



The power of yes.

# LEASEHOLD REQUIREMENTS

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## 1. WHAT IS A LEASEHOLD?

A leasehold is a legal term referring to the ownership of a property through a lease agreement, granting the lessee the right to use the property for a specific period rather than have outright ownership of the land. This means the borrower has the right to use and occupy the property for a set period but doesn't own the underlying land itself.

## 2. LEASEHOLD DOCUMENTATION

### 2.1 FANNIE MAE/FREDDIE MAC/USDA/NON-QM

- Copy of lease with property address with full lease terms, including but not limited to the length of lease, and any restrictions or conditions on the use of the property.
- NOTE: Non-QM must meet the requirements of Fannie Mae Leasehold. Case by case by exception only.

### 2.2 FHA/VA

- Copy of lease with property address with full lease terms, including but not limited to the length of lease, and any restrictions or conditions on the use of the property.
- The Government Agency will determine the eligibility of the leasehold.

## 3. FANNIE MAE LEASEHOLD REQUIREMENTS

Eligible property types are:

- one- to four-unit properties,
- condo units,
- PUD units,
- manufactured homes located in a PUD project approved by Fannie Mae's Project Review Eligibility Service (PERS)
- Properties held in Land Trusts are not eligible.

 <b>Requirements for Leasehold Mortgages</b>
The loan must be secured by a first lien in the property improvements and the borrower's rights in the leasehold interest in the land.
The leasehold estate and the improvements must constitute real property, must be subject to the mortgage lien, and must be insured by the lender's title policy.
<ul style="list-style-type: none"><li>• The appraisal must meet the requirements: Appraisers must develop a thorough, clear, and detailed narrative that identifies the terms, restrictions, and conditions regarding lease agreements or ground leases and include this information as an addendum to the appraisal report.</li><li>• Appraisers must discuss what effect, if any, the terms, restrictions, and conditions of the lease agreement or ground lease have on the value and marketability of the subject property.</li><li>• When there are a sufficient number of closed comparable property sales with similar leasehold interests available, the appraiser must use the property sales in the analysis of market value of the leasehold estate for the subject property.</li></ul>

	<ul style="list-style-type: none"> <li>However, if there are not enough comparable sales with the same lease terms and restrictions are available, appraisers may use sales of similar properties with different lease terms or, if necessary, sales of similar properties that were sold as fee simple estates. The appraiser must explain why the use of these sales is appropriate and must make appropriate adjustments in the Sales Comparison Approach adjustment grid to reflect the market reaction to the different lease terms or property rights appraised.</li> </ul>
	A mortgage that is subject to a leasehold estate must have an ALTA Endorsement 13.1.
	All rents, other payments, or assessments under the lease that have become due must be paid.
	The lease must not be in default under any provision of the lease and the lessor must not have claimed any such default
	The lease must be recorded in the appropriate land records.
	The lease must be in full force and effect, and enforceable in all respects.

Lender retains first-lien enforceability as part of the terms of the lease as follows:

✓	<b>Lease Requirements</b>
	<p>The lease associated with the subject property, regardless of the form of the lease (including a master lease, sublease, or unit lease) comply with the requirements below. The lessee (or sublessee, when applicable) must be the borrower, condo or PUD homeowners' association (HOA). For manufactured homes located in a PUD project approved by PERS, the HOA must be the lessee without any further sublessees.</p> <p>Compliance with these lease requirements may be satisfied by: separate agreement(s) incorporated into the lease (e.g., addendum, amendment, or rider), or the project's constituent documents (project documents) (e.g., the Recognition Agreement or other agreement).</p> <p>Note: For units in projects subject to a ground lease in which the HOA is the lessee, the lender must ensure the lease complies with these lease requirements unless the project has been approved by Fannie Mae in Condo Project Manager (CPM).</p>
	The lease must have an unexpired term that exceeds the maturity date of the loan by five (5) years or more unless fee simple title will vest at an earlier date in the borrower's name or homeowner's association.
	The lease must not preclude the borrower's membership or voting rights in the HOA, as applicable.
	If the loan is secured by a sublease, a default under the master lease will not automatically result in the termination of the sublease.
	The lease must provide that the leasehold can be assigned, transferred, mortgaged, and sublet an unlimited number of times by the lessee either without restriction or on payment of a reasonable fee and delivery of reasonable documentation to the lessor.
	The lessor may not require a credit review or impose other qualifying criteria on any assignee, transferee, mortgagee, or sub-lessee.
	The lease must provide that the borrower will pay taxes, insurance, and homeowner's association dues related to the land in addition to those they are paying on the improvements.
	The lease must be valid, in good standing and in full force and effect in all respects.
	The lease must not include any default provisions that could give rise to forfeiture or termination of the lease except for nonpayment of the lease rents.
	The lease must include provisions to protect the mortgagee's interests in the event of a property condemnation.
	The lease must be serviced by either the lender that delivers the mortgage to Fannie Mae or the servicer it designates to service the mortgage.

