



Multifamily Selling and Servicing Guide

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Summary of Changes

HIGHLIGHTS
Effective for Mortgage Loans Committed on or after April 15, 2022 , zoning and legally non-conforming status requirements were updated.

Primary Changes

- You must confirm the zoning and land use laws and regulations permit the applicable
 - multifamily housing, or
 - manufactured housing community.
- If affected Improvements cannot, in case of full or partial casualty or condemnation, be rebuilt to the pre-casualty condition, you must:
 - Confirm the Improvements can be reconstructed to support a minimum 1.00 amortizing DSCR if non-conformance would result in a loss of 20% or more of the Property's units.
 - Require the Borrower to execute Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275).

Questions

Please contact Daniel Maisel at (202) 752-3155, or daniel_e_maisel@fanniemae.com, with any questions.



Chapter 3

Legal Compliance

Section 301

Zoning and ~~Legal~~ Legally Non-Conforming Uses ~~Status~~

Requirements

For each Property, you must:

- Identify the current zoning or land use designation.
- Determine whether the use and Property characteristics conform to those designations.
- Confirm the zoning and land use laws and regulations permit the applicable
 - multifamily housing, or
 - manufactured housing community.

If the Property's use and/or characteristics are a ~~legal~~ legally non-conforming ~~use~~ under applicable zoning and/or land use laws and regulations and the affected Improvements cannot be rebuilt to the pre-casualty condition per current zoning requirements and building codes, you must:

- Analyze the impact on the Mortgage Loan if the Borrower is not allowed to rebuild the Property as is under current law.
- ~~The Improvements must be able to be reconstructed per current zoning requirements to a level that would support a minimum 1.00 amortizing DSCR in case of~~
 - ~~partial condemnation, or~~
 - ~~full or partial casualty.~~
- If non-conformance would result in a loss of 20% or more of the Property's unit count, confirm the Improvements can be reconstructed per current zoning requirements and building codes to a level that would support a minimum 1.00 amortizing DSCR in case of
 - partial casualty or condemnation, or
 - full casualty and assuming the insurance proceeds are insufficient to fully prepay the Mortgage Loan.



- Require the Borrower to execute Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275).

If you order a Zoning Report for the Property from a zoning consultant, you must:

- deliver structured data per the Zoning Report Data Supplement (Form 4089); and
- include a report narrative.

➔ Guidance

To assess the Borrower's ability to rebuild Improvements on a non-conforming Property to a level that would support a minimum 1.00 amortizing DSCR, you should consider:

- the continued marketability and economic viability of the Property;
- the percentage of damage that could occur before the Property would be forced to comply with current zoning and land use requirements, and how to apply that percentage to the Property's market value, assessed value, replacement cost, or unit count;
- for Properties with multiple buildings, whether the percentage of damage would need to apply to a single building or the whole complex before being forced to comply with current zoning and land use requirements; and
- the amount and type of insurance coverage maintained by the Borrower and required per Part II, Chapter 5: Property and Liability Insurance, Section 501.02C: Ordinance or Law Insurance, and the insurance loss proceeds payout, compared to increased rebuilding costs from
 - building code changes,
 - Americans with Disabilities Act compliance, and
 - the municipality's local zoning requirements (e.g., green compliance for new buildings, etc.).

Section 302

Easements

Requirements



You must evaluate:

- the impact of all easements (public and private), including their effect on the [Property's](#) value and marketability; and
- the impact on life safety issues, environmental risks, and acceptability in the market area for certain types of easements, such as for
 - transcontinental pipelines,
 - high power electric transmission lines, or
 - drainage channels.

Guidance

Easements for normal utilities are generally acceptable, including those that provide natural gas, water, sewer, electricity, or telephone service to the [Property](#).

Easements that serve other properties will generally be acceptable if they

- do not interfere with [Improvements](#) on the [Property](#),
- are limited to residential and reasonable commercial use, and
- are covered by appropriate insurance.

