

**FINAL DELIVERY INSTRUCTIONS – IMMEDIATE CASH and TAH UNFUNDED  
FORWARD CASH AT CONVERSION**

**(Revised 9-1-2016)**

NOTE: Except as otherwise noted below, this document is generally designed for use with the following Multifamily Conventional Cash and Bond Programs:

- Multifamily Conventional Cash Mortgages
- Targeted Affordable Housing (TAH) Cash Mortgages
- Multifamily Supplemental Mortgages
- Multifamily Seniors Housing Mortgages
- Bond Credit Enhancements
- TAH Unfunded Forward Commitments – Delivery at Conversion

**This document is arranged in alphabetical order and *only* contains instructions not otherwise found in the forms of the Loan Documents, the Letter of Commitment, early rate-lock application, or elsewhere in the *Guide*.**

**The Special Instructions section found at the end of this document is a resource for unique structures and documents.**

**The Final Delivery Package Table of Contents, completed by Seller, must be included with the Final Delivery Package, and must be uploaded into Multifamily DMS with the electronic delivery portions of such Package.**

### **Agreement to Amend and Comply**

Freddie Mac does not require this document and does not have a form, but if Seller requires Borrower to execute this type of document, then it should be included with the Final Delivery Package.

### **Assignments of Security Instrument and Other Recorded Instruments**

#### **Assignment of Security Instrument**

The Assignment of Security Instrument to Freddie Mac must:

- Be made using the for Assignment of Security Instrument, unless that form would be unenforceable under applicable law
- Be dated on or after the date of the Security Instrument
- Have the legal description of the Property attached
- Be recorded after the Security Instrument
- Not state that the assignment is without recourse
- Be duly recorded in every place necessary to perfect a security interest in the Property in favor of Freddie Mac or its designee

#### **Assignment of Consolidation, Extension, and Modification Agreement**

The Assignment of Consolidation, Extension, and Modification Agreement to Freddie Mac must:

- Be made using the Freddie Mac Assignment of Consolidated Instrument, unless that form would be unenforceable under applicable law
- Be dated on or after the date of the CEMA
- Have the legal description of the Property attached
- Be recorded after the CEMA
- Not state that the assignment is without recourse
- Be duly recorded in every place necessary to perfect a security interest in the Property in favor of Freddie Mac or its design

#### **Assignment of Modification and Extension Agreement**

For an Assignment of Modification and Extension Agreement, Seller must deliver a copy of the recorded Assignment of Security Instrument, meeting all requirements for an Assignment of Security Instrument, that has been modified so that the description of the instrument assigned includes a description (with recording information) of:

- Any prior assignments of the instrument
- The Extension Agreement

## **Certificates of Occupancy**

Seller must deliver the Seller's Certification Regarding Certificates of Occupancy.

In addition, for Mortgages secured by Property where construction was completed for the use and operation of the Property within three years or less from the date of the Loan Agreement, Seller must deliver copies of all applicable certificates of occupancy for the use and operation of the Property.

## **Commercial Lease**

As more fully detailed in Section 8.11 of the Guide, Seller's delivery requirements for commercial leases are as follows:

SNDA – Required only if specifically requested by Freddie Mac in the Commitment or early rate lock application (such request will generally be based on Seller's recommendation in the PLIM).

Tenant Estoppel – Required for the following leases:

- Commercial leases which individually account for 5% or more of gross potential rent
- If income from all commercial leases is 10% or more of gross potential rent, then estoppels are required from all commercial leases which demise more than 1,000 square feet

(Note: there is no form tenant estoppel for conventional cash loans; instead, the minimum criteria for such estoppels is set forth in Guide Section 8.11)

Lease Analysis - To be delivered with the underwriting package, not the Final Delivery Package. See Guide Section 55.2. Required only for leases which individually account for at least 5% of gross potential rent, or as specifically requested by Freddie Mac in the Commitment or early rate lock application.

Copies of Commercial Leases – To be delivered with the underwriting package, not the Final Delivery Package. See Guide Section 55.2.

## **Cross-Collateralization**

In addition to any other Riders required under the Letter of Commitment or early rate-lock application in connection with a cross-collateralized Mortgage, Seller must deliver the following documents, as set forth in the Letter of Commitment or early rate-lock application:

### **Cross-Collateralization Agreement -Master**

Does not need to be recorded if the Memorandum has been recorded.

### **Cross-Collateralization Agreement Memorandum**

This is not required if the Cross Collateralization Agreement has been recorded. (We prefer to record the Memo rather than the Agreement, but some jurisdictions don't allow recordation of a Memo.)

#### **Assignment of Cross-Collateralization**

This is only required if the Cross Agreement (rather than the Memo) has been recorded.

