**CONDOMINIUM DOCUMENT REVIEW CHECKLIST**

**NOTES FOR REVIEWER/ATTORNEY:**

* **CONDOMINIUM DOCUMENTS SHOULD BE REVIEWED IN ACCORDANCE WITH THE GUIDE AND THIS CHECKLIST.**
* **CHECKLIST FOR INTERNAL / LENDER-SIDE USE ONLY. LENDER MUST MAINTAIN THE COMPLETED CHECKLIST IN THE SERVICING FILE.**
* **FOR ALL FRACTURED AND COMMERCIAL CONDOMINIUMS, BORROWER MUST OBTAIN AN ESTOPPEL CERTIFICATE (ATTACHED TO FORM 6258) FROM THE ASSOCIATION.**
* **AN ESTOPPEL CANNOT AMEND THE CONDOMINIUM DOCUMENTS, SO CONSIDER WHETHER AN AMENDMENT TO THE CONDOMINIUM DOCUMENTS IS REQUIRED TO SATISFY ANY REQUIREMENTS.**
* **THIS CHECKLIST IS NOT INTENDED FOR USE WITH VERTICAL SUBDIVISIONS. CONTACT THE FANNIE MAE DEAL TEAM FOR GUIDANCE.**

**NOTE: If Borrower does not possess control[[1]](#footnote-1) of the Condominium, contact the Fannie Mae Deal Team to determine if the property will be accepted and which Fannie Mae Loan Documents should be used.**

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| **LENDER** |  |
| **PROJECT NAME/CITY and STATE** |  |
| **BORROWER NAME** |  |
| **LAW FIRM** |  |
| **LAW FIRM ATTORNEY CONTACT INFORMATION** |  |
| **REVIEW DATE** |  |

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| --- | --- |
| **CONDOMINIUM DOCUMENTS REVIEWED** (list all governing documents (including dates, amendments, and recording information, if applicable) of declaration, bylaws, plats, and any other documents relating to the creation, operation and management of the Condominium and the Association (“**Condominium Documents**”)) |  |
| **NAME OF CONDOMINIUM** (the“**Condominium**”) |  |
| **NAME OF CONDOMINIUM ASSOCIATION** (the“**Association**”) |  |
| **DESCRIPTION OF CONDOMINIUM PROPERTY** |  |
| * Total number of units, description of units (e.g. residential, parking, retail, etc.) |  |
| * Percentage of residential units owned by Borrower |  |
| * Percentage of total units owned by Borrower |  |
| **CONDOMINIUM STRUCTURE** (e.g. Wholly-Owned, Fractured, Commercial ) |  |
| **NAME OF DECLARANT (**and identify if Borrower is Declarant**)** |  |
| **DATE OF FORMATION OF CONDOMINIUM** |  |
| **STATUTE UNDER WHICH CONDOMINIUM WAS ESTABLISHED** |  |