The lease must provide lenders with the right to receive a minimum of 30 days' notice of any default by the borrower and the option to either cure the default or take over the borrower's rights under the lease.

The lease may, but is not required to, include an option for the borrower to purchase the fee interest in the land. If the option is included, the purchase must be at the borrower's sole option, and there can be no time limit within which the option must be exercised. If the option to purchase the fee title is exercised, the mortgage must become a lien on the fee title with the same degree of priority that it had on the leasehold. Both the lease and the option to purchase must be assignable.

The table below provides the requirements for establishing the purchase price of the land.

Status or Property Improvements	Purchase Price of Land
Already constructed at the time the lease is executed.	The initial purchase price should be established as the appraised value of the land on the date the lease is executed.
Already constructed at the time the lease is executed, and the lease is tied to an external index, such as the Consumer Price Index (CPI).	<p>The initial land rent should be established as a percentage of the appraised value of the land on the date that the lease is executed.</p> <p>The purchase price may be adjusted annually during the term of the lease to reflect the percentage increase or decrease in the index from the preceding year.</p> <p>Leases may be offered with or without a limitation on increases or decreases in the rent payments.</p>
Will be constructed after the lease is executed.	<p>The purchase price of the land should be the lower of the following:</p> <ul style="list-style-type: none"> <li>• the current appraised value of the land, or</li> <li>• the amount that results when the percentage of the total original appraised value that represented the land alone is applied to the current appraised value of the land and improvements.</li> </ul> <p>For example, assume that the total original appraised value for a property was \$160,000, and the land alone was valued at \$40,000 (thus representing 25% of the total appraised value). If the current appraised value is \$225,000, \$50,000 for land and \$175,000 for improvements, the purchase price would be \$50,000 (the current appraised value of the land, because it is less than 25% of \$225,000).</p> <p>If the lease is tied to an external index, the initial land value may not exceed 40% of the combined appraised value of the land and improvements</p>

## 4. FREDDIE MAC LEASEHOLD REQUIREMENTS

Eligible property types are:

- one- to four-unit properties,

- condo units,
- PUD units,
- manufactured homes located in a PUD project that meet all PUD requirements and warranties,
- A manufactured home with a leasehold must not include an ADU
- Properties held in Land Trusts are not eligible.

<input checked="" type="checkbox"/>	<b>Requirements for Leasehold Mortgages</b>
	The Mortgage must be secured by a leasehold interest in the land where there is a demonstrated market acceptance of this type of property ownership, and the property improvements to be a leasehold Mortgage.
	The leasehold estate and improvements must constitute real property.
	The leasehold estate must be covered by an acceptable title insurance policy and an ALTA Form 13.1 endorsement or its equivalent for all leasehold Mortgages.
	The lease and any sublease (including all amendments) are recorded in the appropriate land records
	The lease is in full force and effect and is binding and enforceable against the lessor (and sublessor). The leasehold estate and Mortgage must not be impaired by any merger of the fee interest and leasehold interest in the event the same person or entity acquires both interests.
	The term of the leasehold estate must run at least 5 years beyond the maturity date of the Mortgage unless the fee simple vests at an earlier date.
	All basic rent (amount paid for use of the leasehold estate under the terms of the lease or sublease) and amounts due to taxes, insurance, utilities and use fees or operating expenses relating to the land and improvements must be current and the borrower must not be in default under any provision of the lease nor may the lessor have claimed such as default.
	The lease must not preclude the borrower from retaining voting rights in the homeowner's association, if applicable.

Lender retains first-lien enforceability as part of the terms of the lease as follows:

<input checked="" type="checkbox"/>	<b>Required Lease Provisions</b>
	Permit mortgaging of the leasehold (or sub-leasehold) estate.
	Permit assignments of the leasehold (or sub-leasehold) estate, including any improvements on the leasehold estate.
	Provide that in order for a notice of lessee's default (monetary or non-monetary) to be valid, the lessor must have sent written notice of the lessee's default to the leasehold mortgagee not more than 30 days after such default.
	Provide for the right of the leasehold mortgagee, in its sole discretion, to cure a default for the lessee's, or sub-lessee if applicable, account within the time permitted to lessee or take over the rights under the lease (sublease).
	The lease cannot contain default provisions allowing forfeiture or termination of the lease for nonmonetary default, except for nonpayment of the ground rent.
	The lease must provide for protection of the mortgagee's interests including an insurable interest in the subject property unless otherwise required by law, and interest in the lease, ground lease community and leasehold estate.
	The lease may, but is not required to, include an option for the Borrower to purchase the fee interest; provide, however, there is no time limit on when the option must be exercised, and the lease and option to purchase must be assignable.

