

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

The following pages are taken from a project being 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 footnotes to 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.

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Note that this is not an exhaustive list of all secondary market requirements. It was prepared with an 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. Note, also, that some lenders have regularly obtained waivers of some requirements. Associations and developers need to work with experienced lenders to help them navigate the process of “qualifying” a project.

Ineligible Projects

FHA Mortgage Letter 2009-46B III (06/12/09)

- A. Hotels
- B. Timeshares;
- D. Multi-dwelling Units;
- E. projects not deemed to be used primarily for Residential Use

FNMA Fannie Mae Single Family/2009 Selling Guide B4-2.1-02 (10/30/2009).

Hotel or motel, or that restrict owner's ability to occupy 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 by association (e.g., spa, restaurant, health club)

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

Tenancy-in-common or similar arrangements

Timeshares or other segmented ownership projects

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/2010 Selling Guide B3-4.1-03 (05/27/2010).

Projects where more than 20% of the total space is used for non-residential purposes

Projects where a single entity (individual, investor group, etc.) owns more than 10% of total units.

Multi-dwelling unit projects or co-ops (see regs for variations on the theme)

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

See "Pending Legal Actions" section for additional description of actions which would make project ineligible

Ineligible Projects (continued)

- Freddie** Freddie Mac Single Family Seller/Service's Guide 42.3 (10/09/09)
- (a) project which is (or has potential to be) subject to state or federal securities regulation
 - (b) Hotel or resort
 - (c) project with multi-dwelling units
 - (d) and (e) project with more than 20% of space or income from non-residential use
 - (f) common interest [tic] (g) fragmented ownership; or (h) timeshare
 - (j) legal non-conforming use (attached projects)
 - (k) litigation (or ADR) involving safety, structural soundness, habitability
 - (l) projects sold with excessive seller contributions (See Freddie Mac Single Family Seller/Service's Guide 25.3 (06/15/10)
 - (m) where single entity owns more than 10% of units
 - (n) project comprised of owners who own their units and renters who rent or lease from the developer or a third party. (doesn't apply to conversions where tenants entitled to rent by law)
 - (o) continuing care facilities (see regs for further description)

Ownership of multiple Units by one owner

FHA One Owner may not own more than 10% of the Units. Mortgage Letter 2009-46B V,55 (11/06/09).

Developer's unsold units are not counted unless he rents them

FNMA No single entity – the same individual, investor group, partnership or corporation other than the developer during the initial marketing period, may own more than 10% of the total units in the project. Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009).

If less than 10 units, no more than one can be owned by one party.

Freddie No single entity owns more than 10% of units (or, if less than 10 units, no one owns more than one unit).
Freddie Mac Single-Family Seller/Service's Guide 42.3(m) (10/09/09)

Mixed Use

FHA no more than 25% of total floor area commercial. Mortgage Letter 2009-46B V,4 (11/06/09).

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 20% commercial. Fannie Mae Single Family/2009 Selling Guide B4-2.2-04 (04/01/2009).

Freddie project is ineligible if more than 20% of total square footage is non-residential [42.3(d) and 42.11(h) or if more than 20% of its income is from sources other than dues and assessments [42.3(e)] Freddie Mac Single-Family Seller/Service's Guide 42.6(a) (10/09/09)

Can't have multiple classes of unit owners and with a commercial entity as manager over the entire project. 42.7(d),1

Can't have a hotel, and may not have fragmented ownership or interest. 42.7(d),2

Docs must explicitly address retail and commercial uses. 42.7(d),5

Commercial owners pay all costs related to commercial space. For example, renovation of retail space or retail lobby (unless whole building where majority of residential and majority of commercial owners agree). 42.7(d),6

Commercial owners can't override residential on issues involving residential units. 42.7(d),9

Docs must identify CE reserved for residential owners, including parking. 42.7(d),10

Commercial owners carry appropriate commercial insurance paid for by them. 42.7(d),8

Operating reserves of at least 3 months. 42.7(d),12

Docs must explicitly address how assessments are divided between residential & commercial units. 42.7(d),11

Project management must not manage a rental program for residential units. 42.7(d),13

If common entrance, a majority of commercial & a majority of residential votes are needed for upgrade. 42.7(d),7

Conversions

FHA Must be 100% completed, entire project including common elements. Escrow provisions are permitted for weather related delays for Common Areas only. Mortgage Letter 2009-46B VIII (11/06/09).

