



# Multifamily Selling and Servicing Guide

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## TABLE OF CONTENTS

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Summary of Changes .....	3
Part II Chapter 1 Attributes and Characteristics .....	4
Section 101 Generally .....	4
Section 102 Multiple Parcels .....	4
Section 103 Property Ownership; Leasehold .....	5
Section 104 Ground Leased Properties .....	5
104.01 Generally .....	5
104.02 Ground Lease Rents .....	6
104.03 Ground Lease Estoppel Certificate .....	6
104.04 Ground Lease Review .....	6
Section 105 Minimum Occupancy .....	6
105.01 Residential Occupancy .....	6
105.02 Qualified Occupants .....	7
Section 106 Certificates of Occupancy .....	7
Section 107 Phased Properties .....	8
Section 108 Commercial Leases .....	10
108.01 Material Commercial Leases .....	10
108.01 A Lease Review .....	10
108.01 B Lease Approval .....	11
108.01 C Lease Modifications .....	12
108.01 D Tenant Estoppel Certificate .....	12
108.01 E Subordination, Non-Disturbance and Attornment .....	12
108.02 Non-Material Commercial Leases .....	13
108.02 A Tenant Estoppel Certificate; Lease Modification .....	13
108.02 B Non-Material Commercial Lease Types .....	13
108.03 Short Term Rentals .....	17
Section 109 Renewable Energy Generation Systems .....	18
109.01 Acceptable Renewable Energy Generation Systems .....	18
109.02 Solar Photovoltaic Systems .....	19
109.03 Solar PV System Module .....	20
109.04 Underwritten NCF .....	20
Section 110 Oil/Gas Wells and Mineral Exploration .....	21
110.01 Active Oil and Gas Wells .....	21
110.02 Inactive Oil and Gas Wells .....	22
Section 111 Property Management and Agreement .....	22
111.01 Property Management .....	22
111.02 Property Management Agreement .....	23



# Summary of Changes

HIGHLIGHTS
<b>For Mortgage Loans Committed on or after July 13, 2021</b> , Ground Lease Estoppel Certificate requirements in Part II, Chapter 1: Attributes and Characteristics were updated.

## Primary Change

Clarified that a Ground Lease Estoppel Certificate cannot be used to amend the Ground Lease. This change aligns with:

- a 4th Circuit Court of Appeals decision that an estoppel does not amend the lease; and
- the recently updated Ground Lease Review Checklist ([Form 6479](#)) drafting Note.

## Questions

Please contact the Fannie Mae Deal Team with any questions.



## Chapter 1 Attributes and Characteristics

### Section 101 Generally

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#### Requirements

For a [Mortgage Loan](#) to be eligible for purchase, it must be secured by a multifamily residential property that meets all of the following:

- contains at least 5 dwelling units;
- has suitable bathroom and cooking facilities located within each unit;
- is located in 1 of the 50 states of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam;
- is located on a publicly dedicated, all-weather road, or is accessible by a satisfactory easement from this type of road;
- consists of either a single parcel or multiple parcels per [Part II, Chapter 1: Attributes and Characteristics, Section 102: Multiple Parcels](#);
- any commercial space is physically part of, and connected to, the multifamily space, or a stand-alone building that is on the same tax parcel;
- has adequate water and sewer service, which may be delivered by a public utility or, where commercially acceptable for the market area, by a private system or utility;
- offers a suitable level of utility service (e.g., electrical, natural gas, plumbing, refuse removal, etc.) for the market area;
- either complies with all applicable statutes, rules, regulations, and housing and building codes, or is being appropriately remediated;
- does not contain any [Modular Housing](#); and
- has access to police and emergency services.

