

Matrix of Secondary Market (FHA, VA, Fannie Mae, Freddie Mac) Requirements for Condominium Unit Loans

The following pages are taken from a project originally done for updating published materials.

We are attempting to organize (by subject matter) the requirements of the various secondary market lenders, guarantors and insurers who deal in condominium unit loans, so that we can:

analyze what we need to put in our condominium documents (to try to qualify with as many secondary market requirements as possible) to avoid the necessity of amending documents later when someone wants to “qualify” the project;

cross reference the requirements in condominium documents included in future editions of *Ohio Condominium Law* <http://west.thomson.com/productdetail/152941/40361815/productdetail.aspx> and *Ohio Real Estate Law* published by West (now part of Thomson Reuters). (Please excuse the shameless self-promotion.); and

have a checklist of items to review when evaluating how difficult (or easy) it will be to qualify a specific project.

The “Matrix” has since been used in presentations for the ABA and the American College of Real Estate Lawyers (ACREL)

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Note that this is not an exhaustive list of all secondary market requirements. It was prepared with an initial emphasis on documentary requirements (which is the attorney’s bailiwick), does not attempt to be comprehensive with regard to some topics (such as rules regarding expandable projects) and avoids some topics which are rarely problematic (such as permitted easements and title exceptions). It is the author’s hope that it will be a helpful starting point.

FNMA A note with regard to the changes in the Selling Guide dated November 10, 2014

With the Fannie Mae Single Family Selling Guide issued 11/10/2014, Fannie Mae embarked upon a new method of categorizing project standards and requirements, based upon whether the units being mortgaged are **attached** or **detached**, and whether they are in **“established”** projects (not subject to additional phasing; 100% complete, including all units and common elements; 90% conveyed to unit purchasers; and turned over to the unit owners) or are in **“new”** projects (missing one of the tests for “established” project) or a **“newly converted”** (within the last 3 years) project.

If the mortgaged unit is **detached** (even though there are also attached units in the project), the lender can do a **“limited review”**. (This is also available for attached units in an established project where the loan to value ratio is 80% for a principal residence and 75% for a second home.) In the limited review, all the lender has to do is make sure:

The project is not an “ineligible project” (See B4-2.1-02 of the Guide)

The project does not consist of manufactured units

If the subject unit is a detached unit, the unit is 100% complete (attached units must be in established projects which, by the definition of “established units” must be 100% complete, including all units and common elements)

The appraisal of the subject unit meets all applicable appraisal requirements (See B4-1 of the Guide)

The unit satisfies all insurance requirements stated in B7 of the Guide

The lender doing a limited review is not required to validate that the project also meets the eligibility requirements of another project review type. For instance, specific requirements for new projects, which require a full review, are not on the radar screen for the lender, unless they affect the value requirements (an example of where an “appraisal requirement” might affect the qualification of the project would be where a unit which is a non-conforming use and cannot be rebuilt to the same density is to be identified in the appraisal process. See B4-1.3-04 (04/15/2014) of the Guide. This would put the project on the list of “ineligible projects. See B4-2.1-02 (11/10/2014) of the Guide.

There are some requirements (such as the requirement that any amendment which materially, adversely affect lenders be approved by 51% of the lenders, and that the lender have 60 days to respond to a request for approval) that are included in a portion of the Guide’s requirements “for attached units in new or newly converted condo projects” (B4-2.2-03 of the Guide.) Assumedly, that is not required for the lender’s “limited review” approval of a loan secured by a detached unit.

There are also varying requirements for two- to four-unit projects, and “gut” and “non-gut” conversions, which I will try to identify in this “matrix”.

Ineligible Projects

FHA FHA Condominium Project Approval & Processing Guide 1.4 (June 30, 2011)

Mandatory rental pools or other arrangements which restrict owner's ability to occupy the unit;

More than 25% of space used for nonresidential purposes; [See Mortgage Letter 2012-18 (Sept. 13, 2012) 1.5.1 and page 4, below (discussion of "Mixed Use" requirements) for elaboration and exceptions.

Condominium Hotels or "Condotels" (examples – has registration services, has word "hotel" or "motel" in title;

Located in Coastal Barriers of Atlantic, Gulf of Mexico or Great Lakes;

Timeshares or segmented ownerships;

Multi-dwelling Units;

Assisted Living Facilities;

Projects where developer retains ownership of common areas or amenities after control turned over

FNMA Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014).

Hotel or motel, or that curtail owner's ability to utilize their own unit, or which have mandatory rental pool agreements, or which give management control over occupancy (see regs for further descriptions)

Projects with non-incidentual business operations owned or operated by association (e.g., spa, restaurant, health club) – Exceptions:

15% where income from leasing units acquired through foreclosure

Income between HOA and telephone, cable & internet companies (e.g. cell tower on roof)

Income from use of recreational facilities for exclusive use of owners on project or leased to another project subject to a shared amenities agreement

Investment securities (filed with SEC or where promoted as investment opportunities)

Tenancy-in-common or similar arrangements; Timeshares or other fragmented/segmented ownership projects

Projects with mandatory upfront or periodic membership fees for use of recreational amenities owned by outside party (other than owned exclusively by HOA or master association).



Ineligible Projects (continued)

FNMA (Continued) Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014).

Sales where Interested Party Contributions are in excess of Fannie Mae's eligibility policies for individual mortgage loans, including, but not limited to:

Builder/developer contributions; sales concessions; and HOA or principal and interest payment abatements and/or contributions not disclosed on HUD-1.

For rules on HOA credits in excess of 12 months which are paid outside of closing and not disclosed on the HUD-1, see Fannie Mae Single Family Selling Guide B3-4.1-03 (06/30/2010).

