PROPERTY PRESERVATION EXECUTIVE FORUM
A Five Star Institute Membership Group

SPRING 2021

Property Preservation Review

CHAIR LETTER

We are closing out the first quarter of 2021 full of cautious optimism and anticipation. We hope to see more in-person interactions, moratoriums being lifted, and some normalcy returned to our daily jobs and our industry. Last year brought many unique challenges, and our industry successfully faced them head-on. While we have a lot to be optimistic about the year, we will likely see new obstacles that we must work together to overcome.

The number of loans in forbearance remains elevated. Many properties have not had inspections completed in months. Unidentified vacant properties due to fewer inspections will bring inevitable community blight. If properties are vacant and mortgage servicers are not aware of the vacancy, no postings will be placed on properties. As a result, concerned neighbors, police officers, or code enforcement officials are unable to determine who to contact. Due to this, municipalities receive these calls instead of property preservation companies, resulting in violations and potential deterioration of the properties.

With warmer months quickly approaching, grass and overgrowth will once again be a challenge. When landscaping is not appropriately managed, complaints from neighbors and HOAs will commence, resulting in cities issuing fines. Also, as we approach the warmer spring months, we are preparing for seasonal weather events like tornados. The last few years have brought significant technological enhancements to assist with disaster preparedness. However, the best satellite imagery and storm tracking still cannot replace physical presence at the properties. It is critical to have inspections completed to assess the damage and understand the risk posed to properties when disasters strike.

As an industry, continued education and routine communication to the investors and insurers are more important than ever. In the last year, the focus has rightfully been on aiding mortgagors. Now is the time for a new call to action, servicers and lenders must be given the ability to conduct inspections to ensure properties are being cared for and neighborhood blight avoided.

Best regards,

Caroline Reaves

Caroline Reaves
Chair, PPEF
CEO, Mortgage Contracting Services

INDUSTRY INSIGHT

Minimizing Risks of Multiple-Payee Hazard Insurance Checks

Improper handling of hazard insurance checks may result in UCC claims without the endorsement of all parties.

By Errett Dickenson and Charles Brumby

The greatest risks are unknown risks. The known risks associated with servicing a mortgage in default is abundant, and the industry devotes tremendous resources to manage those risks. However, the unknown risks can blindside and cripple organizations. One such risk is how servicers handle hazard insurance checks made payable to multiple parties, usually payable to the mortgagee and the mortgagor. If a mortgagee deposits a multiple payee check without the endorsement of all parties, even into the mortgagor's escrow account, the mortgagee may face claims under the Uniform Commercial Code (the UCC). As such, the mortgagee must tread carefully.

The common fact pattern is as follows: a property is damaged by an insurable peril and the insurance carrier issues a check payable to the mortgagor and the mortgagee. Often, the mortgagor or the mortgagee receives the check and deposits it without the endorsement of the other, in violation of the UCC, which states:

"If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them."

UCC Article 3-110(d) (emphasis added). Article 3 of the UCC has been adopted in nearly every state. If the mortgagor deposits the check and does not repair the property, the mortgagee is stuck with a property with insurable damages but without insurance proceeds. Alternatively, if the mortgagee deposits the check without proper endorsements

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INDUSTRY INSIGHT

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(because of standard operating procedures or the mortgagor's refusal to endorse), the mortgagee may be exposed to substantial legal risks. Under both scenarios, the mortgagee is not made whole.

Tips for Mortgagees

Generally, depending on state law, the mortgagee has priority over the mortgagor to insurance proceeds up to the mortgagee's interest at the time of loss. A mortgagee's interest varies based on three common fact patterns. First, if the property has not sold at foreclosure, then the mortgagee's interest is usually equal to the payoff of the loan. Second, if the loss occurred before foreclosure sale but subsequently sold at foreclosure, the mortgagee's interest is generally the loan's payoff less the amount received by the mortgagee from the sale, even if the mortgagee purchased the property via credit bid. Third, if the loss occurred after the foreclosure sale and the property was purchased by the mortgagee, the mortgagee's interest is usually that of the owner of the property, and the amount of payoff should not be relevant.