### Section 102 Multiple Parcels

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#### Requirements

When a [Property](#) consists of non-contiguous multiple parcels, the multifamily units on each parcel must individually:

- comply with the minimum occupancy requirements in [Part II, Chapter 1: Attributes and Characteristics, Section 105: Minimum Occupancy](#),



or Part III, Chapter 9: Small Mortgage Loans, Section 903: Occupancy;

- be located in the same MSA; and
- have an acceptable Property condition based on your site inspection and any PCA.

### Guidance

When a Property consists of non-contiguous multiple parcels, you should also consider whether the Property:

- has historically, and will continue to, operate as a single project;
- if separated by a major thoroughfare primarily intended for traffic traveling through the area (rather than a street primarily intended to provide access to the Property), can be managed effectively by the Borrower;
- has amenities located on any parcel that are available to all Property tenants;
- has reciprocal agreements and easements in place; and
- is adversely affected by material differences in rent among the parcels.

## Section 103 Property Ownership; Leasehold

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### Requirements

You must ensure that the Property is owned in fee simple, unless the Property is held under an acceptable Leasehold estate.

## Section 104 Ground Leased Properties

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### 104.01 Generally

### Requirements

If the Property has a Ground Lease, the Mortgage Loan collateral must include a Lien on the Leasehold estate.

You must ensure that the Ground Lease complies with the Ground Lease Review Checklist (Form 6479), unless

- the ground lessor joins with the Borrower in executing the Security



Instrument and grants a Lien on the ground lessor's fee estate, or

- the absence of the Leasehold estate would not have a material adverse effect on the operation or value of the Property.

#### 104.02 Ground Lease Rents

##### Requirements

You must establish an escrow for ground rents and ensure that the Borrower deposits sufficient funds for you to make all payments due under the Ground Lease.

#### 104.03 Ground Lease Estoppel Certificate

##### Requirements

You must obtain an executed Ground Lessor Estoppel Certificate that: (Form 6495).

- follows Modifications to Multifamily Loan and Security (Ground Lease Defaults) (Form 6206); and
- includes any provisions required by Form 6479 that are not already contained in the Ground Lease.

#### 104.04 Ground Lease Review

##### Requirements

You must:

- review and analyze the Ground Lease to ensure compliance with the requirements of this Section; and
- retain the completed Form 6479 in your Servicing File.

### Section 105 Minimum Occupancy

#### 105.01 Residential Occupancy

##### Requirements

You must ensure that the Property meets the following minimum occupancy levels:



- 85% physical occupancy; and
- 70% economic occupancy.

These minimum levels apply at the time of the [Commitment](#) and for the preceding 3-month period.

## 105.02 Qualified Occupants

### Requirements

When calculating physical occupancy, you must only include tenants who

- physically occupy the unit, and
- have commenced paying rent.

### Guidance

You may include any tenant who:

- was under a standard lease for at least 6 months, then converted to a month-to-month lease when the lease expired; or
- is under a lease with a term of less than 6 months, if shorter-term leases
  - are commonly accepted in the market area, and
  - do not reflect weakness in the market.

You may include non-revenue producing units such as

- management units,
- employee occupied units,
- maintenance units, and
- model units.

Such units should not exceed what is usual and customary for stabilized properties in the market.

## Section 106

## Certificates of Occupancy

### Requirements



For any **Property** with construction or rehabilitation work completed within the last 12 months, you must:

- ensure that all units have a certificate of occupancy;
- obtain copies of all certificates of occupancy from the **Borrower**; and
- retain them in your **Servicing File**.

For all other **Properties**, you must:

- determine whether each unit had a certificate of occupancy at some point;
- attempt to obtain copies of all certificates of occupancy; and
- retain them in your **Servicing File**.

### Guidance

If you are unable to obtain copies of certificates of occupancy for a **Property** (for example, because of the age of the **Property** or the records of the jurisdiction where it is located), you should look for other evidence that certificates of occupancy had been issued.