#### **Escrows and Reserve Accounts**

With respect to escrow or reserve accounts held in connection with the Mortgage, Seller must deliver the following:

#### **List of Reserves Held – Form 1056**

A copy of the List of Reserves Held – Form 1056, providing a list of all Reserves held in Custodial Accounts established in accordance with the requirement of Guide Chapter 52 (if the Letter of Commitment or Early Rate-Lock Application does not require an initial deposit, the initial balance must be listed as \$0). The monthly amount should be listed even if “deferred.” The Imposition Reserves Collect/Defer column should match the commitment requirements. Select the appropriate radio button to open applicable reserve sections. Use the User Defined radio button to manually enter any deposits not listed. Reserve amounts collected should match the commitment and amounts collected on the settlement statement. For supplemental loans, when the escrows are collected on the senior lien, select “n/a” in the Cash/Letter of Credit cells for all reserves with the exception of any cash deposits required by the commitment and collected at settlement (for example, immediate repairs).

#### **Custodial Accounts**

For principal and interest Custodial Accounts:

When establishing a new principal and interest Custodial Account, a copy of one of the following forms, as applicable, executed on behalf of the institution that maintains the Custodial Account

- If the account is held by an institution other than the Servicer, a copy of Form 1057 - Letter Agreement for Servicer's Principal and Interest or P&I Disbursement Clearing Custodial Account
- If the account is held by the Servicer, a copy of Form 1059 - Letter Agreement for Principal and Interest or P&I Disbursement Clearing Custodial Account

For Reserve Custodial accounts:

When establishing a new Reserve Custodial Account to hold taxes and insurance or other Reserves, a copy of one of the following forms, as applicable, executed on behalf of the institution that maintains the Custodial Account

- If the Custodial Account is held by an institution other than the Servicer, a copy of Form 1058 - Letter Agreement for Servicer's Reserve Custodial Account
- If the account is held by the Servicer, a copy of Form 1060 - Letter Agreement for Reserve Custodial Account

For Custodial Accounts for Bond Credit Enhancement loans that require funds to be invested in tax-exempt obligations

When establishing a securities Custodial Account to hold principal reserve funds, Cap Fee Reserves or Hedge Fee Reserves, a copy of Form 1057A - Letter Agreement for Securities Custodial Account for Tax-exempt Bond Transactions.

If the Letter of Commitment or early rate-lock application requires that the Loan Agreement include a Rider to Multifamily Loan and Security Agreement - Rental Achievement Cash Reserve, a copy of one of the following forms, as applicable, executed on behalf of the institution that maintains the Custodial Account

- If the Custodial Account is held by an institution other than the Servicer, a copy of Form 1058 - Letter Agreement for Servicer's Reserve Custodial Account
- If the account is held by the Servicer, a copy of Form 1060 - Letter Agreement for Reserve Custodial Account

The Servicer must follow the instructions in Guide Section 52.6 regarding its obligation to return the original of any applicable form for new Custodial Accounts

### **Financing Statement (UCC)**

Financing Statements (UCC-1) must be filed and recorded in all locations necessary under applicable law to perfect a security interest in all fixtures, personal property and other UCC collateral set forth in Exhibit B to the financing statement. Financing statements must include the following information:

- Name of Borrower
- Legal description [The legal description of the Property shown in or attached to the Security Instrument (attached as Exhibit A)]
- List of fixtures, personalty and other UCC collateral (The list of all fixtures,

personalty and other UCC collateral shown on the form UCC Financing Statement - Exhibit B)

If Freddie Mac is not identified as the assignee on the UCC-1, Seller must include a separate assignment document in the form of an appropriately completed UCC Financing Statement Amendment (UCC-3).

A detailed list of all filed financing statements and their respective recording jurisdiction are listed in the Seller's Counsel Certificate.

#### **Ground Lease**

For Mortgages secured by ground lease Properties, in addition to all various form Ground Lease Riders required in the Letter of Commitment or early rate-lock application, Seller must provide the following:

#### **Recorded Document**

A copy of either the recorded memorandum of ground lease, or the recorded ground lease (including all amendments).

#### **Lease**

A copy of the unrecorded ground lease (including all amendments), unless a copy of the recorded ground leases is delivered in lieu of a recorded memorandum.

#### **Ground Lease Analysis**

Copy of the Ground Lease Analysis form completed by Seller's counsel. To be delivered with the Underwriting package, not the Final Delivery Package.

#### **Guaranty**

The Multistate Guaranty must:

- Include the appropriate state provisions offered in the form
- Be acknowledged in a form that is in accordance with applicable State law, even if State law does not require that non-recorded documents be acknowledged

#### **Laundry Lease**

See "Commercial Lease" section above

#### **Lead-based Paint Indemnification Agreement**

Provide original and include on Exhibit A of Omnibus Assignment.

**Letter of Credit**

Any original letter of credit must be freely assignable by Freddie Mac and its successors and assigns without any consent or approval of the issuer of such letter of credit and without cost to Freddie Mac or its successor and assigns. All letters of credit must have attached:

- An acceptable assignment form,
- The Letter of Credit Certification, and
- An executed opinion of the letter of credit issuer's counsel that the letter of credit meets the requirements of Guide Section 11.2(e).

**Management Agreement**

Include the Assignment of Management Agreement and Subordination of Management Fees, with a copy of the complete Management Agreement attached.

