



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

June 12, 2009

MORTGAGEE LETTER 2009-19

**TO: ALL APPROVED MORTGAGEES
ALL FHA ROSTER APPRAISERS**

SUBJECT: Condominium Approval Process – Single Family Housing

In accordance with the passage of the Housing and Economic Recovery Act (HERA) of 2008, the Federal Housing Administration (FHA) is implementing a new approval process for Condominium Projects to insure mortgages on individual units under Section 203(b) of the National Housing Act. FHA will now allow lenders to determine project eligibility, review project documentation, and certify to compliance of Section 203(b) of the NHA and 24 CFR 203 of HUD's regulations. HUD will continue to maintain a list of Approved Condominium Projects. The requirements of this Mortgagee Letter are effective for all case numbers assigned on or after October 1, 2009 except as noted.

The purpose of this Mortgagee Letter is to provide guidelines and instructions on options available to lenders to receive mortgage insurance on condominium units which are located in a project. The lender will be required to retain all the project legal documents, contracts, conveyances, plats, plans, insurance coverage, presale and owner occupancy conditions and other documentation in connection with their review and approval of the condominium project. When requested, the lender must provide such documentation to HUD staff for verification of compliance with HUD's regulations.

I. Approval Processing Options

A. The lender will have two condominium project approval processing options. The applicable documentation requirements will be the same for each option:

1. HUD Review and Approval Process (HRAP).
2. Direct Endorsement Lender Review and Approval Process (DELRAP), outlined in this Mortgagee Letter. This option is only available to lenders who have unconditional Direct Endorsement authority and staff with knowledge and expertise in reviewing and approving condominium projects.

B. The processing options stated above will be applicable to condominium developments that are:

1. Proposed/Under Construction;
2. Existing Construction; or
3. Conversions.

II. Eligible Projects

The Condominium Project has been created and exists in full compliance with applicable State law requirements of the jurisdiction in which the Condominium Project is located, and with all other applicable laws and regulations.

III. Ineligible Projects

- A. Condominium Hotel or “*Condotels*”
- B. Timeshares or segmented ownership projects
- C. Houseboat projects
- D. Multi-dwelling unit condominiums [i.e. more than one dwelling per condominium unit]
- E. All projects not deemed to be used primarily as residential

IV. General Requirements

A. Site Condominiums

Site Condominiums are single family detached dwellings encumbered by a declaration of condominium covenants or condominium form of ownership. Condominium Project approval is not required for Site Condominiums; however, the Condominium Rider (Attachment D) must be included in the FHA case binder submitted for insurance endorsement. Manufactured housing condominium projects (MHCPs) may not be processed as site condominiums; these projects will require approval under HRAP.

NOTE: Site Condominiums requirements are effective immediately with issuance of this Mortgage Letter.

B. “Spot Loan” Approval Process

The Spot Loan Approval process as defined in Mortgage Letter 1996-41 is eliminated with issuance of this guidance. The DELRAP and HRAP processes have been streamlined to allow for uncomplicated condominium project approvals eliminating the need to approve units on a “spot loan” basis.

C. FHA-to-FHA Transactions

Project Approval is not required for:

- a. FHA-to-FHA streamline refinance transactions; or
- b. FHA/HUD Real Estate Owned (REO) Division sales.

D. Environmental Review Requirements

If a lender elects to use the HRAP option, then environmental reviews will not be

required for projects that, at the time that condominium project approval is requested, have progressed beyond that stage of construction where HUD has any influence over the remaining uncompleted construction. This occurs when:

- a condominium plat or similar development plan and any phases delineated therein have been reviewed and approved by the local jurisdiction and, if applicable, recorded in the land records, **and**
- the construction of the project's infrastructure (streets, stormwater management, water and sewage systems, utilities, facilities (e.g., parking lots, community building, swimming pools, golf course, playground, etc.) and buildings containing the condominium units has proceeded to a point that precludes any major changes.

