



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

November 6, 2009

.....**MORTGAGEE LETTER 2009-46 A**

**TO: ALL APPROVED MORTGAGEES**

**SUBJECT: Temporary Guidance for Condominium Policy**

In Mortgagee Letter 2009-46 B, the Federal Housing Administration (FHA) announced the permanent baseline guidance for condominium project eligibility. This Mortgagee Letter (ML) waives five provisions of that guidance and serves as a temporary directive to address current housing market conditions. This temporary guidance is effective for all FHA case numbers assigned on or after December 7, 2009 through December 31, 2010, except as noted for the “Spot Loan” Approval Process. FHA reserves the right to modify, suspend or terminate the guidance contained in this document if analysis of condominium mortgage performance indicates that the insurance fund is at risk.

**I. “Spot Loan” Approval Process**

Mortgagee Letter 2009-46B eliminated the Spot Loan Approval Process as defined in Mortgagee Letter 1996-41 for all FHA case number assignments effective on or after December 7, 2009. However, to address concerns involving the volatility in the condominium market, the new effective date for the elimination of this practice is for all FHA case number assignments on or after February 1, 2010. FHA may perform additional monitoring to ensure compliance with the “Spot Loan” Approval Process.

**II. FHA Concentration Requirements**

The FHA concentration requirement defined in ML 2009-46 B will be increased temporarily to 50 percent.

**Exceptions to 50 percent Concentration Level.** The FHA concentration may be increased up to 100 percent if the project meets all of the basic condominium standards plus the additional items stated below:

- The project is 100 percent complete and construction has been completed for at least one year, as evidenced by issuance of the final or temporary/conditional certificate of occupancy for last unit conveyed;



- 100 percent of the units have been sold and no entity owns more than 10 percent of the units in the project (for projects with fewer than 10 units, single entity may own no more than 1 unit);
- The project's budget provides for the funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 10% of the budget;
- Control of the Homeowners Association has transferred to the owners; *and*
- The owner-occupancy ratio is at least 50 percent.

Note: New construction and conversions are not eligible for this exception.

### III. Owner-Occupancy Requirements

At least 50 percent of the units in a project must be owner-occupied or sold to owners who intend to occupy the units. For proposed, under construction, or projects still in their initial marketing period, FHA will allow a minimum owner occupancy amount equal to 50 percent of the number of presold units.

Vacant or tenant-occupied real estate owned (REOs), including properties that are bank owned, may be excluded from the calculation of the required owner-occupancy percentage (should be removed from both the numerator and denominator).

### IV. Pre-Sale Requirements

In the case of new construction, the pre-sale requirement defined in ML 2009-46 B will be reduced temporarily to 30 percent. Per ML 2009-46 B, the pre-sale percentage must be documented as follows:

- Copies of sales agreements and evidence that a mortgagee is willing to make the loan;
- Evidence that units have closed and are occupied; **OR**
- Information from a developer/builder that lists all of the units already sold, under contract, or closed (e.g. a spreadsheet, chart, or listing used for the company's own tracking purposes) that is accompanied by a signed certification from the developer (Attachment F of ML 2009-46 B).

**V. Florida Condominium Project Approval**

All requests for approval of condominium projects located in Florida will require submission to the Atlanta Homeownership Center for review, under the HUD Review and Approval Process (HRAP). These projects are not eligible for approval using the Direct Endorsement Lender Review and Approval Process (DELRAP), defined in ML 2009-46 B.

If you have questions regarding this Mortgage Letter, please call the FHA's Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens  
Assistant Secretary for Housing-  
Federal Housing Commissioner

November 6, 2009

**MORTGAGEE LETTER 2009-46 B**

**TO: ALL APPROVED MORTGAGEES  
ALL FHA ROSTER APPRAISERS**

**SUBJECT: Condominium Approval Process for Single Family Housing**

In accordance with the passage of the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Administration (FHA) is implementing a new approval process for condominium projects and insurance requirements for mortgages on individual units, as authorized under Section 203(b) of the National Housing Act. The requirements of this Mortgagee Letter are effective for all case numbers assigned on or after December 7, 2009, except as noted. This Mortgagee Letter revises and consolidates existing guidance, and therefore replaces Mortgagee Letter 2009-19.

