Projects that Operate as Hotels or Motels

A project may not be operated or managed as a hotel, motel, or similar commercial entity as evidenced by meeting one or more of the following criteria:

- The HOA is licensed as a hotel, motel, resort, or hospitality entity.
- The HOA or project's legal documents restrict owners' ability to occupy the unit during any part of the year.
- The HOA or project's legal documents require owners to make their unit available for rental pooling (daily or otherwise).
- The HOA or the project's legal documents require unit owners to share profits from the rental of units with the HOA, management company, or resort, or hotel rental company.

In addition to the requirements above, any project with one or more of the following characteristics is ineligible. The project

- is primarily transient in nature;
- offers hotel type services (including those offered by or contracted through the HOA or management company) or characteristics such as registration services, rentals of units on a daily or short-term basis, daily cleaning services, central telephone service, central key systems and restrictions on interior decorating;
- is a conversion of a hotel (or a conversion of a similar type of transient housing) unless the project was a gut rehabilitation and the resulting condo units no longer have the characteristics of a hotel or similar type of transient housing building;
- is subject to voluntary rental-pooling, revenue, profit or commission sharing agreements with the HOA or management company, or similar agreements that restrict the unit owner's ability to occupy the unit such as blackout dates and occupancy limits to assure an inventory of units for rent on a frequent basis. This may include daily, weekly, monthly or seasonal restrictions;
- is professionally managed by a hotel or resort management company that also facilitates short term rentals for unit owners or projects with management companies that are licensed as a hotel, motel, resort, or hospitality entity;

- is deemed to be ineligible under Freddie Mac's requirements because of condo hotel, resort, transient or short-term rental activity;
- has a legal or common name that contains hotel, motel, or resort, unless the use of hotel, motel, or resort is a reference to a historical use of the building and not reflective of its current use as a residential condo or co-op project;
- is marketed as a hotel, motel, resort or investment opportunity; or
- has obtained a hotel or resort rating for its hotel, motel, or resort operations through hotel ratings providers including, but not limited to, travel agencies, hotel booking websites, and internet search engines.

The following criteria are examples of some common red flags. The lender should perform additional due diligence of the project when any of these characteristics are present:

- more than 75% or more of the units are owned as investment and second home occupancy - especially when the loan transaction is not a principal residence transaction;
- units that do not contain full-sized kitchen appliances;
- advertisements for daily or short-term rental rates;
- franchise agreements;
- location of the project in a resort area;
- units that are less than 400 square feet;
- amenities that are common in hotels or resorts including spa services, concierge services, rentals of recreational equipment or amenities, childcare services for short-term renters, scheduled social or entertainment activities for short-term renters, airport shuttles, ski lift shuttles or ski lift and trail passes, or other vacation amenities and packages; or
- interior doors that adjoin different units.

Projects Subject to Split Ownership Arrangements

Projects with covenants, conditions, and restrictions that split ownership of the property or curtail an individual borrower's ability to utilize the property are not eligible for delivery to Fannie Mae. These types of properties include, but are not limited to, the following:

- "common interest" apartments or community apartment projects that are projects or buildings owned by several owners as tenants-in-common or by an association in which individuals have an undivided interest in a residential apartment building and land, and have the right of exclusive occupancy of a specific apartment in the building;
- projects that restrict the owner's ability to occupy the unit, even if the project is not being operated as a motel or hotel; and
- projects with mandatory rental pooling agreements that require unit owners to either rent their units or give a management firm control over the occupancy of the units.
    - These are formal agreements between the developer, association, and/or the individual unit owners that obligate the unit owner to rent the property on a seasonal, monthly, weekly, or daily basis. In many cases, the agreements include blackout dates, continuous occupancy limitations, and other such use restrictions. In return, the unit owner receives a share of the revenue generated from the rental of the unit.

