

## National P&P Conference Summary

Day 1: Thursday, November 5, 2009

Session 1: State of the Industry

**Moderators:** Vicki Vidal, MBA Associate VP Loan Administration  
Deb Oakley, Oakley Consulting Group

**Panelists:** Vicki Bott, HUD Deputy Assistant Secretary for Single Family Housing  
Vance Morris, HUD Director of Single Family Asset Management  
Mike Frueh, VA Assistant Director of Loan Management  
Rob Caire, Fannie Mae VP Credit Loss Management Operations  
John Vella, GMAC Executive Vice President  
Chris Oswald, MBA Director of State Government Affairs  
Marina Walsh MBA AVP Industry Analysis - Research and Economics  
Joe Schilling, National Vacant Properties Campaign Director of Research and Policy  
Robert Klein, Safeguard Properties CEO

### Industry Trends

Among the factors affecting the mortgage servicing and field servicing industries this year are legislative changes, high unemployment and a continuing decline in the U.S. economy, and increasing volumes of vacant and foreclosed properties.

Media attention and outreach efforts by government and non-profit groups have helped to educate more borrowers about their options. John Vella noted that, as a result, more borrowers are seeking loan modifications and have higher expectations that they will be successful. The volume of loan modification requests are having an impact on the court system and on the foreclosure process overall, especially from homeowners who do not realize that they are not eligible until their loan is actually in default.

To address concerns about the high rates of homeowners who receive loan modifications and end up back in foreclosure, servicers are testing new approaches. Some servicers are attempting trial-basis modifications for a three-month period to determine whether loan modification may be viable for a homeowner. Servicers also are utilizing principle forgiveness and forbearance to help homeowners maintain their equity and provide an incentive to remain in their homes. Servicers also are creating programs to assist tenant-occupants, which have increased 40 percent in the past year.

Despite the proliferation of loan modification programs, Vella believes the trend will move more toward short sales and away from loan modifications.

Mike Frueh pointed out that the purpose of home modifications is to reduce monthly payments to an affordable amount that the borrower can maintain. The rule of thumb is that the monthly payment should be no more than 31 percent of the homeowner's monthly income. Frueh said that a large percentage of requests to the

VA for loan modification are from homeowners whose payments already are at or below the 31 percent of income threshold; as a result they do not qualify for loan modification.

Frueh discussed options under the Home Affordable Modification Program (HAMP), which was implemented August 15, 2009. Under HAMP, the loan can only be brought down to the current market rate, which reduces the principle balance. HAMP created the possibility for more aggressive loan modifications.

## **Economic Overview**

Marina Walsh presented numerous statistics that pointed to a continuation of high rates of delinquencies, defaults and foreclosures for the foreseeable future, despite data concluding that the recession officially ended in July 2009. A major driver in the continuing housing crisis is the increasing rate of unemployment, currently at 10 percent. Walsh also presented data on the rising costs of property preservation, for both pre-sale and REO properties. Total spending from October 1, 2008 through September 30, 2009 was \$3.5 billion, up 78 percent compared with the prior year. With the aforementioned expectation of continued high delinquencies, the financial impact to the industry is anticipated to continue to rise.

## **Industry Challenges & Efforts**

All sectors of the industry have initiated creative programs to address the ongoing high rates of delinquency and the challenges created by large volumes of vacant properties. These programs are designed to decrease the numbers of foreclosures and help keep homeowners in their homes for longer periods. Investors and servicers continue to find new and better ways to manage increasing volumes, and the government is considering better alternatives to work on existing workout procedures.

Because not all cases meet HAMP specifications, more non-HAMP solutions are needed. Rob Caire noted that Fannie Mae still utilizes a number of more traditional workout options—payment forbearance, repayment plans—and said that a “HAMP mod is not the only option.” He also noted that regardless of the alternative utilized, the borrower must have both a desire, and the financial capacity, to remain in the home if a loan modification is to be successful. Otherwise, the focus is more on helping the borrower have a “graceful exit from the property.” Caire and others believe that there will be an increase in short sales and deed in lieu programs as a result of situations where the borrowers are not going to be helped by a modification. Vella noted that he believes the number of short sales will overtake the number of modifications in the future.

Servicers have an increasingly difficult time complying with an ever-changing patchwork of state laws and local requirements. The industry is engaged in forming new partnerships to confront the many challenges ahead.

## **Government and Industry Response to Economic Crisis**

Additional programs have been implemented and others have been enhanced to help address the current economic crisis. These include refinance options, foreclosure alternatives, and borrower loan workout plans. In early 2009, Fannie Mae launched their rental program for non-owner-occupants, and it may be extended to owner-occupants as a "deed for lease" type of program. Under HAMP, about 500,000 trial modifications have taken place so far in 2009.

