

Section 1.10 - Leasehold Estate Guidelines

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Overview

General

Agency Loan Programs

Reference: See the “Leasehold Estates” subtopic within the “Occupancy/Property Types” and “Appraisal Requirements” topics in [Section 2.01 Agency Loan Programs](#) of the *Correspondent Seller Guide* for guidelines.

Non-Agency Loan Programs

The requirements outlined in this document apply to all occupancy types and all SunTrust non-Agency loan programs, unless otherwise specified in the product description.

- Leasehold estates are properties that represent an *interest in real property* where the ownership of the land is legally separated from the improvement on the land.
- The owner of a home subject to a leasehold (sometimes referred to as “ground rent”) is said to “lease” the land indefinitely, pursuant to a written “ground lease” (typically 99 years in duration, but renewable in perpetuity).
- The owner of the home is obligated to pay a semi-annual or annual rental amount to the ground lease owner.

Reference: See the “Ground Rent Escrow Requirements” subtopic subsequently presented in the “Closing and Loan Settlement Documentation” topic for additional information.

- SunTrust allows mortgages that are secured by leasehold estates in those areas where there is a market acceptance and the mortgage covers the mortgagor’s leasehold interest in the land.

Reference: See the “Occupancy/Property Types” topic subsequently presented for additional information.

Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- [2018](#)
 - [2016](#)
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Identifying a Leasehold Estate

General

- A property may be disclosed as a leasehold estate in several ways:
 - the listing agent may include in the property listing,
 - the appraiser may notate on the appraisal, and

Note: In cases where the appraiser does not notate a leasehold property, and it is later discovered that the property is a leasehold estate, the appraiser must update the appraisal to include the applicable leasehold information.

Reference: See the “Appraisal Requirements” topic subsequently presented for additional guidelines and requirements.

- the title company determines from the title search.
- For properties located in the state of Maryland, the Department of Assessments and Taxation maintains a database of all leasehold properties.
 - Maryland ground rent owners may have registered their leasehold in the Maryland Department of Assessments and Taxation’s database.
 - Leasehold estates in Maryland must be checked at application, or as soon as it is determined that the property is a leasehold estate, against the Department of Assessments and Taxation’s database to confirm whether the property is titled as leasehold.
 - Leasehold estates that are confirmed to be registered with the Maryland Department of Assessments and Taxation database are acceptable without meeting the Conventional Loan programs requirements.
 - A printout from the Maryland Department of Assessments and Taxation’s website, showing the registered leasehold property must be placed in the loan file.
- Leasehold estates that are not registered with the Maryland Department of Assessments and Taxation must meet all conventional leasehold requirements.
- If the lease agreement is not legible, then the leasehold property is ineligible.

Reference: [Click here](#) to access the Maryland Department of Assessments and Taxation’s website to search the real property data system for ground rent registrations.

Occupancy/Property Types

Eligible Occupancy/ Property Types

Non-Agency Loan Programs

- Eligible occupancy/property types include the following:
 - primary residences,
 - second homes,
 - investment properties,
 - single family dwellings (attached and detached),
 - 2-4 unit properties,
 - modular homes,
 - warrantable condominiums,
 - PUDs, and
 - mixed use properties.
- All eligible occupancy/property types must meet the specific first and/or second mortgage program eligibility guidelines.

Reference: See the applicable first or second mortgage product description for specific requirements.

Ineligible Property Types

Non-Agency Loan Programs

- Ineligible property types include the following:
 - Indian lands,
 - Georgia Power Company Leasehold Estates, and
 - manufactured homes
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Leasehold Requirements, Continued

Conventional Loan Programs

Non-Agency Loan Programs

- The leasehold requirements outlined below apply to the following loan programs:
 - Jumbo Solution Second Mortgage, and
 - Key Loan Program.
- All Non-Agency conventional leasehold estate transactions must meet the guidelines outlined in this section.

Reference: See the “Occupancy/Property Types” topic subsequently presented for additional information.

