



Banking, Bankruptcy & Creditors' Rights Law Practice Group

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FHA ENDS MOST CONDOMINIUM PROJECT 'SPOT APPROVALS,' COSTLY PRE-APPROVALS BEGIN NEXT WEEK

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In response to the current residential housing loan debacle, lender beware, most condominium mortgage lending will be dramatically altered on Monday, Feb. 1, when new Federal Housing Administration (FHA)-insured mortgage loan requirements are implemented.

Plunkett Cooney anticipates additional changes to, or perhaps delays in the implementation of, these requirements in response to growing housing industry consternation that implementation will further constrict the availability of mortgage financing to a significant component of the housing market. FHA-insured mortgages constitute 30 percent of all condominium financing.

Unless a condominium project is a fully-detached "site" condominium, in which case FHA has agreed that the new requirements will not apply, mortgage lenders will no longer be able to obtain FHA "spot approval" of condominium projects based upon a certification by the condominium property manager or association officer. A "pre-approval" of the entire condominium project will now be required. FHA announced that "pre-approvals" are valid for a two-year period and "re-approval" requirements have not been announced.

The new FHA "pre-approval" requirements differ in important respects from those previously announced by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), but address the same issues and adopt many of the same standards. Criminal penalties, including incarceration and fines up to \$1 million may now be imposed for the knowing submission of any false, fictitious or fraudulent statements in connection with a "pre-approval" application.

FHA (as had Fannie Mae and Freddie Mac) imposes separate requirements for "new projects" (generally, those which are not both 100 percent complete and 90 percent conveyed), for which additional unit sale, certificate of occupancy and association turnover requirements, and "existing projects" exist. Common requirements include, but are not limited to:

- **Aggregate limitation upon FHA-insured mortgages in any project:** A maximum of 30 percent of the project's units may be secured by an FHA-insured mortgage (50 percent or 100 percent, if certain additional requirements are met in 2010);
- **Association restrictions:**

(A) Assessments: Not more than 15 percent of total units are delinquent in assessment payment for more than 30 days.

(B) Insurance:

Hazard – Replacement cost;

Liability – minimum \$1 million

Fidelity (if 20 units or more) – minimum times

the aggregate amounts of monthly assessments plus reserve amounts

Flood (if applicable) – minimum \$250,000

Co-owner HO6 in amount equal to 20 percent of appraised value (unless Association master policy “all-in” coverage, including improvements and betterments)

(C) Budget: Adequate or meets minimum reserve funding requirements

- **Occupancy restrictions:** 50 percent of units owner-occupied (vacant and real estate owned properties may be excluded from numerator and denominator).
- **Commercial limitation:** Non-residential uses in a mixed-use project restricted to 25 percent of the project area.
- **Legal compliance:** The project representative must certify that the “project was declared and exists in full compliance with applicable state law requirements of the jurisdiction in which the project is located and with all other applicable laws and regulations.”

Issued Nov. 6, 2009, The FHA’s new requirements are embodied in FHA Mortgagee Letters 2009-46 B (permanent baseline guidance for condominium project eligibility) and 2009-46 A (temporary exceptions designed to address current housing market conditions).

Previously, Fannie Mae announced comparable requirements in Announcement 08-34 and introduced its Project Eligibility Review Service (PERS), a fee-based project-acceptance service for Fannie Mae sellers and servicers. This fee-based service requires lenders to submit the complete project package to Fannie Mae by e-mail.

The FHA and Fannie Mae “pre-approval” processes are document-intensive and detail-oriented. Although not required by the agencies, in view of the potential criminal penalties, a lender seeking pre-approval should consider obtaining the assistance of legal counsel.

If you are interested in obtaining additional information on this topic, contact the author David S. Keast, whose Bloomfield Hills office banking practice includes a specialty in condominium law, or contact any member of Plunkett Cooney’s Banking, Bankruptcy & Creditors’ Rights Practice Group. To review a practice group directory, [click here](#).