

RD AN No. 4303 (1980-D)
August 13, 2007

TO: All State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Rural Housing Specialists,
Rural Development Managers, and
Community Development Managers

FROM: Russell T. Davis *(Signed by Tom Hannah)* for
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Condominium Requirements

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify Single Family Housing Guaranteed Loan Program (SFHGLP) condominium requirements, and how to determine if the condominium has been approved or accepted by the United States Department of Housing and Urban Development (HUD), Veteran Affairs (VA), Fannie Mae (FNMA), or Freddie Mac (FHLMC).

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4196, dated July 10, 2006, which is hereby retired. This AN provides additional guidance relating to ineligible condominium project types under HUD, FNMA, FHLMC, or VA guidelines. This AN also takes into account certain changes to FHLMC Condominium Class II requirements.

EXPIRATION DATE:
August 31, 2008

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

Condominium projects and their units are invariably served by homeowners associations (HOA's). RD Instruction 1980-D, section 1980.311(c), states in part that:

“A dwelling served by a HOA may be accepted when the project has been approved or accepted by HUD, VA, FNMA, or FHLMC.”

Dwellings served by HOA's can be under three types of projects: Planned Unit Development (PUD), cooperatives, or condominiums. Other than condominiums, this AN does not apply to any dwellings served by an HOA.

Ineligible Properties

Certain types of condominium projects are not eligible under HUD, FNMA, FHLMC, or VA guidelines. They are:

- Condominium hotels.
- Timeshares.
- Houseboat projects.
- Multi-dwelling unit condominiums that permit an owner to hold title to more than one dwelling by a single deed and mortgage.
- Any project for which the owner's association is named a party to current litigation or for a project that has not been turned over to the association for which the project sponsor or developer is named a party to current litigation.
- Condominiums that represent a legal, but non-conforming use of the land, if zoning regulations prohibit rebuilding the improvements to current density in the event of their full or partial destruction.
- Investment Securities – A project in which ownership is characterized or promoted as an investment opportunity; and/or projects that have documents in file with the Securities and Exchange Commission.
- Common interests apartments or community apartment projects – Any project or building that is owned by several owners as tenants-in-common or by a HOA in which individuals have an undivided interest in a residential apartment building and land, and have the right of exclusive occupancy of a specific apartment in the building.
- A project with non-incident business operations owned or operated by the owners' association such as, but not limited to, a restaurant, spa, health club, etc.
- Projects that include registration services and offer rentals of units on a daily basis.
- Projects that restrict the owner's ability to occupy the unit.

- Projects with the names that include the words “hotel” or “motel”.
- Projects with mandatory rental pooling requirements that require the unit owners to either rent their units or give a management firm control over the occupancy of the unit. These formal agreements between the developer, homeowner’s association and/or the individual unit owners, obligate the unit owner to rent the property on a seasonal, monthly, weekly, or daily basis. In many cases, the agreements include blackout dates, continuous occupancy limitations and other such use restrictions. In return, the unit owner receives a share of the revenue generated from the rental of the unit.

Lender Self Certification and Warranty

HUD, FNMA, and FHLMC have delegated to lenders the authority to warrant that condominium projects meet their requirements. Lenders have the ability to “self certify” or warrant that condominiums purchased by FNMA or FHLMC, or insured by HUD, meet the minimum requirements of those entities. Lenders can warrant that they have reviewed condominium documentation, that the condominium meets the requirements of HUD, FNMA, or FHLMC, and that the documentation remains available in the lender file for verification purposes. The documentation containing the information necessary to determine if a condominium would be approved by HUD, FNMA, or FNMA are:

- a condominium questionnaire, and
- the condominium’s master hazard insurance policy.

Neither the condominium questionnaire nor the master hazard insurance policy have form numbers. Condominium master hazard insurance policies are issued by insurance companies. Each insurance company uses it’s own letterhead and format. The lender reviews the master insurance policy to determine the type of coverage and whether the policy offers coverage sufficient to meet requirements.

The condominium questionnaire typically is sent to the condominium HOA on the lender’s letterhead. It contains questions about the number of units in the condominium project, how many of the units have been sold or rented, whether all the common areas have been 100 percent completed, and other questions concerning the condominium project.

The condominium’s HOA officer or managing agent completes the questionnaire and returns it to the lender, who then reviews the questionnaire responses in order to determine whether HUD, FNMA or FHLMC requirements have been fulfilled. The lender must retain all of the documentation in case HUD, FNMA or FHLMC wish to examine it in order to determine that the lender’s certification or warranty was truthful and correct.