FHA will now allow lenders to determine project eligibility, review project documentation, and certify to compliance with Section 203(b) of the NHA and 24 CFR 203 of FHA's regulations. FHA will continue to maintain a list of approved condominium projects. Lenders will be required to retain all the project legal documents, contracts, conveyances, plats, plans, insurance coverage, presale and owner occupancy conditions and other documentation in connection with their review and approval of the condominium project.

## **PROJECT APPROVAL**

### **I. Approval Processing Options**

- A. Lenders will have two condominium project approval processing options. The applicable documentation requirements will be the same for each option:
1. HUD Review and Approval Process (HRAP).
  2. Direct Endorsement Lender Review and Approval Process (DELRAP), outlined in this Mortgagee Letter. This option is only available to lenders who have unconditional Direct Endorsement authority and staff with knowledge and expertise in reviewing and approving condominium projects.

Under DELRAP, lenders must provide the condominium approval or denial documents to FHA within five (5) business days of final disposition. These documents must be uploaded using *pdf* format through FHA Connection.

- B. The processing options stated above will be applicable to condominium developments that are:
1. Proposed or Under Construction;
  2. Existing Construction; or
  3. Conversions.
- C. Lenders who are eligible to and do process condominium approvals under DELRAP may exercise the option, at their discretion, to submit a condominium project for approval under the HRAP.

## II. Eligible Projects

The Condominium Project has been declared and exists in full compliance with applicable State law requirements of the jurisdiction in which the condominium project is located, and with all other applicable laws and regulations.

## III. Ineligible Projects

- A. Condominium Hotel or “*Condotels*”
- B. Timeshares or segmented ownership projects
- C. Houseboat projects
- D. Multi-dwelling unit condominiums [*i.e.* more than one dwelling per condominium unit]
- E. All projects not deemed to be used primarily as residential

## IV. General Requirements

- A. Site Condominiums (effective June 12, 2009)

Condominium project approval is **not** required for Site Condominiums. Site Condominiums are defined as single family totally detached dwellings (no shared garages or any other attached buildings) encumbered by a declaration of condominium covenants or condominium form of ownership. Site Condominiums that do not meet this definition will require project approval. See Loan Approval section for processing and documentation requirements for unit financing of Site Condominiums.

- Manufactured Housing Condominium Projects (MHCPs) may **not** be treated as Site Condominiums; these projects require approval under HRAP.
- Modular homes are processed as single family homes for insurance purposes and are eligible to be treated as Site Condominiums as long as they meet the stated definition for site condominiums.

## B. Environmental Review Requirements

If a lender elects to use the HRAP option, then environmental reviews will not be required for projects that, at the time that condominium project approval is requested, have progressed beyond a stage of construction where HUD has any influence over the remaining uncompleted construction. This occurs when:

- a condominium plat or similar development plan and any phases delineated therein have been reviewed and approved by the local jurisdiction and, if applicable, recorded in the land records, **and**
- the construction of the project's infrastructure (streets, stormwater management, water and sewage systems, utilities), and facilities (e.g., parking lots, community building, swimming pools, golf course, playground, etc.) and buildings containing the condominium units has proceeded to a point that precludes any major changes.

Environmental reviews will not be required for condominium projects approved using the DELRAP option. If the appraiser identifies an environmental condition or the lender is aware of an existing environmental condition through remarks provided on the Builder's Certification, Form HUD-92541, the appraisal or other known documentation, the lender must avoid or determine that there are mitigants to address the following conditions before completing its review process:

1. The project is located in a Special Flood Hazard Area designated on a Federal Emergency Management Agency flood map.
2. Potential noise issues, where the property is located within 1000 feet of a highway, freeway, or heavily traveled road, within 3000 feet of a railroad, or within one mile of an airport or five miles of a military airfield.
3. The property has an unobstructed view, or is located within 2000 feet, of any facility handling or storing explosive or fire-prone materials.
4. The property is located within 3000 feet of a dump or landfill, or of a site on an EPA Superfund (NPL) list or equivalent state list, or a Phase I Environmental Site Assessment indicates the presence of a Recognized Environmental Condition or recommends further (Phase II) assessment for the presence of contaminants that could affect the site.
5. The property has any hazards or adverse conditions listed in Section 1.f. of the Builder's Certification, including, but not limited to, high ground water levels, unstable soils, or earth fill.