Joe Schilling noted that most cities are in a double-bind as vacant properties increase and budgets are cut. Cities received federal funding (NSP) in April and May and state funding in July. However, cities have fewer than 12 months to use the money to purchase or rehab properties to stop the decline and improve neighborhood stability. Cities are realizing that these requirements are unrealistic.

## **Session 2: HUD, Part I**

**Moderator:** Robert Klein, Safeguard Properties CEO

**Panelists:** Marlene Robinson, HUD Principal GTR  
Leslie Bromer, HUD Housing Policy Specialist  
James McGee, HUD Housing Policy Specialist  
Michelle Stevens-Schultz, JP Morgan Chase Mortgage Officer  
Sherilee Massier, Wells Fargo Assistant Vice President  
Jodi Gaines, Claims Recovery Field Services COO  
Kellie Chambers, Safeguard Properties Operations Manager  
Tracy Hager, Mortgage Contracting Services VP Operations  
Michele Stockdale, Lender Processing Services Director of Government Strategy

In his opening session remarks, Vance Morris discussed upcoming changes with the M&M III contract, which will be implemented in 2010. Session 2 provided a follow-up to many of Morris's comments, as well as an opportunity for servicers and field services companies to discuss and ask questions about the upcoming changes.

### **Bid Cost Estimator Database for Mortgagee Requests**

James McGee reiterated that no more bid approvals or overallowable requests (OAs) will be submitted following the implementation of the M&M III contracts and new property preservation guidelines. Rather, there will be a total property allowable within which the servicers must complete work needed at a property. The mortgagee will have to order work for a reasonable cost and submit it on the Part B claim. HUD will use the Bid Cost Estimator database to determine if the cost is reasonable and therefore claimable. The intention of this design is for the MCM to become a neutral party in providing costs to the servicer.

HUD has entered into an agreement to run a one-year pilot with Marshall & Swift, who offers a cost estimator for repairs at the zip code level. Data is collected and updated quarterly and accounts for fluctuations in the market by region. HUD is

anticipating running the pilot with Marshall & Swift in conjunction with the roll out of the M&M III contracts. Mortgagees/servicers will not have access to the information in the M&S database system unless they purchase a contract with them.

The industry is concerned with the bid cost estimator program not being available to servicers, as this will hinder quality control and result in an increase in post-claim audit rebuttals.

### **HUD P260: Electronic Method of Submitting Mortgagee Requests**

In conjunction with the rollout of the M&M III contracts and new property preservation guidelines, HUD will be implementing a new electronic system to facilitate mortgagee requests and communication with the MCM. This system is called P260, which is currently being used in a pilot with HUD. It is expected that all mortgagee requests, photos and Part A conveyance notices will be submitted through the P260 system. It is unknown whether servicers will be able to run reports from P260.

While the transition plan has not fully been designed, Marlene Robinson advised that HUD will review its process for training servicers on the new system. The expected response time from the MCM will still be five business days. Escalations for non-response or dispute of the decision will be channeled through P260 and routed to the MCM management team.

Audience members raised concerns about a backup process, in the event that P260 is inoperable for periods of time. Candace Fraley of Hooks Van Holm said that the MCM's performance work statement mandates a contingency plan in this event. Robinson concurred.

### **Conveying Damaged Properties**

HUD does not intend to change the conditions or parameters by which damaged properties can be conveyed to HUD. Mortgagees may still request "convey as-is" approval for properties with non-surchageable damages in lieu of repairing when neighborhood conditions are unstable.

M&M pre-conveyance inspections will not be required, though they may be requested by the servicer. However, the MCM is not required to provide an inspection just because one was requested. Servicers and M&M contractors agree that the benefits and time savings in completing pre-conveyance inspections resulted in zero reconveyances of properties with questionable conditions. The industry urged HUD to mandate that pre-conveyance inspections be completed by the M&M when requested by the servicer.

### **Mortgagee Appeal Process**

Under the new structure, there will only be one GTR for the MCM awardee. All servicer appeals are to be routed through the MCM management, who will then forward to the GTR when appropriate. The GTR will be required to respond to the MCM within 3 business days.

## Post-Convey Inspections

The field service management (FSM) company will be required to complete an inspection of the property within 48 hours of conveyance. Results from the post-convey inspections will be uploaded into P260. The asset management (AM) company will not be completing the initial inspection report, nor be assigned the property until HUD confirms clear title.