Projects where more than 25% of the total space is used for non-residential purposes. (For the first time, Fannie Mae provides detailed, if somewhat complicated, rules for measuring.)

Projects where a single entity (individual, investor group, etc.) owns more than 10% of total units (more than 1 unit in a 2-4 unit project, more than 2 units in a 5-20 unit project). Developer's Units are counted if rented, even if tenant has some right to purchase. Developer's vacant units not counted if being actively marketed for sale.

Multi-dwelling unit projects (see regs for variations on the theme) An owner may combine 2 or more units, but the project's legal documents must be amended to reclassify the combined unit as a single unit in the project.

Projects that represent legal, but non-conforming, use of land if zoning regulations prohibit rebuilding the improvements to current density in the event of partial or full destruction.

Projects with property that is not real estate, such as houseboat project, boat slips, cabanas and other forms of property that are not real estate, but are OK if owned in common by the unit owners.

Projects owned or operated as a continuing care facility.

Projects that do not meet the requirements for live-work projects (such as being primarily residential in character. See other restrictions.)

Projects containing manufactured housing units (unless approved through Fannie Mae's PERS program).

Newly converted (within 3 years), non-gut conversions (new carpet, paint, replacement of cabinets, fixtures, doors or windows) containing more than 4 units (unless approved through Fannie Mae's PERS program)

See "Pending Legal Actions" and "Priority of Common Expenses" sections, below, for additional description of deficiencies which would make the project ineligible.

Ineligible Projects (continued)

Freddie

Freddie Mac Single Family Seller/Service's Guide 42.3 (7/18/13)

- (a) project which is required to be registered under state or federal securities regulation
- (b) Hotel or resort
- (c) project in which owner may hold a single deed evidencing ownership of more than one dwelling unit
- (d) project with more than 20% of square footage used for non-residential or commercial use
- (e) common interest [tic] (f) timeshare or segmented ownership; or (g) houseboat
- (h) legal non-conforming use (where rebuilding to current density not allowed)
- (i) litigation (or ADR) involving safety, structural soundness, habitability unless commenced by the association, or involving non-monetary neighbor disputes regarding rights of enjoyment, or where the litigation amount is known and is covered by insurance (& insurance company has committed to defend.
- (j) projects sold with excessive "interested party contributions" (See Freddie Mac Single Family Seller/Service's Guide 25.3
- (k) where individual or single entity (such as an investor group) owns more than 10% of units
- (l) continuing care retirement community facilities (see regs. for further description)
- (m-o) see regs for other categories such as projects where Fannie Mae has issued a determination of ineligibility, manufactured home projects, and certain new condominium projects in Florida

Conversions

FHA FHA Condominium Project Approval & Processing Guide 1.5.1 (June 30, 2011) has detailed rules for newly converted projects for which applications for approval are submitted through HUD “HARP” process (no DELRAP, where Direct Endorsement Lender approves project) within 2 years from date of conversion.

For All Newly Converted Projects:

Only where conversion complete, not based on conversions or phases that are anticipated in the future

Work completed as evidenced by engineering or architectural inspection w/i 12 months of completion

Reserve study & engineer’s report: commenting favorably on structural integrity, remaining useful life

Review of current year budget, current balance sheet, actual income & expense statement must determine that budget and operating results are sufficient and:

Includes allocations/line items sufficient to maintain & preserve all amenities and features unique to project

Provide funding and replacement reserves for capital expenditures & deferred maintenance of 10% of budget

Provides funding for insurance coverage and deductibles

Funds to cover total cost of any items identified in reserve study or engineers report that need to be replaced within 5 years from date of study must be deposited in HOA’s reserve account

Detailed description of work proposed or already completed in order for units to be ready for sale

Additional for NON-GUT (painting, new carpet, replacement of cabinets, fixtures, doors or windows) Conversions

50% conveyed or under contract to owner-occupant principal residents (contract & loan commitments)

Developer may own up to 50% of units at time of project approval

Developer must provide comprehensive sale and marketing strategy and efforts to affirmatively market

Additional for GUT (down to shell; new HVAC or electrical components; any structural modification) Conversions

100% complete (except preference items) before any unit mortgage is endorsed. (May escrow for weather related delays for common area items only)

Building permit (or equivalent) is required and Temporary or Permanent Certificate of Occupancy (or equivalent)

Developer must provide comprehensive sale and marketing strategy



Conversions (continued)

VA In a conversion where the declarant is in control or still marking units not previously occupied, declarant must provide a statement by a registered professional engineer and/or architect, with an estimate of the remaining useful life of all components (10 years is required on all structural and mechanical components, or declarant must fund 1/10th the cost for each year less than 10). Not required for resale units when declarant is not in control and/or selling units (but it is, apparently, required where declarant is either in control or selling units.) 38 CFR 36.4360a(b)(7)(i)(C) (07/01/93)

In declarant controlled project, a statement by local authorities of the adequacy of off-site utilities (eg, sanitary or water) is required. If local authority declines, one may be obtained from a licensed professional engineer. 38 CFR 36.4360a(b)(7)(ii) (07/01/93)

FNMA For “gut” conversions (where property is renovated down to its shell, including new HVAC and electrical) created in last 3 years, engineer’s report (or functional equivalent) that was originally obtained for conversion must comment favorably on structural integrity and condition and remaining useful life of major components (heating & cooling systems, plumbing, electrical, elevators, boilers, roof, etc.). Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014).

For newly created, non-gut conversion with more than 4 units must be processed through FNMA’s Project Eligibility Review Service (“PERS”) Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014).

For specific requirements for full review of newly (3 years) created two- to four-unit non-gut conversions, see Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014).

See also “Budget Requirements/Reserves” below.

Freddie Freddie Mac Single-Family Seller/Servicer’s Guide 42.6(h) (07/18/13) requires that for a conversion (a project with a prior use) an engineer must state that the project is structurally sound, and the condition and remaining useful life of the major components are sufficient for residential use, etc.

