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New Fannie Mae rules hurt condo buyers, sellers, developers

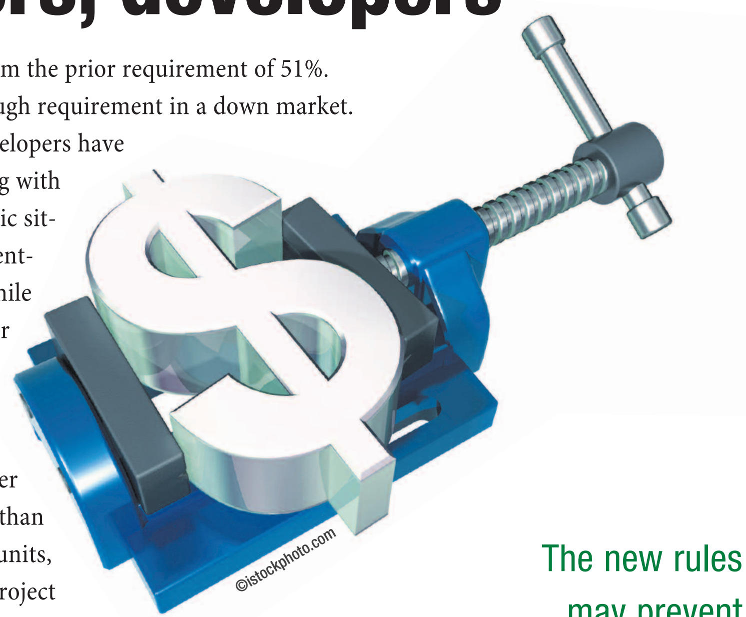
New rules issued by Fannie Mae are making it harder for people to get mortgages for condominium units, particularly when the condo is new construction or a new condo conversion.

The rules are designed to reduce the risk of foreclosures. However, they come at a bad time, because the real estate market is slow and many people have already been having more trouble getting mortgage loans.

Fannie Mae can't tell lenders what to do, but Fannie repurchases a huge percentage of mortgages, and many lenders are unwilling to offer loans unless they can turn around and resell those loans to Fannie. So when Fannie tightens its eligibility for repurchases, it makes lenders less willing to offer loans.

Here's a summary of the new rules. In general, Fannie will no longer repurchase a mortgage from a lender unless:

70% of a new condo project has already been sold or is under contract. This is an increase from the prior requirement of 51%. This is a tough requirement in a down market. A lot of developers have been dealing with the economic situation by renting units while they wait for them to sell. However, if a developer rents more than 30% of the units, the entire project may be ineligible for Fannie approval as long as those leases are in effect.



Some developers and buyers will be caught in a "Catch-22," because even if a developer has 51% of the units under contract, some of those contracts might expire before the developer hits

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The new rules may prevent foreclosures, but they come at a bad time.

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the 70% threshold, because they can't be closed without Fannie approval. So trying to reach 70% will feel like running up a down escalator.

At least 80% of the project is residential space. This is bad news for mixed-use developments, which combine residential units with hotels, restaurants, shops or office space.

The irony is that this type of "smart growth" development is exactly what many communities have been encouraging developers to create. They want people to live, work and play in the same area, in order to reduce traffic congestion and pollution.

No one person or entity owns more than 10% of the units. This is a problem for some condos that are newly built or converted. When a condo project first becomes available in a down market, savvy real estate professionals will often buy up a chunk of the units, with the idea of selling them later when the market recovers. Under this rule, even if a developer can persuade an investor to buy more than 10% of the units, it might be reluctant to do so because it will preclude Fannie eligibility. And in a building where an investor has already purchased more than 10% of the units, other owners might find it difficult to sell their units until the investor has begun unloading his or hers.

No more than 15% of the units are more than 30 days late on their condo dues. The previous rule was 15% of total fee payments, not 15% of units, and it didn't apply to new projects.

Other new Fannie requirements include:

- Condos with 20 or more units must have fidelity insurance. This is true even for established projects.
- Borrowers must buy an individual condominium owner's insurance policy (known as an HO-6 policy), unless the condo's master policy covers the interior of the units. Coverage must be for at least 20% of assessed value.
- At least 10% of budgeted condo income must be earmarked for the reserve fund.
- New projects must have a reserve fund adequate to cover the insurance deductible.

Finally, Fannie says that developers and sellers cannot get around any of its requirements through strategic negotiating. For instance, if a buyer doesn't meet the requirements, sellers cannot "fudge" this by means of "builder/developer contributions, sales concessions, [condo fee] or principal and interest payment abatements, and/or contributions not disclosed on the HUD-1 Settlement Statement."

In general, these new rules will be a significant stumbling block for condo buyers, sellers and developers.

The only people who appear to benefit would be sellers of single-family homes. The reason: Many buyers who could otherwise easily qualify for a mortgage on either a home or a condo will be unable to qualify for a condo loan simply because of the way the condo is set up. This could make a single-family home purchase more appealing.

