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Industry News

Fannie Mae, Freddie Mac Multifamily Changes Impact Handling of Funds

November 14, 2024

Fannie Mae and Freddie Mac recently updated their Multifamily Seller/Servicer Guides changing requirements for the handling of escrow and settlement functions involving mortgage transactions and the acquisition of multifamily properties.

The revisions were in response to several fraudulent transactions involving multifamily properties where the actual purchase price was not reported. The fraudulent activity resulted in inflated loans. ALTA is closely monitoring this issue and will be communicating with the government sponsored enterprises on developments in this area.

Freddie Mac

Freddie Mac on Oct. 17 issued a **revision** to its updated **Multifamily Seller/Servicer Guide** changing requirements for the handling of escrow and settlement functions involving multifamily properties. As announced Aug. 15 in a bulletin, Freddie Mac started requiring title insurance underwriters to receive and disburse all the funds associated with these types of transactions. Underwriters must also deliver the Settlement Statement to the Seller/Servicer or the Seller/Servicer's counsel.

In its latest bulletin, Freddie Mac stated that if an underwriter doesn't offer closing services in an attorney state, then an attorney agent can handle the escrow and/or settlement functions.

Specifically, the bulletin says:

- For acquisition Mortgage origination transactions, if the law of the jurisdiction in which the Property is located prohibits the use of anyone other than a licensed attorney for escrow and/or settlement functions, and the Seller/Servicer, Seller/Servicer's counsel or Single Counsel has confirmed that the Title Insurance Underwriter or its wholly-owned subsidiary or affiliate under identical ownership does not have a licensed attorney on staff in such jurisdiction who can fulfill this requirement, the Seller/Servicer's counsel or Single Counsel, as applicable, must notify the applicable Freddie Mac transactional attorney prior to the Seller/Servicer's submission of the full underwriting package.

Fannie Mae

Fannie Mae's change wasn't as drastic, but requires information about the flow of funds involving loans for multifamily transactions. According to [Lender Letter 24-05](#), title companies and escrow agents must provide a receipts and disbursements ledger for transactions—or other written evidence—showing:

- the source of all funds deposited (with federal funds wires and full entity names) into the closing escrow (including good faith deposits and all other funds required for acquisition or cash-in refinance, if applicable)
- the flow of all funds disbursed from the closing escrow for the mortgage loan (and any acquisition or assumption, if applicable), whether by check or federal funds wires (with full entity names)

The delivery requirement document may be used immediately and must be used for all mortgage loans with a confirmed commitment date on or after Sept. 24, 2024.

It's expected Fannie Mae will make additional changes after it identified gaps in its processes for managing multifamily loan origination fraud risk and for overseeing our multifamily seller/servicer counterparties.

In its [quarterly SEC filing](#), Fannie Mae reported it has "discovered instances of multifamily lending transactions in which one or more of the parties involved engaged in mortgage fraud or possible mortgage fraud, and we continue to investigate additional multifamily lending transactions in which we suspect fraud may have occurred."

Fannie Mae said it delegates underwriting in which lenders make specific representations and warranties about the characteristics of the mortgage loans it purchases and securitizes.

"As a result, we do not independently verify most borrower information that is provided to us," Fannie Mae said in its filing. "This exposes us to the risk that one or more of the parties involved in a transaction (such as the borrower, borrower's attorney, sponsor, seller, broker, appraiser, property inspector, title agent, lender or servicer) will engage in fraud by misrepresenting facts about a mortgage loan."

In February, Fannie Mae notified its lenders that it would no longer accept loans from Riverside Abstract and Madison Title. The title companies were involved in deals with New York City-based investor Boruch Drillman, who **pleaded guilty in a \$165 million mortgage fraud case** last year.

Additionally, **three real estate investors** pleaded guilty to conspiracy in a \$119 million mortgage fraud scheme involving a Fannie Mae loan, according to the Department of Justice.

Best Practices

Title companies are encouraged to implement **ALTA's Best Practices** and showcase to their lender clients the policies and procedures that are followed to ensure a positive and compliant real estate settlement experience.

Specifically, Pillar 2 of Best Practices recommends procedures to help ensure accuracy and minimize the risk of loss of funds.

With fraud continuing to increase, it's important settlement service providers understand the demands being put on lenders. Financial institutions will be more inclined to work with title companies, attorneys and settlement service providers that can ensure the least amount of risk when closing real estate transactions.

Contact ALTA at 202-296-3671 or communications@alta.org.

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PRESS RELEASE

Three Real Estate Investors Plead Guilty to \$119M Mortgage Fraud Conspiracy

Thursday, August 1, 2024

For Immediate Release

Office of Public Affairs

Three real estate investors have pleaded guilty to engaging in an extensive, multi-year conspiracy to fraudulently obtain a \$74 million loan and a \$45 million loan and fraudulently acquire multifamily properties.

Fredrick Schulman, 72, of New York, and Chaim “Eli” Puret, 29, of New Jersey, pleaded guilty today to one count of conspiracy to commit wire fraud affecting a financial institution. Moshe “Mark” Silber, 34, of New York, pleaded guilty on July 9 to one count of conspiracy to commit wire fraud affecting a financial institution.

According to court documents, between 2018 and 2020, Silber, Schulman, and Puret conspired with others to deceive lenders into issuing a mortgage loan for a multifamily property and Fannie Mae into funding or purchasing the mortgage loan. Silber and Schulman were managing members of Rhodium Capital Advisors, an entity that was involved in the acquisition and management of Williamsburg of Cincinnati, an apartment complex in Cincinnati, Ohio. Puret was one of the owners of commercial property Troy Technology Park in Troy, Michigan. Silber, Schulman, Puret, and their co-conspirators provided the lenders and Fannie Mae with falsified documents, including a purchase contract with an inflated purchase price and other fraudulent documents.