Environmental reviews will not be required for condominium projects approved using the DELRAP option. If the appraiser identifies an environmental condition or the lender is aware of an existing environmental condition through remarks provided on the Builder's Certification, form HUD-92541, the appraisal or other known documentation, the lender must avoid or mitigate the following conditions before completing its review process:

1. The project is located in a Special Flood Hazard Area designated on a Federal Emergency Management Agency flood map.
2. Potential noise issues, where the property is located within 1000 feet of a highway, freeway, or heavily traveled road, within 3000 feet of a railroad, or within one mile of an airport or five miles of a military airfield.
3. The property has an unobstructed view, or is located within 2000 feet, of any facility handling or storing explosive or fire-prone materials.
4. The property is located within 3000 feet of a dump or landfill, or of a site on an EPA Superfund (NPL) list or equivalent state list, or a Phase I Environmental Site Assessment indicates the presence of a Recognized Environmental Condition or recommends further (Phase II) assessment for the presence of contaminants that could affect the site.
5. The property has any hazards or adverse conditions listed in Section 1.f. of the Builder's Certification, including, but not limited to, high ground water levels, unstable soils, or earth fill.
6. The project is located in a wetland designated on National Wetlands Inventory maps or designated by State or local authorities.
7. The project is on the National Register of Historic Places or is within a historic district listed on the Register.

8. The appraiser or DE lender is aware of any other condition that could adversely affect the health or safety of the residents of the project.

V. Project Eligibility Requirements

A. The following requirements apply to all Condominium Project approvals:

- Projects consist of two units or more.
- Projects must be covered by hazard and liability insurance and, when applicable, flood insurance.
- Right of first refusal is permitted unless it violates discriminatory conduct under the Fair Housing Act regulation in 24 CFR 100.
- No more than 25 percent of the property's total floor area in a project can be used for commercial purposes. The commercial portion of the project must be of a nature that is homogenous with residential use, which is free of adverse conditions to the occupants of the individual condominium units.
- No more than 10 percent of the units may be owned by one investor. This will apply to developers/builders that subsequently rent vacant and unsold units. For two and three unit condominium projects, no single entity may own more than one unit within the project; all units, common elements, and facilities within the project must be 100 percent complete; and only one unit can be conveyed to non-owner occupants.
- No more than 15 percent of the total units can be in arrears (more than 30 days past due) of their condominium association fee payment.
- At least 50 percent of the total units must be sold prior to endorsement of any mortgage on a unit. Valid presales include an executed sales agreement and evidence that a lender is willing to make the loan.¹
- At least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units.² For proposed, under construction or projects still in their initial marketing phase, FHA will allow a minimum owner occupancy amount equal to 50 percent of the number of presold units (the minimum presales requirement of 50 percent still applies).
- Legal Phasing is permitted for condominium processing. It is recommended that developers submit all known phases for initial project approval. For purposes of calculating the owner-occupancy percentage:
 - a. On multi-phased projects the owner-occupancy percentage is calculated on the first declared phase and cumulatively on subsequent phases if the ownership of the condominium project remains the same;

¹ Secondary residences can only be included if it meets the requirements of 24 CFR 203.18(f)(2).

² If the owner-occupancy ratio includes presales, FHA requires an executed sales agreement and corresponding evidence that a lender is willing to make the loan and the buyer intends to occupy the unit. A separate owner-occupancy certification is also required in the FHA case binder for loans where the Individual Condominium Unit Appraisal Report, Fannie Mae Form 1073, does not contain the required data or the condominium project is proposed or under construction.

- b. If multi-phasing includes separate ownership per phase, each phase is calculated individually; or
 - c. Single-phase condominium project approval requests must meet the owner-occupancy percentage requirement.
- FHA Concentration
 - a. Projects consisting of three or less units will have no more than one unit encumbered with FHA insurance.
 - b. Projects consisting of four or more units will have no more than 30 percent of the total units encumbered with FHA insurance.
 - Reserve Study - a current reserve study must be performed to assure that adequate funds are available for the funding of capital expenditures and maintenance. A current reserve study must be no more than 12 months old – if recent events or market conditions have affected the finished condition of the property that information must be included. When reviewing the reserve study, consideration must be given to items that have been replaced after the time that the reserve study was completed.

