

**WAC 460-33A-065 Service agreement.** (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the investors setting forth specifically what services will be provided.

(2) The service agreement shall provide:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule;

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received;

(c) That payments received on the note, bond or obligation shall be transmitted to the investors pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the investors of the source for payment. A broker or servicing agent who transmits to the investors such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received;

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the investors of any default on such prior encumbrances or on the note or other obligations subject to the servicing agreement;

(e) That any fee to be collected by the servicing agent shall be reasonable in relation to the services performed;

(f) That the servicing agent may not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration;

(g) That in the event a borrower defaults on a loan or the investors acquire property that secured a loan, the servicing agent shall send, at least once every calendar quarter or ninety-day period, each investor a statement setting forth all income and expenses incurred in connection with the loan or the property during that period, or since the last statement, within fifteen days after the end of the calendar quarter or ninety-day period or receipt of an investor's request for a statement, until such time that the default has been cured or the property has been sold, at which time a final statement shall be provided to each investor;

(h) That any provision providing for the indemnification of the servicing agent shall not provide for indemnification by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder;

(i) That whenever the servicing agreement requires the consent or approval of the investors, the investors shall have a minimum of fifteen days from the date the request for consent or approval is sent by the servicing agent to approve or disapprove of the matter in writing unless a shorter period of time is permitted under this chapter or consented to in writing by investors holding interests representing a majority interest in the unpaid amount of the loan; and

(j) That the servicing agent will, upon request by an investor, provide a list of the investors holding an interest in a loan to the investor, along with the respective percentage interests in that loan held by each investor and their most recent mailing addresses on file with the servicing agent.

(3) The servicing agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are as-

sessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer in the event the investors acquire the real property securing the loan at the foreclosure sale. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(4) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, that provides servicing on loans sold as mortgage paper securities owes the duties of a fiduciary to each investor.

(5) Any notices to investors concerning the servicing of the loan in which they have invested, or property that has been acquired by investors through foreclosure, shall be sent to each investor at the investor's last known address.

[Statutory Authority: RCW 21.20.060, [21.20].070, [21.20].090, [21.20].100, [21.20].180, [21.20].210, [21.20].250, [21.20].270, and [21.20].450. WSR 12-11-087, § 460-33A-065, filed 5/17/12, effective 6/17/12. Statutory Authority: RCW 21.20.450. WSR 89-17-078 (Order SDO-124-89), § 460-33A-065, filed 8/17/89, effective 9/17/89; WSR 86-21-107 (Order SDO-140-86), § 460-33A-065, filed 10/20/86; WSR 83-03-025 (Order SDO-7-83), § 460-33A-065, filed 1/13/83.]