



Fannie Mae®

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# Multifamily Selling and Servicing Guide

Effective as of September 8, 2023

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# Summary of Changes

## HIGHLIGHTS

**Effective for all Mortgage Loans as of September 8, 2023**, requirements for preventing suspicious activity, including mortgage fraud and money laundering, throughout the Mortgage Loan term were clarified.

### Primary Change

Clarified requirements for you to establish and maintain effective procedures and controls, similar to those required by the Bank Secrecy Act, for prevention of mortgage fraud suspicious activity.

### Questions

If you have questions, please contact:

- the Fannie Mae Deal Team; or
- Lender Risk Management, at [lender\\_risk\\_management@fanniemae.com](mailto:lender_risk_management@fanniemae.com).



## Chapter 3

## Borrower, Guarantor, Key Principals, and Principals

### Section 301

### Generally

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#### Requirements

You must:

- perform a risk assessment of the Borrower, Guarantor, Key Principals, and Principals based ~~solely~~ on objective credit standards; and
- ensure all:
  - Potential Red Flags for Mortgage Fraud and Other Suspicious Activity were evaluated; and
  - unresolved red flags were reported per Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 308: Compliance.

Prohibited practices include:

- basing the risk assessment on any characteristic protected by any fair housing or fair lending law, including
  - race,
  - color,
  - religion,
  - sex,
  - handicap,
  - familial status, or
  - national origin of the prospective
    - Borrowers,
    - Guarantors,
    - Key Principals,
    - Principals,
    - Property occupants, or
    - residents of the Property's neighborhood; or



- using
  - unsupported assumptions,
  - personal opinions, or
  - unsupported perceptions.

#### ➔ Guidance

You should:

- Complete a credit review by analyzing information about their
  - organizational structure,
  - multifamily business experience and qualifications,
  - general credit history, and
  - current and prospective financial condition.
- Ensure the financial strength, experience, qualifications, and credit history of the **Borrower**, **Guarantor**, **Key Principals**, and **Principals** support the size, complexity, structure, and risk of the transaction.

## Section 302 Borrower Organizational Structure

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### 302.01 Single-Asset Entity

#### ☑ Requirements

You must ensure that

- the **Borrower** is a domestic single-asset entity, and
- if the **Borrower** is ultimately owned by foreign persons or entities, it has at least 1 domestic tier of ownership.

#### ➔ Guidance

As you analyze the **Borrower** and its organizational documents to confirm that it is a single-asset entity, consider the following questions:

- Can the **Borrower** acquire any additional real property, personal property, or assets?
- Can the **Borrower** participate in any business other than managing



and operating the Property?

- Are the Borrower's assets or funds commingled with anyone else's? If so, can these assets or funds be separated and identified?
- Are the Borrower's financial statements, accounting records, and other organizational documents maintained with anyone else's?
- Except for the Mortgage Loan, has the Borrower assumed, guaranteed, or obligated itself to cover anyone else's liabilities?

#### Requirements

If the Borrower owns more than a single asset, the Borrower may still qualify as a single asset entity if you:

- Obtain an operating statement for each real property owned.
- Obtain proof that the Borrower has no existing debt secured by a Lien on any of the Borrower's real property, other than a Mortgage Loan purchased by Fannie Mae.
- Obtain proof that the Borrower does not have any direct or indirect equity interest subject to mezzanine financing.
- Ensure that the Loan Documents prohibit the Borrower from
  - acquiring any additional debt (except for supplemental debt on existing Fannie Mae loans),
  - increasing any existing debt, or
  - acquiring any additional real property.

#### Guidance

As you analyze the Borrower that owns more than a single asset, you should consider whether its other real estate assets are only

- multifamily properties, or
- other types of real estate that do not pose an environmental risk to the Borrower.

## 302.02 Co-Tenant Borrowers

#### Requirements



You must ensure that any **Co-Tenant Borrower** meets these eligibility requirements:

- the **Borrower** has no more than 10 co-tenants;
- no co-tenant is an individual;
- each co-tenant is a single-asset entity complying with Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 302.01: Single-Asset Entity; and
- each co-tenant has jointly and severally executed the **Loan Documents**.

