Freddie Mac MULTIFAMILY

Single Counsel SBL Programmatic Questions/Comments (12.14.18)

Topic	Single Counsel Comment/Question	Freddie Mac Response
Form Documents	Where can one find a discussion of the recent template updates?	See SBL Legal Quick Hits #16 for information about recent loan document changes.
	What is Freddie Mac's process for updating form SBL loan documents?	We update form documents twice a year. A brief explanation of the nature of the updates are communicated through an edition of SBL Legal Quick Hits. If we determine that a form is materially inaccurate between the scheduled updates, we will revise the form and alert Single Counsel (usually through an edition of SBL Legal Quick Hits) that an updated version of that form has been published.
	Why does the Freddie Mac logo appear on the SBL document forms and can it be removed?	This was part of the SBL branding rollout. There are discussions about removing the logo, but there are no current plans to remove it.
	The "Property Name" should be removed from the CEMA note to match the format on the regular notes.	At the request of counsel and our Purchase and Delivery team, all updated forms have reinstated the "Property Name" field.
Electronic Signatures	Acceptance of electronic signatures – i) a status update on Freddie Mac's move towards accepting e-signatures on loan documents (based on the updated loan agreement) and ii) Freddie Mac's position and policy on the use of e-signatures with respect to ancillary closing documents or deliverables (e.g. there has been pushback on the delivery side from the use of e-signatures/Docu-Sign on closing statements and other documents).	For the foreseeable future, wet signatures will continue to be required for all loan documents. The language in the updated loan agreement regarding e-signatures is prospective – once we can accept such signatures, we do not want a loan document update schedule to stand in the way of that future implementation. We have confirmed for the Purchase and Delivery team that e-signatures on settlement statements are acceptable.
Document Automation	What is the status of document automation for SBL documents?	Automation of SBL documents is still in discussion with the business team and pending prioritization as part of our digital transformation initiatives.
Copies vs Originals	At the time of funding can it be confirmed that all signatures are "originals"?	Purchase and Delivery has instituted additional steps to confirm that required loan document signatures are originals as part of their package review. Single Counsel should all be doing the same.
Servicing	When can we expect SBL-specific assumption documents to be posted on the website, even if just on the Single Counsel resources page?	All assumption documents (Conventional and SBL) are being reviewed and restructured, and the plan is to post SBL assumption documents when those new forms are finalized.

Topic	Single Counsel Comment/Question	Freddie Mac Response
	For SBL servicing matters, there is not a form of reaffirmation agreement or amendment to loan agreement like we have for conventional. Should we continue to use the conventional forms and tailor as needed, or are SBL forms forthcoming?	It is a rare case that this is needed, and in those instances, you should adapt the conventional forms.
	Until the new transfer provisions are provided (as previously mentioned by Freddie Mac, they are in the works), Single Counsel is in the dark as to whether certain types of transfers would trigger a full review, including the 1% transfer fee. Is there some sort of outline, or guidance that can be provided to aid single counsel in such initial reviews, and ultimately, in servicing the request?	The new transfer provisions were rolled out in the 10-18-2018 Loan Agreement – SBL. Additionally, for loans on the prior versions of the Loan Agreement – SBL, look for clarifying Servicing Stanard language in the December 15 Guide update on when the 1% Transfer Fee should be applied.
Priority Repairs/Building Code Violations	Building Code Violations – We frequently see that Freddie Mac Underwriters are not only requiring the underlying conditions that give rise to a building violation be remediated, but also that the violation is removed of record prior to rate lock (as opposed to making removal a priority repair). In instances where the Underwriter does make removal of record a priority repair, they also require a repair deposit. This essentially creates a “double dip” because most, if not all, of the fines attached to those violations have already turned into liens on the property, requiring the title company to pick up those amounts at closing to issue clean title. Essentially, we think discussion of how to improve communication between Single Counsel and the Freddie Mac Underwriters is necessary so that we are not notified of this type of issue strictly from the Seller-side. As an aside, Seller-Servicers appear to be having difficulty in addressing Priority Repairs with the Borrower from a servicing perspective post-close, especially considering the repairs are no longer listed in the loan agreement. While the repairs are outlined in the Physical Risk Report and, more likely than not, in the Seller-Servicer’s loan commitment to the Borrower, they come to us for guidance on how to implement or require the Borrower to complete the items considering there is no actual timeframe for completion in the loan agreement.	Removal of the violation from record prior to rate lock should be the standard for code violations. Permitting remediation of <u>only</u> the underlying issues as a Priority Repair is intended for jurisdictions like NYC and Philadelphia where there is a known and significant administrative backlog in processing the remediation paperwork. For more information on best practices for servicing Priority Repairs for SBL Loans, see Freddie Mac Asset Management’s Best Practices for Servicers of Securitized Small Balance Loans (SBLs).
Preferred Equity	When is preferred equity permitted?	Preferred equity is not permitted in SBL. Note that the term “preferred equity” as used in the context of a Freddie Mac loan is very specific. For a description of what constitutes preferred equity, see Section 11.6 of the Guide.

