



December 2014

### Limited Partner and Non-Managing Member Transfer Rider

The Limited Partner and Non-Managing Member Transfer Rider has been one of the most frequently requested transfer riders so Freddie Mac Multifamily recently made it available to all borrowers without the borrower having to request it. The Limited Partner and Non-Managing Member Transfer Rider is now applicable to every loan purchased by Freddie Mac and is automatically attached to every Loan Agreement.

#### Transfers without the Rider

Without the Rider, the Loan Agreement permits up to 50 percent of limited partner and non-managing member interests in the aggregate in the borrower and in each Designated Entity for Transfers (DET) to be transferred without any special requirements. If an entity is not named as a DET, 100 percent of the interests in that entity may be transferred without meeting any requirements.

#### Transfers with the Rider

- The addition of the Rider permits transfers of limited partner and non-managing member interests (Investor Interests) of more than 50 percent in the aggregate in the borrower and in each DET upon satisfaction of certain conditions (Investor Interest Transfer).
- The Rider also provides that if at any time one person or entity directly or indirectly acquires 25 percent or more of investor interests in the aggregate as a result of the Investor Interest Transfer, certain other requirements must be satisfied, including payment of a \$15,000 Transfer Processing Fee.

#### Application of the Rider

As this Rider is now available to all borrowers, some questions have arisen regarding the Rider, and in particular what we require if, after closing, a single person or entity acquires through one or more transfers 25 percent or more investor interests in borrower or a DET. Below is guidance and two examples to help clarify our requirements.

The Rider applies only to transfers of more than 50 percent of limited partner and non-managing member interests.

- **Transfers of 50 Percent or Less, with One Person or Entity Acquiring 25 Percent or More**

A transfer of up to 50 percent of the investor interests in borrower or any DET is permitted with no notice to lender, no additional requirements and no payment of any Transfer Processing Fee, even when one

person or entity acquires 25 percent or more of the investor interests in the borrower or DET. The reason for this is because neither the lender nor the servicer may even be aware of the transaction so cannot be expected to perform OFAC checks or obtain bankruptcy and criminal background information.

- **Transfers of More Than 50 Percent**

If there is an aggregate change of more than 50 percent of the investor interests in the borrower or a DET, then additional requirements are triggered, including:

- > 30 days prior notice of the proposed transfer, and
- > If one person or entity acquires, in the aggregate, 25 percent or more of the direct or indirect Investor Interests in the borrower or a DET through this investor interest transfer, payment of a \$15,000 Transfer Processing Fee and satisfaction of additional conditions such as OFAC checks and bankruptcy and criminal background information.

**Note**

The 25 percent ownership interest trigger can be a result of one or a series of transfers. The additional conditions apply only to the investor interest transfer that brings the total ownership interest for any one Person to 25 percent or more of the direct or indirect investor interests in a borrower or a DET.

**Examples**

- **Example 1**

At loan closing on January 1, 2014, Charlie Brown owns 90 percent of the interests in borrower, all of which are non-managing member interests. On March 1, 2014, he transfers 25 percent to various investors. On June 1, 2015, he transfers another 25 percent to his sister Sally. On August 1, 2015, he transfers the remaining 40 percent to Linus Van Pelt.

**Analysis**

The initial 25 percent transfer and the 25 percent transfer to Sally do not trigger any additional requirements, since at the time of these transfers, the aggregate amount of investor interests transferred was 50 percent or less. However, the transfer to Linus does trigger all the additional requirements (including the payment of the \$15,000 Transfer Processing Fee) since at the time of that transfer, more than 50 percent of the investor interests in the aggregate have been transferred, and Linus acquired 25 percent or more of the investor interests.

- **Example 2**

At loan closing on January 1, 2014, Archie Andrews owns 24 percent of the limited partnership interests and Betty Cooper owns 76 percent of the limited partnership interest in Riverside, LP, a limited partnership. Betty transfers 50 percent of the limited partnership interests in Riverside to Jughead Jones

on July 1, 2014, and later that year transfers another 6 percent of the limited partnership interests, 1 percent to Archie and 5 percent to Veronica Lodge.

### **Analysis**

The initial 50 percent transfer to Jughead does not trigger any additional requirements since, at the time of these transfers, the aggregate amount of investor interests transferred was 50 percent or less. Betty's subsequent transfer of 6 percent limited partnership interests does trigger the conditions of the Rider since at the time of that transfer more than 50 percent of the investor interests in the aggregate have been transferred. In addition, the 1 percent transfer to Archie, making Archie a 25 percent or greater aggregate owner of Riverside, does trigger all the additional requirements under the Rider for owners of 25 percent or more, including payment of the \$15,000 Transfer Processing Fee.

Please contact any Freddie Mac Multifamily Attorney with any questions relating to the Limited Partner and Non-Managing Member Transfer Rider.