Will allow temporary/conditional certificates of occupancy if common areas completed, temporary/conditional CO indicates that unit is habitable and eligible for immediate occupancy, and jurisdiction has in place a standard protocol whereby permanent certificates are issued and maintained. Mortgage Letter 2009-46B IX,C (11/06/09).

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 Conversions which are not “gut” conversions (where property is renovated down to its shell, including new HVAC and electrical) lender must review engineer’s report (or other substantially similar report) to verify that report identifies reserves for all capital improvements and to verify that the party doing the evaluation notes the adequacy of the reserves. Where conversion done in last 3 years, architect or engineers report obtained for conversion must comment favorably on structure and components. Fannie Mae Single Family/2009 Selling Guide B4-2.2-04 (04/01/2009).

Freddie Freddie Mac Single-Family Seller/Service’s Guide 42.2(i) (10/09/09) requires that for newly converted projects, the appraiser or other licensed professional must state that the project is structurally sound, and the condition and remaining useful life of the major components are sufficient for residential use.

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(C) of the Guide (10/09/09) 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 at least 50% sold -- Mortgage Letter 2009-46B V,7 (11/06/09). [70% under §4150.1 Rev-1 11-3,A (2/1/1990)]

-- contract AND evidence that lender is willing to make loan. Mortgage Letter 2009-46B V,7 (11/06/09).

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. Mortgage Letter 2009-46B V,7 (11/06/09).

For projects assigned after 12/07/2009, through 12/31/2010, for new construction, pre-sale requirement reduced temporarily to 30%, documented with: copies of sales agreements and evidence that a mortgagee is willing to make the loan; evidence that units have closed and are occupied, and certified information (e.g., spreadsheet or chart) from developer that lists all units sold, under contract, or closed. Mortgage Letter 2009-46A IV (11/06/09)

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

FNMA 70% sold or under Contract. Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009).

(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 70% requirement. Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009).

Established Project, 90% conveyed to Buyers B4-2.2-06

Freddie New Project – 70% Freddie Mac Single-Family Seller/Service’s Guide 42.6(a) (10/09/09)

Multiple sales to one owner = 1 sale 42.1

Building in which units are located can not be in more than one phase if there are multiple buildings in project to be counted in column as being “sold” for purposes of meeting 51% requirement. 42.6(b)

Completed Project – 51% if borrower is investor. No requirement if borrower is going to use as primary or secondary residence. 42.5(b)

In mixed use project, pre-sale requirement apply to residential units only. 42.7(d),3

Owner-Occupancy

FHA At least 50% owner occupied or sold to owners who intend to occupy. Mortgage Letter 2009-46B V,8 (11/06/09).

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

[4150.1 Rev 1 11-3,C (2/1/1990) provides that once a project is approved, 80% of the units on which there is are HUD mortgages must be owner occupied.)

For projects assigned after 12/07/2009, through 12/31/2010, vacant or tenant-occupied real estate owned (REOs), including properties that are bank owned) may be excluded from calculation of owner-occupied (removed from both numerator and denominator) Mortgage Letter 2009-46A III (11/06/09)

FNMA 70% sold or under Contract to buyer's intending to occupy (new project)

(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. Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009).

In established project, no owner occupancy requirement if loan being purchased is secured by primary or secondary residence. Fannie Mae Single Family/2009 Selling Guide B4-2.2-06 (10/30/2009). For additional rules regarding other loans, and special rules for counting REO units held by financial institutions, see Fannie Mae Single Family/2009 Selling Guide B4-2.2-06 and 07 (10/30/2009).