**Management Plan**

If the Property is managed by Borrower, Seller must deliver Borrower's management plan, or a Borrower Certification of No Change - Form 1147, for Supplemental Mortgages, if a management plan or management agreement was previously submitted and approved for the Property and it has not changed since the origination of the latest Mortgage

**Moisture Management Plan**

If a Moisture Management Plan was not delivered in the full underwriting package, then a Moisture Management Plan meeting the requirements of Guide Section 8.3(a), is required in the Final Delivery Package; or

If a Moisture Management Plan was previously submitted and approved for the Property and there has been no change since the origination of the latest Mortgage, then a Borrower Certification of No Change - Form 1147, for Supplemental Mortgages, is required in the Final Delivery Package

**Note****Multifamily Note**

The Note must bear the following endorsement:  
PAY TO THE ORDER OF THE FEDERAL HOME LOAN MORTGAGE  
CORPORATION WITHOUT RECOURSE

(Name of Seller-endorser)  
(Signature of duly authorized officer)

(Typed name and title of signatory)

The endorsement should not be dated.

- To the extent provided in the Uniform Commercial Code (UCC), the endorsement “without recourse” may limit Seller/Service’s obligation, as endorser under the UCC, to pay amounts due under the Note upon default by Borrower, but will not affect Seller/Service’s repurchase obligations under the Purchase and Servicing Documents.
- The chain of endorsements must be complete from the original lender shown on the Note to Freddie Mac.
- Endorsements may appear on an allonge to the Note if the Freddie Mac loan number appears on the allonge and the allonge is attached to the Note.

#### **Amended and Restated Note**

The existing Notes do not need to be endorsed, but the originals of each or a Lost Note Affidavit should be included in the Final Delivery Package

#### **Consolidated Note**

Seller must require Borrower to execute a new Note for the amount of the new funds (the “Gap Note”) that Seller will advance. If the amount of the Mortgage does not exceed the existing indebtedness secured by the Property, a Gap Note is not necessary. The form to be used for any Gap Note is the appropriate Multifamily Note or any other form approved in writing by Freddie Mac.

In addition, Seller must require Borrower to execute a Note in the amount of the entire consolidated indebtedness called the Consolidated, Amended, and Restated Note (“Consolidated Note”).

- Seller’s counsel must use the appropriate Multifamily Note and rename it the “Consolidated, Amended, and Restated Note.”
- Seller’s counsel must add the following language to Exhibit A of the Consolidated Note:

This Note consolidates the promissory notes described in Exhibit B-1 to this Note (together the “Existing Notes”), without impairing the debt evidenced by the Existing Notes. This Note does not create any new or additional indebtedness but evidences the outstanding indebtedness established by the Existing Notes so that this Note evidences a single consolidated debt in the principal amount of (\$\_\_\_\_) Dollars.

This Note amends and restates in their entirety the terms, obligations, agreements, covenants and conditions set forth in the Existing Notes and all other agreements



that previously consolidated, modified and extended the Existing Notes so that the terms of this Note supersede the terms, obligations, agreements, covenants and conditions of the Existing Notes.

- Seller’s counsel must modify the Consolidated Note to add a check box for Exhibit B. Seller’s counsel must further modify the Consolidated Note to add an Exhibit B that lists the existing promissory notes being consolidated, including the Gap Note, if any (collectively the “Underlying Notes”).
- Seller must deliver executed originals of all existing Notes or a Lost Note Affidavit for each of the Notes listed on Exhibit B-1. The Underlying notes should be arranged in the same order as the Exhibit B-1.
- Seller must endorse the Consolidated Note and each Underlying Notes to Freddie Mac using the endorsement specified above.

### **Modified and Extended Note**

For modified and extended note structures, Seller must require Borrower to execute a new Note in the amount of the modified and extended indebtedness (“Modified Note”).

- Seller’s counsel must use the appropriate Multifamily Note and rename it the “Modified and Extended Note.”
- Seller’s counsel must add the following language to Exhibit A of the modified Note:

This Note modifies and extends the promissory notes described in Exhibit B to this Note (the “Existing Notes”), without impairing the debt evidenced by the Existing Notes. This Note does not create any new or additional indebtedness but evidences the outstanding indebtedness established by the Existing Note so that this Note evidences a single debt in the principal amount of (\$\_\_\_\_) Dollars. This Note amends and restates in their entirety the terms, obligations, agreements, covenants and conditions set forth in the Existing Note(s) and all other agreements that previously consolidated, modified and extended the Existing Note so that the terms of this Note supersede the terms, obligations, agreements, covenants and conditions of the Existing Note.

