



Multifamily Selling and Servicing Guide

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Section 705

Restrictive Covenants and Affordable Regulatory Agreements

Requirements

You must review the Affordable Regulatory Agreement to ensure there are no provisions that, if a Borrower defaulted, would

- grant rights, remedies, or powers similar to that of a secured creditor to any aggrieved party, or
- impair the Lien rights or priority of the Lien of the Security Instrument.

If the Affordable Regulatory Agreement contains any of these provisions, Fannie Mae will only purchase the Mortgage Loan if the Affordable Regulatory Agreement is subordinated to the Lien of the Security Instrument

- using a Subordination Agreement approved by Fannie Mae, or
- if the Affordable Regulatory Agreement is in connection with a subordinate loan, using Fannie Mae form Subordination Agreement (Affordable) ([Form 6456](#)).

Guidance

The rights, remedies, and powers of a secured creditor would typically include:

- the ability to appoint a receiver;
- the right to collect rents directly from the mortgaged property;
- the right to take possession of the mortgaged property;
- limitations on transferring title to you or to a subsequent transferee by foreclosure or deed in lieu;
- no requirement to give you notice of violations of or amendments to the Affordable Regulatory Agreement; and
- the ability to remove or replace the Property manager without your prior consent.

The Affordable Regulatory Agreement does not need to be subordinated to the Lien of the Security Instrument if the Affordable Regulatory Agreement:

- has no Borrower obligations other than the affordability restrictions;
- has no rights or remedies to enforce the affordability restrictions other than specific performance or injunctive relief; and
- terminates upon foreclosure of the Mortgage Loan.



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).

B

Borrower

Person who is the obligor under the Note.

Synonyms

- Borrowers
- Borrower's

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

P



Property

Multifamily residential property securing the Mortgage Loan and including the land (or Leasehold interest in land), Improvements, and personal property (as defined in 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 obligations under the Loan Documents.