### **302.02A** Tenancy-in-Common Agreement

#### Requirements

You must ensure that a validly executed Tenancy-in-Common Agreement is in place prior to or at the **Mortgage Loan** closing.

You must review the agreement to ensure that:

- Each co-tenant is bound by the terms of the agreement.
- The **Property** has a manager of its day-to-day business and affairs, which can be
  - a single co-tenant (or the **Key Principal** of such co-tenant) known as the “co-tenant representative”, or
  - a validly-appointed property manager.
- Distributions to the co-tenant representative are subordinate to
  - all payments under any **Mortgage Loan** secured by a **Lien** on the **Property**, and
  - the terms and conditions of any such **Mortgage Loan**.

#### Guidance

As you analyze the Tenancy-in-Common Agreement, consider the following questions. The term “co-tenant” also includes any **Key Principal** who has the rights of the co-tenant.

#### **Representation**

- Have the **Co-Tenant Borrowers** given the co-tenant representative



the power to deal with the Lender through the Tenancy-in-Common Agreement or an irrevocable power-of-attorney?

- Has each Co-Tenant Borrower waived its right to reside in the Property?

### Buy outs

- Does each Co-Tenant Borrower have buy out rights to any other co-tenant?
- Is each Co-Tenant Borrower financially able to buy out any other co-tenant?

### Communication

- Does each Co-Tenant Borrower have a name, address, telephone number, and percentage of ownership interest listed?
- Has each Co-Tenant Borrower agreed to promptly notify all other Co-Tenant Borrowers and you if their address or telephone number changes?
- Has a single Key Principal of the co-tenant representative agreed to receive any communication from you on behalf of all Co-Tenant Borrowers?

## 302.02B Key Principal Execution of Guaranty

### Requirements

You must ensure that:

- each Co-Tenant Borrower names at least 1 Key Principal; and
- if a Guaranty is required, each Key Principal must become a Guarantor and execute either a Non-Recourse Guaranty or Payment Guaranty.

## 302.03 Joint and Several Borrowers with Multiple Properties

### Requirements

If a Mortgage Loan not in a Credit Facility is secured by multiple Properties and any Property is owned by a different Borrower, you must require each Borrower to:

- execute a single set of Loan Documents with joint and several





liability for the [Mortgage Loan](#);

- comply with the “single purpose entity” requirements per [Modifications to Multifamily Loan and Security Agreement \(Co-Borrowers\) \(Form 6274\)](#);
- be owned by the same [Persons](#) having the same percentage ownership interests (whether direct or indirect);
- be [Controlled](#) by the same [Sponsor](#) or [Key Principal](#);
- execute [Form 6274](#), restricting [Property Transfer/Assumption](#) or release during the [Mortgage Loan](#) term;
- execute an acceptable [Contribution Agreement](#) complying with [Form 6274](#); and
- if separate [Security Instruments](#) are recorded to encumber [Properties](#) in different counties, execute separate [Modifications to Security Instrument \(Co-Borrowers\) \(Form 6322\)](#) for each [Security Instrument](#).

Each [Property](#) securing the [Mortgage Loan](#) must:

- be in the same State; and
- comply with [Part II, Chapter 1: Attributes and Characteristics, Section 102.01: Single Borrower Ownership](#).

## Section 303

### Key Principals, Principals, and Guarantors

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#### Requirements

For every [Mortgage Loan](#), you must:

- Identify and underwrite any [Guarantor](#) and all [Key Principals](#) and [Principals](#) of the [Borrower](#).
- Ensure the [Guarantor](#)
  - is not a foreign person or a foreign entity, and
  - either has an ownership interest in the [Borrower](#) or ensure that the [Guarantor](#) has adequate consideration to enter into the [Guaranty](#).

You must identify the [Principals](#) based on the aggregate of all direct and indirect ownership interests in the [Borrower](#) held per the following table.