## Non-Performance and Demand Letters

The scope of work for the many parts of the M&M III contracts offers no changes to the current guidelines regarding the issuance of non-performance or demand letters. However, it is anticipated that all HUD letters will be issued through P260, and all responses will likewise be submitted through the system.

## M&M Delays and Issues

Audience members expressed general concerns about the transition to M&M III. Robinson said HUD is working to ensure a smooth transition. However, the process is still in review and no definite procedures have been confirmed. Robinson noted that if delays in conveyance occur as a result of the transition, M&M or MCM delays, or HUD error, reasonable extensions of time to convey will be granted.

At the urging of the industry, HUD is considering joint training for the new MCM, AMs, FSMs and lenders/servicers to review the new M&M contracts, convey process and conveyance standards.

## Session 3: HUD, Part II

**Moderator:** Robert Klein, Safeguard Properties CEO

**Panelists:** Marlene Robinson, HUD Principal GTR  
Leslie Bromer, HUD Housing Policy Specialist  
James McGee, HUD Housing Policy Specialist  
Michelle Stevens-Schultz, JP Morgan Chase Mortgage Officer  
Sherilee Massier, Wells Fargo Assistant Vice President  
Jodi Gaines, Claims Recovery Field Services COO  
Kellie Chambers, Safeguard Properties Operations Manager  
Tracy Hager, Mortgage Contracting Services VP Operations  
Michele Stockdale, Lender Processing Services Director of Government Strategy

The primary focus of Session 3 was to examine the current HUD guidelines and answer questions from servicers and field services companies, since the current guidelines will remain in place until the full implementation of M&M III.

## **Demand Letters**

The question was raised about the issuance of demand letters for damages, despite the M&M's initial inspection report stating "no" damages. Marlene Robinson said that the GTRs have been asked to clarify this with the M&Ms. The inspection results should match the photos, which should support the issuance of any HUD letter. The servicers are not receiving photos to support the issuance of the demand letters, and M&Ms and GTRs have stated that they are not required to provide such documentation. Robinson stated that the M&M must provide photo documentation. Kellie Chambers asked HUD to provide clarification in writing to the M&Ms that photos are required to support a HUD letter.

Servicers are receiving demand letters and reconveyances citing hurricane damages despite the date of default being many years after Hurricanes Katrina and Rita. Lionel Hotard from Cityside said that hurricane damage demands are being issued at HUD's direction if the history of the property indicates such damages exist at the properties. Chambers reminded HUD that they stated a mortgagee letter would be issued following the hurricanes in 2005 offering clarification regarding conveyance of these properties. To date, no clarification has been provided and servicers are unsure how to address properties that may have been damaged by the hurricanes but they are unsure since the date of default is years after the hurricanes. The panel agreed and suggested that HUD provide clarification to the industry.

## **Federal Tenant Bill**

Jodi Gaines asked whether the tenant bill would have an impact on HUD accepting occupied properties at the time of conveyance. HUD representatives responded that the process for conveying occupied properties stays the same; the servicer must request and obtain HUD approval.

Gaines also asked whether HUD would consider allowing a cash-for-keys option during the 90-day notice period stipulated by the tenant bill. HUD will consider this option (as opposed to waiting until an eviction has been set) and advise on a decision. HUD further clarified that servicers will not auto curtail for failure to initiate eviction if a confirmed tenant is occupying the property, until after the 90 days described by the bill has passed.

## **Bid Process**

Servicers are submitting thousands of bid requests each month for basic property preservation work due to the property maximum allowable being reached. The bid requests are being submitted to the M&M for the HUD defined allowables. Chambers asked HUD to exclude winterizations and monthly grass cuts from total cost to date, as these items are causing a high percentage of overallowable requests at the start of each season. James McGee agreed that these should not be included in the total cost

to date. McGee will work to get clarification in writing so servicers can complete the work for the HUD allowable without bid delays.

McGee also stated that work completed per bid approval does not count towards total P&P costs to date or the maximum allowable. The panel was surprised by this comment and asked for clarification in writing to avoid potential HUD audit findings.

Chambers added that the M&M contractors would receive far fewer bid requests in October for winterizations if HUD reinstated year-round winterizations in the northern states with long foreclosure periods. The HUD representatives agreed and will consider revising the guidelines to include more year-round winterization states.

Questions were also raised regarding an allowable for re-glazing, as currently none is stipulated in the guidelines despite HUD's requirement that reglazing is the required method to secure broken windows. McGee noted that there is such an allowable in the upcoming M&M III property preservation guidelines.

### **Extension Requests**

Tracy Hager and Sherilee Massier asked whether HUD would grant automatic conveyance extensions in the event of M&M delays in responding to mortgagee requests. McGee said that HUD will review the regulations regarding this and advise the industry on their position.