Section 303 Liens and Encumbrances

303.01 Generally

Requirements

You must ensure that the [Property](#) is free of all [Liens](#) and rights of others, except for

- [Permitted Encumbrances](#), and
- cable and laundry leases per [Part II, Chapter 1: Attributes and Characteristics, Section 108: Commercial Leases](#).

You must analyze any restrictions on [Improvements](#) or the use of the [Property](#), in order to



- determine whether the restrictions are acceptable, and
- make recommendations for addressing the restrictions.

Examples of restrictions that must be analyzed include restrictive covenants and any restrictions that have been offered, or accepted, in order to obtain a zoning approval or building permit.

If a non-MAH Property has an [Affordable Regulatory Agreement](#), it must be subordinated to the [Security Instrument Lien](#) per [Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 705: Restrictive Covenants and Affordable Regulatory Agreements](#).

➔ Guidance

When determining whether a restriction is acceptable, you should consider whether a restriction could negatively impact the [Property's](#)

- value,
- use,
- security,
- marketability, or
- ability to generate [NCF](#) sufficient to pay debt service.

☑ Requirements

You must analyze the impact of any restriction on the conversion of a [Property](#) to a condominium or similar development.

➔ Guidance

A restrictive covenant on condominium conversions will generally not have a negative impact if all of the following apply:

- The conversion restriction is for a period of 10 years or less.
- Any repurchase option or right of reversion in favor of a benefitted party:
 - is unconditionally subordinated to the [Lien of the Security Instrument](#) and to the [Mortgage Loan](#);
 - includes an unconditional “standstill” provision prohibiting the exercise of such option or right while the [Mortgage Loan](#) is outstanding; and



- automatically ends if a **Foreclosure Event** occurs.
- The covenant provides that no mortgagee, trustee, or beneficiary under any mortgage or deed of trust will be liable for any act, omission, or indemnification obligation of the **Borrower** or any prior or subsequent owner of the **Property**.
- The covenant does not require any mortgagee, trustee, or beneficiary under a mortgage or deed of trust to execute an assumption or similar agreement if a **Foreclosure Event** occurs.

303.02 Property Previously Secured Bond Financing

Requirements

If the Property...	You must...
Previously secured taxable or tax-exempt bonds	<ul style="list-style-type: none">• determine if the Property is subject to any requirements, restrictions or other features that survived repayment, and• analyze whether the surviving features will have a material adverse impact on you, Fannie Mae, or the Mortgage Loan.
Currently secures taxable or tax-exempt bonds that are being retired with proceeds of the Mortgage Loan	<ul style="list-style-type: none">• review the bond documents, and• analyze the impact of any surviving features of the financing.

Guidance

A **Property** that secures, or has secured, bonds may be subject to certain requirements, restrictions, or other features that survive repayment of the bonds such as:

- rent, income, transfer, or other restrictions;
- master lease requirements that support such restrictions; and
- indemnification or other requirements that could
 - burden a future owner,
 - depress the value or marketability of the **Property**, or



- prevent or inhibit foreclosure of a lien securing new financing.

Operating Procedures

For any bonds being retired with the proceeds of a [Mortgage Loan](#), you must prepare a written summary of the bond documents that:

- explains why any surviving features of the financing will not have a materially adverse effect on the [Mortgage Loan](#), the [Property](#), you, or Fannie Mae;
- gives an overview of the redemption process for retiring the bonds; and
- is uploaded into [DUS Gateway](#) prior to [Commitment](#).

Section 304

Title Insurance

Requirements

You must ensure that every [Mortgage Loan](#) is covered by an [ALTA](#) title policy or comparable title policy approved for use in the applicable jurisdiction.

