Issue 14: June 1, 2018

Loan Document Updates

Yesterday, we posted updated versions of several of the SBL Borrower loan documents. You may begin using the updated versions of the SBL loan documents immediately, but we will not require their use on loans with a Commitment Effective Date on or prior to June 29, 2018. The new Currently Acceptable Multifamily Loan Documents – SBL details the changes and when each version of the SBL loan documents may be used.

Below is a summary of the material changes to the SBL loan documents. Redlines comparing the documents to the prior versions are available on the SBL Single Counsel Resources page. If you have any questions regarding the updated SBL loan documents, contact Filicia Davenport (filicia_davenport@freddiemac.com).

Material Updates

- Note Fixed Rate & Note Hybrid ARM
- Loan Agreement
- Guaranty

Non-Material Updates

- Uniform Covenants *(corrects one defined term in Section 3(b)(i))*

New Rider(s) to be Published *(existing SBL concepts, but standardized for publication)*

- Month to Month Leases (Permitting New MTM Leases) Rider to Loan Agreement

Riders to be Retired *(all to-be-retired riders were incorporated into their respective base loan document)*

- *All* Guaranty Riders
  - Foreign Guarantor
  - Expiring Term of Existence
- Foreign Guarantor Rider to Loan Agreement

Key Note Updates (apply to both Fixed Rate and Hybrid ARM)

- **ACH Payment Requirements**
  - Eliminated option for Lender to approve payment by cash, check, or money order. All borrowers must set up ACH payments [§3(d)]
- **Prepayments**
  - Clarified that Lender may apply prepayments to required prepayment charges before applying the prepayment to pay down loan principal [§4(a)] – *alignment with Conventional docs*
  - Clarified that for a full prepayment, if the payment date is a non-business day, then the borrower can prepay as of the immediately prior business day, ***but*** the calculation of a required prepayment charge will be based on the scheduled payment date [§4(c)]
- **Formatting and Use Improvements**
  - Reformatted Section I – Key Terms to eliminate shading for to-be-completed fields to improve readability of scanned documents

Key Loan Agreement Updates

- **Anti-Money Laundering / OFAC Updates**
  - Updated reps at origination and covenants during the loan term to incorporate new requirements for AML/OFAC compliance – alignment with Conventional docs (§§5.23, 5.24, 6.20, 9.02)

- **Transfers**
    - Expanded prohibited transfers section to contemplate changes of control in addition to transfers of the property – changes of control will trigger 1% of UPB transfer fee if approved [§7.05]
    - Clarified that easement reviews do not trigger a transfer review fee or a transfer fee [§7.05]
    - Contemplated a 'series of transfers' for preapproved intrafamily transfers; most often, these estate planning transfers have multiple steps [§7.04] – *alignment with Conventional docs*
    - Specified that converting up to 50% of general partnership or managing member interests to limited partner or non-managing member interests is NOT a prohibited transfer. Any subsequent transfers of those converted interests would be controlled by the documents [§7.02(d)] – *alignment with Conventional docs*

- **Property Improvements**
    - Reorganized and clarified conditions for borrowers who are investing in property improvements [§6.09(d) and (e)]
        - These two sections now spell out when Lender consent IS required and when Lender consent IS NOT required
        - No material change to our position on SBL property improvements, but addition of clarifying pre-conditions and limitations that align with Conventional Property Improvement Alteration concepts will help Borrowers understand what is permitted and when they must seek Lender consent
        - Lender consent required for
            - Converting the use of a unit or common area
            - Modifying the number of bedrooms in a unit
            - Displacing/relocating more than 20% of tenants to renovate
        - Lender consent not required as long as Borrower does not do any of the following – this permitted work is a "**Property Improvement**"
            - Convert use of units/common areas
            - Modify bedroom counts
            - Displace more than 20% of tenants
            - Demolish existing improvements (no taking down buildings)
            - Obstruct tenant access (temporarily or permanently)
            - Adversely affect major building systems
        - If Borrower begins a Property Improvement, it must complete that improvement in good and workmanlike fashion and with the same requirements for any other Priority Repair or Capital Improvement work at the property. If Borrower begins but does not complete a Priority Improvement, Lender has the option to complete the work and add the cost to the loan UPB [§6.14].