Servicers have recently seen a spike in denied extension requests when a hazard insurance claim is pending with a third party. Hazard insurance claims will take an average of 75-90 days for the insurance company to resolve. Servicers are filing the hazard insurance claim in HUD's best interests, to obtain additional funds to reduce the amount of loss. Leslie Bromer stated that servicers should always file a claim for surchargeable damages, but should complete a cost benefit analysis prior to filing a claim on non-surchargeable damages. Bromer added that if there is potential for cost savings HUD will approve the extensions of time to convey.

### **First-Time Vacancy (FTV)**

Massier and Michele Stockdale asked whether the FTV date is based on the visual exterior inspection, or the date the property is confirmed vacant by securing. McGee's response was that the FTV is the first date the property is found "not occupied by humans." The servicers' responsibility to protect the property begins at that time, without exceptions. McGee said "HUD cannot write policy to advise servicers how to determine occupancy", and added that, "it remains the servicers' responsibility to provide documentation to support claims of occupancy."

McGee stated that HUD requires servicers to preserve and protect, including securing, for all vacant properties, regardless of borrower contact or "not abandoned" status. If the property is vacant, it is the servicer's responsibility to protect it. Servicers' legal counsel advises differently and cautions against securing or entering a property that is

being maintained by a realtor, home owner, or in the process of renovation. HUD stated that the servicer should be making arrangements with the maintaining persons to arrange for monthly interior inspections and securing when appropriate.

McGee clarified further by adding that vagrants do not equate to occupancy. An occupied property is one that is occupied by "persons actually maintaining the property; not just personals inside."

### **HOA Common Area Repairs**

Servicers and field services companies raised concern regarding the proper procedure when a property managed by a homeowners' association (HOA) has damages to a common area. It is unclear whether the responsibility lies with the servicer to ensure that needed repairs are made prior to conveyance, even though ultimately the HOA is responsible for making the repairs. Additionally, the GTRs are denying bids to repair these damages stating it is the HOA's responsibility. Such circumstances have caused delays in conveyance and the industry would like additional clarification. Marlene Robinson said that since this is a relatively new issue, HUD would like time to review before stating a policy.

### **Pool Securing**

Stockdale raised concerns about the specifics in the HUD guidelines regarding the proper securing of pools. The current guidelines and specs are confusing as to the proper method and installation of the cross beams and box structure. Additionally, the length of pools often exceeds the length of standard 2x6 lumber stocked, thus making it nearly impossible to build with one continuous beam. McGee stated that HUD cannot draft guidelines for every type of pool; servicers should submit appeals if they believe the pools were properly secured. Bromer added that they will review internally and look to issue clarification on the diagram.

Robert Klein asked about alternative methods of pool securing; specifically mesh safety tarps (see [Pool cover information](#)). Klein suggested that HUD consider installation of an actual pool cover which offers security and is more attractive to a potential buyer than the boarding. The actual replacement of the pool cover is becoming more required by city code enforcement and prevents citations and violations. HUD is in receipt of the pool cover information and the industry's perspective on it, and will review further.

### **Boarding Requirements**

An audience member inquired as to whether HUD would consider allowing USB material as opposed to plywood for the boarding of windows. USB is more cost-effective, readily available, and just as secure as plywood. HUD agreed to take the suggestion and review internally.

## Session 4: Investors/Insurers

**Moderator:** Robert Klein, Safeguard Properties CEO

**Panelists:** Carl Wasson, VA Supervisory Loan Specialist  
Andrew Trewayne, VA Central Office Servicing Liaison  
Elonda Crockett, Fannie Mae Director of Credit Loss Management Operations  
Deloise Browne-Milner, Freddie Mac Operations and Servicing Manager  
Rhoan Burnard, Freddie Mac Special Assets Manager  
Susanne Wilson, USDA Single Family Housing Manager, Guaranteed Loan Division  
Michelle Corridon, USDA Senior Loan Specialist, Rural Loan Development  
Robert Shekell, ZC Sterling Senior Vice President

### Fannie Mae

Elonda Crockett provided an overview on Fannie Mae's current processes, beginning with the Home Tracker system. Crockett noted that Fannie Mae's volume of pre-sale bids has tripled, and she now has a team of eight people reviewing these. Home Tracker was launched in May of 2009 to streamline the bid process. It has been a very successful program, with 75% of servicers currently utilizing it. The remaining 25% represent smaller companies. Home Tracker has allowed Fannie Mae to review requests more quickly, and the current turnaround time is 3 days.

