



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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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 110: 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.



## 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](#))).

### B

Borrower

Person who is the obligor per the Note.

#### **Synonyms**

- Borrowers
- Borrower's

### 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

### Lien

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

### Synonyms

- Liens

## 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



## 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.

## 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 Instrument

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

### **Synonyms**

- Security Instruments
- Security Instrument's