Fannie Mae®

Multifamily Selling and Servicing Guide

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Section 301 Zoning and Legally Non-Conforming Status

301.01 Zoning

☑ Requirements

For each Property, you must:

- identify the current zoning or land use designation;
- determine if 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
- 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 you order a Zoning Report from a zoning consultant, you must:

- upload the zoning report to DUS Docway in Folder II; and
- deliver structured data per the Zoning Report Data Supplement (Form 4089).

301.02 Legal Non-Conforming Use

☑ Requirements

If the Property is a legal non-conforming use, you must:

- ensure the Borrower executes Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275);
- confirm, following a casualty, the percentage of damage to the Property's Improvements (i.e., the destruction threshold) at which the Property jurisdiction would prohibit the rebuilding of all impacted Improvements to the pre-casualty use and condition under current
  - laws,
  - zoning requirements, and
  - building codes; and

- if the destruction threshold is less than 50%, not Deliver the Mortgage Loan.

301.03 Legal Non-Conforming Characteristics

Requirements

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

- ensure the Borrower executes the Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275);
- confirm whether, if fully or partially destroyed, the Property's Improvements can be fully rebuilt to the pre-casualty condition per current
  - laws,
  - zoning requirements, and
  - building codes; and
- if the Property's Improvements cannot be fully rebuilt to the pre-casualty condition,
  - evaluate if the as-rebuilt Property will support the Mortgage Loan at the current Tier, and
  - document your analysis in the Transaction Approval Memo.

Guidance

To assess the Borrower's ability to rebuild Improvements on a non-conforming Property to a level that will support the Mortgage Loan at the current Tier, you should consider:

- conducting a threshold analysis to determine the resulting actual amortizing DSCR if the reconstructed Improvements cannot be rebuilt as-is per current law;
- the likelihood of a casualty event (e.g., wind, earthquake, fire, flood, mine subsidence, etc.);
- the percentage of damage to the Improvements at which the Property's jurisdiction will require the Property be rebuilt to current zoning and land use requirements (i.e., the destruction threshold);
- which Property characteristics the destruction threshold percentage applies to, such as
  - market value,

- assessed value,
- replacement cost, or
- unit count;

- for Properties with multiple buildings, if the destruction threshold percentage applies to
  - each building, or
  - all buildings as a whole;

- the replacement cost to rebuild per current requirements for
  - zoning, and
  - land use;

- the Property's continued
  - marketability, and
  - economic viability;

- the amount and type of Borrower-maintained insurance coverage required per Part II, Chapter 5: Property and Liability Insurance, Section 501.02E: Ordinance or Law Insurance;
- 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.);

- the sufficiency of estimated insurance proceeds from ordinance or law insurance and other coverages to repay the Mortgage Loan in the event of partial or full
  - casualty, or
  - condemnation; and

- for a Tier 3 or Tier 4 Mortgage Loan, if requiring execution of the Limited Payment Guaranty (Form 6020.LPG) would mitigate the risk of the as-rebuilt Property not supporting a Tier 2 Mortgage Loan.

Glossary

B

Borrower	Person who is the obligor per the Note. **Synonyms** • Borrowers • Borrower's

D

Debt Service Coverage Ratio	On an annual basis or any specified period, the ratio of Net Cash Flow to the total of: principal, interest, and required Mezzanine Financing or Hard Pay Preferred Equity payments. **Synonyms** • DSCR
Delivery	Submission of all correct, accurate, and certifiable documents, data, and information with all applicable documents properly completed, executed, and recorded as needed, and any deficiencies resolved to Fannie Mae's satisfaction. **Synonyms** • Deliver • Delivered • Deliveries
DocWay	Business-to-business electronic documentation delivery application, or any successor system.
DUS	Delegated Underwriting and Servicing

G

Guaranty	Payment Guaranty, Non-Recourse Guaranty, or other guaranty by a Guarantor for the Mortgage Loan.

Guide	Multifamily Selling and Servicing Guide controlling all Lender and Servicer requirements unless a Lender Contract specifies otherwise. **Synonyms** • DUS Guide

I

Improvements	Buildings, structures, improvements, and alterations, including the multifamily housing dwellings, now or hereafter constructed or placed on the Property, including all fixtures (as defined in the UCC). **Synonyms** • Improvements'

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

Payment Guaranty	Guaranty executed by a Key Principal on Form 4502 series or Form 6020 series, or approved by Fannie Mae.
Pricing and Underwriting Tier	Tier 1, Tier 2, Tier 3, or Tier 4 per the Multifamily Underwriting Standards (Form 4660). **Synonyms** • Tier
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

R

Replacements	Capital item replacements and major maintenance needs identified by the Property Condition Assessment or otherwise required. **Synonyms** • Replacement

S

Security	MBS, PFP MBS, or REMIC. **Synonyms** • Securities