

# Multifamily Seller/Servicer Guide

## Chapter 29

### Title, Description, Survey and UCC Search

#### 29.1 Title insurance policy requirements (03/03/17)

Each Mortgage purchased by Freddie Mac must be covered by a single paid-up loan title insurance policy meeting the requirements in this chapter (“ALTA Loan Policy”). It is the responsibility of the Seller and its counsel to obtain and review in detail the title commitment, documents evidencing or creating each exception to title and the ALTA Loan Policy. It is also their responsibility to bring to Freddie Mac's immediate attention any issue that could result in a material adverse effect on the Mortgage or the use or marketability of the Property or could create potential safety or environmental issues.

##### a. Maximum single risk amount (10/07/03)

The maximum single risk amount (the risk in connection with any one Mortgage) assumed by one title insurance company may not be more than 25 percent of that company's surplus to policyholders. Policies for amounts in excess of the maximum single risk amount may be acceptable if any excess amount is covered by reinsurance by another title insurance company meeting the requirements of this chapter.

##### b. Reinsurance and coinsurance (10/07/03)

- Reinsurance

If the single risk amount exceeds 25 percent of the insurer's surplus to policyholders, the excess amount may be covered by reinsurance meeting all of the following requirements:

- The excess amount may not exceed 25 percent of the reinsuring company's surplus to policyholders. Tertiary insurance will not be permitted.
- The reinsurer must be a title insurer licensed to do business and regularly issuing title insurance in the State in which the Property is located.
- The reinsurance must be provided by the issuance of the most current form of American Land Title Association (ALTA) Facultative Reinsurance Agreement.
- Pro forma documentation for all reinsured transactions must be submitted to Freddie Mac for review and approval prior to the final delivery of the Mortgage.

Any title insurance policy that is reinsured at the option of the title insurer must meet all of the requirements of this subsection.

- Coinsurance

Usually, Freddie Mac will not accept coinsurance (multiple title insurance policies issued by multiple insurers for the same transaction). Freddie Mac will consider allowing coinsurance only if the title companies and policies each meet the requirements of this chapter and the use of coinsurance is approved in writing by Freddie Mac. Prior to the purchase of the Mortgage, the Seller must submit to Freddie Mac for its review and approval the title policies for any Mortgage that will be coinsured.

**c. Title insurer (10/07/08)**

The title insurance policy must be written by a title insurer licensed to do business in the jurisdiction where the Property is located (unless such jurisdiction is Iowa).

The Seller's selection or acceptance of the title insurance company must be based solely on considerations normally used by prudent institutional lenders originating or purchasing Mortgages in the jurisdiction where the Property is located. The Seller must not base this selection on receipt of any fee or other consideration by the Seller or its employees, officers, or directors paid by or on behalf of a title insurer.

**d. Amount of protection (03/03/17)**

The title insurance policy must insure the mortgagee for an amount no less than the original principal balance of the insured Mortgage.

**e. Insured (04/30/13)**

The title insurance policy must name as the insured either

- Freddie Mac, its successors or assigns, or
- the Seller and/or Freddie Mac, its successors or assigns, as their interests may appear

**f. Form (03/03/17)**

The title insurer must write the title insurance policy on a 2006 ALTA Loan Policy with the required signed endorsements attached. A 2010 or 2014 T-2 policy may be used in Texas as set forth in Section 29.1(f)(3).

**1. Electronically issued policy**

Freddie Mac will accept title insurance policies produced in an electronic format, including policies issued in PDF format and delivered electronically by email to the Seller (an "electronically issued policy") if the electronically issued policy includes an endorsement that provides that the issuing company will not deny coverage solely on the grounds that the policy and/or endorsements were issued electronically and/or lacked signatures ("Electronic Signature Endorsement").

**2. Arbitration**

Freddie Mac requires the ALTA Loan Policy to contain one of the following:

- a waiver of the compulsory arbitration provision
- a waiver of arbitration endorsement
- an amendment to the ALTA Loan Policy stating that both the Company and the insured must agree to arbitration when the amount of insurance is \$2 million or less with respect to any claim made by or on behalf of Freddie Mac.

The Seller must ensure that

- The policy expressly waives the compulsory arbitration provision, or
- An amendment is issued that provides that both the title company and the insured must agree to arbitration
- Freddie Mac does not require a waiver if the title insurer does not add a mandatory arbitration provision to the policy and the Mortgage is more than \$2 million.

### 3. Special provisions for Texas Mortgages

For a Mortgage secured by a Property located in Texas, the title insurance policy must be written using the 2010 or 2014 Texas Mortgage Policy of Title Insurance (T-2). The policy must contain Endorsement Form T-30, Tax Deletion, or the language regarding subsequent taxes for prior years must be deleted from the policy. The endorsements attached to the policy must be on the most recently approved forms for properties located in Texas.

#### g. Endorsements (06/27/19)

The endorsements enumerated below must be attached to the ALTA Loan Policy. The title insurer may elect to incorporate into the 2006 ALTA Loan Policy certain endorsements by reference only, without attaching the endorsements to the policy.

Freddie Mac requires that each endorsement must

- Be on the most recent form of endorsement approved by ALTA or CLTA (California Land Title Association) if an ALTA or CLTA form is available. In addition, the ALTA or CLTA form must be the appropriate form for the selected policy and should not deviate from the form approved by ALTA or CLTA unless noted as having been modified and the changes have been identified in the Title Exceptions and Survey Analysis (“TESA”), as further described in Section 29.2(b), and approved by Freddie Mac before the Seller originates the Mortgage
- Include the number of the ALTA Loan Policy
- Be signed by the title insurer or agent. A signature that is part of the printed form or a signature that is electronically produced as part of the endorsement is acceptable

Any specific violations and/or encroachments identified in Schedule B of the title commitment must have affirmative coverage, even if they fall into a safe harbor category.