With these principles in mind, we turn to more practical considerations, such as ensuring policies and procedures reflect the applicable law, and how to get to the right result for both the mortgagor and mortgagee. Mortgagees may face substantial risks by depositing multiple payee checks unless all payees endorse the check, or the payees are separated by an "or." The mortgagee should attempt to contact the mortgagor and have the mortgagor endorse the check before taking any other actions. Once contact is made, the check must be sent to the mortgagor without the endorsement of the mortgagee, otherwise, the mortgagor can easily cash the check and abscond with the funds. Of course, a mortgagor in the process of foreclosure may be unwilling to endorse the check to the mortgagee's benefit, or the mortgagor simply cannot be found.

When a mortgagee is unable to obtain the mortgagor's endorsement on a multiple payee check, the mortgagee should have a defined process in place for what comes next.

Ideally, the mortgagee should first request that the insurance carrier reissue the check up to the interest mortgagee with the mortgagee as sole payee, but many carriers will resist, arguing that the insurance policy requires the carrier to list all interested parties on the check. As one might imagine, the larger the loss, the more resistant the insurance carrier is likely to be to reissue the check payable solely to the mortgagee. Despite the insurance carrier's custom in issuing multiple payee checks, state law and the policy often require payment to be made solely to the mortgagee. If the carrier refuses to reissue, then the mortgagee may need to take legal action to obtain the funds. The mortgagee may need to enlist outside counsel to have a court rule that payment must be made solely to the mortgagee. The various legal options available will depend on the jurisdiction, the terms of the insurance policy, and the terms of the mortgage itself.

Critically, mortgagees must be careful if the damage to the property occurred before the foreclosure sale. As mentioned above, if the sale occurs after the loss, the amount of the sale can impact a mortgagee's ability to recover funds from the carrier. If the mortgagee is planning to credit a bid on the property at a foreclosure sale, the estimated amount of the loss should be subtracted from the total bid. Depending on the jurisdiction, if a property suffers a $50,000 loss, the maximum bid by the mortgagee at the foreclosure sale should be reduced by $50,000 to ensure that the mortgagee is entitled to the full proceeds of the insurance claim. This may be a best practice regardless of a multiple payee situation and will reduce the likelihood of a partial credit bid or full credit bid reducing (or even extinguishing) the ability to recover the full amount of insurance funds needed to repair the property. The last thing a mortgagee wants is to cause itself to lose out on funds that can be used to repair the property. However, it should be noted that there may be other factors outside of insurance proceeds that mortgagees should consider in determining the final amount of the bid.

Finally, there are situations where a mortgagor obtains the check, either directly from the insurance carrier or the mortgagee, and the mortgagor cashes the check, absconds with the funds, and fails to repair the damaged property. In these situations, the instinct is to file a claim against the mortgagor for the funds, but this often proves unfruitful, and the mortgagee still has a damaged property on their hands. Luckily, there are other potential avenues of recovery available. A claim might be viable against the carrier if it improperly issued the check without the mortgagee as a payee, or in some circumstances and depending on the policy if the check was sent directly to the mortgagor and not the mortgagee first. If the mortgagor cashes the check without the endorsement of the mortgagee or fraudulently endorses the check, then the mortgagee may have claims against the bank that accepted the improperly endorsed check for deposit, or against the insurance carrier's bank that paid the improperly endorsed check.

For these reasons, mortgagees must understand the risks of improperly handling hazard insurance checks and have a process in place to help mitigate those risks.

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NEWS BRIEF

Helping Consumers Understand the 'Flood Factor'

Understanding the flood risk when purchasing a home just became easier with a new tool for tracking flood risk information.

For those considering purchasing a home, an understanding of flood risk is invaluable, market experts say. Real estate brokerage company Redfin recently announced a partnership with science and technology nonprofit First Street Foundation and the collaborative introduction of Flood Factor, a tool for tracking flood risk information for most homes on Redfin's website in regions where data is available.

