



# 2010 Community Association Law Seminar & Expo

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New Frontiers in the  
Community Association  
Industry: Judicial, Legislative  
and Insurance Update

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# Case Update

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## Charter Club on the River Homeowners Association, Inc. v. Walker

- Property NOT subject to Property Owners Association Act or Georgia Condominium Act
- Membership adopted by 2/3<sup>rd</sup> vote a leasing restriction
- O.C.G.A. §44-5-60(d)(4) provides:

*No change in the covenants which imposes a greater restriction on the use or development on the land will be enforced unless agreed to in writing by the owner of the affected property at the time such change is made.*



# Case Update

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- Owner did not vote in favor of the amendment
- Leased her home
- Association imposed fines
- Suit to collect fines and stop leasing
- Trial court said leasing amendment was restriction on use of property
- Affirmed by Court of Appeals



# Case Update

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- Statute refers to use or development of the LAND, not the property
- Court of Appeals: The statute does not condemn all amendments to restrictive covenants; rather, it simply provides that owners must consent to those amendments that further restrict the USE OF THEIR PROPERTY.
- If a person says an amendment affects his or her USE of the home/lot, it is not enforceable unless the owner agrees to it.



# Case Update

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- O.C.G.A § 44-5-60(d)(4) does not apply to property submitted to the Georgia Property Owners Association Act.
- If this does not compel associations to adopt the Property Owners Association Act, nothing will.
- ALL amendments will be subject to attack.



# Legislation

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- Banks Failure to Foreclose
- Can an association force a bank to foreclose or at least pay assessments once a unit is vacated?
- No – Florida case ... association is not a party to the loan and has no standing to force foreclosure or payment



# Legislation

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Proposed legislation in Georgia:

## Super Lien



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# Senate Bill 103



# Legislation

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## Add to Georgia Condominium Act and Property Owners Association Act:

However, a lien under this Code section is also prior to the lien of any mortgage described in subsections (a)(2) and (4) above in an amount equal to one-half of all the unpaid common expense assessments that came due during the twelve months immediately preceding the date of a foreclosure sale by, or deed in lieu of foreclosure given to, the holder of any mortgage described in subsections (a)(2) or (4) above.



# Federal Housing Administration (FHA)

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- Created in 1934 under the National Housing Act to:
  - (1) encourage improvement in housing standards and conditions;
  - (2) to provide an adequate home-financing system through the insurance of home mortgages; and
  - (3) to create a stabilizing influence on the mortgage market.
- Became a part of the Department of Housing and Urban Development's (HUD) Office of Housing in 1965.



# FHA – How Does it Work?

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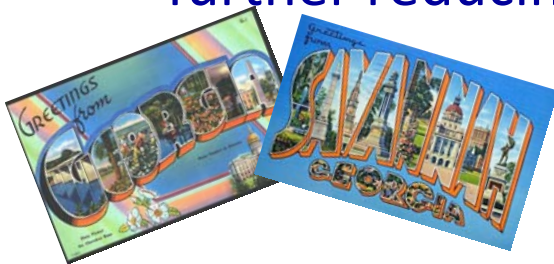
- FHA neither builds homes nor lends money directly.
- Instead, FHA provides mortgage insurance that protects lenders against losses as the result of homeowners defaulting on their mortgage loans. Lenders bear less risk because FHA will pay a claim to the lender in the event of a homeowner's default.
- Loans must meet certain requirements established by FHA to qualify for insurance.



# FHA Loans for Condominium Units

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- FHA Condominium Loans are provided through FHA Section 234(c).
- Section 234(c) program insures a loan for 30 years to purchase a unit in a condominium building. The building must contain at least 4 dwelling units and can be comprised of detached and semi-detached units, row houses, walkups, or an elevator structure.
- Many of the features of Section 234(c) mortgage insurance are similar to those of FHA Section 203(b) for one to four-family homes. Down payment requirements are low because these FHA loans allow borrowers to finance up to 97% of their home loan and some of the closing costs can also be financed, further reducing up front costs.



# Why are FHA Loans More Important In this Market Than in the Past?

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- Fannie Mae and Freddie Mac have both implemented even tighter guidelines for making condominium mortgages.
- Without government backing, private lenders that offer mortgages for condominiums require large down payments of 30% or more.
- If a building has FHA approval, the borrower can get a mortgage in a shorter time period (FHA website suggests 2 weeks).
- Buyer can get a down payment as low as 3.5%.
- The review of FHA project approval applications take 30+ days and will reportedly take longer as FHA prepares to implement changes announced in its Mortgagee Letter 2009-19 (dated June 12, 2009).



