

CAI Members Meet with FHA to Discuss Condominiums

On January 7th, a delegation of CAI members met with policymakers at the Federal Housing Administration (FHA), presenting the agency with practical difficulties condominium associations face when qualifying for FHA's condominium mortgage insurance program. CAI's member delegation focused on three problem areas that are preventing homeowners in many condominium associations from using FHA programs:

- Deed Restrictions on Investor-Owned Units & Owner Occupancy Requirements
- Lease Term Restrictions and Room Occupancy Limits
- Restrictions on Condominiums with Affordable Housing Units

The meeting was productive, offering CAI's member delegation the opportunity to directly engage with policymakers and see first-hand the commitment of FHA staff to support affordable and sustainable homeownership opportunities for all Americans. Likewise, it was helpful for FHA staff to engage in a thorough discussion with industry practitioners to improve their understanding of how certain program rules have become an impediment for households living in condominiums.

CAI anticipates future opportunity for members to engage with FHA staff to improve compliance with FHA program requirements and to inform the agency of how its requirements are helping or harming the condominium real estate market. CAI staff will work with FHA in the coming months to design efficient and effective forums to facilitate an ongoing conversation between CAI's members and agency staff.

Brief descriptions of major topics covered in today's meeting are below.

FHA is crafting new condominium program guidance

FHA staff disclosed the agency is developing comprehensive guidance for its condominium mortgage insurance program. The release of the guidance is anticipated to be June, 2011, coinciding with the conclusion of FHA's newly announced [extension period for ML 2009-46A](#). The new guidance will supplant most existing FHA condominium mortgage insurance program guidance and provide flexibility on key underwriting criteria that have to date proved problematic for CAI member condominium associations. Staff were unable to disclose the particulars of the guidance, but noted that some flexibility would be provided to so-called "hard-stop" criteria where a violation disqualifies a condominium from FHA programs.

Amending governing documents to ensure FHA compliance is not practical

A number of condominiums rejected for FHA approval or recertification have been directed by FHA to amend declarations or master deeds to come into compliance with program guidelines. CAI explained that the process of amending an association's governing documents is by design difficult. FHA staff asked questions about the particulars of the amendment process, focusing on the need for a supermajority of owners to successfully amend governing documents.

HOCs may approve condominiums that limit initial lease terms to 12 months

A number of condominiums have been rejected due to a lease restriction that initial leases be for a period of at least 12 months. FHA staff indicated that the HOCs may approve condominiums with a 12 month initial lease requirement and will reiterate this policy decision from headquarters in the coming week.

Condominiums should proactively justify limits on occupants per bedroom

FHA regulations require that all FHA-insured mortgages comply with the Fair Housing Act and relevant regulations. FHA staff indicated that condominiums should offer the rationale for limiting the number of unit occupants to satisfy Fair Housing Act concerns. CAI representatives provided FHA staff with a copy of the so-called "Keating Memorandum", which states that limitations on occupants per bedroom do not, in-and-of-themselves, constitute a violation of the Fair Housing Act. CAI representatives explained the practical need for many condominiums to have such restrictions in place and relevant case law validating the legality of occupancy restrictions. CAI will monitor FHA project rejections on the basis of Fair Housing Act compliance concerns to ensure FHA does not require condominiums to meet a legal standard that is different from existing rules and established Fair Housing Act case law.

Condominiums with affordable housing units will continue to be problematic

FHA staff are sympathetic to condominiums developed with State-supported financing (bond proceeds, tax credits, etc.), but are unwilling to waive FHA requirements that foreclosure extinguish a unit's affordable designation. FHA staff were also unwilling to consider a general waiver allowing market rate units in such condominiums to be eligible for FHA-insured mortgages. CAI will continue to work with FHA to address this issue so that all residents of mixed-income, mixed-use developments have access to FHA programs.