6. The project is located in a wetland designated on National Wetlands Inventory maps or designated by State or local authorities.
7. The project is on the National Register of Historic Places or is within a historic district listed on the Register.
8. The appraiser or DE lender is aware of any other condition that could adversely affect the health or safety of the residents of the project.

## V. **Project Eligibility Requirements**

The following requirements apply to all Condominium Project approvals:

1. **Minimum number of units:** Projects must consist of two or more units.
2. **Insurance Coverage:**  
Projects must be covered by hazard and liability insurance and, when applicable, flood and fidelity insurance (See Section VI, Insurance Requirements).
3. **Right of First Refusal:** Right of first refusal is permitted unless it violates discriminatory conduct under the Fair Housing Act regulation at 24 CFR part100.
4. **Commercial Space:** No more than 25 percent of the property's total floor area in a project can be used for commercial purposes. The commercial portion of the project must be of a nature that is homogenous with residential use, which is free of adverse conditions to the occupants of the individual condominium units.
5. **Investor Ownership:** No more than 10 percent of the units may be owned by one investor. This limitation also applies to developers/builders that subsequently rent vacant and unsold units. For condominium projects with ten or fewer units, no single entity may own more than one unit within the project; all units, common elements, and facilities within the project must be 100 percent complete.
6. **Delinquent Home Owners Association (HOA) Dues:** No more than 15 percent of the total units can be in arrears (more than 30 days past due) of their condominium association fee payments.
7. **Pre-sales:** At least 50 percent of the total units must be sold prior to endorsement of a mortgage on any unit. Valid presales include an executed sales agreement and evidence that a lender is willing to make the loan.<sup>1</sup>
8. **Owner-occupancy Ratios:** At least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units.<sup>2</sup> For proposed,

<sup>1</sup> Secondary residences can only be included if it meets the requirements of 24 CFR 203.18(f)(2).

<sup>2</sup> If the owner-occupancy ratio includes presales, evidence that a lender is willing to make the loan and the buyer intends to occupy the unit OR information from a developer/builder that lists all of the units already sold, under contract, or closed (e.g. a spreadsheet, chart, or listing used for the company's own tracking purposes) that is accompanied by a signed certification from the developer (Attachment F) must be provided to FHA. A separate

under construction or projects still in their initial marketing phase, FHA will allow a minimum owner occupancy amount equal to 50 percent of the number of presold units (the minimum presales requirement of 50 percent still applies).

9. **Legal Phasing:** Legal phasing is permitted for condominium processing. It is recommended that developers submit all known phases for initial project approval. FHA will not accept market phasing in lieu of legal phasing.

For vertical buildings, legal phasing is acceptable if:

- a. The floors are legally phased in groupings of no less than five floors;
- b. At least a temporary certificate of occupancy has been obtained and **all** common areas and amenities have been completed; **AND**
- c. A third party completion bond has been obtained.

For purposes of calculating the owner-occupancy percentage and FHA concentration:

- a. On multi-phased projects the owner-occupancy percentage is calculated on the first declared phase and cumulatively on subsequent phases if the ownership of the condominium project remains the same.
- b. If multi-phasing includes separate ownership per phase, each phase is calculated individually.
- c. In single-phase condominium project approval requests, all units are used in the denominator when calculating the 50 percent owner-occupancy percentage.

10. **FHA Concentration:** FHA will display the concentration information for each approved condominium development on the approved condominium listing, which can be found on both FHA Connection and on the public website at [www.hud.gov](http://www.hud.gov). The concentration level will be based on case numbers assigned on units in a project; FHA will not issue new case numbers once the 30 percent concentration level (plus a small tolerance to accommodate for some fall-out) has been reached in any particular development.

- a. Projects consisting of three or fewer units will have no more than one unit encumbered with FHA insurance.
- b. Projects consisting of four or more units will have no more than 30 percent of the total units encumbered with FHA insurance.
- c. Calculation of the level of FHA concentration in a project declared with legal phases will follow the same methodology as owner-occupancy, described above.

11. **Budget Review:** Mortgagees must review the homeowners' association budget (the actual budget for established projects or the projected budget for new projects) for all projects. This review must determine that the budget is adequate and:

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owner-occupancy certification is also required in the FHA case binder for loans where the Individual Condominium Unit Appraisal Report, Fannie Mae Form 1073, does not contain the required data or the condominium project is proposed or under construction.