In March 2019, Williamsburg of Cincinnati was acquired for \$70 million. However, Silber, Schulman, and other co-conspirators utilized a stolen identity to present a lender and Fannie

Mae with a purchase and sale contract for \$95.85 million and other fraudulent documents. On March 8, 2019, two closings were performed, one for the true \$70 million sales price and another for the fraudulent \$95.85 million sales price presented to the lenders. Based on the co-conspirators' false statements, the lender and Fannie Mae funded a loan in the amount of \$74.25 million for the purchase of Williamsburg of Cincinnati.

In September 2020, Troy Technology Park was acquired by Puretz and co-conspirators for \$42.7 million. However, to support an inflated purchase price of \$70 million, Puretz and his co-conspirators submitted to the lender and appraiser a fraudulent letter of intent to purchase the property from another party for \$68.8 million and other fraudulent documents. Based on the fraudulent documents, the lender funded a loan for \$45 million. To conceal the fraudulent nature of the transaction, Puretz and his co-conspirators arranged for a short-term \$30 million loan, which was used to make it appear that they had the funds needed to close on the sale. On Sept. 25, 2020, a title company based in Lakewood, New Jersey, performed two closings, one for the true \$42.7 million sales price and another for the fraudulent \$70 million sales price presented to the lender.

Silber, Schulman, and Puretz are scheduled to be sentenced on Dec. 3 and each face a maximum penalty of five years in prison. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Principal Deputy Assistant Attorney General Nicole M. Argentieri, head of the Justice Department's Criminal Division; U.S. Attorney Philip R. Sellinger for the District of New Jersey; Inspector General Brian M. Tomney of the Federal Housing Finance Agency Office of Inspector General (FHFA-OIG); and Postal Inspector in Charge Eric Shen of the U.S. Postal Inspection Service's (USPIS) Criminal Investigations Group made the announcement.

The FHFA-OIG and USPIS are investigating the case.

Trial Attorney Siji Moore of the Criminal Division's Fraud Section and Assistant U.S. Attorney Martha Nye for the District of New Jersey are prosecuting the case.

Anyone with information concerning similar multifamily or commercial mortgage fraud can report it by contacting the FHFA-OIG Hotline at 800-793-7724 or via the web at www.fhfaoig.gov/ReportFraud#hotlineform.

Updated February 6, 2025

Topic



PRESS RELEASE

Real Estate Investor Pleads Guilty to \$165M Mortgage Fraud Conspiracy

Thursday, December 14, 2023

For Immediate Release

Office of Public Affairs

A New York man pleaded guilty yesterday to engaging in an extensive multi-year conspiracy to fraudulently obtain over \$165 million in loans and fraudulently acquire multifamily and commercial properties.

According to court documents, between 2018 and 2020, Boruch “Barry” Drillman, 36, of New York, conspired with at least four others to deceive lenders into issuing multifamily and commercial mortgage loans. Drillman and his co-conspirators provided the lenders with fictitious documents, including purchase and sale contracts with inflated purchase prices. Drillman managed BRC Williamsburg Holdings LLC, which purchased multifamily property Williamsburg of Cincinnati in Cincinnati, Ohio, and Troy Technology Holdings LLC, which purchased commercial property Troy Technology Park in Troy, Michigan.

In March 2019, Williamsburg of Cincinnati was acquired for \$70 million. However, Drillman and his co-conspirators from Rhodium Capital Advisors utilized a stolen identity to present a lender and Fannie Mae with a purchase and sale contract for \$95.85 million and other fraudulent documents. On March 8, 2019, Madison Title Agency performed two closings, one for the true \$70 million sales price and another for the fraudulent \$95.85 million sales price presented to the lender.

In September 2020, Troy Technology Park was acquired for \$42.7 million. However, Drillman and his co-conspirators presented the lender with a fraudulent purchase and sale contract for

\$70 million. Additionally, to support the inflated purchase price, Drillman and his co-conspirators submitted to the lender and appraiser a fraudulent letter of intent to purchase the property from another party for \$68.8 million and other fraudulent documents. To conceal the fraudulent nature of the transaction, Drillman and his co-conspirators arranged for a short-term \$30 million loan, which was used to make it appear that they had the funds needed to close on the loan. On Sept. 25, 2020, Riverside Abstract performed two closings, one for the true \$42.7 million sales price and another for the fraudulent \$70 million sales price presented to the lender.

Drillman pleaded guilty to one count of conspiracy to commit wire fraud affecting a financial institution. He is scheduled to be sentenced on April 16, 2024, and faces a maximum penalty of five years in prison. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Acting Assistant Attorney General Nicole M. Argentieri of the Justice Department's Criminal Division, U.S. Attorney Philip R. Sellinger for the District of New Jersey, Inspector General Brian M. Tomney of the Federal Housing Finance Agency Office of Inspector General (FHFA-OIG), and Postal Inspector in Charge Eric Shen of the U.S. Postal Inspection Service's (USPIS) Criminal Investigations Group made the announcement.

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Updated February 6, 2025

Topics

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Components

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Press Release Number: 23-1422



Fannie Mae investigates potential multifamily mortgage fraud

The government-sponsored enterprise admitted in its Q3 report that it had experienced financial losses due to loan misrepresentation.