Users can plug in a ZIP code and determine a particular property's risk ranging from 1 (minimal) to 10 (extreme) over 30 years.

"Buying a home is the biggest purchase most people will make in their lifetime," Redfin Chief Product Officer Christian Taubman said. "By publishing the Flood Factor score, we are making it easier to understand the risk each home faces of being damaged by flooding, meaning everyone can make better-informed decisions about buying and selling. Most home buyers and sellers say that the frequency or intensity of natural disasters factors into their decision about where and whether to buy or sell a home, so this is information they can use."

In tandem with the Flood Factor score, users can view the estimated Federal Emergency Management Agency (FEMA) zone, Redfin reported. Consumers can use the tool to learn more about Flood Factor, FEMA, and flood insurance, and they can visit FloodFactor.com for additional insights on a property's flood risk, how to protect against flooding, and more.

Matthew Eby, Founder and Executive Director of First Street Foundation said the organization's goal in partnering with Redfin is to help current and future homeowners understand the extent of the flood risk facing a property, its severity, and how—with changes to the environment—the risk is changing over time.

"Integrating with Redfin significantly expands our ability to enable home shoppers and owners alike to understand otherwise complex, difficult-to-find information about flooding and the sources that contribute to and exacerbate it. By providing them with this data when preparing to buy or sell a home, Redfin is an invaluable partner in contributing to the public's understanding of flood risk."

The flood-risk score is determined by hydrologists, researchers, and data scientists, and reviewed by some of the world's leading research institutions, Redfin noted in a press release. "First Street Foundation's flood model is the most comprehensive in the industry. It provides a climate-adjusted, property-parcel-level assessment of risk today and over the course of the standard 30-year mortgage."

NEWS BRIEF

HUD Announces Disaster Assistance for Texas' Winter Storm Victims

White House partially approves Texas' request for a major disaster declaration by providing individual assistance in 77 counties.

The U.S. Department of Housing and Urban Development (HUD)announced the implementation of federal disaster assistance for the State of Texas to provide support to homeowners and homebuyers in areas affected by the severe winter storm.

President Biden recently issued a major disaster declaration for the following counties in Texas: Angelina, Aransas, Bastrop, Bee, Bell, Bexar, Blanco, Brazoria, Brazos, Brown, Burleson, Caldwell, Calhoun, Cameron, Chambers, Collin, Comal, Comanche, Cooke, Coryell, Dallas, Denton, DeWitt, Ellis, Falls, Fort Bend, Galveston, Gillespie, Grimes, Guadalupe, Hardin, Harris, Hays, Henderson, Hidalgo, Hood, Jasper, Jefferson, Johnson, Kaufman, Kendall, Lavaca, Liberty, Madison, Matagorda, Maverick, McLennan, Montague, Montgomery, Nacogdoches, Nueces, Orange, Palo Pinto, Panola, Parker, Polk, Rockwall, Sabine, San Jacinto, San Patricio, Scurry, Shelby, Smith, Stephens, Tarrant, Travis, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wharton, Wichita, Williamson, Wilson, and Wise.

The declaration allows for HUD-assisted foreclosure relief outlined below as well as other assistance to impacted households living in these counties, according to HUD:

- Provision of immediate foreclosure relief—HUD's automatic 90-day moratorium on foreclosures of Federal Housing Administration (FHA)-insured home mortgages commenced for the Texas counties covered under the Presidential declaration on the date of the declaration. Additionally, borrowers who cannot make their mortgage payment, are urged to call their loan servicer, the entity to which they make their mortgage payment.
- Making mortgage insurance available—HUD's Section 203(h) program provides FHA insurance to disaster victims whose homes were destroyed or damaged to such an extent that reconstruction or replacement is necessary. For those that are facing the daunting task of rebuilding or buying another home, Section 203(h) allows eligible borrowers to receive 100 percent financing, including closing costs.
- Making insurance available for both mortgages and home rehabilitation—HUD's Section 203(k) loan program enables those who have lost their homes to finance the purchase or refinance of a house along with its repair through a single mortgage. It also allows homeowners who have damaged houses to finance the rehabilitation of their existing single-family home.
- Ensuring HUD-approved housing counseling agencies are ready to assist—HUD-approved housing counseling agencies have counselors available to assist those who are impacted by natural disasters to determine assistance needs and available resources.
- Making information on housing providers and HUD programs available—The department will share information with the Federal Emergency Management Agency (FEMA) and the State on housing providers that may have available units in the impacted counties. This includes Public Housing Agencies and owners of HUD-assisted multifamily properties. The Department will also connect FEMA and the State to subject matter experts to provide information on HUD programs and providers.