In two- to four-unit projects, all but one unit must have been conveyed to owner-occupant principal residence or second home purchasers. Single Family/2009 Selling Guide B4-2.2-04 (04/01/2009).

Freddie New Project – 70% Freddie Mac Single-Family Seller/Service's Guide 42.6(a) (10/09/09)

Multiple sales to one owner = 1 sale 42.1

Building in which units are located can not be in more than one phase, if there are multiple buildings in project, to be counted in column as being "sold" for purposes of meeting 51% requirement. 42.6(b)

Completed Project – 51% if borrower is investor. No requirement if borrower is going to use as primary or secondary residence. 42.5(b)

In mixed use project, owner-occupancy requirement apply to residential units only. 42.7(d),3

Pending Legal Actions

FHA Pending legal actions against Association or Officers or Directors must be considered (in determining that no conditions exist which would prevent unacceptable risks to FHA) at the time of recertifying a project. Mortgage Letter 2009-46B XII (11/06/09).

FHA's Frequently Asked Questions for Mortgage Letters 2009-46A and 46B (page 12, Question 11) relates some of the considerations in analyzing pending legal action against officers and directors.

How does the legal action impact the future solvency of the HOA?

The ability for homeowners to transfer title.

Does the action impact the homeowner'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/2009 Selling Guide B4-2.1-02 (10/30/2009) lists "ineligible projects":

-Any project for which HOA is named as a party to current litigation

Unless HOA is plaintiff in foreclosure action or action to collect assessments

-Developer is named as a party to litigation and project is not yet turned over

Freddie Freddie Mac Single-Family Seller/Service's Guide 42.3(k) (10/09/09) includes, in its list of "ineligible projects":

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

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

-Dispute involves safety, structural soundness or habitability of the project.

Budget Requirements/Reserves

FHA Mortgagee must review budget of developer or association (or may request and rely on FNMA Form 1073a executed by authorized representative of seller/servicer, owners association or management agent) to determine that budget is adequate and includes allocations to ensure sufficient funds to “preserve all amenities and features unique to the” project; provides for funding of replacement reserve (at least 10% of budget) and provides for adequate funding for insurance coverage and insurance deductibles. Mortgage Letter 2009-46B V,10 (11/06/09).

Where budget documents don’t meet these standards, mortgagee may request reserve study (which cannot be more than 12 months old). Must consider items replaced after time reserve study was completed.

FHA’s FAQ’s for ML 2009-46B states (at page 9, Q. 48) that the working capital requirement in §4265.1 Appendix 24 (HUD Legal Policies) is no longer required.

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 Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 & 06 (10/30/2009) requires an adequate Budget with reserve of at least 10% and funding for insurance deductible

For Conversions which are not “gut” conversions (where property is renovated down to its shell, including new HVAC and electrical) lender must review engineer’s report (or other substantially similar report) to verify that report identifies reserves for all capital improvements and to verify that the party doing the evaluation notes the adequacy of the reserves. Where conversion done in last 3 years, architect or engineers report obtained for conversion must comment favorably on structure and components. Fannie Mae Single Family/2009 Selling Guide B4-2.2-04 (04/01/2009)

Budget Requirements/Reserves (Continued)

Freddie Freddie Mac Single-Family Seller/Service's Guide 42.5(c) and 42.6(c) (10/09/09) requires appropriate allocations for line items consistent with type and status of project.

At least 10% budget for replacement reserves for capital expenditures and deferred maintenance and adequate funding for insurance deductible

For 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(c)

For mixed use projects, operating reserve must equal 3-months of operating expenses 42.7(d),12

Arrearages

FHA No more than 15% for more than 30 days. Mortgage Letter 2009-46B V,6 (11/06/09).