Published Nov. 13, 2024



Mary Salmonsens
Reporter

The Fannie Mae headquarters in May 2019. The government-sponsored enterprise reported that it had experienced losses due to mortgage fraud in its third quarter earnings filing. Courtesy of Fannie Mae

Dive Brief:

- Fannie Mae reported that it had experienced financial losses due to mortgage fraud, and that it is currently investigating multifamily lending transactions where it suspects fraud may have occurred, in its recent third-quarter earnings filing with the Securities and Exchange Commission.
- “Certain gaps have been identified in our processes for managing multifamily loan origination fraud risk and for overseeing our multifamily seller/servicer counterparties,” Fannie Mae stated in the Oct. 31 report. “In the future, we may experience additional financial losses as a result of mortgage fraud.”
- To mitigate the impact of fraud on its business, the government-sponsored enterprise intends to improve its processes for

managing multifamily loan origination fraud risk and oversight of multifamily seller and servicer counterparties, it said.

Dive Insight:

Fannie Mae's underwriting process is delegated, according to the earnings filing, meaning that its lenders are the ones that present the characteristics of the mortgage loans it purchases and securitizes, and it does not usually independently verify this information.

"This exposes us to the risk that one or more of the parties involved in a transaction (such as the borrower, borrower's attorney, sponsor, seller, broker, appraiser, property inspector, title agent, lender or servicer) will engage in fraud by misrepresenting facts about a mortgage loan," the report said.

Until its process improvements are complete, Fannie Mae still anticipates it will experience losses from mortgage fraud. Even then, it cannot guarantee that its improvements will solve the issue entirely, according to the filing. The details of these process changes were not specified in the report.

In February, Fannie Mae notified its lenders that it would no longer accept loans from Riverside Abstract and Madison Title, two Lakewood, New Jersey-based title insurers, according to a report by Bisnow. The firms are allegedly linked to deals by New York City-based investor Boruch Drillman, who pleaded guilty in a mortgage fraud conspiracy in December.

In August, three fraudulent investors also pleaded guilty to conspiracy in a mortgage fraud scheme involving a Fannie Mae loan, according to the Department of Justice. The trio had purchased an apartment building for \$70 million in 2019, but presented their lender and Fannie Mae with falsified

documentation stating the property's purchase price was just under \$96 million. Fannie Mae and the lender had granted a \$74 million loan based on the false information.

Fannie Mae's fellow GSE, Freddie Mac, implemented new policies designed to detect and prevent underwriting mortgage fraud in April. Property inspections at properties with Freddie Mac mortgages now require a larger number of unit inspections and higher leased audit sample sizes. First-time borrowers and borrowers with limited multifamily experience will also require additional due diligence, and all borrowers will need additional liquidity and owned real estate verification.

Fannie Mae Earmarks \$752M to Fight Multifamily Fraud - CRE Daily

KEY TAKEAWAYS

- Fannie Mae allocated \$752M for credit losses, partly due to fraud or suspected fraud in its multifamily lending business.
- The firm is investigating additional transactions and may uncover more fraudulent loans in the coming months.
- Falling multifamily property values and rising delinquencies also contributed to the loss provision.

Fannie Mae (FNMA) set aside **\$752M for multifamily lending credit losses**, citing fraud or suspected fraud as a contributing factor. The provision follows an industrywide crackdown on questionable loans, per Bloomberg.

Behind The Provision

In its annual report, Fannie Mae disclosed that fraudulent or potentially fraudulent transactions contributed to its decision to set aside \$752M for credit losses in 2024.

The government-sponsored enterprise (GSE) acknowledged multiple cases of fraud in its multifamily lending transactions and warned that further investigations may reveal additional affected loans.

“We have discovered instances of multifamily lending transactions in which one or more of the parties involved engaged in mortgage fraud or possible mortgage fraud,” Fannie Mae stated in its report.

Weighing Down Multifamily

While fraud was a key factor, falling multifamily property values and rising loan delinquencies also contributed to the provision for credit losses.

Indeed, Fannie Mae reported \$2.5B in net income from its multifamily business in 2024, down from \$4.7B in net revenue.

The broader multifamily market has struggled with higher interest rates, rising insurance costs, and tightening credit conditions. Due to historically low rates, lending in the sector surged during the pandemic but slowed down significantly as borrowing costs climbed.

Cracking Down on Fraud

Fannie Mae and its sister organization, Freddie Mac (FMCC), have both previously flagged concerns about fraudulent multifamily loans.

Last year, Fannie Mae warned investors about an ongoing fraud investigation, while Freddie Mac temporarily banned one of its top broker partners as part of a wider industry crackdown.

Although Freddie Mac has since lifted those restrictions, fraud-related scrutiny in the multifamily sector remains high.

What's Next

Fannie Mae's single-family lending business remains its dominant segment, generating \$14.4B in net income last year compared to \$24.4B in net revenue.

However, its growing concerns over multifamily fraud and market conditions suggest increased caution in the sector moving forward.

With investigations ongoing, more fraudulent multifamily loans may be discovered, potentially leading to further financial provisions and stricter lending standards.

Multifamily Seller/Service Guide

Chapter 29

Title, Description, Survey, UCC Searches and Opinions



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 - b. [Reinsurance and coinsurance \(08/15/24\)](#)
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29.1 Title insurance policy requirements (10/17/24)

Each Mortgage purchased by Freddie Mac must be covered by a Title Policy. The final Title Policy delivered to Freddie Mac must be accurate and complete and must reflect any additional requirements that may be imposed by Freddie Mac for a particular Mortgage. The Title Policy must be underwritten by a Title Insurance Underwriter.