VI. Manufactured Housing Condominium Projects

Pursuant to HERA, manufactured housing condominium projects are now eligible for FHA mortgage insurance. Accordingly, all outstanding and current FHA Manufactured Housing individual unit requirements remain applicable for both Home Equity Conversion Mortgages (HECM) and forward mortgages, including elevations in flood zones and foundation requirements. MHCPs must be submitted to the applicable Homeownership Center for review and approval – these projects are ineligible for DELRAP processing. MHCPs may not be processed as site condominiums; these projects will require approval under HRAP.

1. Appraisal reporting requirements for condominium manufactured homes:
 - a. Appraisal must be reported on the Manufactured Home Appraisal Report (Fannie Mae Form 1004C).
 - b. Subject condominium project must be inspected and the Project Information section of the Individual Condominium Unit Appraisal Report (Fannie Mae Form 1073) must be completed and included as an addendum to the appraisal report.
 - c. Comparable sales must be condominium manufactured homes. Detailed explanations must be provided when search parameters are expanded due to the lack of comparable sales in subject market area.

VII. Condominium Conversions

Conversion to condominiums occurs in those projects which involve changing the title of an existing structure generally under one title, to property that is separated into units so that the title to most units can be held separately. Changes to condominium conversion requirements are defined below:

1. The one-year waiting period requirement for conversions is eliminated;
2. In the event that FHA is insuring a mortgage on a unit and an undivided interest in the common elements on a project undergoing remodeling or rehabilitation, the entire condominium project, including the common facilities, must be 100 percent completely built before any mortgage may be endorsed. Escrow provisions will be permitted for weather related delays for common areas only.

VIII. FHA Connection (FHAC)

System modifications will be made to capture additional information, remove obsolete fields, and identify points of contacts. Major planned system modifications are:

1. Establishment of a Condominium Project Approval screen in FHAC that will be used by DE lenders and HUD staff to enter approval, rejection and recertification data.
2. System generated condominium project identification numbers based on the HOC of jurisdiction.

NOTE: While major system modifications have been identified, other modifications will be made and released as necessary to ensure collection of all valid information.

IX. Condominium New Construction Pre-approval and Inspection Requirements

Mortgagee Letter 2001-27 prohibited condominium processing under those guidelines. This Mortgagee Letter now permits condominium processing under the policy as established below.

In cases where a building permit and a certificate of occupancy (or its equivalent) are issued by a local jurisdiction that performs a minimum of three inspections (typically the footing, framing and final) neither an Early Start Letter nor a HUD approved ten-year warranty plan is required. For those jurisdictions that do not issue a building permit (or its equivalent) prior to construction and a Certificate of Occupancy (or its equivalent) upon completion of construction, a condominium unit that is one year old or less must have either an Early Start Letter (with a minimum of three inspections by an FHA Roster Inspector) or be covered by a HUD-approved ten-year warranty plan (with a final inspection by a FHA Roster Inspector) to be eligible for high-ratio mortgage insurance. All condominium types are eligible to follow this process (e.g. Multi-family). Projects are still required to be on the FHA-approved condominium list.

FHA will require the completion and retention of the following documents when processing new construction condominium project approvals:

- Builder's Certification of Plans, Specifications and Site, form HUD-92541
- Builder's Warranty, form HUD-92544
- Building Permit (or its equivalent)
- Final Certificate of Occupancy (or its equivalent)

FHA will not accept a temporary Certificate of Occupancy; all units within the building (where the specific unit that is security for the insured financing is located) must be complete.

