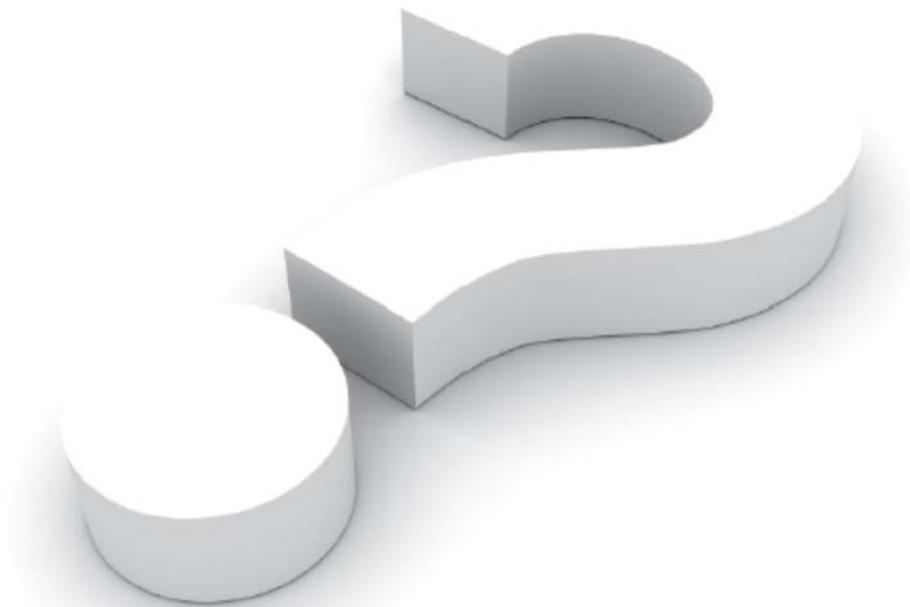


# FINANCING OPTIONS FOR CONDOMINIUMS WITH PENDING HOA LITIGATION



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# Overview

This white paper offers information and answers for Homeowners Associations and their members considering an SB800 claim against the developer of their condominium development.

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## Disclosure

Donald M. Maher holds a California Real Estate Brokers license, #01025802, and is registered with the Nationwide Mortgage Licensing System (NLMS), #241202. Mr. Maher is the President and Broker of Record at Universal Capital Mortgage Corp. (UCMC) and has been licensed through the state of California since 1989. UCMC holds a license with the Bureau of Real Estate, license # 01866200, and is in good standing with the Nationwide Mortgage Licensing System, NMLS #366070. UCMC is a private company owned 100% by Donald M. Maher. Mr. Maher is also an account executive for Coast 2 Coast Funding Group (C2CFG). C2CFG is licensed CA Bureau of Real Estate, #01524242, and is in good standing with the Nationwide Mortgage Licensing System, NMLS #92145. Mr. Maher, UCMC, and C2CFG have not been compensated or subsidized in any way by any 3<sup>rd</sup> parties, including the many attorney firms they consult about mortgage financing.

## The Financing Reality

Individual condominium units with Homeowners Associations involved in pre-litigation, mediation/arbitration, or formal litigation are considered “non-warrantable” by Fannie Mae (FNMA), a United States Government-Sponsored Entities (GSE’s) whose main goal is to provide liquidity to the nation’s mortgage finance system. Non-warrantable condominium loans are not eligible to be sold to Fannie Mae, therefore very few lenders offer programs for them.

To obtain financing on a non-warrantable condominium, one must use a lender that will not sell the loan to Fannie Mae, but will either hold on to the loan in a portfolio, or sell to an investor who will also hold on to the loan in a portfolio. The reason there are very few lenders for non-warrantable condominiums is that most lenders, including banks, mortgage banks, and wholesale lenders, want to have the option of being able to sell their loans in the secondary market.

There are a number of companies that offer loans for non-warrantable condominiums, most offering only Adjustable Rate Mortgages (ARM’s). Conventional 30 year fixed mortgages are also available, but on a limited basis, and through only a handful of originators. Loan guidelines and limits are set every year by Fannie Mae, and are “county” specific. To view a list current loan limits, log on to <https://www.fanniemae.com/singlefamily/loan-limits#>

The ultimate challenge in financing a condominium that is non-warrantable due to pre-litigation, mediation/arbitration, or formal litigation is choosing the right lender. Many people prefer to use the banks and mortgage companies they have existing relationships with. The problem is these companies for the most part have little to no knowledge of how to process and fund the special type of loan needed. The best approach is to be up front with your lender and explain to them the situation. Many reputable lenders will provide you a referral to a company that is experienced in non-warrantable condominium financing. If you are a homeowner and ready to sell your unit, make sure you choose a Realtor that has experience in your community and disclose the litigation up front to them. Realtors that have previous experience in communities with litigation may have an existing relationship with a lender that has already completed a loan in the community.