It is the responsibility of the Seller/Servicer and its counsel to obtain and review in detail the title commitment, documents evidencing or creating each exception to title and the Title Policy.

a. Maximum single risk amount (08/15/24)

The maximum single risk amount (the risk in connection with any one Mortgage) assumed by one Title Insurance Underwriter may not be more than 25 percent of such Title Insurance Underwriters' surplus to policyholders. Policies for amounts in excess of the maximum single risk amount may be acceptable if any excess amount is covered by reinsurance by another Title Insurance Underwriter meeting the requirements of this chapter.

b. Reinsurance and coinsurance (08/15/24)

• Reinsurance

If the single risk amount exceeds 25 percent of the Title Insurance Underwriter's surplus to policyholders, the excess amount may be covered by reinsurance meeting all of the following requirements:

- The excess amount may not exceed 25 percent of the reinsuring company's surplus to policyholders. Tertiary insurance will not be permitted.
- The reinsurer must be a Title Insurance Underwriter.
- The reinsurance must be provided by the issuance of the most current form of American Land Title Association (ALTA) Facultative Reinsurance Agreement.
- Pro forma documentation for all reinsured transactions must be submitted to Freddie Mac for review and approval prior to the Origination Date.

Any Title Policy that is reinsured at the option of the Title Insurance Underwriter must meet all of the requirements of this subsection.

• Coinsurance

Usually, Freddie Mac will not accept coinsurance (multiple Title Insurance Policies issued by multiple Title Insurance Underwriters for the same transaction). Freddie Mac will consider allowing coinsurance only if the Title Insurance Underwriters and Title Policies each meet the requirements of this chapter and the use of coinsurance is approved in writing by Freddie Mac prior to Rate Lock. Prior to the Origination Date, the Seller/Servicer must submit to Freddie Mac for its review and approval the Title Policies for any Mortgage that will be coinsured.



c. Selection of the Title Company (10/17/24)

1. The Seller/Servicer's selection or acceptance of any Title Company must be based solely on considerations typically used by prudent institutional lenders originating or purchasing Mortgages in the jurisdiction where the Property is located, as permitted by applicable law, and acting in the best interests of Freddie Mac. The Seller/Servicer must not base this selection on receipt of anything of value or other consideration by the Seller/Servicer or its employees, officers, or directors paid by or on behalf of a Title Company.
2. As provided in Section 2.19, the Seller/Servicer must approve, evaluate and monitor Title Companies and any other third party to whom functions relating to a Mortgage or REO are outsourced or assigned, including consulting the [Multifamily Restricted Vendor List](#).

Freddie Mac reserves the right to: (i) refuse to accept Mortgages for purchase, or (ii) approve the assumption of a Mortgage, in each case involving any specific Title Company on the Multifamily Restricted Vendor List. If a Title Company appears on the Multifamily Restricted Vendor List, the Seller/Servicer may not use that Title Company until notified otherwise by Freddie Mac. The decision to place a Title Company on the Multifamily Restricted Vendor List is solely within Freddie Mac's discretion.

With respect to Title Companies, the Multifamily Restricted Vendor List is made available to Seller/Servicers at mf.freddiemac.com for the sole purpose of ensuring that an unacceptable Title Company does not perform services in connection with Multifamily Mortgage transactions and will constitute "Confidential Information" as defined in Section 2.8. Notwithstanding the Confidential Information classification, when a Borrower has engaged a Title Company on the Multifamily Restricted Vendor List in connection with a Mortgage transaction, the Seller/Servicer is permitted to advise the Borrower and Seller/Servicer's counsel or Single Counsel engaged for that Mortgage transaction that Freddie Mac will require engagement with a different Title Company. Parties are advised of their placement on the Multifamily Restricted Vendor List.

3. Freddie Mac also reserves the right to subject Freddie Mac's acceptance of the engagement of any Title Company to such additional terms and conditions as Freddie Mac deems necessary, reasonable, or appropriate in Freddie Mac's sole discretion. When applicable, Freddie Mac is identifying these Title Companies as Third-Party Vendors on the Vendors With Conditions List, which is attached as a schedule to the [Multifamily Restricted Vendor List](#). These Title Companies may continue to be engaged by Borrowers or Seller/Servicers but will be subject to the additional conditions provided in the schedule to the [Multifamily Restricted Vendor List](#).
4. If the Seller/Servicer, for cause, discontinues the use of a Title Company in connection with a Freddie Mac transaction within the past 12 months and such Title Company is not identified on the [Multifamily Restricted Vendor List](#), the Seller/Servicer must send written notification promptly to Freddie Mac, to the attention of Freddie_Mac_Legal_MF@freddiemac.com.

d. Acquisitions (10/17/24)

1. Effective for any Mortgage origination transaction that is an acquisition which is taken under Seller Application on and after August 15, 2024, the Title Insurance Underwriter, its affiliate under identical ownership, or its wholly-owned subsidiary must directly perform



all escrow and settlement functions for both the Mortgage origination transaction and the acquisition of the Property (*i.e.*, the Title Insurance Underwriter or such affiliate or subsidiary must receive and disburse all funds from all sources related to the acquisition and prepare the settlement statement for the acquisition of the Property and the acquisition financing). The settlement statement must be delivered to the Seller/Servicer or the Seller/Servicer's counsel directly by the Title Insurance Underwriter or such affiliate or subsidiary. (See Section 32.3(c) for additional settlement statement requirements.)

For acquisition Mortgage origination transactions, if the law of the jurisdiction in which the Property is located prohibits the use of anyone other than a licensed attorney for escrow and/or settlement functions, and the Seller/Servicer or its legal counsel has confirmed that the Title Insurance Underwriter or its wholly-owned subsidiary or affiliate under identical ownership does not have a licensed attorney on staff in such jurisdiction who can fulfill this requirement, the Seller/Servicer's legal counsel must notify the applicable Freddie Mac transactional attorney on or prior to the Seller/Servicer's submission of the full underwriting package.