# FHA Condominium Project Eligibility

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- HUD Revised Legal Policies attached to Appendix 24 of HUD Handbook 4265.1 dated October 1980.
- On June 12, 2009, HUD issued Mortgagee Letter 2009-19, which outlined a new approval process for condominium projects (slated to become effective on November 2, 2009).



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- Letter 2009-19 now replaced with Letter 2009-46B to become effective December 7, 2009



# Websites

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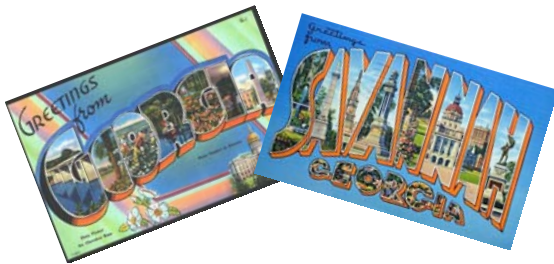
- [www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-46bml.pdf](http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-46bml.pdf)
- [www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-46aml.pdf](http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-46aml.pdf)



# FHA Condominium Project Approval Processing Options

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- HRAP – HUD Review and Approval Process
- DELRAP – Direct Endorsement Lender Review and Approval Process (this option is only available to lenders who have unconditional Direct Endorsement authority and staff with knowledge and expertise in reviewing and approving condominium projects).



# FHA Eligible Project

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“Condominium projects that have been created and exist in full compliance with applicable state law requirements of the jurisdiction in which the condominium project is located, and with all other applicable laws and regulations.”



# FHA Ineligible Projects

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- Condominium Hotel or “Condotels”
- Timeshares or segmented ownership projects
- Houseboat projects
- Multi-dwelling unit condominiums (i.e., more than one dwelling per condominium unit)
- All projects not deemed to be used primarily as residential



# FHA Project Eligibility Requirements for all Condominium Projects

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- Project must consist of at least 2 units.
- Project must be covered by hazard and liability insurance and, when applicable, flood insurance.
- Right of first refusal is permitted unless it violates discriminatory conduct under the Fair Housing Act regulation in 24 CFR 100.
- No more than 25% of the property's total floor area in a project can be used for commercial purposes.



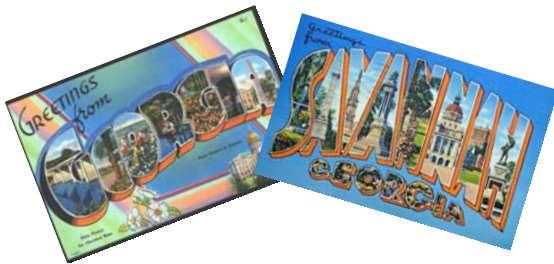
# FHA Project Eligibility Requirements for all Condominium Projects

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- No more than 10% of the units may be owned by a single investor.
- No more than 15% of the total units can be in arrears (more than 30 days past due) of their condominium association fee payment.



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- FHA concentration is increased temporarily to 50%. May be increased to 100% if it meets all criteria AND the project is 100% complete and all construction has been completed for at least 1 year.
  - Vacant and REO can be excluded from the number.



# Budget Review

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- Lenders must review the actual budget. The review must determine:
  - Includes allocations/line items to ensure sufficient funds are available to maintain and preserve all amenities and features unique to the condominium project;
  - Provides for the funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 10% of the budget; and
  - Provides adequate funding for insurance coverage and deductibles (see Section VI, Insurance Requirements).



# Budget Review

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- In cases where the budget documents do not meet these standards, the mortgagee may request a reserve study to assess the financial stability of the project. The reserve study cannot be more than 36 months old. When reviewing the reserve study, consideration must be given to items that have been replaced after the time that the reserve study was completed.



# Other “High-Lights” of Mortgagee Letter 2009-19

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- Transfer of control of the association must occur no later than the following:
  - 120 days after the date by which 75% of the units have been conveyed to the unit purchasers; or
  - 3 years after completion of the project evidenced by the first conveyance to a unit purchaser
  - As required by state law



# Other “High-Lights” of Mortgagee Letter 2009-19

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- “Spot Loan” approval process eliminated.
- Manufactured housing condominium projects now eligible for FHA mortgage insurance (requires approval under HRAP).
- The 1 year waiting period requirement for a conversion condominium project is eliminated.
- FHA will not accept a temporary certificate of occupancy; all units within the building (where the specific unit that is to be the security for the insured financing is located) must be complete.