Fannie Mae is expecting some minor adjustments to their P&P allowables in the first quarter of 2010. Many changes were made in the 2009 announcement, so additional changes should be minimal.

Crockett also noted a continued commitment to improving communication, including seeking feedback from servicers and field services companies on what is working and what is not.

On the REO side, Crockett discussed HomePath, which is Fannie Mae's internal data system. HomePath includes programs like HomePath Mortgage, which offers 90% financing to qualified buyers, and HomePath Mortgage Renovation, for financing on properties requiring renovation.

Fannie Mae is making efforts to keep the properties owner-occupied by working with the occupants before taking offers from investors. In January 2009, Fannie Mae began offering renters an option to lease while the property is marketed for sale.

### The VA

Carl Wasson and Andrew Trewayne provided an update on the VA's current initiatives, including adding new standardized review process for P&P overallowables to their VALERI (VA Loan Electronic Reporting Interface) Web site. This upgrade will offer great relief and assistance to field service providers and servicers alike.

VALERI also has a new appeals procedure, designed to improve overall response times. Disputed charges can now be uploaded electronically, accompanied by written justification and an invoice detailing the amount expended.

Although a target date for release has not yet been determined, system upgrades are anticipated regarding the filings of claims, currently conducted by a data change file submitted daily by servicers to a VALERI application. Updates of this new procedure will soon follow.

Wasson also provided an overview of the VA HAMP program, an additional model for loan modifications, which is not yet in writing.

### **Freddie Mac**

Deloise Browne-Milner noted that Freddie Mac completes property inspections at the 45<sup>th</sup> and 60<sup>th</sup> days of delinquency across the board. They document the properties' status on the 1014 form on the Web, or on the servicers' own forms as long as the data fields are the same. These inspections help preserve the integrity of the properties, catching issues early in the process, thus helping to maintain a good condition for future owners.

Freddie Mac has increased their allowable limits on many items, including exterminations, securing, emergency roof repairs, windows, and pools. Overall allowable requests should be e-mailed to Freddie Mac. Servicer adherence is expected on all local and state preservation ordinance requirements. In the event of an emergency, the servicer should address the issue but notify Freddie Mac within one day of the emergency.

Rhoan Burnard spoke about the Special Assets Unit at Freddie Mac, which was created to handle loans that fall outside standard foreclosure processes—notably distressed properties with severe damages or with severe depreciation to the value. The group's primary focus is to review at-risk account information and make decisions to minimize Freddie Mac's exposure to liability. In the event of a disaster, Freddie Mac requires the servicer to determine the extent of the damage, secure bank-owned properties, provide assistance to borrowers where applicable, and to monitor and coordinate the insurance claim process.

### **USDA**

Susanne Wilson and Michelle Corridon thanked the planning committee for the invitation and opportunity to be a part of this year's conference. Wilson reported that the USDA, which has been known for its specialization rural properties, but are not limited to farms and mobile homes, has doubled their volume in the last year, to \$33 billion. Loss mitigation efforts have also grown significantly. They are seeing many new servicers and lenders, and efforts are being taken to ensure adequate education on the USDA's expectations.

Operations have recently been centralized, which has drastically minimized any inconsistencies in the servicing of loans. To continue to improve operations, upgrades in technology are underway. The USDA is focused on keeping operations streamlined

and consistent with other strategies already being utilized in the industry. All regulations are available on their Web site, <http://www.rurdev.usda.gov/rhs/>.

Michelle Corridon noted that UDSA is in favor of cash-for-keys offers, and recommends remaining consistent in the amounts offered to the occupants in each market. The UDSA does not have stated allowables for preservation work, but allows a bid of 85% of the market value, to encourage more third party purchases at foreclosure sale.

In addition, there are plans for a HAMP program, though the details are still being finalized. Hazard insurance guidance is also being developed, and is expected to be released in early 2010.

### **Chinese Drywall Review**

Robert Shekell took the opportunity to educate the conference attendees on the issue that some parts of the United States are experiencing with Chinese-manufactured drywall, as some attendees were not aware of this issue. This topic has attracted national media attention, and raises questions over whether homeowners' insurance should cover the remediation. The drywall contains sulfur compounds that react with heat, causing corrosion to pipes, electronic devices, and air conditioning units. The drywall also emits a foul odor, rendering the homes virtually uninhabitable.

However, what many do not know is that the affected drywall represents a rather small percentage of the total amount of imported drywall. In fact, there have only been 570 confirmed cases, though there was enough drywall imported to build 60,000 homes. Insurance companies will not cover the costs to remove and replace the affected materials (this is the only cure) because they view it as a product liability issue. Affected homeowners are left with few options; a federal lawsuit is underway. Most of the affected homes are in the South, as the imports were the result of material shortages following Hurricanes Katrina and Rita.