Topic	Single Counsel Comment/Question	Freddie Mac Response
Litigation/Searches	Should SBL Sellers be encouraged to buy their own searches instead of asking counsel to order? Are there alternatives to ordering from First American? How far do criminal and litigation searches have to go back? Some search companies have run searches as far back as 20 years. Is 10 years a reasonable timeframe to cut off searches?	SBL Sellers are encouraged to order the searches. Sellers are not restricted to using First American. However, if an alternative search company is used, please ensure that all the required searches described in Chapter 18SBL and in the Public Record Search Policy Job Aid – SBL posted on mf.freddiemac.com are conducted. The timeframe for litigation searches is 10 years. Certain judgments that occurred prior to that period, as noted in the Form 1115, must still be disclosed by the sponsor on in that form.
	Explain the review standards and expectations for an SBL deal versus a conventional deal – in our experience, seller/servicers have been requesting more information for litigation hits on SBL deals then on conventional transactions. Seller/servicers have advised that we need to prepare formal memos for all litigation hits which are included in the seller/servicer submission package, which can be somewhat time consuming and costly considering the capped fees for SBL transactions.	The review standards are the same. Reasons for the increased number of litigation matters in an SBL loan include: 1) Use of non-SAE borrowers (which triggers identification of litigation matters that would be unrelated in a conventional loan) has a great likelihood of impact in the non-SAE borrower. 2) Lack of overall financial strength of some SBL sponsors (as compared to a conventional loan). See below for a discussion of the memos required for litigation matters.
	Please clarify the idea of "worst case scenario" for litigation matters.	"Worst case scenario" equates to maximum financial exposure. We acknowledge that it cannot always be determined.
	To the extent that we are required to produce PLIMs for litigation matters, where does the line cross over from legal to credit? We are being asked to obtain information that is not readily available, and make a recommendation based on incomplete information. If the ultimate purpose of these PLIMs is to provide as much information as possible, when is enough, enough? At the end of the day, we are tasked to provide as much information as possible, and it should be credit that makes the decision of whether to continue with the proposed loan. Moreover, we are being asked to predict worst-case scenarios of such information. We are not litigation counsel and often feel uncomfortable offering such an opinion. Further,	Please keep in mind that you are also Freddie Mac's counsel. Analyzing litigation is not a pure underwriting exercise. You should provide advice and counsel to Freddie Mac, as your client, to assist us with making what will ultimately be a credit decision. If underlying information is not readily available, please contact Freddie Mac in-house counsel to discuss the specific issues. With respect to PLIMs, the term "PLIM" is often a misnomer. We have traditionally used PLIM for a formal memo about a matter, including

Topic	Single Counsel Comment/Question	Freddie Mac Response
	even in instances where an insurance carrier has agreed to defend a claim (slip and fall), we are being asked to obtain still an estimate of the exposure to the sponsor. The back and forth on these PLIMs is time intensive and candidly, we, as counsel, are playing "bad cop" (nobody likes to hear us say we don't recommend proceeding), on what, in most instances, is a credit decision.	litigation. Formal memos should be uncommon in SBL. Rather, most litigation matters should be addressable in an email to the underwriter. ***In such cases, this email should be uploaded to DMS, and since there is no other title/designation available, it should be uploaded as a "PLIM."*** In the example of a slip and fall, an email stating that Borrower is being sued in connection with a slip and fall that occurred on the property on xxx date, the nature of the injury [if known], the amount of the claim [if known – which should be your worst-case scenario] and that the carrier has assumed defense without reservation is likely enough. For matters more complex than that, Single Counsel should feel free to consult with Freddie Mac Regional Counsel if there are questions.
Paper-lite Delivery	Document Retention – With Freddie Mac's move to the paper-lite deliveries, Seller's no longer deliver original, recorded documents. What are Freddie Mac's expectations with respect to Seller's retention of original recorded documents?	Single Counsel should ask the SBL Seller about its document retention policy and follow that.
Role of Single Counsel/Communication	We think that there needs to be open communication between Production and Single Counsel, especially in instances where pre-screen exception requests are submitted concerning units without certificates of occupancy, TCOs, and litigation. There have been quite a few instances where the Seller has submitted an exception request related to illegal units without our knowledge of the illegal unit or the request. Production has come back with follow-up questions, which Single Counsel would be in the best position to answer. However, we appear to be brought into the situation late in the game resulting in a time crunch between vetting the issue and coming dangerously close to the 35-day timeline for submission. There have also been instances where we have written litigation memos that have been submitted as part of exception requests and there has been follow up by Production, which Single Counsel is not looped in on. We suggest Single Counsel be cc'd on exception requests that could have the potential for follow up required by us.	This is a great point and an outstanding recommendation. We recommend asking Sellers to include you on the submission of these underwriting exception requests. We will also ask our clients to remind Sellers to do this.
	The creation of a regular SBL "newsletter" that discusses unusual transactions and: (i) how issues were identified, (ii) how they were resolved, (iii) what went well in	This is a great idea; the primary issue for us is time and resources. We have taken this request under advisement and are discussing internally.

