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Fannie Mae’s blacklist: Concerning for condo sales - by Edmund Allcock

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Edmund Allcock

Fannie Mae and Freddie Mac, which are under the conservatorship of the Federal Housing Finance Agency (FHFA) has developed a secret blacklist of condominiums, HOA's and co-op's which are ineligible for "conventional financing," i.e. loans that can be sold on the secondary market. It will be difficult for owners in these blacklisted condominiums to either sell or refinance their units. Fannie and Freddie are publicly traded corporations that are government sponsored entities that back about 70% of all residential mortgages granted in the United States.

While the Federal Government won't make the blacklist publicly available, the list appears to be updated every 60 days and has grown from 1,700 condominiums, HOA's and cooperatives since May of 2023 to over 2,500 by year's end.

Data and Factors

The source of the list is information provided on condominium lender questionnaires. It's one big database. As a result, it is critical that all lender questionnaires are reviewed by association counsel prior to submission. One mistake could result in your association landing on the list and it could take months to get off the list.

Aside from FHFA, Fannie and Freddie looking to ensure that the loans they back are strong, there are other factors at play. The 2021 surfside tragedy in Florida (where a condominium collapsed killing 98 people) certainly is a driving force. The legal settlement in that case, largely paid by insurance companies was $1.2 billion. We are also in the midst of an insurance crisis where some condominiums cannot obtain certain coverages and policy premiums are skyrocketing, due to payouts of claims like Surfside, as well as numerous weather related events the last few years, such as wildfires, hurricanes, floods, cold snaps, etc.

The takeaway from Fannie Mae's blacklist is that condominiums must take care of their property. The days of low condo fees, deferred maintenance and skipping certain insurance coverages to keep premiums down are over.

Warning Signs and Missteps

So how do you get blacklisted. The criteria in some respects is straightforward and in other respects ambiguous. A condominium will be blacklisted if a lender questionnaire discloses the following:

1. More than 25% of floor space is commercial;

2. It is a condotel or transient in nature (timeshare or significant Airbnb);

3. Mandatory membership in amenity not owned by condo;

4. Insufficient insurance (less than full replacement cost, missing coverages, i.e. no wind or hail or flood depending on area, too high of a deductible);

5. Insufficient reserves noted on budget (less than 10 percent of annual budget: Note this figure is expected to increase to 20% in 2025);

6. Do you have a reserve study, if so it must be fully funded;

7. Special Assessments are a red flag;

8. 15% or more of the owners are more than 60 days delinquent on HOA fees;

9. Condominium needs critical repairs;

10. Construction defect litigation (unless repairs are made);

11. Condominium is subject to an evacuation order;

12. Unfunded repairs of more than $10,000 per unit; and

13. Engineering reports identify structural or other building issues that need attention.

While, the devil is in the details and the budget is the budget, an innocuous engineering or inspection report provided to a lender can be read incorrectly by a lender or the Federal Government and result in a “blacklisting”. Care must be taken with engineering reports and there are legal strategies to address them. Management companies should also be careful about simply uploading association legal documents to platforms available to lenders. Consult with counsel before procuring and providing. The same holds true for insurance and identification of the number of investor or developer owned units.

We predict that the list will keep growing. While in some ways it is well intentioned it is best to stay off the list. Getting off the blacklist is a lot harder than getting on it.

Edmund Allcock, Esq., CCAL is a founding member of the firm Allcock & Marcus, LLC, Braintree, Mass.