

WMRA URGES NAR TO ADDRESS CONDO FINANCING ISSUES

The Western Mountain Resort Alliance (WMRA) is composed of boards of REALTORS® of destination ski resorts in the Mountain West including: Park City, Utah; Sun Valley and McCall in Idaho; Jackson Hole, Wyoming; Crested Butte, Steamboat Springs, Summit County, Vail, Winter Park and Telluride in Colorado; Tahoe, California; Big Sky, Montana; and Whistler/Blackcomb in British Columbia, Canada. We are committed to the marketing and selling of resort real estate and protecting the benefits our owners of vacation real estate enjoy.

The Issue

Our membership is becoming increasingly concerned about the difficulty of obtaining financing in condominium transactions in our resort areas due to strict Fannie Mae & Freddie Mac condo guidelines. The condo markets in our areas have been particularly hard hit by the housing downturn. The current guidelines have made it almost impossible for condo transactions to be completed, even for buyers with strong credit and healthy down payments.

It's a self-fulfilling prophecy: The GSE's don't want to lend for fear of foreclosure, but if they don't lend, and sellers in these condos can't sell their properties, they will foreclose.

Resort Market Characteristics:

- 1. A Record Decrease in Sales of Condominiums:** The Fannie Mae and Freddie Mac guidelines have blocked buyers, who need financing, from purchasing properties, even when well-qualified. Not only does this affect Second-home and investment purchasers, but also primary "local" residents.
- 2. First Time Homebuyer Tax Credit Driving Interest In Condo Purchases.** Many "locals" are trying to secure the first time homebuyers tax credit and these condos are the only units that fit within their price parameters.
- 3. Qualified Buyers:** Due to its high cost characteristics the resort marketplace attracts second home buyers of substantial means. Most of these buyers are typically fiscally responsible and represent ideal customers for sellers and lenders. These prime borrowers should not be prevented from acquiring property utilizing leverage if they so desire, because of owner occupancy or unit rental GSE requirements that are irrelevant to their ability to service their loans. Similarly, the economic stimulus that such transactions lend to our marketplace is unnecessarily turned away at the time when it is most needed.
- 4. Few Foreclosures:** Because of the high cost characteristics and qualified buyers as mentioned above, our resort markets are holding strong against foreclosures. Loans in resort condo markets perform better than traditional housing loans and resort areas are not seeing more than 2% foreclosure rate. GSE's are concerned about foreclosure, as it relates to the entire U.S. Housing Market. FHFA needs to differentiate resort condo markets from traditional lending markets.

5. **Economic Dependence:** Resort markets depend on efficient condominium marketplaces so that such developments
 - a. address the need for various price points required to attract a broad base of residents and second home owners that are critical to a healthy resort economy, and
 - b. provide homes located near jobs for permanent residents at price points more suited to the prevailing wage rate than those of single family homes.
6. **Rental Opportunities are Positive:** Knowing that many condominium buyers in resort communities are well qualified as described above, but part time residents, the opportunity to rent units only adds to the financial security the buyer can present to a lender.
7. **Rental Opportunities are Necessary:** Small and large condo projects represent hundreds of millions of dollars of investment in our communities. To disallow these projects the ability to utilize conforming loans to help close for sale unit transactions could severely impact their chances for success. This could in turn prolong the development cycle or even prevent it from starting, and therefore increase the length of the economic downturn resort markets are experiencing. This is especially impactful when considering the ripple effects of construction and real estate wages spent in our communities that would have been earned sooner (and which may not be earned at all if projects can not complete due to lack of sales) with quicker build-out and absorption of projects.

As an example, the City of Ketchum, Idaho has recently approved construction of two major hotel projects and is presently considering and will likely approve the development of two more, all of which contain as part of their development strategy for sale units many of which will also be available for rent. In addition, two of these projects will contain separate, stand alone, for sale units that will be physically separated from the hotel buildings but which, under the guidelines may be considered part of a “for rent” project. The price point of this type of product will likely result in a requirement for substantial down payments in order to utilize conforming loans, further strengthening the lender’s position and arguing against the need for lending criteria other than the borrower’s ability to repay.

