

October, 5, 2012



Michelle C. Davenport, Esq.
Associate General Counsel
Fannie Mae (FM-TX-DA1)
14221 Dallas Parkway, Suite 1000
Dallas, TX 75254

Re: Trustee Fee Increase in California

Dear Ms. Davenport:

On behalf of the United Trustees Association ("UTA") and its 370 members, I am writing to request a fee increase for nonjudicial foreclosures in California. (Please see Attachment "A" for background information on the UTA.)

As you know, the FNMA fee schedule has been in existence for at least 15 years. In the beginning, this fee structure was appropriate given the routine nature of non-judicial foreclosures at the time, the relatively low liability risk and the high volume of foreclosures. However, during the past several years, changes at the legislative level and with FNMA's requirements, have significantly increased the complexity, length and cost of performing a non-judicial foreclosure in California. In addition, given the litigious nature of borrowers in California, trustees are repeatedly being named in foreclosure-related litigation. Cutbacks to the Court system have resulted in "appearance fees" in excess of \$435.00\$. Between hiring an attorney and filing an initial response to even the most meritless lawsuit exceeds the trustee fee received for the foreclosure. Now, add in the increased liability under California's new Homeowner Bill of Rights and it is becoming increasingly difficult for trustees to cost-effectively process non-judicial foreclosures.

To reiterate some of the changes that have, and will continue to, impact the non-judicial foreclosure process in California:

1. In 2008, the Legislature passed *Civil Code* section 2923.5, which required trustees to add affidavits to the NOD. Costs to analyze the statute, prepare the declaration and work with the servicers to implement the new procedures were non-recoverable expenses.
2. In 2009, the Legislature passed *Civil Code* section 2923.52 - .54, which required an additional affidavit with the NOS. Again, the cost of implementing and complying with these additional requirements significantly increased the cost to trustees.
3. The impending Homeowner Bill of Rights, effective January 1, 2013, will require one, if not two, additional notices to be sent by the trustee. In addition, the Private Right of Action provision

under *Civil Code* 2924.12 significantly increases the trustee's exposure while performing its duties. The new laws will also make it more difficult for trustees to file Declarations of Non-Monetary Status, excusing them from further participation. Instead, trustees will find themselves trapped in extended litigation that often is primarily directed at servicers' loss mitigation efforts.

4. As a result of these bills, and others, servicers look more and more to their trustees for compliance advice, which is in no way reflected in the recoverable fee. In addition, the significant penalties contained in the new statute mandate increased interaction and communication with the servicers, increasing the amount of time spent on each foreclosure.
5. All of the bills mentioned above have, and will continue to, increase the amount of litigation against servicers and their trustees. Litigation costs for trustees are likely to continue to increase. As mentioned in the introductory paragraph, California courts have increased the "appearance fee" for any defendant to a minimum of \$435.00.
6. Servicers have steadily placed additional responsibilities on trustees, i.e., letters to borrowers, collecting loss mitigation documents, etc. The trend of having trustees perform some of these tasks is not likely to end soon.
7. Increased loss mitigation efforts have significantly extended the time frame for non-judicial foreclosures, keeping the trustees file open for longer and delaying final payment for services. Lengthy foreclosures also require increased postponements of sales. Each postponement requires that the file be worked up for sale, only then to learn of postponement and have to communicate the same to the auctioneer.
8. Increased rescissions of trustee's deed due to after sale loan modifications.
9. Increased interference work such as QWR's, trustee's disclosure letters, etc.
10. Increased bankruptcies –real and fraudulent.
11. Increased need for bankruptcy and SCRA checks to avoid violation of federal law (with no reimbursement from servicer for staff time or fees paid by the Trustee). These checks and resulting fees are required by the servicers and for the protection and benefit of FNMA.
12. Increased stall tactics on trustee sales which trustees are analyzing.
13. Increased title curative work.
14. Some trustees are being required to use a firm called Auction.com for FNMA files, which entails additional work and enhanced processes by the trustees.
15. New County/City registration requirements, which trustees are often asked to perform on behalf of the servicer and/or FNMA.
16. FNMA and servicer audits, while valuable, require significant management time, cost, and commitment by trustees.
17. Increased use of Third-party servicer providers by the servicers. The use of these Third parties often increases the work and cost for trustee, i.e., uploading of documents; payment of a fee to upload invoices; provide chronologies for each file going to sale; and the increased touches while waiting for information to be communicated from the 3rd party to the servicer and back again.

Additionally, in the last 15 years, the obvious costs to run a business have increased:

1. California has a very high cost of living, which means that trustees have to offer higher salaries and benefit packages to attract and retain quality employees. Rent is also more expensive.
2. Aside from the general higher cost of doing business in California, the legislative and systemic changes to the non-judicial process have increased the complexity of foreclosures, requiring a higher quality employee to process FNMA's foreclosures.
3. Higher mailing costs, which trustees must absorb since FNMA only pays for postage (e.g., envelopes, mailers, postage machines, personnel to stuff the mail etc.).
4. Continued work by the trustees to try to modify damaging legislation through groups like the UTA. Note – the UTA is often the only voice advocating against many of these bills targeting the foreclosure process.
5. Higher E & O costs due to increased requirements by FNMA, as well as the general increase of insurance costs.
6. Increased health insurance costs.

Maintaining the quality of nonjudicial foreclosures in California is obviously in both FNMA and the trustees' best interest. Unfortunately, several internal and external factors have increased the complexity, cost and risk of this process. The UTA and its members believe that increasing the allowable fees in California will go a long way to help maintain a quality product, for the benefit of everyone.

For the reasons set forth above, as well as others that we would be happy to discuss, the UTA collectively requests that FNMA increase its allowable fees on all tiers in California. Ideally, we ask that the fee increase be retroactive to August 1, 2012, which is when the Homeowner Bill of Rights passed, which immediately and significantly increased the requirements on trustees as they try to educate and work with FNMA's servicers to understand, implement and comply with the Bills new requirements.

Please feel free to contact the undersigned at rfinlay@wrightlegal.net or 949-477-5056 to discuss any questions or concerns you may have. As all of the UTA's membership is anxiously monitoring this issue, we would appreciate your prompt response. Thank you very much for your time.

Sincerely,



T. Robert Finlay
President

United Trustees Association

cc: Robin Lockhart, Freddie Mac

Attachment A

The United Trustees Association is the source for information, expertise and opinion on nonjudicial trustee issues and practices. UTA membership is comprised of those acting as trustees under real property deeds of trust, including employees of title companies, financial institutions, and independent companies. UTA members also work in allied and support organizations, including posting and publishing companies and computer service firms. The UTA is a national, non-profit corporation.