Required Endorsements and acceptable alternatives are set forth in the chart below. An equivalent endorsement is acceptable only if the required form is not available in the State where the Property is located.

Endorsement	Explanation/Alternatives
ALTA Form 3.1-06, Zoning – Completed Structure Endorsement	<p>Required for Mortgages with an initial principal balance of \$25 million or greater, or if the Mortgage is a part of a cross-collateralized and cross-defaulted pool of Mortgages that are, when aggregated, \$25 million or greater.</p> <p>Required for all Mortgages secured by properties located in Arizona, California, Nevada, Oregon, Utah or Washington if Freddie Mac has waived the survey.</p>
ALTA Form 4-06, Condominium Endorsement	<p>Required when the residential or commercial units or both are subject to a condominium regime.</p> <p>For properties located in Texas, an Endorsement Form T-28 is acceptable.</p>
ALTA Form 5-06, Planned Unit Development Endorsement	<p>Required when the Property is within a planned unit development.</p> <p>For properties located in Texas, an Endorsement Form T-17 is not acceptable.</p>
ALTA Form 7.1-06, Manufactured Housing Unit Endorsement	<p>Required for any MHC Mortgage where the collateral includes Borrower-Owned Homes.</p>
ALTA Form 8.1-06, Environmental Protection Lien Endorsement	<p>Part (b) of ALTA Form 8.1-06 may make an exception only for specific State statutes that provide for possible subsequent “superliens” that could take priority over the Mortgage.</p> <p>For properties located in Texas, an Endorsement Form T-36 is acceptable.</p>
ALTA Form 9-06, Restrictions, Encroachments, Minerals – Loan Policy (Adopted 04- 02-12), ALTA Form 9.3-06, Comprehensive Endorsement (Adopted 06- 17-06), or	<p>In the event the ALTA Loan Policy includes the ALTA 9.3-06 (Adopted 04-02-12), the Seller will be required to provide the ALTA 9.6-06 (Adopted 04-02-12 or 04-02-13), ALTA 28.1-06 and/or ALTA 35.1-06, as applicable, to ensure sufficient affirmative coverage is provided.</p>

Endorsement	Explanation/Alternatives
ALTA Form 9.3-06, Covenants, Conditions and Restrictions (Adopted 04-02-12)	
ALTA Form 9.6-06, Private Rights – Loan Policy (Adopted 04-02-12 or 04-02-13)	<p>Required if the ALTA Loan Policy includes an ALTA Form 9.3-06 (Adopted 04-02-12) and/or an exception exists which includes a reservation of a private right against the Property.</p> <p>Freddie Mac does not permit exclusions from coverage under this endorsement without prior approval from the applicable <i>Multifamily Attorney</i>.</p>
ALTA Form 13.1-06, Leasehold Endorsement	<p>Required when the Mortgage is secured by a ground lease regardless of whether the ground lessor joins the Mortgage.</p> <p>For properties located in Texas, an Endorsement Form T-5 is acceptable.</p>
ALTA 17-06, Access endorsement	<p>Must insure that the Property is contiguous to and has vehicular and pedestrian access to a physically open street identified by name, if such an endorsement is available in the State where the Property is located.</p> <p>If primary access is not provided by a public right of way, access by way of an access agreement or private road requires prior approval by Freddie Mac. See Section 8.8 for the requirements for access easements.</p> <p>If an access endorsement to the title insurance policy is not available in the State where the Property is located, the Seller must submit a statement from the Seller or its counsel that it has examined the survey and has found that the survey indicates that the Property is contiguous to and has vehicular and pedestrian access to a street (specifically named in the statement) and that the street is an open, publicly dedicated right of way.</p> <p>For properties located in Texas, an Endorsement Form T-23 is acceptable.</p>
ALTA Form 18-06, Single Tax Parcel Endorsement	<p>Required when the Property is comprised of a single tax parcel.</p> <p>If an ALTA Form 18.1-06, Multiple Tax Parcel, is applicable and provided as part of the ALTA Loan Policy, an ALTA Form 18-06 is not required.</p>



Endorsement	Explanation/Alternatives
11.ALTA Form 18.1-06, Multiple Tax Parcel Endorsement	<p>Required when the Property is comprised of multiple tax parcels.</p> <p>If an ALTA Form 18-06, Single Tax Parcel, is applicable and provided as part of the ALTA Loan Policy, an ALTA Form 18.1-06 is not required.</p>
ALTA Form 19-06, Contiguity endorsement	<p>Required when the legal description of the Property describes two or more adjacent tracts of land. If the Property consists of two or more tracts of land (including any appurtenant easements) that are not adjacent, the Seller or its counsel must submit a statement that it has examined the survey and has found that the tracts are not adjacent.</p> <p>If the ALTA Loan Policy includes a single-boundary legal description with no gaps, strips, or gores, or if the Property is divided by a public right-of-way, an ALTA Form 19-06 is not required.</p> <p>For Properties located in Texas, an Endorsement Form T-25 is acceptable.</p>
ALTA 25-06, “Same as Survey” endorsement	<p>This endorsement must insure that the Property described in the policy is the same Property delineated on the survey [identified by surveyor’s name, job number, and date (including date of last revision)].</p>
ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable	<p>Required if the ALTA Loan Policy includes any of the following permissible exceptions for easements: a public utility, avigation, temporary construction easement; an itemized survey and/or plat exception; or an easement for sewer and utility tie-in which benefits adjacent property.</p> <p>Such permissible exceptions for easements are more particularly described in Section 29.2(e).</p> <p>Freddie Mac does not permit exclusions from coverage under these endorsements without prior approval from the applicable <i>Multifamily Attorney</i>.</p>
ALTA 28.2-06, Encroachments – Boundaries and Easements – Described Improvements	<p>Required for any MHC Property in which site pads encroach onto an easement.</p> <p>Section 2 of the endorsement must provide a detailed description of the improvements for which coverage is provided.</p>

