



Multifamily Mortgage Business Lender Letter 21-02

March 15, 2021

To: Multifamily Lenders
From: Te-Mika Warner, Deputy General Counsel
Subject: Lender Letter 21-02 – Loan Document Update

HIGHLIGHTS

Fannie Mae is announcing updates to the Loan Documents which may be used immediately and must be used for all Mortgage Loans with a confirmed Commitment Date on or after April 26, 2021.

New and Revised Loan Documents

We have updated our existing forms to address issues raised since the last publication, including enhancements, state law developments, and Guide updates. Below is a summary of some of the key changes to the Loan Documents. See [Exhibit A](#) for details.

- [REMIC Election](#) – We added language to the Multifamily Loan and Security Agreement (the “Loan Agreement”) and related definitions in connection with Fannie Mae’s REMIC election, including adding a tax savings clause and language to ensure protection of the securitization. We also removed the reference to a limit on reserves of not more than 10% of the unpaid principal balance from drafting notes throughout various Loan Documents.
- [Ground Lease Forms](#) – We updated our ground lease documents to address circumstances in which the Borrower (as ground lessee) and ground lessor are affiliated. We have provided a form of Joinder and Consent to spread the lien over the fee estate, which is required when the Borrower (as ground lessee) and ground lessor are affiliates.
- [Reserve Escrows](#) – We updated the Loan Documents for escrows of principal and interest to align and remain current with underwriting requirements.

Annotated Loan Agreement

In support of our commitment to enhance delegation for loan document modifications, we are pleased to announce that version 5.0 of the Annotated Multifamily Loan and Security Agreement (the “Annotated Loan Agreement”) will be available by the end of March. Version 5.0 will replace version 4.0 and will conform the Annotated Loan Agreement to the most recently published Loan Agreement. The annotations provide guidance on modifications and alternative language for appropriate additions or substitutions, allowing you to make changes to the Loan Agreement (Form 6001) under the Annotated Document Delegation, as provided in Lender Letter 17-12, for all Mortgage Loans except Credit Facilities. Distribution of the Annotated Loan Agreement is limited to Fannie Mae Multifamily Lenders and their counsel. The Annotated Loan Agreement may be obtained from your Deal Team.

Effective Date

The revised Loan Documents may be used immediately and must be used for all Mortgage Loans with a confirmed Commitment Date on or after April 26, 2021.

Contact Us

If you have questions regarding this Lender Letter or the Loan Documents, please contact your Deal Team, or Te-Mika Warner at te-mika_warner@fanniemae.com.



EXHIBIT A: MULTIFAMILY MORTGAGE BUSINESS 6000 SERIES FORM LOAN DOCUMENTS

The following Loan Documents have been created or revised to reflect issues raised since the last publication, including enhancements, state law developments, and Guide updates. Additional revisions to the Loan Documents are largely conforming, or corrective. Please refer to the marked copies for complete details. The revised Loan Documents are available on the [Multifamily Loan Documents](#) page on FannieMae.com.

Notable Loan Document changes include the following revisions.