The title policy must:

- be issued by a title company that is authorized to issue title policies where the [Property](#) is located;
- be in the original amount of the [Mortgage Loan](#), including all advances held in escrow or reserves;
- be no less than the amount of the [Mortgage Loan](#) allocated to each [Property](#), if the [Mortgage Loan](#) is secured by multiple properties;
- insure for the benefit of Fannie Mae;
- insure the first priority [Lien](#) of the [Mortgage Loan](#), subject only to the [Permitted Encumbrances](#), unless it is a [Supplemental Mortgage Loan](#);
- be in full force and effect with
 - all premiums paid,
 - no claims made by you or another lender, and
 - no claims paid;



- insure the legal description of the insured property is identical to the legal description of the property shown on any required survey;
- contain:
 - a Comprehensive Endorsement (ALTA Form 9 or equivalent);
 - an Environmental Protection Lien Endorsement (ALTA Form 8 or equivalent) that only takes exception for a statute that could give an environmental protection Lien priority over the Mortgage Loan;
 - a Mortgage Tax Endorsement (ALTA Form 38.06 or equivalent) if the Mortgage Loan is secured by an amended and restated Security Instrument, such as a New York Consolidation, Extension, and Modification Agreement (Form 6025.NY.CEMA), or a Florida Consolidated, Amended, and Restated Mortgage (Form 6025.FL.AR); and
 - appropriate Endorsements such as:
 - Zoning (where available);
 - Condominium;
 - PUD;
 - Variable Rate;
 - Leasehold Mortgage;
 - Location;
 - Unlocated Easements; and/or
 - Contiguity-Multiple Parcel;
- delete the standard survey exception;
- include a note on Schedule B, Part II listing you as the secured party and Fannie Mae as the assignee, for any financing statement filed in the recording office;
- not list any financing statement as an exception on Schedule B, Part I; and
- insure that any taxes, assessments, or other lienable items are not yet due and payable.

304.01 Title Insurance Company



Guidance



The title company should have a satisfactory rating and adequate reserves.

304.02 Policy Form

➔ Guidance

If the policy form meets all requirements of this Section, Fannie Mae will accept the standard 2006 or the 1992 [ALTA](#) forms of title insurance policies.

In those states where [ALTA](#) forms of coverage are not approved by the state insurance board or commission, you should get the closest equivalent alternative coverage.

304.03 Electronic Policies

➔ Guidance

You may use electronically issued title policies if the coverage is enforceable against the insurer.

304.04 Insured

➔ Guidance

The title policy should

- name you as the insured, and
- insure Fannie Mae when the [Mortgage Loan](#) is delivered (either by reference to your “successors and assigns, as their interests may appear” or by direct reference to Fannie Mae).

304.05 Effective Date

➔ Guidance

The effective date of the title policy should not be earlier than when the:

- [Security Instrument](#) is recorded, if a 1992 [ALTA](#) policy form is issued; or
- [Mortgage Loan](#) was funded, if a 2006 [ALTA](#) policy form is issued.



304.06 Survey Exception

→ Guidance

If the title policy includes exceptions to matters shown on a recorded map or plat, the exceptions should be specifically described.

304.07 Exception for Taxes, Assessments, or Other Lienable Items

→ Guidance

If any taxes could become delinquent within 60 days after closing, you should require payment at closing.

304.08 Financing Statements

→ Guidance

Any financing statement not filed in the recording office (such as a Uniform Commercial Code filing) may be shown as an informational note on Schedule B, Part II.

304.09 Endorsements

304.09A Generally

→ Guidance

You should get an appropriate [ALTA](#) form of endorsement that is incorporated into the “base” title policy. In jurisdictions where an [ALTA](#) form is not available, you may include in Schedule B an equivalent form of endorsement or affirmative coverage.

304.09B Environmental Protection Lien Endorsement

→ Guidance

Super Lien statutes that may be included in the [ALTA Form 8.1](#) endorsement are listed in the [Acceptable Super Lien Statutes \(Form 6506\)](#).

304.09C Comprehensive Endorsement

→ Guidance



You should consider whether an adverse circumstance affecting the [Property](#) would be an acceptable exception on Schedule B, Part I. Examples include:

- encroachments onto the [Property](#),
- easements or rights of way over the [Property](#),
- encroachments by the [Improvements](#) onto adjoining land, and
- violations of existing covenants, conditions, and restrictions.

304.10 Document Retention

Guidance

You should keep copies of any restrictions shown as exceptions in the title policy (such as easements and encumbrances) in your [Servicing File](#).