FNMA No more than 15% for more than 30 days. Fannie Mae Single Family/2009 Selling Guide B4-2.2-04 (04/01/2009) and B4-2.2-06 (10/30/2009)

Freddie No more than 15% for more than 30 days. Freddie Mac Single-Family Seller/Service's Guide 42.6(d) [new] and 42.5(d) [established] (10/09/09)

Assessment Requirements – Starting Date

Freddie For a new project, the assessments must begin on a specific date. Whether or not all units have been sold. Freddie Mac Single-Family Seller/Service's Guide 42.6(c) (10/09/09)

Developer Control

FHA FHA legal guidelines Appendix (1980) Earlier of 120 days after 75% units conveyed 24-6(a)(i) OR reasonable time after first conveyance, but not more than 3 years (5 years in phased project) 24-6(a)(ii)

New requirements – Later of (1) 120 days after 75% units conveyed; (2) 3 years after first conveyance to a unit purchaser; OR (3) requirement of state or local condominium law. Mortgage Letter 2009-46B X,K (11/06/09)

Relinquishing control includes not having right to veto any action of members or board Appendix 24-6(a)

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 "The developer or sponsor should provide for and promote the unit owners' early participation in the management of the project." Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009). No specific time frames referenced.

For established projects, control has been turned over to the owners. Fannie Mae Single Family/2009 Selling Guide B4-2.2-06 (10/30/2009).

Freddie Additional Condominium Warranties include that "the developer has transferred or will transfer control of the HOA to the home owners within a reasonable period of time. Freddie Mac Single-Family Seller/Service's Guide 42.11(a) (10/09/09). No specific time frames referenced.

does not apply to Detached Condominium Project where mortgaged unit is primary or secondary home of unit owner. Seller/Service's Guide 42.11,2

Amenities (ownership and leasing)

FHA §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-5(b)(i) & (ii), in a section titled “examples of acts and reserved rights which are usually unacceptable” includes binding the association to any management contract, employment contract, or lease of recreational or parking areas or facilities, to which the declarant, the developer, sponsor “or any other party” (who are collectively referred to by HUD as “declarant”) is a party unless it is terminable without penalty on no more than 90-days notice. Also listed as usually unacceptable are “any contract or lease, including franchises and licenses, to which a declarant is a party.” FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

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 Unit owners in the project must have the sole ownership interest in, “and rights to the use of” (-06) [“and have rights to the use of,” (-05)] 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/2009 Selling Guide B4-2.2-05 & -06 (10/30/2009).

Freddie When control is turned over, the owners must be the sole owners of all buildings, roads, parking and amenities. The common elements, including amenities such as parking and recreational facilities, must not be subject to a lease between the unit owners, the association and any other party. Freddie Mac Single-Family Seller/Service’s Guide 42.2(g) (10/09/09)

Management Arrangements

FHA §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-5(b)(i), in a section titled “examples of acts and reserved rights which are usually unacceptable” includes binding the association to any management contract with the developer, an affiliate of the developer or any other party unless it is terminable without penalty on no more than 90-days notice. FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

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)

FNMA Fannie Mae prefers that the project be professionally managed. Management contract must be for a “reasonable term” and must “include equitable provisions for termination” Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009). The management contracts termination provision must not require a penalty payment or advance notice of more than 90 days. B4-2.2-06 (10/30/2009)

Freddie Management contract must be for a “reasonable term” and must “include equitable provisions for termination” (must not require the payment of a penalty or advance notice of more than 90 days). Freddie Mac Single-Family Seller/Servicer’s Guide 42.11(i) (10/09/09)

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

FHA §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-5(b)(ii), in a section titled “examples of acts and reserved rights 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. FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

Appendix 24, Section 24-5(c) spell 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.

As mentioned above, FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

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.

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

FHA In cases where master policy does not include interior unit coverage, including replacement of interior improvements and betterment coverage to insure improvements that borrower may have made, the borrower must obtain a “walls-in” coverage policy (HO-6 policy). Mortgage Letter 2009-46B VI, A (11/06/09)

FNMA The Lender must review the entire condominium project insurance policy to ensure that the association maintain a master or blanket policy. In addition to all general and limited common elements that are normally included in coverage, the master policy “also must cover fixtures, equipment, and replacement of improvements and betterment coverage to cover any improvements that the borrower may have made.”

