



Multifamily Selling and Servicing Guide

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Section 107 Commercial Leases

107.01 Material Commercial Leases

107.01A Lease Review

Requirements

You must analyze all aspects of each Material Commercial Lease and the tenants. Tenant refers to each tenant, grantee, or other beneficiary of the Material Commercial Lease.

If Material Commercial Lease approval is required by the terms of [Part II, Chapter 1: Attributes and Characteristics, Section 107.01B: Lease Approval](#) you must:

- prepare a written summary of the material terms of the Material Commercial Lease; and
- keep a copy of your summary in your Servicing File.

Guidance

As you analyze the Material Commercial Lease, you should consider the following questions:

- Does each tenant have the ability to fulfill its financial and other performance obligations under the Material Commercial Lease?
- Are the insurance provisions of the Material Commercial Lease consistent with the insurance requirements in the applicable Loan Documents or otherwise prescribed by Fannie Mae?
- Is each tenant required to obtain the Lender's consent before making any assignment, sublease, subcontracting, or other transfer of the Material Commercial Lease?
- Does the tenant have early termination clauses and if so, what are the conditions under which the tenant can terminate? For example,
 - if there is a material casualty or condemnation, or
 - if the landlord cannot substantially restore the premises in a reasonable period of time following a casualty or condemnation.

107.01B Lease Approval

Requirements



Material Commercial Lease Type	
Lease with Property Assessed Clean Energy (PACE) Financing	You must not approve any Material Commercial Lease that includes PACE financing.
Other Material Commercial Leases	You must only approve other Material Commercial Leases if they comply with Part II, Chapter 1: Attributes and Characteristics, Section 107: Commercial Leases .

➔ Guidance

Material Commercial Lease Type	
Solar Power or Other Power Generation Lease	You may underwrite and approve a solar power, thermal power generation, or co-power generation Material Commercial Lease and any related power purchase agreement.

107.01C Lease Modifications

Requirements

As you review each Material Commercial Lease modification, you must consider the following questions:

- Does it violate any of the requirements of this Section?
- Does it contain terms that are inconsistent with the Mortgage Loan?
- Does it present risks that are inappropriate for the Mortgage Loan?

If the answer to any of these questions is “yes”, then you must:

- require the Borrower to modify the Material Commercial Lease appropriately; or
- address the items in the Tenant Estoppel Certificate ([Form 6413](#)) and/or the Subordination, Non-Disturbance, and Attornment Agreement ([Form 6415](#)).

107.01D Tenant Estoppel Certificate

Requirements

You must obtain a Tenant Estoppel Certificate ([Form 6413](#)) for each Material Commercial Lease.



107.01E Subordination, Non-Disturbance and Attornment

Requirements

You must:

- evaluate whether an SNDA ([Form 6415](#)) is necessary to provide for subordination and attornment or would be beneficial for other reasons; and
- use [Form 6415](#) if the Material Commercial Lease contains provisions for the Borrower to assume liability or other risks as landlord that would not be acceptable to the Lender in case of a Foreclosure Event.

You must ensure that each Material Commercial Lease (including any renewal or extension):

- is subordinate to the Lien of the Security Instrument; and
- requires the tenant to attorn to the Lender under the Mortgage Loan.

107.02 Non-Material Commercial Leases

107.02A Tenant Estoppel Certificate; Lease Modification

Requirements

You must make reasonable efforts to get a [Form 6413](#) for each non-Material Commercial Lease, other than leases relating only to equipment or maintenance services.

If a non-Material Commercial Lease has terms that are inconsistent with the terms of the Mortgage Loan or present inappropriate risks for the Mortgage Loan, then you must:

- require the Borrower to modify the lease appropriately; or
- address any inconsistencies or risks in a [Form 6413](#).

107.02B Non-Material Commercial Lease Types

Requirements



Non-Material Commercial Lease Type

Telecommunications and Cell Tower Leases

You must review any telecommunications and cell tower lease to ensure that it does not:

- comprise more than 5% of the Property's Effective Gross Income;
- negatively impact the value, visibility, livability, or marketability of the Property;
- impose an undue financial or operating burden on the Property or the Borrower;
- obligate the Borrower to rebuild any Improvements at the Property following a casualty or condemnation;
- have a lease term (including extension options) in excess of 25 years;
- contain a purchase option; or
- convey any right to the tenant other than simple lessee rights (e.g., a perpetual easement, a purported sale of a portion of the Improvements, unjustified exclusivity, etc.).



Non-Material Commercial Lease Type

Communications Service Agreement

You do not need to subordinate the service agreement to the Lien of the Security Instrument if:

- the Borrower certifies to you that neither the Borrower nor any Key Principal or Principal is an Affiliate of the communications service provider; and
- the lease does not contain provisions for the Borrower to assume liabilities and risks as landlord that would not be acceptable for you (as lender under the Mortgage Loan) in the context of a Foreclosure Event.

If a communications service agreement is accompanied by a lease or easement, then the lease or easement must end automatically when the service agreement expires, unless the service agreement is subordinated to the Lien of the Security Instrument.



Non-Material Commercial Lease Type	
Mineral Rights; Oil and Natural Gas Leases	<p>You must review each lease of mineral rights or rights relating to subsurface oil and natural gas to ensure that it does not:</p> <ul style="list-style-type: none">• comprise more than 5% of the Property's Effective Gross Income;• grant surface entry for any purpose (e.g., pipes, access across, or storage on the Property);• grant subsurface rights within 250 feet below the surface of the Property, or within 600 feet from any Property boundary line;• have a material adverse effect on public health and safety, air quality or noise levels, or on the marketability or occupancy of the Property;• permit oil or gas well activities that could have a negative effect on access, visibility, or storm water drainage at the Property;• have a negative effect on the zoning or allowable density of the Property;• facilitate drilling, storage, or processing of oil or gas on the Property or any adjacent property; or• fail to require the lessee to indemnify and hold harmless the Borrower, as lessor, for any damage to the Property or any other damage or liability caused directly or indirectly as a result of the lease activities.
Laundry Lease	<p>You do not need to subordinate the lease to the Lien of the Security Instrument if you confirm that the lease:</p> <ul style="list-style-type: none">• is not with an Affiliate of the Borrower or any Key Principal or Principal;• has market terms;• contains an acceptable termination for cause provision; and• meets recognized industry standards.