- Includes allocations/line items to ensure sufficient funds are available to maintain and preserve all amenities and features unique to the condominium project;
- Provides for the funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 10% of the budget; and
- Provides adequate funding for insurance coverage and deductibles (see Section VI, Insurance Requirements).

In cases where the budget documents do not meet these standards, the mortgagee may request a reserve study to assess the financial stability of the project. The reserve study cannot be more than 12 months old. When reviewing the reserve study, consideration must be given to items that have been replaced after the time that the reserve study was completed.

In lieu of the actual budget documents, mortgagees may request and rely on Fannie Mae form 1073a, Analysis of Annual Income and Expenses – Operating Budget, executed by an authorized representative of the seller/servicer, owners association, or management agent.

## **VI. Insurance Requirements**

A. The condominium project must be covered by hazard, flood, liability and other insurance required by state or local condominium laws or acceptable to FHA as defined below:

- **Hazard Insurance:** The homeowners association (HOA) is required to maintain adequate “master or blanket” property insurance in an amount equal to 100% of current replacement cost of the condominium exclusive of land, foundation, excavation and other items normally excluded from coverage. If the HOA does not maintain 100% coverage, the unit owner may not obtain “gap” coverage to meet this requirement.
- **HO-6 Coverage:** In cases where the master policy does not include interior unit coverage, including replacement of interior improvements and betterment coverage to insure improvements that the borrower may have made to the unit, the borrower must obtain a “walls-in” coverage policy (HO-6 policy).
- **Liability Insurance:** The HOA is required to maintain comprehensive general liability insurance covering all of the common elements, commercial space owned and leased by the owner’s association, and public ways of the condominium project.
- **Fidelity Bond/Fidelity Insurance:** Fidelity Bond/Fidelity Insurance is required for new and established condominium projects with 20 or more units. The HOA must maintain this insurance for all officers, directors, and employees of the association and all other persons handling or responsible for funds administered by the association. The coverage must be no less than a sum equal to three months aggregate assessments on all units plus reserve funds.
- **Flood Insurance:** Insurance coverage equal to the replacement cost of the project less land costs or up to the National Flood Insurance Program (NFIP)

standard of \$250,000 per unit, whichever is less. In the insuring of a residential condominium building in a regular program community, the maximum limit of building coverage is \$250,000 times the number of units in the building (not to exceed the building's replacement cost). The HOA, not the borrower or individual unit owner, is responsible for obtaining and maintaining adequate flood insurance under the NFIP on buildings located in a Special Flood Hazard Area (SFHA). The flood insurance coverage must protect the interest of borrowers who hold title to an individual unit as well as the common areas of the condominium project. If the FHA Roster Appraiser reports that buildings in a condominium project are located in a SFHA the lender is responsible for ensuring that the HOA obtains and maintains adequate flood insurance on buildings located within the SFHA, per Mortgagee Letter 2009-37.

#### B. Determining Need for Flood Insurance

Mortgagees must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located in a 100-year flood plain. If the property is in a 100-year flood plain, flood insurance is required, per Mortgagee Letter 2009-37. To demonstrate and document that the property is not located in a 100-year flood plain and not subject to flood insurance requirements, the mortgagee must obtain:

- A final Letter of Map Amendment (LOMA) or
- A final Letter of Map Revision (LOMR)

### VII. **Manufactured Housing Condominium Projects (MHCP)** (effective June 12, 2009)

Pursuant to HERA, manufactured housing condominium projects are now eligible for FHA mortgage insurance. All outstanding and current FHA Manufactured Housing individual unit requirements remain applicable for both Home Equity Conversion Mortgages (HECM) and forward mortgages, including elevations in flood zones and foundation requirements. MHCPs must be submitted to the applicable Homeownership Center (HOC) for review and approval (HRAP). MHCPs are ineligible for DELRAP processing and may **not** be processed as site condominiums.

See Loan Approval section for appraisal reporting requirements.

### VIII. **Condominium Conversions**

Conversion to condominiums occurs in those projects which involve changing the title of an existing structure generally under one title, to property that is separated into units so that the title to most units can be held separately. Changes to condominium conversion requirements are defined below:

1. The one-year waiting period requirement for conversions is eliminated;
2. In the event that FHA is insuring a mortgage on a unit and an undivided interest in

the common elements on a project undergoing remodeling or rehabilitation, the entire condominium project, including the common facilities, must be 100 percent completely built before any mortgage may be endorsed. Escrow provisions will be permitted for weather related delays for common areas only.