2. For purposes of the requirements described in this chapter, and notwithstanding any identification of the Mortgage origination transaction in the Mortgage commitment or otherwise, a Mortgage origination transaction will be deemed to be an acquisition if the Property (A) is acquired by the Borrower effective as of the Origination Date, or (B) was acquired by the Borrower or an affiliate of the Borrower within a thirty (30) day period prior to the Origination Date.
3. For any Mortgage origination transaction that is not an acquisition, the Title Insurance Underwriter may also perform escrow and settlement functions but is not required to do so.
4. For purposes of clarification and without limitation of any of its requirements, this Section 29.1(d) will apply to the origination of a Supplemental Mortgage in connection with any acquisition of the related Property and the assumption of the related senior Mortgage within the time frame described in Section 29.1(d)(2).

e. Amount of protection (08/17/23)

The Title Policy must insure the mortgagee for an amount no less than the original principal balance of the insured Mortgage.

f. Insured (08/15/24)

The Title Policy must name as the insured either:

- Freddie Mac, its successors or assigns, or
- Seller/Servicer and/or Freddie Mac, its successors or assigns, as their interests may appear



g. Legal description (08/15/24)

The legal description in the Title Policy must conform to the legal description contained in the survey, security instrument, UCC financing statement, lease, and all other documents pertaining to the Mortgage and the Property.

h. Endorsements (08/15/24)

Each endorsement required pursuant to the [Title Policy and Endorsement Requirements](#) posted on mf.freddiemac.com must:

- Be either attached to or sufficiently incorporated in the Title Policy.
- Be on the specific form of the endorsement identified in the Title Insurance Policy Certifications as defined in Section 29.2(c).
- Include the number of the Title Policy.
- Be dated as of the date of the Title Policy, if dated.
- Be signed electronically by the Title Company. A PDF signature or a signature that is electronically produced as part of the Title Policy or the endorsement is acceptable.

If affirmative coverage in lieu of an endorsement is acceptable as indicated in the [Title Policy and Endorsement Requirements](#), then the affirmative coverage language in the Title Policy must be equivalent to the affirmative coverage language described in the Title Policy Requirements.

i. Insured Closing Protection Letter (08/15/24)

If either of the recordation of the documents or the escrow and disbursement of funds in connection with the origination of the Mortgage is being handled by a Title Company other than the Title Insurance Underwriter, then if available in the applicable jurisdiction, the Seller/Servicer must also obtain and provide an insured closing protection letter addressed to Freddie Mac, or to the Seller/Servicer and its successors and assigns, that provides coverage for any loss that arises out of (i) the failure of the Title Company to comply with the Seller/Servicer's written closing instructions, or (ii) fraud or dishonesty in handling the funds or documents in connection with the origination of the Mortgage.

29.2 Title exceptions (04/18/24)

a. Approval of title exceptions (04/18/24)

The Seller/Servicer or its counsel must obtain, read, and analyze each document that evidences or creates any exception to the title insurance coverage to determine whether the exception would be acceptable to a prudent institutional lender.

If the Seller/Servicer or its counsel determines that any of the following applies with respect to an exception, such exception requires written analysis in the form and manner described in



Section 29.2(b) and, whenever required pursuant to Section 29.2(b), must be expressly approved by Freddie Mac:

- Any party's exercise of its rights under the exception could have a foreseeable adverse effect on the Borrower's intended use of the Property, including any interference with the present or proposed improvements on the Property or with the operation of the Property.
- Any party's exercise of its rights under the exception could impair lender's ability to enforce its rights under the Mortgage or could adversely affect the lien priority of the Mortgage.
- The exception would not be acceptable to a reasonable, prudent institutional lender in the area where the Property is located.
- The exception results in an exception to the Seller/Service Representations and Warranties.
- The exception could create potential safety or environmental issues.
- The exception could result in a material adverse effect on the Mortgage, the security interest in the collateral described by the Mortgage, or the use, value, operation or marketability of the Property or could impair the lien of or the lien priority of the Mortgage.
- The Guide or Legal Issues Analysis separately requires written analysis or approval with respect to such exception (such as, by way of example and not limitation, ground leases, regulatory agreements or condominium declarations).
- The exception contains a purchase option, right of first refusal, right of first offer, right of reverter, or requires consent to a transfer of all or any portion of the Property (including in connection with foreclosure or deed-in-lieu of foreclosure).

b. Submission of analysis (04/18/24)

If the written analysis required pursuant to Section 29.2(a) was not included in the Legal Issues Analysis and/or any other required legal analysis required by the Guide submitted prior to the effective date of the Commitment, then the analysis must be submitted for approval no later than two business days prior to the anticipated Origination Date.

All requests for approval of title exceptions must be in writing and be submitted to the applicable Multifamily Attorney and Legal Analyst by email and include the anticipated closing date and pool name, if applicable, in the email subject line, and be uploaded to DMS. The request must be in the form of:

- An amended Legal Issues Analysis or other analysis previously submitted to the applicable Multifamily Attorney; and
- If applicable, such other legal analysis required by the Guide.



The analysis must describe which category or categories in Section 29.2(a) applies to such exception necessitating written analysis and must include the Seller/Servicer or its counsel's recommendation (i) for mitigating any risk evidenced by the exception or explanation of why mitigation is not necessary or possible and (ii) as to the acceptability of the exception. The recommendation must expressly state why Freddie Mac should consider accepting this exception. The analysis must provide sufficient detail to enable Freddie Mac to make any necessary decision regarding the acceptability of an exception without having to read the document evidencing or creating the exception.