- Seller’s counsel must modify the Modified Note to add an Exhibit B that lists the Existing note(s) being modified and extended or the existing note(s) that have previously been consolidated and are now being modified and extended, plus a check box for Exhibit B.
- Seller must deliver the executed original of the Existing Note or Notes (previously consolidated) described in Exhibit B to the Extension Agreement.
- Seller must endorse the Existing Note or Notes to Freddie Mac, using the endorsement language specified above

### **Notice to Third Parties of Origination of Mortgage and Assignment to Freddie Mac**

Copies of written notices provided to third parties under any documents, instruments or

agreements, recorded or unrecorded, affecting the Property, that Seller/Service's legal counsel has determined are required and/or generally advisable in connection with the origination of the Mortgage and/or the subsequent assignment of the Mortgage to Freddie Mac, including for the purpose of entitling the Seller and/or Freddie Mac, each in its capacity as a mortgagee of the Property, to any legal rights under such documents, instruments or agreements.

#### **Omnibus Assignment**

For all documents required to be assigned by Seller to Freddie Mac under the Guide, the Letter of Commitment, or the early rate-lock application (other than the assignment of recorded documents, and the Note), in lieu of individual assignments, Seller must use the Omnibus Assignment

#### **Operational Repair Letter**

A copy of the Repair Letter which, pursuant to Exhibit F of the commitment/ERLA, Seller is required to deliver to Borrower at loan origination, listing all Operational Repairs listed in the Property Condition Report (Form 1105).

#### **Operations and Maintenance (O&M) Program Agreements and Certifications**

If an Operations and Maintenance Program Agreement and Certification for applicable Environmental Condition were not delivered in the full underwriting package, it would be required in the Final Delivery Package.

#### **Operating Lease**

Seller must provide any one of the following, as applicable:

- Freddie Mac's standard Subordination, Nondisturbance and Attornment Agreement (if previously approved by Freddie Mac), or
- Both a subordination agreement and an estoppel certificate, or
- Only an estoppel certificate if the lease is subordinate by its terms.

The lease language and the Subordination, Nondisturbance and Attornment Agreement must comply with the provisions of Guide Section 8.11(a).

An Operating Lease Analysis should be delivered as part of the Underwriting Package, rather than the Final Delivery Package.

If lease is recorded, a Subordination Agreement may be required to be executed and recorded

#### **Opinion of Counsel**

- An opinion of Borrower's counsel, for each Borrower, SPE Equity Owner, and guarantor (whether the guarantor is an individual or an entity). A detailed list of all legal opinions, including the nature of the opinion and law firm issuing the opinion, is set forth in the Seller's Counsel Certificate.
- The Opinion Letter must be addressed to Seller and, except as set forth below, must be on the applicable form Opinion Letter.
- Except as set forth below, Seller may accept modifications to the form of Opinion Letter without Freddie Mac's prior review and written consent to such changes, provided that (i) Seller remains able to make the warranties contained in Guide Section 5.2(c), (ii) Borrower and guarantor meet the requirements of Guide Section 9.7, (iii) the requirements of this section are satisfied, and (iv) Seller's counsel is able to make the opinion certifications required by the Seller's Counsel's Certification form.
- For a Mortgage with an initial principal balance of \$100,000,000 or greater, Seller must submit a copy of the opinion marked to indicate clearly the additions to and deletions from the appropriate form of Opinion Letter and receive Freddie Mac's decision as to the acceptability of the additions and deletions before it originates the Mortgage. Borrower or Seller must pay for any legal fees associated with the review and approval of any such additions to or deletions from the appropriate form of Opinion Letter in connection with the origination of the Mortgage.
- Unless specifically waived in the Commitment or early rate-lock application, for (i) a Mortgage with an initial principal balance of \$25,000,000 or greater or (ii) each Mortgage that is a part of a cross-collateralized and cross-defaulted pool of Mortgages that are, when aggregated, \$25,000,000 or greater or (iii) if otherwise required by the Letter of Commitment or early rate-lock application, a nonconsolidation opinion stating that if any equity owner or group of affiliated equity owners (or group of family members) who own more than 49% of the equity in Borrower were to become insolvent, neither Borrower, nor its assets and liabilities, would be substantively consolidated with that of the equity owner or group of affiliated equity owners (or group of family members) or with the SPE Equity Owner.

A "should" nonconsolidation opinion is not acceptable; all nonconsolidation opinions must be "would" opinions.

Each nonconsolidation opinion must be addressed to Seller.

Any required nonconsolidation opinion must be submitted to Freddie Mac for review and written approval prior to origination of the Mortgage. Borrower or Seller must pay for any legal fees associated with the review and approval of any nonconsolidation opinion required in connection with the origination of a Mortgage.

- In the Letter of Commitment or early rate-lock application, Freddie Mac may require additional opinions. Unless otherwise specified in the Letter of Commitment or early rate-lock application, Seller is authorized to approve the form of the additional opinion(s), provided that (i) Seller remains able to make all warranties contained in Guide Section 5.2, (ii) Borrower and guarantor meet the requirements of Guide Section 9.7, (iii) the requirements of this section are satisfied, and (iv) Seller's counsel is able to make the opinion certifications required by the Seller's Counsel's Certification form.
- Each opinion delivered to Freddie Mac must contain the following use/reliance provision:

“This letter is furnished to you solely for your benefit, the benefit of subsequent holders of the Note, and any statistical rating agency that provides a rating on securities backed in part by the Loan, all of which we understand may receive copies of this letter. This letter may not be used, quoted from or relied upon by any other person without our prior written consent; however, you or a subsequent holder of the Note may deliver copies of this letter to (a) independent auditors, accountants, attorneys and other professionals acting on behalf of you or a subsequent holder of the Note, (b) governmental agencies having regulatory authority over you or a subsequent holder of the Note, (c) designated persons pursuant to an order or legal process of any court or governmental agency, and (d) prospective purchasers of the Note.”