3. Conversions of properties from non-residential or from rental, whether tenant-occupied or vacant, will be treated as new construction.

## **IX. Condominium New Construction Pre-approval and Inspection Requirements**

This Mortgagee Letter now permits condominium processing consistent with guidance described in Mortgagee Letter 2001-27.

- A. In cases where a building permit and a certificate of occupancy (or its equivalent) are issued by a local jurisdiction that performs a minimum of three inspections (typically the footing, framing and final) neither an Early Start Letter nor a HUD approved ten-year warranty plan is required. For those jurisdictions that do not issue a building permit (or its equivalent) prior to construction and a Certificate of Occupancy (or its equivalent) upon completion of construction, a condominium unit that is one year old or less must have either an Early Start Letter (with a minimum of three inspections by an FHA Roster Inspector) or be covered by a HUD-approved ten-year warranty plan (with a final inspection by a FHA Roster Inspector) to be eligible for high-ratio mortgage insurance. Projects are still required to be on the FHA-approved condominium list.
- B. FHA will require the completion and retention of the following documents when processing new construction condominium project approvals:
  - Builder's Certification of Plans, Specifications and Site, form HUD-92541
  - Builder's Warranty, form HUD-92544
  - Building Permit (or its equivalent)
  - Final Certificate of Occupancy (or its equivalent)
- C. FHA will accept a temporary/conditional Certificate of Occupancy for new construction and conversions that require substantial rehabilitation under the following circumstances:
  - All common areas and amenities for the project must be completed.
  - The temporary/conditional Certificate of Occupancy that was issued clearly indicates that the unit is habitable and eligible for immediate occupancy.
  - The jurisdiction that is issuing the temporary/conditional Certificates of Occupancy has in place a standard protocol whereby permanent certificates are issued and maintained.

## **X. General Processing Steps for DELRAP or HRAP**

- A. Determine acceptability of the site and location of the project. Refer to Attachment A, *Condominium Project Approval Matrix* for the list of documents that the project review package must contain.

B. Review the project's financial and legal documents; if acceptable, authorized personnel will sign and date the Lender Certification of Condominium Requirements (Attachment B).

- While FHA expects lenders to submit recorded documents with the condominium project approval package, unrecorded properly executed documents are acceptable in the initial request for project approval.
- If unrecorded documents are utilized, no loan can be *insured* in the project until the recorded documents have been received and the applicable approval data updated.
- Unrecorded documents for conversions will be acceptable if the conversion was a non-occupied rental building (i.e., warehouse or vacant building converted to a condominium regime) that meets all applicable requirements.
- Whenever unrecorded documents are submitted, the lender (for HRAP), DELRAP lender or builder/developer must provide a certification with the final recorded documents and description of any changes from original unrecorded documents.

C. Determine the project's budget is adequate or meets the alternative standards in Project Approval Section, V, 11.

D. Retain and maintain all documents used to review and approve the project for a period of three years from the date of project approval.

E. If a project is listed as Rejected or Withdrawn on the FHA-approved condominium list, the project will not be eligible for reconsideration unless the request meets the following:

- Project was rejected or withdrawn  $\leq$  12 months: new/additional information may be submitted to HUD for reconsideration only under HRAP processing based on the rejection or withdrawal date;
- Project was rejected or withdrawn  $>$  12 months: new/additional information may be submitted to HUD for processing under HRAP or may be considered by the lender (and ultimately transmitted to HUD) in the case of projects undergoing DELRAP review.

NOTE: If a project is no longer approved or does not meet approval criteria, then only a FHA-to-FHA streamline refinance without an appraisal is allowed.

F. Second and subsequent lenders that submit a unit for insurance in a project that is listed on the FHA-approved condominium list are not required to complete any further approval process. However, as part of loan-level review, FHA will require the lender to certify (Attachment C) it has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent. FHA will also require the lender to certify (Attachment C) that it has reviewed and verified the condominium project's continued compliance with the initial approval requirements regarding investor ownership, percentage of owners in

arrears for condominium association fees, owner-occupancy rate and FHA loan concentration rate, and the lender certifies (Attachment C) that the condominium project continues to comply with FHA requirements.