Endorsement	Explanation/Alternatives
ALTA 34-06, Identified Risk	Required for any MHC Property in which site pads violate building setback lines.
ALTA Form 44-06, Insured Mortgage Recording – Loan	Required for those loans where the issued title insurance policy does not include the recording information for the Mortgage (including all applicable assignments).
Waiver of Compulsory Arbitration Endorsement	Required only if the requirements set forth in Section 29.1(f)(2) are not otherwise satisfied.
Mortgage Recording Tax Endorsement	If available in the jurisdiction, required for those loans in which the security interest in the Property has been acquired through an assignment of a security instrument, mortgage, or deed of trust.
Electronic Signatures Endorsement	Required for all electronically issued policies

**h. Reserved (12/07/06)**

**i. Date of ALTA Loan Policy (03/03/17)**

The ALTA Loan Policy must be dated no earlier than the effective date, and no later than the date of recordation, of the assignment of the Security Instrument to Freddie Mac.

The date of the ALTA Loan Policy must be a date certain. Freddie Mac will not accept the ALTA Loan Policy with a blank effective date or an effective date described as "the date of the assignment or the date of recordation, whichever is later".

**j. Identification of recorded documents (03/03/17)**

1. The ALTA Loan Policy must identify the Security Instrument, the assignment of the Security Instrument and any other required recorded documents by title of document, parties, effective date of document, date of recording, and the recording office.
2. The ALTA Loan Policy must provide one of the following regarding each recorded document:
  - Book and page number or recorded instrument number
  - Date of recording of each document and the transaction number or other serial number, if any, indicated on the recording clerk's receipt in accordance with Section 29.1(i)
  - Date of recording with blanks for the book and page or recorded instrument number in accordance with Section 29.1(i)
  - Blanks for the date of recording and the book and page number or recorded instrument number in accordance with Section 29.1(i)

In the event recording information is not available at the time the ALTA Loan Policy is delivered to Freddie Mac, the Seller must deliver an endorsement that modifies the policy to include recordation information for all loan documents filed for record in connection with the Mortgage as soon as such information is made available.

**k. Insured Closing Protection Letter (04/30/13)**

If either of the recordation of the documents or the escrow and disbursement of funds in connection with the origination of the Mortgage is being handled by a title agent rather than a branch officer of the title insurer, if available in the applicable jurisdiction, the Seller must also provide an insured closing protection letter addressed to Freddie Mac, or to the Seller and its successors and assigns, that provides coverage for any loss that arises out of (i) the failure of the title agent to comply with Seller's written closing instructions, or (ii) fraud or dishonesty in handling the funds or documents in connection with the origination of the Mortgage.

## 29.2 Title exceptions

**a. Deletion of standard exceptions (10/07/11)**

The title insurer must delete the standard exceptions on Schedule B, Part I of its policy and the policy may omit Schedule B, Part II.

**b. Analysis of title exceptions (06/27/19)**

The Seller or its counsel must obtain, read and analyze each document that evidences or creates any exception to the title insurance coverage. The Seller or its counsel must provide Freddie Mac with a written analysis of each exception that does not meet one of the "safe harbor" categories set forth in Section 29.2(e) by completing the TESA found on FreddieMac.com.

A TESA is required for every Mortgage to be purchased by Freddie Mac and must be approved by the applicable Multifamily Attorney prior to origination of the Mortgage. TESAs must be submitted to Freddie Mac no later than two Business Days prior to the anticipated Origination Date. All requests for approval must include the anticipated closing date and pool name, if applicable, in the email subject line.

See Section 29.2(b)(4) for the title analysis requirements that apply to a Supplemental Mortgage purchased under the Freddie Mac Multifamily Supplemental Mortgage Product.

### 1. Purpose of the analysis

The purpose of the title analysis is to

- Identify for Freddie Mac those exceptions that do not fall within one or more of the safe harbor categories set forth in Section 29.2(e) of this section or those exceptions that fall in a safe harbor category only if certain mitigants or additional coverage is provided



- Enable Freddie Mac to make an informed decision on the acceptability of any exceptions to coverage that do not fall within a safe harbor category, without the delay that would result if Freddie Mac had to examine each such exception document in its entirety

## 2. Content of the title analysis

In completing Sections 9 and 10 of the TESA, the Seller or its counsel must provide sufficient detail to enable Freddie Mac to make any necessary decision regarding the acceptability of such an exception without having to read the document evidencing or creating the exception.

The Seller must disclose all exceptions which fall into a safe harbor category subject to receiving additional coverage in the “Conditional Safe Harbor Title Exceptions” portion of the TESA. However, if the mitigant needed to satisfy the safe harbor requirement is limited to an endorsement identified in Section 29.1(g), then the exception does not need to be included in the TESA.

If the endorsement needed to satisfy the safe harbor requirement is not available or has been modified from the standard ALTA form, the exception must be analyzed in the “Non-Safe Harbor Title Exceptions and Survey Matters” portion of the TESA before the Seller originates the Mortgage.

The analysis of each title exception that does not fall within one of the safe harbor categories must include the following information:

- A summary of the document that meets the standards set forth in Section 6.7
- A determination of whether any party's exercise of its rights under the document could have a foreseeable adverse effect on the Borrower's intended use of the Property, including any interference with the present or proposed improvements on the Property or with the operation of the Property
- A determination of whether any party's exercise of its rights under the document could impair Freddie Mac's ability to enforce its rights under the Mortgage or could adversely affect the lien priority of the Mortgage, including a determination that:
  - The party's rights are subordinate only to a first lien Mortgage on the Property, whether then in existence or created in the future, and
  - The right of repayment to any city, county, or any other governmental authority or agency for work performed by such governmental authority or agency is subordinate to the lien of the Mortgage either by the terms of the document, or by applicable law; or the ALTA Loan Policy insures that any lien resulting from the right of repayment is subordinate to the lien of the Mortgage.
- The Seller's recommendation for mitigating any risk evidenced by the exception (such as removal of an encroachment or specific affirmative title insurance) or the Seller's explanation of why mitigation may not be necessary or possible

- The Seller's recommendation as to the acceptability of the exception. Instead of asking Freddie Mac whether the exception is acceptable, the recommendation must state why Freddie Mac should consider accepting this exception
- If a title endorsement being delivered specifically carves out from coverage any exception identified in Schedule B of the title insurance policy, the analysis must address how that additional coverage is being provided for the specific exception which is being carved out under such endorsement.

