Fannie Mae

Multifamily Selling and Servicing Guide

Effective as of September 18, 2023

TABLE OF CONTENTS

Summary of Changes

HIGHLIGHTS
Effective for Mortgage Loans Committed as of September 18, 2023, clarifying updates were made regarding: • zoning and legal non-conforming status; and • title policy effective and issuance dates.

Primary Changes

- Updated Part II, Chapter 3: Legal Compliance to increase delegation and clarify underwriting requirements when affected Improvements cannot, in the case of full or partial casualty or condemnation, be rebuilt to their pre-casualty condition per current zoning requirements and building codes.
- Added a new Loan Document, Limited Payment Guaranty (Form 6020.LPG), that you may consider requiring the Borrower to execute for a Tier 3 or Tier 4 Mortgage Loan at origination, to mitigate the risk of the as-rebuilt Property not supporting a Tier 2 Mortgage Loan.
- For all Properties, updated the Title Insurance guidance to clarify:
  - title coverage must be in effect the date you fund the Mortgage Loan; and
  - the issued title insurance policy should be later-dated to cover the Assignment of Security Interest's recording date.

Questions

Please contact the Fannie Mae Deal Team with any questions.

Chapter 3 Legal Compliance

Section 301 Zoning and Legally Non-Conforming Status

301.01 Zoning ~~and Legal Non-Conforming Use~~

Requirements

For each Property, you must:

- identify the current zoning or land use designation;
- ~~confirm~~determine if the existing Property use (e.g., multifamily, single-family, mixed use, Manufactured Housing Community, etc.) is expressly permitted per current zoning and land use laws and regulations; and
- ~~not Deliver any Property with a legal non-conforming use.~~
- confirm the Property's characteristics (e.g., building height, density, set-back lines, etc.):
  - conform to current zoning requirements and land use designations; or
  - are legally non-conforming per applicable zoning or land use laws and regulations.

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

- upload the zoning report to DUS Docway in Folder II; and
- deliver structured data per the Zoning Report Data Supplement (Form 4089)~~; and~~.
- ~~include a report narrative.~~

301.02 Legal Non-Conforming Use

Requirements

If the Property is a legal non-conforming use, you must:

- ensure the Borrower executes Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275);
- confirm, following a casualty, the percentage of damage to the

Property's Improvements(i.e., the destruction threshold) at which the Property jurisdiction would prohibit the rebuilding of all impacted Improvements to the pre-casualty use and condition under current

- laws,
- zoning requirements, and
- building codes; and

- if the destruction threshold is less than 50%, not Deliver the Mortgage Loan.

~~301.02~~ 301.03 Legal Non-Conforming Characteristics

Requirements

~~You must confirm the Property's characteristics (e.g., building height, density, set-back lines, etc.):~~

- ~~conform to current zoning requirements and land use designations; or~~
- ~~are legally non-conforming per applicable zoning or land use laws and regulations.~~

If the Property's characteristics are legally non-conforming, you must:

- ~~Require~~ensure the Borrower ~~to execute~~executes the Modifications to Multifamily Loan and Security Agreement (Legal Non-Conforming Status) (Form 6275)~~.~~;
- ~~Confirm whether the affected Improvements can be rebuilt to the pre-casualty condition per current laws, zoning requirements, and building codes without conditions or limitations, including any related solely to timing for:~~
  - ~~obtaining permits or approvals; and/or~~
  - ~~commencing or completing construction.~~
- ~~Analyze the impact on the Mortgage Loan if the Borrower is not allowed to rebuild the Property as is per current law, without conditions or limitations.~~
- ~~Comply with the following.~~

- confirm whether, if fully or partially destroyed, the Property's Improvements can be fully rebuilt to the pre-casualty condition per current
    - laws,
    - zoning requirements, and
    - building codes; and
- if the Property's Improvements cannot be fully rebuilt to the pre-casualty condition,
    - evaluate if the as-rebuilt Property will support the Mortgage Loan at the current Tier, and
    - document your analysis in the Transaction Approval Memo.

~~If...~~	~~You must...~~
~~Improvements cannot be rebuilt as is per current law, without conditions or limitations,~~	~~Prepare an analysis determining if conformance per current zoning law would result in a loss of 20% or more of the Property's unit count.~~
~~The analysis determines conformance per current zoning law would result in a loss of 20% or more of the Property's unit count,~~	~~Prepare a threshold analysis confirming the reconstructed Improvements, per current zoning requirements and building codes, would support a minimum 1.00 amortizing DSCR.~~
~~The reconstructed Improvements, per current zoning requirements and building codes, cannot support a minimum 1.00 amortizing DSCR,~~	~~Submit the Mortgage Loan for Pre-Review.~~

Guidance

To assess the Borrower's ability to rebuild Improvements on a non-conforming Property to a level that ~~would~~will support ~~a minimum 1.00 amortizing~~the Mortgage Loan at the current ~~DSCR~~ Tier, 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;~~
- ~~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, including from:~~
  - ~~building code changes;~~
  - ~~Americans with Disabilities Act compliance; and~~
  - ~~the municipality's local zoning requirements (e.g., green compliance for new buildings, etc.); and~~
- conducting a threshold analysis to determine the resulting actual amortizing DSCR if the reconstructed Improvements cannot be rebuilt as-is per current law;
- the likelihood of a casualty event (e.g., wind, earthquake, fire, flood, mine subsidence, etc.);
- the percentage of damage to the Improvements at which the Property's jurisdiction will require the Property be rebuilt to current zoning and land use requirements (i.e., the destruction threshold);
- which Property characteristics the destruction threshold percentage applies to, such as
  - market value,
  - assessed value,
  - replacement cost, or
  - unit count;
- for Properties with multiple buildings, if the destruction threshold percentage applies to
  - each building, or

- all buildings as a whole;

- the replacement cost to rebuild per current requirements for
  - zoning, and
  - land use;
- the Property's continued
  - marketability, and
  - economic viability;
- the amount and type of Borrower-maintained insurance coverage required per Part II, Chapter 5: Property and Liability Insurance, Section 501.02C: Ordinance or Law Insurance;
- insurance loss proceeds payout, compared to increased rebuilding costs, including from
  - building code changes,
  - Americans with Disabilities Act compliance, and
  - the municipality's local zoning requirements (e.g., green compliance for new buildings, etc.);
- ~~whether~~ the sufficiency of estimated insurance proceeds from ordinance or law insurance and other coverages ~~will be sufficient~~ to repay the Mortgage Loan in the event of partial or full
  - casualty, or
  - condemnation~~.~~; and
- for a Tier 3 or Tier 4 Mortgage Loan, if requiring execution of the Limited Payment Guaranty (Form 6020.LPG) would mitigate the risk of the as-rebuilt Property not supporting a Tier 2 Mortgage Loan.

Section 302 Easements

Requirements

You must evaluate the impact of all easements (public and private), including their effect on:

- ~~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	• 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	• 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 2021 or 2006 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~~Requirements

~~The~~You must have title ~~policy's effective date should be~~coverage in effect (i.e., the date of the signed pro forma policy or marked-up commitment) when you fund the Mortgage Loan.

Guidance

The issued title policy should be later-dated to cover the Assignment of Security Instrument's recording date.

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.Borrower).
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	• 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.