

# HOA Lending and New FHA/HUD Guidelines

Webinar

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# Overview

- Review Levels of Authority Re Borrowing
- New FHA/HUD Guidelines
  - What We Know
  - What We Don't Know
  - Compare “Old v. New”
- Non FHA Condo Guidelines

# Levels of Authority Re Borrowing

- Governing Documents

- Statutory

“Make contracts and incur liabilities;”

“Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;”

- WA: WCA (RCW 64.34.304); HOA Act (RCW 64.38.020)

- OR: OCA (ORS 100.405); PCA (ORS 94.630)

- Further limitation on authority to sell or transfer common property (ORS 94.655)

“Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides”

# Levels of Authority Re Borrowing (cont'd)

- Association vote? . . . Purpose of loan?
- Procedure

# What We Know

- HUD Mortgage Letter 2009-19
- ???
- When approval is required
- No more “spot approvals”
- Uncertainty in adoption of new regs
- New certification process
- 30% cap on FHA loans per project
- 25% cap on total floor area used for commercial space

# What We Know

- At least 50% of units must be sold (including presales)
- At least 50% of total units must be owner occupied or sold to owners who intend to occupy the unit
- A current reserve study must be performed (not more than 12 months old)
- Project approvals will expire every two years requiring re-approval
- Established Projects
  - Fannie Mae – 90% sold and turnover has occurred
  - HUD/FHA – Turnover must occur no later than the earlier of: (a) 1 year following first unit conveyance; or (bi) 120 days > 75% of units are conveyed
- Environmental Reviews required unless DELRAP

# What We Know

- New Projects
  - Must have reserve study
  - Budgets must include reserve allocations. Adequacy determined by field office.
- Established Projects
  - Conversions
    - New Projects – Reserve Fund must be 100% funded
    - Established Conversions – Reserve Fund must be 60% funded
  - Non-Conversions
    - Reserve Fund must be 60% funded and study not less than 12 months old
    - Current Operating Budget
    - Balance Sheet showing reserve funds in separate bank account

# What We Don't Know

- Who can submit certification package?
  - Lenders? Developers?
  - Role of legal counsel
- Reserve account funding (60%? ... 100%?)
- Status of current approved projects?

# Comparison

Old Regulations	New Regulations
Spot Approval	Comprehensive Approval
Attorney Opinion Letter in support of certification package	Lender Certification? (following Fannie Mae/Freddie Mac)
--	Require COAs to compile & maintain “underwriting” docs
--	Inconsistencies between Fannie Mae, Freddie Mac, VA and FHA
HUD review and approval	Two Approval Process Options: (1) HUD Review and Approval Process (HRAP); (2) Direct Endorsement Lender Review & Approval Process (DELRAP)
No max level of assessment delinquencies	≤ 15% past due assessment cap (30 days)

# Project Approval Items

- All Condominium Legal Documents
- Recorded Plat Map indicating Legal Description
- Recorded Covenants, Conditions and Restrictions (CC&R's)
- Signed and Adopted Bylaws
- Articles of Incorporation filed with the State
- Recorded Condominium Site Plans
- Plan or Evidence of Transfer of Control
- Proposed or Actual Budget

# Project Approval Items

- Reserve Study
- Management Agreement, if applicable
- Equal Employment Opportunity Certificate (Form HUD 92010)
- Affirmative Fair Housing Marketing Plan or Voluntary Affirmative Marketing Agreement (VAMA)
- FEMA Flood Map
- Estimated Construction Completion Date
- Outstanding or Pending Litigation Analysis
- Pending Special Assessment Analysis

# Non-FHA Condo Guidelines

- ???

- Fannie Mae / Freddie Mac

- Fannie Mae Guidelines

- Announcement 08-34 December 16, 2008*

- <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2008/0834.pdf>

- 51% owner-occupancy rule

- Relatively straight forward

- 10% of assessments allocated to reserves

- No more than 15% of units can be more than 30 days delinquent

- Aim for FHA

# Questions?



**BARKER · MARTIN**

CONSTRUCTION DEFECT  
AND  
HOMEOWNER ASSOCIATION ATTORNEYS

*A Professional Services Corporation*

# Community Association Borrowing

April Ahrendsen

Regional Account Executive

Community Association Banc

A faint, stylized background image of two hands shaking, rendered in a light teal color against the darker teal background. The hands are positioned horizontally across the middle of the slide, with one hand on the left and one on the right, palms facing each other.

# Why is it important for an association to know where it is...

- Pending FHA/HUD Requirements
- Develop a realistic plan of action
- Property Values
- Build confidence in the community leadership



# Get the entire Board Involved



# Help them correct the course now!

- Review Reserve Study with Board
- Help Board create a plan to FUND reserves
- Determine maintenance schedules for all components and add to annual calendar
- Evaluate their spending on Band-Aid repairs vs. correction of problem
- Use Strategic Planning for future component repairs/replacements

# Underfunded...

- Special Assessment
- HOA Loan ...
  - a) Complete a repair, maintenance, or replacement
  - b) Complete pending replacement

# Advantages – Disadvantages of Borrowing Money

- Advantages
  - a) Downward slide of property values slowed or eliminated
  - b) Needed repairs/improvements are completed quickly
  - c) Reduced financial impact on homeowners
- Disadvantages
  - a) May increase monthly assessments
  - b) Interest costs incurred may be high

# HOA LOANS

- How is the loan secured?
- Does the Association have the ability to borrow?
- Membership approval