According to the White House, Robert J. Fenton, Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency (FEMA), Department of Homeland Security, named Jerry S. Thomas as the Federal Coordinating Officer for federal recovery operations in the affected areas.

Additional designations may be made later if requested by the state and warranted by the results of further damage assessments.

NEWS BRIEF

Biden to Release Billions in Puerto Rico Disaster Relief

The Biden administration is looking to ease spending restrictions imposed following Hurricane Maria in 2017, by releasing $1.3 in aid to Puerto Rico.

Puerto Rico's hurricane recovery efforts—specifically those following Hurricane Maria in 2017 have been slow compared to that of other parts of the United States. *The New York Times* reports that it is due in part to restrictions on Puerto Rico's aid funds put in place by The Department of Housing and Urban Development (HUD) under the previous president, Donald Trump.

Citing current and former officials and policy experts, the *Times* reports that those restrictions did not apply to other recipient states.

Now the Biden administration is working to remove some of those spending restrictions put in place after Maria, reports the *Times*. The current administration also reportedly has said it will release $1.3 billion in aid that Puerto Rico can use to protect against future climate disasters.

"The money is part of $20 billion that Congress provided HUD after Maria for recovery and protection against future storms in Puerto Rico," the *Times* reported. "According to federal data, only $138 million, or about 0.7%, has been spent, a far lower rate than for funding that Congress provided HUD to help Texas, Florida, and other parts of the United States to rebuild after similar disasters.

The *Times* piece explores some of the reasons why Puerto Rico has been slower to receive its allotted funds: "Kenneth McClintock, a former Puerto Rico secretary of state and Senate president, said that the island had an admittedly slow and bureaucratic process to approve construction projects. But the Trump administration also tagged Puerto Rico as more corrupt than other jurisdictions and delayed the disbursement of federal funds, to begin with, he said."

Reportedly, neither former HUD Secretary Benjamin Carson nor former President Trump responded to the *Times*' request for comment on the situation. But a HUD representative named Michael Burns told the paper that the effort by Biden to resume aid to Puerto Rico represents an attempt to "reset" its relationship with the island. He says this "will help the island build resilience to future storms and floods."

NEWS BRIEF

Industry Lessons Learned From 2020's Catastrophic Events

Climate change is having an impact on the housing economy, reduced risk and greater protection lies in insurance and mortgage industries adopting innovative technologies.

The failure to take climate change seriously is akin to playing Russian roulette with the housing economy, according to experts. Consequently, it is incumbent upon the insurance and mortgage industries to tap new technologies to ratchet up efficiency, while reducing risk and ensuring the protection of American homeownership and commercial assets. That is the message from the CoreLogic 2020 Catastrophe Report.

The report analyzes last year's natural catastrophes through a host of perspectives, including climate change, the pandemic, and the overall threat to American homeownership.

Insurers and mortgage lenders can better understand peril risk and damages down to a parcel level by using catastrophe risk science, weather verification tools, and digital workflows.

Last year marked the sixth straight year with over 10 weather events reaching losses catapulting $1 billion.

A cocktail of peril risk scores from CoreLogic reflect 35 million homes—which approaches a third of the U.S. housing stock—are highly vulnerable stemming from natural hazards.