If you cannot obtain a copy or other sufficient evidence of a certificate of occupancy, you should analyze the risk to the **Property** if one had never been issued, by considering whether:

- your physical inspection reveals any life safety issues;
- all units are accessible through normal access routes (and not, for example, through a former janitorial closet);
- the insurance excludes coverage of a casualty originating from a unit without a certificate of occupancy; and
- the **Property** is located in a market that exhibits low vacancies and barriers to entry.

You should exclude the income generated by any units without a certificate of occupancy but include all expenses (including replacement reserves) for the maintenance of such units.

## Section 107

### Phased Properties

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#### Requirements

If the **Property** is a **Phased Property**, you must evaluate





- how the **Property** will be affected by other phases of the complex, and
- whether the **Property** will be able to succeed independently from other phases.

### ➔ Guidance

In determining whether a **Phased Property** is viable as a separate **Property**, you should consider whether:

- its ownership and operation are separate from all other phases of the complex;
- the **Borrower** is able to provide a separate leasing office for the **Property**;
- your underwriting has discounted any benefits derived from staff or facilities that the **Property** shares with other phases;
- the records and accounts used to underwrite the **Property** are separate from the records and accounts of other phases;
- the **Property** is marketable to tenants or a new owner, separately from other phases;
- the **Property** is visible to the public without passing through another phase of the complex;
- the **Property** is accessible from a public roadway;
- any cross-easements for the complex will survive an adverse action against another phase; and
- any development of a future phase could materially interfere with or disturb the occupancy, marketability, or living environment of the **Property**.

In assessing the impact of future phases on a **Property**, you should consider

- the short-term impact of construction activity, and
- long-term implications for the continued economic viability of the **Property**, taking into account the allocation of costs for shared facilities (such as roadways).

### ☑ Requirements

You may only **Deliver a Mortgage Loan** on a **Phased Property** if Fannie



Mae holds all other Mortgage Loans secured by other phases of the complex.

When the Phased Property is owned or Controlled by the same Borrower or Principals as the other phases in the complex:

- all Fannie Mae Mortgage Loans on each phase must be cross-defaulted and cross-collateralized;
- when any new Phased Property Mortgage Loan is underwritten, the actual amortizing DSCR (per Form 4254.DEF) and current LTV for all existing Mortgage Loans on each phase must comply with Form 4660 for the same loan term, product, and Pricing and Underwriting Tier, where each property value is determined by
  - dividing the current NCF by the capitalization rate (i.e., a Direct Cap with Sales Comparables analysis),
  - broker's opinion of value, or
  - most recent Appraisal; and
- the new Phased Property Mortgage Loan must have a Prepayment Premium Period End Date that is on or before the Prepayment Premium Period End Date of the other Mortgage Loans on the other phases.

#### ➔ Guidance

If a future phase is expected, consider issuing the first phase MBS with a potential future cross.

## Section 108 Commercial Leases

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### 108.01 Material Commercial Leases

#### 108.01A 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 108.01B: 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.

## 108.01B Lease Approval

### Requirements

Material Commercial Lease Type	
Lease with Property Assessed Clean Energy (PACE) Financing	You must not approve any <a href="#">Material Commercial Lease</a> that includes PACE financing.
Solar Power or Other Power Generation Lease	You must only approve leases for renewable energy systems that comply with <a href="#">Part II, Chapter 1: Attributes and Characteristics, Section 109: Renewable Energy Generation Systems</a> .



Material Commercial Lease Type	
Other Material Commercial Leases	You must only approve other <a href="#">Material Commercial Leases</a> that comply with <a href="#">Part II, Chapter 1: Attributes and Characteristics, Section 108: Commercial Leases</a> .

### 108.01C 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 \(Form 6415\)](#).

### 108.01D Tenant Estoppel Certificate

#### Requirements

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

### 108.01E 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.

## 108.02 Non-Material Commercial Leases

### 108.02A 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.

### 108.02B 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

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:

- 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 oil and gas exploration or drilling activities. The **Borrower** must execute **Form 6262** 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**.





