



Fannie Mae®

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# Multifamily Selling and Servicing Guide

Effective as of December 13, 2024

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## Chapter 3 Legal Compliance

### 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 501.02D: 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.



## Section 302 Easements

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### Requirements

You must evaluate the impact of all easements (public and private), including their effect on:

- the Property's value and marketability; and
- life safety issues, environmental risks, and acceptability in the market area for certain types of easements, such as for
  - transcontinental pipelines,
  - high power electric transmission lines, or
  - drainage channels.

### Guidance

Easements for normal utilities are generally acceptable, including those that provide natural gas, water, sewer, electricity, or telephone service to the Property.

Easements that serve other properties will generally be acceptable if they

- do not interfere with Improvements on the Property,
- are limited to residential and reasonable commercial use, and
- are covered by appropriate insurance.

## Section 303 Liens and Encumbrances

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### 303.01 Generally

#### Requirements

You must ensure that the Property is free of all Liens and rights of others, except for

- Permitted Encumbrances, and
- cable and laundry leases per [Part II, Chapter 1: Attributes and Characteristics, Section 109: Commercial Leases](#).

You must analyze any restrictions on Improvements or the use of the Property, in order to

- determine whether the restrictions are acceptable, and



- make recommendations for addressing the restrictions.

Examples of restrictions that must be analyzed include restrictive covenants and any restrictions that have been offered, or accepted, in order to obtain a zoning approval or building permit.

If a non-MAH Property has an Affordable Regulatory Agreement, it must be subordinated to the Security Instrument Lien per [Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 705: Restrictive Covenants and Affordable Regulatory Agreements](#).

### ➔ Guidance

When determining whether a restriction is acceptable, you should consider whether a restriction could negatively impact the Property's

- value,
- use,
- security,
- marketability, or
- ability to generate NCF sufficient to pay debt service.

### ☑ Requirements

You must analyze the impact of any restriction on the conversion of a Property to a condominium or similar development.

### ➔ Guidance

A restrictive covenant on condominium conversions will generally not have a negative impact if all of the following apply:

- The conversion restriction is for a period of 10 years or less.
- Any repurchase option or right of reversion in favor of a benefitted party:
  - is unconditionally subordinated to the Lien of the Security Instrument and to the Mortgage Loan;
  - includes an unconditional “standstill” provision prohibiting the exercise of such option or right while the Mortgage Loan is outstanding; and
  - automatically ends if a Foreclosure Event occurs.
- The covenant provides that no mortgagee, trustee, or beneficiary under any mortgage or deed of trust will be liable for any act, omission, or indemnification obligation of the Borrower or any prior or subsequent



owner of the Property.

- The covenant does not require any mortgagee, trustee, or beneficiary under a mortgage or deed of trust to execute an assumption or similar agreement if a Foreclosure Event occurs.

**303.02** Property Previously Secured Bond Financing

Requirements

| If the Property...  | You must...   |
|---|---|
| Previously secured taxable or tax-exempt bonds  | <ul style="list-style-type: none"> <li>• determine if the Property is subject to any requirements, restrictions or other features that survived repayment, and</li> <li>• analyze whether the surviving features will have a material adverse impact on you, Fannie Mae, or the Mortgage Loan.</li> </ul> |
| Currently secures taxable or tax-exempt bonds that are being retired with proceeds of the Mortgage Loan | <ul style="list-style-type: none"> <li>• review the bond documents, and</li> <li>• analyze the impact of any surviving features of the financing.</li> </ul>  |

Guidance

A Property that secures, or has secured, bonds may be subject to certain requirements, restrictions, or other features that survive repayment of the bonds such as:

- rent, income, transfer, or other restrictions;
- master lease requirements that support such restrictions; and
- indemnification or other requirements that could
  - burden a future owner,
  - depress the value or marketability of the Property, or
  - prevent or inhibit foreclosure of a lien securing new financing.

Operating Procedures

For any bonds being retired with the proceeds of a Mortgage Loan, you must prepare a written summary of the bond documents that:





- explains why any surviving features of the financing will not have a materially adverse effect on the Mortgage Loan, the Property, you, or Fannie Mae;
- gives an overview of the redemption process for retiring the bonds; and
- is uploaded into DUS Gateway prior to Commitment.