# General Loan Terms

Term = one to fifteen years

Fixed and variable interest rates

Loan Origination Fees

No Prepayment penalties

Structure – “Non-revolving” Line of credit vs. Fixed term loan

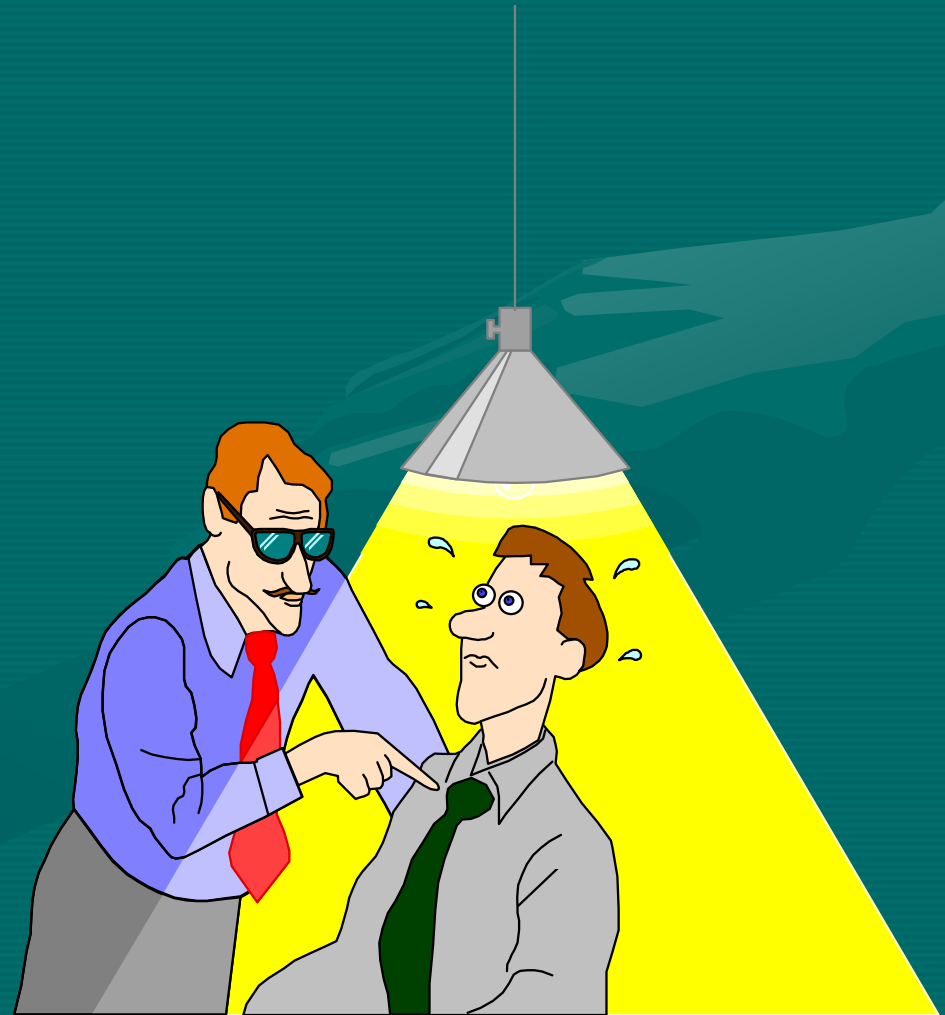
Reduced rates or loan origination fee by placement of funds within financial institution \*

\*\*\*fund placement only for rate reduction typically not requirement unless special situation



# When selecting a lender. . . Ask the following:

- How long have they been offering loans to HOAs?
  - The more experience the better.
- How long will the loan approval process take?
  - What are the “normal” rates, loan fees, and terms?
  - These all vary depending upon amounts, terms, and risks.
  - Are there deposit requirements?



# What does the Lender look for to approve your loan?

- Size of the HOA
- Cash Flow
- Reserve Study\*
- Delinquencies\*
- Delinquency Policy\*
- Financial Documents
- Stability\*
- Professional Management

\* = Key Points



# Common Questions

- Does the bank put liens on individual units?
- Do board members sign the note as individuals or as officers of the corporation?
- Do the homeowners make their portion of the loan payment directly to the bank?
- Does the bank want the associations reserve & operating accounts?
- Is it possible for only some owners to pay over time with others selecting to pay a one-time assessment?

# Common Questions

- If the payment were defaulted, would a lien be placed against the property of all owners or against those who had elected to pay overtime?
- Is a proportional interest on the loan tax-deductible by each owner?
- Is there any tax advantage to the HOA?

# Special Assessment vs. Increasing Annually Examples

Current Assessment	\$272.04
20% increase 2008	54.41
New Assessment	\$326.45
20% increase 2009	65.29
New Assessment	\$391.74
20% increase 2010	78.35
New Assessment	\$470.05

Within 3 years your assessment increased \$198.01!  
With the repairs still incurring cost increases.

# Continue...

Current Assessment	\$341.72
20% increase 2008	68.34
New Assessment	\$410.06
20% increase 2009	82.01
New Assessment	\$492.07
20% increase 2010	98.41
New Assessment	\$470.05

Within 3 years your assessment increased \$250.76!  
With the repairs still incurring cost increases.

# Continue...

Current Assessment	\$411.40
20% increase 2008	82.28
New Assessment	\$493.68
20% increase 2009	98.74
New Assessment	\$592.42
20% increase 2010	118.48
New Assessment	\$710.90

Within 3 years your assessment increased \$299.50!  
With the repairs still incurring cost increases.

?

?

Questions & ?

Answers