# Transition Strategy

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- Projects that received approval prior to October 1, 2008, will require recertification on or before December 7, 2010.
- Projects that received approval between October 2, 2008 through December 7, 2009, will expire 2 years from date of approval and must meet recertification requirements defined in the Project Approval Section, XII in ML 09-46B.



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# Insurance Requirements

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- The project must be covered by hazard, flood, liability and other insurance required by state or local condominium laws or acceptable to FHA as defined below:
  - Hazard Insurance: The homeowners association (HOA) is required to maintain adequate “master or blanket” property insurance in an amount equal to 100% of current replacement cost of the condominium exclusive of land, foundation, excavation and other items normally excluded from coverage. If the HOA does not maintain 100% coverage, the unit owner may not obtain “gap” coverage to meet this requirement.



# Insurance Requirements

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- HO-6 Coverage: In cases where the master policy does not include interior unit coverage, including replacement of interior improvements and betterment coverage to insure improvements that the borrower may have made to the unit, the borrower must obtain a “walls-in” coverage policy (HO-6 policy).



# Insurance Requirements

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- **Liability Insurance:** The HOA is required to maintain comprehensive general liability insurance covering all of the common elements, commercial space owned and leased by the owner's association, and public ways of the condominium project.



# Insurance Requirements

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- Fidelity Bond/Fidelity Insurance: Fidelity Bond/Fidelity Insurance is required for new and established condominium projects with 20 or more units. The Homeowners Association must maintain this insurance for all officers, directors, and employees of the association and all other persons handling or responsible for funds administered by the association. The coverage must be no less than a sum equal to three months aggregate assessments on all units plus reserve funds.



# Federal National Mortgage Association ("Fannie Mae")

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- Established in 1938 as a federal agency for the purpose of purchasing FHA loans from loan originators to provide some liquidity for government-insured loans in a depression-wracked economy when few lending institutions would undertake this type of loan.
- Important to mortgage companies since they generally do not hold deposit assets and must sell their loans quickly to replenish their available cash.



# Fannie Mae Requirements

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New hurdles to condominium unit financing imposed by Fannie Mae in its Announcement 08-34, dated December 16, 2008:

## Community Formation

- Limitations on Commercial Use. If the residential project is to include commercial uses, Fannie Mae will not approve the project if commercial activities encompass more than 20% of the project.
- Pre-sales. At least 70% of the total units in the project (or of a legal phase if project development is phased) must be sold or under a bona fide contract for sale as a principal residence or second home. Developers are being advised to give careful consideration to adding new phases so that pre-sale thresholds can be met.
- Owner-occupancy. Established condominium project consisting of attached units must have an owner-occupancy ratio of at least 51% at the time the loan is originated (purchase or refinance) is the mortgage loan being delivered is secured by an investment property. If unit is to be owned-occupied or used as a second home, the 51% owner-occupancy requirement does not apply.



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# Fannie Mae Requirements

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## Association Operations

- Homeowner Assessments. Fannie Mae used to require that no more than 15% of homeowners association's assessments be more than one month past due. This requirement has now been revised to require that no more than 15% of all units in a project be more than 30 days past due in the payment of assessments.
- Hazard Insurance. Fannie Mae also amended their homeowner association hazard insurance requirements. Most condominium covenants currently require the association to maintain hazard insurance that covers the unit "as-built" by the developer. Fannie Mae now requires that buyers obtain a "walls-in" insurance policy (commonly known as a HO-6 policy) in an amount not less than 20% of the unit's appraised value unless lender can document that master policy provides same interior unit coverage. This requirement is an additional financial burden to buyers and also raises questions regarding "appraised values" given a glut of foreclosures and reduced property values.



# Fannie Mae Requirements

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## Association Operations (continued)

- Fidelity Bond Insurance. Required for new and established condominium project with more than 20 units.
- Budget. Budget must be “adequate” and allocate a portion of the income (generally at least 10%) for replacement reserves and insurance deductibles.



# Insurance Requirements

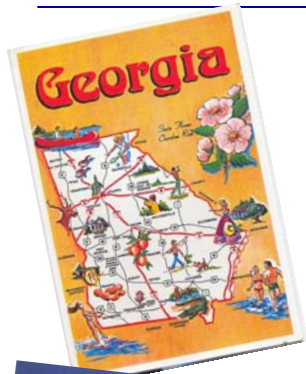
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- Flood Insurance: NFIP \$250,000 per unit



# Thank you!

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