- G. Subsequent phases being approved by a different lender must follow the general procedures listed under this Section of the ML. The original lender must also follow these general procedures but will have already satisfied some of the steps listed.
- H. All required certifications, as applicable, must be included in the FHA case binder submitted for insurance endorsement.
- I. For both new construction and conversions the developer should complete form HUD-92541, Builder's Certification of Plans, Specification and Site. If the developer/builder intends to market five or more units within the next 12 months with FHA mortgage insurance and block 11 "a, b, c, or d" is not checked, the developer/builder is required to complete Form HUD-935.2C, Affirmative Fair Housing Marketing Plan – Condominium or Cooperatives. This completed form must be submitted to the Director of the Processing and Underwriting Division in the jurisdictional HOC for approval (prior to project approval).
- J. Environmental reviews will be required only for proposed and under construction project approvals submitted under the HRAP option consistent with the Environmental Review Requirements listed in Project Approval section, numeral IV, B. Environmental review is not required under DELRAP, but the lender **must** take necessary actions to avoid or determine that there are mitigants to addressing identified environmental conditions prior to completing its project review.
- K. Transfer of control of the Homeowners Association shall pass to the unit owners within the project no later than the latest of the following:
  - 1. 120 days after the date by which 75 percent of the units have been conveyed to the unit purchasers;
  - 2. Three years after completion of the project evidenced by the first conveyance to a unit purchaser; OR
  - 3. The time frame established under state or local condominium laws if specific provisions regarding transfer of control exist.

## **XI. Certification for Initial Project Approval**

### **A. Lender Certification**

Lenders must provide certifications on company letterhead signed by a company authorized representative (signature stamps or electronic signatures are not authorized) that:

- 1. The eligible condominium project complies with applicable FHA requirements addressed within this ML;

2. All condominium legal documents meet HUD regulations, state and local condominium laws; and
3. Pre-sale, owner occupancy and FHA concentration ratios are met.

#### B. Developer Certification

The developer/builder must provide a certification (Attachment E) on company letterhead signed and dated by an authorized representative of the developer/builder (signature stamps or electronic signatures are not authorized) which states that:

1. The eligible condominium project complies with all applicable FHA requirements addressed in this ML; and
2. All condominium documents meet all HUD requirements, and state and local requirements.

NOTE: FHA will not require an attorney's certification. However, lenders and developers/builders may obtain this as part of their own due diligence process. Lenders as well as developers/builders are reminded that this document will not replace other required condominium certifications they are required to execute (*e.g.*, Applicable Appendices B, C, E and F of this Mortgage Letter).

## **XII. Recertification of Project Approvals**

Condominium Project approvals will expire two years from the date of placement on the list of approved condominiums. Further participation in the program after this two-year period has expired will require recertification to determine that the project is still in compliance with HUD's owner-occupancy requirement and that no conditions currently exist which would present an unacceptable risk to FHA. Items that must be given consideration are:

1. Pending special assessments,
2. Pending legal action against the condominium association, or its officers or directors, and
3. Adequate hazard, liability insurance, and when applicable, flood insurance coverage.

## **LOAN APPROVAL**

### **I. Mortgage Insurance for Individual Unit Financing**

All applicable, outstanding and any additional FHA mortgage insurance requirements not defined in this ML must be satisfied for individual units.

### **II. Recordation of Documents**

If unrecorded documents were submitted along with other required documentation for initial project approval, no loan can be *insured* in the project until the recorded documents are received and the applicable approval data updated.

### **III. Insurance Requirements**

#### **A. Hazard Insurance**

For forward mortgages, in cases where the master policy *does not* include interior unit coverage, including replacement of interior improvements and betterment coverage to insure improvements that the borrower may have made to the unit, the borrower must obtain a “walls-in” coverage policy (HO-6 policy).

For Home Equity Conversion Mortgages (reverse mortgages), the borrower must obtain and maintain hazard insurance equal to the value of insurable property improvements, per Handbook 4235, REV 1, Chapter 6.

#### **B. Flood Insurance**

For both forward and reverse mortgages, lenders must ensure that the Homeowners Association (HOA), not the individual owner, obtains and maintains adequate flood insurance under the National Flood Insurance Program on buildings located within a Special Flood Hazard Area. The insurance coverage must protect the interest of borrowers who hold title to an individual unit as well as the common areas. See Section VI, Insurance Requirements.