The location of the homes at the highest risk: California, Texas, Oklahoma, Kansas, Nebraska, along the Mississippi River, and large Gulf and Atlantic coastal stretches.

A new study authored by researchers at Stanford University has determined that increased precipitation created by increased global temperatures has contributed to one-third of the financial costs of flooding in the U.S. over the past three decades.

The study, published in the journal Proceedings of the National Academy of Sciences, estimated that nearly $75 billion of the $199 billion in flood damages that occurred between 1988 and 2017 was the result of dramatic changes to the global climate. The Stanford researchers used climate and socioeconomic data for their study to determine if the increase in flooding was being driven primarily by climate change or by other ground-level factors including population growth, housing development, and increasing property values.

"The fact that extreme precipitation has been increasing and will likely increase in the future is well known, but what effect that has had on financial damages has been uncertain," said Frances Davenport, a Ph.D. student in Earth system science at Stanford's School of Earth, Energy & Environmental Sciences, and the lead author of the study. "Our analysis allows us to isolate how much of those changes in precipitation translate to changes in the cost of flooding, both now and in the future."

NEWS BRIEF

FHFA Issues RFI on Impact of Natural Disaster Risk

FHFA seeks standard on identifying climate and natural disaster risk, as well as how it prioritizes risks that require regulatory oversight.

The Federal Housing Finance Agency (FHFA) has issued a Request for Input (RFI) on the impact of natural disaster risk to the housing finance system as a whole and to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks in particular.

In its RFI, the agency noted, "As a prudential financial regulator, FHFA does not have expertise in climate science." Nonetheless, the agency also acknowledged that "natural disasters could result in increased delinquency rates, default rates, credit losses, credit-related expenses, and loan loss frequency and severity."

The RFI is focused on two specific considerations. The first seeks a standard in identifying and assessing climate and natural disaster risk, which includes setting the methodologies in measuring and monitoring these risks while establishing risk management strategies and approaches related to issues including pricing, insurance, credit risk transfers, loss mitigation, and disaster response.

The second consideration examines the FHFA's supervisory and regulatory framework in assessing and managing these risks, with concerns ranging from how the agency supervises the climate and natural disaster risk management within its regulated entities and how to prioritize the risks that require regulatory oversight.

The FHFA also pointed out that this level of regulation could generate unintended results, ranging from the implementation of policies that result in increased housing costs, which would negatively affect lower-income households, to the creation of policies that would mitigate the higher delinquency rates that minority borrowers have traditionally experienced following natural disasters. The FHFA also questioned whether it should partner with other government agencies or programs that could enhance its work in this area.

"Natural disasters can adversely affect the regulated entities," said FHFA Director Mark Calabria. "Historically, the ability to assess the scale, timing, location, and impact of such risks has been limited. Today's RFI will help FHFA better understand and address the regulated entities' exposure to climate and natural disaster risk."

The FHFA will accept feedback for its RFI through April 19.

MEMBER ALERT

Safeguard Properties Webinar Explains Eviction Moratoria

Safeguard Properties, which manages mortgage field services on vacant, defaulted, and foreclosed properties, kicked off their 2021 webinar series with a webinar entitled, "Evictions: Maneuvering Through the Moratoriums," during which a panel of experts discussed the nuances of the latest federal, lending, and servicing rules related to the COVID-19 pandemic.

Specifically, the pundits explained what preservation-related actions servicers can and cannot take during the moratoriums; changes in eviction laws and guidance; the CDC order regarding evictions; and challenges in key states.

The following speakers participated in the discussion:

- **C. Lance Margolin**, Partner Emeritus and Director of Eviction and REO Services, The Margolin & Weinreb Law Group, LLP in Syosset, N.Y.
- **Daniel Barbagelata**, Supervising Partner of Evictions, Deed in Lieu and National Closing Services, Aldridge Pite LLP in Atlanta, Ga.
- **Will Jarrell**, Senior Associate Attorney, Aldridge Pite LLP in Atlanta, Ga.
- **Linda Erkkila**, General Counsel, and EVP, Safeguard Properties