**September 2019 Newsletter**

Hard to believe summer has come to an end. We at Keough & Moody, hope you all enjoyed the warm weather and all that the Chicagoland area has to offer during these summer months.


Dawn and I are excited to announce the elevation of Gabriella Comstock to principal of the law firm. For 23 years Gabriella has been providing legal counsel to condominiums and community associations in the Chicagoland area. Currently she is the co-chair of the Chicago Bar Association's Real Property Law, Condominium Subcommittee and a member of the prestigious College of Community Association Lawyers. From our offices in Chicago and Naperville, Gabriella will continue to provide superb legal advice to our association clients, including corporate counsel, litigation solutions and contractual services.

We thank you all for your continued support. If you have any questions about the article that follows, please do not hesitate to contact Dawn Moody at dlm@kmlegal.com or Gabby Comstock at grc@kmlegal.com.

Chuck Keough

## RECENT CHANGES TO FHA REGULATIONS RELATED TO CONDOMINIUM ASSOCIATIONS

In mid-August, the Department of Housing and Urban Development revised its regulations concerning condominium lending rules through the Federal Housing Administration, or FHA. While commonly referred to as FHA "loans," the FHA is not in fact a lender and does not issue loans, but simply provides mortgage insurance. Because this mortgage insurance must meet specific requirements and is backed by the Federal Government, commercial banks offer lower down-payments to FHA insured mortgages, which in turn makes home (or condo) buying more affordable. Considering how FHA approval within a condominium association can broaden the pool of potential buyers, increase competition and marketability of units, potentially raise unit values, and decrease the percentage of rentals within an association, it is important for every association to understand the changes in FHA policy and their impact.

To begin, there are five major changes to policy which will become effective on October 15, 2019. First, the FHA is implementing a single-unit approval process, allowing individual condominium units to become eligible for FHA-insured mortgages. Previously, an entire association would have needed to obtain FHA approval, which was only granted to about ten percent of the nation's condominiums. Second, the process to obtain project approval has been simplified, and the time between approval and recertification has been extended; essentially, it is easier for a unit to become FHA-approved and the unit will stay approved for longer before needing to recertify. Third, the FHA is easing its commercial space restrictions, allowing for more mixed-use projects to be eligible for FHA financing. Fourth, owner occupancy rates have been lowered. Previously, for an association to obtain FHA approval, at least fifty percent of the units were required to be owner-occupied. Now, the owner-occupancy requirement is flexible and depends on other markers of financial and operational stability, allowing FHA approval for a unit in an association with as low as thirty-five percent owner occupancy. Fifth, the FHA increased its limit as to how many units within association may be FHA financed; now, a maximum of up to seventy-five percent of units within an association can have FHA mortgage insurance.

Taken together, these changes to FHA policy will impact potential buyers and the associations they consider joining. Most importantly, these changes will make it easier for buyers to access FHA financing, allowing individuals to obtain more-affordable loans and become first time owners. Estimates predict that nationwide, up to an additional sixty-thousand units will become eligible for FHA financing. Further, economists predict that condominium sales will play a greater role in coming years, as millennials enter the market as first-time buyers. The changes in FHA policy offer an opportunity for condominium associations to take advantage of this increased pool of potential buyers.

Given these changes, it is critical for every association to evaluate whether it wants its units to qualify for FHA financing approval, and if so, whether changes are required to qualify for approval. For example, to qualify, the association must ensure that no greater than fifteen percent of its accounts are delinquent, at least ten-percent of its budget goes towards reserves, there is adequate insurance covering the property, and that restrictions against leasing comply with FHA requirements. Prior to this policy shift, associations would have to consider whether to budget for association-wide FHA approval. Now, because spot approval can be granted on a unit-by-unit basis, an association can choose to expend its resources in other ways.

Moving forward, for example, your association may consider amending its declaration to ensure compliance with FHA leasing requirements. In order to have FHA approval of units, an association cannot have a universal ban against leasing for the entire association, however leasing caps - where only a percentage of units of rentals are permitted - are acceptable under the FHA. Additionally, provisions that require unit owners to own the condominium for a period of time prior to leasing or provisions that require board "approval" of the lease are prohibited. However, other requirements are allowed, such as ensuring leases conform to the association's governing documents and provisions requiring tenant information be submitted to the Board.

Ultimately, the changes proposed by the Department of Housing and Urban Development will make FHA financing more readily obtainable for purchasers of condominium units, allowing associations the opportunity to take advantage of increased competition, unit values, and owner-occupancy.

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