Non-Material Commercial Lease Type	
Laundry Lease	You do not need to subordinate the lease to the Lien of the Security Instrument if you confirm that the lease: <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	You must ensure that the lease: <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	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.

**108.03** Short Term Rentals

Requirements

You must ensure that:

- the residential nature of any Property with units available for STR is maintained, even though any Lease of an STR unit will be
  - classified as a commercial lease, and
  - subject to the space and income limitations per Form 4660;
- no more than 5% of the Property's units (not counting recreational



vehicle sites) are available for STR; and

- the Underwritten NCF accurately incorporates all STR income.

You must include the following information in your underwriting analysis:

- a description of the STR arrangement;
- length of time the STR has been in place;
- Borrower's action plan for handling liability issues for
  - STR tenants at the Property, and
  - safety concerns for non-STR tenants;
- Borrower's strategy for implementing STR;
- whether the STR units are furnished or unfurnished;
- confirmation that the STR is legally permissible and in compliance with applicable laws and zoning;
- confirmation that the Borrower's or master tenant's insurance covers any STR; and
- confirmation that the Property is residential in nature (i.e., not operated as a hotel or other single room occupancy arrangement).

### Guidance

Examples of an STR arrangement include an arrangement between the Borrower and:

- a tenant/master tenant, where the tenant/master tenant has an agreement with an STR provider or platform (such as Airbnb, VRBO®, etc.); or
- an STR provider or platform, where the Borrower's tenants may make their units available for STR.

You should seek to establish a leasing history of at least 12 months for any STR unit.

## Section 109

## Renewable Energy Generation Systems

### 109.01 Acceptable Renewable Energy Generation Systems

#### Requirements



An operational renewable energy generation system located on the **Property** must be:

- comprised of a **Solar PV System**;
- **Borrower**-owned; and
- installed or begin installation on or before the **Mortgage Loan Origination Date**.

## 109.02 Solar Photovoltaic Systems

### Requirements

For any **Property** with an acceptable **Solar PV System**, you must ensure:

- All equipment, including energy storage, is located on the **Property** and owned by the **Borrower**.
- The **Borrower** has all required permits, licenses, and certificates to comply with all utility tariffs and laws governing the
  - generation,
  - storage,
  - transmission, and
  - distribution of electricity.
- The **Property** will remain connected to the utility grid even if the **Solar PV System** output is sufficient for all of the **Property's** energy needs.
- The **Borrower** will not be characterized or regulated as a public utility.
- Any power generated from the **Solar PV System** that is not consumed or stored on-site is only sold to the local utility, not to any other third party.
- Any battery storage system is designed only for on-site uses (e.g., peak shaving), and the **Borrower** has not arranged for ancillary services with any utility or third party.
- The **Borrower** executes Modifications to Multifamily Loan and Security Agreement (Mortgage Loan with installed Solar Photovoltaic System) (Form 6270).

### Guidance

You should engage legal counsel with solar photovoltaic system



experience and state-specific knowledge to review all applicable local laws, contracts, and agreements regarding the [Solar PV System](#) installation and operation, including:

- the interconnection agreement with local distribution company or utility;
- any net metering agreements;
- engineering, procurement, and construction contracts or agreements;
- any Operating and Maintenance Agreements;
- notice of Permission to Operate (or similar document) provided by local distribution company or utility;
- any supplemental financing or financing incentives (e.g., grants, tax credits, etc.) used by the [Borrower](#) to finance the [Solar PV System](#) to determine if any competing liens or other restrictions might result;
- any leases or contractual arrangements, such as agreements for
  - renewable energy certificates,
  - solar renewable energy certificates, or
  - purchasing power; and
- confirming that [Borrower](#) will not be deemed a public utility.

### 109.03 Solar PV System Module

#### Requirements

The [PCA](#) must include an evaluation of the [Solar PV System](#) equipment and roofs/structures where the equipment is mounted per the [Solar PV Module of Form 4099](#).