All rehabilitation work is completed.

If a partial rehabilitation, lender must verify that all repairs affecting soundness and habitability are complete and replacement reserves have been allocated for all capital improvements, and the underwriter has determined that the reserves are sufficient to fund the improvements.

42.6(d) of the Guide (07/18/13) repeats the requirement that for conversions, there must be an initially funded reserve consistent with the remaining useful life of the individual common elements.

Pre-Sales

FHA FHA Condominium Project Approval & Processing Guide 3.4 & 1.5.1 (June 30, 2011) as revised by ML 2012-18 (Sept. 13, 2012) 3.4

Existing and Non-Gut Conversion Projects – 50%

Proposed, under construction, existing less than 12 months, Gut Conversions – at least 30% sold (see chart in ML 2012-18 (Sept 13, 2012) 3.4

contract AND evidence that lender is willing to make loan or evidence that unit is sold and occupied

Can include secondary residence if meets all requirements of 24 CFR 203.18(f)(2). (where mortgagor maintains or will maintain a part-time place of abode and typically spends less than a majority of the calendar year and its not a vacation home.)

VA While Declarant in control – 70%. 38 CFR §36.4360a(c)(1)

FNMA In attached new (subject to additional phasing or not turned over yet) or newly converted (3 years) project, at least 50% of units must have been conveyed, or be under contract for sale, as personal residence or second home Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

(Building in which units are located can not be in more than one phase to be counted in column as being “sold” for purposes of meeting 50% requirement. Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

In two- to four-unit project, all but one unit must have been conveyed or be under contract for sale as personal residence or second home. Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

Freddie New Project – 70% Freddie Mac Single-Family Seller/Service’s Guide 42.6(c) (07/18/13)

Building in which units are located can not be in more than one phase to be counted in column as being “sold” for purposes of meeting 51% requirement. 42.6(c) (07/18/13).

Established Project – 51% if borrower is investor. No requirement if borrower is going to use as primary or secondary residence. 42.5(c) (7/18/13)

2 to 4 Unit Project – All but one must have been conveyed to purchasers (other than the developer) who occupy the unit as their primary residence or second home. 42.7(a) (07/18/13)



Owner-Occupancy

FHA FHA Mortgage Letter ML 2012-18 (Sept 13, 2012) 3.4

Existing and Non-Gut Conversion Projects – 50%

Proposed, under construction, existing less than 12 months, Gut Conversions – at least 30% sold (see chart in ML 2012-18 (Sept 13, 2012) 3.4

If includes presales, need evidence that a lender is willing to make loan and buyer intends to occupy or evidence (e.g., certified spreadsheet or chart) from developer that lists all units sold, under contract, or closed.

Can include secondary residence if meets requirements of 24 CFR 203.18(f)(2). (where mortgagor maintains or will maintain a part-time place of abode and typically spends less than a majority of the calendar year and its not a vacation home.)

FNMA At least 50% of units must have been conveyed, or be under contract for sale, as personal residence or second home - in attached new (subject to additional phasing or not turned over yet) project
- in attached units in newly converted (3 years) project
- in attached units in established project purchased for investment, but not a requirement if unit is purchased as principal residence or second home

Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014) and B4-2.2-03 (11/10/2014).

(Building in which units are located cannot be in more than one phase to be counted in column as being “sold” for purposes of meeting 50% requirement.

In two- to four-unit project, all but one unit must have been conveyed or be under contract for sale as personal residence or second home. Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

For additional rules regarding other loans, and special rules for counting REO units held by financial institutions, see Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

Freddie New Project – 70% Freddie Mac Single-Family Seller/Service’s Guide 42.6(c) (07/18/13)

Project consisting of one building must have only one legal phase. Any one building in project comprised of multiple buildings cannot be subject to more than one legal phase. 42.6(c) (07/18/13).

Completed Project – 51% if borrower is investor. No requirement if borrower is going to use as primary or secondary residence. 42.5(c) (7/18/13)

2 to 4 Unit Project – All but one must have been conveyed to purchasers (other than the developer) who occupy the unit as their primary residence or second home. 42.7(a) (07/18/13)



Pending Legal Actions

FHA Pending legal actions must be disclosed (except for routine foreclosures commenced by unit lenders) FHA Condominium Project Approval & Processing Guide 2.1.8 (June 30, 2011) Attorney letter must address:

reasons;

anticipated settlement/judgment date;

whether insurance coverage is sufficient to pay without affecting financial solvency of project;

whether it could affect ability of owners to transfer title to units; and

whether it could impact owner's rights

VA If developer controls, one of items to be submitted, even for existing unit resales, is a "litigation statement" VA Lenders Handbook, 16-A-03(18) (7/14/2003).

FNMA Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014) lists "ineligible projects":

-Any project for which HOA is named as a party to pending litigation or for which sponsor or developer is named as a party to litigation that relates to safety, structural soundness, habitability or functional use of the project

Minor matters not considered:

Non-monetary dispute involving neighbor disputes or rights of quiet enjoyment;

Where claimed amount is known, covered by insurance, and insurance company is defending; or

HOA is plaintiff in foreclosure or action for assessments.

Freddie Freddie Mac Single-Family Seller/Service's Guide 42.3(i) (7/18/13) includes, in its list of "ineligible projects":

-Where Association (or Developer, where project not turned over to home owners);

-Is a party to current litigation, arbitration, mediation or other ADR; AND

-Dispute involves safety, structural soundness or habitability of the project. unless commenced by the association, or involving non-monetary neighbor disputes regarding rights of enjoyment, or where the litigation amount is known and is covered by insurance (& insurance company has committed to defend.