## Section 304

### Title Insurance

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#### Requirements

You must ensure that every Mortgage Loan is covered by an ALTA title policy or comparable title policy approved for use in the applicable jurisdiction.

The title policy must:

- be issued by a title company that is authorized to issue title policies where the Property is located;
- be in the original amount of the Mortgage Loan, including all advances held in escrow or reserves;
- be no less than the amount of the Mortgage Loan allocated to each Property, if the Mortgage Loan is secured by multiple properties;
- insure for the benefit of Fannie Mae;
- insure the first priority Lien of the Mortgage Loan, subject only to the Permitted Encumbrances, unless it is a Supplemental Mortgage Loan;
- be in full force and effect with
  - all premiums paid,
  - no claims made by you or another lender, and
  - no claims paid;
- insure the legal description of the insured property is identical to the legal description of the property shown on any required survey;
- contain:
  - a Comprehensive Endorsement (ALTA Form 9 or equivalent);
  - an Environmental Protection Lien Endorsement (ALTA Form 8 or equivalent) that only takes exception for a statute that could give an environmental protection Lien priority over the Mortgage Loan;
  - a Mortgage Tax Endorsement (ALTA Form 38.06 or equivalent) if the Mortgage Loan is secured by an amended and restated Security Instrument, such as a New York Consolidation, Extension, and



Modification Agreement (Form 6025.NY.CEMA), or a Florida Consolidated, Amended, and Restated Mortgage (Form 6025.FL.AR); and

- appropriate Endorsements such as:
  - Zoning (where available);
  - Condominium;
  - PUD;
  - Variable Rate;
  - Leasehold Mortgage;
  - Location;
  - Unlocated Easements; and/or
  - Contiguity-Multiple Parcel;
- delete the standard survey exception;
- include a note on Schedule B, Part II listing you as the secured party and Fannie Mae as the assignee, for any financing statement filed in the recording office;
- not list any financing statement as an exception on Schedule B, Part I; and
- insure that any taxes, assessments, or other lienable items are not yet due and payable.

### 304.01 Title Insurance Company

#### Guidance

The title company should have a satisfactory rating and adequate reserves.

### 304.02 Policy Form

#### Guidance

If the policy form meets all requirements of this Section, Fannie Mae will accept the standard 2021 or 2006 ALTA forms of title insurance policies.

In those states where ALTA forms of coverage are not approved by the state insurance board or commission, you should get the closest equivalent alternative coverage.



### 304.03 Electronic Policies

#### ➔ Guidance

You may use electronically issued title policies if the coverage is enforceable against the insurer.

### 304.04 Insured

#### ➔ Guidance

The title policy should

- name you as the insured, and
- insure Fannie Mae when the Mortgage Loan is delivered (either by reference to your “successors and assigns, as their interests may appear” or by direct reference to Fannie Mae).

### 304.05 Effective Date

#### ☑ Requirements

You must have title coverage in effect (i.e., the date of the signed pro forma policy or marked-up commitment) when you fund the Mortgage Loan.

#### ➔ Guidance

The issued title policy should be later-dated to cover the Assignment of Security Instrument’s recording date.

### 304.06 Survey Exception

#### ➔ Guidance

If the title policy includes exceptions to matters shown on a recorded map or plat, the exceptions should be specifically described.

### 304.07 Exception for Taxes, Assessments, or Other Liable Items

#### ➔ Guidance

If any taxes could become delinquent within 60 days after closing, you should require payment at closing.



## 304.08 Financing Statements

### → Guidance

Any financing statement not filed in the recording office (such as a Uniform Commercial Code filing) may be shown as an informational note on Schedule B, Part II.

## 304.09 Endorsements

### 304.09A Generally

#### → Guidance

You should get an appropriate ALTA form of endorsement that is incorporated into the “base” title policy. In jurisdictions where an ALTA form is not available, you may include in Schedule B an equivalent form of endorsement or affirmative coverage.

### 304.09B Environmental Protection Lien Endorsement

#### → Guidance

Super Lien statutes that may be included in the ALTA Form 8.1 endorsement are listed in the Acceptable Super Lien Statutes ([Form 6506](#)).