- Mortgages secured by a mixed used leasehold estate are NOT eligible for origination under the Jumbo Solution Second Mortgage and Key Loan Programs.
- The lease agreement must be reviewed by the Correspondent lender.
- For condominium transactions underwritten by SunTrust, the SunTrust Central Condominium Department in Richmond, VA will also review the lease agreement, but reserves the right to request the Correspondent client to obtain a legal opinion from the Correspondent client’s legal counsel, the title company or the HOA attorney in the cases where it is not clear that all leasehold requirements are met.
- The lease must meet all of the following requirements:
 - The leasehold estate and improvements must constitute real property, be subject to a mortgage lien and insured by a title policy.
 - The lease must be valid and in full force and effect.
 - All ground rent payments, other payments or assessments must be current and the borrower must not be in default under any other provision of the lease, nor may the ground rent owner have claimed such a default.
 - For Key and Jumbo Solution Second Mortgage loans, the estate term must run for at least **five (5) years** beyond the mortgage maturity unless fee simple title will vest at an earlier date in the borrower or a homeowners’ association and must be assignable or transferable.
 - The lease must guarantee the lender the right to receive at least 30 days notice of default by the borrower and the option to cure the default or take over the borrower’s rights.
 - The lease must include provisions to protect the lender’s interest in the event of a property condemnation.
 - The lease must provide that the borrower will pay taxes, insurance and HOA dues related to the land and improvements.
 - The lease must provide that the leasehold can be transferred, mortgaged and sublet an unlimited number of times without restriction or upon payment of a reasonable fee and delivery of documentation to the lessor. The lessor may not require credit qualification on any assignee or sublessee.
 - The lease **cannot** contain default provisions allowing forfeiture or termination of the lease except for non-payment of the ground rent payments.

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Leasehold Requirements, Continued

Conventional Loan Programs, (continued)

Non-Agency Loan Programs, continued

- The lease may, but is not required to, include an option for the borrower to purchase the interest in the land (buyout the lease). There can be no time limit when the *option* must be exercised.
- The lease and option to purchase must be assignable.
- The lease must allow the borrower to retain voting rights in any homeowners' association.

Note: Maryland properties will not have to meet the above requirements provided the leasehold estate is registered in the Maryland Department of Assessments and Taxation's database.

References:

- See the "General" topic previously presented in this document for additional information regarding the Maryland Department of Assessments and Taxation database.
- See the "Occupancy/Property Types" topic previously presented in this document for additional information regarding eligible and ineligible occupancy/property types.
- Leasehold properties that do not meet the above requirements must follow **one** of the options outlined below.
 - A leasehold addendum must be prepared by the title company to eliminate or amend any deficiencies. The addendum must be signed by all parties (borrower and ground rent owner) at closing and evidence of recordation of the updated lease with addendum must be provided. **OR**
 - The leasehold must be bought out. The final title policy must reflect the buyout of the leasehold and fee simple ownership, evidenced by a Fee Simple Warranty Deed.

Note: Maryland properties registered in the Maryland Department of Assessments and Taxation's database do not have to follow one of the options listed outlined above.

Reference: See the "Buyout of a Leasehold Estate" topic subsequently presented in this document for additional information

Buyout of a Leasehold Estate

General

Non-Agency Loan Programs

- Buying out the lease provides fee simple title to the property and the ground rent owner's interest and the leasehold is dissolved.
- The price to buyout the leasehold interest will be as follows:
 - For Non-Agency I loans, it will be the appraised value of the land.

Notes:

- For leasehold properties in Maryland, the cost to buyout the leasehold interest is set by state law, using a specific calculation.
 - Information regarding the purchase of the ground lease may be obtained through the [Maryland Department of Assessments and Taxation](#).
 - The cost of redeeming the ground rent may **not** be financed into the loan amount, on purchase or rate/term refinance transactions.
 - If the borrower is responsible for the cost, sufficient assets to buy-out the leasehold, in addition to the down payment, closing costs and reserves must be documented in the loan file.
 - The final title policy must reflect the buyout of the leasehold and fee simple ownership.
 - The cost of the leasehold buyout must be reflected on the Settlement Statement.
 - At closing, ownership transfer must be evidenced by a Fee Simple Warranty Deed.
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Appraisal Requirements

General

Non-Agency Loan Programs

- The appraiser must be provided with a copy of the lease agreement, which details the terms, conditions, and restrictions of the ground lease and they must comment on any effect the terms of the lease have on value and marketability.
- The appraiser should use sales of similar properties with the same lease terms as comparable sales.
- If there are no comparable sales of leasehold properties with the same lease terms, the appraiser may use sales of similar properties with different lease terms or, if necessary, sales of similar properties that were appraised as fee simple estates.
 - The appraiser must explain why the use of these sales is appropriate, and make appropriate adjustments on the “sales comparison analysis” grid to reflect the market reaction to the different lease terms or property rights appraised.
- If the appraisal does not initially reflect that the property is a leasehold, the appraiser must update the appraisal to include the applicable information noted above.

