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# Multifamily Selling and Servicing Guide

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## 108.02 Documents

### 108.02A Loan Documents

#### Requirements

You must:

- ensure the Borrower executes the Modification to Multifamily Loan and Security Agreement Shared Use of Essential Elements ([Form 6276](#)); and
- if appropriate per the conditions described in the Estoppel Certificate attached to [Form 6276](#), use reasonable efforts to obtain from the association or other appropriate party:
  - the Estoppel Certificate attached to [Form 6276](#); or
  - other form providing similar representations.

### 108.02B Shared Use Documents

#### Requirements

You must:

- evaluate the Shared Use Documents;
- document your evaluation in the Transaction Approval Memo; and
- obtain:
  - an ALTA title policy per [Part II, Chapter 3: Legal Compliance, Section 304: Title Insurance](#); and
  - ALTA Endorsements (i.e., 5-06, 28-06, and 9-06) if available in the Property's jurisdiction.

#### Guidance

| Shared Use Document Evaluation |   |
|--------------------------------|---|
| Topic                          | You should review the Shared Use Documents to evaluate... |



| Shared Use Document Evaluation   |  |
|----------------------------------|--|
| Ownership and Control            | <ul style="list-style-type: none"> <li>• if the Borrower owns all Improvements and the underlying land;</li> <li>• if Essential Elements not located on the Property exist, and if ownership is:               <ul style="list-style-type: none"> <li>- directly or indirectly by an Affiliate of the Borrower or Key Principal;</li> <li>- by a separate association or governing body;</li> <li>- by another community owner or an adjacent property owner; or</li> <li>- shared by the community owners; and</li> </ul> </li> <li>• how association and Essential Elements decisions are made by any               <ul style="list-style-type: none"> <li>- developer,</li> <li>- declarant,</li> <li>- association,</li> <li>- community owner, or</li> <li>- other governing body.</li> </ul> </li> </ul> |
| Responsibilities and Enforcement | <p>how an association or governing body:</p> <ul style="list-style-type: none"> <li>• collects fees and assessments;</li> <li>• maintains Essential Elements;</li> <li>• obtains insurance;</li> <li>• mediates disputes; and</li> <li>• enforces covenants, including               <ul style="list-style-type: none"> <li>- levying fines or interest, or</li> <li>- pursuing liens or foreclosure.</li> </ul> </li> </ul>   |
| Fees                             | <p>the assessment fee structure, including</p> <ul style="list-style-type: none"> <li>• escalation provisions,</li> <li>• special assessments, and</li> <li>• if assessments should be escrowed.</li> </ul>  |
| Budget                           | <p>the associations current</p> <ul style="list-style-type: none"> <li>• annual budget,</li> <li>• income/expense statements, and</li> <li>• reserve accounts.</li> </ul>  |



| Shared Use Document Evaluation |   |
|--------------------------------|---|
| Mandates                       | <p>how the association dictates:</p> <ul style="list-style-type: none"><li>• operations;</li><li>• physical appearance;</li><li>• insurance claim proceeds;</li><li>• other restrictions, including limitations or modifications for using the Essential Elements; and</li><li>• if the cost and maintenance of the Essential Elements located on the Property are not overly burdensome.</li></ul> |
| Insurance                      | <p>the associations coverage for:</p> <ul style="list-style-type: none"><li>• property, including if the Essential Elements not located on the Property must be rebuilt or repaired after any casualty or condemnation;</li><li>• liability; and</li><li>• directors and officers.</li></ul>  |



# Glossary

## A

### Affiliate

When referring to an affiliate of a Lender, any other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.

When referring to an affiliate of a Borrower or Key Principal:

- any Person that owns any direct ownership interest in Borrower or Key Principal;
- any Person that indirectly owns, with the power to vote, 20% or more of the ownership interests in Borrower or Key Principal;
- any Person Controlled by, under common Control with, or which Controls, Borrower or Key Principal;
- any entity in which Borrower or Key Principal directly or indirectly owns, with the power to vote, 20% or more of the ownership interests in such entity; or
- any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

#### **Synonyms**

- Affiliates
- Affiliate's

### ALTA

American Land Title Association

## B

### Borrower

Person who is the obligor per the Note.

#### **Synonyms**

- Borrowers
- Borrower's

## C



## Control

Possessing, directly or indirectly, the power to direct or cause the management and operations of an entity (e.g., through the ownership of voting securities or other ownership interests, or by contract).

### **Synonyms**

- Controlling
- Controlled
- Controls

## **E**

### Essential Elements

A Shared Use Property's amenities, common areas or infrastructure:

- impacting or essential to the:
  - operation,
  - use,
  - value and marketability,
  - leasing,
  - refinancing, and/or
  - zoning or legal compliance; and
- examples of Essential Elements may include:
  - parking,
  - roadways,
  - utility easements, and
  - amenities such as
    - laundry facilities,
    - clubhouses,
    - pools,
    - playgrounds,
    - tennis courts,
    - fitness clubs, and
    - recreational facilities.

## **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).



## K

### Key Principal

Any Person who controls and/or manages the Borrower or the Property, is critical to the successful operation and management of the Borrower and the Property, and who may be required to provide a Guaranty.

#### **Synonyms**

- Key Principals

## P

### 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.

### Shared Use Documents

Agreements benefiting and/or burdening a Shared Use Property, such as:

- reciprocal easement agreements (REA);
- declaration of covenants;
- conditions and restrictions (CCR);
- development agreements;
- shared use agreements;
- joint ownership agreement or similar agreements governing homeowners' associations (HOAs);
- planned unit developments (PUDs); or
- other common interest arrangements or planned developments.