



Fannie Mae®

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# Multifamily Selling and Servicing Guide

Effective as of August 29, 2025

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## **109.02** Non-Material Commercial Leases

### **109.02A** 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](#).

### **109.02B** Non-Material Commercial Lease Types

#### Requirements



Non-Material Commercial Lease Type	
Telecommunications and Cell Tower Leases	<p>You must review any telecommunications and cell tower lease to ensure it does not:</p> <ul style="list-style-type: none"> <li>• comprise more than 5% of the Property's Effective Gross Income;</li> <li>• negatively impact the Property's <ul style="list-style-type: none"> <li>- value,</li> <li>- visibility,</li> <li>- livability, or</li> <li>- marketability;</li> </ul> </li> <li>• impose an undue financial or operating burden on the Property or the Borrower;</li> <li>• obligate the Borrower to rebuild any Improvements at the Property post-casualty or condemnation;</li> <li>• have a lease term (including extension options) in excess of 25 years;</li> <li>• contain a purchase option; or</li> <li>• 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.).</li> </ul>
Communications Service Agreement	<p>You do not need to subordinate the service agreement to the Lien of the Security Instrument if:</p> <ul style="list-style-type: none"> <li>• the Borrower certifies to you that neither the Borrower, nor any Key Principal or Principal, is an Affiliate of the communications service provider; and</li> <li>• 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.</li> </ul> <p>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.</p>



Non-Material Commercial Lease Type	
Mineral Rights; Oil and Natural Gas Leases	<p>You must review each agreement or 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"><li>• comprise more than 5% of the Property's Effective Gross Income;</li><li>• grant surface entry for any purpose (e.g., pipes, access across, or storage on the Property);</li><li>• grant subsurface rights within<ul style="list-style-type: none"><li>- 250 feet below the surface of the Property, or</li><li>- 600 feet from any Property boundary line;</li></ul></li><li>• have a material adverse effect on<ul style="list-style-type: none"><li>- public health and safety,</li><li>- air quality or noise levels, or</li><li>- the Property's marketability or occupancy;</li></ul></li><li>• permit oil or gas well activities with potential negative effects on the Property's<ul style="list-style-type: none"><li>- access,</li><li>- visibility, or</li><li>- storm water drainage;</li></ul></li><li>• have a negative effect on the Property's<ul style="list-style-type: none"><li>- zoning, or</li><li>- allowable density;</li></ul></li><li>• facilitate drilling, storage, or processing of oil or gas on the Property or any adjacent property; or</li><li>• 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 oil and gas exploration or drilling activities.</li></ul> <p>The Borrower must execute <a href="#">Form 6262</a> if a lease or deed reservation of rights allows for the subsurface exploration of oil, natural gas, or minerals, but no evidence of active or planned exploration or drilling exists on the Property.</p>



Non-Material Commercial Lease Type	
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"><li>• is not with an Affiliate of the Borrower or any Key Principal or Principal;</li><li>• has market terms;</li><li>• contains an acceptable termination for cause provision; and</li><li>• meets recognized industry standards.</li></ul>
Equipment or Related Maintenance Services Lease	<p>You must ensure that the lease:</p> <ul style="list-style-type: none"><li>• is subordinate to the Security Instrument;</li><li>• contains an acceptable termination for cause provision; and</li><li>• meets recognized industry standards.</li></ul>

➔ Guidance

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



# 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
- Affiliate's

## B

### Borrower

Person who is the obligor per 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 203: Income Analysis](#) and the applicable products and features in Part III.

### **Synonyms**

- EGI

## **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.

## **I**

### Improvements

Buildings, structures, improvements, and alterations, including the multifamily housing dwellings, now or hereafter constructed or placed on the Property, including all fixtures (as defined in the UCC).

### **Synonyms**

- Improvements'

## **K**





## Key Principal

Person who

- controls and/or manages the Borrower or the Property,
- is critical to the successful operation and management of the Borrower and the Property, and/or
- may be required to provide a Guaranty.

### **Synonyms**

- Key Principals
- Key Principal's

## 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 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

## Principal

Person who owns or controls, in the aggregate, directly or indirectly (together with that Person's Immediate Family Members, if an individual), 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 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 Instrument

Instrument creating a lien or encumbrance on 1 or more Properties and securing the Loan Document obligations.

### **Synonyms**

- Security Instruments
- Security Instrument's