Budget Requirements/Reserves

FHA FHA Condominium Project Approval & Processing Guide 2.1.6 (June 30, 2011)

Financial Documents to be reviewed

Current projected budget (if under construction and built in legally declared phases, actual year-to-date)

Current balance sheet for existing projects

If projects existing for over 1 year, income and expense statement

Review of financial documents must determine that budget and operating results are sufficient and:

Includes allocations/line items sufficient to maintain & preserve all amenities and features unique to project

Provide funding and replacement reserves for capital expenditures & deferred maintenance of at least 10% of budget; and provides funding for insurance coverage and deductibles

VA VA Lenders Handbook, 16-B Other VA Requirements (7/1/2000) (D) Other Considerations, Item 1,e references an information brochure or public offering statement disclosing, “at a minimum”, “a projected budget for the community of at least one year at full buildout,” a component for reserves and replacements, if appropriate, and if the project is phased, over 200 units, or includes significant common area improvements, a multi-year feasibility budget with reserve table

16-B (A)(10) requires that if a maximum annual assessment is stated, it may be adjusted by the greater of 10% per annum, a CPI adjustment, or by a vote of the members paying the increase. Adjustments can also be made for increases in certain fixed costs like taxes and insurance.

If no maximum is set forth in the declaration, owners have to approve capital expenditures, other than repair and maintenance, for a fiscal year that exceeds 20% of the budget for common expenses during that fiscal year.

FNMA For attached units in established, new or newly converted projects, the Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014) requires an adequate Budget with reserve of at least 10%.

Divide replacement reserve by budgeted assessment income, with the following items being excluded:

Income collected for utilities that would typically be paid by individual unit owners

Income allocated to reserve accounts

Special assessment income

Where budget includes utilities not separately metered, determine if that is customary, and confirm that budget includes adequate funding for utility payments



Budget Requirements/Reserves

FNMA (Continued) For attached units in established, new or newly converted project

Reserve studies may be used to determine appropriate levels of reserves. Reserve studies will also provide useful information regarding the adequacy of the HOA's current reserve fund and offer recommendations to meet funding goals in the event the HOA has under reserved for its needs. Lender may review the most current reserve study or a reserve study update provided it has been completed within 3 years of the date on which the lender approves the project.

Reserve studies must be prepared by an independent third party that has specific expertise

The following items must be addressed:

All manor components and elements of the common areas for which maintenance is expected

Condition and remaining useful life of each major component

An estimated cost of repair, replacement, restoration or maintenance of major components

An estimate of the total contributions required (minus existing reserves) including inflation

Analysis of existing funding

Suggested reserve funding plan. Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014).

For new two- to four-unit conversions which are not "gut" conversions (where property is renovated down to its shell, including new HVAC and electrical) budget must contain adequate reserves (identified in a reserve study), funds to cover 100% of costs of any items identified in reserve study or engineer's report that need to be replaced within 5 years, and a utility contingency of 10% of previous year's utility costs if not separately metered. Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014).

See "Conversions", above, for FNMA requirements for engineer's reports and other requirements for conversions.

Freddie Freddie Mac Single-Family Seller/Service's Guide 42.5(d) (7/18/13) and 42.6(d) (07/18/13) requires appropriate allocations for line items pertinent to type and status of project.

At least 10% of budget for replacement reserves for capital expenditures and deferred maintenance based on the projects age, remaining useful life and replacement cost, plus adequate funding for insurance deductible. 42.5(d) (7/18/13) [established projects], 42.6(d) (07/18/13) [new projects]

For new conversions, there must be an initially funded reserve consistent with the remaining useful life of the individual common elements Seller/Service's Guide 42.6(d) (07/18/13).

Arrearages

FHA No more than 15% for more than 60 days, including bank-owned units. FHA Condominium Project Approval & Processing Guide (June 30, 2011) and ML 2012-18 (Sept. 13, 2012) 2.1.5

Although the original Project Approval & Processing Guide indicated that exceptions could be made, when the FHA went to 60 days, it made it clear that no exceptions would be granted. ML 2012-18 (Sept. 13, 2012) 2.1.5

FNMA For attached units, no more than 15% for more than 60 days. Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014)

Freddie No more than 15% for more than 30 days. Freddie Mac Single-Family Seller/Service's Guide 42.6(e) [new projects] (7/18/13) and 42.5(e) [established projects] (07/18/13)

Assessment Requirements – Starting Date

Freddie For a new project, the assessments must begin for all units once the developer ceases to pay operating expenses, whether or not all units have been sold. Freddie Mac Single-Family Seller/Service's Guide 42.6(d) (07/18/13)

FHA Concentration Requirement

FHA FHA will not insure any more than 50% of the units in a project. FHA Condominium Project Approval & Processing Guide 3.6 (June 30, 2011). Jurisdictional Homeowners Center can grant exemption.

FHA concentration can be increased to 100% if all requirements for project approval are met and:

100% complete all construction completed for 1 year, as evidenced by final or temporary CO for last unit

100% sold and no entity owns more than 10% (except for eligible governmental or nonprofit programs)

Control turned over

Budget provides funding replacement reserves for capital expenditures & deferred maintenance of at least 10%

Owner-Occupancy ration at least 50%

Gut-rehabilitation (as well as proposed and under-construction projects) not eligible



Ownership of multiple Units by one owner

FHA Mortgage Letter ML 2012-18 (Sept. 13, 2012) 2.1.4

In existing or Non-Gut Conversion (w/ 2 years of conversion), one investor/entity may own up to 50% of the Units (not counting unit investor occupiers)

Permitted Percentage for planned, under construction, existing for less than 12 months, and Gut Conversions depends upon pre-sales and owner occupancy percentage. See Chart at 3.4 of ML 2012-18 (Sept. 13, 2012)

Developer's unoccupied units are not counted unless rented or previously occupied

Eligible non-profit or government housing program subject to same limits

FNMA No single entity – the same individual, investor group, partnership or corporation may own more than 10% of the total units in the project, or 1 unit in a two- to four- unit project, or 2 units in a five- to twenty-unit project. Developer's Units are counted if rented, even if tenant has some right to purchase. Developer's vacant units not counted. Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014).

