Fannie Mae®

Multifamily Selling and Servicing Guide

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111.01 Material Commercial Leases

111.01A Lease Review

Requirements

You must analyze all aspects of each Material Commercial Lease and its

- tenants,
- grantees, or
- other beneficiaries.

If Material Commercial Lease approval is required per Part II, Chapter 1: Attributes and Characteristics, Section 111.01B: 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 if:

- each tenant has the ability to fulfill its financial and other performance obligations under the Material Commercial Lease;
- the Material Commercial Lease insurance provisions are consistent with the insurance requirements in the applicable Loan Documents or otherwise prescribed by Fannie Mae;
- each tenant is required to obtain the Lender's consent before the Material Commercial Lease is
  - assigned,
  - subleased,
  - subcontracted, or
  - otherwise transferred; and
- the tenant
  - has early termination clauses, and
  - understands the conditions under which they can terminate, including

- 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.

111.01B 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.
Renewable Energy Generation Lease	You must only approve leases for renewable energy systems that comply with Part II, Chapter 1: Attributes and Characteristics, Section 112: Renewable Energy Generation Systems.
Other Material Commercial Leases	You must only approve other Material Commercial Leases that comply with Part II, Chapter 1: Attributes and Characteristics, Section 111: Commercial Leases.

111.01C Lease Modifications

☑ Requirements

As you review each Material Commercial Lease modification, you must consider if it:

- violates any of the requirements of this Section;
- contains terms that are inconsistent with the Mortgage Loan; or
- presents risks that are inappropriate for the Mortgage Loan.

If any of these conditions are present 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).

111.01D Tenant Estoppel Certificate

☑ Requirements

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

111.01E Subordination, Non-Disturbance and Attornment

☑ Requirements

You must use Form 6415 if:

- the Material Commercial Lease contains provisions for the Borrower to assume liability or other risks as landlord that would be unacceptable to the Lender in case of a Foreclosure Event; or
- the form
  - is necessary for subordination and attornment, or
  - would otherwise be beneficial.

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 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.

G

Guide	Multifamily Selling and Servicing Guide controlling all Lender and Servicer requirements unless a Lender Contract specifies otherwise. **Synonyms** • DUS Guide

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 Fannie Mae approved 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 Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan. **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 comprising 5% or more of the Property's annual EGI, or • relating to: - solar power, thermal power generation, or co-power generation, or 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 ▪ a Borrower Affiliate, ▪ 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 • Mortgage Loan's

P

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	MBS, PFP MBS, or REMIC. **Synonyms** • Securities
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
Servicing File	Your file for each Mortgage Loan serviced. **Synonyms** • Servicing Files