8. **Local Lenders Recognize the Value of Resort Market Buyers:** Local lenders are equally frustrated by the GSE requirements that prevent them from selling their condominium loans to the secondary markets. They know that many prospective buyers are very well qualified for the purchases they are contemplating, but they are prevented from closing a loan due to regulations that do not relate to the customer’s ability to repay it. The fact that some local lenders are creating significantly sized investment funds to make portfolio loans in resort markets that will necessarily stay on their books is irrefutable evidence that these

local lending experts realize that current GSE regulations go too far and prevent otherwise attractive borrowers from becoming active in resort marketplaces.

9. Home Ownership Irony: One of the few silver linings of the storm clouds brought on by the recession is the devaluation of real estate in virtually all markets that has made the goal of home ownership more of a reality for those who have been fortunate enough to maintain their pre-recession employment and wage levels. In resort markets, condominiums represent the product type that best suits many of our permanent residents from a pricing and/or lifestyle perspective; residents that make up the fabric of our communities and work the jobs that help our communities to prosper. To deny them what may be the best opportunity in their lives to enter the housing market because of guidelines that are unrelated to their ability to repay the loan is clearly policy that needs to change.

10. Lack of Liquidity Depresses Prices Even Further: The lack of lending liquidity caused by these regulations, which are difficult or impossible to meet in resort markets, has the result of driving already depressed prices even lower. Fewer buyers (resulting from the lack of available financing) mean less competition for properties, accentuating the same effect. With this devaluation beyond what would have otherwise occurred, depressed sale prices may result in an increase in the number of transactions where there is a shortfall relative to existing financing. Additionally, cash buyers become even more powerful with the ability to push values down even more drastically.

11. Home Owners Associations (“HOA”) Representatives Can Not Respond: The complexity of the regulations, the requirement that questions on HOA certifications be answered precisely, and the ramifications of incorrectly completed forms has placed an unrealistic educational requirement upon the marketplace. If professional management does not exist, where the expectation exists that such professionals will self-police themselves relative to understanding the requirements that the GSE regulations place upon them, well intentioned wrong answers to questions can derail transactions that should otherwise be made.

It is incumbent upon regulators to provide clear, concise, standardized regulations with explanations of potential pitfalls (for ex. clarifying the definition of owner occupied – how many days of use annually qualify the unit as such?) so that HOA managers need not rely solely on real estate professionals, who may be deemed to have a conflict of interest in helping to complete the forms, to be the sole providers of this education. Whereas cooperation has generally been the norm in REALTOR®/HOA relationships in the past, the importance of obtaining accurate HOA certifications has created a disharmonious environment between HOAs, lenders and REALTORS® where none needs to exist.

12. Home Owners Associations Are Reacting Negatively: Some HOA's are reacting to the GSE guidelines by changing original doc's to disallow short term rentals completely so that financing can be obtained. This is backfiring, or will, when investment buyers will not seek properties in these HOA's, because they cannot be rented.

13. Home Valuation Code of Conduct ("HVCC") Appraisal Concerns:

Overlaid on the GSE lending regulation issues is the ongoing problem of inexperienced, unknowledgeable appraisers being allowed into our market as a result of the HVCC legislation. We are still suffering from appraisals that are incorrect mainly due to out-of-market appraisers' lack of understanding of valuation principles specific to our County, and as a result, their utilization of incorrect comparables in establishing value. With HR 3126 still under debate in Washington, a near term solution to this problem needs to be developed as soon as possible.