### **3. Submission of the TESA and related documentation**

The Seller must submit the TESA to the applicable Multifamily Attorney, and must also submit a copy via Multifamily DMS to the Multifamily TAH Underwriter, for TAH Mortgages, or to the Applicable Freddie Mac Multifamily Regional Office, for all other Mortgages. The Seller must also send email notification to the applicable underwriter.

When the Seller submits the TESA, the Seller is not required to submit a copy of the title commitment or policy that contains the exception and such additional information or documentation unless requested by the applicable Multifamily Attorney. If the exception appears on the survey, the applicable Multifamily Attorney may also request a copy of the survey, however, the survey does not need to be as current as the updated survey that the Seller submits to Freddie Mac with the Final Delivery Package.

Freddie Mac requires every Mortgage it purchases to have a TESA that is approved by the applicable Multifamily Attorney prior to origination. The Seller/Servicer must submit the TESA to Freddie Mac no later than two Business Days prior to the anticipated Origination Date.

The Seller or its counsel must submit the approved TESA to Freddie Mac with the Final Delivery Package, as required by the Final Delivery Instructions found on FreddieMac.com.

### **4. Analysis of non-safe harbor title exceptions for Supplemental Mortgages**

For any Supplemental Mortgage purchased under the Freddie Mac Multifamily Supplemental Mortgage Product, the Seller or its counsel must provide the discussion of the exceptions to title required by Section 29.2(b) only for:

- Any title exception that did not previously appear as an exception to title in the policy insuring the senior Mortgage, or
- Any title exception that previously appeared as an exception to the title in the policy insuring the senior Mortgage but will not be covered by the same endorsement or equivalent coverage [see also the Final Delivery Instructions found on FreddieMac.com].

Therefore, with respect to a Supplemental Mortgage, an analysis will be required for any exception that appeared as a subordinate item in the policy insuring the senior Mortgage when such exception is not expressly subordinate to the Supplemental Mortgage as well.

## 5. Analysis of non-safe harbor title exceptions for Assumptions

For any assumptions, the Seller or its counsel must provide the discussion of the exceptions to the ALTA Loan Policy as required by Section 41.4.

### c. Reserved (03/03/17)

### d. Encroachments and violations on Survey (06/27/19)

If any encroachment or violation materially and adversely affects the Property's operation, use or value or the security intended to be provided by the Mortgage (examples: income-producing buildings, parking, access ways) ("material and adverse effect") then the TESA must include the following:

- a reasonably detailed description of the encroachment and/or violation (e.g., how many feet a building encroaches over an easement)
- whether there is building law and ordinance coverage for the Property if the encroachment and/or violation impacts a zoning requirement

The TESA must include the above analysis for any encroachments or violations that are shown on the survey that have a material and adverse effect, including those not disclosed as exceptions to title in the "Non-Safe Harbor Title Exceptions and Survey Matters" portion of the TESA,

However, if any encroachment or violation is identified as a safe harbor under Section 29.2(e), but the mitigant needed to satisfy the safe harbor requirement is limited to an endorsement identified in Section 29.1(g), then the exception does not need to be included in the TESA. If the mitigant needed to satisfy the safe harbor requirement is not available or has been modified from the standard ALTA form, then an analysis of the exception must be included in the "Non-Safe Harbor Title Exceptions" section of the TESA.

### e. Safe harbor categories (12/17/19)

The following exceptions in Schedule B of the ALTA Loan Policy are generally acceptable without submitting a written analysis of the title exception and without receiving express approval by Freddie Mac; provided that:

- The Seller may not rely on any safe harbor category for an exception that would not be acceptable to a reasonable, prudent institutional lender in the area where the Property is located even if the exception technically falls within a safe harbor category.
- The Seller may not rely on any safe harbor category if any party's exercise of its rights under the exception could have a foreseeable adverse effect on the Borrower's intended use of the Property, including any interference with the present or proposed improvements on the Property or with the operation of the Property.

- The Seller may not rely on any safe harbor category if any party's exercise of its rights under the exception could impair Freddie Mac's ability to enforce its rights under the Mortgage or could adversely affect the lien priority of the Mortgage.
- The Seller may not rely on any safe harbor category if a title exception would result in an Exception to the Seller/Service Representations and Warranties. Under such circumstances, the Seller must submit a written analysis of the title exception and receive written approval of the exception from Freddie Mac.

### **1. Utility easements**

Exceptions for public utility easements for local residential distribution, such as lines for gas, water and sewer, cable for electric, telephone or cable television (CATV), slope, storm drainage and/or storm water management, fire lane, driveway and emergency access easements and private cable easements for nationally recognized telecommunication and cable companies, are acceptable provided:

- the location of the easement is ascertainable on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA Form 103.3-06, CLTA 103.1-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy, or
- if the easement is a "blanket easement," it is either noted on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

In addition to the above, to satisfy this safe harbor any cable easements for nationally recognized telecommunication and cable companies must not impose any obligations on the Borrower to take any affirmative actions or make payments.

This safe harbor category does not include (i) an easement for the storage of or general commercial transportation (except as provided below) or distribution of natural gas or petroleum products, or (ii) the installation or maintenance of any type of electrical or communication substation.

Easements for commercial transportation for utilities purposes are permitted under this safe harbor category; provided the easement limits the transportation area of any product in connection with the utilities to public roadways and the title insurance policy includes a specific notation as to such limitation.

