Claims Dispute Resolution Roundtable

Mortgage Bankers Association

of Florida

November 18, 2009

Questions

- How insurance proceeds for property are currently disbursed to the Homeowner?
- Is the disbursement process uniform among mortgage companies?
- Is the homeowner’s equity in the property taken into consideration?
- Is it possible for property insurance proceeds to be setup on a “draw” process similar to a construction loan?
- Is interest paid on insurance proceeds which are held for over a certain period of time?

How insurance proceeds for property are currently disbursed to the Homeowner?

There are many factors that influence this:

- The amount of the claim
- The agencies (Freddie Mac, Fannie Mae, FHA, VA, RHS and/or MI) involved
- Borrower’s payment history/current delinquency level
- Borrower’s unpaid balance
- Timeframe needed to achieve the needed repairs/reconstruction

Florida Statutes Section 494.0026

- **494.0026 Disposition of insurance proceeds.**--The following provisions apply to mortgage loans held by a mortgagee or assignee that is subject to part II or part III of this chapter.
- (1) The mortgagee or assignee must promptly endorse a check, draft, or other negotiable instrument payable jointly to the mortgagee or assignee and the insured by the insurance company. However, the mortgagee or assignee is not required to endorse such instrument if the insured or a payee who is not subject to part II or part III of this chapter refuses to endorse the instrument.
- (2) Insurance proceeds received by a mortgagee or assignee that relate to compensation for damage to property or contents insurance coverage in which the mortgagee or assignee has a security interest must be promptly deposited into a segregated account of a federally insured financial institution.
- (3) Insurance proceeds received by a mortgagee or assignee that relate to contents insurance coverage in which the mortgagee or assignee does not have a security interest in the contents must be promptly distributed to the insured.
- (4) Insurance proceeds received by a mortgagee or assignee that relate to additional living expenses must be promptly distributed to the insured.
- (5) The mortgagee or assignee is not required to remit the portion of the proceeds relating to additional living expenses and contents insurance if the mortgagee or assignee is not able to determine which part of the proceeds relates to additional living expenses and contents insurance.

  This section may not be construed to prevent an insurance company from paying the insured directly for additional living expenses or paying the insured directly for contents insurance coverage if the mortgagee or assignee does not have a security interest in the contents.
- **History.**--s. 5, ch. 95-313; s. 16, ch. 2009-241.

Is the disbursement process uniform among mortgage companies?

- At this time we are unable to determine what disbursement variations may exist among servicing mortgage lenders. However, we have included some guidelines set forth by the Freddie Mac and Fannie Mae that address these practices and will answer the following questions asked by the Office of the Insurance Consumer Advocate.

Is the homeowner’s equity in the property taken into consideration?

- Yes. One of the factors used by both Freddie Mac and Fannie Mae is the borrower’s equity. Proceeds that exceed the unpaid principal balance are generally released to the borrower as long as they do not exceed $10,000.

Is it possible for property insurance proceeds to be setup on a “draw” process similar to a construction loan?

- Yes. In general for claims that exceed $15,000, funds are generally deposited into an escrow account and disbursed based on an established schedule as repairs or construction progress. The Servicer should ascertain that the contractor chosen by the borrower is :
  - Duly licensed
  - Qualified
  - Financially able to complete the repair or reconstruction within the timeframes.

Is interest paid on insurance proceeds which are held for over a certain period of time?

- Generally if proceeds are to be held for over three months, they are deposited into a federally insured, interest bearing account to benefit the borrower.

Freddie Mac Single Family Seller/Servicer Guide, Volume 2 / Chapter 58.10 Insurance Loss Settlements (08/21/06)

Upon notification of loss or damage to the Mortgaged Premises, the Servicer must monitor and coordinate the claim process with the Borrower and the insurer. The Servicer must take appropriate action to:

- Verify the extent of the loss or damage
- Ensure judicious disbursement of the insurance proceeds for the necessary repairs
- Protect the priority of the Mortgage by obtaining, where necessary, waivers of material man's or mechanic’s liens
- Document completion of repairs.

Claims Proceeds

- When an insurance draft for structural losses is payable to the insured Borrower and the Servicer, the Servicer may immediately release insurance funds to the Borrowers who legitimately need to advance funds to the contractors, provided all of the following conditions are met:

- The Mortgage is current.
- The Borrower’s payment history does not show delinquencies of two payments or more.
- The released funds do not exceed the highest of :
  - $10,000.00
  - 10% of the unpaid principal balance (UPB) of the affected Mortgage
  - The amount by which the released funds exceed the UPB of the Mortgage

When the amount of the insurance funds released equals or exceeds $10,000, the Servicer must have the Borrower execute an affidavit in which the Borrower expressly agrees to apply the released funds promptly to repair or reconstruct the residence.

The Servicer may unilaterally apply the insurance proceeds to the Mortgage’s unpaid balance only to the extent allowed by applicable law and the Security Instrument. The Borrower, however, may unilaterally decide to have the proceeds applied to the Mortgage’s unpaid balance.

If repairs or reconstruction of the residence is expected to take more than three months, insurance funds retained by the Servicer pending disbursement for such repair or reconstruction must be maintained in a federally insured account that pays interest to the Borrower.