Freddie No individual or a single entity such as an investor group, partnership or corporation owns more than 10% of units. Developers units being marketed are not counted, unless leased. Freddie Mac Single-Family Seller/Service's Guide 42.3(k) (7/18/13)

Mixed Use

FHA FHA Condominium Project Approval & Processing Guide 2.1.3 (June 30, 2011)

No more than 25% of total floor area non-residential/commercial (special rules for "live/work" projects)

Exceptions can be granted – See Mortgage Letter 2012-18 (Sept. 13, 2012) 2.1.3

VA Commercial areas are acceptable, but will be considered in value. 38 CFR §36.4360a(g)

If mixed use, voting rights among members must be fully described, including provisions allowing for representation or protection of minority interests. VA Lenders Handbook, 16-B, Exhibit A,(A)4(a) (7/1/2000).

FNMA No more than 25% non-residential. Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014). See "ineligible projects" above.

Freddie project is ineligible if more than 20% of total square footage is non-residential [42.3(d) (7/18/13) Freddie Mac Single-Family Seller/Service's Guide.



Developer Control

FHA Later of (1) 120 days after 75% units conveyed; (2) 3 years after 1st conveyance; OR (3) requirement of state or local condominium law. FHA Condominium Project Approval & Processing Guide 1.9 (June 30, 2011)

VA Earlier of 120 days after 75% units conveyed OR 3-5 years (5-7 if phased) after first conveyance 38 CFR 4359 (a)(1)

BUT VA Lender's Handbook, Exhibit A "Other VA Requirements" Item (A),4,(b) states the second item as "7 years from the date of recording the declaration or, if a phased project, 5 years after recordation of the most recently recorded annexation document."

Relinquishing control includes not having right to veto any action of members or board 38 CFR 4359(a)(1)

Declarant is prohibited from retaining the right to veto actions of the Association (except to the extent that declarant's development rights are affected). Item (D),2,(c) of VA Lender's Handbook, Exhibit A "Other VA Requirements".

FNMA For attached units in a new or newly converted project, "The developer or sponsor should provide for and promote the unit owners' early participation in the management of the project." Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014). No specific time frames referenced.

Amenities (ownership and leasing)

FHA Lease of recreational or parking areas or facilities unacceptable unless HOA has right of termination, without penalty, on up to 90-day notice. FHA Condominium Project Approval & Processing Guide 1.8.10 (June 30, 2011)

VA VA Lenders Handbook, 16-B, Exhibit A,(D)2 (7/1/2000) references rights reserved by the declarant, its affiliates, “or other party,” which are not acceptable unless reviewed by VA, includes

Lease of the common area to the association or accepting leases from the association except in connection with development related offices such as marketing, sales or construction office for the project

Accepting franchises or licenses from the association for the provision of central television antennae service, cable television or like services.

If parking is not provided within each unit, documents must:

Assign specific spaces to each unit

Assign a specific area to a specific group of units, or

Make other provision assuring parking in compliance with local requirements

OR declarant is to provide other evidence of compliance with local ordinances VA Lenders Handbook, 16-B, Exhibit A,(A)16 (7/1/2000).

FNMA For attached units in New, Established and two- to four-unit projects, unit owners in the project must have the sole ownership interest in, and rights to the use of the project’s facilities, common elements, and limited common elements. The developer may not retain any ownership interest in any of the facilities. The amenities and facilities – including parking and recreational facilities – may not be subject to a lease between owners or the association & another party. Fannie Mae Single Family Selling Guide B4-2.2-02 (11/10/2014). See regulations for permitted arrangements among two or more HOA’s or parking arrangements with parties not related to the developer.

Freddie When control is turned over, the owners must be the sole owners of all buildings, roads, parking and amenities, and developer must not retain any ownership interest in the common elements (except as a unit owner). The common elements, including amenities such as parking and recreational facilities, must not be subject to a lease between the unit owners or association and any affiliate of the developer (as lessee). Freddie Mac Single-Family Seller/Service’s Guide 42.2 (7/18/13)

Management Arrangements

FHA Any management contract, employment contract, or any contract to which Declarant or an affiliate is a party is unacceptable unless HOA has right of termination, without penalty, on up to 90-day notice. FHA Condominium Project Approval & Processing Guide 1.8.10 (June 30, 2011)

VA 38 CFR 4358(a), in a section titled “examples of reserved rights of declarant, sponsor or affiliate of declarant which are usually unacceptable” includes binding the association to any management contract unless it is terminable without penalty on no more than 90-days notice.

38 CFR 4360a(f) (07/01/93), in a section titled “appraisal requirements”, provides that the “management agreement must be terminable for cause upon 30-days notice, and run for a reasonable period of from 1 to 3 years and be renewable with consent of the association and the management. (Management contracts negotiated by the declarant should not exceed 2 years.)”

VA Lenders Handbook, 16-B, Exhibit A,(D)2(c) (7/1/2000) prohibits the declarant, its affiliates, the sponsor “or other party” from retaining the right to enter into management agreements which extend beyond the declarant control period unless those contracts are: (i) limited to 2 years or (ii) permit the owner-controlled board to terminate the contract.