The counsel rendering the opinions must be acceptable to Freddie Mac or to Seller if Seller is authorized to approve the opinion. The Letter of Commitment or the early rate-lock application may require that the counsel state additional conclusions in the opinion. Freddie Mac reserves the right to require Seller at any time to deliver to Freddie Mac all documents on which the counsel based or should have based the opinion.

### **Organizational Documents**

For any entity that is a Borrower, SPE Equity Owner, or guarantor, Seller must provide the organizational documents for that entity, as reviewed by Seller pursuant to Guide Section 9.7. Required organizational documents include Articles of Incorporation, By-Laws, Articles of Organization, Operating Agreement, Trust Agreement, Partnership Certificate and Partnership Agreement, as appropriate as well as a Certificate of Good Standing and/or Authorization to Transact Business

A Borrower Certification of No Change - Form 1147, for Supplemental Mortgages, if organizational documents were previously submitted and approved for the Property and there have been no changes since the origination of the latest Mortgage.

### **Rate Cap Agreement**

Seller must provide a copy (an original is not required) of the interest rate cap agreement

between Borrower and the cap provider, for an ARM with a third-party interest rate cap along with any related documents

### **Rent Roll**

A rent roll for occupancy and rents, certified by Borrower, meeting the requirements of Chapter 55 and the Letter of Commitment or early rate-lock application if:

- The Property is not stabilized, or
- The Letter of Commitment or adjustment letter for the early rate-lock application requires a rent roll.

If a rent roll is required, it must be delivered to Freddie Mac prior to the Origination Date via DMS, and this will not be part of the Final Delivery Package.

### **Security Instrument**

The Security Instrument must:

- Have the legal description of the Property attached
- Be recorded in every place necessary to perfect a security interest in the Property in favor of the mortgagee and be recorded prior to the assignment.

Seller must ensure that the Security Instrument complies with the applicable legal requirements of the jurisdiction where the Property is located.

### **Consolidated Security Instruments**

For a Consolidated Security Instrument, Seller must record the document, with all required Exhibits, in the land records in the jurisdiction in which the Property is located. If a Section 255 Affidavit is executed, a copy should be included with the delivered document.

### **Gap Security Instrument**

For a Gap Security Instrument, Seller must require Borrower to execute a new Security Instrument only when Borrower has executed a Gap Note. The “Gap Security Instrument” must be for the gap amount, and may be either the applicable form Security Instrument or any other form approved in writing by Freddie Mac

### **Extension and Modification Agreement**

For an Extension and Modification Agreement (Single Instrument—Multifamily), Seller must record the document, with all required Exhibits, in the land records in the jurisdiction in which the Property is located. If a Section 255 Affidavit is executed, a copy should be included with the delivered document

### **Seller's Certification of Outstanding Items**

All items specifically noted in the Letter of Commitment or early rate-lock application as being specifically required to be reviewed and approved by Freddie Mac prior to loan origination or prior to loan purchase must be listed in the Seller's Certification of Outstanding Items, and to the extent approval from Freddie Mac has not been received by Seller for any such items at the time the Certification is executed, Seller must identify such items on the Certification.

### **Settlement Statement**

The settlement statement, executed by the Borrower, and either executed by the closing agent or printed on the closing agent's letterhead.

The settlement statement must be the actual final (not estimated) version used by the closing agent, not a summary or other version prepared for Seller's use.

There is no specific required form for the settlement statement; however, it must clearly show the following:

- Acquisition price, including any credits to the Borrower against the contractual purchase price, and any items which the Seller is asking Freddie Mac to consider in determining the acquisition price (for acquisitions only)
- Existing loan payoff amount (for refinances only)
- Borrower's cash out after closing costs (for refinances only)
- Borrower's cash contribution after closing costs (for cash-in refinances, or acquisitions)
- Calculation of up-front escrow deposits, reserves, and other cash collateral that matches the requirements of the Letter of Commitment or early rate-lock application, and the list of all escrows held. In lieu of setting forth a detailed listing of Seller's reserves and expenses directly in the main body of the closing agent's settlement statement, such detail may be set forth as an exhibit to the settlement statement, provided such exhibit is expressly referenced in the main body of the settlement statement.

### **Side Agreements**

Seller must provide a copy of any other agreement entered into between Seller and Borrower with respect to the Mortgage. Despite the inclusion of any such document in the Final Delivery Package, Freddie Mac will not be bound by any such document to

which it is not a party.

