

## **IMPORTANT CHANGES TO FHA CONDO GUIDELINES**

FHA has made changes to the condominium guidelines as indicated in Mortgage Letters 2009-46A and B. These changes are effective as of December 7, 2009. I have outlined the positives and negatives of the upcoming changes. First there are a couple of definitions:

There are two (2) types of project review:

1. HRAP (HUD review and approval process).
2. DELRAP (Direct Endorsement Lender Review and Approval Process). Direct Endorsement (DE) Lenders now have the option to submit projects under this process or HRAP if they choose. They must have the staff that has the capabilities to review and approve projects. Or they can use an experienced consultant to review their projects for compliance.

### **Positives:**

- If the project has started construction prior to submission to FHA an Environmental Report will not be required. This means that if the plat or development plans and any delineated phase have been reviewed and approved by the local jurisdiction and construction of the streets, sewers, and utilities have proceeded to a point that changes cannot be made to the building an Environmental is not required. Not required under DELRAP reviews.
- Site condos (single family detached under condominium ownership) no longer require project approval.
- Project approval not required for FHA to FHA streamline refinance or FHA/HUD REO sales.
- Condominiums that consist of 2 or more units are now eligible for FHA financing. Previously FHA only considered condominiums consisting of 4 or more units.
- Right of First Refusal now acceptable as long as it does not violate discriminatory conduct under the Fair Housing Act Regulation.
- 30% pre-sale and 50% owner-occupancy down from 51%. That means in a 100 unit project only 30 percent will need to be under contract and only 15 units sold to owner-occupant/2<sup>nd</sup> home purchasers.
- 1 year waiting period for apartment conversions is eliminated. Previously, outside purchasers in an apartment conversion with tenants, had to wait for 1 year after the Declaration had been recorded in order to close on a unit.
- 10-year warranty not required on new construction as long as the local jurisdiction provides a building permit to start construction and also provides a certificate of occupancy prior to closing.
- Attorney's Certification no longer required.
- Vertical Phasing in single building new construction or condo conversions is now acceptable. The floors must be legally phased in groupings of no less than 5 floors. At least a temporary Certificate of Occupancy has been obtained and all common areas and amenities have been completed.

- Increase in FHA loan concentration from 30% to 50% for new construction and condo conversions. 100% for existing condos that meet the following:
  - Project has been completed for over 1 year
  - 100% of the units have been sold
  - No entity owns more than 10% of the units
  - Budget has a 10% reserve contribution
  - Control has been transferred to the homeowners
  - 50% of the units are owner-occupied.
  - Reserve Study not required on existing condo projects. It may be required if the budget doesn't meet FHA's 10% reserve requirement.
  - FHA will now accept temporary/conditional Certificates of Occupancy for new construction and conversions under the following circumstances:
    - All common areas and amenities for the project must be complete
    - The temporary/conditional Certificate of Occupancy that was issued clearly indicates that the unit is habitable and eligible for immediate occupancy.
    - The jurisdiction that is issuing the temporary/conditional Certificates of Occupancy have a standard protocol for this procedure.
    - Vacant or tenant-occupied REO's including properties that are bank owned may be excluded from the required owner-occupancy percentage.
    - Unrecorded documents are acceptable when a project is submitted for review. However, no loan can be insured until the recorded documents are received.

### **Negatives:**

- No "spot" loan approvals. Existing condominiums must be submitted to FHA for their review and approval as of February 1, 2010. *However, I can help with this process.*
- No more than 10% of the units may be owned by a single investor. FHA is saying that this will apply to builders/developers that subsequently rent vacant or unsold units. In today's market, developers are staying afloat by renting units until they can be sold. Now they cannot do that for more than 10% of the units.
- Developers will have to provide a certification that states that:
  - The eligible condominium project complies the all applicable FHA requirements addressed in Mortgage Letter 2009-46B.
  - All condominium documents meet all HUD requirements, and state and local requirements.
  - Projects consisting of 3 or less units will have no more than 1 unit use FHA financing.
  - The 30% pre-sale requirement is indicated to be temporary, to be re-evaluated at the end of 2010. Hopefully, they will decide to keep it.
  - FHA concentration level of 50% is temporary as well.

- HO-6 policy now required on FHA condominiums following Fannie Mae's requirement.
- FEMA Flood Map required for all projects to verify whether or not a project is in a Flood Zone.
- Project approvals expire two (2) years from the date HUD issued their approval of the project. I can assist realtors, homeowner's associations, and management companies with the recertification process.
- **Projects that received approval prior to October 1, 2008 will require recertification on or before December 7, 2010. If they are not recertified by that date, they will be removed from the FHA approved list and have to reapply which requires a full document submission.**