### **2. Encroachments on or projections over public utility easements or public property**

Exceptions for encroachments on or projections over public utility easements or public property, such as streets, alleys or sidewalks are acceptable provided that all of the following conditions are met:

- The encroachment does not interfere with the use of the easements or public property or with the exercise of rights of repair and maintenance in connection with the easements or public property.
- The removal of the encroaching improvement would not adversely affect the security for the Mortgage.
- The ALTA Loan Policy contains affirmative insurance against loss or damage suffered by reason of the entry of a decree or court order requiring the removal of the encroachment.

Notwithstanding the foregoing, the Seller may use this safe harbor category for any private utility easement, if, in addition to the conditions stated above, the easement identifies the obligations of each party under the easement and one of the following is true:

- the location of the easement is ascertainable on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy, or
- if the easement is a "blanket easement," it is either noted on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

### **3. Restrictive agreements**

Exceptions for covenants of record are acceptable provided that all of the following conditions are met:

- If the excepted document provides for periodic assessments payable by the Borrower, such assessments have been included in the operating expenses of the Property that the Seller submitted to Freddie Mac for purposes of underwriting the Mortgage, and all such assessments have been paid in full as evidenced by an estoppel certificate, or the ALTA Loan Policy states that any such assessments are not yet due and payable or have been paid in full.
- The excepted document contains no other provisions that materially affect the Property's operating costs.
- There is not a violation of a covenant, condition or restriction known to the Seller.
- If the Property is within a planned unit development, the title insurance policy contains the Planned Unit Development Endorsement as described in Section 29.1(g)(8).
- The excepted document does not create or provide for any lien that would be prior to the lien of the Mortgage, nor provide for the subordination or



extinguishment of the lien of the insured Mortgage or impair its validity or enforceability.

- The Property has been fully developed and is in compliance with any restrictive agreements regarding green space or other restrictions in development.

This safe harbor category does not include restrictive agreements that affect occupancy, leasing, access, use, setback, density, minimum building size or minimum unit size or require the Borrower to reserve a certain number or percentage of units for low income tenants. This safe harbor category does not include condominium declarations or other documentation related to a condominium regime.

See Safe Harbor 13 to determine whether exceptions to title for condominium declarations or other documentation related to a condominium regime are considered safe harbor exceptions.

#### **4. Mutual easement agreements and party walls**

Exceptions for recorded mutual easement agreements that establish a joint driveway, pathway, party wall, storm drain, or detention pond are acceptable if the easement agreement allows all present and future owners unlimited use of the driveway, pathway, party wall, storm drain, or detention pond without any restriction other than restriction by reason of the mutual easement owners' rights in common and duties for joint maintenance.

This safe harbor category does not include mutual easement agreements that relate to shared facilities or primary access to the Property and the Seller must include a written analysis of any such mutual easement agreement in the TESA, as more particularly described in Section 29.2(b). Such an agreement must also meet the specific requirements of Section 8.8, relating to access easements, or Section 8.9, relating to shared facilities.

Party walls that are not subject to an easement agreement are acceptable provided the title insurance policy affirmatively insures that the wall may remain undisturbed for as long as such wall remains standing.

#### **5. Fence or wall misplacements**

Exceptions for fence or wall misplacements on either side of the property line of the Property are acceptable, provided that neither the misplacement nor a future correction of it will interfere with the use of any improvements on the Property nor with the use of the balance of the Property not occupied by improvements.

The definition of walls in this safe harbor category does not include building walls, retaining walls that serve in whole or in part a structural purpose or other permanent structures.

#### **6. Encroachments on the Property by improvements on adjoining property**

Exceptions for encroachments on the Property by improvements on adjoining property are acceptable provided that both of the following conditions are met:

- The encroachment does not touch any improvements on the Property.
- Loss of use of any portion of the Property occupied by the encroachment will not interfere with the use of any improvements on the Property or cause the Property to be out of compliance with any zoning code or building code requirements, including requirements for number of parking spaces, open space or density.

#### **7. Encroachments onto adjoining property**

Exceptions for encroachments of the Property onto adjoining property in the form of eaves, awnings, canopies, balconies, cornices or other projections attached to improvements on the Property, or by other structures such as tool sheds, storage sheds, carports, garages not attached to residential structures, or by a driveway appurtenant to the Property are acceptable if an endorsement to the title insurance policy affirmatively insures against loss suffered by reason of the entry of a decree or court order requiring the removal of the encroachment, and for encroachments by carports or garages not attached to residential structures, loss of any parking spaces will not cause the Property to be out of compliance with any zoning code requirement.

#### **8. Oil, gas, ground water and mineral rights**

Exceptions for outstanding oil, gas, ground water or mineral rights are acceptable provided all of the following conditions have been met:

- The exercise of such rights will not result in damage to the Property or impairment of the use of the Property for its intended purpose.
- There is no right of surface entry on the Property (whether express or by operation of law).
- If title to the land was initially granted by the U.S. government through a patent grant under which mineral rights were established, then a STG Patent Endorsement 1 or another equivalent endorsement is being provided.
- The ALTA Loan Policy includes, if available, the ALTA 35.1-06, or equivalent, in the event that coverage is not provided under the ALTA Form 9-06 (Adopted 04-02-12) or ALTA Form 9.3-06 (Adopted 06-17-06). The ALTA 35-06 is not permissible without prior approval from the applicable Multifamily Attorney.
- For properties located in Texas where such oil, gas, or mineral rights are excepted or excluded on Schedule A, Item 2 of the Texas Mortgage Policy (T-2), the policy must include the T-19.2.

See Safe Harbor 15 for exceptions to title for the riparian rights of others.

