

## Selling Guide

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### B7-2-05: Title Exceptions and Impediments (02/23/2016)

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#### Title Exceptions

Fannie Mae will not purchase or securitize a mortgage secured by property that has an unacceptable title impediment, particularly unpaid real estate taxes and survey exceptions.

If surveys are not commonly required in particular jurisdictions, the lender must provide an ALTA 9 Endorsement. If it is not customary in a particular area to supply either the survey or an endorsement, the title policy must not have a survey exception. However, if the lender substantiates that a first mortgage title policy was issued without a survey exception, Fannie Mae will purchase or securitize a second mortgage secured by the same property even though it has a survey exception.

Minor title impediments must not materially affect the marketability of the property. The lender must indemnify Fannie Mae (as described in [A2-1-03, Indemnification for Losses](#)) for any Fannie Mae losses that can be directly attributed to the impediment(s).

Requests for waivers of exceptions to title should be submitted in writing to the lender's lead Fannie Mae regional office (see [E-1-03, List of Contacts](#)) and should provide appropriate justification for the waiver.

#### Minor Impediments to Title for Conventional Mortgages

Title for a property that secures a conventional mortgage is acceptable even though it may be subject to the following conditions, which Fannie Mae considers minor impediments:

- customary public utility subsurface easements that were in place and completely covered when the mortgage was originated, as long as they do not extend under any buildings or other improvements;
- above-surface public utility easements that extend along one or more of the property lines for distribution purposes or along the rear property line for drainage purposes, as long as they do not extend more than 12 feet from the property lines and do not interfere with any of the buildings or improvements or with the use of the property itself;
- mutual easement agreements that establish joint driveways or party walls constructed on the security property and on an adjoining property, as long as all future owners have unlimited and unrestricted use of them;
- restrictive covenants and conditions, and cost, minimum dwelling size, or set back restrictions, as long as their violation will not result in a forfeiture or reversion of title or a lien of any kind for damages, or have an adverse effect on the fair market value of the property;
- encroachments of one foot or less on adjoining property by eaves or other overhanging projections or by driveways, as long as there is at least a ten-foot clearance between the buildings on the security property and the property line affected by the encroachment;
- encroachments on adjoining properties, as long as those encroachments consist only of hedges or removable fences;
- outstanding oil, water, or mineral rights that are customarily waived by other lenders, as long as they do not materially alter the contour of the property or impair its value or usefulness for its intended purposes;
- variations between the appraisal report and the records of possession regarding the length of the property lines, as long as the variations do not interfere with the current use of the improvements and are within an acceptable range. (For front property lines, a 2% variation is acceptable; for all other property lines, 5% is acceptable.);
- rights of lawful parties in possession, as long as such rights do not include the right of first refusal to purchase the property. (No rights of parties in possession, including the term of a tenant's lease, may have a duration of more than two years.);
- minor discrepancies in the description of the area, as long as the lender provides a survey and affirmative title insurance against all loss or damage resulting from the discrepancies;
- exceptions to Indian claims, as long as the lender is insured against all loss and damage from such claims.

#### Title Impediment – Mortgage Loans Secured by Properties with Unexpired Redemption Periods

Certain state laws provide a "redemption period" after a foreclosure or tax sale has occurred, during which time the property may be reclaimed by the prior mortgagor or other party upon payment of all amounts owed. The length of the redemption period varies by state and does not expire automatically upon sale of the property to a new owner. Although an unexpired redemption period will generally be deemed to be an unacceptable title impediment, Fannie Mae will consider it to be acceptable provided the following requirements are met:

✓	<b>Requirements for Mortgage Loans Subject to Unexpired Redemption Periods</b>
	<p>The property must be located in a state where it is common and customary to sell single-family residential property during the redemption period.</p> <p><b>Note:</b> Loans representing the purchase of Fannie Mae-owned properties which have been sold during the redemption period may be subject to separate negotiations. Lenders should contact their lead Fannie Mae regional office for additional information.</p>
	The mortgagee policy of title insurance must take specific exception to the unexpired right of redemption but also affirmatively insure the mortgagee against all loss arising out of the exercise of any outstanding right of redemption, without qualification.
	If any party exercises a right to redeem the mortgaged property, the mortgage must be paid off directly out of the redemption proceeds with no requirement for any further action or claim for repayment.
	The lender must indemnify Fannie Mae (as described in <a href="#">A2-1-03, Indemnification for Losses</a> ) for any losses incurred by Fannie Mae that can be directly attributed to the exercise by any party of a right to redeem the mortgaged property, including without limitation, a loss related to borrower default due to a dispute with the redeeming party over the terms of the redemption.

**Note:** Fannie Mae strongly encourages lenders to provide written disclosure to borrowers of properties that are subject to unexpired redemption periods if not otherwise required by law (or disclosed by the title company).

### Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcements	Issue Date
<a href="#">Announcement SEL-2016-02</a>	February 23, 2016
<a href="#">Announcement SEL-2013-03</a>	April 9, 2013
<a href="#">Announcement SEL-2010-10</a>	August 12, 2010
<a href="#">Announcement SEL-2010-07</a>	May 27, 2010

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