Reference: See [Section 1.07: Appraisal Guidelines](#) of the *Correspondent Seller Guide* for additional information concerning appraisals and appraisal requirements.

The Origination System Data Input

Leasehold Estate Indicator

Leasehold MUST be selected in the “**Estate will be held in:**” field within the origination system.

Ground Rent Escrow Data Input Requirements

For SunTrust Internal Employees Only:

The ground rent escrow data (e.g., number of reserve months, amount due, due date and frequency) **MUST** be input on the origination system.

Note: When the HOA is responsible for paying the ground lease payments, the “GROUND RENT” fields must be completed on the origination system with the following information: “RES MOS” enter “0” (zero), “NEXT AMT DUE” enter “0.01” (one cent), “MONTH/YEAR” enter first payment date and “FREQ” enter “A”.

Reference: See the *Ground Rent Escrow Requirements* subtopic subsequently presented in the *Closing and Loan Settlement Documentation* topic for additional information.

Closing and Loan Settlement Documentation

General

The closing and loan settlement documentation requirements outlined in this topic are specific to the leasehold estate.

Reference: See the applicable first or second mortgage product description for additional information on closing requirements.

Addendum to the Lease Agreement

- An addendum to the Lease Agreement is required in all cases where the lease requirements are deficient or missing.
 - The addendum is prepared by the settlement agent/closing attorney.
 - The addendum must reference the original lease being amended, must clearly specify the terms being added or amended and must ensure the lease remains valid and in full force and effect.
 - The addendum must be signed by all parties (the borrower and ground rent owner) at closing and evidence of recordation of the updated lease with addendum must be provided.
 - If the leasehold agreement cannot be amended, the leasehold must be purchased and title converted to fee simple.
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Cross Default of Lease Rider

- A *Cross Default of Lease Rider* is required for on all non-Agency conventional leasehold transactions.

Note: The *Cross Default of Lease Rider* is NOT required on FHA and VA leasehold estate transactions.

- This Rider must be included with the closing documents and amends the security instrument for mortgages secured by leasehold estates so that a default on the lease is, at the lender's sole discretion, a default on the mortgage.
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Closing and Loan Settlement Documentation, Continued

Ground Rent Escrow Requirements

Agency Loan Programs

Reference: See the “Leasehold Estates” subtopic within the “Occupancy/Property Types” topic outlined in [Section 2.01: Agency Loan Programs](#) of the *Correspondent Seller Guide* for guidelines.

Non-Agency Loan Programs

Reference: See [Section 1.08: Loan Delivery and Purchase Review](#) in the *Correspondent Seller Guide*, for additional escrow requirements.

- The monthly ground rent must be included in the Proposed Housing Payment and counted in the debt-to-income ratios.
- Any potential increase in ground rent payments that are scheduled to occur within 12 months of closing must be taken into consideration by the underwriter when calculating the debt-to-income ratios.

Security Instrument – Additional Language Requirements

The Settlement Agent must add the following language (as a rider which amends the security instrument or as the second sentence of the last paragraph in Section 9 of the security instrument) on all conventional leasehold transactions:

Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease.

Note: The above additional language requirement is NOT required on FHA and VA leasehold estate transactions.

Title Insurance

- The leasehold estate and the improvements must be insured by an ALTA 13 Leasehold Endorsement.
- The title binder must include the ground rent owner’s information (name and address where to send payments).

Note: If property is converting to fee simple interest, see the *Buyout of a Leasehold Estate* topic previously presented in this document for additional information.

Reference: See [Section 1.16: Title Insurance](#) of the *Correspondent Seller Guide* for additional information concerning title insurance requirements.