### 304.09C Comprehensive Endorsement

#### → Guidance

You should consider whether an adverse circumstance affecting the Property would be an acceptable exception on Schedule B, Part I. Examples include:

- encroachments onto the Property;
- easements or rights of way over the Property;
- encroachments by the Improvements onto adjoining land; and
- violations of existing covenants, conditions, and restrictions.

## 304.10 Document Retention

### → Guidance

You should keep copies of any restrictions shown as exceptions in the title policy (such as easements and encumbrances) in your Servicing File.



## Section 305 Survey

### 305.01 Decision to Obtain a Survey

#### Requirements

You must decide whether to get an as-built survey and comply with:

- Part II, Chapter 3: Legal Compliance, Section 305.02: Survey, if you require a survey; or
- Part II, Chapter 3: Legal Compliance, Section 305.03: Decision Not to Obtain a Survey, if you do not require a survey.

### 305.02 Survey

#### Requirements

If you require an as-built survey, it must:

- meet the requirements of an ALTA/NSPS Land Title Survey (made per the 2021 Minimum Standard Detail Requirements), including the required certification; and
- allow the title company to delete the standard survey exception from the title policy.

#### Guidance

An acceptable as-built survey:

- should include these items from Table A to all the ALTA/NSPS Minimum Standard Detail Requirements: 1, 2, 3, 4, 6(a) and (b), 7(a), 8, 9, 10, 13, 16, and 18;
- may omit the following from Table A:
  - item 1 for a Property with a lot and block legal description; and/or
  - item 10, if there are no party walls; and
- should be dated within 360 days before recording the Security Instrument.

#### Requirements

If an existing survey dated more than 360 days before the effective date of the title insurance policy is used, it must satisfy all Title Insurance Company requirements for the deletion of the standard survey exception.



## → Guidance

The Title Insurance Company may require a “no new improvements” affidavit from the Borrower certifying that no changes have been made to the Property since the date of the survey. An existing survey dated within 360 days before the effective date of the title insurance policy, but not prepared in connection with the origination of the Mortgage Loan, may be recertified to you, the Title Insurance Company, and Fannie Mae for the Mortgage Loan.

You should consider whether an adverse circumstance found by a survey would be acceptable. Examples include:

- encroachments over boundary lines, setback lines, or easements; and
- the absence of necessary appurtenant easements, such as a storm or sanitary sewer easement.

### 305.03 Decision Not to Obtain a Survey

#### Requirements

If you do not require an as-built survey:

- either you or the Appraiser must conduct a visual inspection of the Property;
- any visible site condition (such as an easement, right-of-way, or encroachment) must be disclosed and insured under the title policy; and
- the title company must delete the standard survey exception from the title policy.

### 305.04 Location of Improvements

#### Requirements

Whether or not you decide to get an as-built survey, [Part II, Chapter 5: Property and Liability Insurance, Section 501.03: Catastrophic Risk Insurance](#) requires you to determine if any Improvements are located in an SFHA Zone A or Zone V.

## Section 306 Security Interests in Personal Property

### 306.01 Uniform Commercial Code (UCC) Financing Statements

#### Requirements

You must:



- Ensure that the Security Instrument creates a Lien on all Personal Property.
- Ensure that the Lien is a perfected first priority Lien.
- Assign each UCC security interest to Fannie Mae.

## 306.02 Creating and Perfecting the Security Interest

### → Guidance

Article 9 of the UCC covers the perfection of a security interest in Personal Property.

