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Master Planned Community &  
Condominium Practice Group

**The following summary was, in principal part, prepared by the National Association of Homebuilders. We have made certain revisions to the summary to underscore issues affecting our clients.**

**Our firm has assisted clients with FHA certification of their new or existing projects for several years. For almost all new and existing projects, we strongly encourage our clients to consider using the FHA HRAP (as opposed to the DELRAP) process for certification. Certification under the HRAP process allows direct submission to FHA and, in our view, provides the most flexibility for purchasers when choosing a lender.**

**For our clients with existing owner-controlled projects, since Spot Loan Approval is being eliminated effective January 31, 2010, FHA certification is mandatory for loans made after that date.**

**Please contact Bob Burton at 512-435-2314 if you have any questions or would like additional information on the FHA certification process.**

### **Update on FHA Condo Policies**

#### **Overview**

FHA released its updated condominium policy on Nov. 6, which will become effective on Dec. 7. Mortgagee Letter 2009-46B provides permanent baseline guidance for condominium project eligibility. However, to address current market conditions, FHA has issued Mortgagee Letter 2009-46A, which describes several temporary waivers that will be in effect from Dec. 7, 2009 through Dec. 31, 2010.

These exceptions include a temporary decrease in the pre-sale requirement to 30 percent (from 50 percent) and an increase to 50 percent (from 30 percent) in the allowable concentration of condo units financed with FHA-insured mortgages. The FHA concentration may be increased to 100 percent for existing projects that meet certain additional requirements. New construction and conversions are not eligible for this higher exception.

At the end of the waiver period, FHA's condo requirements will revert back to those contained in ML 2009-46B, which outlines the criteria that condo projects must meet to receive FHA's approval and describes the condominium project approval process. Importantly, the new policy does not apply to site condos which are exempt from the condo approval process, effective June 12, 2009.

Key provisions of the new condo policy are described below.

#### FHA Loan Concentration Limits

**Until December 31, 2010, FHA will allow up to 50% of the units in a project to be financed using FHA insured loans. After December 31, 2010, the concentration limit is scheduled to drop to 30%.** The concentration ratio will apply to projects with four or more units. Projects consisting of three or fewer units cannot have more than one unit encumbered with FHA insurance.

**Until December 31, 2010, FHA will allow exceptions to the 50 percent concentration level---up to 100 percent loan concentration for owner-controlled projects.** The owner-controlled project must meet all standard FHA approve requirements and the following:

- The project is 100 percent complete and construction has been completed for at least one year;
  - 100 percent of the units have been sold and no entity owns more than 10 percent of the units in the project (for projects with fewer than 10 units, a single entity may own no more than 1 unit);
  - The project's budget provides for the funding of replacement reserves for capital expenditures and deferred maintenance in an account that is at least 10 percent of the budget;
  - Control of the condominium association has transferred to non-developer owners;
- and
- The owner-occupancy ratio is at least 50 percent.

**New construction and conversions are not eligible for the 100% concentration limit.**

#### "Spot Loan" Approval Process

Since 1996, FHA has approved loans for units located in non-approved projects on a case-by-case basis. **This "Spot Loan Approval" will be eliminated after January 31, 2010.** After this date, the project must be approved by FHA in advance. **In almost all circumstances, this will require that the condominium association submit their project to FHA for pre-approval.**

### Pre-Sale Requirements

FHA's permanent policy calls for at least 50 percent of the units to be sold before the first FHA-insured loan is endorsed. **Until December 31, 2010, FHA is reducing the pre-sale requirement to 30 percent.**

### Owner-Occupancy Requirements

At least 50 percent of the units in a project must be owner-occupied or sold to owners who intend to occupy the units. Vacant or tenant-occupied real estate owned, including REO units, are not to be included in the owner-occupancy calculation. For proposed, under construction or projects still in their initial marketing phase, FHA will allow a minimum owner occupancy amount equal to 50 percent of the number of presold units.

### Site Condominiums

**Pursuant to ML 2009-46B, site condominiums do not need FHA condominium project approval and are treated as single family residences for FHA loan approval purposes.** FHA defines site condominiums as single family totally detached dwellings (no shared garages or any other attached buildings) encumbered by a declaration of condominium covenants or condominium form of ownership.

### Investor Ownership

HUD will not allow more than 10 percent of the units to be owned by one investor. This limitation also applies to builders/developers who have elected to lease units for residential purposes within the project.

### Transfer of control

HUD will require the developer to transfer control to the homeowners association no later than the latest of the following:

- 120 days after the date by which 75 percent of the units have been conveyed to the unit purchasers;
- Three years after completion of the project as evidenced by the first conveyance to a unit purchaser; or,
- The time frame established under state or local condominium laws if specific provisions regarding transfer of control exist.

### Recertification of Project Approvals

**Project approvals will expire two years from the date of placement on the approved project list.** Recertification will be necessary to determine if the project complies with HUD's owner-occupancy requirement and that no conditions exist which would present

an unacceptable risk to FHA. During the recertification process, particular attention will be given to pending special assessments, pending legal action against the association or its officers and directors, and the adequacy of insurance coverage.

HUD will be phasing in the recertification process:

- **Projects that received approval prior to October 1, 2008 will require recertification on or before December 7, 2010.**
- **Projects that received approval between October 1, 2008 and December 7, 2009 will be subject to the recertification.**
- **If your project has never been certified by HUD, you will need to submit for certification on or after December 7, 2009, or no later than January 31, 2010 for projects which have relied on “Spot Loan Approval.”**

#### Structural Warranty Requirements

HUD will not require a 10-year warranty for projects where the local jurisdiction issues a building permit and certificates of occupancy. This is consistent with guidance issued in Mortgage Letter 2001-27, which addresses warranty requirements for single family homes. If the jurisdiction does not issue building permits or conduct three inspections during the course of construction, the builder must either obtain an Early Start letter from an FHA-approved lender or provide a HUD-approved 10-year warranty. Temporary or conditional certificates of occupancy are acceptable if the following conditions are met:

- All common areas and amenities for the project must be completed;
- The temporary or conditional certificate of occupancy that was issued must clearly indicate that the unit is habitable and eligible for occupancy; and,
- The jurisdiction that issues the temporary or conditional certificate of occupancy maintains a standard protocol for issuing permanent certificates of occupancy.