If the Borrower is a...	Then a Principal is...
General Partnership or Joint Venture	any general partner or joint venturer.
Limited Partnership	all general partners and any Person who owns a 25% or more limited partnership interest.
Privately-Held Corporation	any Person who owns 25% or more of the voting stock.
Limited Liability Company	all non-member managers, member-managers, and any Person who owns a 25% or more membership interest.
Trust (other than a Land Trust)	the grantor (if the trust is a revocable trust or if the grantor or settlor has retained powers), any Person who has a 25% or more beneficial interest in the trust, and any trustee.
Land Trust	any Person who owns a 25% or more beneficial interest in the land trust.

### 303.01 Entity Review

#### ➔ Guidance

When you review an entity, consider the following questions:

- Is it an existing entity (e.g., a corporation, limited liability company, limited liability partnership, or other acceptable structure) that is not newly formed?
- Is it a well-capitalized, stable, on-going business that would be expected to:
  - Remain financially healthy?
  - Support the Property?
  - Meet all Guarantor requirements and obligations under the Guaranty?
  - Have assets and net worth that are significantly greater than what would be minimally acceptable for an individual Key Principal?

### 303.02 Fund



## → Guidance

When you review a fund, consider the following questions:

- What is the experience and performance history of the fund manager with similar funds?
- Can the fund raise equity from financially substantial investors?
- What is the performance of the fund?
- What is the leverage level of the fund?
- What is the net worth and liquidity of the fund?
- What is the type and quality of
  - the [Property](#) and market,
  - other existing properties and markets, and
  - any potential additional properties and markets targeted by the fund pursuant to its agreements?

Additionally, you should review the organizational documents and private placement memorandum (if applicable) for the following information:

- the fund's expiration date;
- any extension to the fund's existence and conditions to approve that extension; and
- the process for winding up the business affairs of the fund, including whether the fund is organized in a state that requires the orderly dissolution of investment funds, such as Delaware or Illinois.

## Section 304

### Financial Statements

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#### Requirements

You must:

- obtain signed financial statements from all parties relevant to the [Mortgage Loan](#); and
- ensure all:
  - [Potential Red Flags for Mortgage Fraud and Other Suspicious Activity](#) were considered; and



- unresolved red flags were reported per Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 308: Compliance.

If the financial statements...	Then...
Are dated less than 12 months before the Commitment Date	You do not need a signed "no material adverse change" certification.
Are dated 12 – 24 months before the Commitment Date	You must include a signed certification dated within 30 days before loan application that states they have experienced no material adverse change to their financial condition.
Are dated more than 24 months old	You cannot use them.

For all financial statements, you must collect:

- A schedule of real estate owned by the party providing the financial statement, including the loan information (such as lender, [DSCR](#), and maturity date) for all assets on the schedule.
- A listing of all other assets, including
  - notes receivable from related entities, and
  - an estimate of the market value of each asset and the basis for calculating value estimates.
- All liabilities and contingent liabilities, including
  - debts under lines or letters of credit,
  - personal guaranties,
  - unmet obligations to partnerships or other entities, and
  - other future obligations (describe the amount and timing of these).
- Any other factors that may impact the party's financial position immediately or during the term of the [Mortgage Loan](#) (including any known threat of potential lawsuits that may arise from the parties' business operations).



## Section 305 Multifamily Underwriting Certificate

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### Requirements

You must obtain the appropriate [Multifamily Underwriting Certificate \(Form 6460\)](#) from the [Borrower](#) and each [Key Principal](#).

You must ensure that the [Form 6460](#) is

- signed and certified as true, correct, and complete, and
- dated within 90 days before the [Commitment](#) date.

If the 90-day limit is exceeded, the [Borrower](#) and [Key Principals](#) must certify that there has been no material adverse change to the financial condition shown in the [Form 6460](#).

You must keep a copy of the [Form 6460](#) in your [Servicing File](#).

## Section 306 Fraudulent Conveyance

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### Requirements

You must not obtain a [Commitment](#) for any [Mortgage Loan](#) if you believe that the [Borrower](#), [Key Principals](#), [Principals](#), or [Guarantors](#) intend to delay, hinder, or defraud creditors.

