



## Multifamily Mortgage Business Lender Memo 18-03

July 27, 2018

To: Multifamily Lenders  
From: Rob Levin, Vice President for Multifamily Credit, Underwriting  
Subject: Lender Memo 18-03 | Reclassification of Oil/Gas Leases and Telecommunications/Cell Tower Leases as Non-Material Commercial Leases

### HIGHLIGHTS

Effective July 30, 2018, Fannie Mae is increasing delegation to Lenders and streamlining underwriting requirements by:

- reclassifying any oil, gas, or mineral rights lease, or telecommunications/cell tower lease that comprises less than 5% of the Property's Effective Gross Income as a Non-Material Commercial Lease;
- clarifying the Title Insurance requirements in states where oil and gas rights are raised as a general exception to the Title Policy; and
- accepting "Actual Cash Value" as the valuation method for determining the appropriate insurance coverage for roofs.

### Revised Underwriting Requirements

To increase Lender delegation and improve underwriting efficiency, Fannie Mae is revising certain underwriting requirements in Part IIIA, Chapter 3 – The Property, of the Multifamily Selling and Servicing Guide.

#### Non-Material Commercial Leases

Leases that comprise less than 5% of the Property's Effective Gross Income and relate to the following have been reclassified as Non-Material Commercial Leases:

- Oil, Natural Gas, and Mineral Rights; and
- Telecommunications and Cell Towers.

Although reclassified as a Non-Material Commercial Lease, each telecommunications or cell tower lease, and each lease of mineral rights or rights relating to subsurface oil and natural gas must always be reviewed by the Lender, and still submitted to Fannie Mae for approval if:

- a telecommunications or cell tower Lease contains any provision that would:
  - negatively impact the value, visibility, livability, or marketability of the Property;
  - impose an undue financial or operating burden on the Property or the Borrower;



- obligate the Borrower to rebuild any Improvements at the Property following a casualty or condemnation;
- have a Lease term (including extension options) in excess of 25 years;
- contain a purchase option; or
- convey an estate or other rights in excess of simple lessee rights (e.g., a perpetual easement, a purported sale of a portion of the Improvements, unjustified exclusivity, etc.); or
- a Lease of mineral rights or rights relating to subsurface oil and natural gas contains any provision that would:
  - grant the lessee the right to use, access, or have the right of ingress and egress in, over, or across, the surface of the Property (i.e., surface entry) for any purpose whatsoever (e.g., pipes, access across, or storage on the Property);
  - grant subsurface rights within 250 feet below the surface of the Property, or within 600 feet from the closest Property boundary line;
  - have a material adverse effect on the health and safety of residents, air quality, noise levels, marketability, or occupancy of the Property;
  - permit oil or gas well activities that could have a negative effect on the access, visibility, or storm water drainage at the Property;
  - have a negative effect on the zoning or allowable density of the Property;
  - facilitate drilling, storage, or processing of oil or gas on the Property or any property that is adjacent to the Property; or
  - fail to require the lessee to indemnify and hold harmless the Borrower, as lessor, for any damage to the Property or any other damage or liability caused directly or indirectly as a result of the lease activities.

#### Updated Title Insurance Requirements for Exceptions Related to Oil, Gas, and Mineral Rights Leases

In states where oil, gas, or mineral rights are raised by the title company as an exception to title, the Lender should obtain an appropriate title endorsement. If a title endorsement is not available, the Lender is delegated the authority to accept the title policy if oil, gas, or mineral rights are raised as:

- a general exception, but there is no evidence of any of the following:
  - an oil, gas, or mineral rights lease;
  - a reservation of mineral rights in the chain of title; or
  - drilling or exploration on or near the Property;
- a specific exception, but surface drilling or exploration rights are waived by the Person holding the rights; or
- either a general or specific exception, but the Lender or title company determines that a controlling local ordinance prohibits drilling or exploration.

If the above conditions are not met, the Lender must document the issue using the Modifications to Multifamily Loan and Security Agreement (Oil, Gas, and Mineral Rights) (Form 6262), and should provide the rationale for accepting the title policy exception in the Transaction Approval Memo. A waiver from Fannie Mae is not required unless drilling or exploration is evidenced on or near the Property.

#### Insurance Requirements

Lenders are delegated the authority to accept the “Actual Cash Value” as the valuation method for determining the appropriate insurance coverage for roofs since coverage based on replacement cost is not readily available



in the market. In addition, Lenders are no longer required to escrow funds covering 3 months of the annual insurance premium installments before using their delegated authority to allow:

- payment of the annual insurance premium in installments; or
- premium financing.

### **Effective Date**

This Lender Memo is effective July 30, 2018.

### **Questions**

Please contact your Fannie Mae Deal Team with any questions.