## Loan Programs

There are three different loan programs available for condominiums with HOA's in various stages of litigation. They are:

1. 30 Year - Portfolio SB800 (pre-litigation – no complaint filed)
2. 30 Year - Portfolio (formal litigation – complaint filed)
3. 30 Year - Fannie Mae Owned (mediation, arbitration, pre and formal litigation)

### **30 Year - Portfolio SB800**

This loan is used for condominiums where the HOA has sent a “notice to the builder” for warranty repair. It can also be used for HOA's currently in mediation/arbitration if there is no formal complaint filed against the developer. It is a 30 year fixed conventional mortgage with “market” interest rates. A 10% down payment is required for purchases, and a maximum loan to value of 90% is required for refinances. Loan amounts are once again based on FNMA's county loan limits.

### **30 Year - Portfolio**

This loan is used for condominiums where the HOA has filed a formal complaint against the developer for construction defect. It is a 30 year fixed conventional mortgage with “above market” interest rates. A 10% down payment is required for purchases, and a maximum loan to value of 90% is required for refinances. Loan amounts are once again based on FNMA's county loan limits. This loan is made by lenders who will either hold the loan for investment, or have “internal investors” that they sell the loan to immediately upon funding. Rates will range approximately .375% to .875% higher than market interest rates depending on down payment, loan amount, occupancy type and credit score.

### **30 Year - Fannie Mae Owned**

Lastly, there is a program that is for refinancing only. Very few lenders know about it, and even less offer it. It does not have a name, but I will call it the 30 Year – Fannie Mae owned. In brief, if a homeowner's loan is currently owned by Fannie Mae, a refinance is allowable regardless if the condominium's HOA is involved in any stage of litigation. It must be a “rate and term” refinance, meaning there is no cash out allowed. The borrower must meet all of the other qualifications required for a typical refinance, but once again, all stages of litigation are acceptable.

## List of Non-Warrantable Items

The below list contains various scenarios in which Fannie Mae or Freddie Mac would classify the condominium as “non-warrantable”. In order for a condominium to be considered “warrantable”, none of the items can exist within a particular condominium project.

- ❖ The HOA is involved in litigation (pre or formal) mediation or arbitration
- ❖ Project is new and does not have the required % of units presold or closed
- ❖ There is a high concentration of renters vs. owners in a project
- ❖ There is a higher percentage of homeowners delinquent on their HOA dues
- ❖ The HOA is not budgeting 10% of income to reserves
- ❖ One entity owns more than 10% of the units in a project
- ❖ The project has more than 25% commercial aspect
- ❖ The property is a co-op, condo-tel, or hotel residence
- ❖ The complex has a deed restriction (BMR unit, low income designation, private transfer fees)
- ❖ The project has inadequate hazard insurance (only private financing available)

## Q and A

1. Are the interest rates/fees higher for buyers or owners refinancing in associations where a “notice to builder” has been sent to the developer, but a formal complaint has not been filed? **No. Market rates/fees are available for both purchases and refinances in communities where there is pre-litigation, but no complaint has been filed. Mediation, arbitration, and judicial reference are all allowable if there is no formal complaint filed.**
2. If a complaint has been filed in Superior Court by the HOA against the developer, can a buyer or an owner refinancing get a loan? If yes, what is the current interest rate/points charged for such buyers or refinancing owners? Are the loan terms or other conditions different? **Yes, a buyer or homeowner refinancing can get a loan, as long as they have 20% equity (in some cases, 10%). The rate will depend on the loan to value, loan amount, credit score and occupancy type. An owner occupied loan under the conforming loan limit, with a credit score over 740, and 25% equity, will be about .5% over market rates and have 0 pts in origination. A loan over the conforming limit, with only 20% down and a credit score under 700 can be upwards of .875% over the market rate. The loans are fully conventional 30 or 15 year fixed mortgages.**
3. Are the loans available for condos with HOA litigation private loans? **No. The loans available are just like every other 30 year fixed conventional loan that is offered on the market. Lenders follow the same FNMA and FHMC guidelines for all products offered for Pre-Litigation and for properties with complaints filed. The loans are usually either 15 or 30 year fixed conventional loans.**
4. Why can't my current lender do this loan? **Most lenders do not even know what a non-warrantable condominium is, let alone how to finance one. Mainstream lenders like to do Conventional, FHA, VA, and other loans that are easily sellable in the secondary loan market.**
5. Is there a prepayment penalty? **Yes. 6 month prepayment penalties are the norm for most lenders. The penalty is 1.00% of the existing balance paid off. Most lenders will allow up to 20% of the loan balance paid off in that period of time without penalty.**
6. Are FHA loans available for condos in the various stages of HOA litigation? **NO. FHA, VA, USDA and all “standard” types of programs will not allow any stage of litigation, mediation or arbitration.**

## About the author

Donald M. Maher has been a mortgage consultant since 1989 and has personally closed over 500 non-warrantable condominium loans, in excess of \$150,000,000, in the last five years, with the majority being condominiums with pending HOA litigation. He is widely recognized as the top expert in the field of non-warrantable condominium financing. With 25+ years of lending experience, he is the trusted advisor to California's top Realtors, CPA's, Real Estate Attorney's, and Financial Planners. For more information, contact Mr. Maher @ 800-736-0565, email [don@uclan.net](mailto:don@uclan.net), or visit: [www.HoaLitigationCondoLoans.com](http://www.HoaLitigationCondoLoans.com)