The declaration should provide that the majority of eligible mortgagees can demand professional management. VA Lenders Handbook, 16-B, Exhibit A,(A)17,h (7/1/2000)

Developer Contracts (other than Management Contracts) (see also “Amenities”)

FHA Any management contract, employment contract, lease of recreational or parking areas or facilities, or any contract or lease (including franchises and licenses) to which Declarant or an affiliate is a party is unacceptable unless HOA has right of termination, without penalty, on up to 90-day notice. FHA Condominium Project Approval & Processing Guide 1.8.10 (June 30, 2011)

VA In 38 CFR 36.4358, the section titled “examples of reserved rights of declarant, sponsor, or affiliate of declarant which are usually unacceptable” includes binding the association to any contract or lease to which the declarant is a party unless it is terminable without penalty on no more than 90-days notice.

38 CFR 36.4358 spells out reserved rights which are usually acceptable include, provided they are for a reasonable period of time and are subject to a concomitant obligation to restore include:

- (1) easements provided for in declaration, over common elements (not units) for completing improvements, but only if access otherwise not reasonably available;
- (2) easements over common elements (not units) for making repairs; and
- (3) rights to maintain facilities (identified in declaration) reasonably necessary to market units, including sales and management offices, model units, parking areas and advertising signs.

Maintenance Responsibilities

VA Responsibility for maintenance and repair of all portions of the condominium property shall be set forth clearly. §38 CFR 36.4357(d)(1)

If association maintains areas it does not own (such as within a public right of way for landscaping or signage or storm water management), [does this include areas within units? After all, technically, the association doesn't own anything.] attorney must provide a description and rationale. VA Lenders Handbook, 16-B, Exhibit A,(A)8 (7/1/2000).

Insurance – Hazard Ins. - What’s Covered (Must Association Policy include “Walls-in” coverage?)

FHA Does not require Association to carry “walls-in” coverage, but requires borrower to obtain a walls-in policy (HO-6) if master policy does not include interior coverage, including replacement of interior improvements and betterments. FHA Condominium Project Approval & Processing Guide 2.1.9 (June 30, 2011)

FNMA Insure against all perils customarily covered for similar types of projects, including those covered by standard “all risk” or “special form” endorsements. 100% insurable replacement cost, no more than 5% of the face amount as deductible, with building code or law enforcement endorsement. Restrictions on co-insurance. Fannie Mae Single Family Selling Guide B7-3-04 (07/29/2014).

The Lender must review the entire condominium project insurance policy to ensure that the association maintains a master or blanket policy. If the Association has either a “Single Entity” or “All-In” policy, it must cover fixtures, equipment and replacement of improvements and betterments that have been made inside the unit being financed.

“If the unit interior improvements are not included” in the association’s “Single Entity” or “All-In” policy, or if the association has only a “Bare Walls” policy, then the borrower must obtain “an HO-6 policy with coverage, as determined by the insurer, which is sufficient to repair the condo unit to its condition prior to the loss claim event.” Fannie Mae Single Family Selling Guide B7-3-04 (07/29/2014).

For detached projects FNMA [see Fannie Mae Single Family Selling Guide B4-2.2-03 (06/28/2011)] requires property to be covered by either:

the type of hazard and flood insurance coverage required for single family detached structures, if the condo unit consists of the entire structure as well as the site and air space, OR

the project’s master hazard and flood insurance policies if the condo unit consists of only the air space for the unit and the improvements and site are considered to be common limited common areas

Notice required 10 days before cancellation to association AND to each first mortgage loan holder named in mortgagee clause. Fannie Mae Single Family Selling Guide B7-3-04 (07/29/2014).

Freddie Building and structures, fixtures, machinery equipment and supplies maintained for the service of the condominium project. Freddie Mac Single-Family Seller/Servicer’s Guide 58.2(c) (10/06/06)

fixtures, improvements, alterations and equipment within the individual units, regardless of ownership, unless unit owners are required by the governing documents to insure those items. *Ibid*

If units are in a detached project, Freddie will accept insurance that meets the requirements for 1 to 4 unit properties. Freddie Mac Single-Family Seller/Servicer’s Guide 58.2(c) (10/06/06)

Flood Insurance

FHA The Association, not the borrower, is to maintain flood insurance under the National Flood Insurance Program (“NFIP”) on buildings located in a Special Flood Hazard Area (“SFHA”) for replacement cost, up to \$250,000 per unit. Mortgagee is responsible for determining if any part of project is in a 100-year flood plain. FHA Condominium Project Approval & Processing Guide 2.1.10 (June 30, 2011). Mortgagee may acquire this information from a third party only to the extent that the third party guarantees the accuracy of the information [(National Flood Insurance Act of 1968 §1365(d)] See also Mortgage Letter 2012-28 (Dec. 11, 2012).

VA If in special flood hazard area, flood insurance for lesser of loan amount or maximum available. 38 CFR 36.4326

FNMA Association must maintain Residential Condominium Building Association Policy for each building (except non-residential detached structures), any part of which is located in a Special Flood Hazard Area (“SFHA”). The flood insurance must cover common elements and property (including machinery and equipment that are part of the building, as well as each unit in the building. Lower of 80% replacement cost or maximum insurance available from National Flood Insurance Program (which is currently \$250,000 per unit). (If NFIP not available, you’re out.) Fannie Mae Single Family Selling Guide B7-3-07 (12/16/2014).

Detached condos, lowest of (a) 100% of replacement cost of insurable value of improvements; (b) maximum available from NFIP (currently \$25,000); or (c) unpaid principal balance of mortgage.