**Day 2: Friday, November 6, 2009**

**Session 1: REO**

**Moderator:** Robert Klein, Safeguard Properties CEO

**Panelists:** Elonda Crockett, Fannie Mae Director of Credit Loss Management  
Operations

Lance Kornicker, VA Realty Officer

Rhoan Burnard, Freddie Mac Special Assets Manager

Mark Kaliss, Cenlar Claims Supervisor

Bryce Fendall, Wilshire Credit Corporation Assistant Vice President

Heidi Coppola, REO Clearinghouse President

Marla Webb, NHMSI Marketing and Outreach Director

Chad Mosley, Mortgage Contracting Services Vice President, Inspections  
Operations

John Roberts, Lender Processing Services REO Division

Denia Graham, TenantAccess Executive Vice President

## Industry Statistics

Chad Mosley reviewed several slides displaying the continued rise in the number of past due mortgages. He noted that there has been a dramatic increase in the volume of properties with payments that are 90 days or more past due.

Since the pre-foreclosure trends have a direct correlation with REO volume, all parties are reviewing to attempt to predict the timing of the dramatic spike in REO volume. Many believe this will occur during the first or second quarter of 2010, but this largely depends on foreclosure moratoriums. Servicers and field services companies alike need to be prepared to handle the additional volume.

## Cash-for-Keys

Relocation assistance packages have gained popularity in the face of increased REO volume and can be an efficient and cost effective alternative to eviction and property management. Bryce Fendall relayed statistics that Wilshire experienced a 20% cash-for-keys success rate in 2008 with an average payout of \$1,050, and has now seen a 27% success rate in 2009 with an average payout of \$2,000. Cash-for-keys exchanges allow servicers to obtain properties more quickly, and in a better condition, while minimizing the gap in time to begin REO servicing. This option also reduces the potential for property damage.

The approach to negotiating these deals, however, has changed as tenant laws prevent or delay the possibility of eviction. Some entities have introduced more creative elements to the packages offered, including direct payment for U-Haul vehicles and payment of the deposit on a new rental property. Wilshire offers different amounts that vary based on the time required to vacate. Fannie Mae considers the average eviction timeline in the area in their offered amount.

It is expected that these properties are left in reasonably clean condition, though the expectation is laid out as "broom-swept" condition. Servicers will usually accept the asset even if it's not perfectly clean, since it is cheaper to perform a thorough initial service than to pay for the eviction process and interim holding costs. Some servicers leave a portion of the negotiated amount for delivery after they certify the condition of the property upon vacancy. The VA requires completion of a relocation assistance packet, which includes a personal property release form that must be completed at the time the check is released.

Some discussion was held surrounding the topic of incenting agents to complete a timely execution of cash-for-keys. Some parties believe this is part of the agents' job, while others note that it is not the agents' primary function and may lose priority if competing with their case load and marketing functions. Concern was voiced around the legal ramifications of the brokers' verbiage when offering a cash-for-keys arrangement in light of the recent tenant laws. Additionally, there was some mention of the potential for agent fraud in paying the maximum cash-for-keys offer amount without attempting to negotiate a lower dollar amount.

Fannie Mae indicated that their cash-for-keys approach does not vary based on property value since they incur holding costs regardless. Robert Klein noted that

more code compliance issues are generally noted on lower end properties; therefore, more emphasis should be placed on completing a cash-for-keys agreement on these assets.

### **Preserving REO Assets**

In today's market, REO assets are competing with many owner-occupied properties for sale in their market, and often on the same street. Lance Kornicker commented that property preservation vendors have done a great job of responding to the increased scrutiny on their functions in light of the growing volume.

Securing an asset must be completed such that no access can be gained without express permission of the client or broker. Trashout companies must adhere to local hazard removal and disposal standards.

The importance of curb appeal cannot be stressed enough. The desire is to raise the appearance of the REO property to the level of the surrounding neighborhood, if not above it. Fannie Mae asks their vendors to spend 15 extra minutes addressing more minor items that can have a significant impact on the curb appeal. They routinely question, "Would I let my mother live here?"

Wilshire works with agents to have sprinklers running, mulch spread and to remove all references to "foreclosure" or "REO". Safeguard emphasized the importance of improved curb appeal, regardless of property value.