X. General Processing Steps for DELRAP or HRAP

- A. Determine acceptability of the site and location of the project. Refer to Attachment A, *Condominium Project Approval Matrix*.
- B. Review the project's financial and legal documents; if acceptable, authorized personnel will sign and date the Lender Certification of Condominium Requirements (Attachment B).
- C. Place the Lender Certification of Condominium Requirements and other required certifications in the FHA case binder.
- D. Retain and maintain all documents used to review and approve the project for a period of three years from the date of project approval.
- E. Mixed condominium review and processing is not permitted. If a lender opts to participate in the DELRAP process, all future processing submissions must be processed, accordingly, in that sole and particular manner with the exception of manufactured housing condominium project approvals (these must be submitted to the applicable Homeownership Center for review and approval).
- F. If a project is listed as Rejected or Withdrawn on the FHA-approved condominiums list, the only approval process accepted is HRAP.
- G. Second and subsequent lenders that submit a unit for insurance in a project that is listed on the FHA-approved condominium list are not required to complete any further approval process. At the lender's discretion, they may seek any additional information to satisfy their own requirements and/or perform their own due diligence. FHA will require the lender to certify it has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent.
- H. Subsequent phases being approved by a different lender must follow the general procedures listed here in Section X. The original lender must also follow these general procedures but will have already satisfied some of the steps listed.

- I. All required certifications, as applicable, must be included in the FHA case binder submitted for insurance endorsement.
- J. For both new construction and conversions if the developer intends to market five or more units within the next 12 months with FHA mortgage insurance, an Affirmative Fair Housing Marketing Plan (AFHMP) or a Voluntary Affirmative Marketing Agreement (VAMA) must be in place. Form HUD-935.2C, Affirmative Fair Housing Marketing Plan – Condominium or Cooperatives, is to be used for condominium projects. This completed form must be submitted to the Director of the Processing and Underwriting Division in the jurisdictional HOC for approval. If “a, b, c, or d” is checked on response to Question 2 in the Applicability section, the developer is not required to complete an AFHMP. The developer should complete block 11 on form HUD-92541, Builder’s Certification of Plans, Specification and Site.
- K. Environmental reviews will be required for proposed and under construction project approvals submitted under the HRAP option consistent with the Environmental Review Requirements listed in Section IV. D. Environmental review is not required under DELRAP, but the lender **must** take necessary actions to avoid or mitigate identified environmental conditions prior to completing its project review.
- L. Transfer of control of the Homeowners Association shall pass to the owners of units within the project no later than the earlier of the following:
 - 1. 120 days after the date by which 75 percent of the units have been conveyed to the unit purchasers, or
 - 2. One year after completion of the project evidenced by the first conveyance to a unit purchaser.

XI. Certification for Initial Approval

Lenders must provide certifications on company letterhead signed by a company authorized representative (signature stamps or electronic signatures are not authorized) that:

- 1. The eligible condominium project complies with applicable FHA requirements addressed within this Mortgagee Letter;
- 2. All condominium legal documents meet HUD regulations, state and local condominium laws; and
- 3. Pre-sale and owner occupancy ratios per loan are met.

NOTE: FHA will not require an attorney's certification; however, lenders may obtain this as part of their due diligence process. Lenders are reminded that this document will not replace other condominium certifications required from the lender.

XII. Certification of Projects Previously Approved

If a project has been previously approved, lenders must certify that they are not aware of any change in circumstances since initial approval of the project that would result in the project no longer complying with FHA requirements.

XIII. Recertification of Project Approvals

Condominium Project approvals will expire two years from the date it has been placed on the list of approved condominiums. This will also apply to all projects currently on the list of approved condominiums. Further participation in the program after this two-year period has expired will require recertification to determine that the project is still in compliance with HUD's owner-occupancy requirement and that no conditions currently exist which would present an unacceptable risk to FHA. Items that should be given consideration are:

1. Pending special assessments,
2. Pending legal action against the condominium association, or its officers or directors,
3. Hazard, liability insurance and when applicable flood insurance.

