



Should Your Condominium Community be Approved for FHA Loans?

As many of you may be aware, the Federal government passed the Housing and Economic Recovery Act of 2008. As part of the Act, the Federal Housing Administration (FHA) implemented a new approval process and requirements for FHA loans in condominium communities. The new requirements are addressed in the US Department of Housing and Urban Development (HUD) Mortgage Letter 2009-46B. Subdivisions are not subject to these requirements and do not require FHA project approval for loans in the community. These requirements apply only to condominiums.

Since the adoption of the new requirements, there has been a rush among condominiums to get "FHA-approved," with many new companies popping up with promises of getting FHA approval for condominiums. However, the new requirements for FHA approval can be confusing for some associations, and errors or misrepresentations in the process can result in severe sanctions. For this reason, many of our condominium clients have turned to us to clarify the current requirements and assist with the application process. Below we explain the basic requirements of the approval process and answer the common questions that we are hearing from our condominium clients.

Under the new procedures, "spot" approval is no longer permitted, and loans will only be approved for units in communities which have received

"project" approval. Spot approval was the practice of approving a specific loan for a specific unit, one unit at a time, and spot approval was the norm throughout the 1990's and early 2000's. Project approval, which is now required and was the norm before the 1990's, is the approval of the condominium property as a whole. Under the current FHA rules, a loan on a specific unit will not be approved unless the entire community has obtained project approval.

Project approval is available for existing, conversion and new construction condominiums. "Existing Condominiums" are defined as those whose buildings were constructed as condominiums, and all units, common elements and improvements have been completed for over one year. "Conversion Condominiums" are defined as those constructed for some use other than condominiums, but converted to condominium use.

In order for HUD to process a request for project approval, the Association must submit documentation evidencing the fact that the condominium meets all of the Project Eligibility Requirements set forth in HUD's Mortgage Letter 2009-46B for Existing Condominiums. The condominium must not be subject to the possibility of further expansion by the developer. While there are a number of other significant requirements, the basic requirements for HUD approval of Existing and Conversion Condominiums are as follows:

3520 Piedmont Rd
Suite 415
Atlanta, GA 30305
P: 404.350.1192
F: 404.350.1193

Visit us at:
condoandhoalaw.com

We Understand Community Associations.

Lazega & Johanson LLC is a law firm dedicated to representing community associations. We believe in building and maintaining long-lasting relationships with community associations and their managers by providing personal attention and superior services. We take pride in being a part of the team of experts you rely on to ensure the successful operation of your community.

**3520 Piedmont Rd
Suite 415
Atlanta, GA 30305
P: 404.350.1192
F: 404.350.1193**

Visit us at:
condoandhoalaw.com



Insurance Requirements: The Condominium must be covered by hazard and liability insurance and, when applicable, flood insurance. Existing Condominiums of 20 units or more must also carry a fidelity bond or fidelity insurance covering all officers, directors, employees or agents handling or responsible for Association funds, in an amount equal to three months' assessments on all units plus the amount of reserve funds.

Commercial Space: No more than 25 percent of the condominium's total floor area can be used for commercial purposes, and the commercial portion, if any, must be of a nature that is homogenous with residential use and free of adverse conditions to the occupants of the units;

Investor Ownership: No more than 10 percent of the units may be owned by one investor. For condominium projects with ten or fewer units, no single entity may own more than one unit;

Delinquent Assessments: No more than 15 percent of the total units can be (more than 30 days past due in the payment of assessments);

Owner Occupancy Ratios: At least 50 percent of the units in the condominium must be owner-occupied or sold to owners who intend to occupy the units. Vacant units are deemed to be "owner-occupied;"

Budget: The annual budget must: (a) include allocations/line items to ensure sufficient funds are available to maintain and preserve all amenities and features unique to the condominium; (b) provide for the funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 10% of the budget; and (c) provide adequate funding for insurance coverage and deductibles; and

Reserve Study: If the budget does not meet the foregoing standards, then, in order to ensure that the budget includes sufficient funds to maintain and preserve the amenities, a capital reserve study, **no more than 12 months old**, is required.

To show that the condominium meets the above criteria, the Association must provide HUD with several supporting documents, including, a complete list of members of the Association, a list of the total number of leased units, delinquency reports, budgets, insurance policies, flood certifications, management agreements, and governing legal documents.

Once approved, FHA loans are permitted on up to 30% of the units.

Once a condominium has been approved, a lender seeking an FHA backed loan on a unit within the condominium must certify that it has reviewed and verified the condominium's continued compliance with the initial requirements concerning investor-ownership, delinquencies, owner-occupancy rates and FHA loan concentration rate. Once FHA project approval is received, it is good for two years. After two years, the condominium must be re-approved.

Some associations have asked us if it is worth the effort to obtain project approval for their community. The answer depends on the goals and perceptions within your community. Clearly, there are significant benefits to FHA approval, the most obvious being that it provides another option for financing to potential purchasers, as well as options for refinancing for existing owners. FHA loans also offer the attractive benefit of 96.5% financing for some borrowers. In a difficult economic environment, more options can mean more potential purchasers, which may mean quicker sales at better prices. FHA loans may also benefit current owners who may be looking to refinance in order to obtain lower monthly payments and avoid foreclosure.

However, some associations have concerns that, if owners are allowed to put as little as 3.5% on a home by obtaining an FHA loan, compared to the 10% to 20% common with conventional loans, the community may attract owners who are not really able to afford the home. While this could be a concern in some communities, we have been able to work with many boards to address some of these concerns through creative amendments to an association's governing legal documents.

If your condominium community would like to discuss FHA approval requirements or apply for FHA project approval, we encourage you to contact us for assistance with the process. □

The information contained on this site is provided for informational purposes as a service to the Internet community, and does not constitute legal advice. The use of this site or other communication with us does not create an attorney-client relationship. You should not act upon this information without seeking professional counsel. If you have confidential information do not provide it to us until we agree in writing to represent you for that matter. Unless you have received such a written agreement, we will not consider any correspondence, emails, or other communications you send us as confidential. Even if you receive such an agreement, you should note that email may be intercepted by others. You should therefore consider using other means to send sensitive or confidential information.

We try to provide quality information, but we make no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in or linked to this web site. Web links are provided to help you locate other Internet resources that may be of interest to you, and are not endorsements or approval of any information, products or services in the sites. In addition, laws and opinions are subject to change depending on changes in statutes or case law. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel.