



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 504 Environmental Matters ..... | 3 |
| 504.01 Environmental Site Assessments .....     | 3 |
| 504.02 Lender's Responsibilities .....          | 4 |
| 504.03 Environmental Indemnity Agreement .....  | 5 |
| GLOSSARY .....                                  | 7 |



## Section 504

## Environmental Matters

### ➡ Guidance

Any environmental conditions or risks impacting the Property should be fully understood and considered in the underwriting.

#### 504.01 Environmental Site Assessments

##### Requirements

You must:

- comply with the Environmental Due Diligence Requirements ([Form 4251](#)), including obtaining a Phase I Environmental Site Assessment (Phase I ESA) of the entire Property;
- ensure the Phase I ESA:
  - is performed per the instructions in [Form 4251](#), including meeting the current requirements of ASTM E1527;
  - is prepared by an environmental professional as that term is defined in 40 C.F.R. § 312.10 (an Environmental Professional);
  - identifies all environmental conditions and risks that may potentially impact
    - resident safety,
    - marketability, or
    - Property value; and
  - clearly identifies how to properly mitigate those conditions and risks, including where applicable:
    - the Environmental Professional's recommendations regarding additional investigation, or requirements of government authority or regulatory agency; or
    - action to remediate or abate any Recognized Environmental Condition (REC)/Controlled Recognized Environmental Condition (CREC), as those terms are defined in ASTM E1527; and
- obtain Fannie Mae's approval before Rate Lock if the Phase I ESA identified any RECs/CRECs.



## ➔ Guidance

You may rely on a preliminary or draft Phase I ESA to obtain a Rate Lock and Commitment.

### 504.02 Lender's Responsibilities

#### Requirements

You must:

- Obtain all investigations recommended or indicated by the Phase I ESA.
- Conduct a thorough review and analysis of the Phase I ESA.
- Provide the Environmental Professional with all available prior Phase I ESAs, investigations, and any relevant and readily available environmental materials.
- Provide the Appraiser with any documentation from the Phase I ESA necessary to accurately assess the Property's value.
- Identify if the Property's state has an environmental Super Lien Statute and, if so, confirm Property conditions are unlikely to result in the imposition of a super lien having priority over the Security Instrument.
- Disclose to Fannie Mae your knowledge of any actual or suspected environmental conditions affecting the Property, whether or not disclosed in the Phase I ESA.
- Ensure any required Operations and Maintenance Plans (O&M Plans) are obtained and located on the site throughout the Mortgage Loan term.
- Assess the Borrower's ability to carry out any O&M Plan.
- Not Deliver a Mortgage Loan if the Borrower or its agents are not financially or organizationally capable of satisfying the requirements of the O&M Plan.
- Evaluate the potential risk of loss and liability to the Property, the Borrower, you, or Fannie Mae posed by any
  - REC/CREC,
  - Business Environmental Risk, or
  - other environmental condition, whether or not disclosed in the Phase I ESA.

If you become aware of any REC/CREC, you must:

- obtain a Remediation Plan from the Borrower that
  - is prepared by an Environmental Professional, as required by Form



4251,

- will protect the health and safety of the residents and bring the Property into regulatory compliance, and
- includes a cost estimate and schedule for completing the work; and
- add the estimated cost of the Remediation Plan to the Completion/Repair Escrow requirement of the Loan Documents.

### Guidance

The amount funded into the Completion/Repair Escrow on the Mortgage Loan Origination Date should be at least 125% of the estimated cost of the Remediation Plan.

## **504.03** Environmental Indemnity Agreement

### Requirements

You must:

- consider revisions to the Environmental Indemnity Agreement (Form 6085) to protect you and Fannie Mae from liability associated with any
  - REC/CREC (including the cost to investigate/remediate any such condition), and
  - violation of Environmental Laws by the Borrower;
- document your evaluation of potential revisions, including at a minimum, whether the following revisions are appropriate:
  - additional representation and warranty where the Borrower disclaims responsibility for any REC/CREC, if appropriate and accurate; and
  - additional covenant(s) requiring
    - implementation of the Remediation Plan,
    - compliance with any Environmental Activity and Use Limitations and/or institutional or engineering controls, and
    - maintenance of Borrower eligibility for applicable liability protection status;
- specifically identifying any liability associated with the REC/CREC in the indemnification provisions; and
- other required terms and conditions based on Fannie Mae environmental



counsel review.



# Glossary

## A

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

**Synonyms**

- Appraiser's
- Appraisers

**ASTM** American Society for Testing Materials

## B

**Borrower** Person who is the obligor per the Note.

**Synonyms**

- Borrowers
- Borrower's

**Business Environmental Risk** Risk of material environmental or environmentally-driven impact on the business or property associated with a Property or the past, current or planned use of a Property, including all "non-scope considerations" under current ASTM E 1527, asbestos or asbestos-containing materials, radon, lead-based paint, lead in drinking water, wetlands, regulatory compliance, health and safety, indoor air quality, biological agents, mold, etc.

**Synonyms**

- Business Environmental Risks

## 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

## Completion/Repair Escrow

Custodial Account funded on the Mortgage Loan Origination Date for Completion/Repairs or capital improvements per the Loan Documents.

## E

### Environmental Activity and Use Limitations

Legal or physical restrictions or limitations on the use of, or access to, all or any portion of a site, facility, groundwater, soils, or other media at, on, about or under a site or facility to reduce or eliminate potential exposure to Hazardous Materials or to prevent activities that could interfere with the effectiveness of a Hazardous Materials removal, response or remediation.

### Environmental Laws

All current federal, state, and local laws, ordinances, regulations, standards, rules, policies, and other governmental requirements, administrative rulings, court judgments, and decrees, and all amendments thereto, relating to pollution or protection of human health, wildlife, wetlands, natural resources or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, and voluntary cleanup programs and/or brownfields programs.



## Environmental Site Assessment

Investigation and resulting report (Phase I ESA or Phase II ESA) conducted per Environmental Due Diligence Requirements ([Form 4251](#)), identifying if a Property has Recognized Environmental Conditions or Business Environmental Risks.

### **Synonyms**

- ESA
- Environmental Site Assessments

## L

### Lien

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

### **Synonyms**

- Liens

### Loan Documents

All Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan.

### **Synonyms**

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents

## 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



## Mortgage Loan Origination Date

Date you fund a Mortgage Loan to the Borrower.

### Synonyms

- Mortgage Loan's Origination Date
- Origination Date

## P

### Phase I ESA

Environmental Site Assessment conducted per the current ASTM E-1527 standard and the resulting report.

### Synonyms

- Phase I Environmental Site Assessment
- Phase I ESAs

### 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

### Rate Lock

Agreement between you and the Investor containing the terms of the Lender-Arranged Sale or Multifamily Trading Desk trade of the Mortgage Loan and the MBS terms and conditions relating to the underlying MBS, if applicable, which may be documented via a recorded telephone conversation.

### Synonyms

- Rate Locks

## 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