XIV. Quality Assurance

Monitoring the condominium approval process is critical to the success of the program. Lenders who approve condominium projects utilizing the DELRAP option will be required to submit a copy of the complete condominium project approval package to the applicable Homeownership Center within five business days of approval. Lenders are required to submit the first **five** DELRAP approvals for review. Further, to manage FHA's risk, and ensure compliance with all condominium project policy requirements, additional condominium project approvals will be selected for review. The criteria for selection of the additional approvals will be determined and lenders will be notified in future guidance.

XV. False Certifications

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

XVI. Insurance of Individual Units

All applicable, outstanding and any additional FHA insurance requirements not defined in this guidance must be met for individual units.

If you have questions regarding this Mortgagee Letter, please call the FHA's Resource Center at 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

Attachments

Attachment A

<i>Condominium Project Approval Matrix</i>				
		Proposed/UC	Existing	Conversion
1	<u>All Condominium Legal Documents</u>	x	x	x
a	<u>Recorded Plat Map indicating Legal Description</u>	x	x	x
b	<u>Recorded Covenants, Conditions and Restrictions (CC&R's)</u>	x	x	x
c	<u>Signed and Adopted Bylaws</u>	x	x	x
d	<u>Articles of Incorporation filed with the State</u>	x	x	x
e	<u>Recorded Condominium Site Plans</u>	x	x	x
2	<u>Plan or Evidence of Transfer of Control</u>	x	x	x
3	<u>Proposed or Actual Budget</u>	x	x	x
4	<u>Reserve Study</u>	x	x	x
5	<u>Management Agreement, if applicable</u>	x	x	x
6	<u>Equal Employment Opportunity Certificate (Form HUD 92010)</u>	x		
7	<u>Affirmative Fair Housing Marketing Plan or Voluntary Affirmative Marketing Agreement (VAMA)</u>	x		x
8	<u>FEMA Flood Map</u>	x	x	x
9	<u>Estimated Construction Completion Date</u>	x		x
10	<u>Outstanding or Pending Litigation Analysis</u>		x	x
11	<u>Pending Special Assessment Analysis</u>		x	

Attachment B

LENDER CERTIFICATION TO CONDOMINIUM REQUIREMENTS

The undersigned hereby certifies that (1) the Lender has reviewed the project and it meets all requirements of Section 203(b) of the National Housing Act, 24 CFR 203, State and local condominium laws and any Mortgage Letters thereto applicable to the review of condominiums; (2) to the best of his or her knowledge and belief, the information and statements contained in this application are true and correct, and (3) the Lender has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including but not limited to: defects in construction; substantial disputes or dissatisfaction among unit owners about the operation of the project or the owner's association; and disputes concerning unit owners; rights privileges, and obligations). The undersigned understands and agrees that the Lender is under a continuing obligation to inform HUD if any material information compiled for the review and acceptance of this project is no longer true and correct.

Authorized Lender Representative
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

Attachment C

**LENDER CERTIFICATION TO CONDOMINIUM REQUIREMENTS FOR
APPROVED PROJECTS**

The undersigned hereby certifies that (1) the Lender has verified the condominium unit in connection with this loan file has been verified to be in a project that appears on FHA's list of approved condominium projects; (2) to the best of his or her knowledge and belief, the information and statements contained in this application are true and correct, and (3) the Lender has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including but not limited to: defects in construction; substantial disputes or dissatisfaction among unit owners about the operation of the project or the owner's association; and disputes concerning unit owners; rights privileges, and obligations). The undersigned understands and agrees that the Lender is under a continuing obligation to inform HUD if any material information compiled for the review and acceptance of this project is no longer true and correct.

Authorized Lender Representative
(Signature and Title)

Date

Title 18 U.S.C. 1014, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than \$1,000,000 or imprisoned for not more than 30 years or both. In addition, violation of this or others may result in debarment and civil liability for damages suffered by the Department.

Attachment D

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this _____ day of _____, 20__, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to _____ ("Lender") of the same date and covering the Property described in the Security Instrument and located at:

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in the Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under the Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

(SEAL)
Borrower

(SEAL)
Borrower

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS.]