- **Recourse**
    - Loss or damages recourse (§ 3.03)
        - Moved "unintentional" material misrepresentation to loss or damage recourse – alignment with Conventional docs
        - Revised non-conforming property carveout to ensure it applies to all non-conforming properties (whether legal non-conforming or simply non-conforming)
        - Re-organized carveouts to logically group similar triggers
        - Moved Foreign Guarantor carveouts from now-retired rider to §3.03(q)
    - Performance and cost recourse (§3.04)
        - Added carveout for cost to Lender for borrower's termination of service agreements (cable, internet, garbage, recycling, landscaping, security, cleaning) – alignment with Conventional docs
    - Full recourse
        - Narrowed written material misrepresentation trigger to "intentional" written material misrepresentation – alignment with Conventional docs

- **Residential Leases**
    - Adjustments to treatment of existing leases at origination – current leases must have a minimum term of one month and a maximum term of two years. [§5.11]
    - Eliminated up to 20% safe harbor for initial term MTM leases
    - Post loan origination, new leases must have a minimum six-month term and a maximum two year term [§6.15]

- New short-term leases during the loan (month-to-month) will now be documented via rider [MTM rider]
    - Expanded the restriction on purchase options in leases to also refer to purchase options that may be associated with the lease even if the term is not in the lease itself [§5.11 and §6.15]
    - Clarified that Borrowers may collect the tenant's expected last month's Rent when tenant begins a new lease – collecting that final month of rent is excluded from our rent prepay prohibition [§5.12]

- **Credit Policy and Other Business Area Updates**
    - Expanded all Stab-Lok provisions to include the panels in addition to the breakers [Article I, Article III, §6.09(j)]
    - Eliminated automatic requirement for MMPs [§6.09(f) and Article I]
        - If an MMP is required, it is documented with the O&M Program requirements in Article I
        - Alignment with Conventional docs
    - Added crowdfunding restrictions [§§5.25 and 6.21] – *alignment with Conventional docs*
    - Eliminated requirement to pay insurance premiums 30 days prior to expiration date [§6.08(b)] – alignment with Conventional docs
    - Added "named storm" to list of Property Insurance [§6.10(b)] – *alignment with Conventional docs*
    - Added opportunity for Borrower to contest governmental or judicial orders related to environmental cleanup obligations; requires Borrower to escrow funds with Lender to cover the potential cleanup [§§6.12(a) and (g), 7.01(i)] – *alignment with Conventional docs*

- **Formatting and Use Improvements**
    - Reformatted Article I – Key Terms to eliminate shading for to-be-completed fields to improve readability of scanned documents
    - Moved Notice addresses to the signature page to aid in document preparation
    - Moved descriptions of borrower entity requirements for TICs and co-borrowers that own separate parcels from the respective riders to Article I to clarify requirements for those structures

- **Other Improvements and Clarifications**
    - Clarified that any liens for work at the property at origination must be **both** disclosed to/approved by Lender **and** insured over by the title policy (§5.06)
    - Limited Borrower's rep that commercial tenants have all necessary licenses, permits and authorizations to "knowledge" – alignment with Conventional docs (§5.09)
    - Clarified Borrower may maintain books and records at its main business office (§6.07(a)(i))
    - Clarified that only entity Guarantors must provide balance sheet/profit and loss statement when requested by Lender; Guarantors who are natural persons must only provide personal financial statements (§6.07(e))
    - Incorporated requirements for Foreign Guarantors and entity Guarantors with terms that expire prior to loan maturity into the base loan agreement – improves transparency for borrowers and simplifies document preparation [§§8.01(q) and (r), 3.03(q) – eliminated two Loan Agreement riders and one Guaranty rider]
    - Clarified that if Lender requires Borrower to correct a document for securitization, that correction will not change the essential economic terms of the loan as specified in the commitment [§10.14] – *alignment with Conventional document* concept, but the SBL provision accounts for the occasional need to make corrections to the Note terms prior to a securitization, so the borrower protection ties back to the commitment rather than the terms in the Loan Documents.
    - Added definitions and other terms related to E-signatures. We are not yet ready to accept E-signed loan documents, but having this concept in place in the Loan Agreement will enable us to make incremental movements on E-signature acceptance without needing to stop and modify the form loan documents [§10.25] – *alignment with Conventional docs*

Key Guaranty Updates

- Incorporated requirements for Foreign Guarantor or entity Guarantor with a term expiring prior to loan maturity into the base document and eliminated both riders [§13 and §14]
- Clarified community property state requirements and put the burden of identifying the guarantor and guarantor spouse's state of residence on the guarantor [§26]
- Added notice requirements that tie back to the Loan Agreement [§24]
- Eliminated ALL riders to the Guaranty; now, like the Note, there will be no riders to the Guaranty