“If the master or blanket policy does not cover the unit’s interior, then the borrower must obtain a “walls-in” policy, commonly known as an HO-6 policy” in no less than 20% of the unit’s appraised value. “The standard requirement for a 5% deductible applies.” Fannie Mae Single Family/2009 Selling Guide B7-3-05 (10/30/2009).

For detached projects FNMA [see 2009 Selling Guide B4-2.2-03 (04/01/2009)] requires either

the type of insurance required for single family detached structures, if the condo unit consists of the entire structure OR

the project’s master policy if the condo unit consists of only the air space in the building, with the improvements constituting common elements, then the master policy

May not have a blanket policy (or self insurance arrangement) that covers multiple unaffiliated condo associations or projects. Fannie Mae Single Family/2009 Selling Guide B7-3-05 (10/30/2009).

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 the 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 Mortgagee is responsible for determining if any part of project is in a 100-year flood plain. Mortgage Letter 2009-46B VI, B (11/06/09). 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)] If the project is in a Special Flood Hazard Area (“SFHA”), and flood insurance is not available under National Flood Insurance Program (“NFIP”), the property is not available for FHA mortgage insurance. Mortgage Letter 2009-37 (10/01/09) The Association, not the borrower, is to maintain the insurance, and the lender is responsible for ensuring that the association obtains and maintains adequate flood insurance equal to the replacement cost of the project less land costs or up to the NFIP standard of \$250,000 per unit. Mortgage Letter 2009-46B VI,A (11/06/09).

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

FNMA If “any part of the improvements are within a Special Flood Hazard Area (“SFHA”) & if flood insurance is available under National Flood Insurance Program (“NFIP”), (if not available, your out) “association must obtain a Residential Condominium Building Association Policy for each building that is located in an SFHA.” The amount of coverage has 3 components: (1) building coverage of 100% of insurable value including machinery and equipment; (2) contents coverage of 100% of insurable value of contents owned by association; and (3) coverage for each unit of lesser of \$250,000 or replacement cost. Fannie Mae Single Family/2009 Selling Guide B7-3-08 (04/01/2009).

If the association does not purchase the complying policy, unit owner is required to get one for his unit, for the “lower” of: (a) 100% replacement cost of the insurable value; (b) maximum available from NFIP (“which is currently \$250,000 per dwelling”); or (c) unpaid principal balance of mortgage. Max deductible \$25,000.

Freddie Freddie Mac Single-Family Seller/Service’s Guide 58.3 (08/20/09) 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 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 Over 20 Units, bond required for officers, directors, employees and all other persons handling or responsible for funds. No less than 3 months of assessments plus reserve funds Mortgage Letter 2009-46B V,A (11/06/09).

Management co needs to have bond if it handles funds. Ten days notice to association prior to cancellation or substantial modification §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-14(a)(iv) (12/1/1980) FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

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

FNMA Over 20 Units, blanket fidelity ins. required for any one who either handles or is responsible for funds. Management co needs to have bond if it handles funds. Amount of maximum funds in custody of HOA or its management agent at any time. Fannie Mae Single Family/2009 Selling Guide B7-4-02 (10/30/2009).

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/2009 Selling Guide B7-4-02 (10/30/2009).

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 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/2009 Selling Guide B4-2.2-13 (10/30/2009).

Leasing Restrictions

FHA No lease of less than 30 days §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-8(f)(2) (12/1/1980)

Also, minimum lease term restriction can't be applied to lease exceeding 6 months

Leases must be in writing and subject to the declaration and bylaws. Appendix 24, 8(f)(1) (12/1/1980)

Restrictions which would subject a conveyance (including a lease) to the consent of a third party would render the property "usually ineligible for HUD mortgage insurance." Mortgage Letter 1994-2 II (01/11/94) Speculation is that ML 2009-46 is intended to replace all prior Mortgage Letters with respect to such provisions, but no specific guidance has been given regarding the same.

