Freddie Mac Multifamily — Legal FYI

September 2019

Loan Documents: REMIC and Securitization Requirements

Freddie Mac's business encompasses a securitization business. Rather than held for investment, substantially all of Freddie Mac's Multifamily mortgage loan purchases are intended for securitization in our "K-Deals", "SB-Deals" and other risk transfer and financing vehicles. Therefore, Freddie Mac lenders must comply with our securitization program standards for both origination and servicing of multifamily loans (**Securitization Requirements**).

In addition, the securitization vehicles themselves must be structured to avoid double (corporate-level) taxation, while maintaining flexibility to create cashflows that are desirable to investors under prevailing market conditions. This means that the Real Estate Mortgage Investment Conduit (REMIC) tax structure is the securitization vehicle of choice. However, the Tax Code and rules relating to creation and maintenance of a good REMIC are very specific and must be followed to avoid unfavorable tax consequences. So for tax reasons, there is a second set of origination and servicing standards (**REMIC Requirements**) that Freddie Mac lenders must follow.

The following are some examples where these dual level requirements typically arise in the context of Freddie Mac loan documents. Because of the potential impacts these provisions can have on the Securitization Requirements and REMIC Requirements, Freddie Mac will permit only limited changes (if any) to these provisions (or to any definitions or recourse or indemnification obligations relating to these provisions).

DISCLAIMER: *This Freddie Mac Multifamily — Legal FYI is intended to provide general information regarding the subject matter discussed herein; it is not intended as legal advice, nor does it supersede either the Freddie Mac Multifamily Seller/Servicer Guide or any Commitment or Early Rate Lock Application issued by Freddie Mac.*

REMIC Requirements			
Requirements	**Description**	**Loan Agreement Section(s)**	**Explanation**
125% Loan-to-Value (LTV) Requirement; Loans Must be Principally Secured by an Interest in Real Property	For REMIC-eligibility, at origination, at the time a mortgage loan is contributed to the REMIC, and at other key points, such as modifications or releases, the ratio of the outstanding principal balance of the loan to the "as-is" appraised value of the Mortgaged Property may not exceed 125%. Only real property is considered to determine the value of the Mortgaged Property, not personal property (FF&E) or going concern value (e.g., as seen in Seniors Housing deals).	6.09 – Preservation, Management and Maintenance of Mortgaged Property	Deteriorating property condition/extensive liens can reduce the value of the Mortgaged Property. The provisions in Section 6.09(a)-(d) requiring Borrower to maintain, preserve, and properly manage the Mortgaged Property protect the value of the real property and help ensure compliance with the 125% LTV requirement (esp. for healthcare, hospitality and MHC properties). Alterations of property, especially those involving any release or demolition of collateral, may also affect LTV, so any modifications to the permitted alteration language in 6.09(e) should be reviewed to make sure there are no potential REMIC issues.
		6.10(l)- Lender's Right to Apply Insurance Proceeds to Indebtedness	After a casualty, complete restoration of the Mortgaged Property may not be feasible. If the Mortgaged Property cannot be completely or substantially restored, then the ability for the Mortgaged Property to satisfy the 125% LTV Requirement may be at risk. The provisions in 6.10(l) help ensure compliance with the 125% LTV Requirement after a casualty by allowing Lender to require a pay down of the Loan in certain circumstances.
		6.11 - Condemnation	Condemnation may reduce the value of the Mortgaged Property, possibly putting the 125% LTV REMIC requirement at risk. The qualified paydown/partial release provisions provide a mechanism for satisfying the 125% maximum LTV requirement by reducing indebtedness.

REMIC Requirements			
Requirements	**Description**	**Loan Agreement Section(s)**	**Explanation**
		7.01 - Prohibited Transfers 7.03(c) - Conditionally Permitted Transfers – Category III 7.05 - Lender's Consent to Prohibited Transfers 7.10(d) - Easement, Restrictive Covenant or Other Encumbrance	Transactions such as releases of collateral (partial releases, crossed-loan releases, easements, covenants, encumbrances, etc.) can reduce value of the Mortgaged Property, potentially putting the 125% maximum LTV requirement at risk. REMIC Opinion may be required in some cases.
	Only loans primarily secured by real property collateral satisfy REMIC requirements.	11.12 - Defeasance	Defeasance collateral is not an interest in mortgaged real property, so specific collateral and timing requirements must be satisfied (e.g., no defeasance within 2 years of REMIC start-up date, even for seasoned loans). Definition of Defeasance collateral should not be changed without tax counsel approval, as it is dictated by the Code.

Securitization Requirements		
Topic	**Loan Agreement Section(s)**	**Description**
SPE Requirements	6.13 – Single Purpose Entity Requirements	Other than certain pre-approved items, SPE reps and covenants should not change; SPE covenants must apply for each individual borrower (e.g., crossed loan pools and separate reserves and ground leases for multi-phase/multi-parcel transactions).
Litigation	6.16 – Litigation; Government Proceedings	Major litigation and governmental proceedings like condemnation can affect the value of mortgaged real property and the LTV, so Lender notice is required.
ERISA	6.20 – ERISA Requirements	Failure to meet ERISA requirements may limit the entities to which securities can be sold. Any change to ERISA requirements may need to be disclosed in the securitization offering documents and could negatively affect the marketability of the securities.

Securitization Requirements		
Topic	**Loan Agreement Section(s)**	**Description**
Transfers	7.01 - Prohibited Transfers 7.03(c) - Conditionally Permitted Transfers – Category III 7.05 - Lender's Consent to Prohibited Transfers 7.10(d) - Easement, Restrictive Covenant or Other Encumbrance	Transactions such as transfers, releases and encumbrances may trigger securitization consent rights of the approved directing certificate holders and these rights cannot be changed.
Securitization Indemnification	10.02(d) - Securitization Indemnification	Disclosure about borrower and its operations may be required if a significant concentration of a borrower sponsor's loans is included in a securitization pool; Freddie Mac has securities law liability for material misstatements and omissions in the borrower sponsor's information, so indemnification is required to cover these risks.
Disclosure of Information	11.08 - Disclosure of Information	Disclosure of collateral and borrower information is required during securitization process.
Supplemental Financing	11.11(b)(v) – Supplemental Financing	The provisions in 11.11(b)(v) contain aggregate LTV restrictions for supplemental loans that help ensure compliance with the 125% LTV Requirement.
Lender's Rights to Sell or Securitize	11.13 - Lender's Rights to Sell or Securitize	Borrower must cooperate in the securitization process by providing information and documents to Freddie Mac. In some cases, the borrower sponsor may be required to provide an indemnification for borrower or loan information.
Cooperation with Rating Agencies and Investors	11.14 - Cooperation with Rating Agencies and Investors	Borrower must cooperate in securitization process by answering requests of Rating Agencies and investors.