New Multifamily Mortgage Loan Documents

Date: January 3, 2011
To: Multifamily Lenders
From: Marsha Baumgarner, Vice President and Deputy General Counsel
Subject: Guide Update 11-01 | New Fannie Mae Multifamily Form Mortgage Loan Documents

HIGHLIGHTS

- New Fannie Mae Multifamily form Mortgage Loan documents available

Fannie Mae is pleased to announce the publication of new Multifamily form Mortgage Loan documents.

Lenders have been originating Mortgage Loans on forms originally published in 1998. Over the years, that original set of loan documents has been modified, updated, and added to, growing the total amount of documents to a population of more than 800. To improve transactional and operational efficiency both internally and externally, reduce redundancies, and provide greater consistency and uniformity in the Mortgage Loan documents going forward, Multifamily is publishing a new set of Mortgage Loan documents as described below.

Core Loan Documents

With this publication, all substantive business terms are contained in the following core set of Mortgage Loan documents:

**Short-form Multifamily Note (Form 6010).** There is only one Multifamily Note form to be used for all executions in any jurisdiction.

**Short-form Multifamily Deed of Trust/Mortgage (Form 6025 series).** Because of state specific requirements, there continue to be 51 Security Instrument forms, one for each state and the District of Columbia, but shortened to include only those provisions necessary to be included in the recorded lien instrument.
Guaranty of Non-Recourse Obligations (Form 6015) and Guaranty (Payment) (Form 6020). There are no longer state specific forms of the Exceptions to Non-recourse Guaranty and the Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability has been retired. The Guaranty of Non-Recourse Obligations (Form 6015) must be used for all transactions where a non-recourse guaranty is required and Guaranty (Payment) (Form 6020) must be used for any transaction requiring a payment guaranty.

Environmental Indemnity Agreement (Form 6085). The environmental provisions formerly contained in the Security Instrument have been included in this new document.

Multifamily Loan and Security Agreement (Form 6001). The Multifamily Loan and Security Agreement (Loan Agreement) is a compilation of many of the existing business terms currently contained in existing loan document forms, including:

- Multifamily Note
- Multifamily Security Instrument
- Certificate of Borrower
- Replacement Reserve and Security Agreement
- Completion/Repair and Security Agreement, and
- Agreement to Amend or Comply.

The Loan Agreement contains Schedules and Exhibits that will document the Mortgage Loan as necessary for a particular interest rate type, asset class, or product feature or execution. For example, instead of separate Note forms for each interest rate type (i.e., Fixed Rate, Fixed+1, ARM, etc.), Schedules to the Loan Agreement contain the necessary provisions to convert the Loan Agreement to a Fixed Rate, Fixed+1, ARM, etc. transaction. Each Schedule suite consists of the following:

- Schedule 1 – Definitions (Form 6101 series)
- Schedule 2 – Summary of Loan Terms (Form 6102 series)
- Schedule 3 – Interest Rate Type Provisions (Form 6103 series)
- Schedule 4 – Prepayment Premium Provisions Form 6104 series)

Note that Schedule 2, Summary of Loan Terms, contains most of the pluggable data fields in the Mortgage Loan documents (i.e., Borrower and Lender addresses, Mortgage Loan amount, the interest rate, monthly debt service payment amounts, maturity date, yield maintenance period, reserve deposits, etc.). As a result, we expect Schedule 2 to be a useful tool for Fannie Mae, Lenders, and Borrowers over the life of the Mortgage Loan.

There are three other Schedules that are fixed for every execution and are published with the Loan Agreement (Form 6001):

- Schedule 5 – Required Replacement Schedule
- Schedule 6 – Required Repair Schedule
- Schedule 7 – Exceptions to Representations and Warranties Schedule

Because of the complexity of Seniors Housing and the Maryland IDOT executions, those executions will have unique Loan Agreement forms. Mortgage Loan documents for Seniors Housing and Maryland IDOT executions will be published later this month.
In addition to the above core documents, Multifamily is issuing other Mortgage Loan documents that are compatible with and must be used with the new core documents.

**No Changes without Waiver**

As has been the custom for the prior loan documents, the new Mortgage Loan documents must be used in the form issued unless a waiver has been granted by Fannie Mae for facts and circumstances peculiar to an individual transaction. If waivers are approved by Fannie Mae, changes to the Mortgage Loan documents may be made only by the addition of an exhibit to the applicable document and only after Fannie Mae has approved the change.

Except as noted with regard to Borrower Channel changes, Lenders are not authorized to make any changes to these Mortgage Loan documents based upon document waivers approved by Fannie Mae in the past and prior to this publication for any Borrower. Multifamily lawyers will be working with the Borrower Channel to develop new exhibits to these new Mortgage Loan documents necessary to reflect previously agreed upon document changes.

**Borrower’s Counsel Opinion**

A new form of Opinion of Borrower’s Counsel (Form 6401) is being published that will be used for most executions. As in the past, no enforceability opinion is required to be given by Borrower’s counsel unless waivers are approved and changes to the form of Mortgage Loan documents are required.

**Timing for Use**

Use of the new Mortgage Loan documents is required for all Mortgage Loan commitments issued on or after April 1, 2011 (the “Mandatory Use Date”). Any Early Rate Lock commitment or Forward transaction entered into prior to the Mandatory Use Date will be permitted to use the existing published loan documents for those transactions.

**Timing of Publication on Web Site**

The core Mortgage Loan documents together with the other product specific documents will be available on eFannieMae.com beginning in mid-January. We will announce, in brief e-mail notices, what and when new documents are added to the Web site.

The existing Web site for Multifamily loan documents will remain operational for transactions committed prior to the Mandatory Use Date.

**Training**

Multiple opportunities for training on the use of the new form Mortgage Loan documents will be available to Lenders. Beginning in late-January and running through February, training sessions will be offered for Lenders’ internal staff and its counsel. Announcements of the specific training dates and times will be provided.
Attachments

Attached to this Guide Update is a spreadsheet listing the population of new Mortgage Loan documents that will be published this month. The following core documents are also attached:

- Multifamily Note (Form 6010)
- Multifamily Deed of Trust/Mortgage (Form 6025)
- Guaranty of Non-Recourse Obligations (Form 6015)
- Guaranty (Payment) (Form 6020)
- Environmental Indemnity Agreement (Form 6085)
- Multifamily Loan and Security Agreement (Form 6001)

For your convenience and reference, in an e-mail sent following this announcement, we will include a zip file containing all Mortgage Loan documents listed in the Index Spreadsheet with a January 3, 2011 publication date. While we are sending the documents via e-mail, they are being provided for your information only. If you need to use the documents prior to the Mandatory Use Date, please contact your Fannie Mae Representative.

If you have questions regarding the new Multifamily Mortgage Loan documents, please contact any of the following individuals:

- Marsha Baumgarner at marsha_baumgarner@fanniemae.com or 202-752-2173
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