### **Subordinate Financing**

If the Property secures subordinate financing, Seller must provide the following:

- Copies of the note, security instrument, Freddie Mac’s standard Subordination Agreement or such other subordination agreement that has been previously approved by Freddie Mac, any security agreements, financing statements, and any other loan document executed in connection with the subordinate financing
- If the Freddie Mac standard Subordination Agreement is not used, an estoppel certificate executed by the subordinate lender that states the UPB and amount of monthly payments relating to any subordinate financing and states that Borrower is not in default under the terms of the subordinate financing

### **Survey**

Seller must provide an electronic version of the survey, which must meet the requirements of Guide Section 29.5, including an analysis of all encroachments and violations shown on the survey. The electronic survey must be uploaded to DMS.

For a Supplemental Mortgage for which a current survey is not required pursuant to Guide Section 29.5(a)(3) or a Mortgage for which Freddie Mac has waived the survey requirement, Seller’s counsel must select the applicable provisions of the survey certification section of the Seller’s Counsel Certification form. If current survey is not required, upload the survey from the senior loan.

### **Telecommunications Agreements**

As more fully detailed in Section 8.11 of the Guide:

- a “telecommunications agreement” (as defined in Section 29.2(e)) that is not with an Affiliate of the Borrower or any Borrower Principal (including any Guarantor), and that meets the requirements set forth in Section 29.2(e)(1) and (21), does not have to be subordinated to the lien of the Mortgage.
- For any telecommunication agreement between Borrower and an Affiliate of the Borrower or any Borrower Principal (including any Guarantor), Seller must provide a subordination agreement (whether or not the agreement was recorded), which must not contain nondisturbance language. The subordination agreement must be recorded if the telecommunications agreement is recorded. A subordination agreement is not required if the lease is subordinate according to its terms or provides for termination without cause on no more than 30 days’ notice without payment of a fee or penalty.

### **Title Insurance Policy and Reinsurance/Coinsurance Agreement**

Seller must provide the following:

- The original title insurance policy, or electronically issued policy, meeting the requirements of Guide Sections 29.1 through 29.3.
- An updated copy of the Title Exception Analysis form, which must meet the requirements of Guide Section 29.2(b) and 29.2(c).
- A copy of the documents establishing all recorded easements, rights of way, restrictive covenants, leases and other instruments of record listed in exceptions B-1 and B-2 of the title insurance policy.

For any exception not within a safe harbor category, a copy of the approved Title Exception Analysis form submitted prior to the origination of the Mortgage.

For any Supplemental Mortgage, Seller or its counsel must provide the discussion of the exceptions to title as required by Guide Section 29.2(b)(4). If all of the title exceptions appeared in the title policy insuring the senior Mortgage and such title exceptions are covered by the same endorsements or equivalent coverage, Seller's counsel must provide the applicable certification using the Seller's Counsel's Certification form.

If applicable, Seller must provide the Reinsurance Agreement or Coinsurance Agreement.

#### **UCC Search**

A UCC Search must be conducted. Seller's counsel will certify in the Seller's Counsel Certificate to the following:

- It has examined the UCC search
- The search is dated no earlier than 30 days from the Origination Date
- The search does not indicate any previous filings (other than those filings of the previous lender that will be released with the proceeds of the Mortgage or those filings that Freddie Mac has approved)

#### **Wiring Instructions for Funding**

If the funding is to go to the warehouse lender, Seller must submit:

- Form 996M - Wire Transfer Authorization for Cash Warehouse Delivery, and
- Form 987M - Warehouse Lender Release of Security Interest.

If the funding is to go directly to Seller, Seller must submit:

Form 1150 - Multifamily Wire Transfer Authorization



## **SPECIAL INSTRUCTIONS**

### **Loan Document Modifications; Changes to the Letter of Commitment/ERLA**

Seller must document all modifications to the Loan Documents, and any changes to the Letter of Commitment or early rate-lock application, in an Amendment to the Letter of Commitment or early rate-lock application except for those certain minor edits to the Commitment/ERLA which are specifically allowed to be corrected by the Commitment/Application Seller Correction. Have all modifications approved and uploaded to DMS in advance of Final Delivery.

### **Power of Attorney**

If any Loan Document is signed pursuant to a power of attorney:

- Seller must have the power of attorney pre-approved by the applicable Multifamily Attorney.
- Seller must attach an original or certified copy of the power of attorney to any original hard copy document executed pursuant to such power of attorney delivered to Freddie Mac. Non-original copies of documents delivered to Freddie Mac and executed pursuant to the power of attorney must attach a copy of such Power of Attorney.
- The opinion of Borrower's counsel must list the power of attorney as one of the documents "prepared, reviewed or examined".
- Nothing in these Instructions is intended to imply that the use of a power of attorney is allowed or acceptable under any circumstances.

### **Seniors Housing**

In addition to all requirements set forth above in these Instructions (and in addition to all various Seniors Housing-related Riders required in the Letter of Commitment or early rate-lock application), the final delivery of each Seniors Housing Mortgage must also meet the following requirements:

### **Collateral Assignment of Management Agreement**

If the Property is not operated or managed by Borrower, Seller must obtain from Borrower a Collateral Assignment of the Management Agreement. The Manager must execute the Collateral Assignment of Management Agreement for purposes of consenting to the assignment and agreeing to continue rendering services following a default under the Mortgage.

