

.04 MARKETABLE TITLES

A. Leasehold Estates

A leasehold estate is an estate in realty held under a ground lease for a fixed term of years.

All lease and sublease documents, including assignments, must be recorded. For a leasehold with a community land trust, the *Community Land Trust Ground Lease Rider* (FNMA Form 2100) that removes restrictions from the community land trust's ground lease must be recorded with the lease to include adoption of the terms and conditions that are incorporated in that ground lease rider.

The Lender must certify it has reviewed the leasehold documents and the warranties for the leasehold estate as specified in this section and must warrant that the mortgage complies with the applicable leasehold estate warranties using AHFC Form PUR-78.

In addition, the appraiser must address the market acceptance of leasehold interest and should demonstrate that acceptance using sales of similar properties on leasehold estates. See Section 2000.02 and 2000.03 for more information.

Any leasehold estate:

1. Must have a remaining term of not less than 10 years after the maturity of the mortgage loan, or be renewable at the option of the borrower/lessee, or contain a provision that prior to the maturity of the mortgage, the title will convert to fee simple; and
2. Must be assignable or transferable if such leasehold estate is subjected to the lien of the mortgage; and
3. The term of the fixed ground rent must be at least 20 years or the term of the loan, whichever is less.

The Lender must warrant that the lease or sublease contains provisions that:

1. Permit the mortgaging of the leasehold estate;
2. Permit assignment without the lessor's consent; and
3. Assign the leasehold mortgagee the right to acquire in its own name (or in the name of its nominee) the right of the lessee upon foreclosure or assignment in lieu of foreclosure.

Additionally, for a lease under a Community Land Trust (CLT), the lender must warrant:

1. The lease is based on either the National Community Land Trust Network (NCLTN) 2011 Model Ground Lease or the Institute for Community Economics (ICE) Model Ground Lease.
2. The CLT is a nonprofit and/or public entity that has experience managing affordable housing properties.
3. The CLT ground lease limits property purchasers to low-income and/or moderate-income families.
4. The resale restrictions in the ground lease terminate automatically on foreclosure of the leasehold mortgage.
5. The leasehold estate created by the CLT ground lease constitutes real property, and the ground lease is valid, enforceable, and in full force and effect.

The Lender must warrant that the lease or sublease does NOT contain provisions that:

1. Permit increases in the rent other than a set increase at a specified date or time interval, unless the rent increase becomes operative more than five years after the maturity date of the mortgage;
2. Provide for termination of the lessee's default without the leasehold mortgagee being entitled to receive written notice of and a reasonable opportunity to cure the default;
3. Provide for termination in the event of damage or destruction as long as the leasehold mortgage is in existence;
4. Prohibit the leasehold mortgagee to be insured under hazard insurance policy;
5. Prohibit the payment of hazard insurance proceeds to the leasehold mortgagee or insurance trustee;
6. Prohibit the payment to the leasehold mortgagee of any condemnation award to which the lessee is entitled; and/or
7. Prohibit the leasehold mortgagee from exercising renewal options.