In every case, the lender is responsible for keeping a copy of the condominium questionnaire, the condominium's master hazard insurance policy, and any other related documents in the lender's file. The lender does not produce the condominium documentation unless requested by HUD, FNMA or FHLMC. Lenders retain the condominium documentation in file for audit purposes.

Lenders do not issue individual certifications or warranties to HUD, FNMA, or FHLMC for each condominium unit. The warranty is part of the master contract between the lender and HUD, FNMA, and FHLMC. By simply stating the project classification on the Uniform Underwriting and Transmittal Summary (FNMA Form 1008, FHLMC Form 1077) the lender certifies that the condominium unit meets the requirements.

For the purpose of providing detail on what a lender certification or warranty attests to, please see attached Table 1 for HUD requirements, Table 2 for FHLMC requirements, and Table 3 for FNMA requirements.

HUD Condominium Types

As seen in Table 1, HUD has only two condominium types. They are "Proposed and New Construction" and "Approved New Projects with Construction Complete". Table 1 illustrates the differences between the two as it pertains to project phases, owner occupancy ratios, and other requirements.

Freddie Mac Condominium Types

As seen in Table 2, FHLMC has three condominium types: Class I, Class II, and Class III. The different requirements between each of these condominium types are stratified on Table 2.

Fannie Mae Condominium Types

As seen in Table 3, FNMA six condominium types: Type P, Type Q, Type R, Type S, Type T, and Type U. Types P, Q and S have two subcategories each with different requirements based on whether the condominiums are attached or detached.

FNMA's CPM has been enhanced to permit lenders to perform a Lender-delegated Expedited Review (Type R) for new projects that:

- contain more than 200 units,
- are built on a leasehold estate, or
- are condominium conversion projects that do not involve gut rehabilitation. (Gut rehabilitation refers to the renovation of a property down to the shell with the replacement of all high efficiency air conditioning Units and electrical components.

VA Requirements

The VA has not delegated to lenders the authority to warrant condominium projects. VA reviews each condominium's organizational documents for compliance with VA regulations, and notifies the lender in writing of VA's approval. The lender should retain the VA documentation in the lender's file, and it should be available upon request.

IMPLEMENTATION RESPONSIBILITIES:

Participating lenders may certify to Rural Development that they have reviewed the condominium documentation, and that the condominium is in compliance with HUD, VA, FNMA, or FHLMC guidelines. Rural Development's Condominium Certification Form (Exhibit A) is attached to this AN. Its use is optional. Aside from the lender certification to Rural Development, all condominium documentation should remain in the lender's file and should be available upon request. The documentation must be provided if no certification is submitted.

When there is an indication that a condominium unit or project does not meet the requirements of HUD, VA, FNMA or FHLMC, the Agency will request additional documentation from the lender. If the condominium unit or project does not meet the stated requirements as certified or warranted by the lender, the Agency may refuse to issue a conditional commitment or loan note guarantee.

Should there be any questions concerning this AN, please contact Stuart Walden or Joaquín Tremols, Single Family Housing Guaranteed Loan Division at (202) 720-1452. Their respective email addresses are stuart.walden@wdc.usda.gov and joaquin.tremols@wdc.usda.gov.

Attachments:

Table 1 - HUD Condominium Requirements

Condo Type	Primary Residence	Subject to Phasing/Add-ons	Completion of the common elements and amenities	Pre-Sale Requirements (number of units sold or conveyed prior to the sale of the subject property).	Owner Occupancy Ratio Requirements	Control of Condominium Association	Master Hazard, Flood, Earthquake, Liability, & Fidelity Coverage
Proposed and New Construction (Excludes Manufactured Homes)	Yes	Yes	Not Required	70%	51%	Developer	Liability: \$1 million Hazard: Replacement
Approved New Projects with Construction complete (Excludes Manufactured Homes)	Yes	Not subject to phasing or add-ons	Required	80%	80%	Developer or unit owners	100% Replacement exclusive of land, foundation, & excavation

Table 2 - Freddie Mac Condominium Requirements

Condo Type	Primary Residence	Subject to Phasing/Add-ons	Completion of the common elements and amenities	Pre-Sale Requirements (number of units sold or conveyed prior to the sale of the subject property).	Owner Occupancy Ratio Requirements	Control of Condominium Association	Master Hazard, Flood, Earthquake, Liability, & Fidelity Coverage
Class I	Yes	May be subject to phasing or add-ons.	Required	70%	70% by owners as Primary or 2 nd Homes	Developer	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Class II	Yes	Not subject to phasing or add-ons	Required	60% when project consists of Manufactured Housing. No presale requirement if the Condo Unit Mortgage is secured by a primary residence or second home and the project is not comprised of Manufactured Homes.	60% by owner as Primary or 2 nd Homes when project consists of Manufactured Housing. No owner occupancy requirement if the Condo Unit Mortgage is secured by a primary residence or second home and the project is not comprised of Manufactured Homes.	Unit Owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Class III	Yes	Not subject to phasing or add-ons	Required	90%	60% by owner as Primary or 2 nd Home	Unit owners have been in control for at least 1 year	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements

Table 3 - Fannie Mae Condominium Requirements

Condo Project Classification Type	Primary Residence	Subject to Phasing/Add-ons	Completion of the common elements and amenities for project or subject legal phase	Pre-Sale Requirements (Number of units sold or conveyed prior to the sale of the subject property).	Owner Occupancy Ratio Requirements	Control of Condominium Association	Liability, Hazard, Flood & Fidelity Coverage
Type P Lender-Delegated Limited Reviews of New Projects	Primary and Second Homes	Yes	Required	None	None	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Type P Lender-Delegated Reviews of Detached Condominiums	Primary and Second Homes	Yes	Not Required	None	None	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Type Q Lender-Delegated Limited Reviews of Established Condominium Projects	Primary and Second Homes	Yes	Required	None	None	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Type Q Lender-Delegated Limited Reviews of Detached Condominium Projects	Primary and Second Homes	Yes	Not Required	None	None	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements

Type R Lender-Delegated Expedited Project Review of a New Project (Fannie Mae's Condo Project Manager "CPM" must be used)	Primary, Second and Investor	Yes	Required	50% must be sold or under contract to primary or second home buyers. "CPM" will determine; 50% or less	50% must be sold or under contract to primary or second home buyers. "CPM" will determine; 50% or less	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements Fidelity Bond if project consists of > 20 units.
Type S Lender-Delegated Expedited Project Review of Established Projects	Primary, Second and Investor	Not subject to add phasing or add-ons	Required for entire project. (Including Master Association if applicable)	90 % conveyed	50% primary or second homes	Unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements
Type S Lender-Delegated Expedited Project Review of Established 2-4 Unit projects	Primary, Second and Investor	Not subject to add phasing or add-ons	Required for entire project. (Including Master Association if applicable)	50% (1-2 Units) 67% (3 Units) 75% (4 Units)	50% (1-2 Units) 67% (3 Units) 75% (4 Units)	Developer or unit owners	Liability: \$1 million Hazard: Replacement Flood: "FEMA" requirements

Footnotes to Table 3 – Fannie Mae (FNMA) Condominium Requirements

Type P: Lender-Delegated Limited Reviews of New Projects

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.
2. Unit owners must have sole ownership interest and rights to the use of project's facilities common elements, and limited common elements once control of the association is turned over.

Type P: Lender-Delegated Reviews of Detached Condominiums

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.
2. Unit owners must have sole ownership interest and rights to the use of the project's facilities, common elements, and limited common elements once control of the owner's association is turned over.

Type Q: Lender-Delegated Limited Reviews of Established Condominium Projects

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.
2. Unit owners must have sole ownership interest and rights to the use of the project's facilities, common elements, and limited common elements once control of the owner's association is turned over.

Type Q: Lender-Delegated Limited Reviews of Detached Condominium Projects

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.
2. Unit owners must have sole ownership interest and rights to the use of project's facilities, common elements, and limited common elements once control of the association is turned over.

Type R: Lender-Delegated Expedited Project Review of a New Project (FNMA's Condo Project Manager "CPM" must be used)

1. No single entity other than the developer during the initial sales period may own more than 10% of the total units.
2. Projects with less than 10 units cannot allow a single entity to own more than 1 unit.
3. If more than 50% of the total units are expected to be sold to investors, lender must contact FNMA and request a waiver.
4. Units must be owned Fee Simple.
5. Lender will review and accept separate legal phases on a phase-by-phase basis.
6. Project must be a gut-rehab conversion or new construction.
7. Project can't exceed 200 units.

Type S: Lender-Delegated Expedited Project Review of Established Projects

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.

Type S: Lender-Delegated Expedited Project Review of New and Established 2-4 Units projects

1. Units must be owned Fee Simple or FNMA acceptable Ground Lease.
2. Each small condominium must have its own separate legal documents.
3. No one entity may own more than one unit.

Exhibit A

Condominium Certification

This warranty certifies the dwelling served by the homeowners association and identified below has been approved or accepted by HUD, VA, Fannie Mae, or Freddie Mac. Documentation supporting this certification will be maintained in the lender's files and will be available for inspection by Rural Housing Service, United States Department of Agriculture upon request.

Borrower: _____

Property Address: _____

Lender: _____

Representative Name: _____

Representative Signature: _____