### **IV. Certifications**

If a project has been previously approved, the lender must certify that it has reviewed and verified the condominium project’s continued compliance with the initial approval requirements regarding investor ownership, percentage of owners in arrears for condominium association fees, owner-occupancy rate and FHA loan concentration rate, and the Lender certifies that the condominium project continues to comply with FHA requirements.

### **V. FHA-to-FHA Transactions**

Project Approval is not required for:

- a. FHA-to-FHA streamline refinance transactions or
- b. FHA/HUD Real Estate Owned (REO).

### **VI. Site Condominiums**

Although processed as Section 203(b) loans, the applicable ADP codes for Site Condominiums are 731 (Adjustable Rate Mortgages) and 734.

Appraisal data is collected and reported on Fannie Mae form 1004, in accordance with the Valuation Protocols, Appendix D of HUD Handbook 4150.2.

The Condominium Rider (Attachment D) must be included in the FHA case binder submitted for insurance endorsement.

## **VII. Manufactured Housing Condominium**

The appraisal reporting requirements for condominium manufactured homes are:

1. Appraisal must be reported on the Manufactured Home Appraisal Report (Fannie Mae Form 1004C).
2. Subject condominium project must be inspected and the Project Information section of the Individual Condominium Unit Appraisal Report (Fannie Mae Form 1073) must be completed and included as an addendum to the appraisal report.
3. Comparable sales must be condominium manufactured homes. Detailed explanations must be provided when search parameters are expanded due to the lack of comparable sales in subject market area.

## **VIII. “Spot Loan” Approval Process**

The Spot Loan Approval Process as defined in Mortgage Letter 1996-41 is eliminated. The DELRAP and HRAP have been streamlined to allow for uncomplicated condominium project approvals eliminating the need to approve units on a “spot loan” basis.

# **LIABILITIES AND MONITORING**

## **I. Mortgagee Liability**

Mortgagees who issue condominium project approvals using the DELRAP process are responsible for material deficiencies associated with the project approval and any loan they originate and/or underwrite using the applicable project approval.

Mortgagees who rely upon a condominium project approval issued by another mortgagee are responsible for the loan level certification (Attachment C). With this certification, the lender is confirming that the company has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent. The lender is also certifying that it has reviewed and verified the condominium project’s continued compliance with the initial approval requirements regarding investor ownership, percentage of owners in arrears for condominium association fees, owner-occupancy rate and FHA loan concentration rate, and it certifies that the condominium project continues to comply with FHA requirements.

## **II. Quality Assurance**

Monitoring the condominium approval process is critical to the success of the program. Lenders who approve condominium projects utilizing the DELRAP option will be required to submit a copy of the complete condominium project approval package to the applicable Homeownership Center within five (5) business days of approval. Lenders are required to submit the first **five** DELRAP approvals for review. Further, to manage FHA's risk, and ensure compliance with all condominium project policy requirements, additional condominium project approvals will be selected for review. The criteria for selection of the additional approvals will be determined and lenders will be notified in future guidance.

## **III. False Certifications**

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

## **TRANSITION STRATEGY**

FHA will move all currently approved condominium projects to the new approval list and FHA Connection database. The following requirements are applicable based on the date of the initial project approval. Additional guidance on new data entry requirements will be issued in a separate ML.

- Projects that received approval prior to October 1, 2008, will require recertification on or before December 7, 2010.
- Projects that received approval between October 1, 2008 through December 7, 2009, will follow the recertification requirements defined in the Project Approval Section, XIII.

Recertification of approved condominium projects may be processed by HUD using HRAP or by a mortgagee under DELRAP. The DELRAP option is only available to lenders who have unconditional Direct Endorsement authority and staff with knowledge and expertise in reviewing and approving condominium projects.