### **Handling Violations**

John Roberts noted that some HOAs and cities are looking for new sources of revenue in the current market. These entities are faced with increasing demands from their citizens and more limited resources to resolve. Once they are alerted to issues at an REO property, it will remain on their radar through property disposition. Many servicers provide their field services vendors with pre-defined allowables to expedite the resolution of any code issues that arise.

Open and honest communication with code enforcement officials is key to the process of resolution. Code enforcement responds to pressure from surrounding neighbors and communication to them allows the officials to properly address resident concerns. Additionally, these officials can often assist local contractors in addressing unique concerns that arise at properties. All parties agree that exterior maintenance is the best measure to remaining in compliance, so as not to draw a code enforcement official to inspect the interior of the property.

### **Repairing REO Properties**

Buyers in the present market are more discriminate, so REO servicers have had to explore more options to enhance the marketability of their assets. Asset managers consider the market time reductions, the reduced risk of vandalism or other property damage and the associated cost of minor and major repairs.

Many servicers perform FHA inspections up front so the asset is compliant with FHA lendable condition should this option be exercised by the buyer. Several entities are also expanding the use of the 203(k) and 203(b) loan options.

## Disposition

The REO Clearinghouse program acts as an information-sharing network among servicers, community organizations, and cities. As foreclosure volume increases, there is a need to understand volume in a broader picture as well as to understand the concentration of properties in a given area and the channels by which these assets can be accessed. Heidi Coppola further noted that she focuses on aged and distressed properties and communities across servicers to identify and execute appropriate strategies.

## Session 2: Tenant Protection

**Moderator:** Vicki Vidal, MBA Associate VP Loan Administration

**Panelists:** Miguel Gutierrez, Fannie Mae Director of Alternative REO Dispositions  
Eric Will, Freddie Mac Director of Business Operations  
Cynthia Nierer, Rosicki, Rosicki & Associates Managing Partner  
Larry Garfinkel, Bendett & McHugh Attorney  
Alan Wolf, The Wolf Firm President and Managing Attorney  
Tracy Hager, Mortgage Contracting Services VP Operations  
Denia Graham, TenantAccess Executive Vice President  
Alfred Minisee, First American VP of Field Services  
Robert Klein, Safeguard Properties CEO

## [S896 Protecting Tenants at Foreclosure Act \(PTFA\)](#)

Signed into law on May 20, 2009, and effective immediately, the PTFA has already impacted the industry dramatically. Vague wording in the legislation along with no elaboration on the intent has resulted in significant uncertainty across all segments of the industry.

PTFA grants additional rights for “bona fide” tenants where the property in which they reside goes to foreclosure. However, it also by definition creates a situation where the servicers are now also landlords, which raises a number of additional questions, including:

- Who is responsible for habitable condition of the property?
- Is a property inspection required within a certain timeframe after sale?
- Who is responsible for emergency repair calls?

There is also a lack of a clear definition of a “bona fide” tenant, though a working definition includes

- Not the former mortgagor, spouse, child or parent
- "arms-length" transaction took place
- Lease for not substantially less rent than fair market value

Other types of tenants include “no protection” (i.e. former mortgagor, spouse), “no lease,” and “Section 8.” Property maintenance and habitability standards must also be considered, and raises new questions about the servicers’ responsibilities to offer relocation services for severely damaged properties, establishing call centers and points of contact for tenant complaint calls, and identifying emergencies from general maintenance needs.

## Industry Responses

Correctly identifying the occupants and whether their situation is applicable to the PTFA is critical to ensure compliance. Servicers are utilizing their respective field service companies to provide this information. Field service companies are now completing more extensive inspections to provide the needed information.

Eric Will and Miguel Gutierrez provided an overview of their respective programs pertaining to tenant protections.

Freddie Mac utilizes several property management companies with national coverage while allowing their broker network to focus on the marketing the properties. This has resulted in desired consistency. Freddie Mac's program instituted prior to PTFA allows for renting to previous mortgagors (currently two thirds of current leases are to former mortgagors and their families). Properties are maintained in safe, sound and habitable condition using a combination of their property management companies and their brokers.

Fannie Mae released on November 5, 2009, their [Announcement 09-33 "New Deed-for-Lease™ Program"](#). This program provides an option for homeowners to be considered for a leaseback if both the homeowner and property qualify.

Alan Wolf discussed a receivership model similar to what is utilized in the commercial and multi-family realm. Receivers are independent third parties appointed by the court and are court officers. Benefits of utilizing receivers including allowing them to determine the validity of leases, evict as needed, maintain and market the property. All of these aforementioned actions would be taken prior to the foreclosure. Lenders and servicers can appoint the receivers, thereby creating an incentive for the receivers to work in the best interest of the servicer to ensure future consideration.