### Guidance

To show that you have made the [Mortgage Loan](#) in good faith, consider the following questions:

- Have you carefully reviewed the facts so that you have a clear defense to potential fraudulent conveyance or fraudulent transfer claims?
- Have you obtained a [Form 6460](#) that confirms the [Borrower's](#) good faith?

## Section 307 Applicant Experience Check

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### Requirements

For both initial applications, [Supplemental Mortgage Loans](#), and any [Transfer/Assumption](#), you must perform an [ACheck™](#) and receive a



"Continue Processing" response for

- the Borrower,
- each Key Principal of the Borrower,
- each Principal of the Borrower,
- each Guarantor, and
- any person who owns or controls an entity Key Principal.

## Operating Procedures

### **Where can you find ACheck?**

You can find the ACheck application at <https://multifamily.fanniemae.com/applications-technology/acheck>.

### **When do you use the ACheck application?**

As soon as you receive an application request and the necessary tax identification numbers and/or social security numbers, enter the information into ACheck.

- If you have not yet identified all parties at this stage, you must enter all Key Principals, Principals, and Guarantors of the Borrower into ACheck as soon as you identify them.
- If more than 90 days pass between the initial ACheck and Commitment Date, you must repeat an ACheck.

### **How do you view ACheck results?**

The ACheck application will provide either a "Continue Processing" or "Do Not Process" electronic response instantaneously.

#### ■ "Continue Processing" Response

You must receive a "Continue Processing" response in order to proceed with the application.

This does not mean that the Borrower, Key Principal, Principal, Guarantor, or Principal is approved; you are still required to complete full Mortgage Loan credit underwriting.

#### ■ "Do Not Process" Response

If you receive a response stating "do not continue processing an application for a Fannie Mae loan that involves this applicant" (or similar



wording), then:

- Do not proceed with the application, and do not omit any [Key Principal](#), [Principal](#), or [Guarantor](#) for which a “Do Not Process” response was given.
- Use the “Do Not Process” response to indicate that you need to have direct communication with Fannie Mae.
- Follow the instructions provided by the [ACheck](#) application and contact Fannie Mae before proceeding to underwrite the [Mortgage Loan](#).
- Never use the “Do Not Process” response as the sole reason for rejecting or denying credit in any cases not involving Fannie Mae.

You will not be provided any information as to why a particular [Borrower](#), [Key Principal](#), [Principal](#), or [Guarantor](#) received a “Do Not Process” response.

### **What about confidentiality?**

You must establish procedures to ensure that all [ACheck](#) responses obtained for [Borrowers](#), [Key Principals](#), [Principals](#), and [Guarantors](#) are kept confidential.

## **Section 308**

### **Compliance**

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#### **Requirements**

You must establish and maintain effective procedures and controls, (including employee training), similar to those required by the [Bank Secrecy Act](#).

You must, to prevent, identify, and report potential:

- mortgage fraud; and
- other suspicious activity.

Fannie Mae will not purchase any [Mortgage Loan](#) with a [Borrower](#), [Key Principal](#), [Principal](#), or [Guarantor](#) that is:

- sanctioned or blocked by [OFAC](#); or



- on the
  - FHFA SCP List,
  - HUD "Limited Denial of Participation, Funding Disqualifications and Voluntary Abstentions List", or
  - GSA "System for Award Management (SAM)" Exclusion List.

### Operating Procedures

If you identify Potential Red Flags for Mortgage Fraud and Other Suspicious Activity:

1. Do not inform the Borrower, any Borrower Affiliate, Key Principal, Principal, or Guarantor.
2. Evaluate the red flags to determine if a plausible business explanation exists.
3. Immediately report any unresolved red flags indicative of mortgage fraud or other suspicious activity to:
  - <https://fims.my.salesforce-sites.com/MortgageFraudReport> or (800) 232-6643; and
  - Lender Risk Management.
4. Maintain all documentation relating to the potential mortgage fraud or other suspicious activity.
5. Promptly provide all related documentation to Fannie Mae upon request.
6. Do not provide any information to Fannie Mae that would indicate whether you have filed a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network (FinCEN).