Submission to Freddie Mac of the underlying document creating the exception does not relieve the Seller/Servicer or its counsel of the requirement to submit the written analysis of the exception. However, Freddie Mac reserves the right to require the Seller/Servicer or its counsel to submit the exception document(s).

c. Delivery of a Title Insurance Policy Certification and written analysis approval (04/18/24)

At final delivery of the Mortgage, the Seller/Servicer's counsel must deliver a Title Insurance Policy Certification in the form found at mf.freddiemac.com/lenders/legal/ (the "Title Insurance Policy Certification"). Copies of all emails with express approval of any exceptions for which the Seller/Servicer or its counsel submitted a request for approval must be attached to the Title Insurance Policy Certification, along with the final title policy and all required endorsements.

d. Analysis of title exceptions for Supplemental Mortgages (04/18/24)

For any Supplemental Mortgage purchased under the Freddie Mac Multifamily Supplemental Mortgage Product, the Seller/Servicer or its counsel must provide a written analysis only for:

- Any title exception that did not previously appear as an exception to title in the policy insuring the senior Mortgage and falls into one or more categories set forth in Section 29.2(a), or
- Any title exception that previously appeared as an exception to the title in the policy insuring the senior Mortgage but will not be covered by the same endorsement or equivalent coverage.

Therefore, with respect to a Supplemental Mortgage, a written analysis will be required for any exception that appeared as a subordinate item in the policy insuring the senior Mortgage when such exception is not expressly subordinate to the Supplemental Mortgage as well.

e. Analysis of title exceptions for Assumptions (04/18/24)

For any assumptions, the Seller/Servicer or its counsel must provide the discussion of the exceptions to the Title Policy as required by Section 41.4.

f. Encroachments and violations on Survey (04/18/24)

In addition to any analysis described in Section 29.2(b), the Seller/Servicer or its counsel must submit a written analysis of and receive approval for any encroachment or violation which materially and/or adversely affects the Property's operation, use or value or the



security intended to be provided by the Mortgage (examples: income-producing buildings, parking, access ways). The written analysis must include the following:

- A reasonably detailed description of the encroachment and/or violation (e.g., how many feet a building encroaches over an easement)
- Whether there is building law and ordinance coverage for the Property if the encroachment and/or violation impacts a zoning requirement

If the risk posed by any encroachment or violation can be mitigated by an endorsement identified in the Title Policy Requirements and included in the Title Policy, then the exception does not need to be included in a written analysis. If any such required endorsement is not available or has been modified from the standard required form, then a written analysis of the exception must be submitted.

g. Exception for Private Transfer Fee Covenant (08/17/23)

If the Title Policy contains an exception for a Private Transfer Fee Covenant that was created on or after February 8, 2011, the Mortgage is ineligible for purchase by Freddie Mac. See Section 8.14.

h. Exception for condominium/cooperative conversion restriction (04/18/24)

If the Title Policy contains an exception for a prohibition against or any indemnification in connection with the conversion of the Property to a condominium or cooperative structure, the Seller/Servicer or its counsel must examine the underlying agreement/restriction as provided in Section 8.18(f) to determine that the agreement/restriction meets the requirements set forth in such section.

The Seller/Servicer or its counsel must confirm that all such requirements have been satisfied or that any non-compliant provisions have been identified in the Legal Issues Analysis prior to the effective date of the Commitment.

29.3 Uniform Commercial Code search requirements (04/18/24)

It is the responsibility of the Seller/Servicer to ensure that a First Lien security interest is perfected in (1) all fixtures, (2) all personal property of the Borrower that is located in or on the Property or is used or intended to be used in connection with the Property and (3) any other Uniform Commercial Code (UCC) collateral described in the UCC financing statement (collectively the "UCC collateral").

In order to ensure this First Lien security interest, the Seller/Servicer must perform certain searches of the Uniform Commercial Code records ("UCC search"). For additional search requirements for the MHC Mortgage Product, see Section 22.9(c).

a. Names to search (04/18/24)

The Seller/Servicer must perform a UCC search for the Borrower's name and, if the Property is being acquired, the name of the current owner of the Property. For additional search



requirements for Seniors Housing Mortgages, see the Final Delivery Instructions available at mf.freddie.com/lenders/purchase.

b. Location of search (03/03/17)

Each UCC search must include every office where a financing statement would be filed in accordance with the provisions of Revised Article 9 of the UCC.

c. Date of search (02/07/05)

A UCC search must be dated no earlier than 30 days prior to the Origination Date.

d. Prior financing statements (04/18/24)

If a UCC Search indicates that there are any financing statements on file (other than the financing statements filed by the current lender that will be released at origination of the Mortgage) then, prior to the Origination Date, the Seller/Servicer must provide an explanation of those financing statements to the

- *Multifamily TAH Underwriter*, for TAH Mortgages
- *Applicable Freddie Mac Multifamily Regional Office* for all other Mortgages

The Seller/Servicer must also submit a copy of the explanation to the applicable Multifamily Attorney.

e. UCC search (04/18/24)

1. If the UCC search done at underwriting shows that no financing statements have been filed in connection with any of the UCC collateral, then the Seller/Servicer does not need to deliver any documentation regarding the UCC search to Freddie Mac prior to final delivery of the Mortgage.
2. The UCC search must be updated at the time of final delivery to a date no earlier than 30 days prior to the date of origination of the Mortgage. The Seller/Servicers counsel must examine the UCC search to determine that Freddie Mac has a First Lien security interest in all UCC collateral except for those items previously approved by Freddie Mac and those items for which UCC termination statements have been filed. The Seller/Servicer's counsel must use the [Seller's Counsel's Certification](#) set forth at mf.freddie.com/lenders/legal to provide a certification regarding the UCC search at final delivery of the Mortgage as set forth in the Final Delivery Instructions found at mf.freddie.com/lenders/purchase.

f. Product-specific UCC search requirements (04/18/24)

For a Mortgage secured by an MHC Property, where a First Lien security interest in a Borrower-Owned Home cannot, under applicable law, be perfected with the filing of a UCC Financing Statement, the Seller/Servicer must take additional actions necessary to verify the ownership of and ensure a perfected First Lien security interest in any Borrower-Owned Home (e.g., obtaining a copy of the certificate of title evidencing the Borrower as the sole title holder of a Borrower-Owned Home).



