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COUNSELORS TO COMMUNITY ASSOCIATIONS

PRESENTS

**THE HUD – FHA CERTIFICATION  
REQUIREMENTS**

**WHAT EVERY CONDOMINIUM SHOULD KNOW  
ABOUT HOW TO BECOME CERTIFIED TO  
OBTAIN FHA BACKED FINANCING**

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## **I. Introduction**

The U.S. Department of Housing and Urban Development (“HUD”) recently issued revised guidelines concerning the Federal Fair Housing Administration’s (“FHA”) condominium lending program. Said guidelines took effect on December 7, 2009. This document summarizes the changes in the FHA condominium loan approval process; what it means for a condominium association; and what steps a condominium association must take to obtain FHA condominium loan certification for the future.

## **II. Why is it Important to have FHA Approval for Your Condominium Association?**

FHA approval is essential to receiving competitive interest rates and flexibility in eligibility for FHA loans. More importantly, failure to receive FHA approval means the units in a condominium association cannot be sold to FHA approved homebuyers. Many first time home-buyers do not have 20% of the purchase price saved to enable them to buy a home. It is possible under certain circumstances to get a conventional loan with 15% or maybe even 10% of the purchase price as a down payment, however, such loans usually require a high credit score and for the potential buyer to pay a premium for purchase money insurance. The FHA program allows qualified buyers to put down as little as 3.5% and may even include the closing costs in the loan. Considering the significant increase in homebuyers using FHA-backed mortgages, not being an FHA approved condominium association could make it increasingly harder to sell units in an already dismal housing market. Obtaining FHA approval is something to seriously consider in today’s real estate market if you wish to increase your attractiveness to homebuyers.

### **III. Classifications of Condominium Association Certification**

There are four classifications of condominiums concerning FHA loan status. Said classifications are:

1. Condominiums that have never been certified by FHA;
2. Condominiums that obtained FHA approval prior to October 1, 2008;
3. Condominiums that obtained FHA approval between October 1, 2008 and December 7, 2009; and
4. Condominiums that obtained FHA after December 7, 2009.

#### **Condominiums that have never been certified by FHA**

If a condominium has never been officially certified by FHA, then it must go through the certification process in order for potential buyers to obtain FHA loans.

#### **Condominiums that obtained FHA approval prior to October 1, 2008**

Currently, if a condominium association is already on the FHA's list of approved condominiums (<https://entp.hud.gov/idapp/html/condlook.cfm>), then generally its approved status will continue in place until at least December 7, 2010. Despite being currently certified, lenders also must determine that previously approved condominiums have not had a change in circumstances that would result in the condominium failing to comply with the new requirements. Unfortunately, this may result in some condominium communities losing their FHA status. Namely, any condominium association that is not on the FHA-approved list and previously relied on the so-called "spot loan" approval process will have to apply for certification under the new requirements since spot loan approval is no longer valid as of February 1, 2010.

Additionally, all condominiums currently on the approved list will be moved over to the new approval list pending recertification.

**Condominiums that obtained FHA approval between October 1, 2008 and December 7, 2009**

Condominiums that were approved between October 1, 2008 and December 7, 2009 will have their certification remain in place for two years from the date of their certification. After said period has expired, the condominium will need to be recertified every two years.

**Condominiums that obtained FHA after December 7, 2009**

Condominiums that were approved after December 7, 2009 will have their certification remain in place for two years from the date of their certification. After said period has expired, the condominium will need to be recertified every two years.

Once the FHA transitional period is over, all condominium associations will have to be recertified every two years.

**IV. What Steps Must a Condominium Association Take to Become FHA Certified?**

Under the new FHA guidelines, there are two possible options for obtaining condominium approval for your association. The first option is to submit an application directly with HUD for review and approval. The alternative option is to go to a lender who has unconditional endorsement authority to review and approve condominium projects. In both cases, the FHA has designated documentation that must be submitted by the association before approval can be granted. The same forms and documents are required, regardless of whether an association chooses to go through HUD or a lender

with endorsement authority. The following is a breakdown of the association requirements and the required documents to achieve FHA financing.