## Session 3: Community Impact

**Moderators:** Deb Oakley, Oakley Consulting Group  
Robert Klein, Safeguard Properties CEO

**Panelists:** Dave Gatton, US Conference of Mayors Director, Council for the New American City  
Dan McLaughlin, MERS, Inc. Executive Vice President and Product Division Manager  
Jennifer Leonard, National Vacant Properties Campaign Director  
Dion Irish, City of Boston Housing Inspection Agency Director  
Mario Bono, Collier County, FL Foreclosure Investigator  
Steve Bancroft, Detroit Office of Foreclosure Prevention Executive Director  
Steve Thomas, Vallejo Foreclosure Task Force  
Heidi Coppola, REO Clearinghouse President  
Nickie Bigenho, Mortgage Contracting Services Vice President of Operations  
Joy Leonelli, Lender Processing Services Vice President of Client Services  
Michael Foreman, First American Field Services Senior Director of Client Relations  
Robert Klein, Safeguard Properties CEO

### Impact of Foreclosures and Unemployment

Deb Oakley, former Senior Vice President for Homeownership Preservation at National City Mortgage opened the session by providing an overview of the session's goals. The session discussed the impact on communities, partnerships that have developed, and innovative solutions.

Dave Gatton reviewed the overall sentiment of mayors across the country; specifically, the impact that rising foreclosures and unemployment rates have on staffing, city budgets, and governance. Cities have not received targeted fiscal assistance (stimulus funds) and therefore continue to experience negative economic consequences.

### Vacant Property Registration

Vacant Property Registration ordinances continue to proliferate throughout the country. These ordinances have created numerous difficulties for the servicing industry, including:

- 350+ known ordinances with unique variances resulting in severe logistical concerns
- No differentiation between pre-sale and post-sale properties and no acknowledgement of the pre-sale legal restraints
- Information requirements
- Onerous penalties for non-compliance

The primary motivation for creating of these ordinances is to determine a servicer point of contact. Servicers and municipalities share common concerns of protecting properties and reducing blight in the community. The industry continues to establish and build on existing relationships with municipalities to cultivate greater understanding and cooperation.

While the ordinances are enacted, generally cities have not been enforcing the registration requirements contained in the ordinances on properties maintained in a safe and secure condition.

## **MERS® Initiative**

The MERS® Initiative has proven to be a viable solution for cities experiencing difficulties with vacant and abandoned properties. The City of Boston (MA) is a prime example of a City with an enacted ordinance that is utilizing the MERS® database to determine the proper point of contact, resulting in a 60% improvement in resolving issues. Collier County (FL) also has seen significant improvement in communication and frequent resolution.

Dan McLaughlin advocated a proactive stance on behalf of servicers, and urged the registration of all loans into the MERS® system in conjunction with working with local legislatures to incorporate the MERS® Initiative similar to the States of [Connecticut](#) and [Virginia](#).

With all preservation measures undertaken by the industry, the extensive timeframes that exist in various states result in the deterioration of the properties as they languish abandoned. The City of Vallejo has been at the forefront of advocating the concept of "fast tracking vacant properties." By utilizing the court system to certify the abandonment, and following the proper due diligence (proving due process and consumer protection), the foreclosure timeframe can be reduced.

## **Community Regeneration, Sustainability, and Innovation Act of 2009**

[The Community Regeneration, Sustainability, and Innovation Act of 2009](#) (S. 453/H.R. 932) does not address foreclosures; however, it does address ways to revitalize neighborhoods utilizing vacant and abandoned properties. The act is a very favorable opportunity especially areas of population decline that seek to redesign neighborhoods to meet the new reality. This act would create a pilot program at HUD to allow communities to design and cultivate these creative solutions.

In response to the housing crisis affecting the City of Detroit along with servicer concerns about becoming landlords in the wake of S896, The Detroit Office of Foreclosure Prevention Executive Director developed the [ROOF \(Retaining Occupancy on Foreclosure\) Program](#). The primary goal of the program is to ensure the property remains occupied minimizing the opportunity for the physical condition to deteriorate.

Benefits of the program include:

- The water bill, often resulting in a lien, will be removed from the property and assumed by the occupant
- The Certificate of Occupancy extends on a month-by-month basis

### **REO Clearinghouse**

The REO Clearinghouse has been successful in facilitating conversations between servicers and various disparate municipal entities (i.e. NSP administrators, code enforcement, housing authority) resulting in community friendly dispositions. Communities enabled with federal subsidies and grant monies (NSP, CDBG) no longer are strictly looking at outright donations and significant discounts. Agreements are increasingly being reached at mutually beneficial levels.