### **Collateral Assignment of Service Contracts**

Seller must obtain from the contracting party (Borrower or Manager) a collateral

assignment of each service contract listed on Exhibit M to the Loan Agreement, including, but not limited to, any food service contract or healthcare services contract. Each such collateral assignment must be in the form of the Collateral Assignment of Service Contracts. A single Collateral Assignment of Service Contracts may be used to assign multiple service contracts. Each such collateral assignment must include the consent of each provider of such services in the form of the Provider Ratification attached to the Collateral Assignment of Service Contracts. A copy of each food service contract and healthcare services contract must be attached to the applicable Collateral Assignment of Service Contracts.

**Collateral Assignment of Licenses, Certificates and Permits**

If any license, certificate or permit is not issued in the name of Borrower, but is required for the intended use (as defined in the Loan Documents) and operation of the Property, then Seller must obtain from the person or entity to whom it is issued a Collateral Assignment of Licenses, Certificates or Permits

**Certification of Licenses, Certificates and Permits**

Seller must obtain a certification from Borrower that all licenses, certificates and permits required for the ownership and operation of the Property are current and that Borrower has not received any notice of pending violations or investigations that has not been brought to Seller's attention. If any license, certificate or permit has been updated or changed from those delivered as part of the underwriting package, Seller must deliver a copy of such license, certificate or permit as part of the Final Delivery Package.

**Certified list of furniture, fixtures, equipment and motor vehicles**

Seller must submit a detailed list, certified by Borrower to be true and complete as of the Origination Date of the Mortgage, of all furniture, fixtures, equipment and motor vehicles located on or used in the connection with the Property, including the name of the individual or entity that owns each item.

**Additional Opinion of Borrower's Counsel**

The opinion of Borrower's counsel required in these Instructions must be modified to include the additional opinions required in Exhibit C-II to the Letter of Commitment or the early rate-lock application, which opinions relate to licenses and certificates of need.

**Seniors Rider to Financing Statements**

In connection with any financing statement required in these Instructions, Seller must attach Financing Statement Exhibit B - Seniors Housing in lieu of the standard (non-Seniors) version of Exhibit B.

**Additional Financing Statements**

Seller must file UCC financing statements for both Borrower and the Manager. If the Manager does not own any furniture, fixtures or equipment located on or used in connection with the Property and is not a party to any service contract listed in Exhibit C to the Security Instrument (other than the management agreement between it and Borrower), Seller is not required to file any UCC financing statement for the Manager.

**Additional UCC searches**

Seller must submit UCC searches to Freddie Mac for Borrower; the Manager, if applicable; any operator of the Property; and, if the Property is being acquired, the current owner of the Property. Each UCC search must include every office where a financing statement would be filed to perfect a security interest in any of the collateral described in Financing Statement Exhibit B - Seniors Housing. Each search must include, but not be limited to, the jurisdictions of Borrower's, the Manager's (if applicable) and any operator of the Property's (if applicable) State of organization.

**Maryland IDOT**

For Maryland Indemnity Deed of Trust (IDOT) transactions, please refer to the applicable Letter of Commitment or early rate-lock application, and contact the applicable Multifamily Regional Attorney.

**Massachusetts Business Trust**

For a Massachusetts business trust, the Final Delivery Package must include the following documentation with respect to the trust:

**Trustee Certificate**

A copy of a recorded certificate of the trustee ("Trustee Certificate"), in which the trustee has certified:

- The names of the current beneficiaries of the trust, and
- That the trustee was authorized and directed by the beneficiaries of the trust to execute and deliver the Loan Documents

The Trustee Certificate should show the recorder's stamp, book and page number, or instrument number. If such recording information is not available at the time of Mortgage origination, Seller may submit a copy of the Trust Certificate, certified by the title company as a true and correct copy of the recorded original. Seller must then deliver to Freddie Mac a copy of the recorded or filed Trustee Certificate showing the required information as soon as the copy becomes available.