For a Mortgage secured by a Seniors Housing Project, in addition to the searches required in Section 21.3, UCC searches are required for:

- The Borrower,
- The Manager, if applicable, and,
- If the Property is being acquired, the current owner of the Property.

Each UCC search must include every office where a financing statement would be filed to perfect a security interest in any of the collateral described in Financing Statement Exhibit B - Seniors Housing. Additionally, each search must include the state of organization for the Borrower and the Manager, if applicable.

g. Newly formed Borrowers and SPE Equity Owners (04/18/24)

For each Borrower and SPE Equity Owner, if applicable, that has been formed within 90 days prior to the origination of the Mortgage, the Seller/Servicer will not be required to provide a UCC search for the Borrower or the SPE Equity Owner. For any entity formed more than 90 days prior to the origination, or if Freddie Mac agrees to permit a “recycled” SPE Borrower or SPE Equity Owner, regardless of the entity’s formation date, the Seller/Servicer must provide a UCC search for the Borrower and the SPE Equity Owner, if applicable.

29.4 Survey requirements (04/18/24)

a. ALTA/NSPS requirements; survey waivers (04/18/24)

1. For each Mortgage purchased by Freddie Mac, the Seller/Servicer must submit a survey meeting the then-current minimum standard detail requirements for American Land Title Association/National Society of Professional Surveyors, Inc. (ALTA/NSPS) Land Title Surveys. The survey must be made, dated or revised by a licensed civil engineer or registered surveyor not more than 90 days prior to the date of the Note. The surveyor's certification must:
 - Be the form of certification required by the most current ALTA/NSPS requirements, except that the Table A items need not be listed in the certification
 - Be for the benefit of the Seller/Servicer, Freddie Mac and its successors and assigns and the title insurance underwriter issuing the title insurance policy if required by the title insurance underwriter
2. Unless specifically waived under the terms of the Letter of Commitment, a survey is required for every Mortgage purchased by Freddie Mac. (See also the [Waiver of Certain Survey Requirements](#) found at mf.freddie.com/lenders/legal/.)

b. Additional Freddie Mac requirements (03/03/17)

In addition to the items that must be included in an ALTA/NSPS Land Title Survey, the survey must also include the following:



- Substantial visible improvements (in addition to buildings) such as entrance or monument signs, parking structures including carports and garages, swimming pools and other recreational facilities such as clubhouses, basketball and tennis courts.
- Indication of access to all public rights of way such as curb cuts, driveways marked, etc.
- Parking areas and type and number of parking spaces (Parking space striping need not be shown.)
- Any setback requirements applicable to the Property (including those imposed via zoning law or building codes and any documents on record affecting the Property).

c. Survey – encroachments and violations (04/18/24)

The Seller/Servicer must analyze all encroachments and violations shown in the survey, as set forth in Section 29.2(f).

d. Special survey requirements for MHC Mortgages (03/03/17)

In addition to the requirements set forth in this Chapter 29 with respect to surveys, if the Property is an MHC Property, the following requirements are applicable:

- The survey must include the number of Home Sites located on the Property, as well as a description of the parking areas or spaces that are generally available for each Manufactured Home (i.e., the number of off-street parking spaces available for each Manufactured Home should be included on the survey).
- The survey must depict the location of:
 1. The extent and approximate dimensions of any encroachments by Manufactured Homes (including any Borrower-Owned Homes), Home Sites, piers, and foundations. If any of the foregoing do not constitute encroachments, their location does not need to be shown on the survey. Instead, a simple indicating mark may be included.
 2. Private interior access roads or streets and visible utilities. Unless such items constitute encroachments, they may be sketched on to the survey to show their approximate location, and can be located by photogrammetric or other approximate methods in lieu of precise field measurements.

29.5 Legal opinions (04/18/24)

a. Legal opinions required (04/18/24)

The Final Delivery Package must include the following legal opinions addressed to the Seller/Servicer (individually and collectively, the “Opinion Letter”):

- A legal opinion with respect to Borrower and any SPE Equity Owner in the form provided on the Freddie Mac Multifamily website ([the “Borrower Opinion”](#)).



- A legal opinion with respect to any Guarantor in the form provided on the Freddie Mac Multifamily website ([the “Guarantor Opinion”](#)).
- A non-consolidation legal opinion (the “Non-Consolidation Opinion”) for any Mortgage:
 - With an original principal balance equal to or greater than \$40,000,000;
 - That is a part of a cross-collateralized and cross-defaulted pool of Mortgages that are, when aggregated, \$40,000,000 or greater; or
 - If otherwise required by the Letter of Commitment or early rate lock application
- Any other legal opinions required by Freddie Mac under the Guide, in the applicable Letter of Commitment or early rate lock application, or otherwise.