## Section 309

### Execution of Non-Recourse Guaranty

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#### Requirements

You must obtain a Non-Recourse Guaranty from a Key Principal (the Guarantor) for any Mortgage Loan that has

- an Underwritten DSCR less than
  - 1.35 for fixed rate or





- 1.10 for variable rate, or
- an LTV greater than 65%.

You do not need to obtain a [Non-Recourse Guaranty](#) if the [Borrower](#) is a [Cooperative Organization](#) or if the [Key Principal](#) (who would otherwise be the [Guarantor](#)) is a publicly traded entity.

## Section 310 Conflict Mortgage Loans

### 310.01 Description

#### Requirements

Conflict Mortgage Loan Type	
Conflict Mortgage Loan	<ul style="list-style-type: none"><li>• Any <a href="#">Mortgage Loan</a> in which:<ul style="list-style-type: none"><li>- a <a href="#">Lender</a>, any <a href="#">Lender Affiliate</a>, or any <a href="#">Lender Senior Executive</a><ul style="list-style-type: none"><li>▪ owns (or will own) any direct or indirect equity interest in the <a href="#">Borrower</a>, or</li><li>▪ directly or indirectly controls the <a href="#">Borrower</a>; or</li></ul></li><li>- any <a href="#">Lender</a> employee, or group of employees, owns (or will own) more than a 5% direct or indirect equity interest in the <a href="#">Borrower</a>.</li></ul></li><li>• Any <a href="#">Mortgage Loan</a> with <a href="#">DLA Mezzanine Financing</a>.</li></ul> <p>Any equity interest you acquire in the <a href="#">Borrower</a> relating solely to obtaining the associated <a href="#">LIHTCs</a> is not considered when determining if the <a href="#">Mortgage Loan</a> is a <a href="#">Conflict Mortgage Loan</a> (see <a href="#">Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 709: LIHTC Properties – Lender Equity Interest</a>).</p>



Conflict Mortgage Loan Type	
Prohibited Conflict Mortgage Loan	<p>Any Mortgage Loan in which</p> <ul style="list-style-type: none"><li>• the Lender or any single Lender Senior Executive owns more than a 5% direct or indirect equity interest in the Borrower,</li><li>• any group of Lender Senior Executives together owns more than a 10% direct or indirect equity interest in the Borrower, or</li><li>• the Lender or any Lender Affiliate is the Property manager.</li></ul>



Conflict Mortgage Loan Type	
Controlling Conflict Mortgage Loan	<p>Any Conflict Mortgage Loan where:</p> <ul style="list-style-type: none"><li>• the Lender<ul style="list-style-type: none"><li>- can (other than through the exercise of a lender's rights and remedies under the <a href="#">Loan Documents</a>) require changes to the management, operations, or decision-making of the <a href="#">Borrower</a>, the <a href="#">Key Principal</a>, any <a href="#">Person</a> holding a <a href="#">Controlling Interest</a> in the <a href="#">Borrower</a> or <a href="#">Key Principal</a>, or any <a href="#">Principal</a> or <a href="#">Guarantor</a>, or</li><li>- owns any <a href="#">Preferred Equity</a> in the <a href="#">Borrower</a>;</li></ul></li><li>• any <a href="#">Lender Affiliate</a> or employee or group of employees of the <a href="#">Lender</a> or any <a href="#">Lender Affiliate</a><ul style="list-style-type: none"><li>- can require changes to the management, operations, or decision-making of the <a href="#">Borrower</a>, the <a href="#">Key Principal</a>, any <a href="#">Person</a> holding a <a href="#">Controlling Interest</a> in the <a href="#">Borrower</a> or <a href="#">Key Principal</a>, or any <a href="#">Principal</a> or <a href="#">Guarantor</a>,</li><li>- individually or together own a 25% direct or indirect equity interest in the <a href="#">Borrower</a> or in any <a href="#">Person</a> holding a <a href="#">Controlling Interest</a> in the <a href="#">Borrower</a> at or after loan origination (including any interest acquired as part of a <a href="#">Transfer/Assumption</a>),</li><li>- own any <a href="#">Preferred Equity</a> in the <a href="#">Borrower</a>, or</li><li>- exercises rights under <a href="#">DLA Mezzanine Financing</a> that results in a <a href="#">Controlling Conflict Mortgage Loan</a> under these requirements; or</li></ul></li><li>• any <a href="#">Lender Senior Executive</a> owns any direct or indirect equity interest in the <a href="#">Borrower</a>.</li></ul>

