



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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## 312.02 Restrictions

### 312.02A Underwriting

#### Requirements

You must ensure that no Lender employee or other person involved in Conflict Mortgage Loan underwriting and approval owns any direct or indirect equity interest in the Borrower.

You must include the following in your Transaction Approval Memo:

- the amount of any direct or indirect equity interest in the Borrower owned by any Lender Senior Executive, other Lender employee or group of employees; and
- answers to the following questions, including an explanation if your answer to a question is yes:
  - Does any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, own any direct or indirect equity interest in the Borrower?
  - Can any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, require changes to the management, operations, or decision-making of the Borrower?

In addition, your underwriting submission must include:

- copies of the Borrower's organizational documents and financial statements;
- copies of all organizational documents and financial statements for any Lender Affiliate that holds a direct or indirect equity ownership interest in the Borrower; and
- an organizational chart or diagram showing the:
  - Borrower's complete ownership structure;
  - relationship among the Lender, Borrower, and applicable Lender Affiliate; and
  - percentage ownership of each entity.





You must designate the Mortgage Loan as a Conflict Mortgage Loan in C&D.

### **312.02B** Servicing

#### Requirements

As Servicer of a Controlling Conflict Mortgage Loan, you must not

- participate in loss mitigation or special asset management decisions if it becomes a Non-Performing Mortgage Loan, or
- be notified of, or participate in, any negotiations or communications between Fannie Mae and the Borrower, Key Principal, or Principal (or any Affiliate of any of them).

Fannie Mae will make reasonable efforts to provide copies of written communications between Fannie Mae and other parties.

These servicing restrictions apply as long as the Mortgage Loan is considered a Controlling Conflict Mortgage Loan.

#### Operating Procedures

1. Fannie Mae has sole discretion to decide what action, if any, to take regarding any Controlling Conflict Mortgage Loan, any Property securing a Controlling Conflict Mortgage Loan, or any Borrower or Guarantor.
2. If Fannie Mae decides that a Controlling Conflict Mortgage Loan has a material risk of default or other characteristics of increased risk, it can
  - designate a substitute servicer or subservicer, or
  - terminate (with or without cause) your right to service the Mortgage Loan.
3. Fannie Mae will comply with the Program Rules Part 3 Sections B and C relating to Fannie Mae initiated servicing transfers. After servicing is transferred, you will retain your loss sharing obligation.

### **312.02C** No First Right of Refusal

#### Requirements

You will not have any First Right of Refusal to purchase a Property that secured a Conflict Mortgage Loan, even if the Loss Sharing Addendum to the MSSA grants you this right.



### **312.02D** Additional Disclosure

#### Operating Procedures

For an MBS backed by a Conflict Mortgage Loan, you must indicate in C&D

- that additional disclosure is required, and
- whether it is the Lender, a Lender Affiliate, a Lender Senior Executive, a Lender employee, or group of employees who has a Controlling Interest or a non-Controlling Interest.

### **312.02E** Notifications

#### Requirements

If, after delivering a Mortgage Loan, it becomes a Conflict Mortgage Loan, you must deliver all materials described in this Section to Multifamily Asset Management within 30 days after acquiring each equity interest.



## Glossary

### A

#### Affiliate

When referring to an affiliate of a Lender, any other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.

When referring to an affiliate of a Borrower or Key Principal:

- any Person that owns any direct ownership interest in Borrower or Key Principal;
- any Person that indirectly owns, with the power to vote, 20% or more of the ownership interests in Borrower or Key Principal;
- any Person Controlled by, under common Control with, or which Controls, Borrower or Key Principal;
- any entity in which Borrower or Key Principal directly or indirectly owns, with the power to vote, 20% or more of the ownership interests in such entity; or
- any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

#### **Synonyms**

- Affiliates
- Affiliate's

### B

#### Borrower

Person who is the obligor per the Note.

#### **Synonyms**

- Borrowers
- Borrower's

### C

#### Controlling Interest

For any entity, ownership or control of 50% or more of the ownership interests in the entity or the power or right to control or modify, directly or indirectly, the management and operations of the entity.



## G

Guarantor

Key Principal or other Person executing a

- Payment Guaranty,
- Non-Recourse Guaranty, or
- any other Mortgage Loan guaranty.

### **Synonyms**

- Guarantors

## K

Key Principal

Person who

- controls and/or manages the Borrower or the Property,
- is critical to the successful operation and management of the Borrower and the Property, and/or
- may be required to provide a Guaranty.

### **Synonyms**

- Key Principals
- Key Principal's

## L

Lender

Person Fannie Mae approved to sell or service Mortgage Loans.

### **Synonyms**

- Lenders
- Lender's

Lender Affiliate

Other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.



Lender Senior Executive

For any Lender any:

- a. senior executive officer serving as its president, chief executive officer, chief financial officer, chief operating officer, chief production officer, chief underwriter, chief asset manager, chief legal officer, chief information security officer, chief compliance officer, or substantially equivalent position;
- b. individual with voting or approval rights over whether the Lender commits to make a Mortgage Loan; or
- c. Immediate Family Member of, or individual having a close relationship with, any individual identified in (a) or (b).

**Synonyms**

- Lender Senior Executives

## M

MBS

Mortgage-Backed Security

Mortgage Loan

Mortgage debt obligation evidenced, or when made will be evidenced, by

- the Loan Documents, or
- a mortgage debt obligation with a Fannie Mae credit enhancement.

**Synonyms**

- Mortgage Loans
- Mortgage Loan's

Multifamily Asset Management

Team that can be contacted at [drawer\\_am@fanniemae.com](mailto:drawer_am@fanniemae.com).

## N



Non-Performing  
Mortgage Loan

Mortgage Loan with an uncured default.

**Synonyms**

- Non-Performing Mortgage Loans
- Non-Performing Mortgage Loan's
- Non-Performing

**P**

Principal

Person who owns or controls, in the aggregate, directly or indirectly (together with that Person's Immediate Family Members, if an individual), specified interests in the Borrower per Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 303: Key Principals, Principals, and Guarantors.

**Synonyms**

- Principals

Property

Multifamily residential real estate securing the Mortgage Loan, including the

- fee simple or Leasehold interest,
- Improvements, and
- personal property (per the Uniform Commercial Code).

**Synonyms**

- Properties
- Property's

**S**

Servicer

Primary Person servicing the Mortgage Loan, including

- the originator,
- seller, or
- a third party.

**Synonyms**

- Servicers
- Servicer's