Topic	Single Counsel Comment/Question	Freddie Mac Response
	that transaction (e.g. open lines of communication, PLIMs were circulated early, etc.) and/or (iv) if applicable, what to avoid or what could be improved on similar transactions in the future.	
	Clarify Single Counsel's and Seller/Servicer's Underwriting's roles in matters such as pending litigation against borrower or guarantor. It should be clear that Single Counsel can evaluate the legal issues and provide possible exposure, recourse, etc. to Seller/Servicer, but ultimately the final decision on these matters should be made by underwriting. In other words, Single Counsel can advise of exposure, but underwriting must decide if the Seller/Servicer is willing to take the risk.	See the response in the "**Litigation**" topic above regarding PLIMs for litigation matters.
Regulatory Agreements	Regulatory Agreement - The guide, regulatory agreement analysis worksheet and loan agreement each offer information as to when a regulatory agreement may be allowed, however, at times they do conflict and we have receiving conflicting information from both Freddie Mac legal and business. We are seeing such an increased volume in regulatory agreement reviews that it would be helpful to have some clearer guidance.	We appreciate the feedback and are following up on this. Anticipate additional details on this issue in Q1 2019.
Product Comparison Grid	Many clients have requested a comparison of SBL to conventional (a grid or cheat sheet) as producers in particular need to explain the differences to borrowers. Is this something that could be provided to us? High level business and legal differences.	There is no comparison chart available at this time, but the term sheets for each product are available on the Freddie Mac Multifamily Products page. We will advise our clients of the interest in this comparison.
Mandatory Title Company List	Has there been any continued discussion about a preferred or mandated title company list? Our biggest struggle on SBL is dealing with unsophisticated title companies. Title policies come back different from the pro forma policies, recordings get messed up, and getting recorded documents back is a painful exercise.	We spent significant time exploring this topic with national title company representatives and Sellers in 2018. It appears that few Sellers have an appetite for either a preferred or required title insurance company list, and those that are interested have already instituted their own requirements.
Commitment	The commitment should be amended to match the order in the loan agreement re: "special purpose" and "required additional" reserves.	We expect to see this change implemented at the end of January 2019. (There is a blackout period from mid-December to mid-January where we are unable to make any changes to the systems that populate our Commitments.
Unpublished Riders	Can a password protected link be created for attorneys who request it, for unpublished riders with the understanding that we would go to Freddie Mac counsel first for approval?	The challenge is that unpublished riders are, by their very nature, evolving documents. Once a rider has been standardized, we make every effort to publish it on our SBL Loan Documents page.

Topic	Single Counsel Comment/Question	Freddie Mac Response
		Currently, we have unpublished riders that cover the following topics – if you have one of these issues, we may be able to provide at least a starting point. Note that in all these scenarios, Freddie Mac counsel should be included in the early conversations. – *Ground lease/leaseback for PILOT arrangements* – *Local housing assistance payment contracts* – *Seismic retrofit* – *Temporary certificates of occupancy* – *Regulatory agreements covering multiple properties* – *MAE with unrestricted ownership* We will include this list on the SBL Single Counsel web page.
Property Self - Management	We are routinely advised by counsel that the property is self-managed, only to find out at the time of commitment issuance that the property is actually managed by an affiliate. If the property is managed by a third-party company or an affiliate, we know a Guide compliant management agreement is needed to close the loan. The production of the management agreement can delay a closing. Is there any guidance or proposed guidance in the works so that all parties are aware of the difference between a self-managed property and one that is managed by an affiliate?	This seems like a good topic to address in Single Counsel's welcome letter to borrower's counsel. We will also ask our clients to follow up with SBL Sellers.
Guaranty	Borrowers and their counsel are often confused by the scope of their obligations under the Guaranty since the document only references sections in the Loan Agreement without any further explanation. Since repeating in the Guaranty the full text of the referenced sections from the Loan Agreement seems cumbersome, perhaps one easier solution would be to at least add the names of the sections after the references to them; e.g., where the Guaranty in Section 5 references Section 6.12 of the Loan Agreement, the text could be revised to read: ". . . Sections 6.12, Environmental Hazards, . . ."	This is helpful feedback. We have added this to our upcoming list of loan document changes.