**Beneficiaries' Authorization**

An original authorization and direction from the beneficiaries of the trust to the trustee authorizing the trustee to enter into the Mortgage and to execute the Mortgage Documents
<b>Illinois Land Trust</b>
In addition to or, where appropriate, in place of the standard documentation required for all Mortgages, and in addition to the form Illinois Land Trust Riders required in the Letter of Commitment or early rate-lock application, Seller must deliver the following documentation for Illinois land trust Mortgages, the updated forms of which are not currently available on FreddieMac.com and must be requested separately from the applicable Multifamily Regional Attorney:
<b>Beneficiary's Undertaking</b>
The original Beneficiary's Undertaking, executed by all of the beneficiaries
<b>Assignment of the Beneficiary's Undertaking</b>
An original assignment of the Beneficiary's Undertaking from Seller to Freddie Mac
<b>Collateral Assignment of Beneficial Interest</b>
The original Collateral Assignment of Beneficial Interest (CABI) and a recorded facsimile of the CABI, if a facsimile is required by applicable law.  The CABI must be <ul style="list-style-type: none"> <li>• Executed by all beneficiaries</li> <li>• Received and agreed to by the land trustee</li> <li>• Consented and agreed to by the holder of the power of direction</li> <li>• Accepted by Seller</li> </ul>
<b>Assignment of Collateral Assignment of Beneficial Interest</b>
An original assignment of the CABI from Seller to Freddie Mac, and a recorded facsimile of the assignment of the CABI (The assignment of the CABI must show an acceptance of the assignment by the land trustee.)
<b>Combined Security Agreement and Assignment of Rents and Leases</b>
A copy of the recorded Combined Security Agreement and Assignment of Rents and Leases, executed by the land trustee and all of the beneficiaries
<b>Assignment of Combined Security Agreement and Assignment of Rents and Leases</b>

A copy of a recorded assignment of the Combined Security Agreement and Assignment of Rents and Leases from Seller to Freddie Mac (Alternatively, Seller may modify the Assignment of Security Instrument to include an assignment of the Combined Security Agreement and Assignment of Rents.)

**Additional Financing Statements**

The following UCC financing statements:

Subject of financing statement	Required signers	Recording/filing location
Fixtures and personal property	Land trustee	Recorded in the local land records
Fixtures and personal property	Land trustee	Filed with the Secretary of State
Beneficiary's interests in the land trust, personal property, rents and profits	Each beneficiary	Recorded in the local land records
Beneficiary's interests in the land trust, personal property, rents and profits	Each beneficiary	Filed with the Secretary of State

**Land Trustee's File Documents**

Copies of all documents in the land trustee's file for the land trust, all certified by the land trustee to be true and complete. These documents must include:

- A copy of the land trust agreement with all amendments, and
- The letter of direction from all of the beneficiaries to the land trustee, directing the land trustee to execute the loan documents

**Opinion of Beneficiaries' Counsel**

An opinion of the beneficiaries' counsel in the form provided by the applicable Multifamily Regional Attorney.

**Secondary Beneficiary Documents**

If there are secondary beneficiaries holding contingent interests in the land trust, those secondary beneficiaries must also execute the following documents:

- Collateral Assignment of Beneficial Interest
- Combined Security Agreement and Assignment of Rents

- UCC financing statements

## Other Land Trusts

### 1. Documentation

For land trust Mortgages secured by Properties in Florida, Virginia or Indiana, Seller must either

- a. Modify the Illinois Land Trust documents described in the preceding section, as appropriate and permitted under the State law of the State in which the Property is located, or
- b. Originate the Mortgage using the following documents:
  - The Multifamily Loan Documents for the State in which the Property is located, and
  - Seller/Service's own land trust documents for the State in which the Property is located

### 2. Opinion of Counsel

For land trusts secured by multifamily Properties in States other than Illinois which are delivered under either of the options listed in Item 1 above, Seller must deliver an opinion of Borrower's counsel, satisfactory to Freddie Mac and substantially in the form shown in the form of Opinion Letter—Borrower available on FreddieMac.com, which also states that

- a. Borrower is a land trust, duly formed and validly existing under the laws of the applicable State.
- b. If the beneficiary is an entity, the beneficiary is a \_\_\_\_\_ (*specify type of entity*) \_\_\_\_\_ organized, validly existing and in good standing under the laws of \_\_\_\_\_ (*State of organization*) \_\_\_\_\_ and is qualified to do business in \_\_\_\_\_ (*the State where the Property is located*).
- c. The execution and delivery of the Note and other loan documents by the beneficiary have been authorized by all necessary action on the part of the beneficiary.
- d. The individual(s) executing and delivering the Note and other loan documents on behalf of the beneficiary have the authority and legal capacity to do so.
- e. The Note and other loan documents have been validly executed by the beneficiary.
- f. The beneficiaries have covenanted to perform or to cause the land trustee to perform, as applicable, all of the obligations imposed upon Borrower under the

Security Instrument.

- g. Neither the Property nor the interests of the beneficiaries may be transferred except in accordance with the provisions of the loan documents.
  - h. The interests of the beneficiaries in the land trust are deemed personal property under applicable law.
3. Additional requirements for Florida and Virginia land trusts  
For each Florida or Virginia land trust Mortgage delivered to Freddie Mac, Seller/Servicer must ensure the following additional requirements are met:
- a. For Florida land trusts, the recorded instrument that vests title to the Property in the land trustee
    - Confers on the land trustee the power and authority either to protect, conserve, sell, lease, encumber or otherwise to manage and dispose of the real property described in the recorded instrument; and
    - Defines and declares the interests of the beneficiaries under the land trust to be personal property only
  - b. For Virginia land trusts, the recorded instrument that vests title to the Property in the land trustee also confers on the land trustee the power to sell, lease, encumber or otherwise dispose of the real property described in the recorded instrument.