The following table describes how to create and perfect a security interest.

| To...  | Do the following...  |
|--|--|
| Establish whether the Borrower or a third party owns the Personal Property | Confirm that the Borrower has provided a representation of ownership in the Underwriting Certificate ( Borrower ) (Form 6460.Borrower).  |
| Verify that no other party has a Lien on the Personal Property             | Conduct searches for UCC financing statements, tax Liens, and judgments on all relevant parties to the transaction.  |
| Obtain a perfected first security interest in the Personal Property        | <ul style="list-style-type: none"><li>• Obtain a security agreement from each third party that owns Personal Property.</li><li>• Verify that the Security Instrument and each third party security agreement contains a granting clause creating a security interest in all Personal Property.</li><li>• File a UCC-1 financing statement in the appropriate filing and recording office(s), with a description that matches the security interest granted in the Security Instrument.</li></ul> |
| Assign the security interest from you to Fannie Mae                        | File an appropriate assignment (e.g., UCC-1Ad; UCC-3) in the same office(s) where the UCC-1 is filed or recorded.  |



## Glossary

### A

Affordable Regulatory Agreement

Regulatory, land use, extended use, or similar agreement or recorded restriction limiting rents, imposing maximum income restrictions on tenants, or placing other affordability restrictions on the use or occupancy of the Property (whether imposed by a government entity or self-imposed by a Borrower per the Sponsor-Initiated Affordability Agreement ([Form 6490](#))).

ALTA

American Land Title Association

Appraiser

Person engaged to estimate a Property's market value per USPAP.

**Synonyms**

- Appraiser's
- Appraisers

### B

Borrower

Person who is the obligor per the Note.

**Synonyms**

- Borrowers
- Borrower's

### C

Commitment

Contractual agreement between you and Fannie Mae where Fannie Mae agrees to buy a Mortgage Loan at a future date in exchange for an MBS, or at a specific price for a Cash Mortgage Loan, and you agree to Deliver that Mortgage Loan.

**Synonyms**

- Committed
- Commitments





## Condominium

Statutorily established Property ownership regime where Condominium Documents designate:

- individual units for separate ownership; and
- common areas for shared use and joint ownership by the unit owners.

## D

### DUS

Delegated Underwriting and Servicing

### DUS Gateway

Multifamily pre-acquisition system, or any successor systems, recording deal registration, Pre-Review and/or waiver tracking, Mortgage Loan Commitments, and decision records.

## F

### Foreclosure Event

Any of the following:

- Foreclosure per the Security Instrument;
- Fannie Mae's exercise of rights and remedies per the Security Instrument or applicable law (including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, where Fannie Mae (or its designee or nominee), or a third-party purchaser, becomes the Property owner;
- Borrower delivers Fannie Mae (or its designee or nominee) a deed or other conveyance of the Property in lieu of any of the foregoing; or
- in Louisiana, any dation en paiement.

## 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'

## L



Leasehold Property held under a long-term lease or Ground Lease.

Lien Lien, mortgage, bond interest, pledge, security interest, charge, or encumbrance of any kind.

**Synonyms**

- Liens

**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.



## Permitted Encumbrances

The following permitted title exceptions:

- lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable;
- covenants, conditions and restrictions, rights of way, easements and other matters of public record acceptable to the Lender and specifically identified in the Title Policy;
- pre-printed exceptions (general and specific) and exclusions set forth in the Title Policy and acceptable to the Lender;
- rights of tenants (as tenants only) under leases (including subleases) pertaining to the Property;
- if the Mortgage Loan is cross-collateralized, the lien of the Mortgage for another Mortgage Loan contained in the same cross-collateralized group; and
- condominium declarations of record acceptable to the Lender and identified in the Title Policy, provided that none of items (a) through (f), individually or in the aggregate, materially interferes with the current marketability or principal use of the Property, the security intended to be provided by the Mortgage, or the current ability of the Property to generate net cash flow sufficient to service the Mortgage Loan or the Borrower's ability to pay its obligations when they become due.

## Personal Property

Furniture, fixtures, equipment, and other tangible personal property located on or used in connection with the Property.

## 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

## Security Instrument

Instrument creating a lien or encumbrance on 1 or more Properties and securing the Loan Document obligations.

### **Synonyms**

- Security Instruments
- Security Instrument's

## Servicing File

Your file for each Mortgage Loan serviced.

### **Synonyms**

- Servicing Files

## Supplemental Mortgage Loan

Mortgage Loan purchased by Fannie Mae that is subordinated to, and has a Mortgage Loan Origination Date after, the Senior Mortgage Loan that is also owned by Fannie Mae.

### **Synonyms**

- Supplemental Mortgage Loans

## U

## UCC

Uniform Commercial Code