

Common Interest Communities Condominiums and PUDs

A common interest community is a subdivision containing common land often including recreational amenities. That common property is typically owned by an association of the homeowners (HOA), to which they all must belong and pay lien-supported assessments for a proportionate share of the expenses of the HOA.

There are VA requirements applicable to **all properties** located in either a PUD or condominium. Also, **condominiums** (but not **PUDs**) must be **approved by VA** before any lots or units in the project are eligible for VA loan guaranty. The nationwide VA Approved Condominium List can be found on the VA Portal.

Requirements Applicable to All Properties in Common Interest Communities

While only condominiums must be approved by VA, lots or units securing VA loans in condominiums and other planned unit developments must meet both title and lien-related VA regulatory requirements. The lender is responsible for ensuring that these requirements are met for each VA loan. Although there is no specific VA requirement that lenders maintain evidence in the loan file that these requirements are met, they may wish to be guided by the advice of their legal counsel in this regard.

Acceptable Title

There are title requirements for every VA loan, whether or not the property is located in a common interest community. These requirements are:

- The estate must not be less than fee simple
- Title must not be subject to unreasonable restrictions or use and occupancy
- Certain minor title limitations will not be considered by VA, to the extent described, as materially affecting the value of the property

Superior VA Lien

VA regulations require that every VA loan be secured by a lien on the property. When a property is located in a condominium or planned unit development the lender must ensure that any mandatory homeowner assessment is subordinate to the VA-guaranteed mortgage.

Appraisal Related

Appraiser will use Fannie Mae Form 1073, Individual Condominium Unit Appraisal Report, for properties located in a condominium; and Fannie Mae Form 1004, Uniform Residential Appraisal Report, for properties located in a planned unit development.

If there is any commercial or other non-residential ownership interest in the condominium the appraisal report must include this usage and comment on its impact on the value of the residential units.

In developer controlled **condominium conversions**, the appraiser must:

- Ascertain the degree to which the converted structure and units have been or will be rehabilitated for condominium use. The structure may have been, or is proposed to be, remodeled, renovated, rehabilitated, modernized, or cosmetically refurbished; and
- Provide a description of the type of work completed or proposed to be completed in the conversion being appraised for developer sales. This information is not required in spot re-sales by sellers other than the developer

Notice of Value Related

The Notice of Value for all properties in a PUD or condominium will be conditioned: "This property is located in a development with mandatory membership in a homeowners' association. The lender is responsible for ensuring that title meets VA requirements for such property and that the homeowner association assessments are subordinate to the VA-guaranteed mortgage."

Note: There are other regulatory-related requirements for a property in a condominium. For example: pre-sale requirements, warranty requirements for the unit and common elements, and a wood-destroying insect inspection is required in low rise and high rise units only when the appraiser observes a potential problem.

Condominium Approval Procedures

For condominium projects the lender must provide the following to the VA office of jurisdiction:

- A written request for VA-approval; and
- A copy of the project's organizational documents

Note: These documents must be reviewed for compliance with VA regulations and approved by VA before any lots or units in the project are eligible for VA loan guaranty.

VA will:

- Review the project's organization documents for compliance with VA regulations; and
- Notify the requesting lender

Note: VA no longer accepts HUD/USDA approved projects. All projects must be approved by VA.

After completing its review of the material submitted with the request for project approval, the VA office of jurisdiction sends a written notice of its decision to the lender.

When...	Then the Notice will...
The project is approved	Indicate any special conditions/requirements which must be met prior to VA guaranty of an individual loan in the project, such as: <ul style="list-style-type: none"> • Recording of documents • Pre-sale requirements • Completing of common areas
There were <ul style="list-style-type: none"> • Missing/incomplete documents • Inaccurate/inconsistent information; or • Correctable deviations from VA requirements 	Explain what further documentation is needed Note: VA will then suspend processing pending receipt of the needed information or material
The project is unacceptable	State the reason. Note: When there are objectionable provisions related to unreasonably retained controls or rights of the developer, and it is difficult to amend the document, VA may consider a separate recorded agreement from the developer relinquishing the objectionable provisions.