Notwithstanding the foregoing, the enforceability opinions and local law opinions may be omitted from the Borrower Opinion and Guarantor Opinion for a supplemental mortgage originated under the Freddie Mac Multifamily Supplemental Mortgage Product.

b. Review and analysis of legal opinions (04/18/24)

Seller/Servicer’s counsel must review and analyze all Opinion Letters to ensure the Opinion Letters conform to Freddie Mac’s requirements. Additional guidelines and requirements for the review of opinions are set forth in the Opinion Letter Guidelines and, if applicable, the Requirements for Review of Non-Consolidation Opinions, provided on the Freddie Mac Multifamily [website](#).

All Opinion Letters must contain the following use and reliance provision, without modification:

“This opinion letter is furnished to you solely for your benefit, the benefit of subsequent holders of the Note, and any statistical rating agency that provides a rating on securities backed in part by the Loan, all of which we understand may receive copies of this opinion letter. This opinion letter may not be used, quoted from or relied upon by any other person without our prior written consent; however, you or a subsequent holder of the Note may deliver copies of this opinion letter to (a) independent auditors, accountants, attorneys and other professionals acting on behalf of you or a subsequent holder of the Note, (b) governmental agencies having regulatory authority over you or a subsequent holder of the Note, (c) designated persons pursuant to an order or legal process of any court or governmental agency, and (d) prospective purchasers of the Note.”

The counsel rendering the opinions must be acceptable to Freddie Mac or to the Seller/Servicer if Seller/Servicer is authorized to approve the opinion. The Letter of Commitment or the early rate lock application may require that the counsel state additional conclusions in the opinion. Freddie Mac reserves the right to require Seller/Servicer at any time to deliver to Freddie Mac all documents on which the counsel based or should have based the opinion.



c. Opinions requiring Freddie Mac review and approval (04/18/24)

The Seller/Servicer must submit a copy of the following opinions for Freddie Mac’s review and approval not less than three business days prior to the scheduled origination date of the Mortgage:

- All Opinion Letters for any Mortgage with an original principal balance equal to or greater than \$100,000,000.
- Any Seniors Housing Mortgage licensure opinion, specifically opinions #27 and #28 from the Borrower Opinion form.

Such opinions must be marked to clearly indicate the additions to and deletions from the appropriate form of Opinion Letter. The Borrower or the Seller/Servicer must pay for any legal fees associated with the review and approval of any such additions to or deletions from the appropriate form of Opinion Letter in connection with the origination of the Mortgage.

The Seller/Servicer’s counsel must provide an analysis and recommendation with respect to such opinions (the “Opinion Analysis”). Freddie Mac will not be responsible for any loss, costs or damages incurred by the Seller/Servicer or Borrower as a result of the origination of the Mortgage being delayed due to the failure of the Seller/Servicer to timely deliver to Freddie Mac a draft Opinion Letter and/or the Opinion Analysis.

d. Non-Consolidation Opinion Requirements (04/18/24)

Non-Consolidation Opinions must state that if any equity owner or group of affiliated equity owners (or group of family members) who own more than 49% of the equity in Borrower were to become insolvent, neither Borrower, nor its assets and liabilities, would be substantively consolidated with that of the equity owner or group of affiliated equity owners (or group of family members) or with the SPE Equity Owner.

A “should” Non-Consolidation Opinion is not acceptable; all Non-Consolidation Opinions must be “would” opinions.

All Non-Consolidation Opinions must be submitted to Freddie Mac for review and approval prior to origination of the Mortgage as provided in the Requirements for Review of Non-Consolidation Opinions provided on the Freddie Mac Multifamily website. The Borrower or the Seller/Servicer must pay for any legal fees associated with the review and approval of any Non-Consolidation Opinion required in connection with the origination of a Mortgage.

e. Required Opinion Provisions for Seller Application (04/18/24)

The Seller/Servicer must include, as part of its Seller Application with or loan commitment to the Borrower, the following provision.

Delivery of Opinion Letters to Be Delivered to Freddie Mac

Borrower acknowledges and agrees that as part of the loan closing process it is required to deliver to [Seller/Servicer to Insert Seller/Servicer’s Name] certain legal opinion letters in form and substance acceptable to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) addressing, among other things, enforceability, due formation, execution



and delivery, non-consolidation (under certain circumstances) and such other matters as may be required by Freddie Mac (collectively if more than one, the “Opinion Letter”). In order to properly review any Opinion Letter requiring Freddie Mac’s approval Freddie Mac must receive a draft of the Opinion Letter, with analysis and recommendations from [Seller/Servicer to Insert Seller/Servicer’s Name], not less than three business days prior to the anticipated consummation of the loan transaction. Accordingly, Borrower acknowledges and agrees to deliver to [Seller/Servicer to Insert Seller/Servicer’s Name], not less than ___ business days [Seller/Servicer to Insert Number of Days as Required by Seller/Servicer’s Counsel] prior to the anticipated consummation of the loan transaction, a draft Opinion Letter for review. Borrower acknowledges and agrees that [Seller/Servicer to Insert Seller’s/Servicer Name] will not be responsible for reviewing any Opinion Letter received less than ___ Business Days [Seller/Servicer to Insert Number of Days as Required by Seller/Servicer’s Counsel] prior to the anticipated consummation of the loan transaction and that Borrower’s failure to timely deliver such Opinion Letter may result in the consummation of the loan transaction being delayed. Borrower further acknowledges and agrees that neither [Seller/Servicer to Insert Seller/Servicer’s Name] nor Freddie Mac will be responsible for any loss, costs or damages incurred by Borrower as a result of the consummation of the loan transaction being delayed due to the failure of Borrower to timely deliver a draft Opinion Letter.