## 5. USDA LEASEHOLD REQUIREMENTS

Eligible Property types are:

- one- to four-unit properties,
- PUD units,
- Condo units

The file must have documentation indicating the appropriate legal documents have been reviewed for compliance with Agency regulations.

<input checked="" type="checkbox"/>	<b>Requirements for Leasehold Mortgages</b>
	The mortgage must cover both property improvements and the leasehold interest in the land.
	The leasehold estate must constitute real property, be subject to the mortgage lien, and be insured by a title policy.
	The estate's term runs fifteen or more years beyond the maturity date of the loan closing, except in the case of properties located on Native American restricted land. See Section 13.6 for guidance regarding loans on Native American restricted land.
	The leasehold estate must be assignable or transferable.
	The lease cannot be terminated except for nonpayment of lease rents.

Lender retains first-lien enforceability as part of the terms of the lease as follows:

<input checked="" type="checkbox"/>	<b>Required Lease Provisions</b>
	Provide for lender notification of any default by the borrower and the option to cure the default
	Provide that the borrower will pay taxes, insurance, and association dues (as applicable) on the land and retain voting rights in the association.
	Provide that the leasehold can be transferred, mortgaged, and sublet without restriction
	State rental increases in exact dollar amounts.
	Be recorded and constitute an interest in real estate.
	Permit mortgaging of the leasehold.
	Provide for written notice of default.
	Provide renewal options for the leasehold mortgagor.
	The right of the lender to foreclose and sell the property without restrictions that adversely affect the market value of the property.
	The right of the lender to bid at a foreclosure sale or to accept voluntary conveyance of the property in lieu of foreclosure.
	The right of the lender to occupy, sublet, or sell the property should the leasehold be acquired through foreclosure, voluntary conveyance, or abandonment.
	For Properties located in a PUD, the following is required: <ul style="list-style-type: none"> <li>• The individual unit owners own or have a leasehold interest in a parcel of land improved with a dwelling, not in common with other unit owners.</li> <li>• The development is administered by a homeowner's association that owns or has a leasehold interest in and is obligated to maintain property and improvements within the development (e.g., greenbelts, recreation facilities, parking areas) for the common use and benefit of the unit owners.</li> </ul>

- The unit owners have an automatic, non-severable interest in the homeowner's association and pay mandatory assessments.

## 6. FHA LEASEHOLD REQUIREMENTS

Eligible Property types are:

- one- to four-unit properties,
- PUD units,
- Condo units

A Mortgage secured by real estate under Leasehold requires a renewable lease with a term of not less than 99 years, or a lease that will extend not less than 10 years beyond the maturity date of the Mortgage.

**Requirements:**

- A copy of the lease must be sent to the Appraiser.
- The Appraiser must advise if the Leasehold Interest does not meet this requirement.
  - The Appraiser must analyze and report the terms of the ground lease, including the amount of the Ground Rent, the term of the lease, if the lease is renewable, if the lessee has the right of redemption (the right to obtain a Fee Simple title by paying the value of the Leased Fee to the lessor, thereby canceling the Ground Rent), and if the Ground Rent can increase or decrease over the life of the lease term.
  - The Appraiser must estimate and report the value of the Leasehold Interest.

In valuing the Leasehold Interest, the Appraiser must apply the appropriate techniques to each of the approaches to value included in the analysis.

- In the cost approach, the value of the land reported must be its Leasehold Interest.
- In the GRM income approach, the sales used to derive the GRM factor must be based on properties under similar Ground Rent terms (or be adjusted to similar Ground Rent terms).
- In the sales comparison analysis, the comparable sales must be adjusted for their lack of similarity to the subject in the "Ownership Rights" section of the Sales Comparison Approach (SCA) Grid.

## 7. VA LEASEHOLD REQUIREMENTS

Eligible Property types are:

- one- to four-unit properties,
- PUD units,
- Condo units

**Requirements:**

VA loans that have leasehold must be approved by VA before the NOV is issued. AD Mortgage will submit for review.

VA's legal staff will review the leasehold documents and the RLC will notify the requester of the results of the review. Copies of the following documents must be sent to the RLC in order for the leasehold to be reviewed for acceptability:

- Copy of the lease identifying the property to be leased, the lessor, the lease term, and the rent,
- All preceding assignments that may have occurred prior to the current assignment,
- Sales contract, and in cases of age or income restricted leasehold communities, the Veteran-lessee consent statement.