### 109.04 Underwritten NCF

#### Requirements

When calculating [Underwritten NCF](#):

- do not include any income derived from the [Solar PV System](#), except for tenant utility reimbursement;
- any utility reimbursement income must
  - not exceed the trailing 12-month period, and
  - consider any decrease from the lower utility expense;



- utility expense must be supported by the trailing 12-month operating history;
- include all additional **Solar PV System** operating expenses such as:
  - operating and maintenance contract fees;
  - fixed utility fees;
  - incremental real estate taxes;
  - insurance coverage; and
  - replacement reserves for equipment replacement and/or system removal and reinstallation upon roof replacement.

## Section 110 Oil/Gas Wells and Mineral Exploration

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### 110.01 Active Oil and Gas Wells

#### Requirements

You must ensure that the **Property** has no evidence of any surface entry related to active mineral, oil, or gas activities.

For **Properties** with mineral, oil, or gas exploration on an adjacent property, you must:

- Identify whether the mineral, oil, or gas exploration is active or inactive.
- Deliver a **Phase I ESA** for the **Property** reporting no Recognized Environmental Conditions.
- Confirm:
  - all mineral, oil, or gas equipment is located more than 600 feet from any **Property** boundary line;
  - the mineral, oil, or gas exploration on the adjacent property does not impact the health or safety of the **Property's** tenants or have a material adverse impact to its marketability;
  - the adjacent property is not owned by an **Affiliate** of the **Borrower**; and
  - either:
    - there is no history of spills or leaks; or
    - if spills or leaks have occurred, all applicable permits are in place.



## → Guidance

Evidence of active mineral, oil, or gas activities on the [Property](#) may include:

- wells associated with mineral, oil, or gas production, exploration, or extraction;
- actively storing or processing mineral, oil, or gas; or
- pits, ponds, or lagoons associated with oil and gas exploration or production.

### 110.02 Inactive Oil and Gas Wells

#### Requirements

You must ensure that the [Property](#) has no evidence of inactive mineral, oil, or gas equipment, unless:

- the [Property's Phase I ESA](#) is acceptable;
- if the [Property](#) is subject to an oil and gas lease, the lease complies with [Part II, Chapter 1: Attributes and Characteristics, Section 108.02B: Non-Material Commercial Lease Types](#); and
- for a refinance, all mineral, oil, or gas equipment has been removed, capped, and closed per regulatory requirements before closing, and you have a permit or closure letter from the governing authority; or
- for an acquisition, you:
  - require the mineral, oil, or gas equipment/wells to be removed, capped, and closed per regulatory requirements within 180 days after the [Mortgage Loan](#) closing;
  - escrow the applicable cost to remove equipment, close wells, and remediate the site per regulatory requirements;
  - receive a permit or closure letter from the governing authority; and
  - modify the Environmental Indemnity Agreement as required by Fannie Mae.

## Section 111 Property Management and Agreement

### 111.01 Property Management

#### Requirements



You must ensure that the **Property's** management team is adequate.

### ➔ Guidance

Fannie Mae does not require an independent, professional management company. However, when analyzing **Property** management, you should consider whether the management team:

- has adequate experience to ensure effective administration, leasing, marketing, and maintenance of the **Property**; and
- is staffed appropriately for the type and size of the **Property** and the services provided.

## 111.02 Property Management Agreement

### ☑ Requirements

If the **Borrower** is not the **Property** manager, you must ensure:

- that the **Borrower** has a written management agreement with a **Property** management company that allows for cancellation by the **Lender** without penalty or prior notice in case of a **Borrower** default under the **Mortgage Loan**; or
- the **Borrower** and **Property** manager complete the Assignment of Management Agreement (Form 6405).

### ➔ Guidance

You should ensure that the **Property** management agreement clearly states

- the responsibilities of the **Property** manager, and
- the amount of the management fee (or describes the method for determining the fee).