- Loan Agreement (6001.NR Series)
 - Section 3.02(a) was revised to provide personal liability for claims arising from any tenant opportunity to purchase act applicable to the Mortgaged Property, with a corresponding event of default under Section 14.01(c). This addition is consistent with guidance previously provided in the Annotated Loan Agreement.
 - Section 4.01 was revised to delete the requirement that Borrower organizational documents prohibit a Division of Borrower, and to carve out ordinary course residential evictions from the representation on litigation.
 - Section 5.02 was clarified to add specific provision for Borrower cooperation to create or maintain the expected federal income tax treatment of the MBS trust.
 - Sections 6.01(a) and 6.02(e) were revised to clarify that legal compliance related to fair housing includes applicable source of income laws, and to provide for Borrower cooperation with respect to any proceedings that may affect lender rights.
 - Section 11.02(b)(2) was revised to delete a reference related to organization termination dates which is more appropriately addressed elsewhere in Article 11.
 - Sections 11.03(a) and (g) were revised to clarify that transfers must not result in an Adverse Tax Event.
 - Section 13.02(a)(4) was revised to reduce the time that Borrowers have to deposit additional funds into repair, replacement, or restoration reserve accounts from thirty (30) days to ten (10) days when there is a determination that the accounts are insufficiently funded.
 - A new Section 15.19 was added as a tax savings clause to provide that no modification to the Loan Documents would result in an Adverse Tax Event.
 - Schedule 6 was updated to provide for inclusion of property address and collateral reference number on the Required Repair Schedule.
 - Schedule 8 was revised to delete the drafting note to include the Federal Employer Identification Number of each entity on the schedule.
- Loan Agreement (6001.R)
 - The recourse version of the Loan Agreement was revised for all the items noted in the non-recourse versions above.
 - In connection with Fannie Mae's REMIC election, the recourse version of the Loan Agreement was also revised to conform to the non-recourse version in the following ways -
 - allows for entity conversion upon lender consent, in addition to changing name or jurisdiction.
 - provides that the loan may be assumed and allows for a replacement guarantor with lender consent.
 - allows for transfers to immediate family members and partnerships upon satisfaction of stated conditions.
 - allows for transfers upon termination or revocation of trusts, and satisfaction of stated conditions.
 - provides for an event of default in the event of termination or revocation of a trust, a guarantor bankruptcy event, or the death of an individual, outside of what is prescribed in Article 11.
- Definitions Schedules (6101 series)
 - These schedules were revised to add definitions for corresponding REMIC related provisions in the 6001 series.
- Ground Lease Modification to Loan Agreement (6206)
 - The rider provides for corresponding recourse and events of default for applicable provisions of the joinder to the security instrument relating to ground lessor affiliates.



- The estoppel was removed from the Exhibit on Form 6206 to create a new Form 6495.
- Ground Lease Modification to Security Instrument (6308)
 - A new Joinder and Consent Form was included as an exhibit to spread the lien over the fee estate when the Borrower (as ground lessee) and ground lessor are affiliates.
 - The rider clarifies the expectation that the Borrower own the fee title to the Improvements.
 - Representations and covenants and corresponding drafting notes were added relating to affiliate relationship.
- Ground Lease Checklist (6479)
 - Drafting notes were revised to clarify that an estoppel cannot amend a ground lease for those instances where a ground lease amendment is appropriate.
 - The checklist requests identifying information about the property and the parties, including lender and project name, the relationship between the ground lessor and ground lessee, and contact information for counsel preparing the checklist.
 - Fannie Mae must be a permitted or authorized mortgagee under the ground lease and all conditions precedent must be satisfied.
 - Ground rent must be comparable to, but not higher than, market ground rent for similar properties in the area.
 - The checklist clarifies the expectation that the Borrower own the fee title to the Improvements.
 - The checklist provides that a joinder is required if the ground lessee and ground lessor are affiliates.
 - The checklist provides that the ground lease must not grant the ground lessor any assignment of leases and rents.
 - The checklist solicits disclosure of any unusual terms or rights in the ground lease that would be unacceptable to lender's interests, as well as disclosure if either party previously owned both the Land and Improvements at the same time.
- Ground Lessor Estoppel (6495)
 - The estoppel was removed from the Exhibit on Form 6206 to create a new Form 6495.
- Reserves Escrows (6102.25, 6268, 6640, 6641)
 - References to a limit on reserves of not more than 10% of the unpaid principal balance was removed from all drafting notes.
 - The documents replaced specific terms, such as the amount of reserves required and the minimum hold period, with blanks to be filled in for current underwriting requirements.
- Installed Solar PV System (6270)
 - The representation was modified to provide that Borrower has provided the EPC Contract to Lender specifically if notice of commercial operation or the in-service date for the installed equipment was not provided to Borrower.
- Compliance Agreements for Operations and Maintenance Plans (6418, 6419, 6420)
 - The Compliance Agreements related to asbestos, lead-based paint, and mold were revised for conformity with one another.
- Amended and Restated Security Instruments (6025.FL.AR, 6025.MD.AR)
 - Revisions were made to conform these forms to their corresponding versions recently updated for state law.
- Pricing Incentive Recapture (6020.PIR) (formerly 6020.MHC)
 - This payment guaranty was revised for use for all loans for which Borrower has received a pricing incentive in exchange for specified covenants, and to specify the amount of the incentive in basis points.
- Guaranty (6020)
- Restabilization Reserve (6102.18, 6233)
- Medicaid Transition Reserve (6237.SRS)
- Government Transition Reserve (6237.SRS.SN)