Freddie Freddie Mac Single-Family Seller/Service’s Guide 58.3 (12/01/12) If any portion of building is in a special flood hazard area designated as Zone “A” or “V” and community participates in NFIP (if they don’t, your out) then you must have either:

A building coverage of lower of replacement cost* or \$250,000 x number of residential units in building (* After stating that requirement, changes effective 12/01/12 recites that if the association coverage is not at least equal to the lower of 80% of the replacement cost or \$250,000 times the number of residential units, the mortgage is not eligible for sale to Freddie Mac.)

plus contents coverage of lower of value of contents owned by association or max available for content’s coverage from NFIP

with maximum deductibles allowed by NFIP

OR B Unit Owner Coverage at the lowest of: (a) 100% replacement cost of the insurable improvements; (b) maximum available from NFIP; or (c) unpaid principal balance of mortgage

with maximum deductibles allowed by NFIP



Fidelity Insurance

FHA FHA Condominium Project Approval & Processing Guide 2.1.9 (June 30, 2011) require that if condo is over 20 Units, Fidelity Bond/Fidelity Insurance is required for officers, directors, employees and all other persons handling or responsible for funds. No less than 3 months of assessments plus reserve funds unless state law differs

Must have similar coverage for management company's officers, employees and agents handling or responsible for funds of, or administered on behalf of, HOA by: (1) management company securing their own policy; (2) HOA's policy naming management company as an agent or insured; or (3) HOA having a "Covered Employee" endorsement that person employed by an employment contractor (management company) performing services subject to direction and control by HOA is covered under the policy. ML 2012-18 (Sept. 13, 2012) 2.1.9

VA Recommends, but does not require, association to purchase bond (3 months + reserves) 38 CFR 36.4359(e)(2).

FNMA For attached unit in project with more than 20 Units, blanket fidelity ins. required for any one who either handles or is responsible for funds, including management agent, who also needs own fidelity ins. Amount of maximum funds held by HOA or management agent at any time. Selling Guide B7-4-02 (11/10/2014).

Lesser amount (3 months of assessments) permitted if condo documents require one of the following:

Separate bank accounts for working and reserve accounts with statements sent directly to assn.

Management company maintains separate accounts for all associations it represents and does not have authority to draw checks or transfer funds from association's reserve account, OR

Two board members must sign checks on reserve account.

Notice required 10 days before cancellation to association AND to each servicer who services a Fannie Mae held or serviced loan. Fannie Mae Single Family Selling Guide B7-4-02 (11/10/2014).

Freddie Over 20 Units, bond required for loss from dishonest or fraudulent acts committed by directors, managers, trustees, employees or volunteers who manage funds. Management co needs to have bond if it handles funds. Amount of maximum funds handled, with minimum of 3 months of assessments plus reserves. Freddie Mac Single-Family Seller/Servicer's Guide 58.5 (03/01/08)

Lesser amount (3 months of assessments) permitted if condo documents require one of the following:

Separate bank accounts for working and reserve accounts with statements sent directly to assn.

Management company maintains separate accounts for all associations in represents and does not have authority to draw checks or transfer funds from association's reserve account, OR

Two board members must sign checks on reserve account.

Insurance - Priority of Mortgagee to collection of insurance proceeds

FNMA For mortgage on an attached unit in a new or newly converted project, no provision of condo docs can give the unit owner or any other party (association?) priority over any rights of the first mortgage holder (under its mortgage) in the case of payment to the unit owner of insurance proceeds or condemnation awards for losses to or a taking of condo units and/or common elements. Fannie Mae Single Family Selling Guide B4-2.2-03 (11/10/2014).

Availability of Records

VA Association is required to make records available (at least available for inspection upon request, during normal business hours and under other reasonable circumstances) to owners, lenders, holders & insurers and guarantors of first mortgages: Declaration, By-laws, Rules & other books, records and financial statements. 38 CFR 4357(c)(3)

VA Lenders Handbook, 16-B, Exhibit A “Other VA Requirements, (A),17 (7/1/2000) requires that the declaration contain a provision guaranteeing mortgagees and agencies the right to inspect association documents and records on the same terms as members, and, granting the majority of eligible holders of first mortgages the right to demand an audit of the association’s financial records.

Likewise, the handbook, at 16-B, Exhibit A, (B),8 requires that the bylaws contain provisions requiring the association to keep records (i) of its governing documents (i.e., association documents, rules and regulations and design standards); (ii) its actions (board resolutions, meeting minutes, etc.); and (iii) its financial condition (receipts and expenditures affecting finances, operations and administration of the association, budget, financial statements, etc.)

The association is not required to keep such records longer than 3 years, unless otherwise required by applicable law.

Documents, books and records kept on behalf of the association are to be available for examination and copying by a member or such members authorized agent during normal business hours and upon reasonable notice and for a reasonable charge except for privileged or confidential information.

Leasing Restrictions

FHA Housing and Economic Recovery Act of 2008 authorized FHA to insure loans under National Housing Act section 203. FHA has determined that the requirements in FHA regulations at 24 CFR part 203 applies to mortgage loans for the purchase of condominium units. (See “Waiver of Federal Housing Administration Regulations at 24 CFR 203.41 (a)(3)” issued March 18, 2011).

Units cannot be subject to legal restrictions on conveyance 24 CFR 203.41(b), which includes leases 24 CFR 203(a)(3), but FHA permits restrictions:

establishment of a maximum number of rental units (not to exceed % which would exceed FHA owner-occupied requirements)

prohibitions against leases for less than 30 days or in excess of maximum allowable term (e.g. 6 months or 12 months)

requirements that leases be in writing and subject to declaration and by-laws

right of association to request names of all tenants and family members who will occupy the unit

Association may not require that tenant be approved by association, including but not limited to meeting creditworthy standards. FHA Condominium Project Approval & Processing Guide 1.8.9 (June 30, 2011)

VA Under 38 CFR 36.4358(c)(6), There shall be no prohibition or restriction on a unit owner’s right to lease his unit except in the following two circumstances:

Minimum initial term of up to 1 year; OR

Age restrictions or restrictions imposed by state and local housing authorities

According to VA Lenders Handbook, 16-B, Exhibit A,(D)3 (7/1/2000), the following restrictions on alienation are not permitted:

- b. Right of prior approval of either a prospective purchaser or tenant;
- c. Leasing restrictions which amount to unreasonable restrictions on use and occupancy of a unit; or
- d. Any minimum lease term in excess of 1 year.