Problematic GSE Guidelines:

WMRA and its members have identified the following regulations and policy procedures to be the nexus of GSE condo mortgage lending issues:

1. FNMA and FHLMC/large bank regulations:

- ✓ Require 70% owner occupancy.
- ✓ Do not allow nightly rentals of condos.
- ✓ Do not allow front desks.
- ✓ Allow underwriters to do a web-based internet search to determine whether project engages in nightly rentals. These searches can include inaccurate or dated information that are not verified.
- ✓ Restrict lending for projects that do not have individual gas or electric meters or services.
- ✓ Do not allow lending in projects where "lodge" is included in the name.
- ✓ Require 40-50% down payment.

2. Pre-Loan Sale Requirement Catch 22: Requiring project owners to sell 51% of the units in a new project before conforming loans are allowed severely restricts owners' ability to close those required sales or line up pre-sales, putting additional pressure on the viability of the project. Depending on the style of project, this will also significantly reduce the universe of potential buyers for the units required to meet the restriction; so the restriction prevents buyers from being considered who would allow the requirement to be satisfied, a true Catch-22! As we have previously stated, many buyers in resort markets are very well qualified and should be measured on their ability to repay loans, not on whether or not sufficient cash buyers exist to purchase over half of the available units.

3. **Overlays:** Overlays put on by large banks selling to FNMA and FHLMC only create further restrictions and confusion to the guideline requirements.
4. **Denial:** When denial occurs, it is generally within the week of closing and often one day prior to closing. In these situations, it means the Seller has taken the condo off the market for 45 days, and the buyer is out the cost of an appraisal and an inspection. The paperwork, time and energy expended by all parties involved is also lost. If underwriters are required to “google” the property, this should be done at the beginning of the process.
5. **No Appeals Process:** There are many unique resort properties that do not fit into conventional guidelines. The definitions of townhomes, and condos are different in every development across the county.
6. **Lack of definition:** It is very unclear as to what can and what cannot qualify. This creates confusion for lenders, REALTORS® and the public at large. We need clear and concise definitions on qualifications.
7. **Conflict between federal agency requirements:** Fannie recently denied approval of a condo project solely because the project included a few ADA units as required by the Americans With Disabilities Act. These units were intended for owners with guests who needed ADA compliant property. Fannie denied the project, indicating the ADA units were a “non-incidentual business use”. The lending agency was concerned these units would be rented out as a nightly rental.

The Goal

With the goal of achieving liquidity in our condo markets, WMRA strongly urges NAR to pursue public policy, whether through federal legislation or regulatory changes, that would exempt resort areas nationwide from the current GSE condo guidelines.

In January, Fannie Mae undertook a “Special Approval” designation that exempts established condo projects in Florida to help stabilize the states condo market. We believe resort markets in all areas of the United States should be exempted from rules that prevent sales of condominiums in our areas.

The Impact In Resort Markets

Below is a sampling of issues REALTORS® and local lenders are seeing in condo transactions:

“As lending practices continue to tighten, it has become exceedingly apparent how this affects our economy in Summit County. Current Fannie Mae Guidelines indicate perfectly sound and warrantable condominium projects in Summit County may be denied any financing possibilities simply because they are located in a “resort” area or because individual unit owners may rent

their units on a nightly basis. Furthermore large banks are adding additional cumbersome barriers restricting financing because many condominiums do not have individual meters for gas and electric services or because the word "lodge" is in the name. These are examples of unreasonable and unfounded restrictions that are severely hindering buyers trying to purchase condos in our area.

If lenders had the ability to loan judiciously to a fireman or a teacher or other permanent residents whose main option for housing is a condominium, we would see more building, more jobs and a good beginning of economic recovery. Second homeowners are also hurt by these restrictions and are finding it increasingly difficult to purchase property in Summit County. Healthy resort areas are one of the major heartbeats of Colorado.

When people think of Colorado, they think of mountains and fishing and snow and skiing. Tourism is the second largest economic driver in Colorado. We also rely on tourists to buy second homes in Summit County furthering jobs and promoting a healthy economy."