| **ITEM** | **SUBJECT MATTER** | **REQUIREMENTS** | **REVIEWER ANALYSIS (include Condominium document name and section references as appropriate)** | **SATISFIED (Yes or No). If no, include mitigants or explanation\*** |
| --- | --- | --- | --- | --- |
|  | **Ownership** | Confirm the Borrower owns the Condominium units in one of the following ways and identify which applies:   1. Wholly-Owned\*: Borrower owns 100% of the residential Condominium units in a residential Condominium. 2. Fractured Condominium: Borrower owns less than 100% (but not less than 80%) of the residential Condominium units in a residential Condominium. 3. Commercial Condominium: Borrower owns 100% of the residential units in a mixed used Condominium.   No Borrower units are subject to a master Condominium or sub-condominium units |  |  |
|  | **Condominium Control** | Borrower must control the Condominium in one of the following ways.   * + For Wholly-Owned Condominiums, Borrower must possess “**Complete Condominium Control**” as defined in the footnote on the first page. OR   + For Commercial Condominiums and Fractured Condominiums, Borrower must possess “**Material Condominium Control**” as defined in the footnote on the first page. |  |  |
|  | **Declarant Control** | The Borrower must be the Declarant or the original Declarant must no longer have the power to unilaterally alter any Condominium Document provisions or have Material Condominium Control. |  |  |
|  | **Governing board(s) of Association** | Describe the body designated in the Condominium Documents to act on behalf of the Condominium or Association:   * + Indicate the total members/directors on the board, the percentage of the total seats Borrower has the right to appoint and remove, and number of members/directors the Borrower currently has on the board.   + Describe how board members are removed or replaced and whether the board can be expanded.   + Describe any other trustee or governing body that is designated to act on behalf of the Association and/or unit owners, and how such members can be replaced. |  |  |
|  | **Decision Making\*** | Describe how decisions are made pursuant to the Condominium Documents and list which decisions require majority, super-majority, unanimous, and/or mortgagee consent.  Describe any veto rights held by any unit owner or mortgagee with respect to any decisions affecting the Condominium. |  |  |
|  | **No Borrower Affiliated Unit Owners** | No other owners of Condominium units are Borrower Affiliates |  |  |
|  | **Separate tax lots and tax bills\*** | Each Condominium unit must be a separate tax lot and subject to a separate tax bill. |  |  |
|  | **Assessments\*** | Borrower must be current on all assessments and any other fees due under the Condominium Documents, and assessments are and will be subordinate to the Mortgage Loan.   * + Describe the annual assessments, when assessments are imposed, the process for setting the assessments, and whether there is any cap on the increase in annual assessments.   + Describe any known special assessments.   + Describe any other charges, fees or costs due by Borrower under the documents. |  |  |
|  | **Use** | The Condominium Documents must permit the Borrower’s Condominium unit to be (or must not prohibit Borrower’s Condominium unit from being) used for multifamily rental housing and any other underwritten use.  The Condominium Documents must not limit the rights of Borrower to lease or alter its Condominium unit. |  |  |
|  | **Insurance Generally\*** | Insurance required and obtained under the Condominium Documents must comply with Fannie Mae’s insurance requirements.  The Condominium Documents must provide Borrower with notice of all insurance changes, claims and payouts affecting Borrower’s Condominium unit and any common elements.   * + What portion of the property is the association responsible for insuring?   + What must Borrower insure?   + Are unit owners and their mortgagees named as additional name insured, additional insured or loss payees on any policies obtained by the Association? |  |  |
|  | **Condemnation/ Casualty Payments; Restoration after Destruction or Condemnation\*** | Borrower (individually or together with its mortgagee) must possess the power to require (or the Condominium Documents must require) (a) the restoration of the Condominium (including common elements) in the event of a casualty (or damage related to a condemnation) of 80% or less of the common elements, and (b) with respect to any casualty or condemnation event that cannot be restored, timely distribution of the insurance or condemnation proceeds to the Condominium unit owners.   * + Describe the repair/rebuild requirements and thresholds after a casualty or a condemnation.   + Describe how insurance proceeds are held and distributed and who will hold/distribute. The Board? The Association? An insurance trustee?   + If proceeds are held by a trustee, how is the trustee selected?   + Do Condominium unit mortgagees have any rights to insurance proceeds or the right to require the Condominium to be repaired or rebuilt upon a casualty? |  |  |
|  | **Mortgagee Protections:**   1. **Mortgage Authorized** | Lender and Fannie Mae must benefit from all protections afforded to mortgagees under the Condominium Documents.  The Condominium Documents must permit (or not prohibit) a mortgage lien on the Borrower’s property and Fannie Mae must qualify as (or not be prohibited from being) a permitted, authorized or eligible mortgagee (or the equivalent term used in the Condominium Documents).  Confirm that all conditions precedent that must be satisfied for Lender and Fannie Mae to benefit from mortgagee protections under the Condominium Documents are or will be satisfied before the Effective Date of the Mortgage Loan. e.g. if the Association must receive notice of the mortgage loan or name and address of a permitted mortgagee, then Lender must confirm that such notice has been sent or will be sent prior to the Effective Date. |  |  |
|  | 1. **Notices; Cure by Mortgagee\*** | The Condominium Documents must provide for written notice to mortgagee of copies of any notices from the Association to Borrower, including default notices and notices pertaining to insurance or casualty and condemnation simultaneously with transmittal of same to Borrower.  Mortgagee must be afforded a reasonable time (in addition to the time given to Borrower) and opportunity for the mortgagee to cure any default under the Condominium Documents, including any default that could result in the termination of the Condominium.  The Condominium Documents must not permit the Association to terminate the Condominium based on defaults personal to Borrower (such as a voluntary bankruptcy filing) or based on defaults that mortgagee is not able to cure. |  |  |
|  | 1. **Foreclosure\*** | The mortgagee must have the right to foreclose (or otherwise take title to the Borrower’s property) without the consent of the Association, any other unit owners, or mortgagees of any other unit owners.  Following any foreclosure event, mortgagee (or any transferee) must be recognized as a unit owner, without the consent the Association or any other unit owner.  Mortgagee shall have the further right to sell and assign such Condominium units or any portion thereof, without any consent of the Association or any other unit owner. |  |  |
|  | 1. **No Personal Liability of Mortgagee\*** | The mortgagee (or its nominees or transferee) must not have any personal liability under the Condominium Documents unless and until it has record title to the Condominium units owned by Borrower. |  |  |
|  | 1. **No Cross Default with Mortgage Loan** | No default or event of default under the Loan Documents will, in and of itself, constitute a default or event of default under the Condominium Documents. |  |  |
|  | **Subordination to Mortgage** | For Wholly-Owned Condominiums, the Condominium Documents and all fees and assessments due thereunder must be subordinated to the Loan Documents (this may be satisfied by Borrower’s execution of Form 6304).  For Fractured Condominiums and Commercial Condominiums, all fees and assessments due by Borrower under the Condominium Documents must be automatically subordinate to the Loan Documents.   * + The Condominium Documents may allow the placement of a lien for unpaid assessments which is subordinate to the mortgage. |  |  |
|  | **No Amendment, Modification or Termination without Mortgagee Consent\*** | The Condominium Documents must provide that Borrower or mortgagee can prevent any Material Amendment or termination of the Condominium. |  |  |
|  | **Other Terms** | The Condominium Documents must not contain any other unusual or noteworthy terms or rights that would be unacceptable to Lender, including any provisions that could materially adversely affect Lender’s rights of the Loan Documents or its lien under the mortgage, or the marketability or Lender’s ability to sell the property following a foreclosure event. |  |  |
|  | **Statutory Issue\*** | Confirm that the Statute(s) under which the Condominium was formed do not negatively affect the Condominium or responses above. Provide any additional relevant analysis separately. |  |  |

