAZARD INSURANCE PREMIUM	Prem Period M/Y-M/Y _____ 017	\$ _____
FIRST HALF ANNUAL RE TAXES	Tax Year _____ 021	\$ _____
SECOND HALF ANNUAL RE TAXES	Tax Year _____ 021	\$ _____
EVICITION COSTS	025	\$ _____
MORTGAGE INSURANCE PREMIUMS	029	\$ _____
APPRAISAL FEE	033	\$ _____
DAMAGE OR RECOVERY	037	\$ _____
DEBENTURE INTEREST	041	\$ _____
REO EXPENSES NOT COVERED BY INSURER		\$ _____
OTHER (itemize) _____		\$ _____
_____		\$ _____
_____		\$ _____
<b>TOTAL OTHER CLAIMED AND ADVANCE EXPENSES</b>		<b>\$ _____</b>
<b>CREDITS</b>		
ESCROW BALANCE	045	\$ _____
HIP REFUND	045	\$ _____
RENT INCOME	049	\$ _____
OTHER (explain) _____		\$ _____
_____		\$ _____
<b>TOTAL CREDITS</b>		<b>\$ _____</b>
<b>TOTAL AMOUNT REQUESTED</b>		
<b>(foreclosure/acquisition costs plus other advances/expenses less credits</b>		<b>\$ _____</b>
SERVICER NAME AND ADDRESS <hr/> <hr/> <hr/> Federal Tax ID # _____	SERVICER REPRESENTATIVE (signature and title) <hr/> <hr/> DATE _____	

**Attachment C: Servicing Expense Pre-approval Form**

Montana Board of Housing

Request for Prior Approval of non-reimbursed expenditures

Loan #

Borrower Name:

Property Address:

Servicing Organization

Contact person at Servicer:

Phone number:

Email address:

Brief description of expenditure:

Reason why expenditure is necessary:

\_\_\_\_ Approved

Denied: \_\_\_\_\_

\_\_\_\_\_  
MBOH Signature

Date: \_\_\_\_\_



**Attachment D: List of approved attorneys to handle foreclosures for MBOH:**

Mark Noenig  
Hendrickson Law Firm, PC  
208 N Broadway, Ste 324  
Billings, MT 59103-2502  
Phone: (406)245-6238  
Email: Sharon@hewlaw.com

John Grant  
Jackson, Murdo, Grant, PC  
203 North Ewing Street  
Helena, MT 59601  
Phone: (406)442-1300  
Email: teve@jmgm.com

Rate allowed for standard foreclosure: Per applicable loan insurer guidelines.