Section 305 Survey

305.01 Decision to Obtain a Survey

Requirements

You must decide whether to get an as-built survey and comply with:

- [Part II, Chapter 3: Legal Compliance, Section 305.02: Survey](#), if you require a survey; or
- [Part II, Chapter 3: Legal Compliance, Section 305.03: Decision Not to Obtain a Survey](#), if you do not require a survey.

305.02 Survey

Requirements

If you require an as-built survey, it must:

- meet the requirements of an [ALTA/NSPS Land Title Survey](#) (made per the 2021 Minimum Standard Detail Requirements), including the required certification; and
- allow the title company to delete the standard survey exception from the title policy.



→ Guidance

An acceptable as-built survey:

- should include these items from Table A to all the [ALTA/NSPS Minimum Standard Detail Requirements](#): 1, 2, 3, 4, 6(a) and (b), 7(a), 8, 9, 10, 13, 16, and 18;
- may omit the following from Table A:
 - item 1 for a [Property](#) with a lot and block legal description; and/or
 - item 10, if there are no party walls; and
- should be dated within 360 days before recording the [Security Instrument](#).

☑ Requirements

If an existing survey dated more than 360 days before the effective date of the title insurance policy is used, it must satisfy all Title Insurance Company requirements for the deletion of the standard survey exception.

→ Guidance

The Title Insurance Company may require a “no new improvements” affidavit from the [Borrower](#) certifying that no changes have been made to the [Property](#) since the date of the survey. An existing survey dated within 360 days before the effective date of the title insurance policy, but not prepared in connection with the origination of the [Mortgage Loan](#), may be recertified to you, the Title Insurance Company, and Fannie Mae for the [Mortgage Loan](#).

You should consider whether an adverse circumstance found by a survey would be acceptable. Examples include:

- encroachments over boundary lines, setback lines, or easements; and
- the absence of necessary appurtenant easements, such as a storm or sanitary sewer easement.

305.03 Decision Not to Obtain a Survey

☑ Requirements



If you do not require an as-built survey:

- either you or the appraiser must conduct a visual inspection of the [Property](#);
- any visible site condition (such as an easement, right-of-way, or encroachment) must be disclosed and insured under the title policy; and
- the title company must delete the standard survey exception from the title policy.

305.04 Location of Improvements

Requirements

Whether or not you decide to get an as-built survey, [Part II, Chapter 5: Property and Liability Insurance, Section 501.03: Catastrophic Risk Insurance](#) requires you to determine if any [Improvements](#) are located in an [SFHA Zone A or Zone V](#).

Section 306 Security Interests in Personal Property

306.01 Uniform Commercial Code (UCC) Financing Statements

Requirements

You must:

- Ensure that the [Security Instrument](#) creates a [Lien](#) on all [Personal Property](#).
- Ensure that the [Lien](#) is a perfected first priority [Lien](#).
- Assign each [UCC](#) security interest to Fannie Mae.

306.02 Creating and Perfecting the Security Interest

Guidance

Article 9 of the [UCC](#) covers the perfection of a security interest in [Personal Property](#).

The following table describes how to create and perfect a security interest.



To...	Do the following...
Establish whether the Borrower or a third party owns the Personal Property	Confirm that the Borrower has provided a representation of ownership in the Underwriting Certificate (Borrower) (Form 6460).
Verify that no other party has a Lien on the Personal Property	Conduct searches for UCC financing statements, tax Liens, and judgments on all relevant parties to the transaction.
Obtain a perfected first security interest in the Personal Property	<ul style="list-style-type: none">• Obtain a security agreement from each third party that owns Personal Property.• Verify that the Security Instrument and each third party security agreement contains a granting clause creating a security interest in all Personal Property.• File a UCC-1 financing statement in the appropriate filing and recording office(s), with a description that matches the security interest granted in the Security Instrument.
Assign the security interest from you to Fannie Mae	File an appropriate assignment (e.g., UCC-1Ad; UCC-3) in the same office(s) where the UCC-1 is filed or recorded.