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Americans spend too little time researching home loans

A home is usually the most expensive purchase people ever make. And as we've all learned recently, mortgage loans can be complex and a poorly chosen mortgage can cause many problems down the road.

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And yet, Americans spend very little time researching a mortgage.

The average homebuyer spends only five hours choosing a home loan and gets only three quotes, according to a recent online survey of nearly 3,000 purchasers by Zillow.com.

More than 30% of purchasers spend two hours or less.

By contrast, Americans typically spend 10 hours researching a car purchase, five hours planning a vacation, four hours deciding what computer to buy and two hours shopping for a television.

Zillow points out that a half-point difference in a mortgage rate for a $300,000 home with 20% down means a savings of $26,000 over the life of the loan. For that kind of money, it's worth putting a little extra effort into making sure you're getting the best deal!

Can landlords, condos ban oxygen users from smoking?

People who use oxygen for medical reasons often smoke as well. (Frequently, smoking is the reason they have respiratory problems that require oxygen.) The problem is that smoking and oxygen are a dangerous combination. Oxygen accelerates fires and can turn a cigarette ember into a serious flame. Even after the oxygen is turned off, gas that has accumulated in a room or on a person's clothing and hair can trigger a conflagration.

For this reason, many landlords and condominium associations would like to ban smoking in units where someone uses oxygen. But is this legal?

The benefits of a ban are obvious: It reduces the likelihood of a fire causing property damage or physical injury to a resident or neighbor, along with possible resulting lawsuits.

In most cases a condo association can probably impose such a ban, although it's not clear whether this can be accomplished by a vote of the trustees or whether a change in the bylaws is necessary.

It may be trickier for a landlord to impose such a ban. The easiest way is to put such a provision in a lease. However, what if a tenant has already signed a lease without the provision in it? The landlord can wait until the lease renews, but if the landlord feels there is a serious danger, waiting might not be a good option.

Many apartment leases allow the landlord to impose reasonable rules that don't specifically violate the lease terms, and many also prohibit tenants from engaging in actions that cause a threat of physical harm. So a landlord might be able to rely on these provisions.

A tenant, however, could argue that such a ban amounts to disability discrimination. If the tenant has emphysema or another serious respiratory problem, that could be considered a disability. And if the tenant is being denied a privilege (smoking at home) that every other tenant has, simply because of his or her disability, that could be discrimination.

The best approach might be to find a reasonable accommodation for the tenant. For instance, there might be a covered area outside where tenants could go to smoke – as long as they don't bring their oxygen with them.

Lead paint can be dangerous…to real estate investors

A recent case from Maryland's highest court shows that even people who deal with real estate simply as investors can be held liable for lead paint problems.

The case involved a Maryland company that bought tax liens. The company's business model was to buy liens, foreclose on delinquent properties, then sell them "as is" at a profit. The company was organized as a limited liability company, or LLC.

In one case, the LLC foreclosed on a home in Baltimore. Sometime after the foreclosure it became aware that the former owner had rented the house to a family. The LLC demanded that the family leave, but the family members refused. So the LLC took the family to court and won its eviction case.

The family then turned around and sued the manager of the LLC personally, claiming that the children in the house had developed lead poisoning.

Under a Baltimore city law, a lead poisoning claim can be brought against anyone who "owns, holds, or controls" the title to a home.

The Maryland high court determined that the manager "controlled" the title to the home, and therefore could be sued … even though he never set foot on the property, didn't know the family was there when it was foreclosed upon, and went to court to try to remove the family once he found out.

In addition, the manager could be personally liable as someone who "controlled" the title, even though the property was owned by the LLC, not by the manager personally.

This is an unusual case, and the law varies across the country. But it goes to show that people who dabble in real estate investing should be wary of claims for lead paint and other unknown environmental problems, and should consult a lawyer about ways to protect themselves.

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FHA-insured condo loans may take longer to be approved


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Mortgages insured by the Federal Housing Administration help many people to buy a home who couldn't do so otherwise. That's because lenders are often willing to loan to people with less of a down payment because the loan is insured by a federal agency.

However, the FHA has just made it more difficult to obtain an insured condo loan.

Generally, the FHA can insure a loan only if the condo project has been approved by the Department of Housing and Urban Development, or HUD.

In the past, if a lender wanted to issue a loan for a condo project that wasn't HUD-approved, it could use a process called "spot approval." Essentially, the lender would analyze the project using guidelines provided by HUD, and if the project met the HUD criteria, the lender could okay the loan.

As of February 1, 2010, though, HUD has done away with spot approvals. That means that loans can't qualify for FHA insurance unless HUD formally approves the project, which can take quite a bit longer than a simple spot approval.

In addition, the FHA now says that it will no longer insure condo loans if 30% or more of the units in the project already have mortgages that are FHA-insured. This means that many condos will now be ineligible for FHA-backed loans until some of the owners move or pay off their mortgages.

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