Allison Simson
Broker/Owner Summit Real Estate

"For secondary market loans, the criteria that FNMA and FHA now employ for determining if a condo project is eligible to be financed has become stricter. It is my understanding that FNMA requires at least 70% of the units in a project to be owner-occupied. Also, any aspect of the project that would suggest that is like a hotel (a condo-tel) will likely prevent units in the project from being financed with FNMA loans. These criteria are particularly tough for our local market where investment properties and condo-tels are prevalent."

Mary I. McDougall
Executive Vice President
FirstBank of Vail

"I'm happy to provide you with feedback about the difficulties in financing condo and condo-tels. I cover 4 resort markets across Colorado for Millennium Bank and run into the same issue in every market. Regular "non-resort" condos are being considered condo-tels, even though they are not. Condo-tels used to be clearly defined by FannieMae as those with a front desk or mandatory rental pooling agreements and they were fairly easy to identify with a condo questionnaire. Now, in the new era of mortgage lending, Underwriters no longer rely solely on condo questionnaires, but will Google the Association name and search for short term rentals. If just one homeowner has their condo for rent on a short term or nightly basis, then the property is considered a condo-tel and ineligible for conventional financing. Even if the HOA doesn't allow short term rentals or is silent on the subject, it takes only one rogue homeowner to effect financing for all unit owners.

When a property is considered a condo-tel, or even if an underwriter slightly suspects a condo-tel aspect, the loan is rejected. The ultimate outcome is the borrower is unable to obtain the most favorable financing, ie. FannieMae type rates and loan programs. 99% of Secondary market investors do not accept condo-tels, leaving financing options very limited, if any. When

financing options are limited, lack of supply and increased demand forces the lending criteria to be very strict, which can include higher rates, shorter loan terms, larger down payments, and more selective criteria.

Also, we've seen an increase in the required percentage of owner occupied versus non-owner units in condo associations. 50% used to be the norm, now it's 70%. Take a mid-valley market like Eagle-Vail and instead of just half of the complex be owner occupied; now it's 70%. We used to see flexibility with this criteria, but most investors have tightened up and waivers are less frequent. Obtaining association or project approvals has all but virtually stopped as nobody wants to take the additional risk of representing a condo project meets FannieMae guidelines.

If I could stress one point, it's that the biggest change with condo lending is Underwriters are very, very conservative to the point of being paranoid. So even though we read Fannie's guideline on how they define a condo-tel and you would think it's a doable transaction, it's the Investors and their Underwriters that sell to FannieMae that are taking it one step further and applying their own criteria, thru "overlays" and being very conservative. We all agree underwriting of mortgage loans needed to be more conservative due to the mess we are in now, but the pendulum has swung too far."

Scott Prince
Vice President, Millenium Bank, Vail, CO

"The real estate lending market is not unlike Wall Street, it is run by "greed & fear". Right now fear has taken hold and is dictating lending practices with little regard to the realities of what is going on in the market. The resort market and lenders in Park City, Utah are experiencing the same problems that lenders nationwide are experiencing. We have well qualified borrowers who in a normal market should easily be an acceptable risk for any lender. The underwriters are using the internet to determine property types and projects without considering appraisals and condo certificates which conflict with their predetermined idea of what they think the project is. Perfectly financeable condo projects that have no front desk or any HOA participation in rentals are being turned down because owners may rent them on a nightly basis to help defray their costs on a second home. This is having a negative impact on sales and the livelihood of many in the Real Estate and financing community.

The problem stems from the people making the decisions on these matters are the same ones who got us into our current situation. Until there is change in the decision makers, fear will continue to run the market and financing will be difficult.

Joe Thomas, CPA
Vice President
Intermountain Mortgage Company, Inc.
Park City, UT

"The underwriters are not approving Associations' Declarations like they used to. Case in point: If there is not specific language prohibiting partial ownership in an association, the complex will be turned down. For properties under 750 sq. ft., buyers are required to put down 40%-50% and can obtain a 5 or 7 year balloon only."

