

October 2012

FHA Eases Certification Requirements for Condominiums

By: Leslie Brown

On September 13, 2012, the Federal Housing Administration (FHA) issued a mortgagee letter relaxing some of the existing requirements for condominium certifications.

While the provisions that were implemented previously and re-constituted in June 2011 remain generally the same, some of the standards that condominium associations once found to be burdensome have been lessened, thus allowing more condominium associations to be eligible for FHA financing.

These changes can be found in FHA's Mortgagee Letter 2012-18 and remain in effect until August 31, 2014, unless the FHA amends the requirements beforehand. During this time period, FHA intends to formalize its requirements by undergoing the rule-making process (drafting regulations and allowing for a public comment period).

Commercial Space

Under the previous rules, no more than 25% of the total floor area could be used for commercial purposes, although FHA would consider a project with up to 35% commercial space on a case-by-case basis.

Under the new mortgagee letter, FHA will consider a project between 35% and 50% commercial space if the applicant provides additional information regarding how the

commercial space is calculated, a description of the use of the space on a floor-by-floor basis, a marketing and neighborhood analysis, and other criteria identified in the mortgagee letter.

Investor Ownership

Previously, no more than 1 investor could own more than 10% of the units in the condominium.

Now, a single entity may own up to 50% of the units in a condominium so long as at least 50% of the units are still owner-occupied.

Delinquencies

Under the previous rules, no more than 15% of the total units in the condominium could be 30 days or more past due in the payment of assessments. FHA would consider a project with up to 20% delinquent units under certain circumstances and with supporting documentation provided.

The new rule is that no more 15% of the total units in the condominium can be 60 days or more past due in the payment of assessments. There is no more 20% exception. However, FHA has clarified that the delinquency ratio it is evaluating pertains to principal assessments only; not charges, late fees, costs, etc.

Fidelity Coverage

Under the previous rules, the Association was required to maintain fidelity coverage equal to the amount currently held in reserves plus $\frac{1}{4}$ of the total annual assessment for the year. Furthermore, the management agent had to be listed as a covered entity. FHA required that the management agent be listed on the certificate of insurance.

This requirement is still in effect, but the management agent can be listed as a covered employee via an endorsement.

Legal Liability

Under the previous rules, the applicant was required to make 3 very stringent certifications regarding the application package and the state of the condominium.

In recognizing that many condominium Board members declined to make the required certifications due to FHA's onerous penalties for false statements, FHA relaxed the certifications. Under the new rules, the association must certify as follows:

- To the best of my knowledge and belief, the information and statements contained in the condominium project application are true and correct; **and**
- I have reviewed the condominium project application and it meets all current Federal Housing Administration (FHA) condominium approval requirements; **and**
- I have no knowledge of circumstances or conditions that might have an adverse effect on the project (including but not limited to defects in construction; substantial operations issues; or litigation, mediation or arbitration issues).

The penalties for knowingly false statements are the same they were previously, but the certifications contain less worrisome language.

As stated above, these changes may make some previously ineligible condominiums now eligible. If you would one of our community association attorneys to evaluate the eligibility of your condominium association under these new rules, please do not hesitate to contact us.

We will continue to monitor FHA's actions and report any additional changes to our clients and industry professionals.