



# Multifamily Selling and Servicing Guide

Effective as of November 25, 2019

No portion of this Multifamily Selling and Servicing Guide may be reproduced in any form or by any means without Fannie Mae's prior written permission, except as may be provided herein or unless otherwise permitted by law. Limited permission to reproduce this Multifamily Selling and Servicing Guide in print, in whole or in part, and limited permission to distribute electronically parts of this Multifamily Selling and Servicing Guide, are granted to Fannie Mae-approved Lenders strictly for their own use in originating and selling multifamily Mortgage Loans to, and servicing multifamily Mortgage Loans for, Fannie Mae. Fannie Mae may revoke this limited permission by sending 60 days advance written notice to any or all Fannie Mae-approved Lenders.



## TABLE OF CONTENTS

---

Part II Section 107.01 Material Commercial Leases .....	3
107.01A Lease Review .....	3
107.01B Lease Approval .....	3
107.01C Lease Modifications .....	4
107.01D Tenant Estoppel Certificate .....	4
107.01E Subordination, Non-Disturbance and Attornment .....	4
GLOSSARY .....	6



## 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 <a href="#">Part II, Chapter 1: Attributes and Characteristics, Section 107: Commercial Leases</a> .

➔ 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.



# Glossary

## B

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

**Synonyms**

- Borrowers
- Borrower's

## 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.

## 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**

## 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