B. Susan Rychel, CRS, GRI, PPS
Branch Broker
Slifer Smith & Frampton Real Estate
Vail, CO

“For one thing, I’ve never understood the aversion to condo-hotels. It seems to me that the ability to generate income, ON TOP OF all the normal requirements for borrower qualifications, should almost make it EASIER to loan on those kinds of properties. At the very least, why can't there be differentiation between markets? I'll bet anything that in strong resort areas like ours, the default rate on condos with rental programs is LESS than that of all other residential property, condo or otherwise.

I guess more than anything, my suggestion/request would be to differentiate more between markets and even properties, rather than have broad, homogenous classifications that lump everyone together regardless of their specific, calculated risk.”

Rob LeVine,
Antler’s at Vail
Vail, CO

“My experience is that the tightening of lending practices (with no exceptions or variances for our different markets) is killing sales.

I have several buyers who won’t purchase, even though they’ve identified properties that they would like to own, because they either can’t get a loan period, or don’t like the terms.

Since our Resort based markets are so heavily condo saturated this is a huge part of my business....or at least it used to be. I’ve worked (for 7 years) primarily with investors and 2nd home owners and the lending guidelines have gotten so strict (based on what happens in primary residence markets) that these people can’t or won’t get back into the game.

It’s driving our property values down, sales volume down and frankly, putting some Realtors out of business.

A solution would be guidelines that are market designed and market appropriate. Lenders face different risks in our type of market and to try and stuff our borrowers into some tiny little box that EVERY borrower in the entire country is supposed to fit in, is just devastating.”

Erin Dellaporta, Broker Associate
NAR Green Designee, e-Pro
Resort & Second Home Property Specialist
OBA & OSA Certified
Prudential Becky Hamlin Realty, Inc.
Crested Butte, CO

“In Steamboat Springs, there was recently an issue with a project consisting of 100 units, 5 of which were in a short term rental program. Many of these units are townhomes but registered at the County as Quail Run Condos. This is a project that consists of primary housing for many of the core service and hospitality families needed in our resort. Due to the 5 short term rentals and the fact that they found this on a web page, funding was denied. And there was no appeal on this clearly errant decision.”

Ulrich Salzgeber
President, Steamboat Springs Board of REALTORS®

“I found out that these changes are mostly due to the highest numbers of foreclosure properties being investor properties in resorts. Condos being the most feared properties to lend on by lenders. It did not help Gunnison County that we did not get a raise in the conforming loan amount and are still at \$147,000 when all other resort towns did increase.

My first hand experience happened this December and January. I was thrilled with the increase activity I was having with perspective buyers interested in ski condos. Yeah- I had 3 condos under contract with VERY qualified buyers (they could pay cash but wanted to have partial financing). Then whammy- in middle of January the under writing changed to the “owner occupancy” must being a 70%/30% owner to investor ratio. Meaning 70% of a condo complex could not be short term rented. Because this means it is “investment” property. Well in this resort town most second home owners rent out their homes and condos to have a little income to help offset expenses when they are not here. Yep- you guessed it! I lost all 3 deals because the properties would not qualify. Well guess what---the next month the underwriting guide line was changed to 50%/50%, and these properties would have qualified! But it was too late for those buyers (because they are very bent on the lending practices at this time). It hurt me too. Ouch! I wish lending would think things through just a little bit before they change the guidelines. Their wishy-washiness is killing resort real estate.”

Mindy Stern
Premier Mountain Properties
Crested Butte, CO

For More Information:

Please contact Dennis Hanlon, WMRA Chair, at 435-640-5851 or Sarah Thorsteinson, Government Affairs Director for the Glenwood Springs Association of REALTORS®, Steamboat Springs Board of REALTORS®, Summit Association of REALTORS®, and Vail Board of REALTORS® at 970-393-3939.