If the commercial or mixed-use space is…	Then its square footage is included in the calculation of commercial space percentage
owned, controlled, or operated by a private entity that is co-located in the building(s) that contain(s) the project's residential units **Example:** • floors 1 to 4 consist of hotel and retail, • floors 5 to 7 consist of privately-owned and -managed rental apartments, and • the remaining floors consist of the condo project units.	Yes
owned, controlled, or operated by a private entity that is NOT co-located in the building(s) or common elements as declared in the project legal documents that contain(s) the project's residential units	No
owned and controlled by a project HOA other than the subject property's HOA that shares the same master HOA with the subject property's HOA BUT the commercial space is located in a building that is separate from the building(s) containing the project's residential units	No

Recreational Leases and Mandatory Memberships

Loans securing units in condo and co-op projects with mandatory memberships that require the HOA or co-op members to pay dues to a third-party organization (such as a golf course or other recreational facility) are ineligible for sale to Fannie Mae. The project must be the sole owner of its amenities, though certain exceptions will be allowed when there is a shared amenities agreement between HOAs or co-op projects.

Projects subject to recreational leases are also not eligible. A recreational lease is a long-term lease between the HOA and a third party for access to certain recreational facilities for a specified time period and payment. In these scenarios, the owner of the facilities is often the project's developer or has some financial relationship to the developer and the leases often provide ongoing profit to this party for the duration of the lease. The lease may permit the owner of the facilities to lease the amenities to other parties in addition to the HOA or co-op. The HOA or co-op may have certain financial, insurance, and other legal obligations under the lease that may be burdensome over time. These leases may or may not provide the project long-term access to the amenities beyond the initial lease term.

When an HOA is part of a master association, the lender is required to evaluate whether the subject property's HOA members are required to participate in a mandatory membership that is managed through the master association. Additionally, the master association may not be subject to recreational leases as described above.

Lenders are encouraged to review the project's legal documents, sales contract, and budget to identify mandatory memberships and recreational leases. Some red flags that a project may require a mandatory membership, or be a party to a recreational lease, is that the amenities may have some of the following characteristics:

- the amenities have a different name from the residential project and may be recognized as a different legal entity from the HOA,
- owners are required to pay large up-front fees to become a member or have access to the amenities,
- owners are required to pay monthly or periodic dues to the entity that owns or operates the amenities (these dues may be paid directly to the owner or operator or they may be paid to the HOA and passed through to the owner or operator),
- the general public may be able to purchase memberships or access passes for the use of the amenities,
- the amenities can be leased or rented to the public for events not hosted by the HOA or its members, or
- HOA members may be subject to block-out dates or other use restrictions.

Live-Work Projects

Live-work projects are projects that permit individual residential unit owners to operate and run a small business from their residential unit. Units in projects that permit live-work arrangements are eligible for sale to Fannie Mae provided the project complies with all applicable local zoning, program, or statutory requirements for live-work projects and the nature of the project is primarily residential.

Litigation or Pre-litigation Activity

Projects in which the HOA or co-op corporation is named as a party to pending litigation, or for which the project sponsor or developer is named as a party to pending litigation that relates to the safety, structural soundness, habitability, or functional use of the project are ineligible for sale to Fannie Mae.

If a lender discovers that a project is engaging in pre-litigation activities (such as, but not limited to, arbitration or mediation) that are reasonably expected to proceed to formal litigation; the lender must apply Fannie Mae's litigation policies. Whether the legal action is resolved through arbitration, mediation, or it proceeds to litigation, there is risk that the project is exposed to material financial hardship related to the matters addressed in the complaint.

If the lender determines that pending litigation involves minor matters with no impact on the safety, structural soundness, habitability, or functional use of the project, the project is eligible provided the litigation meets one or more of the following:

- non-monetary litigation including, but not limited to neighbor disputes or rights of quiet enjoyment;
- litigation for which the insurance carrier has agreed to provide the defense, and the amount is covered by the HOA's or co-op corporation's insurance;
- the HOA or co-op corporation is the plaintiff in the litigation and upon investigation and analysis the lender has reasonably determined the matter is minor and will result in an insignificant impact to the financial stability of the project;
- the reasonably anticipated or known damages and legal expenses are not expected to exceed 10% of the project's funded reserves;
- the HOA or co-op corporation is seeking recovery of funds for issues that have already been remediated, repaired, or replaced and there is no anticipated material adverse impact to the HOA or co-op corporation if funds are not recovered;
- litigation concerning localized damage to a unit in the project that does not impact the overall safety, structural soundness, habitability, or functional use of the project; or