

## ■FHA Revises Requirements for Condo Mortgage Insurance

*By Curtis Ekmark, Esquire*

**The U.S Department of Housing and Urban Development (HUD) issued revised guidance on December 7, 2009 concerning changes to the Federal Housing Administration (FHA) requirements for condominium mortgage insurance.**

If a condominium association is already on the [FHA's list of approved condominiums](#), then generally its approved status will continue in place until at least December 7, 2010. Condominiums that were approved prior to October 1, 2008 will have to be recertified by December 7, 2010. Condominiums that were approved between October 1, 2008 and December 7, 2009 will need to be recertified after two years from the date of approval. After this transition period, every condominium will have to recertify every two years.

However, lenders also must certify that previously-approved condominiums have not had a change in circumstances that would result in the condominium failing to comply with the new requirements. Some communities may find themselves losing their FHA-approved status due to the new requirements.

Furthermore, any condominium association that is not on the FHA approved list and previously relied on the "spot loan" approval process will have to apply for approval under the new requirements because spot loan approval was eliminated for all new loans on or after February 1. The new FHA guidelines only apply to condominium associations, not planned communities.

The FHA insures mortgages offered by financial institutions, giving them the backing of the U.S. government to help make affordable financing available to homebuyers. To qualify for FHA mortgage insurance, a borrower must occupy the property as a principal residence and meet other employment and credit requirements.

Because FHA-backed mortgages have lower down payment and more flexible eligibility requirements, they are being used by an increasingly large segment of potential homebuyers. Not being approved by the FHA means units in a condominium association cannot be sold to these buyers, making the units potentially more difficult to sell in an already difficult housing market.

The new FHA requirements apply to most existing condominiums, as well as those that are undergoing condominium conversion or currently under construction. The new requirements do not apply to Site Condominiums, defined as single-family totally detached dwellings (with no shared garages or other attached buildings) that are governed by a condominium declaration because these units are treated as single-family housing by the FHA. Similarly, timeshares, condominiums with multiple dwellings per unit, and projects not deemed as primarily residential are ineligible for FHA mortgage insurance, so they need not be concerned with compliance.

The new guidelines are laid out in [HUD's Mortgagee Letter 2009-46B](#). HUD also issued some temporary guidelines with more lenient standards that are effective until December 31, 2010. These temporary guidelines are found in [Mortgagee Letter 2009-46A](#). The key requirements include:

- No more than 25 percent of the property's total floor area can be used for commercial purposes.
- No more than 10 percent of the units may be owned by one investor, including developers/builders renting vacant and unsold units.
- No more than 15 percent of the total units can be delinquent more than 30 days in paying their assessments.
- At least 50 percent of the units must be owner-occupied or, where construction is not yet complete, sold to owners who intend to occupy their units. For proposed projects, projects under construction, or projects still in their initial marketing phase, the FHA will require minimum owner occupancy of at least 50 percent of pre-sold units. Vacant or tenant-occupied real estate owned (REO) properties owned by a bank or reverted to a mortgage company may be excluded from the calculation of the owner-occupancy percentage. At least 50 percent of the total units in a new development must be pre-sold (e.g., executed sales agreement and evidence that lender is

willing to make loan) prior to FHA endorsement of any mortgage on any unit. The required percentage of pre-sales has been temporarily reduced to 30 percent for new construction.

- A condominium association's budget (actual for existing communities or proposed for new projects) must be adequate to ensure sufficient funds are available to maintain all of the community's amenities and features, provide for the funding of reserves for capital expenditures and deferred maintenance in an account representing at least 10 percent of the budget, or provide adequate funding for both insurance coverage and the payment of insurance deductibles. If the budget does not appear to meet these standards, a reserve study may be requested to assess the financial health of the community. Any reserve study provided must be not more than 12 months old.
- The condominium must have hazard, flood, liability, and other insurance as required by state laws or as otherwise acceptable to FHA.
- Transfer of the control of the association to unit owners must take place no later than the latest of: 120 days after the date by which 75 percent of the units have been conveyed; three years after completion of the project, as evidenced by the first conveyance to a unit purchaser; or the time frame established under applicable state law.
- For condominiums of four or more units, the FHA will insure the mortgages of no more than 30 percent of the total units. The FHA has temporarily increased this concentration requirement to 50 percent of the total units, and it may be increase to 100 percent of the units if the following additional requirements are met: The condominium is 100 percent complete and construction has been completed for at least one year; 100 percent of the units have been sold and no entity owns more than 10 percent of the budget; transition of the condominium association to owner control has occurred; the owner-occupancy rate is at least 50 percent; and new construction and conversions are not eligible for this 100 percent exception.

Under the new guidelines, there will be two options for obtaining condominium approvals. The first option is directly applying to HUD for review and approval. Second, certain lenders will have unconditional direct endorsement authority to review and approve condominium projects. In either case, the FHA has prescribed documentation that must be submitted by an association as part of the review process.

Attachment A to Mortgagee Letter 2009-46B contains a matrix of required documents for proposed or under construction condominiums, existing condominiums, and condominium conversions. The key documents for existing communities include:

- The condominium's recorded plat
- The association's governing documents (Declaration, Bylaws, and Articles of Incorporation)
- Recorded site plans for the project
- A plan or evidence of transfer of control of the condominium to unit owners
- A proposed or actual budget
- Any existing management agreement
- Any applicable FEMA flood map
- An analysis of any outstanding or pending litigation
- An analysis of any pending special assessment

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*Source: NBC-CAM Upwards Directions*