If you have questions regarding this Mortgagee Letter, please call the FHA's Resource Center at 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens  
Assistant Secretary for Housing-  
Federal Housing Commissioner

Attachments

**Attachment A**

<i>Condominium Project Approval Matrix</i>				
		Proposed/UC	Existing	Conversion
1	<u>All Condominium Legal Documents</u>	x	x	x
a	<u>Recorded Plat Map indicating Legal Description</u>	x	x	x
b	<u>Recorded Covenants, Conditions and Restrictions (CC&amp;R's)</u>	x	x	x
c	<u>Signed and Adopted Bylaws</u>	x	x	x
d	<u>Articles of Incorporation filed with the State</u>	x	x	x
e	<u>Recorded Condominium Site Plans</u>	x	x	x
2	<u>Plan or Evidence of Transfer of Control</u>	x	x	x
3	<u>Proposed or Actual Budget</u>	x	x	x
4	<u>Management Agreement, if applicable</u>	x	x	x
5	<u>Equal Employment Opportunity Certificate (Form HUD 92010)</u>	x		
6	<u>Builder's Certification of Plans, Specifications and Site, form HUD-92541</u>	x		x
7	<u>FEMA Flood Map</u>	x	x	x
8	<u>Estimated Construction Completion Date</u>	x		x
9	<u>Outstanding or Pending Litigation Analysis</u>		x	x
10	<u>Pending Special Assessment Analysis</u>		x	

**Attachment B**

**LENDER CERTIFICATION TO CONDOMINIUM REQUIREMENTS**

The undersigned hereby certifies that (1) the Lender has reviewed the project and it meets all requirements of Section 203(b) of the National Housing Act, 24 CFR part 203, State and local condominium laws and any Mortgage Letters thereto applicable to the review of condominiums; (2) to the best of his or her knowledge and belief, the information and statements contained in this application are true and correct, and (3) the Lender has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including but not limited to: defects in construction; substantial disputes or dissatisfaction among unit owners about the operation of the project or the owner's association; and disputes concerning unit owners; rights privileges, and obligations). The undersigned understands and agrees that the Lender is under a continuing obligation to inform HUD if any material information compiled for the review and acceptance of this project is no longer true and correct.

Authorized Lender Representative  
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

**Attachment C**

**LENDER CERTIFICATION FOR INDIVIDUAL UNIT FINANCING**

The undersigned hereby certifies that (1) the Lender has verified the condominium unit in connection with this loan file has been verified to be in a project that appears on FHA's list of approved condominium projects; (2) to the best of his or her knowledge and belief, the information and statements contained in this application are true and correct; (3) the Lender has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including but not limited to: defects in construction; substantial disputes or dissatisfaction among unit owners about the operation of the project or the owner's association; and disputes concerning unit owners; rights privileges, and obligations); and (4) the Lender has reviewed and verified the condominium project's continued compliance with the initial approval requirements regarding investor ownership, percentage of owners in arrears for condominium association fees, owner-occupancy rate and FHA loan concentration rate, and the Lender certifies that the condominium project continues to comply with FHA requirements.

Authorized Lender Representative  
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

## Attachment D

**CONDOMINIUM RIDER**

THIS CONDOMINIUM RIDER is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to \_\_\_\_\_ ("Lender") of the same date and covering the Property described in the Security Instrument and located at:

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

**CONDOMINIUM COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in the Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under the Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

\_\_\_\_\_  
Borrower (SEAL)

\_\_\_\_\_  
Borrower (SEAL)

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS.]

## **DEVELOPER/BUILDER CERTIFICATION TO CONDOMINIUM REQUIREMENTS**

The undersigned hereby certifies that (1) the Developer/Builder has reviewed the project and it meets all requirements of Section 203(b) of the National Housing Act, 24 CFR 203, State and local condominium laws and any Mortgage Letters thereto applicable to the review of condominiums; (2) to the best of his or her knowledge and belief, the information and statements contained in this application are true and correct, and (3) the Developer/Builder has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including but not limited to: defects in construction; substantial disputes or dissatisfaction among unit owners about the operation of the project or the owner's association; and disputes concerning unit owners; rights privileges, and obligations). The undersigned understands and agrees that the Developer/Builder is under a continuing obligation to inform HUD if any material information compiled for the review and acceptance of this project is no longer true and correct.

Authorized Representative  
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

## Attachment F

### DEVELOPER/BUILDER PRESALES CERTIFICATION

The undersigned hereby certifies that in lieu of providing (1) Copies of sales agreements and evidence that a mortgagee has issued approval; **or** (2) Evidence that units have closed and are occupied; the Developer/Builder has attached to the signed and dated certification, a list documenting all units sold, under contract or closed (i.e., and excel spreadsheet). This information will be used to document the required minimum presale requirement of 30 percent.

Authorized Representative  
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.