



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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## TABLE OF CONTENTS

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Part II Section 301.03 Legal Non-Conforming Characteristics .....	3
GLOSSARY .....	5



### 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 501.02D: 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

## 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

**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.



## 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.

### **Synonyms**

- Securities