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NEW FANNIE MAE REQUIREMENTS FOR CONDOMINIUM AND CO-OP PROJECTS

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Following the tragic collapse of the Champlain Tower South Condominium and the resulting concerns over buildings with aging infrastructure, Fannie Mae issued new temporary eligibility requirements for loans secured by units in condominiums or co-op projects with five or more units and insured by Fannie Mae ("Loans"). The temporary requirements became effective as of January 1, 2022, and apply to Loans purchased on or after January 1, 2022, and to Loans delivered into MBS pools with issue dates on or after January 1, 2022.

The new requirements are set forth in Lender Letter LL-2021-14 (available here) and impact the eligibility of condominium and co-op projects with significant deferred maintenance and unsafe conditions. Loans in projects that have not obtained a certificate of occupancy, have failed to pass local regulatory inspections, or have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase.

Condominium and co-op projects with significant deferred maintenance deficiencies are also not eligible for purchase. The new requirements define significant deferred maintenance deficiencies to include (a) situations that require the full or partial evacuation of the building to complete repairs for more than seven days or for an unknown period of time; and (b) "deficiencies, defects, substantial damage, or deferred maintenance" that (i) affect the "safety, soundness, structural integrity, or habitability of the improvements", (ii) require substantial repairs (including major components), or (iii) impede the "safe and sound functioning of one or more of the building's major structural or mechanical elements" such as the foundation, roof, load-bearing structures, electrical systems, HVAC, or plumbing. The new requirements also require a 10% minimum budget reserve and review of information regarding current or planned special assessments including the reason for the assessment, the amount of the assessment, and documentation showing no negative impact on the financial stability of the project.

The requirements set forth in the Lender Letter specifically do not apply (a) to routine maintenance or repairs undertaken to preserve the integrity and condition of the property and (b) if damage or deferred maintenance is isolated to one or a few units and does not affect the overall safety, soundness, structural integrity, or habitability of the improvements. Examples include water damage to a unit due to a leaking pipe that is isolated or damage from a small fire impacting the interior of a unit, other than the unit which is securing the loan.

As a result of the new requirements, condominium associations and co-ops are likely to receive requests from lenders for the information set forth in the new requirements, including information relating to the condition of the buildings, in connection with purchases and re-financing. Although the Florida Condominium Act does not require responses to lenders' requests for this information, failing to respond will interfere with the ability of unit purchasers to obtain a loan as well as the ability of existing owners to refinance.

Condominium associations should provide accurate and truthful responses and should consult with the association’s legal counsel before responding to lenders to avoid potential issues or liability.

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