You must not



- Deliver a Prohibited Conflict Mortgage Loan, or
- cause any Portfolio Mortgage Loan to become a Prohibited Conflict Mortgage Loan.

## 310.02 Restrictions

### 310.02A Underwriting

#### Requirements

You must ensure that no Lender employee or other person involved in Conflict Mortgage Loan underwriting and approval owns any direct or indirect equity interest in the Borrower.

You must include the following in your Transaction Approval Memo:

- the amount of any direct or indirect equity interest in the Borrower owned by any Lender Senior Executive, other Lender employee or group of employees; and
- answers to the following questions, including an explanation if your answer to a question is yes:
  - Does any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, own any direct or indirect equity interest in the Borrower?
  - Can any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, require changes to the management, operations, or decision-making of the Borrower?

In addition, your underwriting submission must include:

- copies of the Borrower's organizational documents and financial statements;
- copies of all organizational documents and financial statements for any Lender Affiliate that holds a direct or indirect equity ownership interest in the Borrower; and
- an organizational chart or diagram showing
  - the complete ownership structure of the Borrower,
  - the relationship among the Lender, Borrower, and applicable



Lender Affiliate, and

- the percentage ownership of each entity.

### Operating Procedures

You must designate the [Mortgage Loan](#) as a Conflict Mortgage Loan in C&D.

## **310.02B** Servicing

### Requirements

As [Servicer](#) of a Controlling Conflict Mortgage Loan, you must not

- participate in loss mitigation or special asset management decisions if it becomes a [Non-Performing Mortgage Loan](#), or
- be notified of, or participate in, any negotiations or communications between Fannie Mae and the [Borrower](#), [Key Principal](#), or [Principal](#) (or any [Affiliate](#) of any of them).

Fannie Mae will make reasonable efforts to provide copies of written communications between Fannie Mae and other parties.

These servicing restrictions apply as long as the [Mortgage Loan](#) is considered a Controlling Conflict Mortgage Loan.

### Operating Procedures

1. Fannie Mae has sole discretion to decide what action, if any, to take regarding any Controlling Conflict Mortgage Loan, any [Property](#) securing a Controlling Conflict Mortgage Loan, or any [Borrower](#) or [Guarantor](#).
2. If Fannie Mae decides that a Controlling Conflict Mortgage Loan has a material risk of default or other characteristics of increased risk, it can
  - designate a substitute servicer or subservicer, or
  - terminate (with or without cause) your right to service the [Mortgage Loan](#).
3. Fannie Mae will comply with the [Program Rules Part 3 Sections B and C](#) relating to Fannie Mae initiated servicing transfers. After



servicing is transferred, you will retain your loss sharing obligation.

### **310.02C** No First Right of Refusal

#### Requirements

You will not have any First Right of Refusal to purchase a [Property](#) that secured a Conflict Mortgage Loan, even if the Loss Sharing Addendum to the [MSSA](#) grants you this right.

### **310.02D** Additional Disclosure

#### Operating Procedures

For an [MBS](#) backed by a Conflict Mortgage Loan, you must indicate in C&D

- that additional disclosure is required, and
- whether it is the [Lender](#), a [Lender Affiliate](#), a [Lender Senior Executive](#), a [Lender](#) employee, or group of employees who has a [Controlling Interest](#) or a [non-Controlling Interest](#).

### **310.02E** Notifications

#### Requirements

If, after delivering a [Mortgage Loan](#), it becomes a Conflict Mortgage Loan, you must deliver all materials described in this Section to [Multifamily Asset Management](#) within 30 days after acquiring each equity interest.