



Multifamily Selling and Servicing Guide

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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.



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.

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

Lien

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

Synonyms

- Liens

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.