



Fannie Mae®

Multifamily Selling and Servicing Guide

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TABLE OF CONTENTS

Part II Section 301 Zoning and Legally Non-Conforming Status	3
301.01 Zoning and Legal Non-Conforming Use	3
301.02 Legal Non-Conforming Characteristics	3
GLOSSARY	6



Section 301 Zoning and Legally Non-Conforming Status

301.01 Zoning and Legal Non-Conforming Use

Requirements

For each Property, you must:

- identify the current zoning or land use designation;
- confirm the existing Property use (e.g., multifamily, single-family, mixed use, Manufactured Housing Community, etc.) is expressly permitted per current zoning and land use laws and regulations; and
- not Deliver any Property with a legal non-conforming use.

If you order a Zoning Report from a zoning consultant, you must:

- deliver structured data per the Zoning Report Data Supplement ([Form 4089](#)); and
- include a report narrative.

301.02 Legal Non-Conforming Characteristics

Requirements

You must confirm the Property's characteristics (e.g., building height, density, set-back lines, etc.):

- conform to current zoning requirements and land use designations; or
- are legally non-conforming per applicable zoning or land use laws and regulations.

If the Property's characteristics are legally non-conforming, you must:

- Require the Borrower to execute Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) ([Form 6275](#)).
- Confirm whether the affected Improvements can be rebuilt to the pre-casualty condition per current laws, zoning requirements, and building codes without conditions or limitations, including any related solely to timing for:
 - obtaining permits or approvals; and/or
 - commencing or completing construction.



- Analyze the impact on the Mortgage Loan if the Borrower is not allowed to rebuild the Property as is per current law, without conditions or limitations.
- Comply with the following.

If...	You must...
Improvements cannot be rebuilt as is per current law, without conditions or limitations,	Prepare an analysis determining if conformance per current zoning law would result in a loss of 20% or more of the Property's unit count.
The analysis determines conformance per current zoning law would result in a loss of 20% or more of the Property's unit count,	Prepare a threshold analysis confirming the reconstructed Improvements, per current zoning requirements and building codes, would support a minimum 1.00 amortizing DSCR.
The reconstructed Improvements, per current zoning requirements and building codes, cannot support a minimum 1.00 amortizing DSCR,	Submit the Mortgage Loan for Pre-Review.

Guidance

To assess the Borrower's ability to rebuild Improvements on a non-conforming Property to a level that would support a minimum 1.00 amortizing DSCR, you should consider:

- the continued marketability and economic viability of the Property;
- the percentage of damage that could occur before the Property would be forced to comply with current zoning and land use requirements, and how to apply that percentage to the Property's market value, assessed value, replacement cost, or unit count;
- for Properties with multiple buildings, whether the percentage of damage would need to apply to a single building or the whole complex before being forced to comply with current zoning and land use requirements;
- the amount and type of insurance coverage maintained by the Borrower and required per [Part II, Chapter 5: Property and Liability Insurance, Section 501.02C: Ordinance or Law Insurance](#), and the insurance loss proceeds payout, compared to increased rebuilding costs, including from:
 - building code changes;



- Americans with Disabilities Act compliance; and
- the municipality's local zoning requirements (e.g., green compliance for new buildings, etc.); and
- whether the estimated insurance proceeds from ordinance or law insurance and other coverages will be sufficient to repay the Mortgage Loan in the event of partial or full
 - casualty, or
 - condemnation.



Glossary

B

Borrower Person who is the obligor per the Note.

Synonyms

- Borrowers
- Borrower's

I

Improvements Buildings, structures, improvements, and alterations, including the multifamily housing dwellings, now constructed or hereafter constructed or placed on the land upon which the Property is located, together with all fixtures (as defined in the Uniform Commercial Code).

M

Manufactured Housing Community Residential real estate development with lots on which manufactured homes are located, together with amenities, utility services, landscaping, roads, and other infrastructure.

Synonyms

- Manufactured Housing Property
- MH Community
- MH Community's
- MH Communities
- MHC

Mortgage Loan Mortgage debt obligation evidenced, or when made will be evidenced, by

- the Loan Documents, or
- a mortgage debt obligation with a Fannie Mae credit enhancement.

Synonyms

- Mortgage Loans
- Mortgage Loan's



P

Pre-Review

Requirement that the Lender obtain Fannie Mae's approval before Rate Lock of a Mortgage Loan.

Property

Multifamily residential real estate securing the Mortgage Loan, including the

- fee simple or Leasehold interest,
- Improvements, and
- personal property (per the Uniform Commercial Code).

Synonyms

- Properties
- Property's

S

Security

MBS, PFP MBS, or REMIC.