**\*For Wholly-Owned Condominiums that are Controlled by Borrower:** After review of the Condominium Documents, in the event that Lender determines that the requirements starred\* above are not satisfied, Lender is delegated the right to determine whether (1) such failure does not adversely affect Lender’s rights, the lien of the Security Instrument or Lender’s ability to exercise its rights and remedies under the Loan Documents, or (2) whether such failure is sufficiently mitigated by (a) the fact that Borrower wholly-owns and Controls the Condominium, or (b) making modifications to Form 6202 to address any such unsatisfied requirements. In the case of (2), Lender may insert “Wholly-Owned” or “Wholly-Owned – 6202 to be modified,” as applicable, in the “Satisfied” Column above.

1. “**Complete** **Condominium Control**” is required for all Wholly-Owned Condominiums and means Borrower possesses the power (including the requisite votes in any body governing the Condominium) to direct or cause the direction of the management and operations of the Condominium, including the right to control the outcome of any matters that are subject to a vote and the right to consent to action before it is taken (including matters related to Condominium termination, amendments to the Condominium Documents, assessments, insurance requirements, and restoration or application of proceeds after a casualty or damage related to a condemnation).

   “**Material Condominium Control**” is required for all Commercial Condominiums and Fractured Condominiums and means (a) the Borrower (individually or together with its mortgagee) possesses the power (including the requisite votes in any body that directly or indirectly governs the Condominium) sufficient to prevent Condominium termination and any Material Amendment to the Condominium Documents, and (b) the Borrower (individually or together with its mortgagee) possesses the power to require (or the Condominium Documents must require) (1) the repair and restoration of the Condominium (including common elements) in the event of a casualty (or damage related to a condemnation) of 80% or less of either the common elements or the Condominium unit(s) owned by the Borrower, and (2) with respect to any casualty or condemnation event that cannot be repaired or restored, timely distribution of the insurance or condemnation proceeds to the Condominium unit owners. As used herein “**Material Amendments**” means changes to the Condominium Documents that pertain to:

   - modifying insurance requirements, use of insurance proceeds or rebuild requirements after a casualty or condemnation;

   - altering or restricting the use of the Borrower Condominium Units, the common elements or any other easements;

   - decreasing or adversely affecting mortgagee rights or notices;

   - altering or diluting voting rights or the number of board seats;

   - diluting Borrower’s ownership interest in or use of common elements;

   - changes to the assessment structure, any aspect of cost sharing amongst the parties, or how assessments (including special assessments) are determined; or

   - causing or allowing termination the Condominium without Borrower or mortgagee consent. [↑](#footnote-ref-1)