**A. What Requirements Must a Condominium Association Meet Before Applying for FHA financing?**

In order to qualify for FHA financing, HUD has developed a list of required attributes each association must have before certification will be granted. The key provisions of these requirements are as follows:

1. Projects must consist of two or more units
2. Projects must be covered by hazard and liability insurance and, where applicable flood and fidelity insurance. See A.R.S. §33-1253.
3. No more than 10% of the units may be owned by one investor.
4. No more than 15% of the total units may be in arrears (30 days) of their condominium association assessments.
5. At least 50% of the total units must be sold (e.g., executed sales agreement and evidence that the lender is willing to make the loan) prior to FHA endorsement of a mortgage on any unit.
6. A condominium association's budget (actual for existing communities or proposed for new projects) must be adequate to:
  - i. Ensure funds are available to maintain all of the community's amenities and features.
  - ii. Provide for the funding of reserves for capital expenditures and deferred maintenance in account representing at least 10% of the budget.



- x. The condominium's budget provides for reserves in an amount equal to at least 10% of the budget.
- xi. Transition of the condominium association to owner control has occurred.
- xii. The owner occupancy rate is at least 50%.
- xiii. New construction and conversions are not eligible.

**B. What Documents Must a Condominium Association Submit to HUD to Obtain Certification?**

In order to qualify for FHA financing, HUD has developed a list of required documents each association must submit before certification will be granted. The attachment to FHA Mortgagee Letter 2009-46B (attached hereto), contains a chart that shows what documents are required, depending on an association's status as an existing condominium, proposed condominium, a condominium under construction or condominium conversions. The requisite documents for most condominium associations include the following:

1. The condominium's recorded plat.
2. The association's governing documents (Declaration, Bylaws, and Articles of Incorporation).
3. Recorded site plans for the project.
4. A plan or evidence of transfer of control of the condominium to unit owners.
5. A proposed or actual budget.
6. Any existing management agreement.

7. Any applicable FEMA flood map.
8. An analysis of any outstanding or pending litigation.
9. An analysis of any pending special assessment.

For further explanation, the new FHA guidelines are available in their entirety at <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-46bml.pdf>. In addition to the permanent guidelines, HUD also issued temporary guidelines that are in effect until December 31, 2010 and they are available online at <http://www.fhasecure.gov/offices/adm/hudclips/letters/mortgagee/files/09-46aml.pdf>.

#### **V. Who Should Apply for FHA Approval on Behalf of the Association?**

Although the forms for FHA certification are available online for public use, filling out the forms and locating all of the required documents can be a tedious and taxing process. Most associations' use one of three options for submitting an FHA application: (1) through the association's property manager; (2) using a preparation service outside of the association; or (3) using an attorney.

##### **a. Using the Association's Management Company**

Selecting the association's management company to complete the FHA paperwork has several advantages and disadvantages. The advantages are that the manager has all relevant information and documents at their fingertips. Also, the Association has the best knowledge concerning the condominium and would be able to quickly and efficiently complete the application process.

It is important to note, however, that in Arizona, the preparation of FHA documents may be deemed as the completion of a legal document, which would require that a certified document preparer handle and submit the application.

**b. Using a Service Outside of the Association**

Selecting a service outside of the association to undertake the approval process also has advantages and disadvantages. As discussed previously, certain lenders are certified by the FHA to give the requisite approval to condominium associations for FHA financing. This makes the application process easier because the lenders are familiar with the documents and effective processes. The main drawback, however, is that it is expensive (some banks charge about \$3,000 for the service). The association would also have to provide the lender with all of the requisite documentation, considering a lender is unlikely to have access to certain association documents.

**c. Using an Attorney**

Lastly, the association may choose to have an attorney prepare and submit the FHA approval documents.

Whichever process the association selects to initiate the FHA approval process, the most important part is gaining certification. If you have any additional questions about the certification process please feel free to contact our offices.

**This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact our office at 480-456-1500.**