

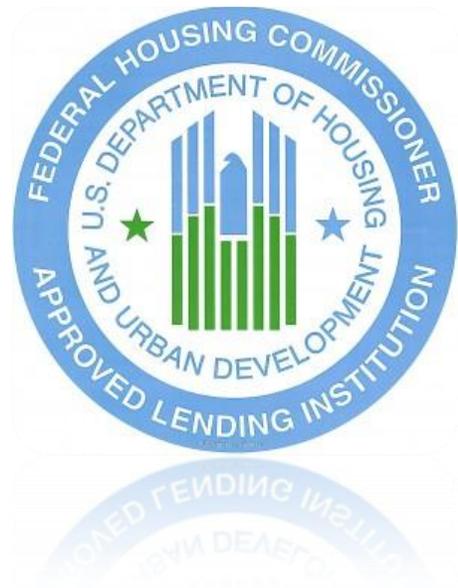
New, Stricter FHA Condominium Lending Guidelines Now Set To Start Nov. 2

by Richard D. Vetstein, Esq. on October 1, 2009

Under revised guidelines which were to be effective October 1, 2009 but now delayed until November 2, 2009, the Federal Housing Administration (FHA) is implementing a new stricter approval process for condominiums to be eligible for FHA financing. Like the [Fannie Mae regulations](#) issued earlier in the year, the new FHA guidelines will surely slow down condominium mortgage financing, and negatively impact first time home buyers for condominium units.

For those who don't know, FHA is a government program designed to help more people buy homes, and more borrowers will qualify with FHA financing than with conventional. It is a low down payment (3.5% down) program and the credit standards are much looser. The mortgage rates are typically better, as well.

To obtain a FHA mortgage on a condominium, the project must be FHA approved. Prior to these changes, there were two ways a condominium could be FHA approved: (1) full project approval, and (2) "spot" approval. Full project approval means that FHA has already done the approval on the entire condominium. Spot approvals were performed on non-FHA approved projects on a loan by loan basis, and were a way to make FHA loans available to home buyers in well run condo projects even if they haven't gone through the full approval process.



No More Spot Approvals

Under the new guidelines, the popular spot approval process will no longer be available and will be replaced with something called a Direct Endorsement Lender Review and Approval Process (DELRA). FHA claims the DELRA process is more uniform and streamlined than the former spot loan approval process. Also, full project approvals expire every two years, so condominiums will have to re-certify every 2 years.

New Project Eligibility Guidelines

Under the new project eligibility requirements, all condominiums (consisting of 2 or more units) must meet the following requirements:

- At least 50% of the units of a project must be owner-occupied or sold to owners who intend to occupy the units. For proposed, under construction or projects still in their

initial marketing phase, FHA will allow a minimum owner occupancy amount equal to 50 % of the number of presold units (the minimum presale requirement of 50 percent still applies).

- Projects must be covered by hazard and liability insurance and, when applicable, flood insurance.
- At least 50% of the total units must be sold prior to endorsement of any mortgage on a unit. Valid presales include an executed sales agreement and evidence that a lender is willing to make the loan.
- No more than 15% of the total units can be in arrears (more than 30 days past due) of their condominium association fee payment.
- No more than 25% of the property's total floor area in a project can be used for commercial purposes. The commercial portion of the project must be of a nature that is homogeneous with residential use, which is free of adverse conditions to the occupants of the individual condominium units.
- No more than 10% of the units may be owned by one investor. This will apply to developers/builders that subsequently rent vacant and unsold units. For two and three unit condominium projects, no single entity may own more than one unit within the project; all units, common elements, and facilities within the project must be 100% complete; and only one unit can be conveyed to non-owner occupants.
- Rights of first refusal are permitted unless they violate discriminatory conduct under the Fair Housing Act.

Buried in the fine print is a requirement for an affirmative action-type housing plan. For both new construction and conversions, if the developer intends to market 5 or more units within the next 12 months with FHA mortgage insurance (that would be most), an Affirmative Fair Housing Marketing Plan (AFHMP) or a Voluntary Affirmative Marketing Agreement (VAMA) must be in place. An affirmative fair housing marketing plan requires that the racial, socioeconomic, and ethnic composition of the condominium residents closely mirror that of the neighboring area, to the greatest extent possible. Most new condominiums don't have these in place.

Click [here](#) for the new FHA condominium guidelines. You can look to see whether a condominium is approved on the HUD Homes & Communities website located [here](#). Here is the [FHA Condominium Mortgage](#) webpage.

The Impact: More Work For Lenders, Condominium Associations/Managers And Attorneys

I expect FHA lenders will approach condominium association boards and managers, asking for certain information, certifications, and even legal opinions regarding compliance with FHA (and Fannie Mae) legal requirements. If a condominium is not on the FHA-approved list, or has lost its approval, condominium associations should consider applying for approval (or re-approval). Reportedly, FHA/HUD is backlogged a month or more in reviewing submitted applications. Thus, should your condominium need to be submitted for approval, keep in mind the process may take some time. Also keep in mind that the work to compile and complete the application package itself can take weeks, and require the board, its manager, and legal counsel to gather

data, documents, and expert opinions required for FHA approval. The package of materials that must be submitted can vary from condominium to condominium, and often requires an updated reserve study and certain legal opinions.

Having issued numerous opinion letters and certifications under the similar Fannie Mae condominium regulations, our office is well equipped to assist lenders and buyers with FHA loan compliance issues. Contact rvetstein@vetsteinlawgroup.com for more information.