Document Amendments After Project Approval

VA recommends that developers have amendment procedures for the declaration or equivalent document amendable by an instrument approved by not less than 67% of unit owners. The association must request VA approval of proposed amendments prior to recordation.

VA approval of any amendments to the declaration, by-laws, or other enabling documentation is required while the developer is in control of the homeowner's association. A written statement signed by an officer of the Association's Board of Directors and submitted with VA Form 26-1844 is required as evidence of approval.

Changes made by the developer prior to the first sale in a condominium project may require amendment of the organizational documents.

Note: VA approval is not required for amendments which annex additional phases to the condominium in accordance with a development plan previously accepted by VA.

Mortgagee Rights

The condominium documents must specify the following rights for holders of first mortgages:

- Prior approval by the first lienholders before the Association can
 - Abandon condominium status or partition or subdivide a unit or the common elements
 - Change the percentage interest of unit owners; or
 - Materially amend the legal documents
- Timely written notice to first lienholders of:
 - Any condemnation or eminent domain proceeding; and
 - Substantial damage or destruction to the common elements
- The right to:
 - Examine the association books
 - Receive annual audited financial statements and records; and
 - Be given notice of association meetings and be entitled to a representative at such meetings

Table of Required Documents

The table below identifies the documents that the VA office of jurisdiction must review in order to approve a particular condominium project. As indicated in the tables, some documents are required only:

- If applicable
- If the developer/declarant is in control of the project; or
- For condominium conversion projects

The last column indicates whether or not it is acceptable to submit a draft of the document. Recorded or existing final documents must be provided if loans have closed in the project.

	Required Document	New Project	Existing Re-sales	Draft
1	Declaration of Covenants, Conditions and Restrictions	Yes	Yes	Yes
2	Bylaws for HOA	Yes	Yes	Yes
3	Articles of Incorporation for HOA	If Applicable	If Applicable	Yes
4	Umbrella project-Declaration, Bylaws & Articles of Incorporation	If Applicable	If Applicable	Yes
5	Plat, map and/or air lot survey of project	Yes	Yes	Yes
6	Plat, map and/or air lot survey of units	If Applicable	If Applicable	Yes
7	Development plan and schedule	Yes	If Declarant Controls	Yes
8	Information or Public Offering Statement	Yes	If Declarant Controls	Yes
9	Grant/deed/leasehold agreement form	Yes	If Declarant Controls	Yes
10	State reviewing agency's report	If Applicable	If Applicable	Yes
11	Annexation documents	If Applicable	If applicable	Yes
12	Cross-easement(s)	If Applicable	If Applicable	Yes
13	Facility Leases	If Applicable	If Applicable	Yes
14	Management agreement	If Applicable	If Applicable	Yes
15	Service Contracts	If Applicable	If Applicable	Yes
16	HOA budget (existing or proposed)	Yes	Yes	No
17	Current financial statements & reserves of project	If Applicable	If Applicable	No
18	Special assessments/litigation statement	Yes	Yes	No
19	Minutes of last two HOA meetings	Yes	Yes	No
20	Registered architect/engineer statement-conversions	Yes	If Declarant Controls	No
21	Recorded documents	Yes	Yes	No

Submit as Available

Although the following documents are also required, as applicable, they may not be available for submission with the initial package. They must be submitted as soon as available and before any lots or units in the project can be considered eligible for VA loan guaranty.

	<i>Document</i>	<i>New Project</i>	<i>Existing Re-sales</i>	<i>Draft</i>
21	Recorded documents	Yes	Yes	No
22	Recorded annexation document for subject phase	Yes	Yes	No
23	Evidence recreational facilities completed and common area conveyed to HOA	Yes	Yes	No
24	Statement of adequacy of utilities (conversions only)	If Declarant Controls	If Declarant Controls	N/A
25	Evidence of common area title free of financial encumbering	Yes	If Applicable	No
26	Evidence of final local authority approval (Low/High Rises and Conversions only)	Yes	No	No
27	Lender's certification that pre-sale requirement met	Yes	Yes	No