## 9. Liens for taxes not due

Exceptions for liens for real estate or ad valorem taxes and assessments are acceptable if they specifically state that such liens either:

- Are not yet due and payable, or
- Are due but not yet delinquent

For states in which there are supplemental real estate taxes or other "roll back" taxes, language substantially similar to the following language must also be included;

"The lien of supplemental taxes and/or adjusted taxes, if any, [pursuant to the (applicable state) Revenue and Taxation Code] assessed as a result of a change in ownership or the completion of new construction occurring on or after the date of the policy, none yet due and payable as of the date of the policy."

## 10. Tenants in possession

Exceptions for rights of tenants in possession, as tenants only, under prior unrecorded residential leases, are acceptable.

## 11. Prior Mortgage(s) for Supplemental Mortgage

For Supplemental Mortgages, an exception for the First Lien and any prior Mortgage held by Freddie Mac or its successors and assigns is required.

## 12. Avigation easements

Exceptions for avigation easements relating to aircraft rights are acceptable provided:

- the location of the easement is ascertainable on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy or,
- if the easement is a "blanket easement", it is either noted on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

## 13. Condominiums

Exceptions for (i) condominium regimes or declarations of condominium rights or the equivalent in which the Borrower owns 100 percent of the condominium units at the Property, and/or (ii) condominium maps or references to condominium maps in the legal description where there is no condominium regime or declaration of condominium rights in effect are acceptable provided:

- The title insurance policy contains the ALTA 5-06, or equivalent, as required under Section 29.1(g) if the legal description does not include a description of the individual condominium units. The ALTA 5.1-06 is not an acceptable equivalent unless Seller or its counsel provides a full analysis of the exception document in Section 9 of the TESA, including a discussion of the liens and priority of mortgage in accordance with the requirements set forth in Section 29.2(b)(2).
- The title insurance policy contains the ALTA 4-06, or equivalent, as required under Section 29.1(g) if the legal description for the Property describes the individual units. The ALTA 4.1-06 is not an acceptable equivalent unless Seller or its counsel provides a full analysis of the exception document in Section 9 of the TESA, including a discussion of the liens and priority of mortgage in accordance with the requirements set forth in Section 29.2(b)(2).
- The preliminary legal issues memorandum required by Section 6.4 specifically identified the existence of the condominium regime, declaration or map, as applicable.
- If the excepted document provides for periodic assessments payable by the Borrower, then either all such assessments must have been paid in full as evidenced by an estoppel certificate, or the ALTA Loan Policy must state that any such assessments are not yet due and payable or have been paid in full.

#### **14. Calculation of acreage**

Exceptions for calculation of acreage, including shortage of area and engineering calculation of acreage are acceptable provided a same as survey endorsement (if available in the applicable jurisdiction) is provided.

#### **15. Riparian rights**

Exceptions for riparian rights and navigational servitude are acceptable. Exceptions for water rights, claims or title to water are acceptable provided the title insurance policy contains CLTA Form 103.5-06 or ALTA 41.1-06. The ALTA 41-06 is not permissible without prior approval from the applicable *Multifamily Attorney*.

#### **16. Temporary construction easements**

Exceptions for temporary construction easements are acceptable provided that the construction has been completed and there are no further obligations by any party to the easement under such easement and one of the following conditions is met:

- the location of the easement is ascertainable on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy, or
- if the easement is a “blanket easement”, it is either noted on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06,

CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

If a temporary construction easement is dated, or the terms of the easement expired, within the 12 months preceding the date of the title policy, Seller's counsel must advise whether affirmative mechanics lien coverage must be obtained, and if so, then arrange to have it included with the title policy.

#### **17. Itemized survey and/or plat exceptions**

Itemized survey and/or plat exceptions for water detention basins, guy wires, power poles, buffers/landscape easements, curbing, light poles, electric/cable/phone boxes, sanitary sewer manholes, water valves, water/electric/sanitary sewer facilities, lake/creek/stream/pond, reinforced concrete pipes, drains and drainage systems, building setback lines that have not been encroached upon by buildings or retaining walls that in whole or in part serve as structural support to improvements on the Property as well as other non-structural items that do not violate any zoning laws or regulations to which the Property may be subject (e.g., fences, boundary walls, signs that lie within the building setback lines), sidewalks, road visibility easements, and traffic control devices are acceptable provided that the location of the itemized survey and plat exceptions are identifiable on the survey and/or plat, as applicable or, if any of the itemized survey and plat exceptions is a "blanket easement," it is either noted on the survey or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

If a matter shown on the itemized survey and/or plat exception is not included among the items listed in this or in any other subsection to this Section 29.2(e), then the exception does not qualify under this safe harbor category and must be separately analyzed according to the requirements of Section 29.2.

#### **18. Sewer and utility line tie-ins benefiting adjacent property**

Easements allowing an adjacent property to tie into sewer and utility lines are acceptable provided the easement specifically allocates responsibility to the parties for maintenance and any costs and one of the following conditions is met:

- the location of the easement is ascertainable on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as applicable, is included in the ALTA Loan Policy, or
- if the easement is a "blanket easement," it is either noted on the survey (if the survey has not been waived) or ALTA 28-06, ALTA 28.1-06, CLTA 103.1-06, CLTA Form 103.3-06, CLTA Form 103.6-06, or their equivalent, as most applicable, is included in the ALTA Loan Policy.

#### **19. Restricted access to roadway, relinquishing rights to future curb cuts**

Restricted access to roadway and/or the relinquishment of rights to future curb cuts



are acceptable provided that access from the Property to a public roadway is available at all times (whether directly or by agreement meeting the requirements of Section 8.8; provided that if access is by agreement, Seller or Seller's counsel must still comply with the requirements of Section 8.8) and an access endorsement is included in the ALTA Loan Policy.

**20. Rights of public in and to portions of public roadway, public sidewalks or public trails**

Rights of the public in and to portions of public roadways, public sidewalks or public trails are acceptable.