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 42.11(b) (10/09/09) requires that 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 Mortgage Letter 2009-46B V,3 (11/06/09) permits a right of first refusal unless it violates discriminatory conduct under the Fair Housing Act regulations. 24 CFR 100. FHA's FAQ's on ML 2009-46B, (Page 5, Q. 12) gives further references for guidance regarding prohibited practices.

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 Fannie Mae Single Family/2009 Selling Guide B4-2.2-05 (10/30/2009) provides:

Right of First Refusal or first option to purchase can not be exercised:

in any way that could be interpreted as unlawful or discriminatory OR
would impair the marketability of units

Rights of first refusal won't impact foreclosure, deed-in-lieu of foreclosure, or lease or sale of a unit acquired by a mortgagee or assignee. Selling Guide B4-2.2-13 (10/30/2009)

Freddie Freddie Mac Single-Family Seller/Service's Guide (10/09/09) provides

Right of First Refusal or first option to purchase can not be exercised:

in any way that could be interpreted as unlawful or discriminatory OR
would impair the marketability of units 42.11(k)

Rights of first refusal won't impact foreclosure, deed-in-lieu of foreclosure, or lease or sale of a unit acquired by a mortgagee or assignee. 42.2(e)

Availability of Records

FHA 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 of first mortgages: Declaration, By-laws, Rules & other books, records and financial statements. Appendix 24-3(c)

Also, required to provide Dec, By-laws Rules and most recent audited financial to prospective purchasers.

Declaration has to provide that upon request from any agency or corporation which has an interest or prospective interest in the project, association will prepare an audited financial statement for immediately preceding year.

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.

Ownership Percentages

FHA §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-2 lists acceptable methods of allocating interests:

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

FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

VA Same as FHA above. 38 CFR 36.4357(b)

Voting Percentages

FHA §4265.1 CHG-5, Appendix 24 Legal Guidelines Section 24-8(b) lists acceptable methods of allocating votes:

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

FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

VA Same as FHA above. 38 CFR 36.4358(c)(2)

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.]

Freddie Can’t have multiple classes of unit owners and with a commercial entity as manager over the entire project. Freddie Mac Single-Family Seller/Service’s Guide 42.7(d),1 (10/09/09)

Commercial owners can’t override residential on issues involving residential units. Freddie Mac Single-Family Seller/Service’s Guide 42.7(d),9 (10/09/09)

Maintenance Responsibilities

FHA 1980 Legal Guidelines §4265.1 CHG-5, Appendix 24-4(a) Responsibility for maintenance and repair of all portions of the condominium shall be clearly set forth. FHA staff members have informally stated that Appendix 24 is no longer applicable, but no written directive to that affect has yet been issued.

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).

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/2009 Selling Guide B4-2.1-06 (04/01/2009) allows up to 6 months of regular common expense assessments to have priority over Fannie Mae's mortgage lien. Fannie Mae will not be liable for any fees or charges related to the collection of the six months of unpaid assessments that accrued before acquisition of title to the unit. Will not purchase a loan in a jurisdiction that allows for more than six months of regular common expense assessments to have priority over Fannie Mae's lien.

Fannie Mae Single Family/2009 Selling Guide B4-2.2-13, Condo Project Review and Legal Document Requirements (10/30/2009) adds "If the condominium association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

Freddie Any first mortgagee that obtains title pursuant to remedies in the mortgage or through foreclosure will not be liable for more than 6 months of regularly budgeted assessments or charges accrued before acquisition of title. If the Association's lien priority includes costs of collecting unpaid assessments, the Seller will be liable for any fees or costs related to the collection of the unpaid assessments. Freddie Mac Single-Family Seller/Service's Guide 42.11(e) (10/09/09).