- Seasonal Working Capital Reserve (Manufactured Housing) (6433)
- Achievement Agreement (6455)
- Amendment for Medicaid Transition Reserve (6630.SRS)
- Amendment for Government Transition Reserve (6630.SRS.SN)
 - References in these documents to a limit on reserves of not more than 10% of the unpaid principal balance were removed from all drafting notes.
- SPE Recourse (6254)
 - The representation was updated to provide that Borrower has not sought and has no plans to Divide during the loan term.
- Opinions of Borrower’s Counsel (6401, 6435, 6450.SRS, 6618)
 - A drafting note was added for Rhode Island counsel to confirm whether an opinion may be requested under state law.
 - The Opinion was revised to delete the requirement that the Borrower’s organizational documents prohibit a Division of Borrower.
- Schedule A to UCC (6449.SRS.Borrower, 6449.SRS.Operator)
 - This document was revised to include elements in the definition of Rents covered by the UCC to conform with the security instruments.
- Restoration Reserve (6615)
 - A drafting note was corrected to reflect that required restoration must be completed one year from date of loss, in accordance with the Guide.

NEW Documents:

6449.Ground Lessor	Schedule A to UCC Financing Statement (Ground Lessor)
6495	Ground Lessor Estoppel Certificate

REVISED Documents:

Loan Document Requirements:

6000	Loan Documentation Requirements	Marked copy
------	---------------------------------	-----------------------------

Delivery Documents:

6502	Table of Contents	Marked copy
------	-------------------	-----------------------------

Core Loan Documents:

6001.NR	Multifamily Loan and Security Agreement (Non-Recourse) (Standard Form)	Marked copy
6001.NR.ML	Multifamily Loan and Security Agreement (Non-Recourse) (Master Lease)	Marked copy
6001.NR.SRS	Multifamily Loan and Security Agreement (Non-Recourse) (Seniors Housing)	Marked copy
6001.R	Multifamily Loan and Security Agreement (Recourse) (Standard Form)	Marked copy
6020	Guaranty (Payment)	Marked copy
6020.PIR	Payment Guaranty (Pricing Incentive Recapture)	Marked copy

Security Instruments:

6025.FL.AR	Consolidated, Amended and Restated Multifamily Security Instrument (Florida)	Marked copy
------------	--	-----------------------------



6025.MD.AR	Amended and Restated Multifamily Security Instrument (Maryland)	Marked copy
------------	---	-----------------------------

Loan Agreement Schedules:

6101.ARM 5/5 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- ARM 5/5 (SOFR))	Marked copy
6101.ARM 7/6 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- ARM 7/6 (SOFR))	Marked copy
6101.ARM.ML 5/5 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- ARM 5/5 (SOFR)) (Master Lease)	Marked copy
6101.ARM.ML 7/6 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- ARM 7/6 (SOFR)) (Master Lease)	Marked copy
6101.ARM.SRS 5/5 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- ARM 5/5 (SOFR)) (Seniors Housing)	Marked copy
6101.ARM.SRS 7/6 (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement - Definitions Schedule (Interest Rate Type - ARM 7/6 (SOFR)) (Seniors Housing)	Marked copy
6101.FR	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Fixed Rate)	Marked copy
6101.FR.ML	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type Fixed Rate) (Master Lease)	Marked copy
6101.FR.SRS	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Fixed Rate) (Seniors Housing)	Marked copy
6101.HYARM (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Hybrid ARM (SOFR))	Marked copy
6101.SARM (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Structured ARM (SOFR))	Marked copy
6101.SARM.ML (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Structured ARM (SOFR)) (Master Lease)	Marked copy
6101.SARM.SRS (SOFR)	Schedule 1 to Multifamily Loan and Security Agreement -- Definitions Schedule (Interest Rate Type -- Structured ARM (SOFR)) (Seniors Housing)	Marked copy
6102.18	Modifications to Multifamily Loan and Security Agreement - Schedule 2 Addenda - Summary of Loan Terms (Restabilization Reserve)	Marked copy
6102.25	Modifications to Multifamily Loan and Security Agreement -- Addenda to Schedule 2 -- Summary of Loan Terms -- (Additional Reserve Escrows)	Marked copy

Loan Agreement Modifications:

6206	Modifications to Multifamily Loan and Security Agreement (Ground Lease Defaults)	Marked copy
6233	Modifications to Multifamily Loan and Security Agreement (Restabilization Reserve)	Marked copy
6237.SRS	Modifications to Multifamily Loan and Security Agreement (Medicaid Transition Reserve)	Marked copy
6237.SRS.SN	Modifications to Multifamily Loan and Security Agreement (Government Receivables Transition Reserve)	Marked copy
6254	Modifications to Multifamily Loan and Security Agreement (SPE Recourse)	Marked copy
6268	Modifications to Multifamily Loan and Security Agreement (Additional Reserve Escrows)	Marked copy
6270	Modifications to Multifamily Loan and Security Agreement (Installed Solar Photovoltaic System)	Marked copy

Security Instrument Modifications:



6308	Modifications to Security Instrument (Ground Lease Provisions)	Marked copy
------	--	-----------------------------

Miscellaneous Documents:

6401	Opinion of Borrower's Counsel on Origination of Mortgage Loan [with Enforceability Opinion]	Marked copy
6418	Compliance Agreement for Asbestos Operations and Maintenance Plan	Marked copy
6419	Compliance Agreement for Lead-Based Paint Operations and Maintenance Plan	Marked copy
6420	Compliance Agreement for Mold Operations and Maintenance Plan	Marked copy
6433	Seasonal Working Capital Reserve Fund and Security Agreement (Manufactured Housing Community)	Marked copy
6435	Opinion of Borrower's Counsel on Origination of Manufactured Housing Community Mortgage Loan [with Enforceability Opinion]	Marked copy
6449.SRS.Borrower	Schedule A to UCC Financing Statement (Borrower) (Seniors Housing)	Marked copy
6449.SRS.Operator	Schedule A to UCC Financing Statement (Property Operator) (Seniors Housing)	Marked copy
6450.SRS	Opinion of Borrower's Counsel on Origination of Mortgage Loan (Seniors Housing Licensing)	Marked copy
6455	Achievement Agreement	Marked copy
6476	Agreement to Submit to United States Jurisdiction	Marked copy
6479	Ground Lease Review Checklist	Marked copy

Asset Management Documents:

6615	Amendment to Multifamily Loan and Security Agreement (Restoration Reserve)	Marked copy
6618	Opinion of Borrower's Counsel on Defeasance of Mortgage Loan with Enforceability Opinion	Marked copy
6630.SRS	Amendment to Multifamily Loan and Security Agreement (Medicaid Transition Reserve – 6000 Series)	Marked copy
6630.SRS.SN	Amendment to Multifamily Loan and Security Agreement (Medicaid Transition Reserve)	Marked copy
6636	Assignment of Management Agreement (6000 Series)	Marked copy
6640	Amendment to Multifamily Loan and Security Agreement (Additional P&I Escrow – 6000 Series)	Marked copy
6641	Additional P&I Escrow Agreement (4000 Series)	Marked copy