**21. Telecommunication and cable company agreements**

A lease, license, easement or agreement for the provision of cable television, Internet, personal communications systems, high speed data or other telecommunication systems to the Property, including marketing support agreements, ("telecommunications agreement") is acceptable, provided that it (a) contains terms and provisions, including compensation, that are customary for the market in which the Property is located, and (b) does not impose any financial obligations equal to or greater than \$100,000 on the Property owner, and does not impose any financial obligations on any mortgagee, and/or subsequent owner by foreclosure, deed in lieu of foreclosure or other conveyance (including reimbursement of any up-front fee paid by the provider to the Property owner upon termination of the agreement).

If any easements are created pursuant to such telecommunication agreements, such easements satisfy Section 29.2(e)(1).

**22. Laundry leases**

Subject to the Final Delivery Instructions found on FreddieMac.com, exceptions for laundry leases with third party vendors are acceptable.

**23. [Facsimile] Collateral Assignment of Beneficial Interest**

Exceptions for a [Facsimile] Collateral Assignment of Beneficial Interest for Illinois Land Trust loans are acceptable.

**24. Emergency and/or Public Utility Vehicle Access Easements**

Exceptions for emergency and/or public utility access easements are acceptable.

**25. Waterfront Property or Property Bounded by Water**

Exceptions for changes in the location of boundary lines as a result of accretion, reliction, erosion and avulsion are acceptable.

**26. Redevelopment and Urban Renewal Plans**

Exceptions for rights of cities or other applicable governmental authorities under

redevelopment and urban renewal plans are acceptable; provided (i) the Property is in compliance with such plans; (ii) there are no on-going obligations of the Borrower under such plans (including future development, tenant restrictions, filing/reporting obligations, assessments, charges or liens); and (iii) there are no restrictions in the plans which would have an adverse impact on the use or valuation of the Property.

## 27. Improvements Designated as Landmarks

Exceptions for improvements that are designated by the applicable governmental authorities as landmarks are acceptable; provided that affirmative coverage for any loss resulting from the improvement being designated a landmark is provided or, if affirmative coverage is not available, the results of a current Landmark's Preservation Department search or an equivalent search confirm that there are no landmark violations indexed against the Property.

## 28. \$1.00 Condemnation Clause in Deeds

Exceptions for a "\$1.00 Condemnation Clause" in New York City deeds conveying the Property from New York City to a third party are acceptable provided that Seller or its counsel confirms in the TESA that no portion of the Property lies within a proposed street.

### f. Exception for Private Transfer Fee Covenant (03/03/17)

If the ALTA Loan Policy contains an exception for a Private Transfer Fee Covenant that was created on or after February 8, 2011, the Mortgage is ineligible for purchase by Freddie Mac. See Section 8.14.

### g. Exception for condominium/cooperative conversion restriction (03/03/17)

If the ALTA Loan Policy contains an exception for a prohibition against or any indemnification in connection with the conversion of the Property to a condominium or cooperative structure, the Seller or its counsel must examine the underlying agreement/restriction as provided in Section 8.18(f) to determine that the agreement/restriction meets the requirements set forth in such Section.

The Seller or its counsel must confirm in the title analysis provided pursuant to Section 29.2(b) that all such requirements have been satisfied or that any non-compliant provisions have been approved by Freddie Mac.

## 29.3 Legal description requirements (03/03/17)

For each Mortgage purchased by Freddie Mac, the Mortgage, title insurance policy, survey, lease, hazard insurance policies and all other documents pertaining to the Mortgage or Property must have a legal description that matches in all material respects the legal descriptions in the other documents.

The Seller's counsel must certify that the counsel has reviewed (or caused to be reviewed) the legal description attached to the Mortgage and, as applicable, the legal description attached to the UCC financing statement with respect to the filing in the land records, and such legal descriptions

match the legal description in the ALTA Loan Policy and, if available, the survey in all material respects. The Seller's counsel must provide this certification using the Seller's Counsel's Certification set forth on FreddieMac.com.

#### **29.4 Uniform Commercial Code search requirements (07/01/14)**

It is the responsibility of the Seller to ensure that a First Lien security interest is perfected in (1) all fixtures, (2) all personal property of the Borrower that is located in or on the Property or is used or intended to be used in connection with the Property and (3) any other Uniform Commercial Code (UCC) collateral described in the UCC financing statement (collectively the "UCC collateral").

In order to ensure this First Lien security interest, the Seller must perform certain searches of the Uniform Commercial Code records ("UCC search"). For additional search requirements for the MHC Mortgage Product, see Section 22.9(c).

##### **a. Names to search (12/16/15)**

The Seller must perform a UCC search for the Borrower's name and, if the Property is being acquired, the name of the current owner of the Property. For additional search requirements for Seniors Housing Mortgages, see the Final Delivery Instructions available on FreddieMac.com.

##### **b. Location of search (03/03/17)**

Each UCC search must include every office where a financing statement would be filed in accordance with the provisions of Revised Article 9 of the UCC.

##### **c. Date of search (02/07/05)**

A UCC search must be dated no earlier than 30 days prior to the Origination Date.

##### **d. Prior financing statements (05/31/11)**

If a UCC Search indicates that there are any financing statements on file (other than the financing statements filed by the current lender that will be released at origination of the Mortgage) then, prior to the Origination Date, the Seller must provide an explanation of those financing statements to the

- Multifamily TAH Underwriter, for TAH Mortgages
- Applicable Freddie Mac Multifamily Regional Office for all other Mortgages

The Seller must also submit a copy of the explanation to the applicable Multifamily Attorney.

##### **e. UCC search (05/01/14)**

1. If the UCC search done at underwriting shows that no financing statements have been filed in connection with any of the UCC collateral, then the Seller does not need to deliver any documentation regarding the UCC search to Freddie Mac prior to final delivery of the Mortgage.

