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**CHAMPLAIN TOWERS SOUTH IN SURFSIDE, FLORIDA: FREDDIE MAC  
ISSUED NEW BULLETIN ON MORTGAGE ELIGIBILITY ON CONDOMINIUMS  
IN NEED OF CRITICAL REPAIRS OR WITH SPECIAL ASSESSMENTS**

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Because of the collapse of the Champlain Towers South in Surfside, Florida, on December 15, 2021, Freddie Mac issued Bulletin 2021-38: Temporary Condominium and Cooperative Project Requirements and Topic 5600 Reorganization. The bulletin was issued to address the risks of residential buildings with aging infrastructure and in need of critical repairs, and temporary condominium and cooperative requirements were announced to address risks related to the marketability and condition of the project, the marketability of the units within the project, and the financial stability and viability of the project.

The guidelines apply to all condominiums with five units or more even if the condominium is otherwise exempt from review. The guidelines will be effective February 28, 2022, so condominiums should become familiar with the information and documents required by the new guidelines.

In most years, Freddie Mac and Fannie Mae acquire a majority of residential mortgages from mortgage lenders (for example, 62% in 2020), so their underwriting guidelines have a substantial impact on the overall lending market.

**Critical Repairs**

Freddie Mac will not accept a mortgage that secures a unit in a condominium in need of critical repairs, which is broadly defined (see chart of definitions at the bottom of this article). The condominium will remain ineligible until all the necessary repairs are completed. It is not enough for the work to be in progress or fully funded. To evidence completion, an engineer's report could be required, along with Board Meeting minutes, reserve studies, and other similar documentation requested by the lender.

## **Special Assessments**

Freddie Mac will require that any current special assessment be reviewed to determine eligibility – even if it has been paid in full for the unit that will secure the mortgage. A current special assessment includes any special assessment that the Board of Directors or owners have approved, even if it is due in the future and collection has not started. A mortgage lender will need to determine the following in order to be able to sell the mortgage to Freddie Mac:

- The reason for the special assessment.
- The total amount assessed.
- For current special assessments, if the total amount is an appropriate allocation, and if the amount budgeted to be collected year-to-date has been collected.
- For planned special assessments, if there is adequate cash flow to fund the reason for the special assessment.

To determine that the amount budgeted to be collected year-to-date (YTD) has been collected:

- The seller must review an income statement or a substantially similar document that has YTD budgeted and actual amounts for the special assessment.
- The document should be dated within 90 days of the project review date.
- Any shortfall between the budgeted and actual YTD amounts for the special assessment must not be more than 5%.

Note that if a special assessment has more than 10 monthly payments remaining, it must be included in the calculation of housing expense-to-income ratio for the borrower.

## **New Condominium Questionnaire**

Freddie Mac and Fannie Mae have developed a Condominium Project Questionnaire Addendum, Form 476A, which is an addendum to Form 476 (i.e., the long form questionnaire). Form 476A can be found at [https://sf.freddiemac.com/content/\\_assets/resources/pdf/forms/form-476a.pdf](https://sf.freddiemac.com/content/_assets/resources/pdf/forms/form-476a.pdf). Form 477, known as the short form, is being retired and will no longer be used.

Lastly, although condominium associations will face immense pressure from selling unit owners and their prospective purchasers, the association has no obligation fill out the questionnaires or provide any information not required by statute. Section 718.111(12)(e) Florida Statutes, provides as follows:

1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.
2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Therefore, if the association does provide the requested information, it may charge a fee that does not exceed \$150, plus the reasonable cost of photocopying and any attorney fees. Further, the association should shield its liability by requiring a written request and including the following disclaimer on any response: “The responses herein are made in good faith and to the best of my ability as to their accuracy.”

<b>TERM</b>	<b>DEFINITION</b>
Critical Repairs	<p>Repairs and replacements that significantly impact the safety, soundness, structural integrity or habitability of the project's building(s) and/or that impact unit values, financial viability or marketability of the project. These repairs and replacements include:</p> <ul style="list-style-type: none"> <li>• All life safety hazards</li> <li>• Violations of any federal, State or local law, ordinance or code relating to zoning, subdivision and use, building, housing accessibility, health matters or fire safety</li> <li>• Material Deficiencies</li> <li>• Significant Deferred Maintenance</li> </ul>
Material Deficiencies	<p>Unresolved problems that cannot reasonably be addressed by normal operation or routine maintenance and which include:</p> <ul style="list-style-type: none"> <li>• Deficiencies which, if left uncorrected, have the potential to result in or contribute to critical element or system failure within one year</li> <li>• Deficiencies that will likely result in a significant escalation of remedial cost related to any material building components that are approaching, have reached or exceeded their typical expected useful life or whose remaining useful life should not be relied upon in view of actual or effective age, abuse, excessive wear and tear, poor maintenance and exposure to the elements</li> <li>• Any mold, water intrusions or potentially damaging leaks to the project's building(s)</li> </ul>
Significant Deferred Maintenance	<p>The postponement of normal maintenance, which cannot reasonably be resolved by normal operations or routine maintenance and which may result in any of the following:</p> <ul style="list-style-type: none"> <li>• Advanced physical deterioration</li> <li>• Lack of full operation or efficiency</li> <li>• Increased operating costs</li> <li>• Decline in property value</li> </ul>
Routine Repairs and Maintenance	<p>Repairs and maintenance that are expected to be completed by the project in the normal course of business and are nominal in cost. These repairs are not considered to be critical and include work that is:</p> <ul style="list-style-type: none"> <li>• Often preventative in nature</li> <li>• Accomplished within the project's normal operating budget</li> <li>• Typically completed by on-site staff</li> <li>• Focused on keeping the project fully functioning and serviceable</li> <li>• Minor deficiencies with a cost of \$3,000 or less per repair item that do not warrant immediate attention but that require repairs or replacements that should be undertaken within the next 12 months</li> <li>• Scheduled repairs and maintenance that are fully funded, may have a cost greater than \$3,000 and will be undertaken within the next 12 months</li> </ul>

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*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

To view past articles, please click “Publications” on our firm’s website at [paveselaw.com](http://paveselaw.com). Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243. Mr. Pope is one of only two attorneys in Florida that is Florida Bar Board Certified in both Construction Law and Condominium and Planned Development Law. He is a partner and an experienced construction and real estate attorney with the Pavese Law Firm. Mr. Pope can be contacted by email at [chrispope@paveselaw.com](mailto:chrispope@paveselaw.com).

**Pavese Law** has five attorneys Board Certified in Condominium and Planned Development Law; three of only thirty attorneys in the State of Florida who are Board Certified in both Real Estate Law and Condominium and Planned Development Law; and one of only two attorneys in the State of Florida who is Board Certified in both Construction Law and Condominium and Planned Development Law.

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