Freddie Freddie Mac Single-Family Seller/Service’s Guide 42.6(i) (07/18/13) requires that for new projects, amendments of a material adverse nature be agreed to by mortgagees representing at least 51% of unit votes. Examples of actions which require mortgagee consent include: “Imposition of any restriction on the leasing or rental of units.”

Rights of First Refusal

FHA FHA Condominium Project Approval & Processing Guide 2.1.2 (June 30, 2011) permits a right of first refusal unless it violates discriminatory conduct prohibitions under the Fair Housing Act regulations. 24 CFR 100.

VA For declarations recorded on or after 12/1/1976, no right of first refusal or right to prior approval of a purchaser is permitted.

For declarations recorded prior to 12/1/76, a right of first refusal or a right to provide a substitute buyer is permitted so long as the price is not lower than the owner is willing sell, the terms are just as favorable, the association has 30 days to respond, and the notice and election is required to be by certified or registered mail. 38 CFR 36.4350(b)(5)(ii)

Permitted exceptions include restrictions that are part of a government program:

(A) to assist low or moderate income purchasers (and other conditions); or

(B) a program to protect older people 38 CFR 36.4350(b)(5)(vi)

FNMA For attached units in new (subject to additional phasing or not turned over yet) or newly converted (3 years) projects, rights of first refusal cannot impact foreclosure, deed-in-lieu of foreclosure, or lease or sale of a unit acquired by a mortgagee or assignee. Selling Guide B4-2.2-03 (11/10/2014)

Freddie Freddie Mac Single-Family Seller/Service's Guide provides that in a new project:

Right of First Refusal can not be exercised:

in any way that could be interpreted as unlawful or discriminatory OR

would impair the marketability of units 42.6(l) (07/18/13).

Rights of first refusal in new projects may not impact foreclosure, deed-in-lieu of foreclosure, or lease or sale of a unit acquired by a mortgagee or assignee. 42.6(e) (07/18/13)

Deed Restrictions and Transfer Fee Covenants

FHA Housing and Economic Recovery Act of 2008 authorized FHA to insure loans under National Housing Act section 203. FHA has determined that the requirements in FHA regulations at 24 CFR part 203 applies to mortgage loans for the purchase of condominium units. (See “Waiver of Federal Housing Administration Regulations at 24 CFR 203.41 (a)(3)” issued March 18, 2011).

Units cannot be subject to legal restrictions which would cause a conveyance 24 CFR 203.41(b), which includes leases 24 CFR 203(a)(3), by the borrower to:

Be void, or voidable, by a third party

Be the basis of contractual liability of the borrower

Terminate, or subject to termination, the borrower’s interest in the property

Be subject to consent of a third party

Be grounds for accelerating or increasing the interest rate on an insured mortgage

Be subject to limits on the amount of sales proceeds a borrower can retain

With regard to this last point, the Community Association Institute believes that this language from FHA Condominium Project Approval & Processing Guide 1.8.8 (June 30, 2011) means that FHA will not fund loans in condominium projects with deed-based transfer fees.

FNMA & Freddie The Federal Housing Finance Agency has issued the following Rule for Fannie Mae and Freddie Mac: They should not purchase, invest, or otherwise deal in mortgages on property encumbered by private transfer fee covenants created on or after February 8, 2011, which require a transfer fee payment in connection with the transfer of title, unless the fee goes to a “covered association” (nonprofit mandatory membership organization comprising owners of the condo) or a 501(c)(3) or (4) and such fees are used by the covered association exclusively for purposes which provide a direct benefit to the real property encumbered. (Private transfer fee does not include fees imposed by a government or by a covered association for defraying the actual costs of the transfer, including the transfer of membership in the relevant covered association.) See rules for definition of “direct benefit.” 12 CFR §1228.1-4, Federal Register March 16, 2012, Volume 75, Number 52 at page 15574-5. FNMA B2-1.4-02 (06/26/2012)

Ownership Percentages

VA acceptable methods of allocating interests include: Equal / Square Footage / Fair Market Value / Other method that is “equitable and reasonable” 38 CFR 36.4357(b)

Voting Percentages

VA 38 CFR 36.4358(c)(2) acceptable methods of allocating votes:

Equal/Following % interests/Square Footage/Fair Market Value/Other method that is “equitable and reasonable”

Declarant’s voting rights may not be “weighted beyond 3 to 1 in the Declarant’s favor (based on the total number of units planned.)” VA Lenders Handbook, 16-B, Exhibit A,(A)4(b) (7/1/2000). [this provision does not appear to negate the developer’s right to appoint directors during the period of developer control. 16-B Exhibit A, (A)5.]

Priority of Common Expenses

VA Units which will be subject to a VA-guaranteed loan will not be subject to delinquent assessments in excess of 6 months in any case in which the association has not brought enforcement action against the current owner. VA Lenders Handbook, 16-B, Exhibit A,(A)12 (7/1/2000).

FNMA Fannie Mae Single Family Selling Guide B4-2.1-02 (11/10/2014) allows more than 6 months of regular common assessments to have priority over the Fannie Mae Mortgage if state law so provided, but only if the law was enacted prior to January 14, 2014, and if the state law references an exception for Fannie Mae’s requirements, then no more than 6 months of assessments may have priority over Fannie Mae’s mortgage lien. In all other states, no more than six months of regular common expenses assessments may have priority over Fannie Mae’s mortgage lien, even if applicable law provides for a longer priority period.