2. The UCC search must be updated at the time of final delivery to a date no earlier than 30 days prior to the date of origination of the Mortgage. The Seller's counsel must examine the UCC search to determine that Freddie Mac has a First Lien security interest in all UCC collateral except for those items previously approved by Freddie Mac and those items for which UCC termination statements have been filed. The Seller's counsel must use the Seller's Counsel's Certification set forth on FreddieMac.com to provide a certification regarding the UCC search at final delivery of the Mortgage as set forth in the Final Delivery Instructions found on FreddieMac.com.

**f. Product-specific UCC search requirements (03/03/17)**

For a Mortgage secured by an MHC Property, where a First Lien security interest in a Borrower-Owned Home cannot, under applicable law, be perfected with the filing of a UCC Financing Statement, the Seller must take additional actions necessary to verify the ownership of and ensure a perfected First Lien security interest in any Borrower-Owned Home (e.g., obtaining a copy of the certificate of title evidencing the Borrower as the sole title holder of a Borrower-Owned Home).

**g. Newly formed Borrowers and SPE Equity Owners (03/03/14)**

For each Borrower and SPE Equity Owner, if applicable, that has been formed within 90 days prior to the origination of the Mortgage, the Seller will not be required to provide a UCC search for the Borrower or the SPE Equity Owner. For any entity formed more than 90 days prior to the origination, or if Freddie Mac agrees to permit a "recycled" SPE Borrower or SPE Equity Owner, regardless of the entity's formation date, the Seller must provide a UCC search for the Borrower and the SPE Equity Owner, if applicable.

## 29.5 Survey requirements

**a. ALTA/NSPS requirements; survey waivers (03/03/17)**

1. For each Mortgage purchased by Freddie Mac, the Seller must submit a survey meeting the then-current minimum standard detail requirements for American Land Title Association/National Society of Professional Surveyors, Inc. (ALTA/NSPS) Land Title Surveys. The survey must be made, dated or revised by a licensed civil engineer or registered surveyor not more than 90 days prior to the date of the Note. The surveyor's certification must:
  - Be the form of certification required by the most current ALTA/NSPS requirements, except that the Table A items need not be listed in the certification
  - Be for the benefit of the Seller, Freddie Mac and its successors and assigns and the title insurer issuing the title insurance policy if required by the title insurer
2. Unless specifically waived under the terms of the Letter of Commitment, a survey is required for every Mortgage purchased by Freddie Mac. [See also the Survey Waiver Requirements found on FreddieMac.com.]

3. For any Supplemental Mortgage purchased under the Freddie Mac Multifamily Supplemental Mortgage Product, a current survey of the Property is not required if all of the following requirements are met:
  - The Seller delivers at the final delivery of the Mortgage a copy of the original survey that was previously delivered to Freddie Mac and was certified to Freddie Mac in connection with the senior Mortgage (the "original survey");
  - The title insurance policy limits any exception for survey matters to those disclosed on the original survey and any new exceptions approved by Freddie Mac;
  - The title insurance policy contains a "same as survey" endorsement ensuring that the Property insured is the same as the Property shown on the original survey; and
  - The Borrower certifies that there have been no on-site activities or off-site activities adjacent to the Property (such as construction, demolition or modification of improvements, roadwork, or eminent domain proceedings) not disclosed on the original survey. The certification must expressly state that the certification is intended to be relied upon by the Seller in making, and by Freddie Mac in purchasing, the Mortgage. [See also the Final Delivery Instructions found on FreddieMac.com.]

However, if Freddie Mac waived the requirement for a survey with respect to the senior Mortgage, then Seller must request a separate waiver of the survey requirement with respect to the Supplemental Mortgage.

**b. Additional Freddie Mac requirements (03/03/17)**

In addition to the items that must be included in an ALTA/NSPS Land Title Survey, the survey must also include the following:

- Substantial visible improvements (in addition to buildings) such as entrance or monument signs, parking structures including carports and garages, swimming pools and other recreational facilities such as clubhouses, basketball and tennis courts.
- Indication of access to all public rights of way such as curb cuts, driveways marked, etc.
- Parking areas and type and number of parking spaces (Parking space striping need not be shown.)
- Any setback requirements applicable to the Property (including those imposed via zoning law or building codes and any documents on record affecting the Property).

**c. Survey certification by Seller's counsel (03/03/17)**

The Seller's counsel must certify to Freddie Mac that all of the buildings and amenities listed in the Letter of Commitment are shown on the survey and all locatable easements are shown on the survey ("survey certification").



- At final delivery, the Seller's counsel must use the Seller's Counsel's Certification set forth on FreddieMac.com to provide the survey certification.
- For a Supplemental Mortgage for which a current survey is not required pursuant to Section 29.5 [see also the Final Delivery Instructions found on FreddieMac.com] or if Freddie Mac has waived its survey requirement with respect to a Mortgage, Seller's counsel must select the applicable provisions of the TESA.

**d. Survey – encroachments and violations (09/14/10)**

The Seller must analyze all encroachments and violations shown in the survey, as set forth in Section 29.2(d).

**e. Special survey requirements for MHC Mortgages (03/03/17)**

In addition to the requirements set forth in this Chapter 29 with respect to surveys, if the Property is an MHC Property, the following requirements are applicable:

- The survey must include the number of Home Sites located on the Property, as well as a description of the parking areas or spaces that are generally available for each Manufactured Home (i.e., the number of off-street parking spaces available for each Manufactured Home should be included on the survey).
- The survey must depict the location of:
  1. The extent and approximate dimensions of any encroachments by Manufactured Homes (including any Borrower-Owned Homes), Home Sites, piers, and foundations. If any of the foregoing do not constitute encroachments, their location does not need to be shown on the survey. Instead, a simple indicating mark may be included.
  2. Private interior access roads or streets and visible utilities. Unless such items constitute encroachments, they may be sketched on to the survey to show their approximate location, and can be located by photogrammetric or other approximate methods in lieu of precise field measurements.