Non-Material Commercial Lease Type	
Equipment or Related Maintenance Services Lease	You must ensure that the lease: <ul style="list-style-type: none">• is subordinate to the Security Instrument;• contains an acceptable termination for cause provision; and• meets recognized industry standards.

➔ Guidance

Non-Material Commercial Lease Type	
Storage Unit Lease	You do not need to subordinate the lease to the Lien of the Security Instrument if you determine that the unit is being leased pursuant to a residential Lease.

107.03 Short Term Rentals

☑ Requirements

You must ensure that:

- the residential nature of any Property with units available for STR is maintained, even though any Lease of an STR unit will be
 - classified as a commercial lease, and
 - subject to the space and income limitations per Form 4660;
- no more than 5% of the Property's units (not counting recreational vehicle sites) are available for STR; and
- the Underwritten NCF accurately incorporates all STR income.

You must include the following information in your underwriting analysis:

- a description of the STR arrangement;
- length of time the STR has been in place;
- Borrower's action plan for handling liability issues for
 - STR tenants at the Property, and
 - safety concerns for non-STR tenants;
- Borrower's strategy for implementing STR;
- whether the STR units are furnished or unfurnished;



- confirmation that the STR is legally permissible and in compliance with applicable laws and zoning;
- confirmation that the Borrower's or master tenant's insurance covers any STR; and
- confirmation that the Property is residential in nature (i.e., not operated as a hotel or other single room occupancy arrangement).

Guidance

Examples of an STR arrangement include an arrangement between the Borrower and:

- a tenant/master tenant, where the tenant/master tenant has an agreement with an STR provider or platform (such as Airbnb, VRBO®, etc.); or
- an STR provider or platform, where the Borrower's tenants may make their units available for STR.

You should seek to establish a leasing history of at least 12 months for any STR unit.



Glossary

A

Affiliate

When referring to an affiliate of a Lender, any other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.

When referring to an affiliate of a Borrower or Key Principal:

- any Person that owns any direct ownership interest in Borrower or Key Principal;
- any Person that indirectly owns, with the power to vote, 20% or more of the ownership interests in Borrower or Key Principal;
- any Person Controlled by, under common Control with, or which Controls, Borrower or Key Principal;
- any entity in which Borrower or Key Principal directly or indirectly owns, with the power to vote, 20% or more of the ownership interests in such entity; or
- any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

Synonyms

- Affiliates

B

Borrower

Person who is the obligor under the Note.

Synonyms

- Borrowers
- Borrower's

E



Effective Gross Income On an annual basis or any specified period, the total of Net Rental Income plus other income per [Part II, Chapter 2: Valuation and Income, Section 202: Income Analysis](#) and the applicable products and features in Part III.

Synonyms

- EGI

F

Foreclosure Event Any of the following:

- Foreclosure under the Security Instrument;
- any other exercise by the Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which the Lender (or its designee or nominee) or a third-party purchaser becomes owner of the Property;
- delivery by the Borrower to the Lender (or its designee or nominee) of a deed or other conveyance of the Borrower's interest in the Property in lieu of any of the foregoing; or
- in Louisiana, any dation en paiement.

Form 4660 Multifamily Underwriting Standards identifying Pre-Review Mortgage Loans and containing the minimum underwriting requirements (e.g., debt service coverage ratio, loan to value ratio, interest only, underwriting floors, etc.) for all Mortgage Loans.

Synonyms

- Multifamily Underwriting Standards

I

Improvements Buildings, structures, improvements, and alterations, including the multifamily housing dwellings, now constructed or hereafter constructed or placed on the land upon which the Property is located, together with all fixtures (as defined in the Uniform Commercial Code).



K

Key Principal

Person(s) who control and/or manage the Borrower or the Property, are critical to the successful operation and management of the Borrower and the Property, and who may be required to provide a Guaranty.

Synonyms

- Key Principals

L

Lease

Written agreement between an owner and the tenant of a Property stipulating the conditions for possession and use of real estate for a specified period of time and rent.

Synonyms

- Leases

Lender

Person approved by Fannie Mae to sell or service Mortgage Loans.

Synonyms

- Lenders
- Lender's

Lien

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

Synonyms

- Liens

Loan Documents

All documents evidencing, securing, or guaranteeing the debt obligation executed for a Mortgage Loan and approved by Fannie Mae.

Synonyms

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents



M

Material Commercial Lease

Lease, sublease, license, concession, grant, or other possessory interest for commercial purposes that comprises 5% or more of the Property's annual EGI, or relates to:

- solar power, thermal power generation, or co-power generation, or for the installation of solar panels or any other electrical power generation equipment, and any related power purchase agreement; or
- any Property dwelling units leased to an Affiliate of the Borrower, any Key Principal, or any Principal.

Synonyms

- Material Commercial Leases

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

Principal

Person who owns or controls specified interests in the Borrower per Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 303: Key Principals, Principals, and Guarantors.

Synonyms

- Principals

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.

Servicing File File for each Mortgage Loan serviced by the Lender.

Synonyms

- Servicing Files

SNDA Subordination, Non-Disturbance and Attornment Agreement